COURT OF APPEALS
DIVISION II
09 MAY 28 PM 12:28
STATE OF WASHINGTON
BY
DEPUTY

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISON II

NO. 39017-5-II (Consolidated)

THE SUQUAMISH TRIBE; KITSAP CITIZENS FOR RURAL PRESERVATION; and JERRY HARLESS,

Appellants,

v.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD; and KITSAP COUNTY,

Respondents.

OPENING BRIEF OF APPELLANTS SUQUAMISH TRIBE, ET AL.

Melody L. Allen
WSBA No. 35084
Suquamish Tribe
18490 Suquamish Way
Suquamish, WA 98392
(360) 394-8488
Attorney for Appellant
Suquamish Tribe

David A. Bricklin
WSBA No. 7583
Bricklin Newman
Dold, LLP
1001 Fourth Ave.,
Suite 3303
Seattle, WA 98154
(206) 621-8868
Attorney for Appellant
Kitsap Citizens for
Rural Preservation

Jerry L. Harless
P.O. Box 8572
Port Orchard, WA 98366
(360) 271-2642
Pro Se

TABLE OF CONTENTS

I. ASSIGNMENT OF ERROR 1

II. ISSUES PRESENTED FOR REVIEW 1

III. SUMMARY OF ARGUMENT 3

IV. BACKGROUND 7

A. ADMINISTRATIVE COMPLIANCE PROCEEDINGS 11

B. SUPERIOR COURT DECISION 12

V. STANDARD OF REVIEW 13

A. COURT OF APPEALS 13

B. THE GROWTH MANAGEMENT HEARINGS BOARD 14

VI. ARGUMENT 15

A. THE BOARD ERRED BY AFFIRMING THE COUNTY'S REDUCTION OF MINIMUM URBAN DENSITIES 17

1. The Board's use of a "bright line" rule to approve minimum densities was invalidated by the Supreme Court. 17

2. Upholding a reduction in minimum density is not supported by substantial evidence in the record. 21

a. Lowering densities in urban areas is contrary to Kitsap County's own recent success in increasing urban densities. 21

b. *Decreasing density to enlarge the UGAs fails to meet the GMA goals and GMA internal consistency requirements.* 24

3. The Board did not decide all the issues..... 27

B. THE BOARD ERRED BY AFFIRMING THE LAND CAPACITY ANALYSIS 27

1. The "bright line" rule as applied to the Land Capacity Analysis is a compounding error of law. 30

2. The Board's decision affirming the Land Capacity Analysis is not supported by substantial evidence. 31

3. The Board did not decide all the issues..... 34

C. THE RURAL WOODED INCENTIVE PROGRAM DOES NOT PRESERVE RURAL CHARACTER 35

1. The Board's reliance on a "bright line" rule to find appropriate rural density is an error of law. .. 37

2. Substantial evidence in the record fails to support that the Rural Wooded Program will preserve rural character. 38

a. *The Board miscalculated density for purposes of determining that subdivisions would contain "rural density" consistent with preserving rural character.* 40

b. *Suburban-style subdivisions in Rural Wooded lands impermissibly promote urban growth.* 44

c. *Subdivision design standards do not protect rural character.* 47

d. *Suburban-style subdivisions will require urban services.* 51

e. *Monitoring of subdivision developments will not protect rural character due to vested rights.* 54

3. The Board did not decide all the issues raised by Petitioners. 58

D. THE RWIP DOES NOT COMPLY WITH THE GMA's RURAL ELEMENT REQUIREMENTS 58

1. The County's "GMA Goal Harmonizing Document" is not Supported by Substantial Evidence. 58

VII. CONCLUSION 65

Table 1: Rural Land Zones ..... Attached

TABLE OF AUTHORITIES

Cases

City of Redmond v. Cent. Puget Sound Growth Mgmt. Hrngs. Bd., 136 Wn.2d 38, 959 P.2d 1091(1998) 13

Diehl v. Mason County, 94 Wn.App. 645, 952 P.2d 542 (1999)..... 39, 47

King County v. Cent. Puget Sound Growth Mgmt. Hrngs. Bd., 142 Wn.2d 543, 14 p.3D 133 (2000) 3, 12, 14

Lewis County. v. W. Wash. Growth Mgmt. Hrngs. Bd., 157 Wn.2d 488, 139 P.3d 1066(2006)..... 13

Low Income Housing Institute v. City of Lakewood (LIHI), 119 Wn.App. 110, 77 P.3d 653 (2003) 27, 35, 58

State v. Black, 100 Wn.2d 793, 767 P.2d 963(1984) 14

Swinomish Indian Tribal Community v. W. Wash. Growth Hrngs. Bd., 161 Wn.2d 415, 166 P.3d 1198 (2007) 55, 57

Thurston County v. Western Growth Management Hearings Bd., 16 Wn.2d 329, 190 P.3d 38(2008).....1, 3, 10, 14-16, 19-21, 34, 37, 61

Thurston County. v. Cooper Point Ass'n, 148 Wn.2d 1, 57 P.3d 1156 (2002)..... 13

Viking Properties v. Holm, 155 Wn.2d 112, P.3d 322 (2005)..... 10, 18-19, 21, 23, 61

Administrative Cases

1000 Friends of Wash. v. Snohomish Cy., 2004 WL 3275236-7..... 39

Bremerton v. Kitsap County, 1995 WL 903165 ..... 18, 29, 38, 62

Bremerton v. Kitsap County, 2004 WL 3249863 ..... 21, 36

Bremerton v. Kitsap County, CPSGMHB No. 95-3-0039c (1997) 36

FOSC v. Skagit County, WWGMHB No. 96-2-0025, Compliance Order (Sept. 16, 1998) 57

Friends of Skagit Cy. et al. v. Skagit Cy., 1995 WL 903176 54

Kitsap Citizens for Rural Preservation, et al., v. Kitsap County, 1994 WL 907904 at 14 (1994) 36, 40

Screen v. Kitsap County 1999 WL 1075115 59

Vashon-Maury v. King Cy., 1995 WL 90329 40

Statutes and Regulations

RCW 34.05.570 (1)(a) 13

RCW 34.05.570 (3)(d) 13, 65

RCW 34.05.570 (3)(e) 13

RCW 34.05.570 (3)(f) 27

RCW 35.70A 1

RCW 36.70A.010 3

RCW 36.70A.020 (1) 4, 5, 16, 25, 30, 36, 63

RCW 36.70A.020 (10) 5, 64

RCW 36.70A.020 (12) 5, 25, 30

RCW 36.70A.020 (2) 4, 15, 30, 62

RCW 36.70A.020 (3) 5, 25, 26

RCW 36.70A.020 (4) 25

RCW 36.70A.020 (8) 5

RCW 36.70A.020 (9) 5, 63

RCW 36.70A.030 (2) 5

RCW 36.70A.030 (5) 5

RCW 36.70A.030 (8) 5

RCW 36.70A.030 (9) 5

RCW 36.70A.030 (10) 5

RCW 36.70A.030 (11) 5

RCW 36.70A.030 (14) 40

RCW 36.70A.030 (15) 36, 39, 48, 50

RCW 36.70A.030 (15)(c) 49

RCW 36.70A.030 (15)(e) 62

RCW 36.70A.030 (15)(f) 51

RCW 36.70A.030 (16) 39, 50

RCW 36.70A.030 (17) 5

RCW 36.70A.030 (18) 15

RCW 36.70A.040 (4) 15

RCW 36.70A.060 5

RCW 36.70A.060 (1) 36

RCW 36.70A.070 ..... 25, 26, 29, 35, 47, 62

RCW 36.70A.070 (1) 28

RCW 36.70A.070 (5) 9, 36, 39, 44

RCW 36.70A.070 (5)(a) 9, 58, 63

RCW 36.70A.070 (5)(b) 38, 61

RCW 36.70A.070 (5)(c) 47, 50

RCW 36.70A.110 5

RCW 36.70A.110 (1) 4, 15, 37

RCW 36.70A.110 (2) 15, 28, 29, 34

RCW 36.70A.110 (4) 51

RCW 36.70A.115 28

RCW 36.70A.130 (3)(a) 7, 15

RCW 36.70A.170 (1) 5

RCW 36.70A.170 (3) 5

RCW 36.70A.170 (6) 5

RCW 36.70A.210 (1) 15

RCW 36.70A.210 (2)(a) 15

RCW 36.70A.210 (3) 15

RCW 36.70A.280 14

RCW 36.70A.302 14

RCW 36.70A.320 (3) 14

RCW 36.70A.3201 ..... 14, 21, 23

RCW 43.62.035 15

RCW 43.63.035 ..... 4, 15

RCW 58.17.033 55

WAC 365-195-920 55

Kitsap County Code

KCC 17.301.080 50

KCC 17.301.080 B 41

KCC 17.301.080 B.1 44

KCC 17.301.080 B.2.b 56

KCC 17.301.080 E.1 42

KCC 17.301.080 E.4.a.(1)[3] 42

KCC 17.301.080 E.5 ..... 42, 64

KCC 17.301.080 E.6 ..... 49, 64

KCC 17.301.080.F 63

KCC 17.301.080 I.1 56

KCC 17.301.080 I.2 56

Law Review Articles

Accommodating Growth or Enabling Sprawl? The Role of Population Growth Projections in Comprehensive Planning under the Washington State Growth Management Act, 36 Gonz. L.Rev. 73, 105 (2001) 16, 34

Alan D. Copsey, *Including Best Available Science in the Designation and Protection of Critical Areas Under the Growth Management Act*, 23 Seattle U.L. Rev. 97, 97 (1999). 3

Richard L. Settle, *Washington's Growth Management Revolution Goes to Court*, 23 Seattle U.L. rev. 5, 6-7 (1999). 3

I. ASSIGNMENT OF ERROR

1. The Superior Court erred in affirming the Central Puget Sound Growth Management Hearings Board's ("Board") decision that Kitsap County's reduction of minimum densities in urban growth areas met the requirements of the Growth Management Act ("GMA"), Chapter 36.70A RCW. CP 111-112, 114.

2. The Superior Court erred in affirming the Board's decision that Kitsap County's land capacity analysis met the requirements of the GMA. CP 112, 114.

3. The Superior Court erred in affirming the Board's decision that Kitsap County's Rural Wooded Incentive Program and associated development regulation met the requirements of the GMA. CP 112-115.

II. ISSUES PRESENTED FOR REVIEW

1. Whether the Board erroneously applied a "bright line" rule for determining minimum urban densities in conflict with the "no bright line" ruling in *Thurston County v. Western Growth Management Hearings Bd.*, 164 Wn.2d 329, 190 P.3d 38(2008)? (Assignment of Error No. 1).

2. Whether substantial evidence supports the Board's decision that a reduction in density in the urban growth areas is consistent

with the GMA requirement for compact urban growth? (Assignment of Error No. 1).

3. Whether the Board erred in allowing reduced densities throughout most of the urban growth areas thereby creating inconsistencies with other portions of the Comprehensive Plan in violation of the GMA's "internal consistency" requirement? (Assignment of Error No. 1).

4. Whether the Board failed to address all the issues presented for its consideration concerning minimum urban densities? (Assignment of Error No. 1).

5. Whether the Board erred by affirming the County's land capacity analysis that relies on an invalidated "bright line" rule to establish minimum urban density? (Assignment of Error No. 2).

6. Whether the Board's decision upholding the County's land capacity analysis was erroneous when the County used a predicted future density that is 29 percent lower than recent measured actual growth patterns? (Assignment of Error No. 2).

7. Whether the Board failed to decide all the issues presented for its consideration concerning the land capacity analysis? (Assignment of Error No. 2).

8. Whether the Board committed an error of law when it applied a "bright line" rule to uphold rural densities in conflict with *Thurston County v. Western Growth Management Hearings Bd.,* 164 Wn.2d 329, 190 P.3d 38(2008)? (Assignment of Error No. 3).

9. Whether substantial evidence supports the Board's decision determining that the rural element preserves rural character? (Assignment of Error No. 3).

10. Whether substantial evidence supports the Board's decision that the "Goal Harmonizing Document" complies with the rural element requirement of the GMA? (Assignment of Error No. 3).

III. SUMMARY OF ARGUMENT

The legislature enacted the GMA in 1990 and 1991 largely, "'in response to public concerns about rapid population growth and the increasing development pressures in the state, especially in the Puget Sound Region.'" *King County v. Cent. Puget Sound Growth Mgmt. Hrngs. Bd.*, 142 Wn.2d 543, 546, 14 P.3d 133 (2000).[1] After decades of optional and lax land use regulations,[2] the legislature's stated intent was to combat "uncoordinated and unplanned growth." RCW 36.70A.010.

---

[1] Quoting Alan D. Copsey, *Including Best Available Science in the Designation and Protection of Critical Areas Under the Growth Management Act*, 23 Seattle U.L. Rev. 97, 97 (1999).

[2] *See* Richard L. Settle, *Washington's Growth Management Revolution Goes to Court*, 23 Seattle U.L. rev. 5, 6-7 (1999).

Two central requirements of the GMA, each at issue in this appeal, are the required concentration of new development in compact urban growth areas and the reciprocal prohibition of development at urban, or even suburban, densities in rural areas. RCW 36.70A.020 (1), .020 (2), .110 (1).

Counties are required to mark the boundaries of urban growth areas within areas already characterized by urban growth. These areas must have adequate existing public facilities in place and service capacities to serve such development or the community must have a financial plan to provide such services. Urban growth areas must be sufficient to accommodate anticipated growth for the next 20 years as determined by the state Office of Financial Management ("OFM"). RCW 36.70A.110 (1); RCW 43.63.035. Urban growth is encouraged within these areas; however, outside these areas (rural lands) growth can only occur if it is not urban in nature.

By concentrating population in tightly limited urban growth areas, public facilities and services can be more efficiently provided with fiscal consideration, natural resource industries and environmentally critical areas can be protected and options for future development can be preserved. Similarly, by severely restricting development densities and intensities in rural areas beyond UGA limits, the construction of for

inefficient systems of public facilities and services can be avoided or minimized, natural resource industries and critical areas (predominately in rural areas) can be protected, and future options in rural lands can be preserved. [3]

The GMA's fourteen statutory planning goals provide the policy foundation which when weighed collectively, convey clear choices for the management of growth. The goals are used to guide the development of comprehensive plans and development regulations. The Act also places the responsibility and discretion on local jurisdictions to balance priorities and options for actions that fully consider local circumstances specific to that jurisdiction; however, local discretion must be consistent with the requirements and goals of the GMA.

This first two, inter-linked issues in this appeal arise from Kitsap County's reduction of minimum urban densities in two large residential zoning districts within the designated urban growth areas. Rather than maintain or increase densities in these districts, the County *reduced* the minimum required densities by 20 percent (from five dwellings per acre to four dwellings per acre). The County did this despite the Act's call for increased densities in urban areas; despite the County's own policies calling for increased densities in urban areas; despite the County's recent

[3] RCW 36.70A.020 (1), (3), (8)-(10), (12); 36.70A.030 (2), (5), (8)-(11), (17); 36.70A.060; 36.70A.170 (1), (3), (6); 36.70A.110.

adoption of new regulations to encourage higher densities in urban areas; and despite County-specific data showing that the County's efforts to increase densities was bearing fruit.

The County used the new, lower minimum density in two ways. One, it changed its policies and regulations, replacing the former five dwellings per acre with the new four dwellings per acre minimum. Two, it then used the lower minimum density to justify a conclusion that the urban growth areas were not large enough to accommodate the forecast growth and expanded the urban growth areas into rural areas. This density reduction catapulted the County into adding more than *four square miles* to the UGAs. Both uses of the new four dwellings per acre standard are challenged by the Appellants below.

The Growth Management Hearings Board upheld this reduction by relying on a "bright-line" numerical rule that was has been invalidated by the Washington State Supreme Court. The Board decision (like the County's before it) fails to consider local circumstances (e.g. the County's success at increasing urban densities) and fails to meet the requirements and goals of the GMA.

The third issue on appeal stems from the GMA's prohibition of development at urban and suburban densities in rural areas. The Hearings Board upheld Kitsap County's Rural Wooded Incentive Program that

promotes urban sprawl in rural lands in exchange for the set aside of other lands for lower intensity use. The Act includes an ironclad protection for rural lands and does not allow a county to trade that protection for set asides of other lands. The subdivisions authorized by this program will destroy rural character in the last remaining rural lands in the Kitsap County. The Hearings Board again relied on an invalidated bright line rule to uphold the Rural Wooded program. It also engaged in mathematical sophistry. The Board calculated densities by combining the high density of the subdivisions with the much lower densities in the set aside lands. This formula had the effect of watering down the densities of new subdivisions — as if a 100 home subdivision is anything less than an urban intrusion into a rural environment simply because there are other less developed lands nearby.

IV. BACKGROUND

This case arises from Kitsap County's ("County") ten year update to its comprehensive plan. The GMA requires counties to update comprehensive plans every ten years to review "[I]ts designated urban growth area or areas, and the densities permitted within both the incorporated and unincorporated portions of each urban growth area." RCW 36.70A.130 (3)(a).

Three ordinances enacted by the County amended the Comprehensive Plan and land use development regulations:

- ❖ Ordinance 370-2006 expanded Urban Growth Areas, thereby re-designating certain land from rural to urban uses that added four net square miles of land for urban development. CP 108, AR 63.1; App. 1, Ord.370-2006.[4]

- ❖ Ordinance 367-2006 amended Chapter 17.301 of the County Code, creating a new Rural Wooded zone that is at issue in this appeal. CP 105, AR 20. The ordinance allows for the creation of urban-sized lots in rural areas as long as they meet certain clustering and buffer requirements.

- ❖ Ordinance 369-2006 amended Chapter 21.04, Land Use and Development Procedures that adds a consolidation of project permit applications, submittal requirements, integration with State Environmental Policy Act and predevelopment meeting requirement. CP 105, AR 20.

The Suquamish Tribe, Kitsap Citizens for Rural Preservation, and Jerry Harless (jointly referred to hereafter as "Appellants") raised nine legal issues[5] pertaining to portions of these enactments by timely filing a petition for review with the Board. CP 104, AR 1, AR 2, AR 8. On August 15, 2007, following submission of briefs and oral argument, the Board issued its decision (the "Final Decision and Order" or "FDO"). CP

---

[4] Most of the documents cited herein are collected in the appendices to this brief. Where apt, parallel appendix citation follows the clerk's papers and administrative record ("AR") citation.

[5] These nine legal issues were identified topically: Urban Density; Land Capacity Analysis; Capital Facilities Element; Transportation; Reasonable Measures; Rural Wooded Incentive Program; Transfer of Development Rights; Open Space; and Balancing of GMA Goals.

107, AR 55; App 2.

The Board agreed with Appellants and entered an order of invalidity for three portions of the Rural Wooded Incentive Program regulations.[6] One, the Board found fault because the program allowed greater density and smaller lots in rural areas in exchange for a development on other set aside lands, but failed to protect the set-aside lands after 40 years. *Id.* at 38. Two, the Board found that the program blurred the lines between land use categories for Forest Resource Lands and Wooded Reserve Lands, contrary to RCW 36.70A.070 (5). App. 2 at 43. Three, the Board found that the County had ignored the Act's requirement for a written explanation of how allowing urban sized lots in rural areas (especially if clustered in new subdivisions) harmonized with the GMA goals as required by RCW 36.70A.070 (5)(a); App. 2 at 43. The County did not appeal any of these rulings.

While the Board agreed with many of Appellants' challenges, it rejected some, including the issues in this appeal. One, on a two-to-one vote, the Board denied Appellants' challenge of the County's action that reduced minimum densities allowed in urban growth areas. The

[6] The Board also found the County's plans for capital facilities (e.g., sewers to serve urban areas) inadequate. App. 2 at 65. The Board ultimately determined that the expansion of the UGAs was invalid because the expansion areas depended on the (invalid) capital facilities program. The County took corrective action and the Board found that action in compliance with the GMA. CP 262, AR 103 at 15; App. 3. Appellants did not appeal this issue.

majority's ruling was based on a "bright line" rule, even though the Supreme Court has repeatedly rejected the Board's use of "bright line" rules, as the dissent noted.[7] The Board affirmed lower densities in the urban growth areas, contrary to GMA goals and in direct contradiction to policy language in the County's Comprehensive Plan directing higher densities

Two, on another two-to-one vote, the Board again impermissibly used a "bright line" rule to deny Appellants' challenge of the County's calculations that used lower densities in urban areas to justify an expansion of urban growth areas contrary to actual development trends – trends which are consistent with GMA goals. App. 2 at 17.

Three, the Board rejected Appellants' challenge to important aspects of the Rural Wooded program that allow creation of new suburban-style subdivisions in rural areas. The Board determined that the regulations would guarantee that the new subdivisions would not be characterized as urban growth, would be consistent with rural character, and would not create a need for urban services. *Id.* at 32-37.

Appellants filed a Motion for Reconsideration with the Board requesting reconsideration of three issues: reducing minimum urban density, expansion of urban growth areas, and the Capital Facilities

[7] *Thurston County,* 164 Wn.2d 329, 190 P.3d 38(2008); *Viking Properties v. Holm (Viking)*, 155 Wn.2d 112, 118 P.3d 322 (2005).

Element.[8] CP 107, AR 56. The Board issued an Order on Motion for Reconsideration denying Petitioners' request for reconsideration of the urban density and Land Capacity Analysis issues, but granted Petitioners request on the Capital Facilities Element and remanded these issues to the County. CP 107, AR 61, App. 4.

On October 11, 2007, Appellants timely filed this action.

A. ADMINISTRATIVE COMPLIANCE PROCEEDINGS

In response to the Board's remand of Ordinance Nos. 367-2006 and 370-2006, the County approved Ordinance No. 407-2008 that repealed, in part, three of the four cluster development alternatives in the Rural Wooded Incentive Program development regulations. CP 260, AR 76, Index 69; App. 5.[9] At the same time, the County filed a "discrete document" with the Board asserting that the Rural Wooded Incentive Program considered local circumstances and harmonized with the goals of the GMA. App. 5 at Index 1. The Board agreed with Appellants and found the County was in continuing noncompliance with the GMA because its document did not explain how the Rural Wooded Incentive Program addresses the local circumstances in the County. CP 261, AR 89 at 11; App. 6.

---

[8] See fn 6, *supra.*

[9] Repealing three of four development alternatives has no substantive effect on Appellants' appeal which challenges the remaining alternative. The County also revised other portions of the regulation not at issue in this appeal.

The County took additional action by adopting Ordinance 411-2008 that amended the Rural Wooded Incentive Program and amended the County's "discrete document." CP 262, AR 93, Ex. A, B; App. 7. In its Order Finding Compliance, the Board disagreed with Appellants and found the County's development regulations and "discrete document" were now consistent with the GMA. App.3 at 6.

On June 20, 2008, Appellants timely filed a Petition for Review in Thurston County Superior Court, Case No. 08-2-01499-9, asserting that the Board erroneously affirmed that the County's discrete document is consistent with the GMA.[10]

B. SUPERIOR COURT DECISION

On February 18, 2009, following submission of briefs and oral argument, Thurston County Superior Court Judge Christine A. Pomeroy issued Findings of Fact and Conclusions of Law and Final Order affirming the decisions of the Board. CP 109-117. Judge Pomeroy's decision is not further discussed because on appeal, this Court reviews the state agency's decision, not that of the Superior Court. *King County*, 142 Wn.2d at 553.

[10] On July 31, 2008, Case Nos. 07-2-02054-1 and 08-2-0149-9 were consolidated by Thurston County Superior Court.

V. STANDARD OF REVIEW

A. COURT OF APPEALS

In this APA appeal, the appellate court "reviews the *Board's* decision, not the decision of the Superior Court." *Id.* (emphasis in original). Review is based upon the record before the Board. The Court of Appeals applies the APA standards directly to that record (sitting in the same position as the superior court). *Id.*

Under the judicial review provision of the APA, Petitioners have the burden of demonstrating the invalidity of the Board's decision. RCW 34.05.570 (1)(a); *Thurston County. v. Cooper Point Ass'n,* 148 Wn.2d 1, 7-8, 57 P.3d 1156 (2002).

Legal determinations made by the Board are reviewed under the "error of law" standard. RCW 34.05.570 (3)(d). The Court's review is de novo. *Lewis County. v. W. Wash. Growth Mgmt. Hrngs. Bd.*, 157 Wn.2d 488, 498, 139 P.3d 1066 (2006). Substantial weight is given to the Board's interpretation of the GMA, but the court is not bound by the Board's interpretation. *City of Redmond v. Cent. Puget Sound Growth Mgmt. Hrngs. Bd.*, 136 Wn.2d 38, 46, 959 P.2d 1091 (1998).

Under the APA, factual determinations are reviewed under the "substantial evidence" standard. RCW 34.05.570 (3)(e). A reviewing court may not substitute its judgment for a factual finding made by an

agency. *State v. Black*, 100 Wn.2d 793, 802, 767 P.2d 963 (1984). "Substantial evidence" is a sufficient quantity of evidence to persuade a fair-minded person of the truth of the order." *King County*, 142 Wn.2d at 533.

B. THE GROWTH MANAGEMENT HEARINGS BOARD

The Growth Management Hearings Boards are charged with determining whether comprehensive land use plans and implementing regulations comply with the GMA. *King County*, 142 Wn.2d at 552, *citing* RCW 36.70A.280, .302. A Board "shall find compliance unless it determines that the action by the state agency, county, or city is clearly erroneous in view of the entire record before the Board and in light of the goals and requirements of [the GMA]." RCW 36.70A.320 (3). To find an action "clearly erroneous," the Board must be "left with the firm and definite conviction that a mistake has been committed." *King County*, 142 Wn.2d at 552.

The legislature intends for the Board "to grant deference to counties and cities in how they plan for growth." RCW 36.70A.3201; *Thurston County*, 164 Wn.2d at 341. While the County may balance priorities and options for action and full consideration of local circumstances under RCW 36.70A.3201, deference ends when a county's actions fail to meet the goals and requirements of the GMA and are

"clearly erroneous." *Thurston County*, 164 Wn.2d at 340.

VI. ARGUMENT

Under the GMA, counties are required to designate urban growth areas ("UGAs") sufficient to accommodate anticipated urban growth for the next 20 years. RCW 36.70A.110 (1). Population forecasts are established by the counties based on projections from the Office of Financial Management ("OFM"), RCW 43.63.035, and are incorporated into the Countywide Planning Policies.[11] At least every ten years, as Kitsap County did here, a county must review its UGAs. RCW 36.70A.130 (3)(a).

The Legislature directed counties to curb urban sprawl by "reducing the inappropriate conversion of undeveloped land into sprawling, low-density development." RCW 36.70A.020 (2).[12] "Urban growth" is encouraged within UGAs but is prohibited elsewhere. RCW 36.70A.110 (1). Moreover, the GMA mandates compact urban growth within UGAs and encourages development where adequate public

---

[11] Countywide planning policies are collaboratively developed by the county and the cities within the county for the purpose of establishing a county-wide framework from which county and city comprehensive plans and development regulations are developed so that the documents are consistent. RCW 36.70A.040 (4); .110 (2); .210 (1),(2)(a),(3); RCW 43.62.035.

[12] RCW 36.70A.030 (18) defines urban growth as "growth that makes intensive use of land for the location of buildings, structures, and impermeable surfaces to such a degree as to be incompatible with the primary use of land for production of food, other agricultural products, or fiber, or the extraction of mineral resources, rural uses, rural development, and natural resource lands designated pursuant to RCW 36.70A.170."

facilities and services exist or can be provided in an efficient manner. RCW 36.70A.020 (1). *Thurston County*, 164 Wn.2d at 336.

One of the ongoing controversies in implementing the GMA has been how to determine the correct size of designated urban growth areas (UGAs). Developers intent on subdividing raw land on the edge of metropolitan areas have sought larger UGAs. Citizens seeking to implement the GMA's goal of compact urban growth and preservation of rural areas and resource lands have sought smaller UGAs. In *Thurston County,* the Supreme Court recognized the pernicious effect of oversized UGAs:

> Oversized UGAs are perhaps the most egregious affront to the fundamental GMA policy against urban sprawl, and it is this policy that the UGA requirements, more than any other substantive GMA mandate are intended to further.

Thurston County, 164 Wn.2d at 352, fn13.[13]

Because sizing UGAs is the product of a mathematical exercise involving anticipated future growth trends, much of the focus has been on the numbers used in those calculations.

A key number in those calculations is the assumed density of future development. When density assumptions for new growth in

---

[13] Citing *Accommodating Growth or Enabling Sprawl? The Role of Population Growth Projections in Comprehensive Planning under the Washington State Growth Management Act*, 36 Gonz. L.Rev. 73, 105 (2001).

existing UGAs are lowered, more land is needed for projected growth within the same urban boundary. Reducing the future urban density assumption provides the County with justification to include more rural lands in the UGA and perpetuates the otherwise unnecessary expansion of UGAs into rural lands. Conversely, when higher densities are presumed (and required), less land is needed in the UGAs for projected growth and it is easier for local governments to provide government services efficiently in those more compact urban service areas. Equally important, more land is protected for rural and resource use.

A. THE BOARD ERRED BY AFFIRMING THE COUNTY'S REDUCTION OF MINIMUM URBAN DENSITIES

1. The Board's use of a "bright line" rule to approve minimum densities was invalidated by the Supreme Court.

The GMA does not numerically prescribe a specific urban residential and rural density necessary to avoid low-density sprawl. The Board tried to fill that void by establishing a "bright-line" rule, but the Supreme Court rejected that effort.

In a 1995 decision, the Board adopted a "bright line" rule for densities that constitute "compact urban development," and made clear that new urban-sized lots are not allowed in rural areas:

> As noted above, the Board holds that up to 2.5-acre lots are urban. However, rather than adopt a maximum urban lot size, the Board instead adopts as a general rule a "bright line" at four net dwelling units per acre. Any residential pattern at that density, or higher, is clearly compact urban development and satisfies the low end of the range required by the Act.
>
> . . .
>
> . . . The Board now holds as a general rule, new 1- and 2.5-acre lots are prohibited as a residential development pattern in rural areas.

Bremerton v. Kitsap County (*Bremerton I*), 1995 WL 903165 at 38-39.[14]

The Supreme Court rejected the Board's "bright line" rule for minimum density of four dwelling units per acre (4 du/acre) and held that while the GMA establishes specific goals and regulatory requirements, it does not give the Boards authority to adopt "bright line" rules:

> [T]he growth management hearings boards do not have authority to make 'public policy' even within the limited scope of their jurisdiction, let alone make *statewide* public policy.
>
> . . .
>
> Second, Viking's argument fails to account for the fact that the GMA creates a general 'framework' to guide local jurisdictions instead of 'bright line' rules . . . Indeed, the existence of restrictive covenants that predate the enactment of GMA and limit density within the urban growth areas are the type of 'local circumstance' accommodated by the GMA's grant of a 'broad range of discretion' for local planning. *See* RCW 36.70A.3201.

Viking, 155 Wn.2d at 129 -130 (2005).[15] In 2008, the Supreme Court

---

[14] Board cases cited herein are provided in Appendix 13 of this brief.

[15] Although *Viking* arose in the context of a covenant containing a repugnant racial restriction, the developer cited the Boards' 4 du/acre "bright line" rule for urban densities

reaffirmed this holding:

> However, a GMHB cannot create a bright-line factor because 'the growth management hearings boards do not have authority to make 'public policy' even within the limited scope of their jurisdictions, let alone to make *statewide* public policy.'

Thurston County, 164 Wn.2d at 353 (quoting *Viking,* 155 Wn.2d at 129).

In the present case, Kitsap County reduced the minimum permitted density ranges within UGAs from five du/acre to four du/acre within two very large residential zoning districts: the Urban Low Residential district and the Urban Cluster Residential district. App. 1 at Zoning Map; App. 2 at 13. These two zoning districts account for 69 percent (14,409 of 20,688 acres) of the County's gross land area and 74 percent (2,711 of 3,639 acres) of the net developable land area designated for urban growth in the County's unincorporated UGAs. App. 2 at Post-HOM Exs. 1, 2.

Rather than determining whether the density reduction was guided by the GMA's anti-sprawl, compact urban growth goals[16] and local circumstances, the Board majority resorted to the "bright-line" rule for minimum densities that was invalidated by the Supreme Court in *Viking*

---

in *Bremerton I* in support of its argument that the density in the City's comprehensive plan and zoning regulations violated public policy under the GMA. *Viking*, 155 Wn.2d at 129.

[16] "Urban Growth. Encourage development in urban areas where adequate public facilities and services exist or can be provided in an efficient manner." RCW 36.70A.020 (1). "Reduce sprawl. Reduce the inappropriate conversion of undeveloped land into sprawling, low-density development." RCW 36.70A.020 (2).

and *Thurston County*. Indeed, the Board continued to rely on the very case (*Bremerton*) that the Supreme Court rejected in *Viking*:

> At the outset, the Board acknowledges that 4 du/ac is an 'appropriate' urban density; it is not low-density sprawl. In fact, the County is correct in noting that since 1995, 4 du/ac has been an approved and accepted minimum urban density for Kitsap County. *See Bremerton v. Kitsap County*, CPSGMHB Case No. 95-3-0039c, Final Decision and Order, (Oct. 6, 1995). What, then, is the basis for Petitioners' complaint? Doesn't the County have discretion to plan for and regulate land use within the parameters of the Act?
>
> . . .
>
> . . . [T]he Board is not persuaded the County's reduction of its minimum density from 5 to 4 du/ac falls outside GMA's requirements.

App. 2 at 13.

Here, again, the Board majority resurrects and applies a bright-line rule when the Supreme Court has unequivocally invalidated the very concept and held that such action is beyond the Board's statutory authority. *Thurston County,* 164 Wn.2d at 353. For these reasons, dissenting opinion by Board Member Margaret A. Pageler is the correct one:

> I respectfully dissent from the analysis and conclusions of the Board majority in deciding Legal Issues 1 and 2. The Board majority relies too heavily on the notion of four dwelling units per acre (4du/acre) as an "appropriate" urban density. As I read the Supreme Court's opinion in *Properties v. Holmes*, 155 Wn.2d 112 (2005), neither the Board nor the parties can take refuge in a 'bright line' urban density measure when

> cogent facts point in another direction. . . It [Kitsap County] has expanded its UGA based on the hypothetical 4 du/acre and seeks to hide behind an outdated 'bright line.'

App. 2 at 67. Consistent with *Viking* and *Thurston County*, this Court should hold that the Board's resurrection of the "bright- line" rule for minimum urban density is an error of law and remand this issue for reconsideration by the Board.

2. Upholding a reduction in minimum density is not supported by substantial evidence in the record.

a. Lowering densities in urban areas is contrary to Kitsap County's own recent success in increasing urban densities.

The GMA recognizes that land use plans and regulations must be shaped not just by the State's goals and requirements, but be tailored to "local circumstances," too. RCW 36.70A.3201; *See, e.g., Thurston*, 164 Wn.2d at 353; *Viking*, 115 Wn. 2d at 130.

Conceivably, the County might have justified *lowering* urban densities by reference to some unusual County-specific "local circumstance" in the record such as pre-GMA restrictive covenants, but there was no substantial evidence to support such a claim. To the contrary, the evidence revealed that the County's GMA recent efforts[17]

[17] The Board found that RCW 36.70A.215 required Kitsap County to enact "reasonable measures" to increase the density of actual development in UGAs to achieve consistency with planned densities.*See Bremerton II*, 2004 WL 3249863 at 45.

were bearing fruit and that densities in urban areas were *increasing*. But for the Board majority's dogged application of a bright line rule, the County's reduction in urban densities would have been found to conflict with both the State goals and local circumstances.

Specifically, the evidence of local circumstances in the record shows that the County's performance of encouraging more growth and higher density growth in its UGAs was not great in the first five years (1999-2003) after adoption of the County's 1998 Plan. Not even half of new residential units were being built inside UGAs. App. 2 at HOM Ex. 1. Likewise, average density for new development in UGAs was only 3.89 du/acre, compared to the 5 to 9 du/acre called for in the 1998 Comprehensive Plan. App. 7 at #31052, 83.

But over time, the development community and home buyers responded favorably to the County's efforts to attract higher density growth to the UGAs. The County's most recent monitoring report indicates that "between 2000 and 2005 Urban Low Residential plats in total achieved an average of 5.6 units/net acre," nearly a 45 percent increase in density compared to the prior average of 3.9 units/acre rate. App. 1 at Vol. 1, 2-9.

Despite these local circumstances, a significant improvement envisioned by the GMA, the County abandoned these achievements and

reduced the minimum allowable density in the two largest zoning districts, by 20 percent.[18] See *supra* at 15. This 20 percent reduction in density translates to an estimated 2,666 dwellings that could have been accommodated within pre-existing UGAs but for this reduction. App. 2 at Post-HOM Ex. 1.

Why did the County turn its back on not just GMA's compact urban growth goals and requirements, but its own recent achievements of successfully attracting higher density development to its urban areas? The answer lies in the County's desire to appease developers outside the UGAs and justify larger and larger UGAs. By reducing density forecasts inside the UGA, the County could justify more land to accommodate the projected urban growth. The Board majority's affirmation of the County's reduction of density assumptions in urban areas – particularly in the face of actual local circumstances reflecting increasing densities -- runs counter not only to "the fundamental GMA policy against urban sprawl," but also to the mandate to plan "*in full consideration of local circumstances.*" RCW 36.70A.3201; *See Viking*, 155 Wn.2d at 130.

Dissenting Board Member Margaret Pageler's opinion reaches the substantive core of the GMA's requirements:

---

[18] Ironically, the new Comprehensive Plan included policy language that continues to direct further increases in urban density at the same time that the minimum was lowered *See* fn. 20 infra.

> The cogent facts in this case are that Kitsap County's average residential density for urban low density (ULDR) plats for the past five years has been 5.6 du/acre and its minimum density in the ULDR designations, except where critical areas are especially protected, has been 5 du/acre.
>
> In updating its UGA to accommodate new population targets, the task before the county is to determine whether there is a capacity within its UGA to absorb the additional housing or whether more land is needed. A county's assumption about the density of development on the available land is the nub of that calculation. This is why the Board has long insisted that county's 'show their work' in support of UGA sizing. The 'show your work' rule is meaningless, however, if the work that's shown doesn't have to be based in reality [is unsupported by the facts]. Here Kitsap County has abandoned the facts in its own record and on its own land that support a residential density of at least 5 du/acre. It has expanded its UGA based on the hypothetical 4 du/acre and seeks to hide behind an outdated 'bright line.'
>
> I am left with a 'definite and firm conviction that a mistake has been made.' I would find noncompliance on Legal Issues 1 [reducing minimum densities] and 2 [Land Capacity Analysis] and would remand for recalculation of the land capacity and resizing of the UGAs.

App. 2 at 67-68. Here, contrary to *Viking* and *Thurston County*, the Board majority erroneously relied on a "bright line" rule to allow and then predict a reduction of minimum urban density rather than relying on substantial evidence in the record showing that local circumstances support a higher residential density. The Court should remand this issue to the Board for reconsideration.

b. Decreasing density to enlarge the UGAs fails to meet the GMA goals and GMA internal consistency requirements.

Appellants challenged the County's decision to decrease urban

density on grounds that those actions were inconsistent with GMA goals 1, 3, 4 and 12[19] and the GMA requirement that a Comprehensive Plan be internally consistent (RCW 36.70A.070). As to the GMA goals, the Board agreed that Appellants presented "very impressive" and "persuasive" evidence that these actions conflict directly with those goals:

> Petitioners point to numerous exhibits within the record, very impressive evidence, which support the notion that higher densities are more cost-effective for jurisdictions when providing services (i.e. water, sewer, public transit) than at lower densities. The Board agrees that there is certainly persuasive evidence providing a solid basis and rationale for increased densities and compact urban growth.

App. 2 at 13-14 (footnote omitted). The Board's statement shows that this is not a hypothetical problem. Appellants' evidence shows that reducing density would increase the costs of providing transportation and urban services (and, thus, the ultimate cost of housing) in direct contradiction of Goals 1, 3, 4 and 12 of the GMA.

The record is also replete with evidence showing that reductions in density do not serve the GMA goal to increase housing variety. Reducing

---

[19] Urban Growth. Encourage development in urban areas where adequate public facilities and services exist or can be provided in an efficient manner. RCW 36.70A.020 (1). Transportation. Encourage efficient multimodal transportation systems that are based on regional priorities and coordinated with county and city comprehensive plans. RCW 36.70A.020 (3). Housing. Encourage the availability of affordable housing to all economic segments of the population of this state, promote a variety of residential densities and housing types, and encourage preservation of existing housing stock. RCW 36.70A.020 (4). 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 services below locally established minimum standards. RCW 36.70A.020 (12).

the minimum density causes new developments to more closely mirror the vast amount of low density, large lot, expensive housing that already exists in the County. App. 8 at Ex. L.

The County acknowledges that projected revenues for transportation improvements will be insufficient to meet demands in the enlarged UGA over the next 20 years. *Id.* at #29761, Ex. M.[20] For example, the County's land use policy 23 (LU-23) demonstrates that reducing density to four du/acre in these zones does not serve the GMA goal to encourage efficient multimodal transportation systems that are based on regional priorities and coordinated with county and city comprehensive plans. RCW 36.70A.020 (3); App. 1 at Vol.1, 2-17.

The County's action of reducing urban density in Ordinance 370-2008 contradicts the exact purpose of increasing densities as called for in the Comprehensive Plan policies adopted earlier that same year as a reasonable measure in response to findings of the Buildable Lands Report.[21] We cannot conceive a more clear-cut violation of the GMA requirement for internally consistent plans. RCW 36.70A.070. The Board erred by failing to base its decision on the substantial evidence in the

---

[20] Also cited in App. 2 at 13, fn.7. This evidence cites 7 du/acre as the threshold for transit.

[21] The Community Trade and Economic Development ("CTED") raised a concern that the County's density reduction will have long-term impacts on in-fill and redevelopment in UGAs, driving more UGA expansions.

record.

3. The Board did not decide all the issues.

Finally, the Board also erred by failing to decide all the issues presented for review. RCW 34.05.570 (3)(f). The Board majority erroneously relied on a "bright line" rule instead of determining (1) whether, apart from a non-existent "bright line" rule, the reduction of urban density is consistent with GMA goals; and (2) whether reducing densities creates internal plan inconsistencies. "[W]here, as here, the Board presents no basis for its decision, we cannot review its analysis. It has failed to decide all issues requiring resolution as required by RCW 36.70A.290 (1) and the APA (specifically RCW 34.05.570 (3)(f))." *Low Income Housing Institute v. City of Lakewood (LIHI)*, 119 Wn.App. 110, 118-119, 77 P.3d 653 (2003). Because there is no basis in the Board's decision, the Court should remand the decision for consideration of these issues.

B. THE BOARD ERRED BY AFFIRMING THE LAND CAPACITY ANALYSIS

The Board majority's reliance on a "bright line" rule to uphold reduced urban density caused a second inextricably linked violation of the GMA.

The County is required to designate sufficient land for its 20-year urban growth forecast by calculating the amount of land new development will consume. *Supra* at 16. The link between the assumed density in the UGAs and the size of the UGA occurs in a calculation known as the Land Capacity Analysis. RCW 36.70A.110 (2).

A Land Capacity Analysis is used to assure that the UGAs can accommodate the forecasted growth. In its simplest form, this analysis involves multiplying the expected future density (number of dwelling units per acre) by the amount of acreage available in urban areas, to assure there is enough urban land for the expected urban population growth. Permitted densities are established typically as a range of allowable densities within a variety of land use designations set to reflect single-family and multifamily housing patterns (e.g. 5-9 du/acre). RCW 36.70A.070 (1); RCW 36.70A.110 (2); RCW 36.70A.115.

Judgments are made as to the amount of land that can be developed at these densities, taking into account reduction for lands already fully or partially developed, unbuildable critical areas, and lands needed for roads and other public facilities.

Another adjustment, called a "market factor," accounts for the marketplace reality that not every landowner will choose to develop his or her property or at least not to the maximum extent allowed. RCW

36.70A.110 (2). Ultimately, the assumed *average* density of new development is multiplied by the available (net) land supply to calculate the amount of new development that can be absorbed in the UGA. That number is compared to the population allocation to assure the UGA is large enough, but not excessively oversized.

The density factor used in the Land Capacity Analysis must be consistent with densities allowed for in the Comprehensive Plan. *Bremerton I*, 1995 WL 903165 at 16. Thus, if an area is designated for growth at four to nine du/acre, the Land Capacity Analysis must assume that future growth will occur within that density range. Furthermore, the Land Capacity Analysis must be consistent with policy direction found elsewhere in the Comprehensive Plan, so as to achieve an internally consistent Plan. RCW 36.70A.070.

The lower the assumed average density of new development, the more land is necessary. Developers speculating in rural land on the urban fringe encourage utilization of low density assumptions to justify inclusion of their land within the UGA. Even the Board majority recognized the inextricable link between lower average densities in urban areas and an enlarged UGA: "a reduction of the minimum urban density will have intended or unintended consequences on the size of the UGA." App. 2 at 14.

Despite the GMA's call to for higher urban density to achieve a compact urban form,[22] despite the County's recent success in obtaining higher densities in new development, and despite the County's policy commitment to continue increasing density, the County used the absolute minimum (four du/acre) as the *average* density in the Land Capacity — and the Hearings Board approved this approach.

By sizing UGAs based, not on actual observed urban densities (5.6 du/ac), but assuming that all new urban development over the next 20 years will occur at the newly-reduced minimum of four du/acre, the County excessively increased the size of the UGAs, converting fast-disappearing rural lands into unnecessary urban sprawl contrary to the GMA's requirements.

1. The "bright line" rule as applied to the Land Capacity Analysis is an error of law.

The Board upheld the County's Land Capacity Analysis (LCA) by acknowledging that it was using the same "bright-line" it used to uphold the County's reduction in minimum urban density in the Comprehensive Plan:

> Just as the Board agreed with the County in regard to urban density, the Board here also agrees with the County on its methodology. The LCA largely rests upon a residential density assumption of 4 du/ac, which, as the Board has stated *supra*, is an "appropriate" urban density.

---

[22] Articulated by the combined purpose of GMA Goals 1, 2, and 12 . RCW 36.70A.020 (1), (2), (12).

App. 2 at 17. Appellants incorporate by reference its arguments and legal analysis, *supra* at pages 19-22, concerning the erroneous use of "bright-line" rules. For these same reasons, the Board majority's affirmation of the Land Capacity Analysis and the UGA expansions is an error of law and must be remanded for recalculation of land capacity and resizing of UGAs.

2. The Board's decision affirming the Land Capacity Analysis is not supported by substantial evidence.

The Board's decision also fails because it was not based on substantial evidence. First, the average four du/acre density assumed by the County in its analysis was the newly-reduced minimum permitted density allowed for each planning district. Even though the Comprehensive Plan allows for a range of urban densities starting at four dwellings per acre and increasing from there,[23] the County used only the lowest permitted minimum density in its LCA calculation, assuming in effect that not even one parcel in 20 years will develop at a density above the minimum. Ignoring the higher average densities specifically allowed by the range of densities in the Comprehensive Plan was clear error on the County's part. There was no substantial evidence to support the County's decision to use only the lowest density in each density range except to artificially inflate the need for more land within UGAs as a basis to

[23] See App 1 at Zoning Map: Urban Cluster Residential (4 – 9 du/acre); Urban Low Residential (4 – 9 du/acre); Urban Medium Residential (10-18 du/acre); Urban High Residential (19-30 du/acre).

enlarge UGAs.

This density reduction catapulted the County into adding more than *four square miles* to the UGAs. App. 1 at Vol. II., App. B. The record, therefore, clearly shows that reducing planned density in the existing UGAs forced the conversion of more rural lands into urban lands in direct contradiction of Goals 1 and 2 of the GMA.[24]

Second, the County's assumption that future development would average only 4 du/acre was flatly inconsistent with recent development trends that show new development occurring at higher (average 5.6 du/acre) densities–higher than historic levels and higher than the future density the County assumed in its Land Capacity Analysis.[25] This recent development trend undermines the County's assumption because it lacks evidentiary support.

Third, the County's four dwellings per acre assumption also ignores its own recently adopted regulations that are intended to boost densities even higher as part of the "reasonable measures" program. App. 1 at Vol. 1, 2-9, -10. The County has asserted that this new program will encourage even more, higher density development in the UGAs. *Id.* These newly adopted "reasonable measures" further undermine the County's average four dwellings per acre assumption in the Land Capacity

[24] See fn 17 *supra.*
[25] App. 2 at 13, 16-17, 67. (citing Comprehensive Plan at App.1 at Vol. I , 2-9).

Analysis and demonstrate a lack of substantial evidence for the key density assumption underlying the Land Capacity Analysis.

To rebut all this evidence, the County (and the Board) did not argue that there was an evidentiary basis for the average four dwellings per acre assumption. Rather, the County and the Board refused to apply this evidence and instead relied on the discredited "bright-line" rule.[26] *See supra* 19-22. The Board did acknowledge the above facts and noted the discrepancy between the data and the County's reduced density assumption:

> However, the Board does agree with Petitioners that adopting this approach may dampen recent success the County has had in encouraging higher densities in the UGAs, since the County concedes that between 2000 and 2005, the County achieved an average of 5.6 units/net acre for urban low density plats.

App. 2 at 17. Despite this finding, the Board majority doggedly defaulted to its discredited bright-line rule and rejected the appeal.

In *Thurston County,* the Supreme Court recognized the pernicious effect of oversized UGAs:

> Oversized UGAs are perhaps the most egregious affront to the fundamental GMA policy against urban sprawl, and it is this policy that the UGA requirements, more than any other substantive GMA mandate are intended to further.

---

[26] Appellants incorporate by reference all evidence, legal arguments and authority cited in Section V. A. *supra*,

Thurston County, 164 Wn.2d at 352, fn13.[27] That is why the dissenting Board member's opinion is the correct one:

> Here Kitsap County has abandoned the facts in its own record and on its own land that support a residential density of at least 5 du/acre. It has expanded its UGA based on the hypothetical 4 du/acre and seeks to hide behind an outdated 'bright line.'
>
> ***
>
> . . . I would find non compliance on Legal Issues 1 [reducing minimum densities] and 2 [Land Capacity Analysis] and would remand for recalculation of the land capacity and resizing of the UGAs.

App. 2 at 68.

By ignoring the evidence in the record of local circumstances, the Board upheld the County's excessive and unnecessary expansion of the UGAs erroneously. This action is contrary to and thwarts the very purpose of the Land Capacity Analysis required by RCW 36.70A.110 (2). The County's action may have served the interests of developers on the urban fringe, but it did not meet the goals and requirements of the GMA.

3. The Board did not decide all the issues.

The Board did not decide the following issues that were asserted by Appellants: (1) whether the reduction in planned densities created

---

[27] Citing *Accommodating Growth or Enabling Sprawl? The Role of Population Growth Projections in Comprehensive Planning under the Washington State Growth Management Act*, 36 Gonz. L.Rev. 73, 105 (2001).

inconsistencies with other parts of the Comprehensive Plan in violation of the requirement that a Comprehensive Plan be "internally consistent" (RCW 36.70A.070); and (2) whether the County engaged in double-dipping by accounting for losses of buildable land because of the presence of wetlands and other critical areas twice, once by reducing assumed future density, and again by a direct deduction in the Land Capacity Analysis for the Urban Restricted Residential designation.

The Board acknowledged that Appellants raised both of these issues. App. 2 at 16.[28] Yet the Board failed to address either issue, merely concluding that "Petitioners have failed to carry the burden of proof in demonstrating non-compliance with RCW 36.70A.020 (1), .020 (2), .070 (Preamble), and .110." *Id.* at 17. The Board provided no analysis; therefore, this Court cannot review the Board's decision and must remand the decision for consideration of these issues. *LIHI*, 119 Wn.App. at 118-119.

C. THE RURAL WOODED INCENTIVE PROGRAM DOES NOT PRESERVE RURAL CHARACTER

The GMA unequivocally and repeatedly seeks to protect rural areas and rural character. Rural lands, such as those at issue in this appeal,

---

[28]The Board also acknowledged that Petitioners clarified the double-dipping argument in their reply. *Id.* At the Hearing on the Merits, a Board Member specifically asked the County's attorney about the question of "double-dipping." CP 107, AR 47 at 79-80; App. 9.

are what remain after urban growth areas and resource lands (forestry, agriculture and mining) are all identified and designated. RCW 36.70A.030 (15); RCW 36.70A.060 (1). Planning for density is also significant in rural areas. A county's Comprehensive Plan must ensure that urban growth does not occur, that permitted growth is consistent with "rural character," and that growth does not require urban levels of service or infrastructure. RCW 36.70A.020 (1); RCW 36.70A.070 (5).

The current Rural Wooded Incentive Program ("RWIP") and its development regulation, Ordinance 411-2008,[29] at issue in this appeal are the latest in a series of County efforts to allow urban-style subdivision in rural areas. Each of the prior efforts was struck down.[30] This one should be struck down, too.

In all of these ordinances (including the current one), the County justified allowing new subdivisions in rural areas because other portions of the ordinance would protect open space. While obtaining open space commitments is certainly an admirable goal, the GMA does not authorize

---

[29] App. 7 at Ex. A.

[30] *See* App. 13. *Kitsap Citizens for Rural Preservation, et al., v. Kitsap County* (*KCRP I*), 1994 WL 907904 at 14 (1994) (finding no parameters existed to prevent development projects that constitute urban growth from occurring in rural areas); *Bremerton I*, CPSGMHB No. 95-3-0039c, 16-17 (1997) (finding the cumulative effect of the Plan provisions would perpetuate a land use pattern that converts a significant portion of the County's rural land to low density sprawl in violation of the RCW 36.70A.020, RCW 36.70A.070 (5), and RCW 36.70A.110); and *Bremerton v. Kitsap County (Bremerton II), 2004 WL 3249863,* 20-21(finding the lack of development regulations and environmental review and ambiguity in the policies failed to address whether rural character would be preserved and whether urban growth would be prevented in the rural area).

that trade-off. The GMA precludes urban development in rural areas absolutely.[31] RCW 36.70A.110 (1) (growth outside urban growth areas "can only occur if it is non urban in nature").

Multiple avenues under this Court's APA review authority support vacating this ordinance.

1. The Board's reliance on a "bright line" rule to find appropriate rural density is an error of law.

The Board yet again erroneously applied a "bright line" rule by defining rural density as a maximum of one dwelling per five acres: "a net residential density of 1 du/5 acres - a rural, not urban density, . . . consistent with preserving the rural character." App. 2 at 36. The Board provided no analysis of whether one dwelling per five acres is "rural," especially when the density calculation is not limited to the developed site but instead waters down the developed density by including adjacent undeveloped lands in the formula. Instead, the Board simply declared one dwelling per five acres to be "rural." *Id.*

"[A] GMHB may not use a bright-line rule to delineate between urban and rural densities. . . ." *Thurston County*, 164 Wn. 2d at 359. The Board's decision is an error of law and must be remanded.

---

[31] The County also sought to provide "incentives for owners of large tracts of land to realize a better economic return." App. 7 at Ex. B, 10. This, too, is an admirable goal, but not one that can come at the expense of protecting rural lands and character.

2. Substantial evidence in the record fails to support that the Rural Wooded Program will preserve rural character.

One of the GMA's fundamental principles is that "urban areas are to be characterized by urban growth and rural areas are not." *Bremerton I*, 1994 WL 903165 at 15. The UGA boundaries preserve this distinction, with urban densities and uses on one side and rural densities and uses on the other. The GMA permits clustering in rural areas, but only if the clusters: "*accommodate appropriate rural densities* and uses *that are not characterized by urban growth* and are consistent with *rural character.*" RCW 36.70A.070 (5)(b) (emphasis added). To accommodate appropriate rural densities, the land must retain its "rural character" after application of clustering and bonus density provisions. Thus, a cluster of three or four homes might fit into a rural setting. A subdivision of 25 homes does not. It belongs in an urban area.

The Rural Wooded Incentive ordinance has no limitation on the amount of land clearing allowed within the developed area. It, therefore, promotes clear cutting of forests and replaces those portions of the forest with a typical suburban subdivision. This scheme is wholly out of place in a rural setting.

To protect rural lands, the rural element of a comprehensive plan must control rural development, assure visual compatibility with the

surrounding rural area, reduce inappropriate conversion of rural land into urban sprawl, protect critical areas, and not allow urban services. RCW 36.70A.070 (5)(c); *Diehl v. Mason County*, 94 Wn.App. 645, 655, 952 P.2d 542 (1999); *1000 Friends of Wash. v. Snohomish Cy.*, 2004 WL 3275236-7. Rural development can consist of a variety of uses and residential densities including clustered residential development, "*at levels that are consistent with the preservation of rural character and the requirements of the rural element.*" RCW 36.70A.030 (16) (emphasis added).

"Rural character" is a defined term and refers, in part, to patterns of land use and development with certain characteristics:

> (a) . . . open space, the natural landscape, and vegetation predominate over the built environment; . . .
> (c) [P]rovide[s] visual landscapes that are traditionally found in rural areas and communities;
> (d) [C]ompatible with the use of the land by wildlife and for fish and wildlife habitat;
> (e) [R]educe[s] the inappropriate conversion of undeveloped land into sprawling, low-density development;
> (f) [G]enerally do[es] not require the extension of urban governmental services; and
> (g) [C]onsistent with the protection of natural surface water flows and ground water and surface water recharge and discharge areas.

RCW 36.70A.030 (15).

"Urban growth" refers to growth that focuses on the intensity of the use of land, specifically naming such physical improvements as

"buildings, structures and impermeable surfaces." RCW 36.70A.030 (14); *Vashon-Maury v. King Cy.*, 1995 WL 90329, 50-51. The intensity of physical improvements placed on rural land can alone be conclusive in determining if growth proposed for a rural area can be permitted or if it crosses the threshold into impermissible urban growth. *Id.* at 51. Measures of development intensity include lot size, building height, setbacks, parking requirements, impervious surface coverage, and the extent of grading and consequent removal of existing vegetation. *Id.* When allowed to spread over wide areas, urban growth typically requires urban governmental services. *KCRP I,* 1994 WL 907904 at 12.

This current Rural Wooded program fails for the same reason found in *KCRP I*:

> [W]hile no clear breaking point is evident in the information presently before the Board, it is only logical that, at some point along the continuum of potential project size and intensity, the quantitative dimension of cluster development in a rural area must have qualitative urban growth consequences.

Id. In like manner, this ordinance allows developments on the intensity continuum that pass the tipping point and are incompatible with maintaining rural character and keeping urban services at bay.

a. The Board miscalculated density for purposes of determining that subdivisions would contain "rural density" consistent with preserving rural character.

Lands eligible for development under the RWIP regulation must be zoned Rural Wooded and be a minimum of 20 acres and a maximum of 500 non-contiguous acres. App. 7 at Ex. A, 2.[32] The standard base rural density for Rural Wooded lands is one dwelling per 20 acres. App. 1 at Vol. 1, 3-5.

Caution is necessary when evaluating assertions regarding the density allowed under the ordinance. As detailed below, the Board calculated density taking into account surrounding undeveloped open space areas too. This formula, of course, has the effect of watering down the development's density by combining it with low (no) density of the open space area. By this mathematical sleight-of-hand, suburban-style subdivisions can be said to have densities that sound rural (e.g. one dwelling per five acres), even though the subdivision itself is totally urban.

There is more than one way to calculate density. The Board masked its errors by using an inappropriate formula.

In the context of this ordinance, density can be calculated by dividing the number of lots by the amount of land being developed. For example, within a parcel of the maximum parcel size allowed by the

[32] KCC 17.301.080.B. "Applicability. This program applies to all properties within the Rural Wooded zone 20 acres or greater in size. Individual projects using this program may not exceed more than 500 contiguous acres."

ordinance (500 acres),[33] the ordinance allows development of 25 percent of the land (125 acres) with 100 dwellings (four subdivisions with a maximum of 25 dwellings each).[34] App. 7. at Ex. A, 5.[35] There is no minimum lot size; therefore, individual lots may be less than an acre so long as on average they are 1.25 acres. *Id.*[36] Thus, the developed lands (125 acres) may have a density nearly one dwelling per 1.25 acre (100 dwellings/125 acres), 16 times the base density of one dwelling per 20 acres.

An alternative method to calculate density would divide the 100 dwellings by the sum of the developed and undeveloped land, *i.e.*, 100 dwellings divided by 500 acres, or one dwelling per five acres.

Which one of these abstractions is more useful in assessing whether a development is "urban" or is compatible with the surrounding rural character? Which best describes the visual impact of up to one hundred 1¼ acre or smaller lots? The Board did not address which of these two formulations to employ, but instead used the latter "entire parcel"

---

[33] See fn. 34, *supra.*

[34] There are no limits to the number of clusters allowed for an individual development project. If fewer lots than the maximum allowed were created in each subdivision, more than four subdivisions could be created.

[35] KCC 17.301.080 E.1 states, "Through the use of the Program, the number of dwelling units permitted in the Rural Wooded zone may be increased to 1 dwelling unit per 5 acres with the designation of minimum of 75 percent of the property(s) gross acreage in Permanent Open Space." KCC 17.301.080 E.5 states, "Each cluster shall be limited to 25 or fewer."

[36] KCC 17.301.080 E.4.a.(1)[3] Minimum lots Size: None."

formulation without explanation, concluding that the ordinance was not "clearly erroneous" because it provides a "density of 1 du/5 acres - a rural, not urban density . . . consistent with preserving rural character." App. 2 at 36.

At the same time, the Board acknowledged that widely different conclusions would be reached depending on which formula was used: "[T]he Board acknowledges that the clustered design of the development appears more dense when viewed in isolation, but it is nonetheless a rural density when viewed in the context of the entire parcel." *Id.* The Board's unexplained reliance on the "entire parcel" calculation, however, runs counter to the Board's earlier statement eschewing reliance on mathematical abstractions in favor of an assessment of "on-the-ground" development and how that squared with the Act's requirements:

> The 'true test of whether' a development regulation results in urban growth is to determine what the regulation permits to be 'physically constructed on the ground, in the real world' and 'how that potential outcome squares with the Act's definition of urban growth.'

Id. at 37.

That statement directly contradicts the Board's action upholding the County's use of the "entire parcel" calculation, rather than calculating and considering the actual density that can physically be constructed on the ground. Had the Board followed its own test, the urban sprawl

inherent in the Rural Wooded program would have become obvious. The Board's failure to adhere to its own test an error of law; it allows perpetuation of urban sprawl in the rural area; it thwarts the GMA's requirement to preserve rural character (RCW 36.70A.070 (5)); and it is inconsistent with the GMA goal to "reduce the inappropriate conversion of undeveloped land into sprawling, low-density development." RCW 36.70A.020 (2).

b. Suburban-style subdivisions in Rural Wooded lands impermissibly promote urban growth.

An estimated 42,108 acres (approximately 85 percent of Rural Wooded lands) are eligible for the Rural Wooded Program. CP 106, AR 33, Ex. 6, #30967; App. 10.[37] These eligible lands are located primarily within the northern portion of the County, the westerly portion along Hood Canal, and the southwestern portion of the County. *Id.* Subdivisions developed under the program will occur in ten phases, each comprised of 5,000 acres (or eight square miles each). App. 7 at Ex. A, 2.[38]

The 500-acre project described earlier (supra at 42) could be

[37] Not all lands qualify because of the minimum and maximum parcel size criteria discussed above.

[38] KCC 17.301.080 (B)(1) states in relevant part, "Land available for use in this program will be *designated in the Comprehensive Plan* in an incremental phased approach consisting of *10 phases*. . . a. Initial phase shall be limited to a total of five-thousand (5000) acres of Rural Wooded (RW) land; b. Subsequent phases may be released based upon the provisions identified in subsection 17.301.080 B with each limited to a total of five-thousand (5000) additional acres of Rural Wooded (RW) land."

adjacent to another identical 500-acre project, *i.e.*, four more clusters comprising another 100 dwelling subdivision with lots averaging just over one acre each. Only a 150 foot "external buffer" would separate one suburban-style subdivision project from the next. Up to ten of these 100-dwelling subdivisions could be created in the first 5,000 acre phase of the program. They could be located close to one another, creating a relatively large suburban area, or they could be sprinkled around creating a hodge-podge of suburban subdivisions throughout the supposedly rural zone because there is no maximum number of clusters set forth in the ordinance.[39]

Lands owned by Pope Resources, a timber company and developer, provide an example of the possible urban sprawl that could arise under the Rural Wooded ordinance.[40] Pope's approximately 5,000-acre forested parcel located near Port Gamble Bay could be developed under the first phase of the Rural Wooded regulation under ten separate applications of 500 acres each. Using the Ordinance's bonus densities, 1,000 homes could be developed on lots averaging 1.25 acres within 40 subdivisions across 1,250 acres. Cumulatively, the project would support an estimated 2,500 residents (assuming 2.5 residents/du).

---

[39] See fn. 37, 38 *supra*.

[40] Also known as Olympic Property Group. Pope is the largest landowner in the County. CP 104, AR 14, #30516; App. 11. Pope's 5000 acre parcel is depicted on a map. App. 10 at Ex. 6 #30967, Fig. 1.

Pope can also develop its Hansville parcel,[41] approximately 2,100 acres, under another phase, translating to an additional 425 homes on suburban sized lots within 17 more subdivisions of 25 homes each. Combined, Pope Resources' large land holdings in the northern portion of the County could be used to create 1,420 suburban lots. *Id.*[42]

When the impacts of this Rural Wooded development pattern are expanded ten-fold to accommodate all ten phases (42,108 acres) on lands elsewhere in the County--the full consequence of the program's inability to maintain rural character comes clearly into focus. The contrast is striking between the development allowed under this program and the current Rural Wooded zoning with its minimum density of one unit per 20-acre parcel (the latter a development pattern fully compatible with rural character). Considering all eligible 42,108 acres, the Rural Wooded program allows *8,400 new homes on lots averaging 1.25 acres*—four hundred percent more than the 2,105 lots allowed under the standard Rural Wooded density (one dwelling per 20 acres). The program would allow 335 new subdivisions of 25 homes each occupying a total of 10,550 acres or ***16 square miles*** throughout the most remote areas of the County and

---

[41] App. 10 at Ex. 6.

[42] Both of these are located within ten minutes of the Kingston UGA and would readily lure development from the UGA and into the rural lands because of their proximity to urban services.

some areas close to urban growth areas, too.

According to the County, because rural character is preserved on the set-aside open space lands, it does not matter that the developed lands smack of "urban growth" and are incompatible with the adjacent rural lands. This argument is fundamentally flawed. The Act requires that new development in rural areas be consistent with rural character and not constitute urban growth. RCW 36.70A.070. The Act's focus is on the character of the new development, not the character of land not being developed. The County (and Board) focused on the nature of the land not being developed and thereby acted inconsistently with the law.

c. *Subdivision design standards do not protect rural character.*

The County claims that high density and small lots in the Rural Wooded subdivisions will not constitute impermissible "urban growth" because the subdivisions will be partially shielded by narrow buffers. This aesthetic "window dressing" falls far short of protecting rural areas.

To protect the rural ambiance (the unique "look and feel" of rural areas), the County must adopt regulations that assure visual compatibility of new development with the surrounding rural area. RCW 36.70A.070 (5)(c); *Diehl*, 94 Wn.App. at 655. When reviewing the Rural Wooded design standards, the Board found:

> Although the Board can understand that clustered residential development *gives the appearance of a suburban environment and a need for urban services*, the property subject to the RWIP remains in the rural area and clusters are limited to 25 units *with specific location* and buffering requirements. The Petitioners have failed to adequately demonstrate that clustered development within a rural area will result in a demand for urban services and the Board must presume that the County, and its examiner, will adhere to the approval criteria for the RWIP. **The Board finds no clear error on the part of the County.**

App.2 at 38-39 (emphasis added).

There is no substantial evidence in the record, however, to support the Board's finding of "ample specific standards" that will preserve "rural character." "Rural character" is not an abstract concept; it is defined by RCW 36.70A.030 (15) to have specific characteristics. See s*upra* at 40-41.

Here, the Rural Wooded regulations erode the very core of what should be a rural area and take it apart piece by piece. First, contrary to the Board's understanding, the location and distribution of clusters are not regulated, but may be located virtually *anywhere* in the Rural Wooded zone of the County. Also contrary to the Board's understanding, the ordinance does not prescribe a "specific location" for the subdivisions within a tract. The Ordinance allows a landowner to designate any 25 percent of the parcel for subdivisions. *See* fn. 37 *supra*. Without specific location requirements, development patterns may range from pervasive

pin cushions (25-lot subdivisions randomly scattered throughout the rural area) to large areas with dozens of 25-lot subdivisions in close proximity to one another. There are no "specific location" criteria that preclude either of these non-rural development patterns. App 2 at 8, Post-HOM Ex.3.

Nor are there are any significant requirements to minimize the visual impacts of dozens of 25-lot subdivisions on the rural landscape. For example, there is nothing in the regulation that precludes 40 subdivisions totaling 1,000 homes being located in such close proximity that the landscape looks and becomes suburban, resulting in the loss of "rural character." RCW 36.70A.030 (15)(c).

The County relies on buffers to address the visual incompatibility issue. The ordinance requires a 100-foot vegetative setback from existing public roadways and adjoining properties and a 150-foot setback between subdivisions.[43] But these "vegetative buffers" from the road is barely more than half the width of a typical 1.25 acre lot.[44] The buffer between subdivisions is just the width of a single lot. Such a "buffer" is miniscule and cannot possibly perform the function of making these suburban subdivisions look "rural." App. 2 at Post-HOM Ex. 3. Buffers of that size

[43] App. 5 at Ex. A, 5: KCC 17.301.080 E. 6.states, "Clusters developed under this program shall provide a 100-foot vegetated buffer from existing public roadways and adjoining properties and a 150-foot buffer between clusters . . . "
[44] A typical 1.25 acre lot might be 150 feet wide by 363 feet long.

commonly occur in subdivisions in some of the most crowded parts of the region's urban areas. In either case, whether the buffers are 150 feet or 100 feet, these buffers do not create separation that would have any functional or visual effect other than for the residents of the developments, and even then it is a minimal one.

Third, even without visualizing the resulting development, the words of the regulation are inadequate on their face to meet GMA requirements. The GMA *requires* protection of rural character. RCW 36.70A.070 (5)(c) (rural policies "shall include measures that apply to rural development and protect rural character). *See also* RCW 36.70A.030 (15) and RCW 36.70A.030 (16). Yet the ordinance merely "*encourage[s]*" the protection of open space; "*encourage[s]*" buffers to contain natural features to maximize retention of views and rural character; and "*encourage[s]*" preservation of trees greater than 10 inches. App. 7 at Ex. A, 1-2. [45] Similarly, the regulation merely encourages but does not *assure* visual compatibility with the surrounding rural area as required in RCW 36.70A.070 (5)(c) and RCW 36.70A.030 (15) ("provide visual landscapes that are traditionally found in rural areas and communities").

Nor are there are any criteria that address the difference between

[45] KCC 17.301.080.

40 subdivisions of 25 lots each or 500 subdivisions of two lots each. The County's untenable position is that there are no significant differences in this wide range of greatly different subdivision sizes. Subdivisions located too close to one another will result in operational impacts, e.g., traffic volumes not typical in a rural area. The Rural Wooded program fails to address this problem entirely, and thus neglects to provide the basis for protecting the areas' rural character as required by the GMA.

d. Suburban-style subdivisions will require urban services.

"Rural services" include only those public services and public facilities historically or typically delivered at an intensity usually found in rural areas.[46] Storm and sanitary sewers are expressly precluded except in rare circumstances authorized by RCW 36.70A.110 (4).[47] A land use pattern with "rural character" generally does not require urban services. RCW 36.70A.030 (15)(f).

The Board rejected the claim that the ordinance's density bonus and its allowance of so many subdivisions in close proximity to each other would result in a demand for urban services in the rural areas:

---

[46] These may include domestic water systems, fire and police protection services, transportation and public transit services, and other public utilities associated with rural development and normally not associated with urban areas.

[47] A narrow exception to the ban on urban services in rural areas is available to address a public health emergency. *See* RCW 36.70A.110 (4). Kitsap County has not attempted to invoke that exception here.

> Although the Board can understand that clustered residential development gives the appearance of a suburban environment and a need for urban services, the property subject to the RWIP remains in the rural area and clusters are limited to 25 units with specific location and buffering requirements. The Petitioners have failed to adequately demonstrate that clustered development within a rural area will result in a demand for urban services and the Board must presume that the County, and its examiner, will adhere to the approval criteria for the RWIP. **The Board finds no clear error on the part of the County.**

App. 2 at 38-39.

The Board's analysis here is clearly erroneous and is not supported by substantial evidence. The Board identifies three factors which caused it to reject the "urban services" claim: (1) that the property remains in the rural area; (2) that the subdivisions are limited to 25 lots; and (3) that there are buffering requirements. None of these factors adequately address the urban services concern.

First, it is dangerous to rely on the fact that the property "remains in the rural area." The GMA prohibition on extending urban services only applies if the property is in a rural area. That these new subdivisions will be located in areas that are and will "remain" in the rural area is precisely the reason that the GMA's prohibition on urban service extensions applies. Subdivisions built under the Rural Wooded ordinance will violate GMA's prohibition *precisely because* they will be in the rural areas, while requiring urban services.

Next, the Board's reliance on the 25-lot cap on the size of each subdivision also is off the mark because this regulatory criterion entirely ignores the problem of cumulative impacts. The problem here relates to the cumulative impact of dozens of these subdivisions creating hundreds of new urban sized lots in the rural areas. The Board should have considered what could be "physically constructed on the ground." App. 2. at 37. A single 25-unit subdivision may not require the extension of urban services. But after many of these subdivisions are approved and hundreds of homes are built on these suburban lots, the need for urban services will become apparent and inevitable.

This regulation allows 8,421 homes within 335 subdivisions of 25 homes each, throughout some of the most remote areas of the County or sited in close proximity to each other near urban areas. This entire scheme accommodates over 18,000 additional residents (at 2.5/du), nearly one-third of the County's 20-year total estimated population growth. That scale of development cannot possibly be served by community wells, community septic systems, rural storm drain systems, and private roads. The ordinance provides no protection against the inevitable expansion of urban services to these misplaced urban subdivisions.

The Western Board found that an ordinance allowing clustering without a cap may lead to densities outside the UGA that cry out for urban

governmental services to protect the environment from undue concentrations of septic systems, with their possible resultant adverse effects on aquifers. *Friends of Skagit Cy. et al. v. Skagit Cy.*, 1995 WL 903176, 5. That is the precise situation here. The "cap" in this ordinance is so high (or non-existent) that developments allowed by this ordinance can easily lead to a demand for urban services.

Last, the buffering requirements (such as they are) are irrelevant to the urban services issue, too. Vegetated buffers may address the visual compatibility issue. They do not address the need for wider roads, more traffic signals, storm sewers, sanitary sewers, schools, and water lines.

e. Monitoring of subdivision developments will not protect rural character due to vested rights.

Regarding monitoring, the Board found that:

> Although clustering is permitted in the rural areas, the GMA is cognizant that the magnitude of such clustering can potentially affect rural character. This is why it is important that rural clustering be monitored to ensure that its magnitude and extent is not overreaching. The County has included such monitoring provisions in the RWIP . . . The biennial monitoring program also works to ensure maintenance of the qualities of rural character. KCC 17.301.080 (B)(2).

App. 2 at 39. For untried development, the specifics of this monitoring program are a long way from rescuing the ordinance from its other deficiencies.

The fatal flaw with the County's monitoring program is that it is

truly too little, too late. This is because the monitoring program is not linked to a requirement that the County make any changes to the Rural Wooded program once monitoring data reveals problems. The complete absence of a mandatory corrective action element renders the monitoring program worthless in terms of assuring that the program does not destroy rural character throughout Kitsap County. (In contrast, WAC 365-195-920, applicable to GMA critical areas ordinances, states that monitoring programs should include commitment to "change course" based on results of monitoring and a "commit[ment]" to do so within an "appropriate time frame"). *See also Swinomish Indian Tribal Community v. W. Wash. Growth Hrngs. Bd.*, 161 Wn.2d 415, 436, 166 P.3d 1198 (2007).) The second fatal flaw is that the monitoring program is an after-the-fact alarm. For multiple reasons, discussed in the following paragraphs, too much damage to rural character can be done before problems with the Rural Wooded program are revealed.

One part of the belated response time is inherent in our State's vesting law. In Washington (unlike most states), a subdivision application vests rights to divide the property under the laws in effect on the day the application is filed. RCW 58.17.033. This cripples the impact of the monitoring ordinance at issue here. Forty subdivision applications creating 1,000 lots (in 25-lot clusters) can be filed, locking in vested rights

during the first phase of the program. All of these applications will be vested long before any land is cleared, homes built, and impacts manifested and documented in a monitoring program. Monitoring data from the first five or ten subdivisions might document significant adverse impacts to rural character, but it would be far too late to do anything about the next 30 or 35 subdivisions (and 750 new homes) that were vested in the permitting pipeline. App. 7 at Ex. A, 3, 8.[48]

The vesting problem is exacerbated by the weak "check blocks" that the County's program envisions between each phase of 5,000 additional acres. Just as the impacts from the first subdivisions might not manifest themselves before other subdivisions in the first phase are vested, so, too, the impacts from all of the subdivisions in the first phase may not manifest themselves (indeed, the subdivisions might not even be built) before the second phase is "released" for more subdivision development by the County. *Id.* at 8.[49] Thus, up to 2,000 more homes on an additional 10,000 acres could be vested long before monitoring results are available.

Moreover, the development standards for the release of subsequent

[48] KCC 17.301.080B.2.b. states, "Final approval for Rural Wooded Incentive Program developments comprising more than 30 percent or 1,500 acres, whichever is greater, of the total Phase acreage; KCC § 17.301.080 I.1 – Vesting for an approved Rural Wooded Incentive Program development shall be effective for five years from the date of approval.

[49] KCC § 17.301.080 I.2. – Property owners with an approved Rural Wooded Incentive Program development may receive a one five-year extension from the hearing examiner that in part, demonstrates to the hearing examiner that tangible progress toward completion of the approved Rural Wooded Incentive Program Development

phases of development acreage fail to provide adequate specificity to maintain rural character. One of the four decision criteria requires the County to base its decision on "satisfactory progress toward achieving the Rural/Urban split identified in the County-Wide Planning Policies" and another requires "satisfactory maintenance of rural character as defined in 17.301.080 . . ." App. 7 at Ex. A, 3.[50] Nowhere in the development regulation or the Comprehensive Plan is there a definition of "satisfactory" or of the phrases "satisfactory progress" and "satisfactory maintenance."

Clear regulations are essential for GMA compliance. Where multiple interpretations are shown or are possible, compliance has not been achieved. *FOSC v. Skagit County*, WWGMHB No. 96-2-0025, 16, Compliance Order (Sept. 16, 1998). As the Supreme Court explained in a recent GMA case, the absence of a clear benchmark against which to measure monitoring data renders the monitoring data worthless: "A benchmark is needed to compare data as it is recorded. Data that cannot be analyzed, via comparison to the benchmark, is essentially meaningless because a harm cannot be detected unless there is a benchmark by which to define a harm in the first place." *Swinomish*, 161 Wn.2d at 435. Kitsap County's benchmark of "satisfactory maintenance of rural character" is too vague to be effective. While monitoring data accumulates and county

[50] KCC § 17.301.080 B.2.b (1), (4).

officials debate these problems, additional applications will be filed and will guarantee further erosion of rural character by vesting more and more subdivisions in rural areas.

3. The Board did not decide all the issues raised by Petitioners.

Appellants argued that the monitoring provisions will fail to protect rural character, are subject to multiple interpretations, and that the vesting law cripples the effectiveness of the monitoring program. App. 7 at 70-75. The Board made no findings or conclusions on these issues in its Final Decision and Order. App. 2 at 34. To the extent the Court cannot address these issues as a matter of law, they should be remanded to the Board pursuant to RCW 34.05.570 (3) (f). *See LIHI*, 119 Wn.App. at 118-119.

D. THE RWIP DOES NOT COMPLY WITH THE GMA's RURAL ELEMENT REQUIREMENTS.

1. The County's "GMA Goal Harmonizing Document" is not Supported by Substantial Evidence.

The GMA's rural element requires a county to consider the GMA goals and local circumstances when "establishing patterns of rural densities and uses." RCW 36.70A.070 (5)(a). In addition, a county is required to "develop a written record explaining how the

rural element harmonizes the planning goals in RCW 36.70A.020 and meets the requirements of this chapter." *Id.*

The Board interprets this provision of the GMA as requiring a written record in those instances where a county has considered local circumstances and has established pattern of densities and uses that would not be considered rural, absent the local circumstances. *Screen v. Kitsap County* 1999 WL 1075115, 7 (Nov. 1999). This provision, therefore, requires a paper trail to demonstrate how these abstract technical policies and regulations will serve the GMA goals and protect rural character based on county-specific local circumstances.

County's inability to harmonize the GMA goals and requirements in a single document indicates that the policies and regulations are not apt to serve the GMA goals or accomplish the rural preservation goals. This is certainly true in the case at bar.

In the first remand on this issue, the Board found that Appellants "make a valid point by asserting that there needs to be an explanation of how the RWIP is responding to local circumstances." App. 6. at 11.

The August 2007 Buildable Lands Report provides an analysis of development in rural lands between 2000 and 2005 and shows that "the net density is 1.8 units per acre," and is "mostly in the Rural Residential

zone." App. 12 at Index 11, 1-2, 14, 44.[51] Development information from this report and summarized in Table 1 (attached to this brief), documents a total of 30,068 *existing* homes at urban sprawl densities in rural areas, with 7,639 vacant non-conforming parcels ripe for future urban sprawl development.[52]

Whether these new 8,400 suburban lots authorized by the Rural Wooded program will create a pattern of urban sprawl must be viewed in the context of this existing local circumstance, i.e. tens of thousands of pre-GMA urban-sized lots already present in the rural areas. The two sets of urban-sized lots--old and new--when combined clearly will create a pattern of urban sprawl throughout the rural areas of the County.

In its Order Finding Compliance, the Board found:

> [T]he RWIP program was not designed to address existing legacy lots; rather it is meant to provide incentives for conserving open space while allowing limited timber production and rural residential development on lands designated as 'Rural Wooded.' . . . Petitioners fear that development of the RWIP residential clusters will spawn further development of legacy lots is speculative, *but may not be unwarranted.*[3] . . . the remand was specific to expanding the County's explanation of local circumstances *supporting the need for the RWIP*. This the County has done.

---

[51] Between 1995 and 1999, the County documented in rural areas, an abundance of existing urban-sized lots, created years ago. App. 8 at #31052, 3, 15; (finding a large number of smaller, nonconforming lots of record with densities averaging between 0.5 – one acre).

[52] Rural Residential parcels account for 84 percent of the nonconforming lots, 25,376 developed lots out of 30,068 total.

App. 3 at 6 (emphasis added). Footnote three in the Order states:

> 84 % of all new permitted housing in the rural areas was located on pre-existing lots. . . However, the BLR does not indicate lot size or how many of these lots were nonconforming."

Id. This is a clear error of fact. *See* Table 1 attached. The size and number of nonconforming lots is provided in the BLR . App. at A-3, Index 11; App.12.

The Board failed to consider the countervailing evidence in the County showing that the very rural lands slated for suburban development under the Rural Wooded program (an additional 8,400 new low-density sprawl lots) are adjacent to 30,068 existing homes at urban sprawl densities plus 7,639 vacant non-conforming parcels that are ripe for future urban sprawl development. In fact, the Board acknowledged that Appellants fears "may not be unwarranted." App. 3 at 6. The consideration of these County-specific local circumstances in planning rural densities and uses are precisely what the GMA calls for. RCW 36.70A.070 (5)(b); *Thurston County*, 164 Wn. 2d at 353; *Viking*, 115 Wn.2d at 130. Developing comprehensive plans and development regulations tailored to local circumstances is bounded by the goals and requirements of the GMA. The Board's error of fact translates into a substantive local circumstance that is not speculative but that clearly

contravenes the GMA.

The pattern of permissible urban subdivisions allowed by this ordinance, particularly in combination with the abundance of grandfathered urban lots in the rural area, contradicts the GMA requirement to "reduce" inappropriate conversion of undeveloped land into low intensity development in order to preserve rural character, and will result in an impermissible urban growth. RCW 36.70A.020 (2); RCW 36.70A.030 (15)(e); RCW 36.70A.070.

While the pre-existing parcelization that is characteristic of urban sprawl cannot be undone, there is no reason (and no authorization under the GMA) to aggravate the problem by creating even more urban lots and subdivisions in the rural area. Thus, the axiom, recognized by the Board in the *Bremerton I*, remains true today:

> The County cannot base its future planning for new growth on its past development practice if those practices, as here, do not comply with the GMA. What was once permissible is no longer so. The GMA was passed to stop repeating past mistakes in the future.

Bremerton I, 1995 WL 903165 at 56.

The County offers no contrary evidence in the record to disprove that the Rural Wooded program fails to encourage development where adequate public facilities and services exist or can be provided in an efficient manner but instead draws planned growth away from facilities

and services, frustrating Goal 1. RCW 36.70A.020 (1).

The set aside of "permanent open space" in the Rural Wooded regulation fails to provide permanent protection because other uses are allowed that erode open space. These other uses include:

> (a) forestry, existing agricultural or other resource uses;
> (b) trails/pedestrian walkways, beaches, docks, swimming areas or any non-motorized passive recreational facilities;
> (c) logging and access roads; and
> (d) open space uses along a shoreline shall allow for visual and physical access to the shoreline and may include view corridors, community beaches, docks, swimming areas, picnic areas, trails/pedestrian walkways, or any non-motorized passive recreational facilities.

App. 7 at Ex. A, 7.[53] The advertised trade-off for high density rural development was protected open space; however, other uses in open space do not protect open space, rural character or harmonize with Goal 9.[54] The County fails to provide countervailing evidence showing how the open space provision preserves rural character and retains open space and conserving fish and wildlife corridors when forestry or other resource uses and logging and access roads are allowed on supposedly "protected" open space lands.[55] The Pope Resources example, cited *supra* at 32, demonstrates the effects of high-density cluster development on lands that

---

[53] KCC 17.301.080.F.
[54] RCW 36.70A.020 (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.
[55] RCW 36.70A.020 (9); .070 (5)(a).

constitute the only swath of "high quality habitat" in this area of the county (a local circumstance) and allows the removal of at least 25 percent of high quality habitat while leaving the rest in open space without any means for actual preservation in perpetuity. *Id.* at Ex. B.[56]

Moreover, as stated earlier (*supra* at 43-44), the development standards do not offer mandatory protection or conservation, just the "encouragement" of protection. *Id.* at Ex. A.[57] Further, buffer requirements in the RWIP regulation merely encourages "where practical, to coordinate Permanent Open Space to provide interconnectivity." *Id.*[58] A Kitsap County Hearing Examiner is powerless to enforce the retention of "permanent" open space and connectivity for the purpose of maintaining rural character and conserving fish and wildlife corridors when the RWIP regulation provides no such mandate.

Finally, there is no countervailing evidence in the record showing that high density subdivisions coupled with local circumstances harmonize with Goal 10[59] by protecting the environment and enhancing the state's high quality of life, including air and water quality, and the

---

[56] App. 7 at Ex. B (see Ex. C attached to AR 93 Ex. B entitled "Forest Resource Wildlife Habitat. and Salmon Refuge Maps.");.
[57] KCC 17.301.080 E.5.
[58] KCC 17.301.080 E.6.
[59] RCW 36.70A.020 (10), "Environment. Protect the environment and enhance the state's high quality of life, including air and water quality, and the availability of water.

availability of water. For these reasons, the Board's Order Finding Compliance must be vacated pursuant to RCW 34.05.570 (3)(d).

VII. CONCLUSION

Appellants have carried their burden of proof. For the reasons stated herein, Appellants request that this Court to vacate those portions of: !0 the Board's Final Decision and Order dated August 15, 2007,[60] 2) Order on Motion for Reconsideration dated September 13, 2007,[61] and 3) Order Finding Compliance dated June 5, 2008,[62] challenged herein and declare that the use of "bright-line" rules to establish urban and rural densities is an error of law, that expanding urban growth areas on that basis is an erroneous application of the GMA, and that allowing suburban subdivisions in rural wooded lands contravenes the GMA's requirements for rural density, rural character, urban services provisions and harmonizing the GMA goals. These issues should be remanded to the Board for further consideration consistent with the Act's requirements.

Further, Petitioners request that this Court remand issues to the Board that it failed to consider: whether the reduction of urban density is consistent with GMA goals; whether reducing densities creates internal plan inconsistencies; whether the reduction in planned densities created

---

[60] App. 2.
[61] App. 13.
[62] App. 3.

internal inconsistencies within the Comprehensive Plan; whether the use of density assumptions substantially lower than observed trends created internal inconsistencies within the Land Capacity Analysis, whether the County engaged in double-dipping in its Land Capacity Analysis; whether the monitoring provisions in Ordinance 411-2008 are subject to multiple interpretations; whether the vesting law cripples the effectiveness of the monitoring program; and whether the RWIP considers local circumstances and harmonizes the GMA goals. Finally, Petitioners request the Court to provide such other future relief as the Court deems reasonable.

Dated this 28th day of May, 2009.

Respectfully submitted,

By: _____

Melody L. Allen, WSBA #35084
Attorney for Appellant Suquamish Tribe
18490 Suquamish Way
P.O. Box 498
Suquamish, WA 98392
Telephone 360-394-8488
Fax: 360-598-4293

By: _____

David A Bricklin, WSBA #7583
BRICKLIN NEWMAN DOLD, LLP
Attorneys for KCRP
1001 Fourth Ave. #3303
Seattle, WA 98154

Telephone 206-264-8600
Fax: 206-264-9300
(Attorney for Appellant Kitsap Citizens for
Rural Preservation)

By: Jerry L. Harless per authorization

Jerry L. Harless,
P.O. Box 8572
Port Orchard, WA 98366
Telephone 360-271-2642
(Pro se)

FILED
COURT OF APPEALS
DIVISION II
09 MAY 29 PM 12: 29
STATE OF WASHINGTON
BY
DEPUTY

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISON II

NO. 39017-5-II (Consolidated)

THE SUQUAMISH TRIBE; KITSAP CITIZENS FOR RURAL PRESERVATION; and JERRY HARLESS,

Appellants,

v.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD; and KITSAP COUNTY,

Respondents.

PROOF OF SERVICE

Melody L. Allen
WSBA No. 35084
Suquamish Tribe
18490 Suquamish Way
Suquamish, WA 98392
(360) 394-8488
Attorney for Appellant
Suquamish Tribe

David A. Bricklin
WSBA No. 7583
Bricklin Newman
Dold, LLP
1001 Fourth Ave.,
Suite 3303
Seattle, WA 98154
(206) 621-8868
Attorney for Appellant
Kitsap Citizens for
Rural Preservation

Jerry L. Harless
P.O. Box 8572
Port Orchard, WA 98366
(360) 271-2642
Pro Se

I, NEOMA BOURÉ, under penalty of perjury under the laws of the State of Washington, declare as follows:

I am the legal secretary for the Office of the Suquamish Tribal Attorney. On the 29th day of MAY, 2009, I caused the OPENING BRIEF OF APPELLANTS SUQUAMISH TRIBE, ET AL.; MOTION FOR LEAVE TO FILE AN OVERLENGTH BRIEF APPELLANTS SUQUAMISH TRIBE, ET AL. along with this PROOF OF SERVICE, to be served on the persons & addresses listed below in the manner indicated below:

Martha P. Lantz, Assistant Attorney General
1125 Washington St. SE
P.O. Box 40110
Olympia, WA 98504-0110
(**X**) By United States Mail
( ) By Personal Service
( ) By Email

Shelley E. Kneip
Lisa J. Nickel
Kitsap County Deputy Prosecuting Attorney
614 Division Street, MS-35-A
Port Orchard, WA 98366-4676
(**X**) By United States Mail
( ) By Personal Service
( ) By Email

David Bricklin
Bricklin Newman Dold, LLP
1001 Fourth Ave., Suite 3303
Seattle, WA 98154
(**X**) By United States Mail
( ) By Personal Service
( ) By Email

Jerry L. Harless
P.O. Box 8572
Port Orchard, WA 98366
(**X**) By United States Mail
( ) By Personal Service
( ) By Email

DATED this 29th day of MAY, 2009.

Neoma Bouré

Neoma Bouré, Legal Secretary for
Melody Allen

Appendices 1
CP 108,
AR 63.1

App. 1
Ordinance
370-2006

ORDINANCE No. 370-2006

RELATING TO THE GROWTH MANAGEMENT ACT AND REGARDING THE 10-YEAR UPDATE OF THE KITSAP COUNTY COMPREHENSIVE PLAN

BE IT ORDAINED:

Section 1. General Findings. The Kitsap County Board of Commissioners makes the following findings:

1. On May 7, 1998, the Board of County Commissioners (Board) adopted the 1998 Kitsap County Comprehensive Plan. Adoption of the 1998 plan satisfied the requirements set forth in the Growth Management Act (GMA). As part of the GMA requirement to continuously review and, if needed, revise the Comprehensive Plan set forth in RCW 36.70A.130(1), Kitsap County made subsequent amendments in June 2002, December 2003, and October 2004 after extensive review and recommendation by the public and Planning Commission.

2. The GMA, pursuant to RCW 36.70A.130(3), requires Kitsap County to "review, at least every ten years, its designated urban growth area or areas, and the densities permitted within both the incorporated and unincorporated portions of each urban growth area." Additionally, "[t]he county comprehensive plan designating urban growth areas, and the densities permitted in the urban growth areas by the comprehensive plans of the county and each city located within the urban growth areas, shall be revised to accommodate the urban growth projected to occur in the county for the succeeding twenty-year period."

3. The Kitsap County Code 21.08.040 provides that the Board will establish a schedule for review and possible amendment of the Comprehensive Plan.

4. On June 28, 2005, the Central Puget Sound Growth Management Hearings Board (Hearings Board), in its Final Decision and Order in *1000 Friends of Washington v. Kitsap County*, CPSGMHB 04-3-0031c, determined that Kitsap County was out of compliance with the GMA by not having completed its 10-Year review of its Urban Growth Areas, and the densities permitted within, by 2004. The Hearings Board ordered Kitsap County to take appropriate legislative action by June 30, 2006. The Hearings Board later granted an extension to the deadline of December 31, 2006 in *1000 Friends of Washington v. Kitsap County*, CPSGMHB 04-3-0031c, Order Amending Compliance Schedule (October 14, 2005).

5. On July 26, 2006, the Hearings Board, in its Final Decision and Order in *KCRP v. Kitsap County*, CPSGMHB 06-3-0007, remanded components of the Kingston Sub-Area Plan, adopted December 21, 2005, to the County for review and revision. The components included:

a. Allocating population without completing the 10-Year Update to the Kitsap County Comprehensive Plan as required by the Growth management Act;

b. The inclusion of a sewer reduction factor in the Updated Land Capacity Analysis (ULCA) used to size the urban growth area;

c. Reasonable measure review and implementation; and

d. Inadequate capital facilities planning which was unable to ensure the provision of urban services to the urban growth area.

Section 2. General Procedural Findings. The Kitsap County Board of Commissioners makes the following findings regarding the public participation process of the 10-Year Update of the Comprehensive Plan:

1. On February 14, 2006, following timely and effective public notice, the Board held a work-study session to discuss and review the draft public involvement plan for the 10-Year Update to the Comprehensive Plan (10-Year Update).

2. On February 28, 2006, following timely and effective public notice, the Kitsap County Planning Commission (Planning Commission) held a work-study session to review and discuss the 10-Year Update draft schedule, project strategies, task prioritization and public involvement plan.

3. On March 13, 2006, following timely and effective public notice, the Board approved Resolution No. 045-2006. The resolution established an application period for land use reclassification requests, ending on April 10, 2006. The resolution also established screening and evaluation criteria for the reclassification requests, as well as the initial docket for text and area-wide map amendments.

4. On March 15, 2006, following timely and effective notice, the Board held a work-study session to review and discuss the 10-Year Update draft vision review and project strategies.

5. On March 18, 2006, following timely and effective public notice, Kitsap County issued a Determination of Significance and scoping notice and document. The scoping notice solicited comments for consideration in the Environmental Impact Statement. The scoping period closed on April 10, 2006.

6. On March 20, 2006, following timely and effective public notice, the Board held an administration briefing to discuss the format and content of the public workshops on the vision statement and the details of the land use reclassification requests submitted by that date.

7. On March 23, 2006, a Public Involvement Plan was issued by Kitsap County to detail the public involvement program Kitsap County was committed to following during the 10-Year Update.

8. On March 23, 27 and 28, 2006, following timely and effective public notice, Kitsap County held public workshops to review the 1998 Comprehensive Plan vision statement and solicited suggestions and revisions for consideration. The vision workshops were from 6:00 to 9:00PM and located in North, Central and South Kitsap, with approximately two hundred and thirty-seven participants. All three workshops included a brief introduction, a question and answer period, followed by four to eight small group exercises.

9. On March 28, April 11, April 25, May 9 and May 23, 2006, following timely and effective public notice, the Planning Commission held work-study sessions to review and discuss the framework and assumptions of the Updated Land Capacity Analysis (ULCA), land use reclassification requests, population and employment projections, reasonable measures, the integration of sub-area planning, preliminary land use alternatives and other issues related to the 10-Year Update.

10. On May 3, 2006, following timely and effective public notice, the Board held a work-study session to review preliminary draft land use alternatives.

11. On May 15, 18, and 24, 2006, following timely and effective public notice, Kitsap County held public workshops to review preliminary draft land use alternatives. The alternative workshops were from 6:00 to 9:00PM and located in North, Central and South Kitsap County, with approximately one hundred and fifty-seven participants. All three workshops included a brief introduction, a question and answer period, followed by six small group exercises. Groups discussed various components of the preliminary land use alternatives, including, but not limited to urban growth area sizing and composition.

12. On May 30, 2006, following timely and effective public notice, the Planning Commission and Board held a joint work-study session to review the preliminary draft alternatives, land use reclassification requests and public comment submitted during the May alternative public workshops. The joint work-study session also included discussion of the range and magnitude of environmental impacts from alternatives one and three for review in the Draft Environmental Impact Statement.

13. On May 31, 2006, following timely and effective public notice, the Board held a work-study session to provide guidance to the Department of Community Development on the range and magnitude of Alternatives one and three for review in the Draft Environmental Impact Statement.

14. On June 27, 2006, following timely and effective public notice, the Planning Commission held a work-study session to review and discuss key components to be analyzed in the Draft Environmental Impact Statement and Capital Facilities Plan.

15. On July 10, 2006, following timely and effective public notice, the Planning Commission and Board held a joint public hearing to consider testimony on the

magnitude and range of alternative two for review in the Draft Environmental Impact Statement and Capital Facilities Plan. Over 120 people attended with half testifying on the potential range of sizes and compositions of Kitsap County's urban growth areas.

16. On July 11, 2006, following timely and effective public notice, the Planning Commission held a work-study session to refine the range and magnitude of Alternative two for review in the Draft Environmental Impact Statement and Capital Facilities Plan.

17. On July 12, 2006, following timely and effective public notice, the Board held a work-study session to refine the range and magnitude of Alternative two for review in the Draft Environmental Impact Statement and Capital Facilities Plan.

18. On July 19, 2006, following timely and effective public notice, the Board approved Resolution 129-2006. The Resolution outlined direction to the Department of Community Development for preparation of the Draft Environmental Impact Statement and alternatives one through three, including criteria for considering land use reclassification requests.

19. On August 23, 2006, following a timely and effective public notice, the Board held a work-study session to discuss major components and organization of Volumes I: Comprehensive Plan Policy Document, Volume II: Draft Environmental Impact Statement (DEIS) and Volume III: Proposed Regulations for the 10-Year Update.

20. On August 29, 2006, Kitsap County issued Volumes I: Comprehensive Plan Policy Document, Volume II: Draft Environmental Impact Statement (DEIS) and Volume III: Proposed Regulations for the 10-Year Update. These documents were posted on the MyKitsap.org web page and made available to the public and agencies. Additionally, in mid-August 2006, thirty-two thousand mailings were sent to property owners within and/or adjacent to the land use alternatives. The mailing included information on the document release, comment opportunities, and dates of the open houses and upcoming public hearings.

21. On August 29, 2006, notice of all amendments to the comprehensive plan and development regulations proposed to fulfill the requirements of RCW 36.70A.130 was sent to the Washington State Department of Community, Trade and Economic Development at least sixty days before the amendments were adopted, in accordance with RCW 36.70A.106."

22. On August 30, 2006, Kitsap County published a DEIS Notice of Availability in the legal publication of record.

23. On September 2, 2006, Kitsap County published in the legal publication of record the Notice of Application and Notice of Availability of Volumes I through III of the 10-Year Update, which had been issued on August 29, 2006.

24. On August 29 and September 7 and 14, 2006, following timely and effective public notice, the County held open houses on Volume I: Draft Comprehensive Plan Policy Document, Volume II: Draft Environmental Impact Statement and Volume III: Proposed Regulations. The open houses were from 6:00 to 9:00PM and located in North, Central and South Kitsap County, All three open houses included a brief introduction, a question and answer period, followed by an open house with six informational stations. Each informational station included professional staff available to answer questions regarding all three volumes. Approximately one hundred and sixty-one participants attended.

25. On September 5 and 12, 2006, following timely and effective public notice, the Planning Commission held work-study sessions to review and discuss components of Volume I: Draft Comprehensive Plan Policy Document, Volume II: Draft Environmental Impact Statement and Volume III: Proposed Regulations.

26. On September 11, 2006, following timely and effective public notice, the Board held an administration briefing to review and discuss components of Volume I: Draft Comprehensive Plan Policy Document, Volume II: Draft Environmental Impact Statement and Volume III: Proposed Regulations.

27. On September 13, 2006, following timely and effective public notice, the Board held a work-study session to review and discuss components of Volume I: Draft Comprehensive Plan Policy Document, Volume II: Draft Environmental Impact Statement and Volume III: Proposed Regulations.

28. On September 18, 2006, the Department of Community Development presented errata sheets for Volumes I through III to the Planning Commission and Board and posted them on the MyKitsap.org web page. These errata sheets included omissions and corrections to improve the accuracy, clarity and consistency of the documents.

29. On September 18, 20 and 21, 2006, following timely and effective public notice, the Planning Commission and Board held joint public hearings to consider testimony on Volume I: Draft Comprehensive Plan Policy Document, Volume II: Draft Environmental Impact Statement and Volume III: Proposed Regulations. Approximately 100 residents and interested parties testified, with majority of testimony relating to selection of a preferred land use alternative and urban growth area composition and sizing.

30. On September 26 and 27 and October 3 and 6, 2006, following timely and effective public notice, the Planning Commission held public meetings to deliberate on the proposed recommendations for Volume I: Draft Comprehensive Plan Policy Document, Volume II: Draft Environmental Impact Statement and Volume III: Proposed Regulations.

31. On October 4, 2006, following timely and effective public notice, the Board held a work-study session to review and discuss the Department of Community

Development's recommendations and the Planning Commission deliberations for the 10-Year Update.

32. On October 6, 2006, following timely and effective public notice, the Planning Commission approved Findings of Fact and Recommendations for Volume I: Draft Comprehensive Plan Policy Document, Volume II: Draft Environmental Impact Statement and Volume III: Proposed Regulations to be forwarded to the Board.

33. On October 11, 2006, following timely and effective public notice, the Board held a work-study session to review the Planning Commission's Findings of Fact and Recommendations for the 10-Year Update.

34. On October 23, 2006, following timely and effective public notice, the Board held a public hearing to consider testimony on the Planning Commission's recommendations. The public hearing was then continued to October 25, 2006 for further public testimony, with written comments allowed through October 30, 2006. Approximately forty-eight citizens and interested parties testified.

35. On October 25, 2006, following timely and effective public notice, the Board held a work-study session to review and discuss the Department's and Planning Commission's recommendations and to review and discuss components of Volume I: Draft Comprehensive Plan Policy Document, Volume II: Draft Environmental Impact Statement and Volume III: Proposed Regulations.

36. On October 30, 2006, following timely and effective public notice, the Board held an administration briefing to review and discuss the Department's and Planning Commission's recommendations and to review and discuss components of Volume I: Draft Comprehensive Plan Policy Document, Volume II: Draft Environmental Impact Statement and Volume III: Proposed Regulations.

37. On October 30, 2006, at 4:30PM, the 60-day comment period on the Volume I: Draft Comprehensive Plan Policy Document, Volume II: Draft Environmental Impact Statement and Volume III: Proposed Regulations closed.

38. On November 1 and 6, 2006, following timely and effective public notice, the Board began deliberations and approved a preferred land use alternative, plan policy document, and associated development regulations.

Section 3. Substantive Findings. The Board of County Commissioners makes the following findings with respect to the text and policy amendments to the Comprehensive Plan:

1. These amendments were developed in consideration of the goals of the GMA for the development of local comprehensive plans, as codified at RCW 36.70A.020, and reflect a careful balancing these goals within the local conditions of Kitsap County.

2. These amendments were developed from and are consistent with the Kitsap County Countywide Planning Policies (CPPs), originally adopted in 1992 and most recently amended in 2004 by Ordinance 327-2004.

3. These amendments were developed according to and are found to comply with the requirements of the GMA, RCW 36.70A.

4. The amendments adopted by this ordinance are within the range of the alternatives analyzed in the Draft Environmental Impact Statement (DEIS) and within the scope of additional analysis contained within the Final Environmental Impact Statement (FEIS). This FEIS also provides updated responses to comments on the Integrated Port Orchard/South Kitsap Sub-Area Plan Draft EIS consistent with the 10-Year Update. The County prepared a Preliminary Final Sub-Area Plan EIS that addressed comments prior to final decisions on the 10-Year Update. This 10-Year Update FEIS completes the Port Orchard/South Kitsap Sub-Area Plan environmental review process.

5. There has been early and continuous public participation in the review of the proposed amendments, as required by the GMA, and consistent with KCC 21.08 and the State Environmental Policy Act.

6. The Board bases its findings and conclusions on the entire record of the planning commission, the findings and conclusions of the Planning Commission, and all of the testimony, oral or written, and exhibits submitted to the Board. Any finding that should be deemed a conclusion, and any conclusion that should be deemed a finding, is hereby adopted as such.

7. The Board has considered the following criteria consistent with Kitsap County Code Sections 21.08.160 and 21.08.170, and makes the following findings:

    a. Circumstances in Kitsap County have substantially changed since the adoption of the 1998 Comprehensive Plan and/or subsequent amendments;

    b. New information is available that was not considered in the adoption of the 1998 Comprehensive Plan and/or subsequent amendments;

    c. The proposed amendments are consistent with or support other plan elements and/or development regulations;

    d. The proposed amendments reflect the goals, objectives and policies of the Comprehensive Plan;

    e. The proposed amendments are consistent with the Countywide Planning Policies; and

    f. The proposed amendments are compliant with the requirements of the Growth Management Act.

8. The Board has reviewed the Central Puget Sound Growth Management Hearings Board Decision in *1000 Friends v. Kitsap County*, CPSGMHB 04-3-0031c regarding the completion of the 10-Year Comprehensive Plan Update and finds that the remand issue has been addressed and resolved in the 10-Year Update.

9. The Board has reviewed the Central Puget Sound Growth Management Hearings Board Decision in *KCRP v. Kitsap County*, CPSGMHB 06-3-0007 regarding the Kingston Sub-Area Plan, and finds the remand issues have been addressed and resolved in the 10-Year Update:

   a. Kitsap County has completed its 10-Year Comprehensive Plan Update;

   b. The sewer reduction factor within the Updated Land capacity Analysis has been removed from the County methodology used to size its urban growth areas;

   c. The 10-Year Update adopts additional reasonable measures and employs additional development regulations to reinforce existing reasonable measures;

   d. The 10-Year Update includes a complete capital facilities plan that includes analysis and funding strategies for urban infrastructure.

10. Should any amendment to the Comprehensive Plan, Kitsap County Code, or any map associated there with that was passed by the Board during its deliberations on November 1 and 6, and December 11, 2006 be inadvertently left out, the explicit action of the Board as discussed and passed shall prevail upon subsequent review and verification by the Board.

Section 4. NOW THEREFORE, BE IT FURTHER ORDAINED, that the Kitsap County Board of Commissioners, based on the foregoing findings, hereby:

1. Approves Alternative 2 for all urban growth areas (UGAs) except Poulsbo as the preferred alternative for the 10-Year Comprehensive Plan Update with the amendments described in Attachment A. Alternative 1 is approved for the Poulsbo UGA.

2. Approves Volume I: Plan and Policy Document (Attachment B), dated December 2006, which reflects the Board's amendments (Attachment C). These amendments include, but are not limited to, the deletion of duplicative goals and policies, the revision of language regarding Low Impact Development (LID) standards, the inclusion of additional economic development policies to direct employment growth, the deletion of language specifying to-be-determined downtown design districts for Silverdale, approval of the Rural Wooded Incentive Program and other changes to improve clarity, accuracy and consistency of the document.

3. Approves the Draft and Final Environmental Impact Statements dated August and December 2006. Volume II: Final Environmental Impact Statement (Attachment D)

includes potential transportation funding/cost saving strategies with estimated values to address infrastructure improvements for the 20-year planning period (Attachment E). These cost saving/funding options include, but are not limited to, impact fees, fuel taxes, reduced levels of service, shift of revenue from other programs, property taxes, reduced urban growth areas, license fees and projecting city annexations/incorporations.

4. Approves Volume III: Proposed Regulations (Attachment F), dated December 2006, which reflects the Board's amendments (Attachment G). These amendments to Kitsap County Code Titles 17, 18 and 21 include, but are not limited to, provisions for rural industrial and commercial properties, allowances for mixed use and commercial development, inclusion of a consolidated use table, clarification of density calculations in the Urban Restricted zone, inclusion of a consolidated density and dimensions table, implementation of the Transfer of Development Rights and Rural Wooded Incentive Programs and other changes to improve clarity, accuracy and consistency of the document. Adoption of these textual amendments is by three separate ordinances.

5. The Site-Specific Comprehensive Plan Amendment submitted by Royal Valley LLC during the 2004 Comprehensive Plan Amendment cycle to include properties north of Waaga Way within the Central Kitsap urban growth area with Urban Restricted zoning is denied.

6. Future urban growth area amendments for the City of Poulsbo, including land use reclassification requests submitted by John Johnson and others, shall be reviewed during the City's 2007 comprehensive plan amendment process. Coordination of the City's and County's amendment processes shall be consistent with a future Memorandum of Understanding (MOU).

Section 5. Repealer. The following portions of Ordinance 325-2005 adopting the Kingston Sub-Area Plan are hereby repealed: Section 1: General Findings #11 and Section 4: Substantive Findings Related to the Kingston urban growth area # 1 through 12.

Effective Date: This Ordinance shall take effect immediately.

Severability: If any sentence, section, provision, or clause of this ordinance or its application to any person, entity or circumstance is for any reason held invalid or unconstitutional, the remainder of the ordinance, or the application of the provision to other persons, entities, or circumstances is not affected.

Dated: December 11, 2006

KITSAP COUNTY BOARD OF COMMISSIONERS

Jan Angel, Chair

Patty Lent, Commissioner

Chris Endresen, Commissioner

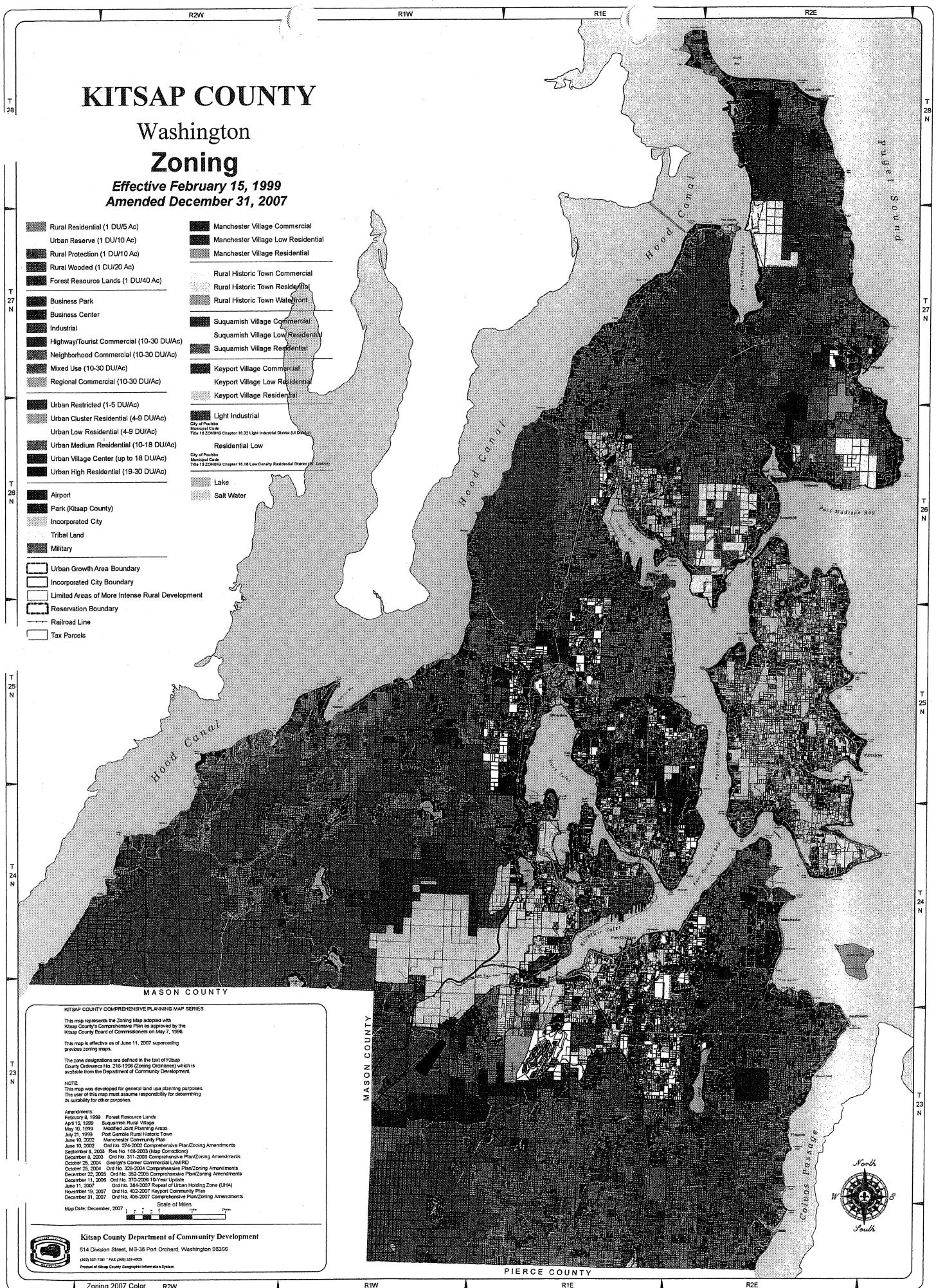
ATTEST:

Opal Robertson
Clerk of the Board

Approved as to Form:

Lisa J. Nickel
Deputy Prosecuting Attorney

App. 1
Zoning
Map


KITSAP COUNTY
Washington
Zoning
Effective February 15, 1999
Amended December 31, 2007
Rural Residential (1 DU/5 Ac)
Urban Reserve (1 DU/10 Ac)
Rural Protection (1 DU/10 Ac)
Rural Wooded (1 DU/20 Ac)
Forest Resource Lands (1 DU/40 Ac)
Business Park
Business Center
Industrial
Highway/Tourist Commercial (10-30 DU/Ac)
Neighborhood Commercial (10-30 DU/Ac)
Mixed Use (10-30 DU/Ac)
Regional Commercial (10-30 DU/Ac)
Urban Restricted (1-5 DU/Ac)
Urban Cluster Residential (4-9 DU/Ac)
Urban Low Residential (4-9 DU/Ac)
Urban Medium Residential (10-18 DU/Ac)
Urban Village Center (up to 18 DU/Ac)
Urban High Residential (19-30 DU/Ac)
Airport
Park (Kitsap County)
Incorporated City
Tribal Land
Military
Urban Growth Area Boundary
Incorporated City Boundary
Limited Areas of More Intense Rural Development
Reservation Boundary
Railroad Line
Tax Parcels
Manchester Village Commercial
Manchester Village Low Residential
Manchester Village Residential
Rural Historic Town Commercial
Rural Historic Town Residential
Rural Historic Town Waterfront
Suquamish Village Commercial
Suquamish Village Low Residential
Suquamish Village Residential
Keyport Village Commercial
Keyport Village Low Residential
Keyport Village Residential
Light Industrial
City of Poulsbo
Municipal Code
Title 18 ZONING Chapter 18.32 Light Industrial District (LI District)
Residential Low
City of Poulsbo
Municipal Code
Title 18 ZONING Chapter 18.16 Low Density Residential District (RL District)
Lake
Salt Water
Hood Canal
Puget Sound
Port Madison Bay
Dyes Inlet
Port Orchard Bay
Colvos Passage
MASON COUNTY
MASON COUNTY
PIERCE COUNTY
R2W
R1W
R1E
R2E
T 28 N
T 27 N
T 26 N
T 25 N
T 24 N
T 23 N
North
West
East
South
KITSAP COUNTY COMPREHENSIVE PLANNING MAP SERIES
This map represents the Zoning Map adopted with Kitsap County's Comprehensive Plan as approved by the Kitsap County Board of Commissioners on May 7, 1998.
This map is effective as of June 11, 2007 superceding previous zoning maps.
The zone designations are defined in the text of Kitsap County Ordinance No. 216-1998 (Zoning Ordinance) which is available from the Department of Community Development.
NOTE
This map was developed for general land use planning purposes. The user of this map must assume responsibility for determining its suitability for other purposes.
Amendments:
February 9, 1999 Forest Resource Lands
April 19, 1999 Suquamish Rural Village
May 10, 1999 Modified Joint Planning Areas
July 21, 1999 Port Gamble Rural Historic Town
June 10, 2002 Manchester Community Plan
June 10, 2002 Ord No. 274-2002 Comprehensive Plan/Zoning Amendments
September 9, 2003 Res No. 168-2003 (Map Corrections)
December 8, 2003 Ord No. 311-2003 Comprehensive Plan/Zoning Amendments
October 25, 2004 George's Corner Commercial LAMIRD
October 25, 2004 Ord No. 335-2004 Comprehensive Plan/Zoning Amendments
December 22, 2005 Ord No. 352-2005 Comprehensive Plan/Zoning Amendments
December 11, 2006 Ord No. 370-2006 10-Year Update
June 11, 2007 Ord No. 384-2007 Repeal of Urban Holding Zone (UHA)
November 19, 2007 Ord No. 402-2007 Keyport Community Plan
December 31, 2007 Ord No. 409-2007 Comprehensive Plan/Zoning Amendments
Scale of Miles
Map Date: December, 2007
Kitsap County Department of Community Development
614 Division Street, MS-36 Port Orchard, Washington 98366
(360) 337-7181 * FAX (360) 337-4925
Product of Kitsap County Geographic Information System
Zoning 2007 Color

App. 1
Vol. 1, Comprehensive Plan

Kitsap County

10-YEAR COMPREHENSIVE PLAN UPDATE

www.MyKitsap.org

INTEGRATED COMPREHENSIVE PLAN AND ENVIRONMENTAL IMPACT STATEMENT

Volume I:
Comprehensive Plan Policy Document

December 2006

KITSAP COUNTY
18 57
WASHINGTON

AR 63.1
Vol. I Comp. Plan

Kitsap County 10-Year Comprehensive Plan Update

Volume I: Comprehensive Plan Policy Document

Prepared for:

Kitsap Board of County Commissioners
District 1 Chris Endresen
District 3 Patty Lent
District 2 Jan Angel

Prepared by:

Kitsap County Departments of Community Development
and Public Works
and
Jones & Stokes and AHBL
with E.D. Hovee & Company and Henderson Young & Company

December 2006

Table of Contents

Chapter 1. Introduction 1-1

1.1. Vision 1-1
1.2. What is a Comprehensive Plan? 1-3
1.3. Planning Context 1-4
1.3.1. Washington State Growth Management Act 1-4
1.3.2. Countywide Planning Policies 1-6
1.3.3. VISION 2020 and Destination 2030 1-7
1.3.4. Other Planning Efforts 1-7
1.4. Citizen Involvement 1-8
1.5. How to Use This Document 1-12
1.5.1. Integrated Plan and Environmental Impact Statement 1-12
1.5.2. Plan Element Contents 1-13
1.5.3. Sub-Area and Community Plans 1-14
1.5.4. Plan Interpretation 1-15

Chapter 2. Land Use 2-1

2.1. Plan Context 2-1
2.2. Land Use Goals and Policies 2-2
2.2.1. Population Projections and Distributions 2-2
2.2.2. Land Capacity Analysis 2-8
2.2.3. Reasonable Measures 2-9
2.2.4. Urban Growth Areas 2-11
2.2.5. Land Use Map, Plan Amendments, and Coordination 2-18
2.2.6. Urban Residential Development 2-20
2.2.7. Urban Commercial Lands 2-26
2.2.8. Urban Industrial and Business Lands 2-30
2.2.9. Open Space and Greenways 2-34
2.2.10. Historic Preservation 2-36
2.2.11. Drainage, Flooding and Stormwater Runoff 2-37

Chapter 3. Rural and Resource Lands 3-1

3.1. Plan Context 3-1
3.1.1. Rural Character in Kitsap County 3-2
3.1.2. Intent of the Rural Lands Chapter 3-3

3.1.3. Growth Management Act 3-3
3.2. Rural and Resource Lands Goals and Policies 3-4
3.2.1. Rural Lands 3-4
3.2.2. Urban Reserve Lands 3-8
3.2.3. Limited Areas of More Intensive Rural Development 3-9
3.2.4. Resource Lands 3-12
3.2.5. Mineral Resource Lands 3-15
3.2.6. Agricultural Lands 3-17
3.2.7. Rural Wooded Policies 3-17
3.2.8. Transfer of Development Rights 3-20

Chapter 4. Natural Systems 4-1
4.1. Plan Context 4-1
4.2. Natural Systems Goals and Policies 4-2
4.2.1. Geologically Hazardous Areas 4-2
4.2.2. Critical Aquifer Recharge Areas 4-3
4.2.3. Surface Water Resources 4-4
4.2.4. Frequently Flooded Areas 4-6
4.2.5. Plant, Fish and Wildlife Habitat Conservation Areas 4-6

Chapter 5. Economic Development 5-1
5.1. Plan Context 5-1
5.2. Economic Development Goals and Policies 5-2

Chapter 6. Housing 6-1
6.1. Plan Context 6-1
6.2. Housing Goals and Policies 6-2

Chapter 7. Utilities 7-1
7.1. Plan Context 7-1
7.2. Utility Goals and Policies 7-2

Chapter 8. Transportation 8-1
8.1. Plan Context 8-1
8.2. Transportation Goals and Policies 8-2
8.2.1. Intergovernmental Coordination 8-2
8.2.2. Public Awareness and Participation 8-2
8.2.3. Mobility 8-3
8.2.4. Environmental 8-3

8.2.5. Transportation Safety 8-4
8.2.6. Economic and Cost Efficiency 8-5
8.2.7. Land Use and Transportation Planning 8-5
8.2.8. High Capacity Transit Service and Commute Trip Reduction 8-6
8.2.9. Marine Transportation Service 8-8
8.2.10. Non-motorized Travel 8-8
8.2.11. Transportation System Planning and Implementation 8-11
8.2.12. Level of Service 8-12
8.2.13. Roadway Access 8-13
8.2.14. Roadway Aesthetics 8-13
8.2.15. Funding Strategy 8-14
8.2.16. Aviation Transportation 8-15

Chapter 9. Shorelines 9-1

9.1. Introduction 9-1
9.2. Planning Context 9-2
9.3. Shoreline Environments 9-2
9.4. Shoreline Management Master Program Goals and Policies 9-3
9.4.1. Conservation and Resource Protection 9-3
9.4.2. Shoreline Use 9-3
9.4.3. Water Quality 9-4
9.4.4. Economic Development 9-4
9.4.5. Public Access 9-4
9.4.6. Recreation 9-5
9.4.7. History and Culture 9-5
9.4.8. Aesthetics 9-5
9.4.9. Natural Systems 9-6
9.4.10. Transportation 9-8

Chapter 10. Parks, Recreation, and Open Space 10-1

10.1. Plan Context 10-1
10.2. Parks Goals and Policies 10-1
10.2.1. County's Role 10-1
10.2.2. Transition of County Parks Priorities 10-2
10.2.3. Parks and Open Space Acquisition 10-3
10.2.4. Management of Park and Open Space Lands 10-4
10.2.5. Funding 10-5
10.2.6. Partnerships 10-6
10.2.7. Civic Engagement 10-7

Chapter 11. Capital Facilities 11-1
11.1. Plan Context 11-1
11.2. Capital Facilities Goals and Policies 11-2
11.2.1. Public Facilities Needs 11-2
11.2.2. Financial Feasibility 11-7
11.2.3. Public Facilities and Concurrency Management 11-9
11.2.4. Capital Improvements Coordination With Land Development. 11-12
11.2.5. Siting of Essential Public Facilities 11-13
11.2.6. Urban Growth Areas 11-15

Chapter 12. Kingston Sub-Area Plan 12-1
12.1. Goals and Policies 12-1
12.1.1. Framework 12-1
12.1.2. Land Use 12-9
12.1.3. Natural Systems 12-13
12.1.4. Transportation 12-15

Chapter 13. Port Orchard / South Kitsap Sub-Area Plan 13-1
13.1. Goals and Policies 13-1
13.1.1. Land Use 13-1
13.1.2. Natural Systems 13-10
13.1.3. Economic Development 13-18
13.1.4. Housing 13-22
13.1.5. Transportation 13-25
13.1.6. Capital Facilities 13-34
13.1.7. Implementation 13-42

Chapter 14. Silverdale Sub-Area Plan 14-1
14.1. Vision 14-1
14.2. Goals and Policies 14-2
14.2.1. Land Use 14-2
14.2.2. Natural Systems 14-7
14.2.3. Economic Development 14-8
14.2.4. Housing 14-10
14.2.5. Transportation 14-11
14.2.6. Capital Facilities 14-14

Chapter 15. Urban Sub-Area Plans 15-1
15.1. Poulsbo Sub-Area Plan 15-1

15.1.1. Goals and Policies 15-1
15.2. South Kitsap Industrial Area Sub-Area Plan 15-6
15.2.1. Goals and Policies 15-8
15.3. ULID #6 Sub-Area Plan 15-25
15.3.1. Goals and Policies 15-25

Chapter 16. Rural Villages and LAMIRDs 16-1
16.1. Manchester Community Plan 16-1
16.1.1. Vision 16-1
16.1.2. Goals and Policies 16-2
16.2. Suquamish Rural Village Sub-Area Plan 16-8
16.2.1. Goals and Policies 16-10

Chapter 17. Community and Neighborhood Plans 17-1
17.1. Illahee Community 17-1
17.2. Vision 17-1
17.3. Goals and Policies 17-2

Chapter 18. Implementation 18-1
18.1. Implementation 18-1

Tables

Table 1-1. Kitsap County Integrated SEPA/GMA Plan and EIS 1-13

Table 2-1. Kitsap County Planning Area Growth Targets 2-8

Table 11-1. Facility and Service Providers 11-15

Table 16-1. Lot Requirements and Setbacks for Manchester Village Residential and Manchester Village Low Residential Zones 16-3

Table 18-1. Implementation Strategies 18-1

Figures

Figure 2-1. Comprehensive Plan Land Use Map, North 2-3

Figure 2-2. Comprehensive Plan Land Use Map, South 2-5

Figure 2-3. Housing Types 2-23

Figure 12-1. Kingston Comprehensive Plan Map 12-2

Figure 13-1. Port Orchard / South Kitsap Comprehensive Plan Map 13-2

Figure 14-1. Silverdale Comprehensive Plan Map 14-3

Figure 14-2. Silverdale Urban Growth Area and Regional Growth Center 14-9

Figure 15-1. Comprehensive Plan Land use Map – Poulsbo 15-2

Figure 15-2. Comprehensive Plan Land Use Map – South Kitsap Industrial Area 15-7

Figure 15-3. Comprehensive Plan Land use Map – ULID #6 15-26

Figure 16-1. Manchester Comprehensive Plan Land Use Map 16-2

Figure 16-2. Suquamish Comprehensive Plan Land Use Map 16-9

Figure 17-1. Illahee Community Boundary 17-3

Appendices

Appendix A. Capital Facilities Plan

Appendix B. Silverdale Policy Index

Acronyms and Abbreviations

AASHTO	American Association of State Highway and Transportation Officials
ADA	Americans with Disabilities Act
BMPs	Best Management Practices
CAC	Citizen Advisory Committee
CAG	Citizens Advisory Group
CAO	Critical Areas Ordinance
CFP	Capital Facilities Plan
CPP	Countywide Planning Policies
CPSGMHB	Central Puget Sound Growth Management Hearings Board
CTR	Commute Trip Reduction
DEIS	Draft Environmental Impact Statement
DNR	Washington State Department of Natural Resources
DOD	Department of Defense
EPA	Environmental Protection Agency
ESA	Endangered Species Act
FAR	Federal Aviation Regulation
FCC	Federal Communications Commission
GIS	Geographic Information System
GMA	Growth Management Act
HB	House Bill
HOV	High Occupancy Vehicle
ILA	Interlocal Agreements
IMPRA	Industrial Multi-Purpose Recreational Area
KCAC	Kingston Citizens' Advisory Committee
KEDC	Kitsap Economic Development Council
KRCC	Kitsap Regional Coordinating Council
LAMIRD	Limited Area of More Intensive Rural Development
LEED	Leadership in Energy and Environmental Design

Acronyms and Abbreviations

LID	Low Impact Development
LOS	Level of Service
LSTP	Local Safety Traffic Program
MUTCD	Manual on Uniform Traffic Control
MVC	Manchester Village Commercial
MVLR	Manchester Village Low Residential
MVR	Manchester Village Residential
NOAA	National Oceanographic and Atmospheric Administration
PBD	Performance Based Development
Plan	Kitsap County Comprehensive Plan
POS Plan	2006 Kitsap County Parks, Recreation & Open Space Plan
PRTPO	Peninsula Regional Transportation Planning Organization
PSRC	Puget Sound Regional Council
PUD	Public Utility District
PUTA	Poulsbo Urban Transition Area
RCW	Revised Code of Washington
RHTC	Rural Historic Town Commercial
RHTR	Rural Historic Town Residential
RHTW	Rural Historic Town Waterfront
SEPA	State Environmental Policy Act
SKIA	South Kitsap Industrial Area
SMMP	Shoreline Management Master Program
SOV	Single Occupancy Vehicles
SR	State Route
SVC	Suquamish Village Commercial
SVR	Suquamish Village Residential
TAZ	Transportation Analysis Zone
TDM	Transportation Demand Management

Acronyms and Abbreviations

TDR	Transfer of Development Rights
TIP	Transportation Improvement Program
TMA	Transportation Management Association
TMP	Transportation Management Programs
TODs	Transit Oriented Developments
UGA	Urban Growth Area
UGAMA	Urban Growth Area Management Agreement
UVC	Urban Village Center
WAC	Washington Administrative Code
WDFW	Washington Department of Fish and Wildlife
WRIA	Water Resources Inventory Area
WSDOT	Washington State Department of Transportation
WSF	Washington State Ferries
WUTC	Washington Utilities and Transportation Commission

Photo Credits

Affordable Housing Design Advisor (www.designadvisor.org) of the U.S. Department of Housing and Urban Development

AHBL

E.D. Hovee and Company

Jones & Stokes

Kitsap Conference Center

Kitsap Conservation District

Kitsap County Departments of Community Development and Public Works

Kitsap Historical Society

Port of Bremerton

Poulsbochamber.com

Puget Sound Energy

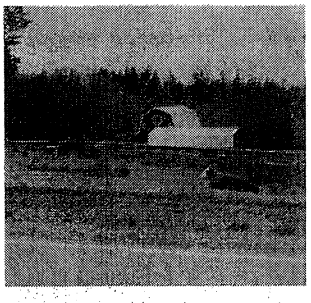
ScenicHudson.org

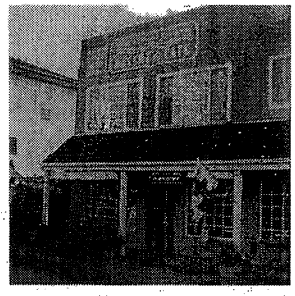
Schreiber-lane.com

Softwood Export Council

Transportation and Land Use Coalition

Washington State Department of Ecology





Chapter 1. Introduction

1.1. Vision

Kitsap County has reached a key point in its growth and development where many residents, business people and government officials see an opportunity to provide direction and vision for the future growth of Kitsap County.

Despite rapid growth in the past two decades, Kitsap County remains an attractive place to live and work, characteristics its residents want to maintain. Yet Kitsap County faces several critical issues, including the loss of rural character, increasing growth pressures from forces both within Kitsap County and from without, and increasing traffic on area roadways.

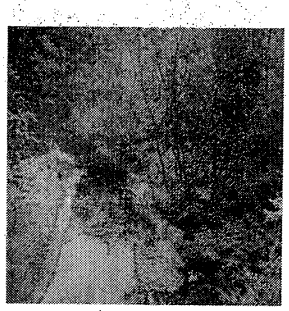
Kitsap County absorbed an 87% increase in population between 1970 and 1990—more than twice the state's growth rate of 42.6%. Kitsap County grew from 189,731 to 231,969—a 22% increase between 1990 and 2000. Kitsap County also represents the third most densely populated county in Washington (behind King and Clark Counties) due to its small geographic size and proximity to the state's largest employment centers.

In the face of continued growth, Kitsap County seeks to shape its future in ways that will maintain the quality of life that makes Kitsap County a special place to live and work.

Kitsap County citizens, through an extensive public involvement process, have described how they see their county today and tomorrow. They have made it clear what they want Kitsap County to look like 20 years from now.

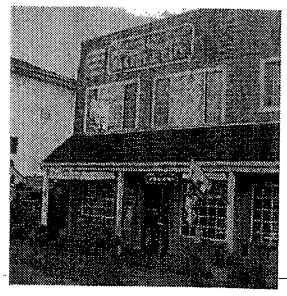
They envision a future in which natural systems are protected; the water quality in our lakes, streams and Puget Sound is enhanced; the village character of some of the smaller towns is preserved; the historical nature of communities is respected in order to preserve our heritage for future generations; a diversified economic base supports good jobs, contributes to healthy downtowns in cities, and offers affordable housing choices; and the rural appearance of the county is perpetuated.

This vision describes many themes important to the communities of Kitsap County. While the themes are each described individually, taken as a whole, the vision speaks to the idea of balance between the public welfare and private property rights. This vision of the future, which is shared by citizens and elected officials, includes the following elements:



- **County Government.** County government that is accountable and accessible; encourages citizen participation; seeks to operate as efficiently as possible; and works with citizens, governmental entities and tribal goverments to meet collective needs fairly while respecting individual and property rights.
- **Natural Environment.** Natural ecosystems—including inter-connected wetlands, streams, wildlife habitat, and water quality—that are rehabilitated, protected and enhanced and that allow for flexible and innovative development to meet environmental and growth goals. In developed areas, the growth pattern supports conservation of non-renewable energy and minimizes impacts on air quality and climate.

- **Housing.** Residential communities that are attractive, affordable, diverse, and livable supported by appropriate urban or rural services. A variety of housing choices are available, meeting a full range of resident income levels and preferences. Residents are able to walk between neighborhoods and to community destinations.
- **Open Space.** An open space network—including greenbelts, wildlife habitat, forested areas, and active and passive parks—that is accessible, inter-connected, provides opportunities for recreation and defines and distinguishes urban and rural areas.
- **Urban Areas.** Healthy urban areas that are the region's centers for diverse employment and housing opportunities, all levels of education, and civic and cultural activities.
- **Rural Areas.** Rural areas and communities where unique historical characters, appearances, functions, and pioneering spirits are retained and enhanced. Natural resource activities, such as forestry, agriculture, and mining continue to contribute to the rural character and economy. Rural recreation opportunities are enhanced, including equestrian facilities, trails, and others.



- **Cultural Resources.** Historical and archaeological resources that are recognized and preserved for future generations.
- **Economic Development.** A stable, prosperous and diversified economy that provides living wage jobs for residents, supported by adequate land for a range of employment uses and that encourages accomplishment of local economic development goals.

- **Public Services and Facilities.** Public services and facilities—including, but not limited to, parks and recreation, law enforcement, fire protection, emergency preparedness, water/sewer, roads, transit, nonmotorized facilities, ferries, stormwater management, education, library services, health and human services, energy, telecommunications, etc.—are provided in an efficient, high-quality and timely manner by the County and its partner agencies. Public services and facilities are monitored, maintained and enhanced to meet quality service standards.
- **Transportation.** An efficient, flexible, and coordinated multi-modal transportation system—including roads, bridges and highways, ferries, transit, and non-motorized travel—that provides interconnectivity and mobility for county residents and supports our urban and rural land use pattern.

This vision has guided development of the Kitsap County Comprehensive Plan (Plan). The Plan's goals and policies give direction for managing future growth consistent with citizens' desired future and quality of life. A key strategy to accomplish this vision is the intention to encourage future urban growth in areas within incorporated cities and in unincorporated areas that are already characterized by urban growth with existing and planned services and facilities. These actions will work to strengthen the natural environmental and rural character, and are geared to reduce taxpayer costs by focusing the expenditure of public funds, encouraging concentrated development where appropriate, and increasing choices for housing and jobs. This Plan recognizes the complexities involved in balancing historical patterns of growth with both a preferred vision of the future and requirements of the Growth Management Act (GMA) and other related state laws. It recognizes that some tradeoffs must be made to balance the costs with the gains, that flexibility is necessary to adapt to changing conditions, that periodic vision and Plan evaluation are appropriate, and that at all times the Plan must reflect the long-term goals of the people living and working here.

1.2. What is a Comprehensive Plan?

This Plan, when adopted in its final form by the Board of County Commissioners, is a vehicle to help Kitsap County achieve its vision of the future.

Used as a guide for the physical, economic and community development of Kitsap County for the next 20 years, the Plan establishes goals and policies for Kitsap County to use in evaluating and making future decisions. The Plan's policies communicate the long-term values and aspirations of the County. By viewing the County as a whole, the Plan shows how all the different parts – land use, housing, transportation, natural systems and capital facilities – must work together to achieve the desired vision.

Kitsap County's regulatory and non-regulatory decisions and programs, as well as its budget, should be consistent with the Plan. Used this way, the Plan minimizes conflict in decision making, promotes coordination among programs and regulations, brings predictability to the

development process, and increases effectiveness of County efforts to improve citizens' quality of life. Individual landowners and interest groups are able to use the Plan to evaluate their decisions in light of the community's goals.

The Plan has these characteristics:

- **Long-range.** The Plan is based on a 20-year vision of Kitsap County, as articulated by elected representatives and the community through early and continuous public participation meetings.
- **Predictable.** The Plan is site-specific and the intent is stated clearly as to how properties will be zoned and used in the future.
- **Consistent.** The Plan is internally consistent and is coordinated with neighboring jurisdictions' comprehensive plans in an attempt to be externally consistent, as well.
- **Comprehensive.** The Plan outlines the use of land and resources to organize and coordinate the complex regulatory and non-regulatory interrelationships among people, land, resources, natural environmental systems, and public facilities to protect and maximize the future health, safety, and welfare of the citizens.
- **Flexible.** The Plan will continue to evolve after it is officially adopted to reflect Kitsap County's actual experience of growth and citizens' concerns. Through annual updates and major 7-year and 10-year reviews the Plan will be adjusted to meet changing needs, unforeseen circumstances, or new local and regional trends.

1.3. Planning Context

As this Plan seeks to achieve the community's vision, it must do so in a way that meets the requirements of state laws; it seeks to do so in a way that fulfills the intent of regional and local guidelines, preferences, and non-regulatory planning efforts. The primary state mandates that this Plan fulfills are contained in the GMA. Regional policies this Plan seeks to fulfill include the Puget Sound Regional Council's VISION 2020 and Destination 2030 plans. Non-regulatory planning efforts interrelated with this Plan include recreation and habitat conservation planning, salmon recovery planning, and water resources planning.

1.3.1. Washington State Growth Management Act

Passage of the GMA in 1990 by the State Legislature marked a major change in growth management planning in Washington. For the first time in the state's history, all urban counties and their cities were required to develop and adopt comprehensive plans and to implement these plans through regulatory means. To ensure comparable planning efforts, the GMA required that comprehensive plans address specific issues including (but not limited to) land use,

transportation, housing, capital facilities and services, natural environment and economic development.

Since 1990, the GMA has been amended multiple times. This document complies with the GMA as amended.

The GMA established 13 goals for the comprehensive planning process. Per RCW 36.70A.020, the following goals are not listed in order of priority and shall be used exclusively for the purpose of guiding the development of comprehensive plans and development regulations:

- **Urban growth.** Encourage development in urban areas where adequate public facilities and services exist or can be provided in an efficient manner.
- **Reduce sprawl.** Reduce the inappropriate conversion of undeveloped land into sprawling, low-density development.
- **Transportation.** Encourage efficient multi-modal transportation systems that are based on regional priorities and coordinated with county and city comprehensive plans.
- **Housing.** Encourage the availability of affordable housing to all economic segments of the population of this state, promote a variety of residential densities and housing types, and encourage preservation of existing housing stock.
- **Economic development.** Encourage economic development throughout the state that is consistent with adopted comprehensive plans; promote economic opportunity for all citizens of this state, especially for unemployed and for disadvantaged persons; promote the retention and expansion of existing businesses and recruitment of new businesses; recognize regional differences impacting economic development opportunities; and encourage growth in areas experiencing insufficient economic growth, all within the capacities of the state's natural resources, public services, and public facilities.
- **Property rights.** Private property shall not be taken for public use without just compensation having been made. The property rights of landowners shall be protected from arbitrary and discriminatory actions.
- **Permits.** Applications for both state and local government permits should be processed in a timely and fair manner to ensure predictability.
- **Natural resource industries.** Maintain and enhance natural resource-based industries, including productive timber, agricultural and fisheries industries. Encourage the conservation of productive forestlands and productive agricultural lands, and discourage incompatible uses.
- **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.

- **Environment.** Protect the environment and enhance the state's high quality of life, including air and water quality, and the availability of water.
- **Citizen participation and coordination.** Encourage the involvement of citizens in the planning process and ensure coordination between communities and jurisdictions to reconcile conflicts.
- **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.
- **Historic preservation.** Identify and encourage the preservation of lands, sites and structures that have historical or archaeological significance.

In addition, the GMA established three key requirements that all comprehensive plans must meet:

- **Capital facilities.** Kitsap County must demonstrate that it can afford the infrastructure needed to support the expected growth. If the services cannot be provided, the land uses must be revised or the levels of services revised.
- **Comprehensiveness.** The Plan must look at Kitsap County as an integrated set of systems of land use, housing, transportation, capital facilities and utilities. All areas of Kitsap County and all elements of this Plan must be addressed from a countywide perspective.
- **Consistency.** The Plan must avoid internal contradictions and must not interfere with the successful implementation of the plans of neighboring jurisdictions. Its policies must be consistent with the direction established by the GMA, and the Kitsap Countywide Planning Policies (CPPs) and with regional plans such as VISION 2020 and Destination 2030.

1.3.2. Countywide Planning Policies

To achieve coordinated planning efforts, GMA further requires that counties and cities develop a set of framework policies to guide development of each jurisdiction's comprehensive plan. On August 10, 1992, the Board of County Commissioners adopted the original Kitsap CPPs, which defined the countywide vision and established the parameters from which the comprehensive plans of Kitsap County and its cities were developed. Seven agencies participated in development of the CPPs through the Kitsap Regional Coordinating Council: the Cities of Bainbridge Island, Port Orchard, Bremerton and Poulsbo, the Port Gamble/S'kallam Tribe and Suquamish Tribe, and Kitsap County. The CPPs have been amended periodically to reflect the coordinated interests of participating governments. The most recent amendment was adopted by Kitsap County in November 2004 and provides for population distribution through 2025.

The CPPs address 13 elements, and topics addressed include, but are not limited to:

- Promote a process and criteria for designation of urban growth areas (UGAs).
- Promote contiguous and orderly development.
- Site public capital facilities.
- Establish transportation facilities and strategies.
- Create affordable housing plans and criteria.
- Ensure favorable employment and economic conditions in Kitsap County.
- Coordinate with tribal and federal governments.

1.3.3. VISION 2020 and Destination 2030

In addition, Plan considers the growth policies of the Puget Sound Regional Council (PSRC), including:

- VISION 2020 is a common, overarching vision for directing growth into urban areas and regional growth centers in an environmentally responsible way, fostering economic development, and providing efficient transportation. As of 2006, VISION 2020 is currently under review to extend it another 20 years (VISION 2020 + 20).
- Destination 2030, the region's long-range transportation plan, was developed in 2001 to build on VISION 2020's transportation policies with a program for addressing transportation improvements.

1.3.4. Other Planning Efforts

This Plan supports and is supported by a variety of non-regulatory efforts that preserve or enhance the quality of life enjoyed by Kitsap citizens. Specific non-regulatory efforts include:

- **Recreation and habitat conservation**. Planning and providing parks, recreational opportunities, open space, and habitat conservation is guided by the Washington State Interagency for Outdoor Recreation policies and Kitsap County Parks, Recreation and Open Space Plan.
- **Salmon recovery**. Planning and implementing projects is guided by the federal Endangered Species Act (ESA), National Oceanographic and Atmospheric Administration (NOAA)

Fisheries' Puget Sound and Hood Canal salmon recovery plans, Salmon Recovery Act (RCW 77.85), Salmon Recovery Funding Board policies, and local lead entities' recovery strategies.

- **Water resources.** Planning and implementing projects is guided by the federal Clean Water Act, Puget Sound Water Quality Management Plan, Water Pollution Control Act (Revised Code of Washington [RCW] 90.48), Nonpoint Source Pollution Rule (Washington Administrative Code [WAC] 400-12), Kitsap Peninsula (Water Resources Inventory Area [WRIA] 15) Watershed Management Plan, and local nonpoint pollution watershed action plans.

1.4. Citizen Involvement

The Plan was adopted in 1998 after an extensive public process that began in 1990 and was deemed valid by the Central Puget Sound Growth Management Hearings Board (CPSGMHB). Involvement included community forums, workshops, citizen advisory committees, open houses, comment sheets, mailings, public reviews by the Planning Commission and public hearings by the Board of County Commissioners.

Likewise, public involvement, review, and comment were integral to the 2006 update to the Plan to extend the comprehensive planning period from 2005 to 2025. Kitsap County undertook a proactive, and comprehensive public involvement program to encourage participation in the development of plan chapters and to ultimately develop a plan that meets community needs. This public involvement program was designed to meet the following objectives.

- To inform the community of the update effort, including the reasons for the update, the purpose of the Plan, state requirements, and CPSGMHB decisions.
- To obtain input from all members of the community through all aspects of plan development.
- To engage the public and stakeholders in an open dialogue throughout the process.
- To encourage two-way communication between the County and community stakeholders.
- To identify interests, concerns, and issues as early as possible to avoid surprises later in the process.
- To ensure that elected officials, staff, and consultants have been fully aware of and understand community and stakeholder concerns.
- To be aware of and communicate clearly about the integration of other plan processes in the development of the Plan update.

- To generate trust, confidence, and credibility in the project team, process, and resulting Plan.
- To develop a comprehensive plan that will have the support of the community and guide Kitsap County's growth over the next 20 years.

To achieve these objectives, the County's multi-faceted outreach program incorporated a wide range of activities. The following discussion summarizes public involvement activities completed during the Plan Update.

Public Involvement Activities – January to July 2006

- **MyKitsap.org Webpage.** In January, a webpage was created and advertised as the on-line repository of all aspects of the Plan update. Future meeting dates, published documents and analysis, contact people and other key information were provided and frequently updated on this page. This webpage also included an online comment form.
- **Coordination with open space and recreation planning outreach efforts.** In January 2006, a comprehensive plan fact sheet and questionnaire were distributed at open space and recreation public meetings and focus groups.
- **Stakeholder Meetings.** County staff met with numerous community groups between February and October 2006, explaining the 10-Year Update and upcoming workshop and comment opportunities. Community groups included special interest groups, fraternal organizations, neighborhood groups, private property owners, developers, and others.
- **Project Fact Sheet.** A project fact sheet that provided basic project background and contact information was widely distributed.
- **Project Comment Card.** A comment card inviting comments on project issues was broadly distributed at meetings and posted on the project website. Comments were reviewed, with responses to commenters and/or incorporation of comments into the planning process.
- **Public Display Boards.** Three graphic display boards that describe the Plan update progress and activities have been posted at high traffic areas, such as libraries, post offices, and other locations at the time of the public workshops.
- **Scoping and Vision Public Meetings.** Three workshops were held in March 2006 to solicit public comment on the scope of the Draft Environmental Impact Statement (DEIS) and the Plan vision statement. These meetings occurred on the following dates and locations.
  - March 23 in Kingston—70 participants.
  - March 27 in Silverdale—104 participants.
  - March 28 in Port Orchard—63 participants.

  The key vision themes identified by participants throughout the county are:

- Natural environment and open space protection and enhancement, balanced with growth.
- Consider broader natural environmental context and open space connections.
- Rural open space and buildings are part of Kitsap's character.
- Define and distinguish urban and rural areas.
- Urban communities, livable and healthy, connected, safe, and innovative.
- Affordable and diverse housing choices.
- Economic prosperity, including balanced growth.
- Transportation plan that is balanced, measurable, and includes road and transit improvements.
- New transportation approaches.
- Improved ferries and transportation.
- Responsive and fair government.
- Link and balance all vision elements.

- **Agency Meetings**. During February, March, June, and September 2006, the County staff conducted a series of meetings with cities, tribal goverments, special districts, and state agencies. The purpose of these meetings was to share information about the Plan update, to hear from agency staff about issues and concerns, and to obtain relevant information for the 10-Year Update process. Meetings and personal contacts continued as needed throughout the duration of project.

- **Alternatives Public Meetings**. Three workshops were held in May 2006 to solicit public comment on preliminary Plan alternatives. These meetings occurred as shown below.

  - May 15 in Kingston—28 participants.
  - May 18 in Silverdale—61 participants.
  - May 24 in Port Orchard—68 participants.

  These meetings were intended to share information and obtain input about several potential alternatives to be studied in the DEIS and the future identification of a preferred alternative.

- **Alternatives Hearing**. On July 10, 2006, the Board of County Commissioners and the Planning Commission jointly held a public hearing to gain public testimony on the range of Alternatives, particularly the refinement of DEIS Alternative 2.

- **Focus Groups**. From May to July 2006, focus group discussions with stakeholders were held on the following topics: water/sewer, transportation, housing and mixed use development,

code development, Transfer of Development Rights, and the Rural Wooded Incentive Program. The purpose of the focus groups was to review policy and implementation issues, understand diverging opinions, and identify policy options or solutions to address issues of common concern.

- **Kingston Phase II Working Group.** Between September 2004 and 2005, a citizen-based working group prepared recommendations on UGA sizing to accommodate Year 2025 population growth. They reviewed public service information, land use reclass requests, UGA boundaries, reasonable measures, and Updated Land Capacity Analysis (ULCA).

- **Silverdale Sub-Area Citizen Advisory Committee Meetings.** Beginning in November 2004, the Silverdale Citizen Advisory Committee (CAC) held public meetings to review various aspects of the Sub-Area, including potential watershed and natural resource impacts of different development scenarios, existing information on public services and facilities, land capacity; and to provide input and comment on the Sub-Area Plan policies and alternative UGA boundaries. The CAC also hosted two public open houses to share its findings related to existing conditions data and to seek input on alternative UGA boundaries. The CAC has held multiple public meetings and has taken public comment at each of these meetings.

- **Port Orchard/South Kitsap Sub-Area Citizen Advisory Group Meetings.** Through an interlocal agreement (ILA), Kitsap County has been working with the City of Port Orchard since 2003. A Citizens Advisory Group (CAG) was also formed in August 2003 and concluded its recommendations in December 2005. The CAG also reviewed various aspects of the Sub-Area, including different development scenarios, existing information on public services and facilities, and land capacity; and provided input and comment on the Sub-Area Plan policies and alternative UGA boundaries. The CAG has also hosted two public open houses to share its findings related to existing conditions data and to seek input on alternative UGA boundaries. The CAG has held multiple public meetings and has taken public comment at each of these meetings. The City of Port Orchard Planning Commission held a public meeting on the draft Sub-Area Plan in Winter 2006. The Port Orchard City Council held a public meeting and made a recommendation on the draft Sub-Area Plan in April 2006. The Kitsap County Planning Commission held a hearing on the draft sub-area plan in early 2006.

Public Involvement Opportunities – August and September 2006

- **Draft Plan meetings.** A third set of open houses/public meetings were held in August/September 2006 to focus on the draft Plan, DEIS, and proposed regulations and to introduce concepts and information prior to the public hearings. The purpose of the meetings was to share the draft plan and provide an opportunity to hear feedback from the public. The meeting locations and attendance were as follows:

  - August 29 in Kingston—36 participants.
  - September 7 in Port Orchard—64 participants.

- September 14 in Central Kitsap—61 participants.

- **Public hearings and meetings.** As part of the adoption process for the updated Plan, the Kitsap County Planning Commission and BOCC conducted three joint public hearings on September 18, 20 and 21, 2006 at the Kitsap County Fairgrounds. The Planning Commission deliberated until October 10, 2006 and made recommendations. The BOCC held a public hearing on the Planning Commission recommendations on October 23, 2006, which was continued to October 25, 2006. The BOCC deliberated on the Plan through November 6, 2006 at which time the BOCC directed the preparation of the Final Plan, FEIS, and Development Regulations for action in early December.

1.5. How to Use This Document

1.5.1. Integrated Plan and Environmental Impact Statement

Washington Administrative Code (WAC) 197-11-210 authorizes GMA counties and cities to integrate the requirements of GMA and the State Environmental Policy Act (SEPA). The goal is to ensure that environmental analysis under SEPA occurs concurrently with, and as an integral part of, the planning and decision-making process under GMA. Analysis of environmental impacts in the GMA planning process can result in better-informed GMA planning decisions; avoid delays, duplication, and paperwork in future project-level environmental analysis; and narrow the scope of environmental review and mitigation under SEPA at the future project level.

GMA jurisdictions are authorized, but not required, to combine SEPA and GMA processes and/or to integrate documents. In either case, WAC 197-11-228 states that the appropriate scope and level of detail of environmental review should be tailored to the GMA action under consideration; jurisdictions may modify SEPA phased review as necessary to track the phasing of GMA actions; and the process of integrating SEPA and GMA should begin at the early stages of plan development.

Kitsap County elected to integrate both the SEPA/GMA process and the document. Integration of the environmental analysis with the planning process informs the preparation of GMA comprehensive plan amendments and facilitates coordination of public involvement activities. The Plan inventories serve as SEPA affected environment discussion (Volume II EIS); and the Plan policies (Volume I Comprehensive Plan) and SEPA mitigation measures (Volume II EIS) can inform each other. These documents act only as a programmatic EIS. Future projects with significant impacts will be required to submit additional project-level EISs based upon the specific impacts of their proposals.

The combined EIS/Plan document is structured as shown in Table 1-1. This Plan is contained in Volume I of the integrated document.

Table 1-1. Kitsap County Integrated SEPA/GMA Plan and EIS

Volume	Contents
Volume I: Policy Document	Brief summary of the "key issues" identified in Volume II. Contains all policies and plans.
Volume II: DEIS and FEIS	Contains all GMA- and SEPA-required inventories in the Affected Environment discussions Analyzes No-Action and Proposed Action Alternatives Summarizes Plan policies and adopted regulations that serve as mitigation measures
Volume III: Development Regulations	Includes development regulations and code amendments implementing the final plan
Appendices	Volume I appendices include the capital facilities plan, a policy matrix related to the Silverdale Sub-Area Plan. Volume II EIS appendices include technical background information.

1.5.2. Plan Element Contents

Volume I, the Plan, is divided into chapters dealing with specific issue areas, such as:

- Chapter 1, *Introduction*
- Chapter 2, *Land Use*
- Chapter 3, *Rural and Resource Lands*
- Chapter 4, *Natural Systems*
- Chapter 5, *Economic Development*
- Chapter 6, *Housing*
- Chapter 7, *Utilities*
- Chapter 8, *Transportation*
- Chapter 9, *Shorelines*
- Chapter 10, *Parks, Recreation and Open Space*
- Chapter 11, *Capital Facilities*
- Chapters 12 to 16, *Sub-Area Plans*
- Chapter 17, *Community and Neighborhood Plans*
- Chapter 18, *Implementation*

Chapters contain goals and policies that are preceded by brief explanatory text, describing the context. Goals represent broad statements of what Kitsap County would like to achieve in that

specific area. Policies are intended to guide County decisions and actions needed to achieve its vision of the future.

1.5.3. Sub-Area and Community Plans

Sub-Area Plans Generally

After the first comprehensive plan was adopted in 1998, the County began developing a series of sub-area plans to address the unique needs and features of specific geographical areas. Once adopted, the sub-area plans became components of the Comprehensive Plan. Since 1998, the County has adopted six sub-area plans, four of which apply to UGAs, and two within rural areas The County includes adopted sub-area plans, as well as new subarea plans adopted through this update to the Comprehensive Plan—Port Orchard/South Kitsap and Silverdale sub-area plans—as chapters of the Comprehensive Plan. The Kingston Sub-Area Plan was on remand and has been considered and included in this update to the Comprehensive Plan.

Sub-Area Plans: Urban Growth Areas

- Kingston Sub-Area Plan 2005, remanded for consideration, and included in the update to the Comprehensive Plan.
- Poulsbo Sub-Area Plan 2001.
- Silverdale Sub-Area Planning Process 2006 as part of Plan Update.
- Port Orchard/South Kitsap Sub-Area Planning Process 2006 as part of Plan Update.
- ULID #6 Sub-Area Plan 2003.
- South Kitsap Industrial Area (SKIA) Sub-Area Plan 2003.

Sub-Area Plans: Rural Areas

- Suquamish Limited Area of More Intensive Rural Development (LAMIRD) Rural Village Sub-Area Plan 2005.
- Manchester LAMIRD Sub-Area Plan 2002.

Neighborhood and community plans that are in process for both rural and urban areas (e.g., Illahee Community Planning Process) may be considered in 2007 or later years as part of the County's annual amendment process.

Community and Neighborhood Plan

- Illahee Community Planning Process. In progress as of 2006.

Kingston and Port Orchard/South Kitsap

The County integrated the remanded Kingston Sub-Area Plan and the new Port Orchard Sub-Area Plan into the overall Comprehensive Plan. The Kingston Sub-Area Plan, updated in 2005, was remanded and integrated in the 10-Year Update process based on a CPSGMHB decision. The following format is used:

1. Volume I Comprehensive Plan. Specific plan policies for the Kingston and Port Orchard UGAs are contained in the Kingston and Port Orchard/South Kitsap Sub-Area Plan chapters of the Comprehensive Plan.

2. Inventory/background data from Volume II that applies to the Kingston and Port Orchard UGAs is integrated into the body of the EIS.

Silverdale

The County integrated the new Silverdale Sub-Area Plan into the overall Comprehensive Plan. It is expected this area may incorporate as its own city in the future. In order to allow the Silverdale Sub-Area Plan to be integrated into the Comprehensive Plan, while being easily extractable, if needed, the following format is used:

1. Volume I Comprehensive Plan. Specific plan policies for the Silverdale UGA are contained in the Silverdale Sub-Area Chapter of the Comprehensive Plan. In order to avoid repetition of policies, the Silverdale Sub-Area Plan does not contain policies that are countywide in nature. Policies that should be incorporated if this Sub-Area Plan is used as the basis for a new city comprehensive plan are listed in Appendix B, Silverdale Policy Index.

2. Inventory/background data from Volume II that applies to Silverdale UGA is integrated in the body of the EIS document and consolidated in an appendix to the EIS. If needed, the consolidated inventory could be easily extracted and used as part of the new city's comprehensive plan if the area incorporates.

1.5.4. Plan Interpretation

This Plan provides a guide and framework for regulatory and non-regulatory actions for growth that express the vision of Kitsap County residents. Because of the general nature of Plan policies, conflict between and among is possible. The following are general rules of construction and are intended to be used for interpreting the Plan:

- Policies are intended to be mutually supportive and are to be read collectively, not individually.

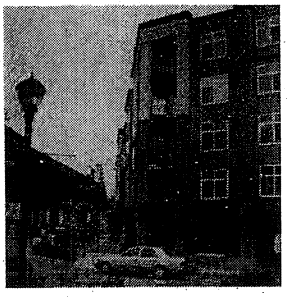
- When conflicts arise between policies, the policy that is more specific shall prevail.

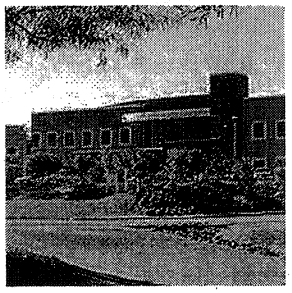
- The Comprehensive Plan Land Use Map or future redesignation proposals should reflect and be based on the policies of the Plan. Any amendment of the Comprehensive Plan Land Use Map should be subject to the annual Plan amendment process or to 7- or 10-year Plan reviews.
- The Zoning Map or future rezone proposals should fall with the intended purpose and land use designation and be subject to Title 21 of the Kitsap County Code.

This page intentionally blank.

Land Use Chapter Relationship to Vision

Vision	Land Use Chapter Concepts
County Government. County government that is accountable and accessible; encourages citizen participation; seeks to operate as efficiently as possible; and works with citizens, governmental entities and tribal governments to meet collective needs fairly while respecting individual and property rights.	▪ Provide policy direction based on citizen participation to guide future land use decisions. ▪ Include policies to help shape intergovernmental processes.
Natural Environment. Natural ecosystems – including interconnected wetlands, streams, wildlife habitat, and water quality – that are rehabilitated, protected and enhanced and that allow for flexible and innovative development to meet environmental and growth goals. In developed areas, the growth pattern supports conservation of non-renewable energy and minimizes impacts on air quality and climate.	▪ Support prevention of environmental degradation from stormwater runoff, flooding and contaminants. ▪ Encourage compact development in centers that supports conservation of non-renewable energy and reduces impacts on air quality and climate.
Housing. Residential communities that are attractive, affordable, diverse, and livable supported by appropriate urban or rural services. A variety of housing choices are available, meeting a full range of resident income levels and preferences. Residents are able to walk between neighborhoods and to community destinations.	▪ Provide policy direction for the development of diverse housing types. ▪ Provide for various types of neighborhoods. ▪ Provide for densification in some areas that encourages the development of walkable neighborhoods.
Open Space. An open space network – including greenbelts, wildlife habitat, forested areas, and active and passive parks – that is accessible, interconnected, provides opportunities for recreation and defines and distinguishes urban and rural areas.	▪ Include policies guiding open space preservation.
Urban Areas. Healthy urban areas that are the region's centers for diverse employment and housing opportunities, all levels of education, and civic and cultural activities.	▪ Focus housing and population growth in urban areas. ▪ Identify land for commercial, industrial and business development, and allows for a variety of uses and development types on those lands. ▪ Encourage the creation of mixed use neighborhoods.
Rural Areas. Rural areas and communities where unique historical characters, appearances, functions, and pioneering spirits are retained and enhanced. Natural resource activities, such as forestry, agriculture, and mining continue to contribute to the rural character and economy. Rural recreation opportunities are enhanced, including equestrian facilities, trails, and others.	▪ Allow for protection of rural areas by focusing growth in urban areas. ▪ (See Chapter 3, *Rural and Resource Lands*, for further policy guidance affecting the rural area.)
Cultural Resources. Historical and archaeological resources that are recognized and preserved for future generations.	▪ Provide policy guidance for inventorying, recognizing, and protecting the county's historic and cultural resources.
Economic Development. A stable, prosperous and diversified economy that provides living wage jobs for residents, supported by adequate land for a range of employment uses and that encourages accomplishment of local economic development goals.	▪ Identify land for commercial and industrial development, and allows for a variety of uses and development types on those lands. ▪ Provide the land use capacity for employment growth, allowing for new businesses and expansion of existing businesses.
Public Services and Facilities. Public services and facilities – including, but not limited to, parks and recreation, law enforcement, fire protection, emergency preparedness, water/sewer, roads, transit, non-motorized facilities, ferries, stormwater management, education, library services, health and human services, energy, telecommunications, etc. – are provided in an efficient, high-quality and timely manner by the County and its partner agencies. Public services and facilities are monitored, maintained and enhanced to meet quality service standards.	▪ Focus growth in areas that will have access to urban services such as sewers and water systems. ▪ Provide for a land use pattern that can be served efficiently with various public services and facilities. ▪ Provide guidance for the County's Capital Facilities Plan.
Transportation. An efficient, flexible, and coordinated multi-modal transportation system – including roads, bridges and highways, ferries, transit, and non-motorized travel – that provides interconnectivity and mobility for county residents and supports our urban and rural land use pattern.	▪ Provide for a land use pattern that allows for more efficient transportation in urban areas. ▪ Provide policy direction for the development of transit-supportive densities in growth nodes and centers.





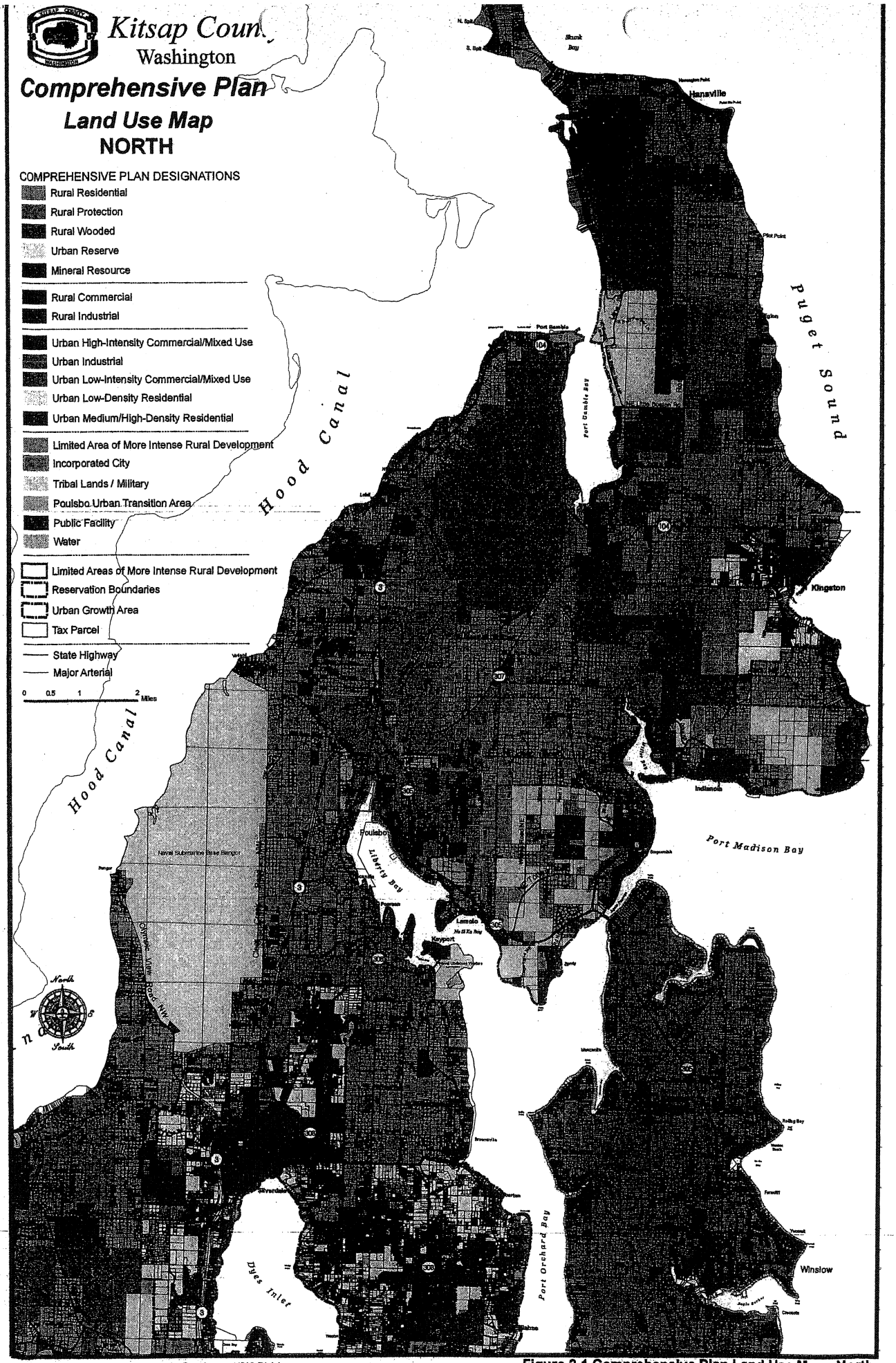
Chapter 2. Land Use

2.1. Plan Context

The Land Use Chapter plays the central role of guiding urban land use patterns and decisions for the unincorporated portions of Kitsap County. In keeping with state law, the County fulfills this responsibility of shaping land use primarily by regulatory means such as zoning and critical areas ordinances (CAOs). Land use goals and policies relate directly to the other chapters of the Kitsap County Comprehensive Plan (Plan), particularly Chapters 6, 8, and 11 (*Housing*, *Transportation*, and *Capital Facilities)*.

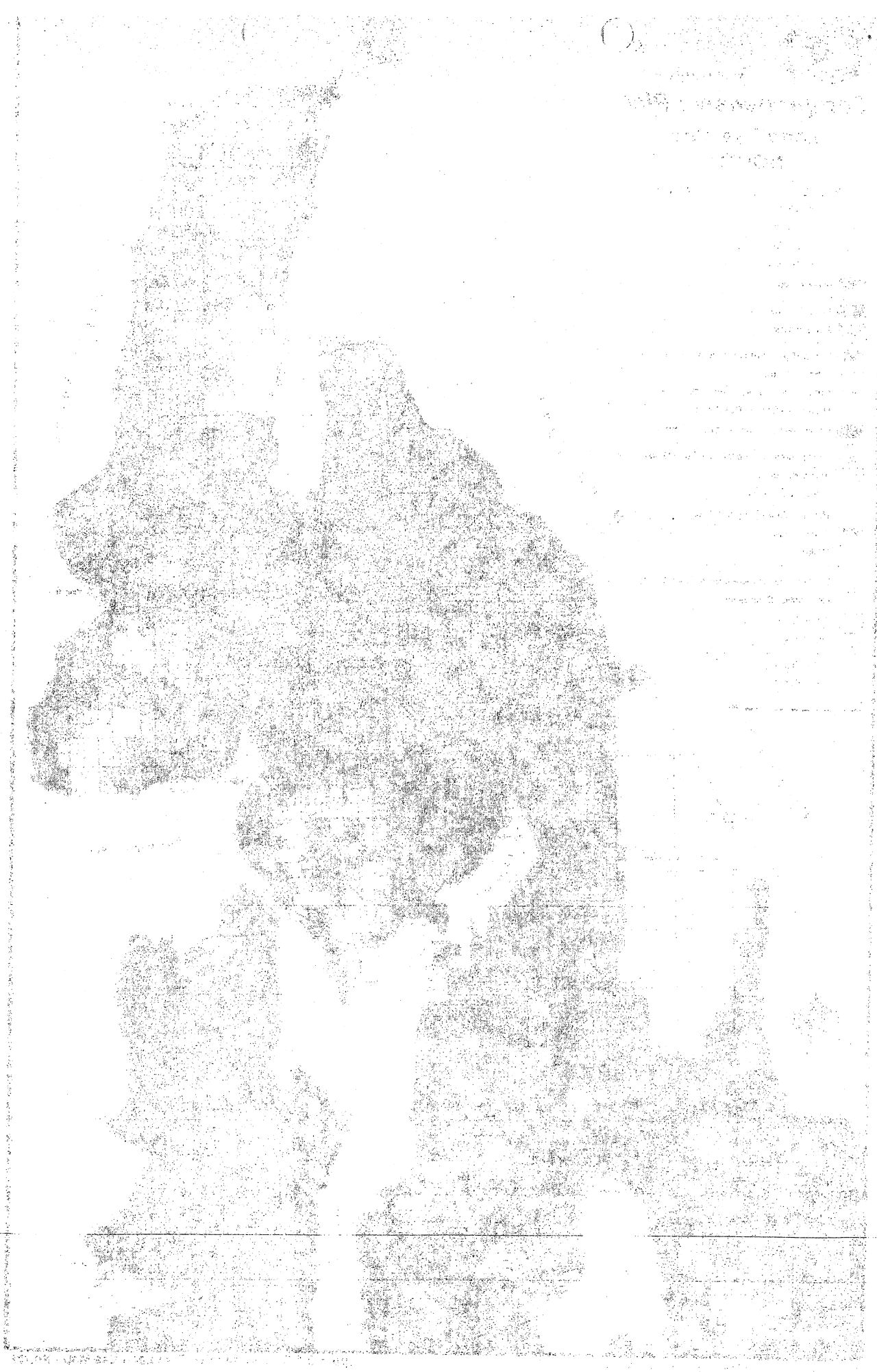
The Land Use Chapter provides policy guidance for the development of Kitsap County's unincorporated areas, primarily focusing on unincorporated urban areas. Chapter 3, *Rural and Resource Lands,* provides policy guidance for rural areas. The policies in the chapter work in tandem with the Comprehensive Plan Land Use Map, which illustrates the location of various land use categories. Please refer to Figures 2-1 and 2-2 for the Land Use Map (north and south on two figures). This chapter is divided into the following sections:

- Population projections and distributions
- Land capacity analysis
- Reasonable measures
- Urban growth areas (UGAs)
- Land use map, Plan amendments, and coordination
- Urban residential development
- Commercial lands
- Industrial and business lands
- Open space and greenways



Kitsap County Department of Community Development/GIS Division

Figure 2-1 Comprehensive Plan Land Use Map - North



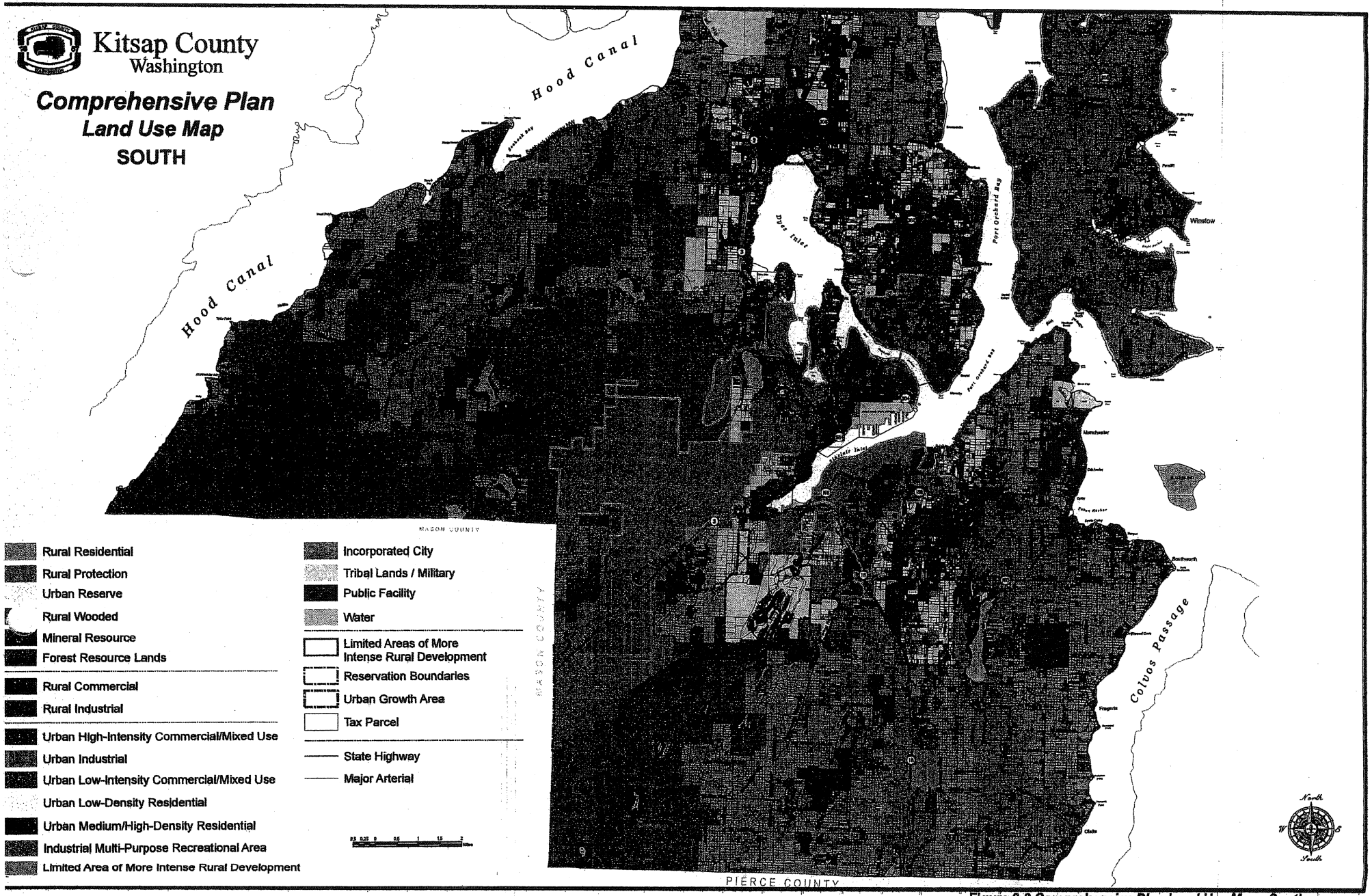


Figure 2-2 Comprehensive Plan Land Use Map - South

The Plan directs future residential and employment growth within the unincorporated portions of the county. Future population growth is accommodated by growth in residential units. As part of this Plan, a land capacity analysis was conducted to determine the capacity for new residences and the associated population, as well as new jobs within the unincorporated county. The Plan includes land use capacity for approximately 23,338 new residential units in the unincorporated county. Based on an average household size of 2.5 for single-family units and 1.8 for multifamily units, unincorporated population growth associated with these new units would be 56,865 persons; 36,444 in UGAs and 20,421 in rural areas. The Plan includes land use capacity for approximately 36,000 new jobs; the majority of these jobs would also occur within UGAs. For information on existing population and housing and the relationship of allocated growth to regional growth projections and distributions, see Section 3.2.3, *Population, Housing and Employment*, of Volume II. See Chapter 6, *Housing,* for more specific information on the county's future housing unit growth.

The intent of goals and policies regarding population projections and distributions is to establish the growth forecasts to be used for planning purposes, and the specific growth targets for each UGA. Designated UGAs are intended to accommodate 20 years' population growth, based on official growth management forecasts adopted by the State of Washington Office of Financial Management. These county-level forecasts are distributed among jurisdictions in the region through a deliberative process. The Kitsap Regional Coordinating Council (KRCC) – comprised of elected officials of the region's governmental entities – is the body charged with making recommendations for such allocations. Goals and policies also identify the County's process for analyzing land capacity and determining whether actual growth is on track to meet adopted targets.

Goal 1. Plan for projected population growth consistent with the Washington State Growth Management Act (GMA) and the Kitsap County Countywide Planning Policies (CPPs).

Policy LU-1 Adopt the intermediate range population forecast developed by the Washington State Office of Financial Management as a guide for future land use planning, consistent with CPPs. The intermediate range population forecast for all of Kitsap County for 2025 is 331,571 people.

Policy LU-2 Plan for approximately 76% of countywide population to occur in urban areas and 24% in rural areas, consistent with the CPP.

Policy LU-3 Adopt population growth targets for unincorporated Kitsap County, its UGAs, and its rural area as shown in Table 2-1. The County shall provide policies and regulations designed to meet those targets.

Policy LU-4 Coordinate with the cities and tribal governments, using the KRCC as a forum, to establish updated population forecasts and distributions to reflect RCW 43.62.035 (Determining Population Projections).

Table 2-1. Kitsap County Planning Area Growth Targets

Area	Population Growth Target 2005-2025	Kitsap County Comprehensive Plan Capacity
Kingston UGA	2,816	2,774
Poulsbo UGA	2,378	2,152
Silverdale UGA	6,988	6,877
Central Kitsap UGA	7,526	5,882
East Bremerton UGA	1,905	1,557
West Bremerton UGA	1,756	1,436
Gorst UGA	73	51
Port Orchard UGA	8,212	8,210
ULID #6 UGA	7,553	7,505
SKIA UGA	0	0
Total Unincorporated UGAs	39,207	36,444
Rural Area	20,421	20,421
Total Unincorporated County	59,628	56,865 [1]

[1] Banked population (i.e., population from the target that is not currently accommodated) will be available to allocate through the Countywide Planning Policies (CPPs) and UGA Management Agreement (UGAMA) planning processes. See Policy LU-13 and Policy LU-29.

2.2.2. Land Capacity Analysis

This section provides direction on monitoring growth within the county for planning purposes. The Plan identifies a process for monitoring and evaluating land use and development trends within UGAs and for periodically revising them as appropriate. This process is intended to be consistent with the "Buildable Lands" provisions of the GMA (RCW 36.70A.215). Kitsap County wishes to comply with these requirements to help ensure that its assumptions about land supply and demand are reasonably accurate. This monitoring and evaluation process would be used to make any appropriate modifications to assumptions defined in Kitsap County's land capacity methodology. The goal and policies below set the framework for the County's monitoring process. Chapter 18, *Implementation,* provides additional detail.

Goal 2. Ensure consistent application of land capacity studies.

Policy LU-5 Monitor and review land capacity and development trends occurring within UGAs annually.

Policy LU-6 Use the Updated Land Capacity Analysis methods to identify capacity for urban residential and urban commercial/industrial lands.

Policy LU-7 Evaluate the assumptions contained in the County's Updated Land Capacity Analysis annually.

2.2.3. Reasonable Measures

This section provides direction on measures being taken by the County to meet its population growth targets and to comply with GMA and CPP requirements for urban areas. The reasonable measures goal and policies in this Plan call for the County to implement reasonable measures to accommodate growth if actual achieved densities are not consistent with the Land Use Map, Plan policies, and Plan growth targets.

GMA requires certain counties (including Kitsap) to review and evaluate whether actual development within the UGAs is at urban densities and is consistent with the jurisdictions' population growth targets and comprehensive plans. Kitsap County adopted its first Buildable Lands Report (BLR) in August 2002. The County's next statutorily required BLR update is due in 2007.

The 2002 BLR indicated that in some cases, urban densities were not being achieved within certain UGAs. However, the report noted that the analysis period of 1995-1999 would have only addressed one year of growth under the approved 1998 Plan. The Central Puget Sound Growth Management Hearings Board (CPSGMHP) (case No. 04-3-0009c) did identify an inconsistency between "planned" and "actual" development patterns in that more growth was occurring in rural areas than was targeted in the CPPs.

In 2004, the County amended the 2002 BLR to identify a set of "reasonable measures" meant to help increase consistency between actual development and that envisioned in the County's Plan. The County recognized 18 reasonable measures already existing in Kitsap County Code (KCC) and existing sub-area planning documents, in Resolution No. 158-2004. In 2005, the KRCC identified a "menu" of 46 "reasonable measures" to encourage urban growth and increase residential development capacity in existing UGAs (i.e., to promote infill development) for jurisdictions to consider during their comprehensive plan updates, in compliance with RCW 26.70A.215. A measure the County put in place after the recent adoption of the 18 reasonable measures includes allowing plats of up to nine lots through an administrative short plat process.

Preliminary growth monitoring indicates that between 2000 and 2005 Urban Low Residential plats in total achieved an average of 5.6 units/net acre which is within the Urban Low Residential density range, although this average was not uniformly achieved in all UGAs. Adjusting zoning allowances as well as improving the availability of urban public services could help the achievement of density goals throughout urban areas. (Please see Appendix C of Volume II FEIS for additional information on preliminary monitoring.)

The County has committed to not only adopting, but also implementing adequate reasonable measures. The County includes several *new and or enhanced* reasonable measures as part of the Comprehensive Plan 10-Year Update to increase urban growth, increase efficiency in the delivery of public services in urban areas, and to address the imbalance in urban and rural growth. These reasonable measures include but are not limited to:

- Increase residential densities within existing UGA boundaries.
- Permit plats of up to nine lots through an administrative short plat process.
- Allow for and monitor alternative sanitary sewer systems in unincorporated UGAs.
- Remove pre-planning allowances in UGAs.
- Provide for regional stormwater facilities in unincorporated UGAs.
- Strengthen and amend policies to promote low impact development (LID).
- Consolidated Comprehensive Plan land use designations.
- Adopt a new Mixed Use zone.
- Mandate minimum densities for new subdivisions.
- Increased building height limits through incentives.
- Proposed design guidelines for Silverdale.
- State Environmental Policy Act (SEPA) categorical exemptions for mixed use and infill development for Silverdale.
- Increased thresholds for SEPA categorical exemptions countywide.
- Adopt Transfer of Development Rights (TDR) policies and implementing regulations.
- Adopt Allowances for density bonuses in policies.
- Adopt policies addressing and promoting reasonable measures.
- Adopt policies addressing association and UGA Management Agreements (UGAMAs).

Goal 3. Enact and implement reasonable measures to ensure that growth in urban areas is consistent with Plan growth targets.

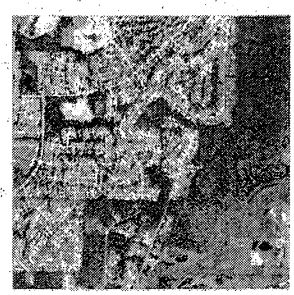
Policy LU-8 Use the Buildable Lands Program to help track the type, location, amount, and rate of growth in the urban and rural areas. Growth will be evaluated to ensure that it is consistent with Plan assumptions and policies.

Policy LU-9 Consider the need, based on the findings of the Buildable Lands Program, to further evaluate or increase the amount or rate of growth in urban areas, or to modify the County's development regulations to ensure that urban growth does not occur in the rural area.

Policy LU-10 Adopt and implement reasonable measures if Plan policies result in inconsistencies between achieved and planned densities.

Policy LU-11 Monitor the effectiveness of adopted reasonable measures annually. Document the effectiveness of reasonable measures in 5-year intervals with the publication of the BLR.

2.2.4. Urban Growth Areas



According to GMA goals, growth is to be encouraged in urban areas, and the CPPs allocate, most growth within UGAs. GMA provides that UGAs must be reviewed at least every 10 years to determine if growth and permitted densities in the county and cities are occurring as planned. This mandatory review is also required to account for the succeeding 20-year planning period population forecast. The process of ongoing planning and evaluation envisioned by the GMA may occur more frequently if a local jurisdiction desires.

The UGAs designated on the Land Use Map have been defined based on direction in CPP and GMA requirements. The 10 designated UGAs within the unincorporated county are described below.

Kingston UGA

The Kingston UGA includes the unincorporated community of Kingston, and is located in the northern portion of the county adjacent to Puget Sound. It is approximately 1,600 acres in size. The UGA includes the Kingston old town, which has a small town character with small-scale commercial uses, and primarily single-family residential development outside of the old town. The Kingston UGA remains unassociated without a contiguous incorporated jurisdiction. Due to the size and development pattern of the UGA, it is unlikely that this area will incorporate in the 20-year planning period. Kitsap County expects to continue to be the provider of planning and urban services for this area. Goals and policies related to Kingston can be found in Chapter 12, *Kingston Sub-Area Plan*.

Poulsbo UGA

The City of Poulsbo is located along Liberty Bay. The Poulsbo UGA includes several non-contiguous unincorporated areas adjacent to the City of Poulsbo, totaling approximately 850

gross acres in size. The UGA has a suburban character of predominantly single-family residential development. Many areas of the UGA have views of Liberty Bay and the Olympic Mountains. The Poulsbo UGA was associated with the City of Poulsbo with the adoption of the Poulsbo Sub-Area Plan (Chapter 15) in 2002. To ensure consistent development patterns between those properties inside the City and those inside the UGA, the City and County adopted an interlocal agreement to address development regulations within the UGA. Through this agreement, the City's zoning and subdivision regulations apply to the development of properties within the UGA.

Silverdale UGA

The Silverdale UGA includes the unincorporated community of Silverdale and is located predominantly to the north and west of the northern portion of Dyes Inlet. It includes approximately 7,400 gross acres (including roads, rights-of-way, and waterbodies). The Silverdale UGA includes a downtown area with a regional commercial center, a historic Old Town, and a mix of uses. The UGA also include industrial areas. Outside of the downtown, the UGA has a suburban character with predominantly single-family residential uses. Silverdale is designated as a "Regional Growth Center" by the Puget Sound Regional Council (PSRC), but the boundaries of this designation focus on the downtown vicinity. Citizens within the Silverdale UGA have discussed incorporation at different times over the past 10 years. As incorporation and annexation is a common manner to address capital facilities and planning for urban areas, Kitsap County will coordinate and cooperate in future discussions of the incorporation of the Silverdale UGA. Goals and policies specifically related to Silverdale can be found in Chapter 14.

Central Kitsap UGA

The Central Kitsap UGA is located between Dyes Inlet to the west and Port Orchard Bay to the east, and is generally southeast of the Silverdale UGA and north of the City of Bremerton and its UGAs. The Central Kitsap UGA includes approximately 6,400 gross acres. It has a predominantly suburban character, with commercial uses concentrated along SR 303, some multi-family residential uses, and a predominance of single-family residential uses. The UGA includes the Illahee community. The Central Kitsap UGA is currently unassociated with an incorporated jurisdiction. The City of Bremerton, through its adopted comprehensive plan, has shown interest in the future annexation of this UGA. The close proximity of this UGA and East Bremerton UGA requires close coordination of planning between these two urban areas.

As many issues remain about the provision of urban services, revenue sharing, and coordinated annexation of the area, the County will pursue association of the Central Kitsap UGA with the City of Bremerton concurrently with the negotiation of a UGAMA. As encouraged under the CPPs, the development of this agreement shall be consistent with policies LU-26 through LU-30 in 2007/2008.

East Bremerton UGA

The East Bremerton UGA includes two unincorporated areas located adjacent to the eastern portion of the City of Bremerton. The two UGAs are located between the Central Kitsap UGA and city boundaries, and total approximately 1,300 gross acres. The East Bremerton UGA is primarily suburban in character, with a majority of its land in single-family residential use and some commercial development along the SR 303 corridor. The East Bremerton UGA was associated with the City of Bremerton in the adoption of the 1998 Comprehensive Plan. Through future annexations, it is expected that much of this UGA will become part of the City over the next 20 years.

As provided under the CPPs, the County will pursue a UGAMA with the city to address this transfer of jurisdiction to ensure consistent development patterns between the City and UGA as well as to address the residual population allocation. The issues to be included in these UGAMA negotiations are contained in policies LU-26 through LU-30.

West Bremerton UGA

The West Bremerton UGA includes three unincorporated areas located adjacent to the western portion of the City of Bremerton (one of these is a pocket of unincorporated area surrounded by land that is part of the city). Together, these areas total approximately 1,100 gross acres. The Rocky Point portion of the UGA is primarily single-family residential in character. The Navy Yard City/National Avenue portion of the UGA contains commercial and industrial uses along with small lot single-family residential development. The western pocket of the UGA (surrounded by city land) is predominantly residential. The West Bremerton UGA was associated with the City of Bremerton in the adoption of the 1998 Comprehensive Plan. Through future annexations, it is expected that much of this UGA will become part of the City over the next 20 years.

As provided under the CPPs, the County will pursue a UGAMA with the City to address this transfer of jurisdiction to ensure consistent development patterns between the City and UGA, as well as to address the residual population allocation. The issues to be included in these UGAMA negotiations are included in policies LU-26 through LU-30.

Gorst UGA

The Gorst UGA is located at the western end of Sinclair Inlet at the junction of State Route (SR) 16 with SR 3. The UGA includes approximately 330 gross acres. The Gorst UGA is a relatively small highway-oriented commercial and industrial center. It is currently unassociated with any incorporated jurisdiction. Due to significant public health concerns regarding failing septic systems in the area, multiple jurisdictions have been pursuing public sewer for this area. The Karcher Creek Sewer District and the City of Bremerton have invested resources to address this issue.

As the UGA is contiguous to the City of Bremerton's watershed area, discussions of association of the UGA should be encouraged in 2007/2008. Concurrently, the City and County should pursue a UGAMA for this area, which should include the aspects included in policies LU-26 through LU-30.

Port Orchard/South Kitsap UGA

The Port Orchard/South Kitsap UGA includes several non-contiguous areas adjacent to the City of Port Orchard. The largest of these is located east of City boundaries and extends northeast from the City along Sinclair Inlet, includes land along Mile Hill Drive, and considerable area to the south and east of the City, as well as some areas west of the city. The UGA also includes two pockets of unincorporated area adjacent to City boundaries in the western Port Orchard area. The UGA totals approximately 6,600 gross acres. The character of the majority of the UGA is suburban, with suburban style commercial centers along the arterial corridors of Bethel Road, Sidney Road, and Mile Hill Drive, and primarily single-family residential development in other areas. The portion of the UGA northeast of the City offers views of Sinclair Inlet. The pockets of the UGA located west and southwest of the City are primarily industrial and commercial.

The Port Orchard/South Kitsap UGA was associated with the City of Port Orchard at the time of adoption of the 1998 Comprehensive Plan. Through future annexations, it is expected that much of this UGA will become part of the City over the next 20 years. Per the CPPs, the County will pursue a UGAMA with the City to address this transfer of jurisdiction to ensure consistent development patterns between the city and UGA. The issues to be included in these UGAMA negotiations are included in policies LU-26 through LU-30. Goals and policies related to Port Orchard/South Kitsap UGA can be found in Chapter 13.

ULID #6/McCormick UGA

The ULID #6/McCormick UGA is located southwest of the City of Port Orchard, and totals approximately 2,400 gross acres. The UGA is characterized by relatively recent suburban type single-family residential development and a golf course. The ULID #6/McCormick UGA is currently unassociated with two abutting incorporated jurisdictions, the cities of Bremerton and Port Orchard. With sewer service provided by City of Port Orchard and water by both Bremerton and Port Orchard, association discussions will have to specifically include agreements about the future of these and other urban services. Additionally, with the close proximity of this UGA to the Port Orchard/South Kitsap, SKIA and Gorst UGAs, association will require enhanced coordination to ensure the logical annexations throughout the south end. Goals and policies specifically for the ULID #6 UGA can be found in Chapter 15.

South Kitsap Industrial Area UGA

The South Kitsap Industrial Area (SKIA) UGA is located along SR 3 southwest of the Gorst UGA in the southern portion of the County. It is approximately 4,700 gross acres. The SKIA UGA is a major manufacturing center and is designated a "Regional Manufacturing/Industrial Center Suburban City" by PSRC. The SKIA UGA is currently unassociated with any incorporated jurisdiction. With the Bremerton National Airport and other Port of Bremerton facilities within this UGA, future planning for the area is very important to the county's long and short-term economic diversification.

The UGA currently abuts the City of Bremerton's watershed area, and the Port of Bremerton has executed an interlocal agreement with the City of Port Orchard for sewer and other services. Both the cities of Bremerton and Port Orchard provide water service. Association of the UGA must include these jurisdictions with discussions of economic development goals, revenue sharing, and annexation. Goals and policies related to the SKIA UGA can be found in Chapter 15.

The UGA policies reflect the intent that the majority of 20 years' population growth, based on official growth management forecasts adopted by the Washington State Office of Financial Management, should be accommodated within UGAs; that public services and capital facilities should be provided to support the planned level of growth within the UGAs; and that development patterns in UGAs should be distinct from rural areas. UGA goals and policies also address future annexation or incorporation of unincorporated areas through the UGAMA process as defined in the CPPs.

Goal 4. Accommodate the 20-year projected population growth, consistent with the County's adopted population targets, within designated urban areas.

Policy LU-12 Designate and associate unincorporated UGAs by allocating population according to the factors and priorities identified in the GMA: 1) currently urbanized areas with existing service capacity to accommodate future growth; 2) currently urbanized areas where a combination of existing and planned services provide capacity to accommodate future growth; and 3) lands adjacent to such currently urbanized and serviced areas. To the extent possible, define UGAs (in concert with cities) as urban areas within which the majority of future growth will be encouraged to occur.

Policy LU-13 Reallocate and resolve any significant population growth target not accommodated by a UGA boundary or zoning within the UGA, when a UGA is in close proximity to an incorporated jurisdiction and logical upzoning or UGA expansions are not available, based on the following:

- The County will enter into discussions with the incorporated jurisdiction and, through an UGAMA (see LU-26 through LU-30), distribute the remaining population growth target in a manner that serves the public interest and facilitates future annexation of the area; or
- The remaining population growth target will be redistributed to another unincorporated UGA through discussions at the KRCC and a subsequent amendment to the CPP.

Goal 5. Provide public services and capital facilities necessary to support planned urban growth at adopted levels of service.

Policy LU-14 Require urban-level sanitary sewer service or equivalent wastewater service in all UGAs.

Policy LU-15 Encourage the use of alternative sanitary sewer techniques within UGAs, such as package plants, membrane and drip systems and/or community drainfields, in areas where other sewer provision is not financially feasible.

Policy LU-16 Promote Kitsap County as an agency for long-term monitoring and maintenance of alternative sanitary sewer systems in unincorporated UGAs to ensure their long-term effectiveness.

Policy LU-17 Prioritize the UGAs for Kitsap County expenditures for public services and facilities as a tool to encourage development, to make urban areas desirable places to live, and to use existing infrastructure more efficiently and cost effectively.

Policy LU-18 Prohibit extension or expansion of urban services and facilities in rural areas except in limited circumstances necessary to protect basic public health, safety, and the environment, and do not allow extensions or expansion in rural areas to create or encourage urban development outside the designated UGA.

Policy LU-19 Reassess the Land Use Map and consider appropriate amendments if funding for capital facilities falls short of expectations and/or if levels of service cannot be adjusted to compensate for any shortfall.

Goal 6. Encourage and reinforce development patterns within UGAs that are distinct from those in rural areas.

Policy LU-20 Encourage compact development patterns within UGAs, allowing for efficiencies in transportation and utilities, as well as public and capital facilities.

Policy LU-21 Encourage infill development on vacant and underutilized lands within UGAs.

Policy LU-22 Encourage development patterns in UGAs that support pedestrian connectivity between neighborhoods and community destinations where possible.

Policy LU-23 Encourage development patterns in UGAs that support and encourage transit use, such as in and around more intensive nodes of mixed use development along major transportation corridors, and major employment centers.

Goal 7. Recognize and support current and prior sub-area planning processes and adopted sub-area plans.

Policy LU-24 Incorporate goals and policies from adopted sub-area plans and on-going sub-area planning processes as chapters of this Plan.

Policy LU-25 Use background data contained in former stand-alone sub-area plan documents for reference purposes only.

Goal 8. Facilitate and encourage incorporation or annexation with associated cities of urban areas over the 20-year planning period and ensure compatibility of development with future planned uses within the unincorporated UGA consistent with the UGAMA process called for in the CPPs.

Policy LU-26 Address the issues related to the association of unincorporated UGAs with their corresponding incorporated cities by the end of 2008, consistent with CPP. The following unincorporated UGAs are currently associated: Poulsbo (City of Poulsbo), East Bremerton (City of Bremerton), West Bremerton (City of Bremerton), and South Kitsap/Port Orchard (City of Port Orchard).

Policy LU-27 Establish a planning process, concurrent with the determination of UGA association, within each unincorporated UGA that abuts an incorporated area, with the goal of improving consistency between city and County plans, zoning and development regulations, as well as providing efficient delivery of urban services. The goals and procedures of the process should be described in an UGAMA between the County and the city associated with the UGA.

Policy LU-28 Include the following components in each UGAMA:

- Specification that the city's zoning code; densities; development, subdivision, environmental and construction standards; and levels of service

shall apply to the entire UGA unless mutually agreed otherwise by the city and the County.

- Confirmation that the city's comprehensive plan should reflect land use and capital facilities planning for the entire UGA. This should include agreement regarding the operation and maintenance of County-owned public facilities such as parks and other community buildings.
- Identification of the responsibility and mechanisms for comprehensive plan amendments, zoning changes and development applications within the UGA.
- Identification of the services to be provided, the service provider and the terms of services. All service providers should be included in UGA planning.
- Provision that the Adopted Revenue Sharing Interlocal Agreement approved by all parties in November-December 2001, or as amended in the future, shall apply.
- Description of the city's pre-annexation planning to ensure logical and coordinated boundaries which shall include: conditioning city service extensions upon annexation for properties contiguous to the city boundary; agreements of no protest to future annexation for properties that are not contiguous; offering pre-annexation agreements to property owners interested in annexation and needing assurances for the city about services, planning or other issues; and other mechanisms.
- Other issues as appropriate for specific UGAMAs.

Policy LU-29 Include UGAMA negotiations for Central Kitsap, East Bremerton, and West Bremerton as a work plan item for the 2007-2008 budget period, dedicating staff time to their resolution.

Policy LU-30 Enter into discussions with any newly incorporated areas to address the logical transfer of jurisdiction, including the issues of infrastructure provision, ownership and maintenance; revenue sharing; and regional planning.

2.2.5. Land Use Map, Plan Amendments, and Coordination

This section provides policy direction for the adoption and amendment of the Land Use Map, which shows the land uses that are permitted by the Plan. The Land Use Map is adopted as part of this plan. It designates the proposed general distribution, location and extent of the uses of land for urban and rural uses, where appropriate, for housing, commerce, industry, recreation, open spaces, public utilities and facilities, agriculture, forestry and other uses. The Land Use

Map guides growth consistent with UGA boundaries and provides the capacity to accommodate adopted growth targets. A large-scale official version of the Land Use Map showing property boundaries is on display at the Department of Community Development. The official zoning map has been revised to be consistent with the Land Use Map. The intent of the Land Use Map, Plan amendments, and coordination goals and policies is to provide overall direction for growth-related decision making and coordination with other jurisdictions and agencies.

Goal 9. Use the Comprehensive Plan policies and Land Use Map to guide all growth-related decisions by the Board of County Commissioners and County staff.

Policy LU-31 Ensure that development and growth-related regulations are consistent with the Plan and Land Use Map.

Policy LU-32 Monitor and evaluate new development to identify any pattern of significant under-building within various residential zoning classifications. In the event that development is not achieving established target densities, identify and develop a strategy and program for remedying any regulatory problems inhibiting achievement of established targets. Do not use failure to achieve target densities as a basis for amending the UGA until such program has been implemented.

Policy LU-33 Allow for amendments to the Land Use Map, Plan policies, and implementing regulations consistent with GMA, CPPs, applicable plan policies and other requirements of federal, state and/or local laws.

Policy LU-34 Docket and consider Plan amendments and related amendments to regulations comprehensively consistent with RCW 36.70A.130 and 36.70A.

Policy LU-35 Accompany any amendments to the Plan with changes to adopted development regulations and adopted capital facility programs, transportation improvement programs or other adopted County plans or programs, as required to maintain consistency.

Policy LU-36 Allow revisions or amendments to the Plan outside the normal schedule if the amendments are consistent with RCW 36.70A.130 and findings are adopted to show that the amendment was necessary (i.e., due to an emergency situation of neighborhood- or community-wide significance and not an individual emergency on the part of a particular applicant or property owner). The nature of the emergency and proposed amendment shall be provided to the Board of County Commissioners, which shall decide whether or not to allow the proposal ahead of the normal amendment schedule.

Policy LU-37 Allow zone changes within the same Plan designation outside of the annual amendment process. The Department of Community Development will follow the review process established in KCC Title 21 for all such proposed zone changes.

Goal 10. Coordinate with other jurisdictions, tribal government, agencies, special districts, and property owners to ensure coordinated and compatible land use planning.

Policy LU-38 Coordinate with the Port Gamble/S'Klallam and Suquamish Tribes to provide a framework for cooperative discussion on comprehensive planning issues among governments and ensure that the tribal government are consulted on issues within their interests.

Policy LU-39 Cooperate with the cities, tribal governments, property owners, local residents, and special purpose districts through the UGAMA process defined in the Plan. This process will provide a framework for ongoing planning and decision making concerning local land use and public service issues.

Policy LU-40 Coordinate with each jurisdiction to reflect appropriate development standards and requirements within each UGA.

Policy LU-41 Encourage master planning of large parcels to optimize development and achieve growth targets.

Policy LU-42 Discourage the siting of incompatible uses near military bases that would affect the installations' abilities for military readiness and future expansion.

2.2.6. Urban Residential Development

Urban residential development is envisioned to accommodate future population growth. The Chapter 6, *Housing,* provides further policy direction regarding housing types and affordability. For rural residential designations, goals and policies, see Chapter 3, *Rural and Resource Lands*.

Urban residential designations are applied within UGAs on the Land Use Map. These include Urban Low-Density Residential and Urban Medium/High-Density Residential, as described below. Designations that encourage a mix of commercial and residential uses are discussed in *Commercial Lands*. For rural residential designations, see Chapter 3, *Rural and Resource Lands*.

- **Urban Low-Density Residential.** This designation primarily focuses on single-family dwellings but also may include innovative types such as clustered housing. It also includes regulated environmentally critical areas within the UGAs and other areas identified for low-density urban development. Zones that implement the Urban Low-Density Residential designation

include: Urban Restricted Residential, Urban Low Residential, and Urban Cluster Residential.

- Urban Restricted Residential. This zone is applied to areas within UGAs that have been identified with a significant amount of critical areas and regulated pursuant to the CAO, or are planned as greenbelts or urban separators, and are therefore appropriate for lower-density development. These areas may include significant salmon spawning streams, wetlands and steep slopes. Non-residential development is limited. (1–5 du/ac generally, but determine allowed densities at the time of application following a review of the site and potential impacts to critical areas)

- Urban Low Residential. This zone focuses on single-family residences. Duplexes are allowed on double lots. (4–9 du/ac)

- Urban Cluster Residential. This zone is applied primarily to areas that are characterized by critical area constraints and large contiguous ownership parcels capable of development as a single, unified project. Clustering of appropriate residential densities in areas most suitable for such development, while simultaneously providing a high level of protection for wetlands, streams, critical aquifer recharge areas and wildlife habitat areas, is encouraged. Flexibility related to site planning is also encouraged, as the exact locations of uses should be based on the location of critical areas, transportation corridors, community needs and market conditions. (4–9 du/ac)

- **Urban Medium/High-Density Residential.** This designation primarily focuses on multifamily residential units and innovative housing types but may also include single-family housing. This designation encourages development at densities that make efficient use of public investments in infrastructure, facilitate public transit, and promote pedestrian and other non-motorized transportation. Zones that implement the Urban Medium/High-Density Residential designation include: Urban Medium Residential and Urban High Residential.

  - Urban Medium Residential. This zone focuses on duplexes, townhouses, multiple-family dwelling and small lot single-family residences. (10–18 du/ac)

  - Urban High Residential. This zone focuses on higher density dwellings, and allows mix of land uses, including residential and professional offices. It is applied in areas on or near major transportation corridors and/or ferry terminals. (19–30 du/ac)

Figure 2-3 illustrates different housing types applicable to various residential designations.

Goal 11. Encourage new residential growth to locate within designated UGAs at higher densities than in rural areas.

Policy LU-43 Require all new residential development within the UGA to achieve minimum densities except where lower densities are appropriate to recognize the presence of critical areas including streams, wetlands, fish and wildlife habitat, geologically hazardous areas, flood-prone areas and aquifer recharge areas.

Policy LU-44 Allow for flexible development standards in residential zones.

Policy LU-45 Provide a system of incentives to make small, vacant and underutilized parcels within UGAs more attractive for development at higher densities.

Goal 12. Provide a variety of housing types within UGAs to meet the housing needs of all Kitsap residents.

Policy LU-46 Provide development standards that allow for a range of housing types such as single-family, clustered, duplexes, townhouses, zero lot-line, condominiums, and manufactured homes.

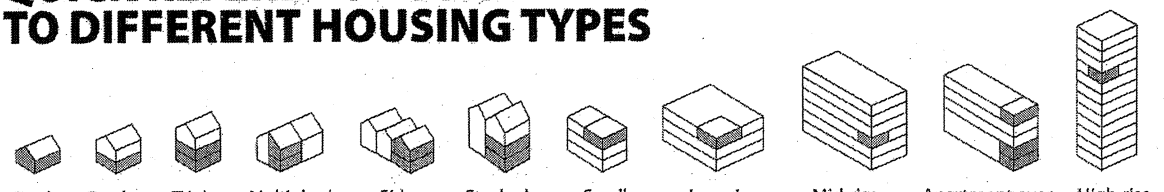
Policy LU-47 Provide development standards that permit accessory dwellings within all residential zones.

Policy LU-48 Provide regulatory flexibility and incentives to promote affordable housing.

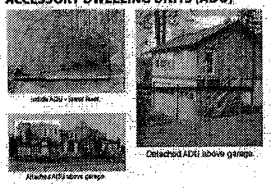
Policy LU-49 Provide density incentives in the UGA to encourage affordable housing.

Policy LU-50 Increase the allowed structure height to accommodate higher density construction in the Urban Medium Residential and Urban High Residential zones.

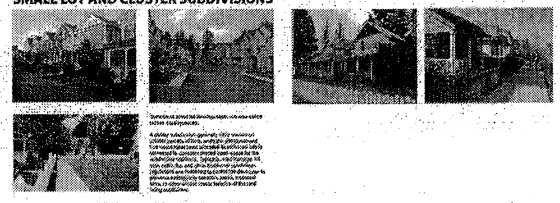
QUICK REFERENCE GUIDE TO DIFFERENT HOUSING TYPES



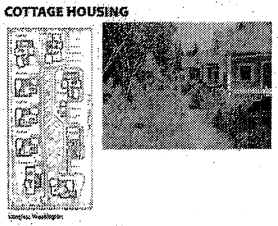
ACCESSORY DWELLING UNITS (ADU)



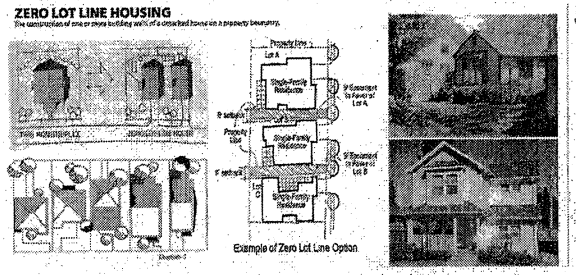
SMALL LOT AND CLUSTER SUBDIVISIONS



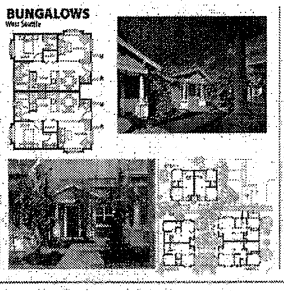
COTTAGE HOUSING



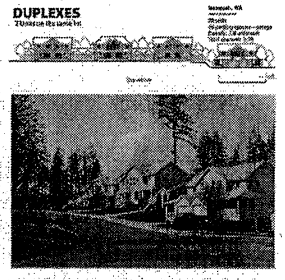
ZERO LOT LINE HOUSING



BUNGALOWS

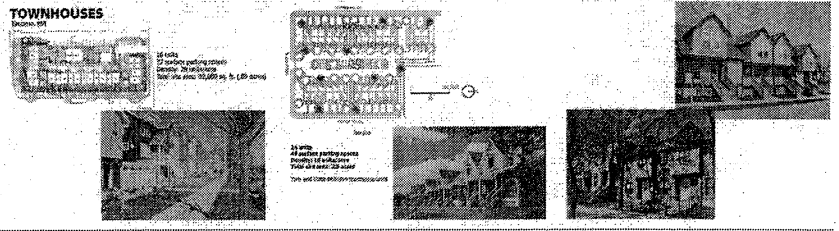


DUPLEXES

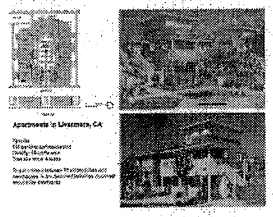


FOURPLEX

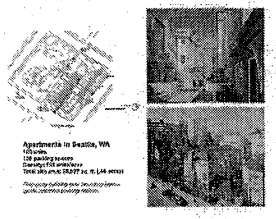
TOWNHOUSES



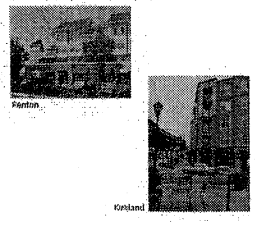
APARTMENTS



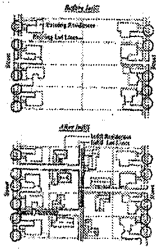
APARTMENTS



MIXED USE



INFILL



KITSAP COUNTY COMPREHENSIVE PLAN UPDATE
COMPILED BY JONES & STOKES

SOURCES:
http://www.transcoalition.org/ia/acssdwel/01.html
http://www.designadviser.org (Demystifying Density)
Jones & Stokes

Figure 2-3
Housing Types

Goal 13. Ensure that new development is compatible with established residential areas and provide for quality development.

Policy LU-51 Provide guidelines and incentives to ensure that higher density development is compatible with future planned uses in scale and design and enhances community livability.

Policy LU-52 Establish specific development standards for medium- and high-density developments to ensure compatibility with existing low-density neighborhoods.

Policy LU-53 Encourage innovative, high quality infill development and redevelopment in existing developed areas within the UGA, while addressing the following issues:

a. Preservation of historic and natural characteristics of neighborhoods and sites;

b. Provision of non-motorized access, and pedestrian mobility and safety;

c. Creation of usable open spaces, community space and facilities;

d. Design variety through lot clustering, flexible setback requirements and mixed attached and detached housing types; and

e. Design variations in multifamily buildings such as in facades, roof lines and other building design features.

Policy LU-54 Where appropriate, provide for area-specific design guidelines to promote compatibility between existing and new development.

Goal 14. Provide residential areas with convenient access to transportation, urban amenities, and goods and services.

Policy LU-55 Encourage urban amenities such as open space, plazas, and pedestrian features in areas of more intensive development within UGAs.

Policy LU-56 Encourage new opportunities for and preservation of existing public waterfront access.

Policy LU-57 Encourage non-motorized and pedestrian linkages in UGAs.

Policy LU-58 Encourage the maintenance and enhancement of public views.

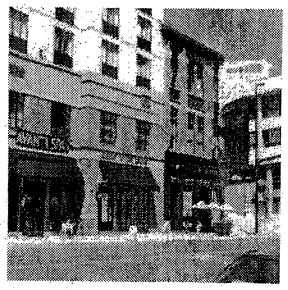
Policy LU-59 Provide density incentives in the UGA to encourage the provision of significant open space, community amenities, transportation-oriented planning and high quality design.

Policy LU-60 Encourage development in residential zones to occur in a manner that results in the design and construction of an interconnected system of pedestrian and bicycle trails linking residential neighborhoods with open spaces, recreational areas, transportation corridors and retail and employment opportunities.

Policy LU-61 Encourage development in residential zones to occur in a manner that results in the design and construction of an interconnected system of open space linking designated open spaces, critical areas, and recreational areas with wildlife corridors.

Policy LU-62 Apply the Urban Medium Residential and Urban High Residential zones in areas near commercial areas and public open space, and on sites with good access to major arterials.

2.2.7. Urban Commercial Lands



Urban commercial designations are designated within the UGAs on the Land Use Map. These include Urban Low-Intensity Commercial/Mixed Use and Urban High-Intensity Commercial/Mixed Use, as described below. Commercial lands are envisioned to accommodate future employment growth, along with industrial and business lands which are discussed in the following section. Commercial lands also accommodated mixed use lands, which may include residential uses. Chapter 5, *Economic Development,* provides further policy direction regarding types of employment uses and attraction of businesses to the County. For designations, goals and policies guiding commercial development in the rural area, see Chapter 3, *Rural and Resource Lands*.

- **Urban Low-Intensity Commercial/Mixed Use.** This designation focuses on commercial uses serving residential neighborhoods and small-scale mixed use development. Commercial uses appropriate for this designation include those serving quick-stop shopping needs. Examples include but are not limited to supermarkets, drug stores, restaurants, laundry and dry cleaning establishments, branch banks, video rental stores and delicatessens, and professional offices. Small-scale mixed use developments incorporating residential units are also appropriate in this designation. Zones that implement the Urban Low-Intensity Commercial/Mixed Use designation include: Neighborhood Commercial, Urban Village Center, and Urban Town Center.

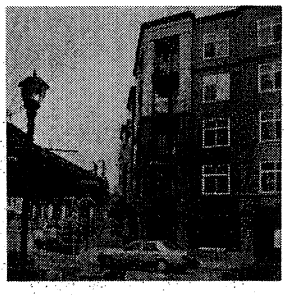
  - Neighborhood Commercial. This zone is applied to sites that can provide for the daily and/or quick-stop shopping needs of the immediate neighborhood. The zone allows for

varying parcel sizes in the Neighborhood Commercial zone to accommodate the provision of certain services, such as stormwater facilities, that are required as part of development approval. (10–30 du/ac)

- Urban Village Center. This zone provides for a compatible mix of single and multifamily housing and smaller-scale commercial retail and service uses, typically in multi-story buildings, and to promote focal points for neighborhood identity, by allowing a range of commercial and some employment opportunities in close proximity to housing. Flexibility is encouraged in this zone, recognizing that the exact mix and configuration of uses must be responsive to community needs and market conditions. Commercial and residential uses may mix either vertically or horizontally, with preferences for a configuration that locates commercial uses on the ground floor of multi-story structures, with multifamily residential units located above. Development in this zone is encouraged to occur in a manner that results in the design and construction of an interconnected system of pedestrian and bicycle trails linking the Urban Village Center to surrounding residential neighborhoods, open spaces, recreational areas, and transportation corridors (maximum of 18 du/ac).

- Urban Town Center. This zone provides for a compatible mix of uses similar to the Urban Village Center zone.

- **Urban High-Intensity Commercial/Mixed Use.** This designation primarily focuses on larger commercial centers, including commercial uses that require large sites and draw customers at the community and regional scale. Examples of commercial uses appropriate to this designation include but are not limited to superstores, department stores, automotive parts and sales, home improvement stores, hotels and motels, and restaurants. Mixed use developments incorporating residential units are also appropriate in this designation. Zones that implement the Urban High-Intensity Commercial/Mixed Use designation include: Highway Tourist Commercial, Regional Commercial, and Mixed Use.



  - Highway Tourist Commercial zone. This zone is applied to areas needed for commercial uses to serve the traveling public, including along major traffic corridors in urban areas and at highway interchanges, and for commercial establishments requiring large sites. Residential units are allowed. (10–30 du/ac)

  - Regional Commercial zone. This zone is used for commercial centers that provide for the shopping and service needs of the entire region. Generally these centers will contain two or more major department stores along with several shops of the same kind for comparative shopping, and will also attract free-standing commercial services that take advantage of the center's customer traffic. Residential units are allowed. (10–30 du/ac)

- Mixed Use zone. This zone encourages a mix of uses, including commercial and residential. It is used to promote development that would generally be more pedestrian-friendly than other commercial and residential zones. (10–30 du/ac)

Goal 15. Focus most commercial growth within the UGAs where most of the County's future population growth will be guided and where urban public services and facilities will be provided.

Policy LU-63 Limit commercial centers within the Highway Tourist Commercial zone to a maximum of twenty acres in size unless a larger site is needed to accommodate requirements of permit approval such as stormwater facilities.

Policy LU-64 Create a new Mixed Use zone, which focuses on pedestrian-friendly urban development, to be applied within UGAs.

Policy LU-65 Encourage a mix of uses in either a horizontal or vertical configuration in the new Mixed Use zone. Allow for phasing in of the mix of uses over time.

Policy LU-66 Allow residential unit densities of 10–30 du/ac in the Mixed Use zone.

Policy LU-67 Allow structure height that accommodates higher density construction in the Mixed Use zone.

Policy LU-68 Allow flexibility in design and development standards in the new Mixed Use zone, depending on area-specific design guidelines or standards.

Goal 16. Provide a sufficient amount of land and variety of sites for commercial land uses that are reasonably scaled to the needs of the community and ensure a convenient and adequate supply of goods and services to the residents of the County as well as the traveling public.

Policy LU-69 Designate sufficient land for anticipated commercial land uses on the Land Use Map, considering countywide population, employment forecasts, and the local needs of the surrounding community.

Policy LU-70 Provide suitable opportunities for commercial and service activities within the urban areas and encourage intensive development of these areas.

Policy LU-71 Develop criteria to allow for the expedited approval of future commercial projects when there is a demonstrated need.

Policy LU-72 Locate Neighborhood Commercial zoning based on a demonstrated need, space these areas a minimum of 0.5 to 1.0 mile apart, and locate them at the intersections of major collector streets.

Policy LU-73 Encourage mixed use development in UGAs along portions of Silverdale Loop Road NW, Frontier Place NW, SR 303 (Wheaton Way), Perry Avenue, Bethel Road, and National Avenue.

Policy LU-74 Limit uses near highway interchanges to those requiring the high visibility and traffic volumes afforded by the interchange.

Goal 17. Encourage and facilitate mixed use development in commercial designations.

Policy LU-75 Provide development standards that allow for attractive, integrated, mixed use development within planned commercial centers to provide affordable housing and reduce auto trips.

Policy LU-76 Provide flexible development standards that facilitate permitting of new mixed use developments.

Policy LU-77 Ensure adequate infrastructure is in place for new mixed use development.

Policy LU-78 Provide a regional approach to stormwater management facilities in order to facilitate mixed use development.

Policy LU-79 Use the Mixed Use zone to promote pedestrian-friendly development.

Goal 18. Encourage an attractively designed commercial land use pattern.

Policy LU-80 Minimize future strip commercial development.

Policy LU-81 Minimize new strip commercial development along major or minor arterials.

Policy LU-82 Encourage commercial areas to be compact to encourage pedestrian and non-motorized travel and transit use.

Policy LU-83 Encourage mixed use development that contributes to a compact, pedestrian-oriented land use pattern at selected locations within the urban area.

Policy LU-84 Provide development standards that identify appropriate uses, site size, building heights, setbacks, access, landscaping, and signage, and account for potential environmental impacts through physical buffers and screening, for different types of commercial development.

Policy LU-85 Require special setback and screening provisions for commercial developments abutting residential zones or residential uses.

Policy LU-86 Provide design guidelines or standards that encourage attractive and efficiently functioning centers.

Policy LU-87 Control the number and size of signs associated with commercial uses to maintain a sense of visual order.

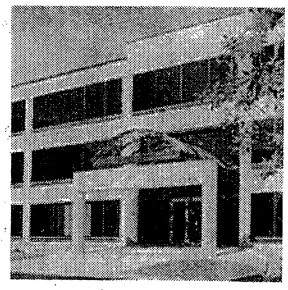
Policy LU-88 Size Neighborhood Commercial zones and uses in a manner compatible with a residential setting.

Policy LU-89 Minimize adverse traffic impacts associated with Regional Commercial centers through siting and development standards.

Policy LU-90 Use development standards to protect the visual integrity of the area surrounding the Regional Commercial centers.

Policy LU-91 Recognize and protect the character of Kitsap County's historical "old town" commercial areas.

2.2.8. Urban Industrial and Business Lands



This section provides policy direction for industrial and business lands within the UGAs. Urban industrial designations are designated within the UGAs on the Land Use Map. These include Urban Industrial and Industrial Multi-Purpose Recreational Area, as described below. Industrial and business lands are envisioned to accommodate future employment growth, along with commercial lands that are discussed in the previous section. Chapter 5, *Economic Development,* provides further policy direction regarding types of employment uses and attraction of businesses to the County.

- **Urban Industrial**. This designation includes both industrial and business uses, such as light manufacturing, hi-tech, warehousing, bio-tech, park-like business, 4-year educational institutions, equipment and vehicle repair, as well as heavy industrial activities and those requiring access to major transportation corridors. Zones that implement the Urban Industrial designation include: Business Center, Business Park, Industrial, and Airport.

  - Business Center zone. This zone provides for integrated groupings of light industrial uses including but not limited to bio-tech, 4-year educational institutions, light manufacturing, hi-tech, warehousing, equipment and vehicle repair, and compatible commercial and office uses that primarily serve their needs. Integrated groupings of small to medium-sized businesses within an attractive, park-like setting are encouraged. This

zone allows for flexibility in the amount of space within each individual business dedicated to office use, warehousing and/or light manufacturing operations.

- Business Park zone. This zone is similar to the Business Center zone and encourages integrated groupings of small to medium-sized businesses, as well as allowing for flexibility in the amount of space for various uses. However, heavier industrial uses are more limited than in the Business Center zone.
- Industrial zone. This zone allows a wide range of industrial activities including heavy industrial activities such as heavy fabrication, processing of raw materials, bulk handling and storage, construction, and heavy transportation.
- Airport zone. This zone recognizes and protects those areas devoted to public use aviation. It is also intended to provide areas for those activities supporting or dependent upon aircraft or air transportation, when such activities benefit from a location within or immediately adjacent to primary flight operations and passenger or cargo service facilities.

- **Industrial Multi-Purpose Recreational Area (IMPRA).** Due to its growing economy and position within the region, Kitsap County has an increasing opportunity to attract industrial and recreational projects that can provide economic benefits to the citizens of the County. Due to the varying size and character of these projects, additional large tracts of land in consolidated ownership should be designated in the urban areas of Kitsap County. The IMPRA designation and accompanying urban holding area is intended to provide land for such emerging economic opportunities consistent with Kitsap County economic diversification goals. These uses include large-scale industrial facilities, institutions of higher education, major sports and recreational facilities including stadium, arena, motorsports, athletic field and playground facilities and other similar uses requiring large land areas for development. As the size, scope, and nature of these opportunities are diverse and currently unknown, this designation provides flexibility in future zoning and development regulations. This designation allows no urban uses unless and until a development agreement, master plan and appropriate environmental and capital facilities planning have been approved by the Board of County Commissioners.

Goal 19. Encourage industrial activities and their related land uses as a means to create new jobs and improve the overall tax base of Kitsap County.

Policy LU-92 Target most future employment growth in designated UGAs.

Policy LU-93 Apply the Urban Industrial designation in areas most conducive to industrial development; e.g., few or no natural limitations to development, reasonable accessibility to major streets and highways, available services and facilities.

Goal 20. Identify and protect sufficient land area for future industrial use.

Policy LU-94 Allow industrial park developments in the Business Center, Business Park, and Industrial zones.

Policy LU-95 Reserve industrial sites located adjacent to an Airport Zone for airport/aircraft related uses.

Policy LU-96 Limit building heights and land use intensities beneath airport approach and departure paths to protect public safety.

Policy LU-97 Do not permit general aviation activity to adversely affect commercial aviation use and safety at Bremerton International Airport.

Policy LU-98 Give air safety the highest priority in the planning and management of the airport system.

Policy LU-99 Evaluate proposed airports and heliports on the basis of demonstrated need; effect on air safety; and their noise, safety, and other impacts on surrounding land uses.

Policy LU-100 Discourage non-industrial uses from locating within industrial areas, with the exception of worker convenience uses such as restaurants, banks, and auto service stations.

Policy LU-101 Consider potential industrial sites as a resource that should be protected from competing or conflicting uses

Policy LU-102 Maintain an industrial lands inventory report that identifies vacant land without major natural limitations, and which is or could be zoned for industrial use.

Goal 21. Preserve areas for emerging economic development opportunities.

Policy LU-103 Prior to or concurrent with an application for a large-parcel economic opportunity project, a development agreement for property(s) located within the IMPRA will be negotiated for public review and consideration by the Board of County Commissioners as a Type IV Legislative action (consistent with KCC Title 21). This agreement shall outline implementing regulations that balance the needs of the emerging opportunity with those of the public interest. Aspects to be covered by the agreement include:

- The allowed industrial or recreational uses for the area as well as any accessory commercial or other uses complementary to the goals of the economic opportunity and/or the South Kitsap Industrial Area;
- Signage regulations that consider such factors as, but not limited to, the nature and scale of the economic opportunity project and maintaining compatibility with surrounding designations;
- Height regulations that consider such factors as, but not limited to, the nature and scale of economic opportunity project, the needs of local fire districts and character of the surrounding area;
- Landscaping, setbacks, buffers, off-street parking, open space and other implementing regulations and development standards;
- Requirements for all projects to submit for master plan approval by the Board of County Commissioners before receiving approval for any urban uses; and
- Any additional environmental analysis that may be required during project review.

Concurrent with approval of a development agreement, a master plan, SEPA-required environmental analysis and capital facilities planning may be approved for the IMPRA.

Policy LU-104 Master plans developed within the IMPRA shall include the following:

- Project details indicating consistency with the Kitsap County Comprehensive Plan, all applicable state and federal laws and KCC as amended by the approved development agreement;
- Full environmental analysis required by a SEPA determination; and
- Capital facilities planning for the area consistent with the County's need for updating its Capital Facilities Plan (CFP).

Policy LU-105 Upon approval of a development agreement and project-specific master plan, Kitsap County shall update its CFP to acknowledge the planned urban levels of infrastructure provision and funding strategies for the area.

Policy LU-106 The IMPRA designation shall sunset if no development agreement or master plan has been approved within 5 years of adoption. Additionally, this designation may be terminated by approval of property owners consisting of a minimum of 60%

of the property within this designation. If the designation sunsets or is terminated, properties within the IMPRA shall revert to their previous designations.

Goal 22. Ensure compatibility of industrial uses with neighboring areas.

Policy LU-107 Encourage any future industrial uses located near residential uses to develop in an industrial-park setting.

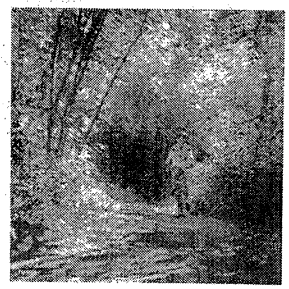
Policy LU-108 Allow the outside storage of equipment or materials within industrial parks only when screened from adjacent properties or public roadways.

Policy LU-109 Provide development standards for lands designated for industrial use to address site size, uses, and design for different types of industrial and business activities.

Policy LU-110 Require industrial park developments to include a landscaped setback, berms, walls or other structures to adequately buffer the industrial activities from adjacent uses.

Policy LU-111 Provide development regulations that contain minimum performance standards for noise, vibration, smoke and particulate matter, odors, heat and glare and other aspects as appropriate, which shall address potential environmental impacts and ensure compatibility with adjacent land uses including residential neighborhoods.

2.2.9. Open Space and Greenways



This section provides general policy direction regarding open space that is not owned by the County. For policies regarding open space owned by the County, see Chapter 10, *Parks, Recreation, and Open Space*; for policies regarding greenways, see Chapter 8, *Transportation*. Parks and public facilities lands are identified on the Land Use Map with the Parks and Public Facilities designation.

- **Parks and Public Facilities**. This designation applies to lands that have facilities or are intended for public use. Public schools, wastewater treatment plants, government buildings, water towers, parks and any other publicly owned lands are included in this designation. The implementing zones for this designation include Park and all other zones that permit public facility uses.
  - Parks zone. This zone is intended to create long-term consistency and nexus between purchasing park and open space properties and the implementing zone. Lands that utilize the Park zone are intended for the long-term benefit and enjoyment of Kitsap County citizens. As such, uses for these lands shall be limited to the development of parks, open space or recreational facilities.

Goal 23. Ensure that privately owned open space meets its intended purpose.

Policy LU-112 Require open space in performance based and master planned developments to be contiguous within the site plan to the extent possible, encourage such spaces to be contiguous with preserved open spaces on adjacent sites, and require public access for trail linkages when appropriate.

Policy LU-113 Encourage homeowner associations and property owners to work with parks agencies and land trusts to effectively maintain buffers and open space within and around developments, and form active partnerships with community groups to effectively maintain natural areas, trails and greenways.

Goal 24. Identify lands owned by government entities, service providers and intended for public use.

Policy LU-114 Coordinate, on an annual basis with service providers, agencies, local jurisdictions and County departments to ensure that accurate designation and implementing zoning is applied for their respective facilities and intended uses.

Policy LU-115 Apply the Public Facilities designation to lands that serve cultural, recreational, educational and public service needs of the county.

Policy LU-116 Implement the Park zone to County-owned lands identified in the Parks, Recreational and Open Space Plan. Specifically, apply the Park zoning to Heritage, Regional and Community parks.

Goal 25. Maximize the quality of life in Kitsap County by providing public facilities to meet the needs of today and to 2025.

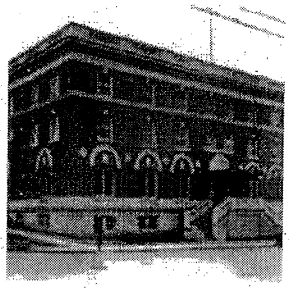
Policy LU-117 Coordinate the orderly provision of public facilities and services with development activities in a manner that is compatible with the fiscal resources of the County and local service providers.

Policy LU-118 Encourage the design of facilities to meet the service levels appropriate for today and in the future.

Policy LU-119 Encourage the location of public facilities that will maximize efficiency of services, minimize costs and impacts to the environment.

2.2.10. Historic Preservation

The specific goal for historic preservation outlined in GMA calls for Kitsap County to identify and encourage the preservation of lands, sites and structures that have historical or archaeological significance. This goals and policies of this section are intended to further clarify and direct efforts toward implementation of effective historic preservation through regulatory and non-regulatory means. Such efforts shall be closely coordinated with tribal governments.



Goal 26. Improve identification and evaluation of historic, archaeological and cultural sites and resources throughout Kitsap County.

Policy LU-120 Involve the Kitsap Historical Society, local tribal governments, other organizations and interested citizens in conducting a full inventory of historical, archaeological and cultural resources, including districts and landscapes that provide unique insights into the history and development of the county.

Goal 27. Protect, conserve and enhance historical, archaeological and cultural resources throughout Kitsap County through non-regulatory means.

Policy LU-121 Increase public awareness of cultural resources through educational and interpretive projects that highlight sites included on Kitsap County inventory or those eligible for inclusion in national, state or local registers of historic places.

Policy LU-122 Increase public awareness of cultural heritage preservation issues, including state and federal penalties for disturbance, destruction or removal of archaeological resources.

Policy LU-123 Provide assistance to developers, landowners, the construction trade and interested citizens regarding appropriate reuse and rehabilitation of identified historic sites and buildings.

Policy LU-124 Provide assistance to developers, landowners, the construction trade and interested citizens in obtaining grants and tax incentives for the reuse and rehabilitation of identified historic sites and buildings.

Policy LU-125 Coordinate and cooperate with national, state, local tribal governments, and local historic and cultural preservation organizations.

Goal 28. Protect and conserve historical, archaeological and cultural sites and resources using regulatory means when appropriate.

Policy LU-126 Adopt a County building code for historic structures that encourages preservation and rehabilitation of historic structures.

Policy LU-127 Prepare a map that identifies historic districts (those identified now and in the future), cultural resource areas and specific historic sites and structures into zoning and planning maps.

Policy LU-128 Include provisions in the KCC that permit the review of individual development, redevelopment and demolition plans to ensure protection of and minimize the impacts on cultural, historic and archaeological resources.

Policy LU-129 Promote ongoing communication and coordination strategies with local tribal governments in an effort to better preserve and enhance cultural resources.

2.2.11. Drainage, Flooding and Stormwater Runoff

This section provides general goals and policies regarding land use impacts on water resources. The way in which land is used may have impacts on water. The quantity and quality of water in streams and aquifers may be affected by how land is used throughout the county—not just in designated critical areas. Properly managing land use will avoid flood damage and contribute to adequate water supplies for the present and future.

This section provides guidance for managing stormwater runoff and groundwater recharge through regulatory and non-regulatory means. Chapter 4, *Natural Systems*, Section 4.2.3, also contains goals and policies related to surface waters.

Goal 29. Prevent the loss of life, property damage, and environmental degradation from stormwater and related flooding and contaminants using appropriate regulatory means.

Policy LU-130 Consider cumulative impacts of stormwater quantity and quality in any long range planning activity. Through zoning and other development regulations, avoid and minimize impacts; mitigate unavoidable impacts.

Policy LU-131 Implement development regulations to manage stormwater to: a) protect human life and health; b) protect private and public property and infrastructure; c) protect resources such as shellfish beds, eelgrass beds, kelp, marine and freshwater habitat and other resources; d) prevent the contamination of sediments

from urban runoff; and e) achieve standards for water and sediment quality by reducing and eventually eliminating harm from pollutant discharges.

Policy LU-132 Implement development regulations that avoid, minimize, and mitigate unavoidable erosion, sedimentation, and stormwater runoff problems including stream and shoreline erosion related to land clearing, grading, development and roads.

Policy LU-133 Implement development regulations to control stormwater runoff that meet or exceed the state's minimum stormwater technical requirements. Require stormwater facilities concurrent with development. Emphasize source control for stormwater and nonpoint pollutants. Emphasize water quantity and quality protection of natural drainages, fish and wildlife habitat and wetlands. Utilize infiltration to the fullest extent practicable to minimize downstream impacts and maximize groundwater resources.

Policy LU-134 Protect property from excess stormwater runoff, erosion and sedimentation.

Policy LU-135 Consider and adopt ordinances and programs to control stormwater runoff through approaches including, but not limited to, the following:

a. adopt a stormwater technical manual that meets the state minimum requirements;

b. control offsite effects of runoff pollution, erosion, flooding and habitat damage;

c. protect natural drainages, fish and wildlife habitat and wetlands;

d. implement source control and treatment Best Management Practices (BMPs); and

e. require adequate stormwater facilities concurrent with development and roads.

Policy LU-136 Require that all surface water and stormwater entering a project site in its predevelopment state be received at the naturally occurring or otherwise legal location. Require all surface and stormwater leaving a project site to be discharged at all times during and after development at the naturally occurring or otherwise legally existing locations so as not to be diverted onto or away from downstream properties.

Policy LU-137 Require that runoff resulting from development activity and roads be controlled so that the peak rates, durations and volumes of runoff leaving the post-developed site do not exceed the capacity of receiving drainage conveyance

facilities, do not increase the potential for stream bank erosion, and do not add significant volume to an offsite closed depression. Seek to maintain the quantity of runoff, flow peaks, and flow durations at pre-development levels to reduce runoff and related flooding.

Policy LU-138 Require in development regulations site design that minimizes impervious surfaces, limits grading, and protects areas of undisturbed soils and vegetation in order to decrease stormwater runoff and hydrologic changes and maintain rural character. Minimize and mitigate for impervious surfaces and loss of natural vegetative cover.

Policy LU-139 Require that all sites meeting the definition of a major development as defined in KCC section 12.08.010 provide permanent facilities for the treatment of water runoff quality and quantity control through the application of BMPs. Encourage monitoring of larger-scale development projects and roads to assess their impacts to surface water quality.

Policy LU-140 Require individuals and groups responsible for operation and maintenance of stormwater facilities to operate and maintain their facilities in accordance with the requirements of Title 12 of the KCC, Stormwater Management Ordinance and Design Manual.

Policy LU-141 Encourage the use of source control and implement mitigative actions to control nonpoint source pollution.

Policy LU-142 Maintain wetland hydrology and provide stormwater treatment prior to discharge into wetlands.

Policy LU-143 Ensure that the County's stormwater facilities are within established water quality limits.

Policy LU-144 Participate in regional efforts to achieve Total Maximum Daily Loads (TMDLs) for local water bodies as required by the Clean Water Act. Take steps to reduce nonpoint sources of pollution to Puget Sound and other water bodies to achieve compliance.

Policy LU-145 Require that conversion forestry activities, in which forest land uses regulated by the Washington DNR are converted to residential land uses regulated by Kitsap County, be carried out in a manner consistent with adopted surface water policies and standards.

Goal 30. Prevent loss of life, property damage, and environmental degradation from stormwater and related flooding and contaminants using appropriate non-regulatory means.

Policy LU-146 Educate the public, businesses and industries about stormwater impacts and source controls.

Policy LU-147 Provide technical support to the public in stormwater management practices.

Policy LU-148 Encourage LID practices to reduce the need for stormwater facilities and maximize groundwater resources. Monitor the effectiveness of LID techniques when they are implemented as stormwater control BMPs.

Policy LU-149 Inventory drainage basins through the Surface and Stormwater Management Program to identify existing and future stormwater drainage problems.

Policy LU-150 Plan and build regional stormwater facilities based on sub-basin plans that consider impacts to ground and surface water resources.

Policy LU-151 Coordinate offsite stormwater detention to the greatest extent practical, where stormwater cannot be infiltrated or detained onsite.

Policy LU-152 Continuously review stormwater regulations and design manuals to ensure that Kitsap County is meeting the most up-to-date BMPs and changes in state and federal stormwater regulations.

Goal 31. Reduce harmful discharges from failing septic systems.

Policy LU-153 Implement, with Kitsap County Health District, development regulations that reduce harm to waterbodies from existing and future onsite sewage systems. Require proper siting of onsite septic systems.

Policy LU-154 Support Kitsap County Health District's efforts to identify and correct failing septic systems.

Goal 32. Safeguard the quantity and quality of long-term groundwater supplies for people, fish, and wildlife using appropriate regulatory means.

Policy LU-155 Consider cumulative impacts of land use on groundwater quantity and quality when creating future sub-area plans. Through zoning and other development regulations, avoid and minimize impacts; mitigate unavoidable impacts.

Policy LU-156 Implement development regulations to maximize stormwater infiltration and minimize the risk of contaminating groundwater.

Policy LU-157 Evaluate, minimize, and mitigate unavoidable impacts to groundwater quality and quantity during the planning and development review process. Consider the cumulative impacts of existing and future development on groundwater quantity and quality. Ensure proposed plans and project design address the extent of and mitigate for the recharge-limiting effect of impermeable surfaces and other factors affecting groundwater quantity and quality.

Goal 33. Encourage the development of low-impact development standards for stormwater mitigation and to maximize groundwater resources

Policy LU-158 Utilize infiltration to the fullest extent practicable, as part of stream bank erosion BMPs.

Policy LU-159 Provide incentives for the use of LID practices to minimize the need for traditional stormwater facilities.

Policy LU-160 Develop a system of fair flow credits for the use of LID practices.

Policy LU-161 Use LID standards to encourage the preservation of natural drainage systems and historic hydrology.

Policy LU-162 Monitor the effectiveness of LID techniques when they are implemented as stormwater control BMPs.

Goal 34. Safeguard the quantity and quality of long-term groundwater supplies for people, fish, and wildlife using appropriate non-regulatory means.

Policy LU-163 Promote construction of facilities and technologies that maximize the retention and recharge of stormwater.

Policy LU-164 Encourage use of incentives such as transfer or purchase of development rights to preserve aquifer recharge areas.

Policy LU-165 Consider the impacts of sewer plans on groundwater quality and quantity.

Policy LU-166 Encourage public and private water purveyors to designate and manage wellhead protection areas in keeping with the Washington State Department of Health's Wellhead Protection Program.

Policy LU-167 Work with appropriate agencies and jurisdictions to implement a public education program that emphasizes the proper installation and maintenance of septic systems and the proper use and disposal of fertilizers and pesticides, including the use of non-toxic alternatives where possible, and promotes water conservation.

Goal 35. Develop and implement watershed action plans to reduce and prevent nonpoint pollution in cooperation with neighboring jurisdictions, tribal governments and interested citizens.

Policy LU-168 Use watershed and basin plans as a means to reduce stormwater impacts and nonpoint pollution to develop long-term plans for development and stormwater controls at the watershed level, and to coordinate with neighboring jurisdictions.

Goal 36. Develop a regional stormwater sub-basin plan.

Policy LU-169 Build regional stormwater facilities based on sub-basin plans.

Policy LU-170 Coordinate offsite stormwater detention where stormwater cannot be infiltrated or detained onsite.

Policy LU-171 Promote the use of regional stormwater facilities in urban areas as an alternative to project or site-specific facilities.

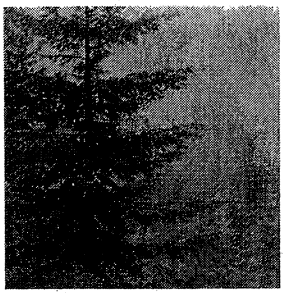
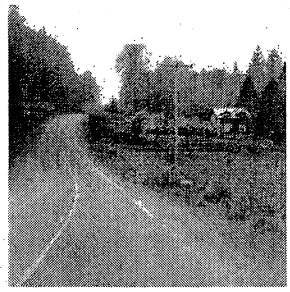
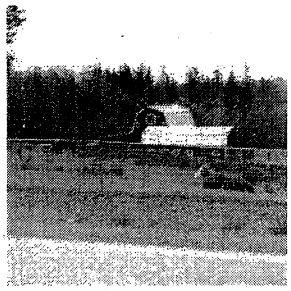
Goal 37. Reduce harmful discharges from agricultural practices.

Policy LU-172 Adopt agricultural BMPs to control and reduce harmful discharges to surface water, shellfish beds, fish and wildlife habitat, and public stormwater facilities, including public rights-of-way.

This page intentionally blank.

Rural and Resource Land Chapter Relationship to Vision

Vision	Rural and Resource Lands Chapter Concepts
County Government. County government that is accountable and accessible; encourages citizen participation; seeks to operate as efficiently as possible; and works with citizens, governmental entities and tribal governments to meet collective needs fairly while respecting individual and property rights.	▪ Provide policy direction based on citizen participation to guide future land use decisions.
Natural Environment. Natural ecosystems – including interconnected wetlands, streams, wildlife habitat, and water quality – that are rehabilitated, protected, and enhanced and that allow for flexible and innovative development to meet environmental and growth goals. In developed areas, the growth pattern supports conservation of non-renewable energy and minimizes impacts on air quality and climate.	▪ Provide for protection of natural ecosystems in rural areas through rural designations, with lower levels of development and lower availability of public services.
Housing. Residential communities that are attractive, affordable, diverse, and livable supported by appropriate urban or rural services. A variety of housing choices are available, meeting a full range of resident income levels and preferences. Residents are able to walk between neighborhoods and to community destinations.	▪ Allow for development of rural residential uses that are distinct from urban residential uses. ▪ Provide for small, rural communities and Limited Areas of More Intensive Development (LAMIRD) including residential uses.
Open Space. An open space network – including greenbelts, wildlife habitat, forested areas, and active and passive parks – that is accessible, interconnected, provides opportunities for recreation and defines and distinguishes urban and rural areas.	▪ Protect rural areas by precluding urban development and by guiding development standards that preserves open space.
Urban Areas. Healthy urban areas that are the region's centers for diverse employment and housing opportunities, all levels of education, and civic and cultural activities;	▪ Support focused development in urban areas as centers for population, employment, and civic and cultural activities (See the Land Use chapter for further policy guidance affecting the urban area.)
Rural Areas. Rural areas and communities where unique historical characters, appearances, functions, and pioneering spirits are retained and enhanced. Natural resource activities, such as forestry, agriculture, and mining continue to contribute to the rural character and economy. Rural recreation opportunities are enhanced, including equestrian facilities, trails, and others.	▪ Maintain low residential densities in rural areas and provides policy guidance for development standards which help to preserve the County's rural character.
Cultural Resources. Historical and archaeological resources that are recognized and preserved for future generations.	▪ Provide policy guidance for historic rural communities.
Economic Development. A stable, prosperous and diversified economy that provides living wage jobs for residents, supported by adequate land for a range of employment uses and that encourages accomplishment of local economic development goals.	▪ Preserve opportunities for resource-based economic activities within the County. ▪ Allow for limited commercial and industrial uses in rural areas, while preserving rural character.
Public Services and Facilities. Public services and facilities – including, but not limited to, parks and recreation, law enforcement, fire protection, emergency preparedness, water/sewer, roads, transit, non-motorized facilities, ferries, stormwater management, education, library services, health and human services, energy, telecommunications, etc. – are provided in an efficient, high-quality and timely manner by the County and its partner agencies. Public services and facilities are monitored, maintained and enhanced to meet quality service standards.	▪ Provide policy guidance for public services and utilities in the rural area. ▪ Provide for limited residential development in the rural area at densities that do not result in a need for public sewer systems.
Transportation. An efficient, flexible, and coordinated multi-modal transportation system – including roads, bridges and highways, ferries, transit, and non-motorized travel – that provides interconnectivity and mobility for County residents and supports our urban and rural land use pattern.	▪ Provide for a land use pattern that allows for more efficient transportation in urban areas. ▪ Provide policy direction for the development of transit-supportive densities in growth nodes and centers.

Chapter 3. Rural and Resource Lands

3.1. Plan Context

The Rural and Resource Lands Chapter guides land use patterns and directs land use decisions for the unincorporated portions of Kitsap County outside of urban growth areas (UGAs). Together, Chapter 2, *Land Use,* and this chapter form the basis for all future land use patterns and decisions. In addition to goals and policies guiding rural development and resource land uses, this chapter includes goals and policies related to lands that are currently designated rural but may be potentially included in the UGA as future growth occurs (generally beyond the current planning period).

The policies in this chapter work in tandem with the Kitsap County Comprehensive Plan (Plan) Land Use Map, which illustrates the location of various land use categories. The Land Use Map is located in Chapter 2 (Figures 2-1 and 2-2). This chapter is divided into the following sections:

- Rural Character in Kitsap County
- Rural Lands
- Urban Reserve Lands
- Limited Areas of More Intensive Rural Development (LAMIRDs)
- Resource Lands
- Mineral Resource Lands
- Agricultural Resource Lands
- Rural Wooded Policies
- Transfer of Development Rights (TDR)

An inventory of existing land use conditions, including rural and resource lands, was created with the Plan. The inventory is contained in Section 3.2.1, *Land Use*, of Volume II. Key issues

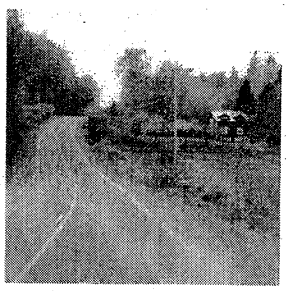
related to existing land use conditions in the rural unincorporated county are summarized as follows:

- The predominant pattern of residential development throughout the unincorporated areas, including the rural area, is low-density single family; and
- Percentages of land historically developed in residential use are nearly the same for urban and rural designated areas (39.5% of UGAs and 36.6% of rural areas).

For rural lands, these issues provide the challenges for the future of how to:

- maintain natural ecosystems and a local forestry sector.
- provide greater distinction between urban and rural areas.
- preserve and enhance rural character.
- preserve open space.

3.1.1. Rural Character in Kitsap County



Kitsap County's rural area consists of a balance of differing natural features, landscape types and land uses. Rural land uses consist of both dispersed and clustered residential developments, farms, wooded lots, and small-scale commercial and industrial uses that serve rural residents as their primary client. Rural landscapes encompass the full range of natural features, including forested expanses, rolling meadows, ridge lines and valley walls, distant vistas, streams and lakes, shorelines and other sensitive areas. The State of Washington defines rural character in Revised Code of Washington (RCW) 36.70A.030 (15) as follows:

> "Rural character" refers to the patterns of land use and development established by a county in the rural element of its comprehensive plan:
>
> a. In which open space, the natural landscape, and vegetation predominate over the built environment.
>
> b. That foster traditional rural lifestyles, rural-based economies, and opportunities to both live and work in rural areas.
>
> c. That provide visual landscapes that are traditionally found in rural areas and communities.
>
> d. That are compatible with the use of the land by wildlife and for fish and wildlife habitat.

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

f. That generally do not require the extension of urban governmental services.

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

The rural area is, however, more than just a description of physical characteristics. For County residents, the term rural also defines a philosophy of living and a quality of life. This quality of life includes a sense of quiet, community and a slower pace of life.

It is this multi-faceted physical character and lifestyle that County residents wish to maintain and enhance through the Plan.

3.1.2. Intent of the Rural Lands Chapter

The intent of the Rural Lands Chapter is to preserve and enhance the rural character of Kitsap County. This chapter designates areas in Kitsap County as appropriate for rural and resource activities, both residential and non-residential, over the long term. The Plan is intended to preserve and protect rural character by reducing the inappropriate conversion of undeveloped rural land to more intensive uses.

Of the many reasons that motivate people to live in Kitsap County, an attractive rural environment is one of the most frequently cited. Rural characteristics—including the abundance of trees, perception of low-density development patterns, access to recreation, views of water and mountains, and a quiet, unregimented atmosphere – all have a strong appeal to new and old residents alike. Because these characteristics can change or diminish as population grows, the challenge for the Plan is to preserve the function, appearance, and lifestyle of the rural area in the face of continued population growth in the County.

3.1.3. Growth Management Act

The Growth Management Act (GMA) provides that "Counties shall include a rural element including lands that are not designated for urban growth, agriculture, forest or mineral resources. The rural element shall permit appropriate land uses that are compatible with the rural character of such lands and provide for a variety of rural densities and uses and may also provide for clustering, density transfer, design guidelines, conservation easements and other innovative techniques that will accommodate appropriate rural uses not characterized by urban growth" (RCW 36.70A.070(5)).

3.2. Rural and Resource Lands Goals and Policies

Goals and policies contained in this section address issues related to appropriate development and environmental protection within rural areas in order to preserve and enhance the County's rural character.

3.2.1. Rural Lands

Kitsap County's rural lands consist of a unique and sensitive balance of differing land features and uses and landscape types. Rural lands for rural development and protection of rural character are identified outside of UGAs on the Land Use Map with the Rural Residential, Rural Protection, Rural Wooded, Rural Industrial, and Rural Commercial designations. Based on Countywide Planning Policies, the rural area is expected to take 24% of the County's future population growth through 2025.

For information on existing population and housing and the relationship of allocated growth to regional growth projections and allocations, see Section 3.2.3, *Population, Housing, and Employment*, of Volume II. See Chapter 6, *Housing*, for more specific information on the County's future housing unit growth. For urban residential designations, goals and policies, see Chapter 2, *Land Use*.

- **Rural Residential.** This designation is intended to allow low-density residential development consistent with rural character, and primarily focuses on single-family dwellings. This designation is applied to areas that are relatively unconstrained by environmentally sensitive areas or other significant landscape features, and also recognizes areas that are already committed to a pattern of smaller rural lots. The Rural Residential designation is implemented by the Rural Residential zone.
  - Rural Residential zone. This zone promotes low-density residential development consistent with rural character. It is applied to areas that are relatively unconstrained by environmentally sensitive areas or other significant landscape features. (Maximum of 1 dwelling unit [du] per 5 acres [ac])
- **Rural Protection.** This designation is intended to allow low-density development in keeping with rural character and to protect significant environmental features, including visual, historic, and natural features; wildlife corridors; steep slopes; wetlands; streams; and adjacent critical areas. It is implemented by the Rural Protection zone.
  - Rural Protection zone. This zone promotes low-density development that is consistent with rural character and protects environmental features such as significant visual, historical, natural features, wildlife corridors, steep slopes, wetlands, streams and adjacent critical areas. (Maximum of 1 du/10 ac)

- **Rural Wooded.** The Rural Wooded designation is applied to larger parcels of land in contiguous blocks that are forested in character, that have been actively managed for forestry and harvested, and that may be currently taxed as timber lands pursuant to state and County programs. It is applied to lands that were formerly zoned as "Interim Rural Forest." The objective of this designation is to promote continued forestry practices, provide ongoing opportunities for large- and small-scale timber management, and maintain large contiguous blocks of forested lands to protect significant environmental features, while allowing limited residential development in keeping with rural character. Environmental features may include significant visual, historic, and natural features; wildlife corridors; steep slopes; wetlands; streams; and adjacent critical areas. The Rural Wooded designation is implemented by the Rural Wooded zone. Policies specific to the Rural Wooded designation are included in Section 3.2.7.
  - Rural Wooded zone. This zone allows for forest resource uses as well as limited residential uses. (1 du/20 ac)
- **Rural Industrial.** This designation contains lands often found at crossroads and supports resource-based industries. It is implemented by the Industrial and Business Park zones, which are described in Chapter 2, *Land Use.* Rural lands goals and policies regarding industrial uses refer to these uses outside of UGAs.
- **Rural Commercial.** Lands contained within this designation are often found at crossroads, where historical development has allowed for smaller lot sizes. These areas also serve neighboring residences, with quick shopping that is compatible with neighboring uses. Land uses include, but are not limited to, post offices, veterinary clinics, day-care facilities, and medical clinics. Rural Commercial is implemented by the Highway Tourist Commercial and Neighborhood Commercial zones, which are described in Chapter 2, *Land Use.* Rural lands goals and policies regarding commercial uses refer to these uses outside of UGAs.

Rural goals and policies are addressed below; additional Rural Wooded goals are addressed in Section 3.2.7.

Goal 1. Retain the rural character of the County outside of designated urban areas.

Policy RL-1 Limit the designated rural area to low residential densities that can be sustained by minimal infrastructure improvements, cause minimal environmental degradation, and that will not cumulatively create the future necessity or expectation of urban levels of service.

Policy RL-2 Provide a variety of densities in the rural areas to make more efficient use of land, maximize the return on public infrastructure investment, and provide for affordable housing opportunities.

Policy RL-3 Permit residential uses in rural areas consistent with the existing and planned rural character of the surrounding area.

Policy RL-4 Limit development only to that which serves rural residential or resource needs and not draw people from UGAs.

Policy RL-5 Apply rural designations on the Comprehensive Plan Land Use Map only to areas that meet one or more of the following criteria:

- Areas not designated for urban growth or as natural resource lands, where a possibility exists for less intensive agriculture, forestry and mineral resource management and utilization.
- Areas not needed for the next 20 years to provide land for population or employment growth.
- Areas which serve as a buffer between resource activities and conflicting land uses.
- Areas where the open-space character of the land is to be protected for scenic qualities, recreational activities and environmental functions.
- Areas in which significant environmental constraints make the area generally unsuitable for intensive urban development.
- Areas where existing and future uses do not typically require urban-level services and facilities and services are not readily available.
- Areas where a rural area designation will help foster more logical boundaries for urban public services and infrastructure.

Goal 2. Encourage development standards that help preserve the County's rural character.

Policy RL-6 Encourage design standards, and encourage development practices and private covenants for subdivisions in the rural area, to limit paved surfaces, changes in grade from pre-development site conditions, elaborate entrance signs, and extensive lawns and other landscaping.

Policy RL-7 Allow and encourage home-based cottage-type businesses and industries in the rural areas, if those activities are compatible with the site and surrounding area.

Policy RL-8 Allow existing commercial and industrial activities in the rural area to continue but not expand beyond the limits of the existing zoning, except as specified under policies RL-30 and RL-31.

Policy RL-9 Use the Buildable Lands Program to help implement the Kitsap County Comprehensive Plan to track the type, location, amount and rate of growth in the rural area. Growth will be evaluated to ensure that it is consistent with Comprehensive Plan assumptions and policies. Based on the findings of this monitoring, consider the need to further evaluate or limit the amount or rate of growth in the rural area or to modify its development regulations to ensure that rural character is maintained and that urban growth does not occur in the rural area.

Goal 3. Maintain appropriate levels of service for public services and facilities in rural areas.

Policy RL-10 Adopt standards for facilities and services in the rural area that protect basic public health and safety and the environment, but are financially supportable at rural densities and do not encourage urban development. Encourage cities adjacent to the rural area and other agencies providing services to the rural area to adopt similar standards.

Policy RL-11 When considering public spending for facilities and services within the rural area give priority to the following:

- Maintaining existing facilities and services that protect public health and safety.
- Upgrading facilities and services when needed to support planned rural development at rural service level standards but not creating capacity for urban growth.

Policy RL-12 Prohibit extension of sanitary sewer service in the rural area "except in those limited circumstances shown to be necessary to protect basic public health and safety and the environment and when such services are financially supportable at rural densities and do not permit urban development" (RCW 36.70A.110(4)) or as otherwise allowed by GMA.

Policy RL-13 Provide road and access standards that enable all-weather access for emergency response vehicles while preserving and enhancing rural character.

Policy RL-14 Ensure proper installation, use and maintenance of on-site septic systems.

Goal 4. Preserve existing open space in rural areas and promote opportunities for provision of new open space in rural areas.

Policy RL-15 Encourage the continuation of working forests through tax policy, conservation easements, purchase of development rights, TDR, and clustering incentives.

Policy RL-16 Continue regulatory and non-regulatory preservation of historic or working farm land, particularly through tax policy, conservation easements, innovative design criteria and the establishment of a small farms institute as recommended by the Rural Policy Roundtable, to encourage small farms. An historic Kitsap County working farm, such as Howe or Peterson farm, should be preserved for educational and scenic purposes.

Policy RL-17 Designate the Barker Creek corridor with a rural designation.

3.2.2. Urban Reserve Lands

The intent of Urban Reserve goals and policies is to guide the use of lands that may be suitable for inclusion in UGA in the future. The Land Use Map identifies such lands with the Urban Reserve designation.

- **Urban Reserve.** This designation indicates areas that may be suitable for inclusion in the UGA in the future. It is implemented by the Urban Reserve zone.
  - Urban Reserve zone. This zone is intended to allow rural development while preventing land use patterns that could foreclose options for future higher densities. (maximum of 1 du/10 ac)

Goal 5. Identify land that is potentially suitable for inclusion in the UGA.

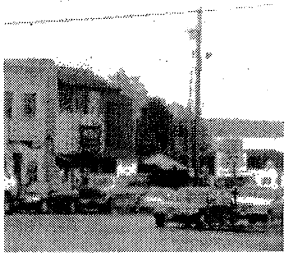
Policy RL-18 Use the Urban Reserve designation to indicate areas that may be suitable for inclusion in the Urban Growth Area (UGA). Urban Reserve lands are intended to recognize lands adjacent to designated UGAs that may be considered for potential future inclusion within an UGA in response to future needs, as reflected in revised or updated population or employment forecasts or distributions.

Policy RL-19 Prevent the establishment of land uses or land use patterns in the Urban Reserve designation that could foreclose planning options and eventual development or redevelopment at higher urban densities.

Policy RL-20 Redesignate Urban Reserve lands if they are determined to not be needed or appropriate for urban development.

3.2.3. Limited Areas of More Intensive Rural Development

The intent of these goals and policies is to guide development of the County's existing LAMIRDs and the future designation of additional LAMIRDs.



- **LAMIRD.** This designation is consistent with the 1997 amendment to GMA and is subject to a number of guidelines and criteria (RCW 36.70A.070(5)(d)). These amendments provide an opportunity to help reconcile the County's historical land use pattern within the parameters of GMA. There currently are four LAMIRDs in Kitsap County: Suquamish, Manchester, Port Gamble and George's Corner. These areas are designated on the Land Use Map. The Manchester and Suquamish LAMIRDs (Chapter 16) are further identified as Rural Villages, while Port Gamble is an historic town and George's Corner is a rural center for commercial uses. The LAMIRD designation is implemented by zones as described below.
  - The Manchester LAMIRD implementing zones include: Manchester Village Commercial (MVC), Manchester Village Low Residential (MVLR), and Manchester Village Residential (MVR).
  - The Suquamish LAMIRD implementing zones include: Suquamish Village Commercial (SVC), Suquamish Village Low Residential (SVLR), and Suquamish Village Residential (SVR).
  - The Port Gamble LAMIRD implementing zones include: Rural Historic Town Commercial (RHTC), Rural Historic Town Residential (RHTR), and Rural Historic Town Waterfront (RHTW).
  - The George's Corner LAMIRD implementing zone is Neighborhood Commercial (NC).

Goal 6. Allow for the designation of LAMIRDs outside of the UGA based on existing rural residential communities or villages, areas of mixed use activity, isolated areas of small-scale commercial/industrial activity, and historic towns.

Policy RL-21 Identify and designate LAMIRDs in the rural area, consistent with the requirements of the GMA.

Policy RL-22 Consider existing, isolated areas of generally small-scale commercial or industrial activity for designation as a LAMIRD.

Policy RL-23 Prohibit designating a LAMIRD adjacent to an UGA.

Policy RL-24 Establish a community planning process for the designation of LAMIRDs; the process should include interested parties, community groups and other stakeholders.

Policy RL-25 Encourage changes to zones in LAMIRDs to occur via a local community planning process. This process should incorporate local knowledge, experience and preferences to determine appropriate area-specific land uses, development standards, design guidelines, and public service needs. Specific issues that should be considered in this planning process include:

- Appropriate logical outer boundaries.
- Rural character of the subject area and surrounding area.
- Appropriate mix of uses, densities and intensities.
- Feasibility, cost and need for public services.
- Significant natural constraints or features to be preserved.
- Provision for a monitoring and evaluation process.
- Benefits to the local community.

Policy RL-26 Provide development regulations for LAMIRDs that provide for the following:

- Greater setbacks, reduced building height, floor/lot ratios, and maximum impervious surface coverage standards in comparison to standards for urban industrial development.
- Maximum protection of sensitive natural features.
- Building and landscape design that respects the aesthetic qualities and character of the rural area, and provides substantial buffering from the adjoining uses and scenic vistas.
- Building colors and materials that are muted, signs that are not internally illuminated and site and building lighting that is held to the minimum necessary for safety.
- Measures to reduce the impacts of noise, odor, and traffic to surrounding rural areas.
- Uses requiring substantial investments in infrastructure such as water, sewers or transportation facilities shall be scaled to avoid the need for public funding of infrastructure.

Policy RL-27 Consider designating as a LAMIRD areas that have the following rural community characteristics:

- primarily residential with some commercial and community services.
- relatively small lots.
- a relatively dense land use pattern.
- located at some distance from the urbanized portion of the County.

Policy RL-28 Consider designating as a LAMIRD areas that have the following rural village characteristics:

- serves as an activity center for the surrounding rural area.
- a broad mix of land use and densities.
- community, recreational, institutional services and public facilities.
- densities that are essentially urban in character.
- served by public water and sewer.
- geographically distinct from the closest urbanized portion of the County.

Policy RL-29 Allow commercial and industrial development to locate in designated LAMIRDs, if utilities and other services permit, in order to provide employment, shopping, services and housing opportunities that will reinforce the health of these communities and convenience of rural residents.

Policy RL-30 Allow new or expanded commercial and industrial activities within designated LAMIRDs, as appropriate for limited and contained growth, infill and redevelopment.

Policy RL-31 Encourage new development within designated LAMIRDs to strengthen the desirable characteristics and the historic character of the village or community. New development should be supported by necessary public facilities and services, and compatible with historic resources and nearby rural or resource uses. Development should be kept compact, promoting pedestrian travel within the designated area.

Policy RL-32 Protect, restore, and enhance the historic character of the Port Gamble Rural Historical LAMIRD. Allow for redevelopment of residential uses, limited new commercial, industrial, waterfront or mixed use development; promote tourist and recreation activities; and provide for necessary public facilities and services.

Policy RL-33 Recognize the historic significance of Port Gamble and its unique "company town" character. To assist in preserving and enhancing the visual integrity of the town site, allow the Board of County Commissioners to appoint a committee of approximately five persons to advise the Department of Community Development on architectural, landscaping and site design issues related to proposed development. The committee shall represent a diverse range of interests, including architecture, landscape architecture and historic preservation. The Port Gamble/S'Klallam Tribal Council may appoint one member to this committee. In the alternative, Kitsap County may hire a qualified professional consultant to advise the Department on development proposals when an applicant funds the cost of such a contract. Committee members or consultants shall show qualifications pursuant to the Secretary of the Interior's Professional Qualifications Standards.

3.2.4. Resource Lands

The intent of resource lands goals and policies is to direct the use of lands that contain commercial quality resources, such as for forestry, agriculture, mineral extraction, and aquaculture. These resource-based uses are often intermixed or occur together with residential development within the County's rural areas. Resource lands are identified on the Land Use Map with the Forest Resource designation. Mineral resource lands are identified with the Mineral Resources overlay, rather than a specific designation; the Mineral Resources overlay is discussed in Section 3.2.5.

- **Forest Resource.** This designation primarily focuses on lands that have commercial forestry resources. This designation of resource lands and activities is intended to help keep these lands available for commercially significant resource production and to help maintain these sectors of the local economy. The Forest Resource designation is implemented by the Forest Resource zone.
  - Forest Resource zone. This zone allows residential uses at an appropriate low density as long as they do not interfere with timber management and harvesting activities. (Maximum of 1 du/40 ac)

Goal 7. Preserve and enhance natural resource-based activities, such as agriculture, forestry, mineral extraction, and aquaculture (as addressed and defined in the Kitsap County Shoreline Management Master Program) in the rural areas through regulatory means.

Policy RL-34 Protect natural resource lands from incompatible adjacent uses.

Policy RL-35 Identify and evaluate regulatory incentives for landowners to conserve shorelines and resource lands and to continue resource-based activities.

Policy RL-36 Allow and encourage agriculture, mineral and forestry uses in the rural areas of the County. Such uses should not be considered to constitute a nuisance within rural areas if conducted within generally accepted management practices and in compliance with applicable laws that regulate such activities.

Policy RL-37 Require that land use activities within or adjacent to resource lands are sited and designed to minimize conflicts with and impacts on resource lands. Minimization of impacts may be accomplished through the use of setbacks, buffers and other requirements.

Policy RL-38 Require the following language on approved plats and building permits in all rural areas: "Notice: the subject property is within or near land in which resource activities are permitted and encouraged, including a variety of activities which may not be compatible with residential use for certain periods of limited duration. In addition to other activities, these may include noise, dust, smoke, visual impacts and odors resulting from harvesting, planting, surface mining, quarrying, application of fertilizers, herbicides, and associated reclamation and management activities. When performed in accordance with state and federal law, these resource activities are not subject to legal action as a nuisance."

Goal 8. Preserve and enhance natural resource-based activities, such as forestry, mineral extraction, agriculture, and aquaculture in the rural areas through non-regulatory means.

Policy RL-39 Identify, evaluate, and pursue incentives for landowners to conserve shorelines and resource lands and to continue resource-based activities. Examples of such incentives include tax reduction, purchase of development rights, TDR and clustering incentives.

Policy RL-40 Encourage the use of Best Management Practices (BMPs) for all resource activities.

Goal 9. Retain land suitable for timber production and encourage the continued practice of forestry within the County through regulatory means.

Policy RL-41 Discourage uses other than commercial timber production on Forest Resource lands by limiting residential density to 1 du/40 ac in the Forest Resource Land zone. Dwellings should not interfere with timber management and harvesting activities.

Policy RL-42 Minimize the conflict between forestry and residential land uses.

Policy RL-43 Allow the use of normal BMPs, such as spraying, logging, slash burning within the designated Forest Resource Lands and Rural Wooded area, provided all applicable environmental laws and regulations are followed.

Policy RL-44 Notify nearby landowners and occupants of the likely continued use of lands zoned Forest Resource Lands for resource production.

Policy RL-45 Consider adopting the 1997 Urban-Wildland Interface Code as part of the County's wildfire protection efforts.

Goal 10. Retain land suitable for timber production and encourage the continued practice of forestry within the County through non-regulatory means.

Policy RL-46 Coordinate with the Department of Natural Resources (DNR), Tribal governments, community groups, and private forest landowners to promote long-term preservation of forest lands.

Policy RL-47 Develop incentives for continued resource uses, including but not limited to the following:

- Providing relief from special levies, assessments, and/or local improvement districts.
- Allowing Transfer of Development Rights.
- Promoting economies of scale through cooperative resource management and marketing for small landowners.
- Allowing expedited permit review processes for forestry-related activities that involve stewardship, habitat restoration, and/or resource management plans that include BMPs.

- Working with state agencies and Tribal governments to expedite regulatory review and technical assistance to cooperating landowners.
- Providing incentives for consolidation of non-conforming and non-buildable lots.
- Requiring subdivision site designs to minimize conflict with nearby forestry activities.
- Encouraging fee-simple purchase, less than fee-simple purchase, purchase with leaseback, or other methods to acquire forest land.

3.2.5. Mineral Resource Lands

The intent of the mineral resource lands goals and policies is to direct the use of lands containing commercial quality mineral resource deposits. The Kitsap County Comprehensive Plan identifies mineral resource lands with the Mineral Resources designation, implemented by a zone overlay.

- **Mineral Resource Overlay.** The intent of the Mineral Resource overlay is to protect sand, gravel, and rock deposits identified as significant. Commercial-quality deposits should be recognized as non-renewable resources and managed accordingly.

Goal 11. Discourage inappropriate land uses in the vicinity of commercial quality mineral deposits in the County through regulatory means.

Policy RL-48 Conduct a comprehensive geologic study to identify commercial quality deposits, establish criteria so that the County may designate deposits of long-term commercial significance, recognizing that commercial quality aggregates, sand, rock and metal deposits are non-renewable resources. Such a study should be undertaken in conjunction and cooperation with other geologic studies, such as the study of aquifers, and shared with property owners.

Policy RL-49 Designate as mineral resource sites lands that have valid surface mining permits through DNR, and sites identified by individual property owners, and apply the Mineral Resource overlay to these sites. This overlay permits mineral resource extraction activities and accessory supporting industrial uses and discourages land uses that would impede such activities.

Policy RL-50 Allow residential uses in the Mineral Resource overlay, at a maximum density of 1 du/20 ac.

Policy RL-51 Allow industrial uses associated with mineral resource extraction and forestry activities in the Mineral Resource overlay.

Policy RL-52 Encourage the preservation of lands identified as mineral deposits.

Policy RL-53 Discourage the conversion of identified aggregate lands to uses incompatible with extraction activities.

Policy RL-54 Use the Mineral Resource overlay to serve as interim protection of mineral resource areas until a comprehensive geologic study is undertaken to determine the extent of additional mineral deposits.

Policy RL-55 Prohibit residential building in the rural areas adjacent to Mineral Resource zoned lands within 100 feet from any property line unless the applicant for a building permit (1) acknowledges the possible occurrence of resource activity on the adjacent property, and (2) waives any damages which might occur to the residence or occupants because of such activities which are conducted within generally accepted management practices and in compliance with applicable laws which regulate such activities. Such waivers must be filed with the County Auditor.

Policy RL-56 Recognize those sites with valid surface mining permits from the State DNR as well as those that have been identified by the property owner as mineral resource lands. Mineral Resource overlay lands that currently appear on the Comprehensive Plan Land Use Map which have been identified by the property owner must submit a geologic study, conducted by a qualified geologist, pertaining to the presence of commercial quality mineral deposits by the second annual review of the plan in order to keep such a designation. Resource designations for lands for mineral resource use may only be added or deleted during the annual review of the adopted Comprehensive Plan. Any additions or deletions will be based upon submission of a geologic study, conducted by a qualified geologist, pertaining to the presence, or lack of commercial quality mineral deposits.

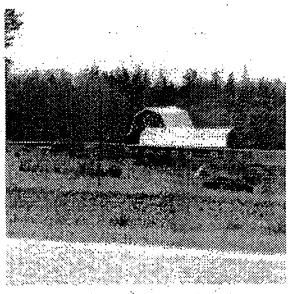
Goal 12. Encourage the reclamation of exhausted mineral extraction sites and their conversion into viable uses consistent with the Kitsap County Comprehensive Plan.

Policy RL-57 Prohibit development under the underlying zoning of a mineral resource reclamation site until completion of the reclamation.

Policy RL-58 Coordinate with the DNR to ensure that future reclamation plans are consistent with the comprehensive planning for the site and surrounding area, as well as any permits issued by the DNR.

3.2.6. Agricultural Lands

Agricultural land is defined by the GMA as "land primarily devoted to the commercial production of horticulture, viticulture, floriculture, dairy, apiary, vegetable, or animal products or of berries, grain, hay, straw, turf, seed, Christmas trees, or livestock, and that has long-term commercial significance for agricultural production" (WAC 365-190-050). Long-term commercial significance "includes the growing capacity, productivity and soil composition of the land for long-term commercial production, in consideration with the land's proximity to population areas, and the possibility of more intense uses of the land."



In 2002, only 4,102 acres of property were used as harvested farmland within Kitsap County according to the United States Department of Agriculture (USDA), National Agricultural Statistics Service. This means that approximately 0.1% of Washington State's agricultural land is located within Kitsap County. Less than 4% of the County's total area comprises prime agricultural soils.

Goal 13. Recognize agricultural activities without designating land specifically for such uses.

Policy RL-59 Recognize that Kitsap County currently has no lands specifically designated and zoned for long-term commercially significant agricultural use.

Policy RL-60 Encourage and allow farming and agricultural activities in the designated rural areas of the County and consider them an important rural activity.

3.2.7. Rural Wooded Policies

Rural Wooded areas are considered a rural land use designation in the Plan (Section 3.2.1). The goal and policies in this section are intended to recognize and preserve forestry as the primary land use while allowing for innovative residential uses such as rural clustered housing. These lands are important for their rural character, economic values, natural resource uses, ecological functions and values, and public benefits. This designation is intended to provide environmental protection, facilitate the creation of open space corridors, and promote residential development that is sensitive to the physical characteristics of the land.

The goals for this designation are:

- Provide ongoing opportunities for continued management of these lands for forestry, open space, or other compatible uses to promote a large-scale, connected landscape. These lands are important for their rural character, economic values, natural resource uses, ecological functions and values, and public benefits.
- Preserve rural character, allow a variety of levels of rural residential densities, and encourage innovative rural planning techniques, while meeting the intentions and requirements of GMA.
- Provide a high standard of environmental protection, facilitate the creation of open space corridors, minimize shoreline impacts, and promote residential development that is sensitive to the physical characteristics of the land.

Goal 14. Implement the Rural Wooded Incentive Program for clustering of limited residential development in the rural area.

Policy RL-61 Consider the following issues when implementing the Rural Wooded Incentive Program:

- Providing ongoing opportunities for large- and small-scale timber management;
- Preserving rural character through a mix of rural densities, innovative rural planning, and clustered development;
- Protecting the natural environment and promoting an interconnected system of open space in the rural areas;
- Providing appropriate buffer widths from property boundaries, existing and potential resource uses, other residential development, rights-of-way and other appropriate factors;
- Encouraging design that preserves environmentally sensitive areas and harmonizes with topography and landscape features;
- Encouraging design that maintains or enhances the predominant rural character, scenic views, and open space corridors; and
- Limiting the use of clustering through limited phases and bi-annual monitoring, such that clustering does not become the predominant pattern of development throughout the rural area.

Policy RL-62 Provide development regulations specifying the base residential density of lands zoned Rural Wooded at one dwelling unit per 20 acres, and allow limited

clustered residential development to be developed at greater density, subject to the following criteria:

1. The portion of the property site identified for clustered residential development may be developed for residential uses provided that clustered residential development shall comprise less than one quarter of the portion of the total site utilized to establish residential base density (or a maximum of 25% of the total site area).

2. The portions of the property not within a clustered residential development but utilized to establish base residential density would be placed in a combination of:

   a. "Wooded Reserve" where forestry would be permitted and encouraged pursuant to the State Forest Practices Act. Properties in Wooded Reserve may not be developed or subdivided earlier than 40 years.

   b. "Permanent Open Space" where an area, not included within a Wooded Reserve, is permanently reserved as open space through conservation easements or other sufficient mechanisms, although it may be used for the limited forestry, recreational, and community utility uses.

3. The residential density incentive in any development is to be directly related to the ratio of "Permanent Open Space" to "Forest Reserve." The greater incentives are proposed for the developments with the greater proportion of "Permanent Open Space."

Policy RL-63 Implement a system to monitor the effectiveness of the Rural Wooded Incentive Program, and the compatibility and impacts of land uses in Rural Wooded zone, in cooperation with landowners, stakeholders, and others. Monitoring will be conducted on a bi-annual basis and presented in a report to the Board of County Commissioners.

Policy RL-64 Encourage DNR to continue to act as lead agency for forestry practices on Rural Wooded lands.

Policy RL-65 Encourage design standards, development practices, and private covenants for subdivisions in the rural area that do not include extensive paved surfaces; marked changes in grade from predevelopment site conditions; elaborate entrance signs; extensive lawns and other landscaping; regulation of house color, design, or other features typical of urban or suburban residential development.

3.2.8. Transfer of Development Rights

Transfer of Development Rights (TDR) is a market-based tool for conserving land or structures determined to have a public benefit. It complements other incentive-based tools, land or easement acquisition programs, and other regulatory techniques intended to achieve selected growth management objectives. The use of TDR is authorized by GMA in RCW 36.70A.090, as follows:

> A comprehensive plan should provide for innovative land use management techniques, including, but not limited to, density bonuses, cluster housing, planned unit development, and the transfer of development rights.

See Chapter 2, *Land Use,* for policies relating to urban areas of the county, where TDR-receiving sites would be located.

Goal 15. Promote the TDR from land valuable to the public, especially rural and resource areas, to urban areas, in order to preserve the rural environment, encourage retention of rural resource-based uses, and avoid urban service demands in the rural area.

Policy RL-66 Continue efforts to implement an effective and focused TDR program, as an innovative means to preserve private lands with countywide public benefit, to encourage higher densities in appropriate areas, and to reduce residential development capacity in natural resource areas.

Policy RL-67 Consider the reduction of development in the rural area by encouraging the TDR from private rural lands into the UGA as the top priority of the voluntary TDR Program.

Policy RL-68 Support and work actively to facilitate the transfer of rural development rights to:

a. Preserve the rural environment, encourage retention of resource-based uses, and reduce service demands in the rural area.

b. Provide protection to significant natural resources.

c. Increase the regional open space system.

Policy RL-69 Promote transfers of development rights by facilitating the transfers from private property owners with sending sites to property owners with receiving sites, and

by working with cities to develop interlocal agreements that encourage transfers into cities and within adopted appropriations.

Policy RL-70 Require private properties qualified as sending sites to provide a protected area of sufficient size to provide public benefit. Priority candidates for sending sites are:

a. All Rural Lands.

b. Lands contributing to the protection of significant landscape or habitat features.

c. Lands contributing to the protection of environmentally sensitive features including but not limited to aquifer recharge areas.

d. Lands that contribute to the preservation of scenic views or maintaining the rural character or that are suitable for inclusion in and provide important links to the regional open space system.

Policy RL-71 Consider the following as candidates for TDR receiving sites:

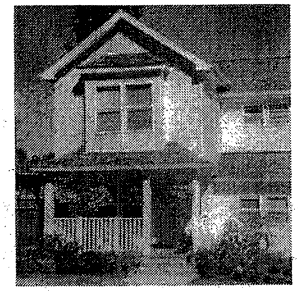
a. Unincorporated UGAs and incorporated cities may receive transfers of development rights.

b. Preferences should be given for locations within designated urban centers, or adjacent to transit stations and park and ride lots. Transfers to incorporated areas shall be detailed in an interlocal agreement between the city and County.

This page intentionally blank.

Housing Chapter Relationship to Vision

Vision	Housing Chapter Concepts
County Government. County government that is accountable and accessible; encourages citizen participation; seeks to operate as efficiently as possible; and works with citizens, governmental entities and tribal governments to meet collective needs fairly while respecting individual and property rights.	▪ Provide policy direction to facilitate adequate housing for all economic segments of the county. ▪ Provide intergovernmental coordination to make the most efficient use of resources to provide housing.
Natural Environment. Natural ecosystems – including interconnected wetlands, streams, wildlife habitat, and water quality – that are rehabilitated, protected and enhanced and that allow for flexible and innovative development to meet environmental and growth goals. In developed areas, the growth pattern supports conservation of non-renewable energy and minimizes impacts on air quality and climate.	▪ Avoid concentrating housing in environmentally sensitive areas. ▪ Protect natural systems adequately to ensure long-term viability of groundwater supplies and maintain a high quality of life. ▪ Allow flexible development standards for housing being proposed in the vicinity of critical areas to reach both goals of meeting housing targets and environmental protection. ▪ Allow diversity of housing stock to include provision of energy efficient housing types that conserve non-renewable energy and helps minimize impact on air quality and climate.
Housing. Residential communities that are attractive, affordable, diverse, and livable supported by appropriate urban or rural services. A variety of housing choices are available, meeting a full range of resident income levels and preferences. Residents are able to walk between neighborhoods and to community destinations.	▪ Develop design guidance to create and maintain attractive housing stock. ▪ Encourage integration of affordable housing in new development. ▪ Promote a diversity of housing types. ▪ Locate housing in areas with adequate public facilities and services.
Open Space. An open space network – including greenbelts, wildlife habitat, forested areas, and active and passive parks – that is accessible, inter-connected, provides opportunities for recreation and defines and distinguishes urban and rural areas.	▪ Encourage developer provision of amenities, including open space, in association with new housing. ▪ Locate housing near an open-space network.
Urban Areas. Healthy urban areas that are the region's centers for diverse employment and housing opportunities, all levels of education, and civic and cultural activities.	▪ Promote the development of housing that contributes to healthy urban areas that attract existing and future residents.
Rural Areas. Rural areas and communities where unique historical characters, appearances, functions, and pioneering spirits are retained and enhanced. Natural resource activities, such as forestry, agriculture, and mining continue to contribute to the rural character and economy. Rural recreation opportunities are enhanced, including equestrian facilities, trails, and others.	▪ Provide adequate housing for growth anticipated in rural areas.
Cultural Resources. Historical and archaeological resources that are recognized and preserved for future generations.	▪ Provide policy guidance and assistance to property owners of historical and culturally significant housing to encourage preservation of those resources within the county.
Economic Development. A stable, prosperous and diversified economy that provides living-wage jobs for residents, supported by adequate land for a range of employment uses and that encourages accomplishment of local economic development goals.	▪ Encourage housing growth and rehabilitation sufficient to meet the needs of the growing Kitsap County economy.
Public Services and Facilities. Public services and facilities – including, but not limited to, parks and recreation, law enforcement, fire protection, emergency preparedness, water/sewer, roads, transit, non-motorized facilities, ferries, stormwater management, education, library services, health and human services, energy, telecommunications, etc. – are provided in an efficient, high-quality and timely manner by the County and its partner agencies. Public services and facilities are monitored, maintained and enhanced to meet quality service standards.	▪ Encourage growth of housing in areas with sufficient public facilities and capacity in place. ▪ Require upgrades to public services and facilities where new housing is planned and services and facilities will not meet standards with new growth.
Transportation. An efficient, flexible, and coordinated multi-modal transportation system – including roads, bridges and highways, ferries, transit, and non-motorized travel – that provides interconnectivity and mobility for county residents and supports our urban and rural land use pattern.	▪ Ensure that housing is planned in areas where transportation capacity exists or is planned. ▪ Provide an interconnected transportation system, including facilities for cars, pedestrians, bicycles, and transit users, in areas with growth in housing units.



Chapter 6. Housing

6.1. Plan Context

Kitsap County has experienced a steady growth in population over the past 25 years largely because of its geographic proximity to the largest population and employment centers in the state. The county also has the third greatest population density among Washington counties because it is one of the smallest counties in area. This increase in population has created a corresponding increase in housing demand in Kitsap County.

Kitsap County's housing stock remains predominantly single-family detached housing with the largest amount of multi-family housing in Bremerton and unincorporated Kitsap County. Statistics from the U.S. Census bureau comparing housing stock between the 1990 and 2000 censuses show that most Kitsap County residents are homeowners. U.S. Census and ongoing real estate research efforts show that the price of owning a home is rising rapidly. The recent boom in real estate prices is imposing even more of a strain on affordable housing and home ownership opportunities within Kitsap County. Affordable housing for first time homebuyers, in particular, is declining in Kitsap County. The county has a large percentage of renters and homeowners earning less than the county median and paying more than 30% of their income for housing, meeting the definition of cost-burdened households.

Kitsap County is projected to gain another 100,000 residents by 2025, for a total population of 331,571 persons. This implies a need for approximately 35,000 new housing units by 2025. From 2000 to 2025, housing in the unincorporated portions of the county grew at a faster rate than housing in incorporated jurisdictions. Most future housing needs, however, are anticipated to occur in cities and the unincorporated urban growth areas (UGAs). For unincorporated areas, estimated housing demand is highest in the Silverdale, Central Kitsap, Port Orchard, and ULID #6 (McCormick Woods) UGAs.

More detailed information about housing conditions, trends and forecasts is provided in Section 3.2.3, *Population, Housing, and Employment*, of Volume II of this document.

6.2. Housing Goals and Policies

Goal 1. Kitsap County will strive to provide opportunities for housing that is within the financial means of its citizens, which includes meeting social service needs and providing a reasonable opportunity to live and work in their community.

Policy HS-1 Ensure that all residents of Kitsap County have an equal and fair opportunity to obtain adequate, safe and sanitary housing suitable to their needs and financial resources regardless of race, religion, gender, sexual orientation, age, national origin, family status, income or disability.

Policy HS-2 Actively pursue job creation and economic diversification strategies that provide better-paying, secure jobs capable of creating new employment opportunities so that housing becomes affordable and available to increased numbers of county residents.

Policy HS-3 Support a continuum of housing and related services for homeless people and forestall growth in homelessness through prevention activities.

Policy HS-4 Promote a continuum of housing and related services for people with special needs, such as frail elderly, mentally and physically disabled persons, people living with AIDS and recovering substance abusers.

Policy HS-5 Fully utilize federal and state housing programs to meet the needs of low- and moderate-income households, and the special needs population that cannot be served by the private sector.

Goal 2. Utilize county resources to formulate and implement strategic policies that improve the affordability and availability of housing for all of its residents.

Policy HS-6 Ensure that a broad range of housing types are available through innovative planning, efficient and effective administration of land and building codes and financial assistance.

Policy HS-7 Develop and administer land use plans and policies that will effectively ensure sufficient land is available for housing development including government-assisted housing, housing for low-income families, multi-family housing, group homes, and foster care facilities.

Policy HS-8 Encourage and facilitate development of a variety of housing types, including single-family residential, multi-family, mobile, modular, and manufactured

homes. Doublewide mobile, modular and manufactured homes should be considered a single-family dwelling.

Policy HS-9 Encourage innovative land use practices and development standards that will have the effect of minimizing housing costs.

Policy HS-10 Consider ordinance provisions that would encourage a percentage of low- or moderate-income housing units in all future housing developments.

Policy HS-11 Permit and encourage the development of residential accessory dwelling units (mother-in-law apartments) in all residential zones with sufficient public facilities to support such development. Subject accessory dwelling units to development standards and design guidance that facilitates their compatibility with existing neighborhood character.

Goal 3. Formulate and implement innovative development regulations and design standards which promote and encourage a sense of neighborhood and community.

Policy HS-12 Identify and implement programs to preserve or rehabilitate neighborhoods and areas that are showing signs of deterioration.

Policy HS-13 Pedestrian pathways should be provided that link residential areas with schools, recreational, shopping and employment areas in urban areas.

Goal 4. Shorten the time and costs associated with processing and approving proposed development while ensuring housing and design standards suitable for maintaining an efficient, attractive and safe housing supply.

Policy HS-14 Identify and study the cost-effectiveness of incentives that are reasonably likely to result in an increased supply of housing suitable to the needs and income of all County residents.

Policy HS-15 Develop and implement available options that would permit increased density for developments that include set-asides for multi-purpose housing or low-cost, subsidized housing and that encourage densities supportive of cost-effective public facilities.

Policy HS-16 Encourage integrating State Environmental Policy Act (SEPA) review and permitting requirements into countywide land use planning and permitting procedures to improve efficiency of development review.

Policy HS-17 Streamline the permitting system by implementing policies and procedures that reduce the length of time involved in plan approval.

Policy HS-18 Implement flexible planning standards that encourage alternative waste treatment plans and other innovative technologies.

Policy HS-19 Implement an "Ombudsman" approach to plan approval and project development.

Policy HS-20 Reduce fees for developments that are providing affordable housing.

Policy HS-21 Promote incentives for construction of affordable and special needs housing in Kitsap County development regulations. Consider incentives suggested in RCW 36.70A.540, such as:

- Bonus density within urban growth areas.
- Height and bulk bonuses.
- Fee waivers or exemptions.
- Parking requirement reductions.
- Expedited permitting conditioned on provision of low-income housing.
- Mixed use projects.

Consider additional incentives such as:

- Lower utility hook-up fees and rates.
- Smaller lot sizes.
- Zero lot line design.

Goal 5. Cooperate with other jurisdictions and entities to plan and develop low- and moderate-income housing.

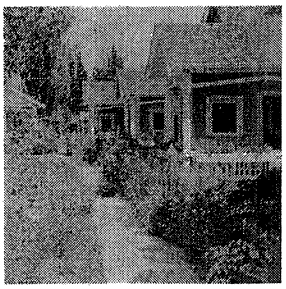
Policy HS-22 Support and assist existing programs that provide and develop low- and moderate-income housing.

Policy HS-23 Actively participate in identifying, evaluating and adopting regional fair share housing goals.

Policy HS-24 Encourage and support efforts of nonprofit organizations and "self help" housing groups (e.g., Habitat for Humanity) to develop housing for low- and moderate-income households.

Policy HS-25 Develop a set of priority housing measures to monitor countywide on an annual basis as a means of evaluating effectiveness of housing goals, policies, and implementation measures (see Implementation Chapter).

Goal 6. Assist first-time homebuyers to become homeowners.



Policy HS-26 Study the feasibility of establishing a low-interest loan program or other financial assistance programs conducive to providing first-time homebuyers an opportunity to achieve home ownership.

Policy HS-27 Study the feasibility and cost-effectiveness of providing housing subsidies to targeted groups of first-time homeowners, such as public safety workers (police, fire and medical) and teachers whose presence in the local community serves a vital public purpose.

Goal 7. Provide on-going information and assistance to existing homeowners so that housing properties are well-maintained and enhance the neighborhood in which they are located.

Policy HS-28 Support a "self help" housing maintenance and rehabilitation program for existing low- to moderate-income homeowners.

Policy HS-29 Provide policy guidance and assistance to property owners of historical and culturally significant housing to encourage preservation of those resources within the county.

Goal 8. Ensure that future residential development carefully considers and protects natural ecosystems including inter-connected wetlands, streams, wildlife habitat, and water quality that have been rehabilitated, protected and enhanced.

Policy HS-30 Develop and implement flexible development standards for housing being proposed in the vicinity of critical areas to meet both goals of housing targets and environmental protection.

Policy HS-31 Encourage a diversity of housing stock capable of providing energy efficient housing types that conserve non-renewable energy and help minimize impact on air quality and climate.

App. 1
Vol. II
Environmental Impact Statement

www.MyKitsap.org

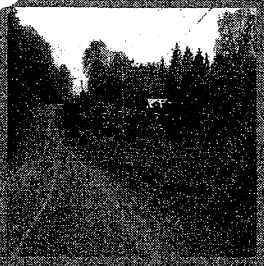
Kitsap County

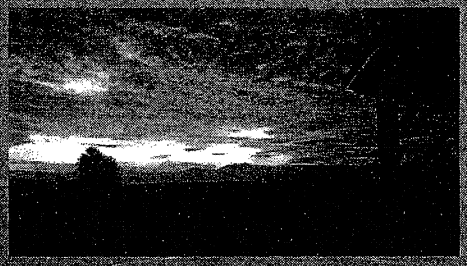
20-YEAR COMPREHENSIVE PLAN UPDATE

INTEGRATED COMPREHENSIVE PLAN AND ENVIRONMENTAL IMPACT STATEMENT

Volume II:
Final EIS

December 2006





KITSAP COUNTY 18 57 WASHINGTON

AR 63.1
Vol. II FEIS

Table of Contents

Chapter 1. Summary 1-1

1.1. Purpose of Proposed Action 1-1
1.2. State Environmental Policy Act and Growth Management Act Process. 1-2
1.3. Public Involvement 1-2
1.4. Proposed Action, Alternatives, and Objectives 1-3
1.4.1. Objectives 1-3
1.4.2. Proposed Action and Alternatives 1-4
1.5. Major Issues, Significant Areas of Controversy and Uncertainty, and Issues to be Resolved 1-13
1.6. Summary Matrix of Impacts and Mitigation Measures 1-14
1.7. Natural Environment 1-15
1.7.1. Earth 1-15
1.7.2. Air Quality 1-17
1.7.3. Water Resources (Surface and Ground) 1-20
1.7.4. Plants and Animals 1-26
1.8. Built Environment 1-33
1.8.1. Land and Shoreline Use 1-33
1.8.2. Relationship to Plans and Policies 1-40
1.8.3. Population, Housing, and Employment 1-46
1.8.4. Cultural Resources 1-52
1.8.5. Aesthetics 1-54
1.8.6. Transportation 1-62
1.8.7. Noise 1-67
1.9. Built Environment: Public Services and Utilities 1-71
1.9.1. Public Buildings 1-71
1.9.2. Fire Protection 1-73
1.9.3. Law Enforcement 1-75
1.9.4. Parks and Recreation 1-77
1.9.5. Schools 1-80
1.9.6. Solid Waste 1-84
1.9.7. Wastewater 1-85
1.9.8. Stormwater 1-89
1.9.9. Water 1-91
1.9.10. Energy and Telecommunications 1-93

1.9.11.Library 1-95

Chapter 2. Alternatives 2-1

2.1. Introduction 2-1
2.2. Purpose of Plan 2-1
2.3. Description of the Plan Area 2-2
2.4. Environmental Review 2-3
2.4.1. Purpose of this FEIS 2-3
2.5. GMA and SEPA Process 2-5
2.5.1. Integrated Plan and EIS 2-5
2.5.2. Public Review Opportunities 2-6
2.5.3. Prior Environmental Review 2-10
2.5.4. Level of Analysis 2-11
2.5.5. Phased Review 2-12
2.5.6. Future Use of Document 2-12
2.5.7. Silverdale Sub-Area Mixed Use and Residential SEPA Exemption 2-12
2.6. Development of Alternatives 2-12
2.6.1. Planning Process and Development of Alternatives 2-12
2.6.2. Proposal Objectives 2-18
2.6.3. Description of Alternatives 2-19

Chapter 3. Affected Environment, Significant Impacts, and Mitigation Measures 3-1

3.1. Natural Environment 3.1-1
3.1.1. Earth 3.1-1
3.1.2. Air Quality 3.1-2
3.1.3. Water Resources (Surface and Ground) 3.1-3
3.1.4. Plants and Animals 3.1-6
3.2. Built Environment: Land Use and Transportation 3.2-1
3.2.1. Land and Shoreline Use 3.2-1
3.2.2. Relationship to Plans and Policies 3.2-8
3.2.3. Population, Housing, and Employment 3.2-11
3.2.4. Cultural Resources 3.2-16
3.2.5. Aesthetics 3.2-16
3.2.6. Transportation 3.2-19
3.2.7. Noise 3.2-36
3.3. Built Environment: Public Services and Utilities 3.3-1
3.3.1. Public Buildings 3.3-1

3.3.2. Fire Protection....3.3-2
3.3.3. Law Enforcement....3.3-3
3.3.4. Parks and Recreation....3.3-5
3.3.5. Schools....3.3-6
3.3.6. Solid Waste....3.3-9
3.3.7. Wastewater/Sewer....3.3-9
3.3.8. Stormwater....3.3-11
3.3.9. Water Supply....3.3-12
3.3.10. Energy and Telecommunications....3.3-13
3.3.11. Libraries....3.3-14
3.4. Mitigation Measures....3.4-1

Chapter 4. Clarifications or Corrections to DEIS Information....4-1

Chapter 5. Comments and Responses....5-1

5.1. Government Agencies, Tribes, Special Districts, and Utilities....5-2
5.2. Citizens, Businesses and Property Owners....5-28
5.2.1. North Kitsap....5-28
5.2.2. Central Kitsap....5-46
5.2.3. South Kitsap....5-58
5.2.4. Unspecified....5-100
5.3. Interest Groups....5-104
5.4. Public Hearings....5-153
5.4.1. September 18, 2006....5-153
5.4.2. September 20, 2006....5-156
5.4.3. September 21, 2006....5-162
5.4.4. October 23 and October 25, 2006....5-167

Chapter 6. Acronyms, Abbreviations and References....6-1

6.1. Acronyms and Abbreviations....6-1
6.2. References....6-7
Chapter 1 Summary and Chapter 2 Alternatives....6-7
Chapter 3 Affected Environment, Significant Impacts, and Mitigation Measures....6-8

List of Tables

Table 1.4-1. Alternatives Comparison....1-5

Table 1.4-2. Overview of Alternatives: Unincorporated Kitsap County....1-9

Table 1.4-3. Population Allocation and Capacity of UGAs under Each Alternative....1-11

Table 2.5-1. Kitsap County Integrated SEPA / GMA Plan and DEIS....2-6

Table 2.6-1. Kitsap County Population Projections: 2000–2025....2-15

Table 2.6-2. Countywide Employment Forecast....2-17

Table 2.6-3. Alternatives Comparison....2-21

Table 2.6-4. Overview of Alternatives: Unincorporated Kitsap County....2-25

Table 2.6-5. Population Allocation and Capacity of UGAs under Each Alternative....2-27

Table 2.6-6. Summary of Upzones, UGA Boundaries, and Land Use Reclassification Requests under the Alternatives....2-29

Table 2.6-7. Employment Capacity of Alternatives: Countywide Totals....2-30

Table 2.6-8. Future Land Use Acreage of Alternatives....2-30

Table 2.6-9. Consolidated Comprehensive Plan Land Use Map Designations....2-31

Table 2.6-10. Potential Regulation Topics – Address in 10-Year Update/EIS Analysis....2-33

Table 3.2-1. Summary of Land Use Designations for the Preferred Alternative and Alternative 2....3.2-3

Table 3.2-2. Developable Land under the Preferred Alternative....3.2-5

Table 3.2-3. Preferred Alternative Population Accommodation....3.2-12

Table 3.2-4. Estimated Owner and Renter Housing in UGAs by Alternative....3.2-13

Table 3.2-5. Preferred Alternative Housing Need and Demand Comparison....3.2-14

Table 3.2-6 Summary of Countywide Travel Statistics....3.2-20

Table 3.2-7. Projected Roadway Segment Deficiencies by 2025....3.2-21

Table 3.2-8. Projected Intersection Deficiencies by 2025....3.2-22

Table 3.2-9. Projected Silverdale Roadway Segment Deficiencies by 2025....3.2-22

Table 3.2-10. Projected Silverdale Intersection Deficiencies by 2025....3.2-22

Table 3.2-11. Projected State Highway Deficiencies by 2025....3.2-23

Table 3.2-12. Locations of Recommended Roadway Improvements by 2025....3.2-25

Table 3.2-13. Locations of Recommended Roadway Improvements in Silverdale by 2025 .....3.2-27

Table 3.2-14. Summary of Cost of Roadway Improvements Recommended by 2025 .....3.2-28

Table 3.2-15. Summary of Cost of Roadway Improvements in Silverdale Sub-Area Recommended by 2025.....3.2-28

Table 3.2-16. Summary of Revenue Projected through 2025.....3.2-29

Table 3.2-17. Summary of Revenue Shortfall through 2025.....3.2-29

Table 3.2-18. Potential Strategies to Achieve Balance among Transportation LOS, Financing, and Land Use 3.2-30

Table 3.3-1. Preferred Alternative—Government Facilities LOS Comparison 3.3-2

Table 3.3-2. Preferred Alternative Estimated Fire Unit LOS and Need.....3.3-3

Table 3.3-3. Preferred Alternative Law Enforcement LOS Comparison 3.3-4

Table 3.3-4. Level of Service and Facilities Needs for Parks, Open Space, and Trails under the Preferred Alternative.....3.3-5

Table 3.3-5. Estimated Enrollment and Capacity in Affected School Districts — Preferred Alternative and Alternative 2.....3.3-7

Table 3.3-6. Estimated Enrollment and Capacity in the Silverdale Sub-Area —Preferred Alternative and Alternative 2.....3.3-9

Table 5.1-1. Agency Letters.....5-2

Table 5.2-1. North Kitsap Citizen, Business and Property Owner Comment Letters 5-28

Table 5.2-2. Central Kitsap Citizen, Business and Property Owner Comment Letters 5-46

Table 5.2-3. South Kitsap Citizen, Business and Property Owner Comment Letters 5-58

Table 5.2-4. Kitsap Citizen, Business and Property Owner Comment Letters: Unspecified Locations5-100

Table 5.3-1. Interest Group Comment Letters: Unspecified Locations 5-105

List of Figures

Figures follow the end of their respective chapters

Figure 2.1-1 Base Map—Incorporated Cities, UGAs, LAMIRDs, Tribal and Military Lands

Figure 2.6-1. Draft Comprehensive Plan Map—Preferred Alternative North

Figure 2.6-2. Draft Comprehensive Plan Map—Preferred Alternative South

Figure 2.6-3. Changes to Future Land Use—Preferred Alternative North

Figure 2.6-4. Changes to Future Land Use—Preferred Alternative South

Figure 2.6-5. Differences between Preferred Alternative and Alternative 2—North

Figure 2.6-6. Differences between Preferred Alternative and Alternative 2—South

Figure 2.6-7. Comprehensive Plan Land Use Map—North

Figure 2.6-8. Comprehensive Plan Land Use Map—South

Figure 3.2-1 Development Capacity—Preferred Alternative North

Figure 3.2-2 Development Capacity—Preferred Alternative South

Figure 3.2-3 Projected Deficient County Roadway Segments—Preferred Alternative

Figure 3.2-4 Projected Deficient State Roadway Segments—Preferred Alternative

List of Appendices

Appendix A	Public Involvement Summary
Appendix B	Updated Land Capacity Analysis for Preferred Alternative
Appendix C	Reasonable Measures
Appendix D	Methods
Appendix E	Transportation
Appendix F	Port Orchard/South Kitsap Sub-Area Plan/EIS Final Response to Comments

Chapter 2. Alternatives

2.1. Introduction

The Proposed Action is the 10-Year Update of Kitsap County's Comprehensive Plan (10-Year Update) in accordance with the review cycle required by the Growth Management Act (GMA). There are several alternative approaches that the County may apply to meet its goal of completing its 10-Year Update consistent with the community vision and GMA requirements. The County considered three alternatives in the Draft Environmental Impact Statement (DEIS), and following public review, selected and modified one of the alternatives to be a Preferred Alternative. This chapter of the Final Environmental Impact Statement (FEIS) presents a description of the four alternatives, particularly the Preferred Alternative, and provides background on the environmental review process, public involvement opportunities, and other information.

2.2. Purpose of Plan

The County is updating its current Comprehensive Plan (Plan), which was adopted in 1998 and most recently updated in December 2005. The Plan includes policies and plans to implement the County vision for the future and to direct public investment and other efforts to implement the vision. The 10-Year Update would, upon adoption, achieve the following objectives.

- Revise the Plan to extend its planning horizon from 2005 to 2025.
- Address population growth forecasts from the State of Washington as required by GMA. The current Plan is designed to accommodate projected population and employment growth from 1998 to 2017. The 10-Year Update would accommodate projected population growth from 2005 to 2025.
- Assure continued compliance with Kitsap County Countywide Planning Policies (CPPs).
- Revise Urban Growth Area (UGA) boundaries that direct where urban land uses and urban public services may occur.

- Amend Plan Land Use Map designations that direct zoning regulations to accommodate population and employment forecasts and to meet other community objectives for management of growth.
- Incorporate approved changes to all chapters of the Plan, as well as the Capital Facilities Plan (CFP in Appendix A of Volume I), to accommodate population and employment growth.
- Refine policies on population and employment growth, land use, housing, capital facilities, utilities, transportation, economic development, natural environment, and rural and resource land use for the unincorporated areas of Kitsap County.
- Include additional or updated information and address changes in the county since the Plan's adoption in 1998.

2.3. Description of the Plan Area

Kitsap County is located in the Puget Sound region of western Washington. The county lies in the eastern portion of the Olympic Peninsula and includes the Kitsap Peninsula as well as Bainbridge Island. Kitsap County encompasses approximately 393 square miles of land and has an estimated population of approximately 240,400 (Washington State Office of Financial Management 2005). Please see Figure 2.1-1, *Base Map*.

The 10-Year Update, like the current Plan, addresses all unincorporated portions of Kitsap County, encompassing a total of approximately 336 square miles and a population of approximately 167,900 (Washington State Office of Financial Management 2005).

Land in the unincorporated county is generally designated as either Urban or Rural. Urban land, designated as UGAs in the Plan, is characterized by urban development where existing public facility and service capacity are available, or secondarily where public or private facilities or services are planned or could be provided in an efficient manner. Urban areas comprise cities totaling approximately 56.7 square miles (Bainbridge, Poulsbo, Bremerton, and Port Orchard) and unincorporated UGAs totaling an additional 38.4 square miles. Three cities, Poulsbo, Bremerton, and Port Orchard, are surrounded by future UGAs. All of these UGAs are listed below.

- Kingston
- Poulsbo
- Silverdale
- Central Kitsap
- East Bremerton
- West Bremerton

- Gorst
- Port Orchard
- ULID #6
- South Kitsap Industrial Area (SKIA)

Outside of the urban areas, rural lands include rural residential, rural industrial, and rural commercial areas; undeveloped areas; and lands for forestry, mining, and agriculture[1].

The incorporated cities of Bremerton, Port Orchard, Poulsbo, and Bainbridge Island are responsible for maintaining their own GMA comprehensive plans, which must be consistent with the County's Plan. The County's planning process, however, includes consultation and coordination with these jurisdictions.

Please see Figure 2.1-1 for a general map of the incorporated and unincorporated areas, including the current unincorporated UGA boundaries.

2.4. Environmental Review

2.4.1. Purpose of this FEIS

Level of Review

The DEIS and FEIS documents serve different purposes; each is described below.

The DEIS addressed elements of the natural and built environment. It compared impacts of and mitigation for the "no action" alternative as well as two other alternative growth scenarios. With a required public comment period, it also provided a vehicle for public input in decisions relative to planning and development in the County. Environmental review in the Draft EIS was intended to help County decision makers identify a recommended land use alternative and associated Comprehensive Plan amendments for analysis in the Final EIS.

The role of this Final EIS is to identify and analyze the Board of County Commissioner's (BOCCs) Preferred Alternative in terms of environmental effects. For comparison, results of the Preferred Alternative are described in the context of the three EIS Alternatives in Chapter 1. Chapter 3 provides a brief focused review of the Preferred Alternative itself. Other key purposes of FEIS include responding to public comments made on the DEIS, and providing corrections to

[1] Agriculture primarily consists of hobby farms. The county does not contain commercially significant agricultural operations.

the DEIS analysis as needed. Consistent with WAC 197-11-230(5), the FEIS will be considered by the County simultaneously with the Final Plan for approval.

Similar to the DEIS that addressed the three draft alternatives, this FEIS addresses two levels of analysis for the Preferred Alternative: a broad countywide analysis of potential impacts associated with proposed amendments to the Plan, and a more focused analysis of the Silverdale UGA. See Section 2.5.4, *Level of Analysis,* for more information.

Environmental Topics

Based on a scoping process described in the DEIS, this FEIS analyzes, at a programmatic level, the potential impacts on the following elements of the environment identified through the scoping process.

- Earth
- Air quality
- Water resources (surface and ground)
- Plants and animals
- Land and shoreline use
- Relationship to plans and policies
- Population, housing, and employment
- Cultural resources
- Aesthetics
- Transportation
- Noise
- Public buildings
- Law enforcement
- Fire protection
- Parks and recreation
- Water supply
- Wastewater/sewer
- Stormwater
- Solid waste
- Energy and telecommunications
- Libraries

2.5. GMA and SEPA Process

2.5.1. Integrated Plan and EIS

WAC 197-11-210 authorizes GMA counties and cities to integrate the requirements of the SEPA and GMA. The goal is to ensure that environmental analysis under SEPA occurs concurrently with, and as an integral part of, the planning and decision-making process under GMA. At a minimum, environmental analysis at each stage of the GMA planning process should address impacts associated with planning decisions. Impacts associated with later planning stages can also be addressed. Analysis of environmental impacts in the GMA planning process can result in better-informed GMA planning decisions; avoid delays, duplication, and paperwork in future project-level environmental analysis; and narrow the scope of environmental review and mitigation under SEPA at the future project level.

GMA jurisdictions are authorized, but not required, to combine SEPA and GMA processes and/or to integrate documents. In either case, WAC 197-11-228 states that the appropriate scope and level of detail of environmental review should be tailored to the GMA action under consideration; jurisdictions may modify SEPA phased review as necessary to track the phasing of GMA actions; and the process of integrating SEPA and GMA should begin at the early stages of plan development.

Kitsap County has elected to integrate both the SEPA/GMA process and the document. Integration of the environmental analysis with the planning process informs the preparation of GMA comprehensive plan amendments and facilitates coordination of public involvement activities. The information contained in the DEIS assisted the County in refining a Preferred Alternative, related Comprehensive Plan amendments, and implementing regulations that are the subject of this FEIS.

The combined FEIS/Plan document is structured as shown in Table 2.5-1. As shown, this FEIS is contained in Volume II of the integrated document.

Table 2.5-1. Kitsap County Integrated SEPA / GMA Plan and DEIS

Volume	Contents
Volume I: Final Policy Document	Summarizes the key issues identified in Volume II. Contains all policies and plans.
Volume II: Draft and Final Environmental Impact Statement (DEIS and FEIS)	Contains all Growth Management Act (GMA)- and State Environmental Policy Act (SEPA)-required inventories in the Affected Environment discussions. Analyzes No-Action and Proposed Action Alternatives. Summarizes Plan policies and adopted regulations that serve as mitigation measures.
Volume III: Development Regulations	Includes development regulations and code amendments implementing the final plan.
Appendices	Volume I appendices include the Capital Facilities Plan, a policy matrix related to the Silverdale Sub-Area Plan and. Volume II DEIS appendices include technical background information.

In accordance with the requirements of SEPA and GMA, the County has provided for continuous public review and comment over the course of the planning process. Public review and comment opportunities were provided with the issuance of the DEIS. See Section 2.5.2, *Public Review Opportunities,* for a description of public involvement for the 10-Year Update, and FEIS Appendix A.

2.5.2. Public Review Opportunities

Public involvement, review, and comment have been integral to the 10-Year Update process. Kitsap County has undertaken a proactive, comprehensive public involvement program to encourage participation in the development of Plan chapters and to ensure that the Plan ultimately meets community needs. The public involvement program was designed to meet the following objectives.

- To inform the community of update effort, including the reasons for the update, purpose of the Plan, state requirements, and Central Puget Sound Growth Management Hearings Board (CPSGMHB) decisions.
- To obtain input from all members of the community through all aspects of Plan development.
- To engage the public and stakeholders in an open dialogue throughout the process.
- To encourage two-way communication between the County and community stakeholders.
- To identify interests, concerns, and issues as early as possible to avoid surprises later in the process.
- To ensure that elected officials, staff, and consultants are fully aware of and understand community and stakeholder concerns.
- To be aware of and communicate clearly about the integration of other plan processes in the 10-Year Update.

- To generate trust, confidence, and credibility in the project team, process, and resulting Plan.
- To develop a Plan that will have the support of the community and guide Kitsap County's growth over the next 20 years.

To achieve these objectives, the County's multi-faceted outreach program incorporated a wide range of activities. The following discussion summarizes public involvement activities that occurred during the 10-Year Update process.

Public Involvement Activities

- **MyKitsap.org webpage.** In January 2006, a webpage was created and advertised as the on-line repository of all aspects of the 10-Year Update. Future meeting dates, published documents and analysis, contact people, and other key information were provided and frequently updated on this page.
- **Coordination with open space and recreation planning outreach efforts.** In January 2006, a 10-Year Update fact sheet and questionnaire were distributed at open space and recreation public meetings and focus groups.
- **Stakeholder meetings.** County staff met with numerous community groups between February and October 2006, explaining the 10-Year Update and upcoming workshop and comment opportunities. Community groups included special interest groups, private property owners, developers, fraternal organizations, neighborhood groups, and others.
- **Project fact sheet.** A project fact sheet that provided basic project background and contact information was widely distributed.
- **Project comment card.** A comment card inviting comments on project issues was broadly distributed at meetings and posted on the project website. Comments have been reviewed, with responses to commenters and/or incorporation of comments into the planning process.
- **Public display boards.** Three graphic display boards that describe the 10-Year Update progress and activities have been posted at high traffic areas, such as libraries, post offices, and other locations at the time of the public workshops.
- **Scoping and vision public meetings.** Three workshops were held in March 2006 to solicit public comment on the scope of the DEIS and the Plan vision statement. These meetings occurred on the following dates and locations.
  - March 23 in Kingston—70 participants.
  - March 27 in Silverdale—104 participants.
  - March 28 in Port Orchard—63 participants.

  The key vision themes identified by participants throughout the county are listed below.

- Natural environment and open space protection and enhancement, balanced with growth.
- Consider broader natural environmental context and open space connections.
- Rural open space and buildings are part of Kitsap's character.
- Define and distinguish urban and rural areas.
- Urban communities, livable and healthy, connected, safe, and innovative.
- Affordable and diverse housing choices.
- Economic prosperity, including balanced growth.
- Transportation plan that is balanced, measurable, and includes road and transit improvements.
- New transportation approaches.
- Improved ferries and transportation.
- Responsive and fair government.
- Link and balance all vision elements.

Please refer to *Vision Workshop Meeting Summary* (April 2006) for a more detailed description of these meetings.

- **Agency meetings**. During February, March, June and September 2006, the County staff conducted a series of meetings with cities, special districts, and state agencies. The purpose of these meetings was to share information about the 10-Year Update, to hear from agency staff about issues and concerns, and to obtain relevant information for the 10-Year Update process. Meetings or personal contacts continued as needed throughout the duration of the project.
- **Alternatives public meetings**. Three workshops were held in May 2006 to solicit public comment on preliminary Plan alternatives. These meetings occurred as shown below.
  - May 15 in Kingston—28 participants.
  - May 18 in Silverdale—61 participants.
  - May 24 in Port Orchard—68 participants.

  These meetings were intended to share information and obtain input about several potential alternatives to be studied in the DEIS and the future identification of a Preferred Alternative. Findings are summarized in *Alternatives Workshop Meeting Summary*, May 2006.

- **Alternatives hearing.** On July 10, 2006, the Board of County Commissioners and the Planning Commission jointly held a public hearing to gain public testimony on the range of Alternatives, particularly the refinement of DEIS Alternative 2.

- **Focus groups.** From May to July 2006, focus group discussions with stakeholders were held on the following topics: water/sewer, transportation, housing and mixed use and code development, Transfer of Development Rights and the Rural Wooded Incentive Program. The purpose of the focus groups was to review policy and implementation issues, understand diverging opinions, and identify policy options or solutions to address issues of common concern.

- **Kingston Phase II working group.** Between September 2004 through 2005, a citizen-based working group prepared recommendations on UGA sizing to accommodate 2025 population growth. They reviewed public service information, land use reclassification requests, UGA boundaries, Updated Land Capacity Analyses (ULCA), and reasonable measures.

- **Silverdale Sub-Area Citizen Advisory Committee (CAC) meetings.** Beginning in November 2004, the Silverdale CAC held public meetings to review various aspects of the sub-area, including potential watershed impacts of different development scenarios, existing information on public services and facilities, land capacity; and to provide input and comment on the Sub-Area Plan policies and alternative UGA boundaries. The CAC also hosted two public open houses to share its findings related to existing conditions data and to seek input on alternative UGA boundaries. The CAC held multiple public meetings and took public comment at each of these meetings.

- **Port Orchard/South Kitsap Sub-Area Citizen Advisory Group (CAG) meetings.** Through an interlocal agreement (ILA), Kitsap County has been working with the City of Port Orchard since 2003. A Citizens Advisory Group (CAG) was also formed in August 2003 and concluded its recommendations in December 2005. The CAG also reviewed various aspects of the Sub-Area, including different development scenarios, existing information on public services and facilities, and land capacity; and provided input and comment on the Sub-Area Plan policies and alternative UGA boundaries. The CAG has also hosted two public open houses to share its findings related to existing conditions data and to seek input on alternative UGA boundaries. The CAG has held multiple public meetings and has taken public comment at each of these meetings. The City of Port Orchard Planning Commission held a public meeting on the draft Sub-Area Plan in Winter 2006. The Port Orchard City Council held a public meeting and made a recommendation on the draft Sub-Area Plan in April 2006. The Kitsap County Planning Commission held a hearing on the draft sub-area plan in early 2006.

- **Draft Plan meetings.** A third set of open houses/public meetings were held in August/September 2006 to focus on the draft plan and DEIS and introduce concepts and information prior to the public hearings. The purpose of the meetings was to share the draft plan and provide an opportunity to hear feedback from the public. The meeting locations and attendance were as follows:

- August 29 in Kingston—36 participants.
- September 7 in Port Orchard—64 participants.
- September 14 in Central Kitsap—61 participants.

- **Public hearings and meetings.** As part of the adoption process for the updated Plan, the Kitsap County Planning Commission and BOCC conducted three joint public hearings on September 18, 20 and 21, 2006 at the Kitsap County Fairgrounds. The Planning Commission deliberated until October 10, 2006 and made recommendations. The BOCC held a public hearing on the Planning Commission recommendations on October 23, 2006, which was continued to October 25, 2006. The BOCC deliberated on the Plan through November 6, 2006 at which time the BOCC directed the preparation of the Final Plan, FEIS, and Development Regulations for action in early December.

2.5.3. Prior Environmental Review

Environmental review conducted for adoption of the 1998 Kitsap County Comprehensive Plan included the *Kitsap County Comprehensive Plan Draft and Final EIS (1994)* and two addenda issued in March and April 1998. Kitsap County has issued the following SEPA documents since adoption of the Plan in 1998; these documents are relevant to the analysis contained in the DEIS/FEIS and in particular DEIS Alternative 1 (No-Action), which assumes continuation of the current Plan.

- *Draft South Kitsap UGA/ULID #6 Sub-Area Plan and Draft Supplemental EIS (An Integrated SEPA/GMA Document), October 26, 2001.*
- *Draft and Final Kingston Sub-Area Plan and Supplemental EIS, October 2002* and *August 2003*, respectively.
- *Integrated Port Orchard/South Kitsap Sub-Area Plan Draft EIS (2005)* and *Preliminary Final EIS (2006).*

This FEIS incorporates by reference the *Integrated Port Orchard/South Kitsap Sub-Area Plan Draft and Preliminary Final EIS* (May 2006), which contains environmental analysis of the proposed Port Orchard/South Kitsap Sub-Area Plan. Similarly, the *Draft and Final Kingston Sub-Area Plan and Supplemental EIS October 2002/August 2003*, are incorporated by reference. All components of these documents are incorporated, with the exception of the land use, socioeconomic, and transportation information, as well as cumulative countywide information, which is updated in the DEIS and FEIS. This FEIS also provides updated responses to comments on the *Integrated Port Orchard/South Kitsap sub-Area Plan Draft EIS* in Appendix F. In so doing, this FEIS completes the Port Orchard/South Kitsap Sub-Area Plan environmental review process.

2.5.4. Level of Analysis

SEPA (Revised Code of Washington [RCW]) 43.21C) requires government officials to consider the environmental consequences of actions they are about to take and to consider better or less damaging ways to accomplish those proposed actions. They must consider whether the proposed action will have a probable significant adverse environmental impact on the following elements of the natural and built environment: earth, air, water, plants and animals, energy and natural resources, environmental health, land and shoreline use, transportation, and public services and utilities.

Together with the DEIS, this FEIS provides qualitative and quantitative analysis of environmental impacts as appropriate to the general nature of the 10-Year Update. The adoption of comprehensive plans or other long-range planning activities is classified by SEPA as a nonproject (i.e., programmatic) action. A nonproject action is defined as an action that is broader than a single site-specific project, and involves decisions on policies, plans, or programs. An EIS for a nonproject proposal does not require site-specific analyses; instead, the EIS discusses impacts and alternatives appropriate to the scope of the nonproject proposal and to the level of planning for the proposal. (WAC 197-11-442).

This FEIS considers potential environmental impacts at both the countywide and smaller area levels of detail.

- **Countywide analysis.** In general, environmental analysis has been conducted at a countywide and cumulative level. This broad cumulative review applies to the land use reclassification requests that have been accepted as part of the 10-Year Update process. In certain cases, where possible and where additional information may assist decision-making, smaller area analyses have been provided, as described below.
- **Smaller area analyses.** For some elements of the environment, information has been broken down into smaller areas of analysis. For example, watershed basins are referenced when possible in the discussion of surface water. These smaller units of analysis are intended to assist in decision making on the Plan as well as to increase the future utility of this EIS.
- **Silverdale Sub-Area Plan.** Because the Silverdale Sub-Area Plan has been incorporated with the 10-Year Update, this EIS provides an area-specific discussion of the Silverdale sub-area under each element of the environment. Where appropriate, the EIS also identifies area-specific mitigation measures to address identified impacts. The EIS also establishes recommended threshold levels, references existing regulations, and prescribes mitigation measures for impacts to allow future development that falls within these thresholds or complies with prescribed regulations/mitigation to proceed with minimal future SEPA review. Please refer to Section 2.6.3, *Description of Alternatives*, for additional discussion of the Silverdale sub-area and future SEPA exemptions.

2.5.5. Phased Review

SEPA encourages the use of phased environmental review to focus on issues that are ready for decision and to exclude from consideration issues already decided or not yet ready for decision-making (WAC 197-11-060(5)). Phased review is appropriate where the sequence of a proposal is from a programmatic document, such as an EIS addressing a comprehensive plan, to other documents that are narrower in scope, such as those prepared for site-specific, project-level analysis. Kitsap County is using phased review in its environmental review of its 10-Year Update with a programmatic review of its Plan amendments and associated implementing regulations.

2.5.6. Future Use of Document

The analysis in the DEIS and this FEIS is used to review the environmental impacts of the Plan alternatives. Additional environmental review will occur as other project or nonproject actions are proposed to Kitsap County in the future. This approach will result in an additional incremental level of review when subsequent implementing actions require a more detailed evaluation and as additional information becomes available. In this case, subsequent phases of environmental review may consider proposals that implement the Plan, such as land use regulations, specific development proposals, or other similar actions. Future environmental review could occur in the form of Supplemental EISs (SEIS), SEPA addenda, or DNSs. The use of this FEIS in future levels of review is described in more detail in section 2.5.6 of the DEIS.

2.5.7. Silverdale Sub-Area Mixed Use and Residential SEPA Exemption

SEPA allows a categorical exemption for new residential or mixed-use development if the development is within a UGA and current density/intensity of use is lower than called for in the goals and polices of the comprehensive plan, provided the plan was previously subjected to environmental analysis through an EIS. This FEIS together with the DEIS provides sufficient environmental analysis of the Silverdale sub-area to meet the criteria for application of the categorical exemption for infill residential and mixed use development pursuant to RCW 43.21C.229.

Please refer to Section 2.6.3, *Description of Alternatives*, for a description of the applicable area in the Silverdale sub-area and the assumptions under each alternative.

2.6. Development of Alternatives

2.6.1. Planning Process and Development of Alternatives

The DEIS addressed three alternatives: Alternative 1 (No Action), Alternative 2, and Alternative 3. Alternative 1 is required by SEPA and is the continuation of the current Plan.

Alternatives 2 and 3 review different locations and amounts of UGA intensification and expansion. Implementing policies and regulations are addressed for some aspects of Alternatives 2 and 3. The purpose of the DEIS alternatives was to provide decision makers and the public with growth options before a plan is adopted, and to test the environmental implications of each. The FEIS addresses the Preferred Alternative as directed by the BOCC following public hearings and recommendations by the Planning Commission, and is based upon DEIS Alternative 2.

Alternatives 2 and 3 and the Preferred Alternative have been developed on the basis of the public involvement process, sub-area plans, Washington State population projections, GMA requirements, CPSGMHB decisions, and Kitsap County CPPs.

- **Public involvement process.** The County solicited public input at two series of workshops to help develop the Plan, one series addressing the vision statement and the second series addressing different land use plans for the unincorporated UGAs. Public hearings in July and September/October 2006 also helped shape Alternative 2 and the Preferred Alternative. See Section 2.5.2, *Public Review Opportunities*, for more information. The public input has helped shape the alternatives reviewed in the DEIS and this FEIS.

- **Washington State population projections.** According to GMA and the adopted CPPs, the Plan must be reviewed every 10 years to accommodate 20 years of population growth. The CPPs establish a population target of 331,571 by 2025. This is roughly a 100,000-person increase over the next 20 years. The CPPs hold that about 76% of the population growth should occur in UGAs and cities and 24% in rural areas. The alternatives show different means to achieve the population projections in the UGAs. This is described in more detail below.

- **Sub-area plans.** The County adopted the Plan in 1998 Comprehensive Plan and then adopted (or is in the process of completing) nine sub-area plans. The County intends to include adopted and in-process sub-area plans as chapters of the updated Plan. Sub-area plans that are in process for rural areas are not directly related to the 10-Year Update and could be considered in 2007 as part of the County's annual amendment process. For in-process sub-area plans, such as Silverdale and South Kitsap/Port Orchard, the alternatives tested different land use patterns under consideration by CACs. For the Kingston Sub-Area Plan, which was recently remanded by the CPSGMHB, all alternatives reviewed the proposed Kingston Sub-Area Plan as of December 2005, but do vary with regard to density ranges and building heights.

- **GMA requirements.** GMA requires counties to review their designated UGAs and the densities permitted within them at least every 10 years and revise them to accommodate the urban growth projected to occur in the county in the succeeding 20-year period. GMA also requires that plans be consistent with the 13 GMA goals related to urban growth, reduction of sprawl, transportation, housing, economic development, property rights, permits, natural resource industries, open space and recreation, environment, citizen participation and coordination, public facilities and services, and historic preservation. GMA compliance for each

alternative is addressed in Section 3.2.2, *Relationship to Plans and Policies of the DEIS and FEIS.*

- **CPSGMHB cases.** Over the last several years, a number of CPSGMHB decisions have affected and prioritized the planning efforts in the County. Three of the most recent cases are summarized below.

  - In case number 04-3-0031c, the CPSGMHB concluded that Kitsap County was out of compliance with GMA by not having completed its 10-Year Update. The County argued that the update should be completed in 2008, rather than 2004, because the Plan only became valid in 1998. However, the CPSGMHB ordered the County to take appropriate legislative action to comply with the review and revision requirements of RCW 36.70A.130 (3) for its UGA designations and permitted urban densities by June 30, 2006. The CPSGMHB later granted an extension to the current deadline of December 31, 2006. The Final Plan considered in this FEIS is intended to meet the requirements to complete a 10-Year Update by December 31, 2006.

  - In August 2004, the CPSGMHB ruled on the Interim Rural Forest/Rural Wooded policies enacted in the 2003 Plan process (case number 04-3-0009c), indicating the policies were out of compliance with GMA. The County believes that the Rural Wooded Incentive Program is appropriate for Kitsap County, but acknowledges the CPSGMHB's findings that program parameters need to be clearly defined. The BOCC repealed portions of the Rural Wooded Incentive Program to comply with the CPSGMHB's order. The County committed to continuing to work on this program in conjunction with the 10-Year Update using information compiled over the past decade to develop a Rural Wooded Incentive Program that fully complies with the CPSGMHB's decision. Proposed Rural Wooded policies and implementing regulations were studied in the DEIS for Alternative 3, and are part of the Preferred Alternative addressed in this FEIS. In the same case, the CPSGMHB also required the County to adopt and implement reasonable measures to provide for efficient land use inside UGAs meeting County density goals. Reasonable Measures, existing and proposed, were reviewed in DEIS Appendix H. FEIS Appendix C notes the new and augmented measures included in the Reasonable Measures chart from the DEIS for greater clarity.

  - As of July 26, 2006, the CPSGMHB issued a decision on the consistency of the Kingston Sub-Area Plan and ULCA with the GMA in case number 06-3-0007. The CPSGMHB found that adoption of the Kingston Sub-Area Plan, expanding an individual UGA prior to the 10-year review of the county's UGAs, countywide analysis, and collective consideration to accommodate the full 2025 population target did not comply with GMA. The CPSGMHB also found that expansion of the Kingston UGA in advance of adoption of "reasonable measures" did not comply with GMA. In addition, the CPSGMHB indicated that a ULCA that discounted un-sewered areas of the existing UGA and a CFP that did not sufficiently provide services did not comply with GMA. The CPSGMHB did find in favor of Kitsap County for other discount factors in the ULCA because they were

tailored to local circumstances and were balanced by a relatively low market factor. The CPSGMHB remanded the Sub-Area Plan to the County for review and to take appropriate legislative action in concert with the 10-Year Update. A discussion of how the DEIS analysis related to this decision is found in DEIS Section 2.6.1, *Planning Process and Development of Alternatives*. The Draft and Final Plan consider the Kingston Sub-area cumulatively with the other UGAs in the 10-Year Update, provide additional reasonable measures, include a land capacity analysis without a sewer discount, and provide a Capital Facilities Program.

- **CPPs.** CPPs are the framework for city and county plans in Kitsap County. Topics addressed include: countywide growth patterns, UGAs, centers of growth, rural land uses and development patterns, countywide strategies for open space preservation, resource protection and critical areas, contiguous and orderly development, siting public capital facilities of a countywide or statewide nature, transportation, affordable housing, countywide economic development, an analysis of the fiscal impact, coordination with Tribal governments, coordination with the federal government (including the Navy), and roles and responsibilities. Section 3.2.2, *Relationship to Plans and Policies* addressed consistency with the CPPs.

Population Growth Targets and Employment Projections

According to GMA and the adopted CPPs, the Plan must be reviewed every 10 years to accommodate 20 years of population growth. The CPPs establish a population target of 331,571 by 2025. The population distributions were adopted by the BOCC and ratified by the cities. The County adopted the Washington State Office of Financial Management (OFM) intermediate range population forecast for Kitsap County through the CPPs.

A breakdown of the expected population growth and associated annual growth rates for Kitsap County, its cities, and UGAs is shown in Table 2.6-1. Most new population (approximately 76%) is expected to occur within the existing UGA boundaries. This projected growth reflects a greater percentage of the population residing in urban areas than was the case in 2000, when 58% of the population resided in urban areas (Kitsap County CPPs 2004).

Table 2.6-1. Kitsap County Population Projections: 2000–2025

Population Distribution through 2025		2000 Population	Through 2025		
			+ New Population	= Total in 2025	Annual Growth Rate
Bremerton	City[1]	37,258	14,759	52,017	1.34%
	East Urban Growth Area (UGA)[2]	5,412	2,210	7,622	1.38%
	West UGA[2]	3,229	2,017	5,246	1.96%
Bremerton Port UGA[1]		68	-68	0	-100%
Central Kitsap UGA[2]		21,743	8,733	30,476	1.36%

Population Distribution through 2025		2000 Population	Through 2025 + New Population	Through 2025 = Total in 2025	Through 2025 Annual Growth Rate
Gorst UGA[2]		154	73	227	1.56%
Silverdale UGA[2]		15,276	8,059	23,335	1.71%
Bainbridge Island City[1]		20,308	8,352	28,660	1.39%
Kingston UGA[3]		1,871	3,135	5,006	4.02%
Poulsbo	City[1]	6,813	3,739	10,552	1.77%
	UGA[1]	901	3,355	4,256	6.41%
Port Orchard	City[1]	7,693	3,600	11,293	1.55%
	UGA[1]	11,570	3,375	14,945	1.03%
Port Orchard UGA expansion study area[3]		0	6,334	6,334	
South Kitsap UGA[1]		1,241	8,024	9,265	8.37%
UGA population		**133,537 (58%)**	**75,697 (76%)**	**209,234 (63%)**	**1.81%**
Non-UGA population		**98,432 (42%)**	**23,905 (24%)**	**122,337 (37%)**	**0.87%**
Total county population		**231,969**	**99,602**	**331,571**	**1.44%**

Source: Kitsap County CPPs.

[1] Based on city and/or County comprehensive or sub-area planning.

[2] Based on Puget Sound Regional Council (PSRC) Model.

[3] Target to be substantiated by further analysis and/or sub-area planning.

The 2025 total population target for unincorporated Kitsap County is 229,049 persons. Adjusted from a 2000 base year in the CPPs to 2005, this represents a growth target of approximately 59,628 additional people between 2005 and 2025. The 2005–2025 growth target for unincorporated urban areas is approximately 39,207 in new population, and the growth target for rural areas is approximately 20,421.

While the County projects future employment, there is no specific employment target for Kitsap County or its jurisdictions. Based on observed employment trends, a countywide jobs forecast was developed by reviewing employment growth in seven job sectors, and trending forward average annual growth rates (AAGR) within each sector to 2025. Manufacturing jobs were then adjusted upward to equal 9% of total jobs forecast for 2025, allowing the new total to float upward, reflecting the County's policy commitment to increase its manufacturing jobs base similar to the 1998 Comprehensive Plan projections. The resulting countywide forecast is shown in Table 2.6-2.

Table 2.6-2. Countywide Employment Forecast

Sector	1995	2004	AAGR	2025 Trended	2004 Distribution	2025 Distribution
Industrial Sector Jobs						
Construction Resources	3,331	4,263	2.8%	7,600	5%	6%
Manufacturing	1,303	1,589	2.2%	10,700*	2%	9%
Warehousing/Transportation/ Utilities	1,523	1,877	2.3%	3,100	2%	2%
Total Industrial Jobs	**6,157**	**7,729**	**2.6%**	**21,400**	**10%**	**17%**
Commercial Sector Jobs						
Retail	8,336	9,969	2.0%	15,100	13%	12%
Finance/Insurance/Real Estate)	2,504	3,269	3.0%	6,100	4%	5%
Services	21,725	28,541	3.1%	53,900	37%	24%
Total Commercial Jobs	**60,245**	**70,386**	**1.7%**	**106,000**	**90%**	**83%**
Total	**66,402**	**78,115**	**1.8%**	**127,400**	**100%**	**100%**

Sources: PSRC; E.D. Hovee & Company, LLC.

Note: For the manufacturing sector, the 2025 number was first trended and then adjusted to equal 9% of the employment total (allowing the new jobs total to float upwards).

Reviews of city plans indicate that they would accommodate about one-third of the net increase in employment; unincorporated Kitsap County would then accommodate the remaining roughly two-thirds of the net increase in employment.

Sub-Area and Community Planning Process

With adoption of the 1998 Comprehensive Plan, the County began developing a series of sub-area plans to address the unique needs and features of specific geographical areas. Once adopted, the sub-area plans became components of the Comprehensive Plan. Since 1998, the County has adopted six sub-area plans, four of which apply to UGAs.

- Kingston Sub-Area Plan—Adopted in 2005; remanded in July 2006.
- Manchester Limited Area of More Intensive Rural Development (LAMIRD) Sub-Area Plan—2002.
- Port Orchard/South Kitsap UGA/Sub-Area Planning Process—proposed for inclusion in the 10-Year Update.
- Poulsbo Sub-Area Plan—2001.
- Silverdale Sub-Area Planning Process—proposed for inclusion in the 10-Year Update.
- SKIA Sub-Area Plan—2003.

- Suquamish LAMIRD Rural Village Sub-Area Plan —2005.
- ULID #6 Sub-Area Plan—2003.

The County intends to include adopted and in-process (Kingston, Port Orchard and Silverdale) sub-area plans as chapters of the 10-Year Update. In addition, the County is considering portions of the Illahee Community Plan, a citizen-sponsored document.

2.6.2. Proposal Objectives

As part of describing proposed actions and alternatives, SEPA requires the description of proposal objectives and features. Agencies are encouraged to describe a proposal in terms of objectives, particularly for agency actions to allow for consideration of a wider range of alternatives and measurement of the alternatives alongside the objectives. Kitsap County's objectives for the 10-Year Update are listed below.

- Provide a Plan that serves as a complete and internally consistent guide for planning over the next 20 years.
- Fulfill the GMA requirements for 10-year comprehensive plan updates.
- Make necessary changes to the Plan based on changes to GMA and other state laws.
- Fulfill GMA and CPP requirements for planning in UGAs and rural areas.
- Accommodate the CPP population growth target through 2025 for unincorporated UGAs.
  - Review existing UGA land capacity and quantification of reasonable measures.
  - Incorporate sub-area plans for the Kingston, Port Orchard/South Kitsap, and Silverdale UGAs.
  - Review and size all other unincorporated UGAs (Poulsbo, Central Kitsap, West and East Bremerton, Gorst, ULID #6, and SKIA).
- Allow for a range of housing types and innovative designs to provide housing affordable to different income levels.
- Formulate policies and regulations that encourage a diversified economy and job growth.
- Ensure efficient provision of public services and capital facilities that serve existing and new development in urban areas.
- Formulate a Rural Wooded Incentive Program (RWIP) as it pertains to properties zoned Interim Rural Forest (IRF).
- Preserve certain rural parcels and intensify certain urban parcels through Transfer of Development Rights (TDR) techniques.

- Consider Land Use Reclassification Requests initiated by property owners as part of the 10-year Update amendment process.
- Consider updated policies and regulations to implement the preferred Land Use Map and to achieve or increase residential and business quality of life in the county.

2.6.3. Description of Alternatives

The Proposed Action—the 10-Year Update—would address four major components of the Plan and would also include some implementing regulations.

- **Vision for the future**. A revised vision statement for the future of Kitsap County is being adopted. The proposed vision statement refines the previous vision and encompasses the planning period through 2025, consistent with the 20-year GMA planning horizon.
- **Growth targets**. The Plan is updated to accommodate population growth targets adopted as part of the CPPs, allocating projected growth through 2025 to the cities and unincorporated areas of the county.
- **Land use map**. The following revisions to the Land Use Map governing future land uses are included in the Proposed Action.
  - Land use redesignations guide future land uses and densities so that they accommodate population growth targets and employment forecasts. Redesignations include refinement of areas designated for housing, employment, and protection of natural areas.
  - The Proposed Action includes changes to the designated boundaries in UGAs within unincorporated Kitsap County; the Preferred Alternative proposes seven UGA changes in particular in comparison to the December 2005 Plan boundaries. Changes refine the existing UGA boundaries to accommodate population growth targets and forecast need for additional employment.
  - Consolidations of Land Use Map designations as part of the Preferred Alternative. Consolidated Land Use Map designations will make it easier to rezone urban parcels in the future without the additional time and expense of a comprehensive plan amendment process. Detailed zoning categories are retained and updated.
  - In between the range of DEIS Alternative 3 which entailed 120 land use reclassification requests initiated by property owners, and DEIS Alternative 2 which entailed 83 requests, the Preferred Alternative includes 82 requests.
- **Plan policies**. Amendments to the goals and policies of the Plan are based on the revised vision statement, revised Land Use Map, and other priority County policy initiatives, and amendments are proposed for purposes of maintaining internal consistency. Policy changes are identified below.

- **Implementing regulations.** Development regulations, such as zoning, implement the Plan. A series of implementing regulations have been prepared as identified below.

Alternatives Overview

Figures 2.6-1 to 2.6-8 identify the Preferred Alternative studied in this FEIS identifying the land use pattern as a whole as well as proposed area of change. (The DEIS contains the maps of the DEIS Alternatives 1, 2 and 3).

Table 2.6-3 presents descriptions of the alternatives evaluated in the DEIS and the FEIS and how they address the major components described above.

The primary differences between the alternatives pertain to the amount of new growth that would be accommodated and how that growth would be managed. Table 2.6-4 provides an overview of these differences.

Table 2.6-3. Alternatives Comparison

	Alternative 1 (No Action)	Alternative 2	Alternative 3	Preferred Alternative
Overview	▪ Continues adopted 1998 Comprehensive Plan, and extends horizon to year 2025. ▪ Required for review as a baseline in the EIS.	▪ Provides for more densification and urban growth area (UGA) expansion than Alternative 1. Alternative 2 specifies a lower expansion of UGAs and a greater intensification of uses within the UGAs than Alternative 3.	▪ Specifies the largest expansion of UGAs with greater densification than Alternative 1, but generally less densification than Alternative 2.	▪ Same as Alternative 2.
Vision Statement	▪ Continues 1998 Vision Statement.	▪ Includes Vision Statement refinements based on visioning/scoping process.	▪ Continues 1998 Vision Statement.	▪ Same as Alternative 2.
Growth Targets	▪ Based on the current Plan, 2025 population allocations specified in the CPPs are not fully accommodated.	▪ Fewer UGAs are oversized compared to Alternatives 1 and 3, and several are closer to but slightly under population targets.	▪ Several UGAs exceed their proposed population targets.	▪ Same as Alternative 2.
Land Use Map	▪ Land use classifications remain the same as adopted in December 2005. ▪ Includes Urban Low and Urban Cluster Residential category at 5–9 dwelling units per acre (du/ac) and retains Urban Restricted at 1–5 du/ac. ▪ Density range for single-family, multifamily, commercial, and mixed use zones is 5–24 du/ac. ▪ UGA boundaries remain per the adopted Plan, and as proposed in the 2005 Kingston Sub-Area Plan.	▪ Provides for greater housing variety. ▪ Features more "upzoning" and mixed use opportunities within UGAs than Alternative 3. ▪ Includes Urban Low and Urban Cluster Residential category at 4–9 du/ac and corresponding Urban Restricted range would be 1–4 du/ac. ▪ Density range broadened for single-family, multifamily, commercial, and mixed use zones is 4–30 du/ac. ▪ Reflects priority study areas/recommended alternatives studied by Silverdale and Port Orchard/South Kitsap Citizens Advisory Committees (CACs). – Includes many land use reclassification requests. – Proposes intermediate UGA boundary expansions that reflect lot patterns and environmental constraints.	▪ Retains emphasis on predominant single-family patterns, provides less housing variety than Alternative 2. ▪ Less "upzoning" and mixed use opportunities than Alternative 2. ▪ Includes Urban Low and Urban Cluster Residential category at 5–9 du/ac and retains Urban Restricted at 1–5 du/ac. ▪ Density range for single-family, multifamily, commercial, and mixed use zones is 5–24 du/ac. ▪ Includes majority of land use reclassification requests. ▪ Reflects maximum land use options studied by Silverdale and Port Orchard/South Kitsap CACs. ▪ Proposes more extensive UGA boundary expansions than	▪ Provides for greater housing variety, slightly more than Alternative 2. ▪ Similar to Alternative 2, features more "upzoning" and mixed use opportunities within UGAs than Alternative 3. ▪ Urban Low and Urban Cluster Residential densities same as Alternative 2, but Urban Restricted range would be 1–5 du/ac. ▪ Density range is same as Alternative 2. ▪ Similar to Alternative 2, reflects priority study areas/ recommended alternatives by CACs. – Similar to Alternative 2, includes many land use reclassification requests. – Proposes intermediate UGA boundary expansions but smaller

	Alternative 1 (No Action)	Alternative 2	Alternative 3	Preferred Alternative
		▪ Includes one UGA boundary contraction between Silverdale and Central Kitsap.	Alternative 2.	than Alternative 2. ▪ Includes one UGA boundary contraction between Silverdale and Central Kitsap.
Comprehensive Plan Policies	▪ Goals and policies remain the same as adopted in December 2005.	Policies are comprehensively updated in all elements. Concepts updated include, but are not limited to: ▪ Revision of the Urban Low and Urban Cluster density range from 5–9 du/ac to 4–9 du/ac and corresponding revision to Urban Restricted density range from 1–5 du/ac to 1–4 du/ac. ▪ Allowing increased density ranges for Urban High Residential and commercial zones, up to 30 du/ac instead of 24 du/ac. ▪ Policy and map revisions consolidating Comprehensive Plan land use map categories. ▪ Update of greenway and open space policies to match the 2006 Kitsap County Parks, Recreation, and Open Space Plan and any identified corridors (e.g., rural corridor between Silverdale and Central Kitsap). ▪ Update of housing and economic development policies to reflect a greater diversity of choices. ▪ Update of transportation and capital facility policies. ▪ Update of utilities and natural system policies. ▪ Update of land use, as well as rural and resource lands policies. ▪ Inclusion of population allocation "banking"	▪ Rural Wooded and TDR Policies would be amended for this alternative.	▪ Policies are comprehensively updated in all elements. Changes are similar to Alternative 2, with the following differences: – Urban Restricted density range would remain at 1–5 du/ac – Rural Wooded policies would be amended for this alternative.

	Alternative 1 (No Action)	Alternative 2	Alternative 3	Preferred Alternative
		with respect to the Central Kitsap, East Bremerton, and West Bremerton UGAs. ▪ Inclusion of UGA Association and UGA Management Agreement (UGAMA) policies. ▪ Revision of the Transfer of Development Rights (TDR) Program policies. ▪ Inclusion of policies to encourage sewer connections for all new development and/or implementation of new innovative wastewater technologies (e.g. wastewater membrane systems). ▪ Revisions to low impact development (LID) policies. ▪ Addition of reasonable measure policies. ▪ SKIA sub-area policy amendment for Industrial Multi-Purpose Recreational Area (IMPRA), and Urban Holding Area (UHA).		
Implementing Regulations	▪ Regulations remain as adopted as of December 2005.	Includes zoning and development permit facilitation amendments. Regulation amendments include but are not limited to: ▪ Areawide redesignations and rezones to implement Land Use Map and policy changes. ▪ Density and dimension amendments to match policy/map changes in Chapter 2, *Land Use*. ▪ New Mixed Use zone, Parks zone, and Urban Holding Area. ▪ Consolidation of some commercial categories. ▪ A consolidated Use Table in Title 17. ▪ Minimum densities in urban areas.	▪ Includes Rural Wooded and associated TDR regulations.	▪ Similar to Alternative 2 with the following differences: – Adds a regulation that implements policy to require adequate sanitary sewer service in UGAs. – Modifies TDR program allowing for rural properties that have sold a development right to restore the right by purchasing one from another rural property, and restoring development rights to properties if and when they are added to the UGA. Allow the County flexibility to determine, at the time of a comprehensive plan docking resolution, whether to require TDRs for sub-area or

Alternative 1 (No Action)	Alternative 2	Alternative 3	Preferred Alternative
	▪ Revisions to maximum height restrictions in some multifamily, commercial, mixed use, and industrial zones. ▪ Categorical exemptions from further environmental review for minor new construction countywide, and for mixed use and infill development within the Silverdale UGA. ▪ Revisions to improve the clarity, consistency and functionality of existing development regulations, including, but not limited to, permit procedures (e.g., conditional uses, rezones, pre-application, etc.). ▪ New TDR regulations.		comprehensive planning efforts. – Includes Rural Wooded regulations. – Modifies the density calculation for Urban Restricted to be gross acres minus critical areas.

Table 2.6-4. Overview of Alternatives: Unincorporated Kitsap County

	CPP Growth Target (2005–2025)	Alternative 1 (No Action)	Alternative 2	Alternative 3	Preferred Alternative
Total Population of Unincorporated UGAs and Rural Areas[2]	59,628[1]	48,782—would not meet overall target (18% under target).	56,869—5% under target.	75,035—26% over target.	56,865—5% under target.
Housing Unit Growth Unincorporated UGAs and Rural Areas[2]	No CPP target; however, it is related to population.	Within UGAs 11,474 units—no change in capacity. In UGAs, growth primarily in single-family unit types (87% of total additional dwellings) and secondarily in multifamily (13%). Based on rural population allocation, 8,168 dwellings projected in rural areas, predominantly in rural residential lands.	Within UGAs 15,038 units—31% over existing capacity. In UGAs, growth primarily in single-family unit types (78%); greater percentage of multifamily than other alternatives (22%). Based on rural population allocation, 8,168 dwellings projected in rural areas, predominantly in rural residential lands.	Within UGAs 22,053 units—92% over existing capacity. In UGAs, growth in single-family unit types greatest of the three alternatives (87% of total additional dwellings) and secondarily in multifamily (13%). Based on rural population allocation, 8,168 dwellings projected in rural areas, predominantly in rural residential lands but one-third assumed to be on Rural Wooded lands.	Within UGAs 15,169 units—32% over existing capacity. In UGAs, growth primarily in single-family unit types (75%); greater percentage of multifamily than other alternatives (25%). Based on rural population allocation, 8,168 dwellings projected in rural areas, predominantly in rural residential lands, but one-third assumed to be on Rural Wooded lands.
Employment Growth Capacity Unincorp-orated UGAs and Rural Areas[2]	No CPP target. County forecasts 32,664 net increase in jobs. Employment land demand in gross acres: *total* 3,495 *Industrial* 2,392 *Commercial* 1,103	Approximately 20,000 jobs, no change in capacity. Buildable acres in industrial: 82% of total buildable employment acres. Buildable acres in commercial: 18%. Gross acres of employment: *industrial* 1,988 *commercial* 547 Under both Industrial and Commercial land demand	Approximately 38,000 jobs, 90% over existing capacity. Buildable acres in industrial: 68%. Buildable acres in commercial: 32%. Gross acres of employment: *industrial* 2,196 *commercial* 1,316 Under Industrial land demand; over Commercial land demand	Approximately 47,000 jobs, 135% over existing capacity. Buildable acres in industrial: 75%. Buildable acres in commercial: 25%. Gross acres of employment: *industrial* 3,276 *commercial* 1,369 Over both Industrial and Commercial land demand	Approximately 36,000 jobs, 80% over existing capacity. Buildable acres in industrial: 72%. Buildable acres in commercial: 28%. Gross acres of employment: *industrial* 2,264 *commercial* 1,074 Slightly under in commercial land demand and industrial land demand

	CPP Growth Target (2005–2025)	Alternative 1 (No Action)	Alternative 2	Alternative 3	Preferred Alternative
Unincorp-orated UGA	Not applicable	38.4 square miles outside of cities, no change in UGA from December 2005 update.	51.8 square miles outside of cities, an expansion of 13.4 square miles, or a 35% increase.	57.6 square miles, an expansion of 19.2 square miles or a 50% increase.	51.1 square miles, an expansion of 12.7 square miles, or a 33% increase.
Densification	Not applicable	No changes in allowed densities.	Densification allowed in six UGAs.	Limited densification allowed in six UGAs.	Densification allowed in six UGAs.

[1]CPP population targets represent an adjusted target to account for growth from 2005 to 2025, rather than the 2000 to 2025 period for which the targets were adopted as part of the Kitsap County CPP. The target established in 2000 was adjusted for this analysis to account for growth that occurred from 2000 to 2004. Adjustments were according to an average annual rate of growth based on the 2000 and forecast 2025 conditions.

[2]Capacity estimates are based on the County's Updated Land Capacity Analysis. See Appendix B for an example using the Preferred Alternative.

Table 2.6-5 shows the CPP population allocation for each UGA, and the population and housing unit capacity of each UGA under all alternatives.

Table 2.6-5. Population Allocation and Capacity of UGAs under Each Alternative

a. Alternative 1 Population and Housing

UGA	CPP Net Population Allocation (2000–2025)	CPP Net Population Allocation (2005–2025)[1]	Alternative 1: Without Sewer Reduction Factor[8]		
			New Housing Units[2]	New Population[3]	Difference with CPP Target
Kingston[4]	3,135	2,816	1,330	3,304	488
Poulsbo[5]	3,355	2,378	860	2,152	(226)
Silverdale	8,059	6,988	1,469	3,466	(3,522)
Central Kitsap	8,733	7,526	2,332	5,799	(1,727)
East Bremerton	2,210	1,905	639	1,590	(315)
West Bremerton	2,017	1,756	167	417	(1,339)
Gorst	73	73	0	0	(73)
Port Orchard[6]	9,709	8,212	1,031	2,558	(5,654)
ULID #6[4]	8,024	7,553	3,646	9,075	1,522
SKIA	0	0	0	0	0
Rural area (non-UGA)[7]	23,905	20,421	8,168	20,421	0
Total	**69,220**	**59,628**	**19,642**	**48,782**	**(10,846)**

b. Alternative 2 Population and Housing

UGA	CPP Net Population Growth Allocation (2000–2025)	CPP Net Population Growth Allocation (2005–2025)[1]	Alternative 2: Without Sewer Reduction Factor[8]		
			New Housing Units[2]	New Population[3]	Difference with CPP Target
Kingston	3,135	2,816	1,117	2,774	(42)
Poulsbo[5]	3,355	2,378	938	2,344	(34)
Silverdale	8,059	6,988	2,931	6,973	(15)
Central Kitsap	8,733	7,526	2,777	6,294	(1,232)
East Bremerton	2,210	1,905	644	1,557	(348)
West Bremerton	2,017	1,756	576	1,436	(320)
Gorst	73	73	4	10	(63)
Port Orchard[6]	9,709	8,212	3,032	7,555	(657)
ULID #6	8,024	7,553	3,019	7,505	(48)
SKIA	0	0	0	0	0
Rural area (non-UGA)[7]	23,905	20,421	8,168	20,421	0
Total	**69,220**	**59,628**	**23,206**	**56,869**	**(2,759)**

c. Alternative 3 Population and Housing

UGA	CPP Net Population Growth Allocation (2000–2025)	CPP Net Population Growth Allocation (2005–2025)[1]	Alternative 3: Without Sewer Reduction Factor[8]		
			New Housing Units [2]	New Population [3]	Difference with CPP Target
Kingston	3,135	2,816	1,328	3,301	485
Poulsbo[5]	3,355	2,378	962	2,404	26
Silverdale	8,059	6,988	6,424	15,677	8,689
Central Kitsap	8,733	7,526	2,947	7,332	(194)
East Bremerton	2,210	1,905	756	1,868	(37)
West Bremerton	2,017	1,756	715	1,786	30
Gorst	73	73	56	139	66
Port Orchard[6]	9,709	8,212	5,180	12,935	4,723
ULID #6	8,024	7,553	3,671	9,137	1,584
SKIA	0	0	14	35	35
Rural area (non-UGA) [7]	23,905	20,421	8,168	20,421	0
Total	**69,220**	**59,628**	**30,221**	**75,035**	**15,407**

d. Preferred Alternative Population and Housing

UGA	CPP Net Population Growth Allocation (2000–2025)	CPP Net Population Growth Allocation (2005–2025)[1]	Preferred Alternative: Without Sewer Reduction Factor		
			New Housing Units [2]	New Population [3]	Difference with CPP Target
Kingston	3,135	2,816	1,117	2,774	(42)
Poulsbo[5]	3,355	2,378	860	2,152	(226)
Silverdale	8,059	6,988	2,901	6,877	(111)
Central Kitsap	8,733	7,526	2,594	5,882	(1,644)
East Bremerton	2,210	1,905	644	1,557	(348)
West Bremerton	2,017	1,756	576	1,436	(320)
Gorst	73	73	21	51	(22)
Port Orchard[6]	9,709	8,212	3,437	8,210	(2)
ULID #6	8,024	7,553	3,019	7,505	(48)
SKIA	0	0	0	0	0
Rural area (non-UGA) [7]	23,905	20,421	8,168	20,421	0
Total	**69,220**	**59,628**	**23,338**	**56,865**	**(2,763)**

1. CPP population targets represent an adjusted target to account for growth from 2005 to 2025, rather than the 2000 to 2025 period for which the targets were adopted as part of the Kitsap County CPP. The target established in 2000 was adjusted for this analysis to account for growth that occurred from 2000 to 2004. Adjustments assumed a constant rate of growth from 2000 to 2025.

2. New housing unit capacity was calculated based on the County's Updated Land Capacity Analysis and incorporated factors such as allowed density, existing land utilization, critical areas, public facilities, and market availability of land over the 20-year planning period. See *DEIS* Section 2.6.1 for a discussion of the Central Puget Sound Growth Management Hearings Board (CPSGMHB) decision regarding the sewer reduction factor. See *DEIS* Section 3.2.3 regarding socioeconomics for additional discussion.

3. Population capacity was calculated based on the housing unit capacity in the previous column. An average household size of 2.5 was used for single-family units and an average household size of 1.8 was used for multifamily units. These averaged household sizes are based on the Updated Land Capacity Analysis method.

4. For Alternative 1 in the Kingston and ULID #6 area, the transportation model level of growth analyzed in the Kingston and ULID #6 assumed a growth level consistent with the CPP targets based on the capacity information available at the time. The range of the transportation analysis, however, considers the capacity level for these UGAs at a maximum level, capturing the growth expected in the range of alternatives.

5. A portion of the Poulsbo UGA allocation in the CPPs was transferred to the City of Poulsbo's allocation to account for annexations of land from the UGA to the city that occurred from 2000 to 2005.

6. The Port Orchard UGA allocation includes the original UGA allocation plus the allocation for the Port Orchard UGA Expansion Study Area; it does not include any city allocations.

7. Due to the creation of excess capacity in the rural area through historic subdivision activities, the rural area allocation is not limited by capacity.

8. Transportation modeling distributions are based on Alternatives 1 and 2 with the sewer reduction factor and Alternative 3 and the Preferred Alternative without the sewer reduction factor. See *DEIS* Appendix B regarding DEIS Alternatives.

Table 2.6-6 summarizes increases in density (upzones), changes in UGA boundaries, and land use reclassification requests for each UGA allowing a comparison among alternatives.

Table 2.6-6. Summary of Upzones, UGA Boundaries, and Land Use Reclassification Requests under the Alternatives

	Upzones Proposed (i.e., greater density in existing UGA)				UGA Expansion				Land Use Reclass Requests		
UGA	Alt 1	Alt 2	Alt 3	Pref	Alt 1	Alt 2	Alt 3	Pref	Alt 2	Alt 3	Pref
Kingston[1]									3	3	3
Poulsbo						✓	✓	✓	2	3	0
Silverdale[2]		✓	✓	✓		✓	✓	✓	33	33	31
Central Kitsap		✓	✓	✓		✓	✓	✓	2	3	2
East Bremerton		✓	✓	✓					0	0	0
West Bremerton		✓	✓	✓		✓	✓	✓	2	2	2
Gorst		✓	✓	✓		✓	✓	✓	1	1	1
Port Orchard[3]		✓	✓	✓		✓	✓	✓	39	70	42
ULID #6							✓		0	3	0
SKIA						✓	✓	✓	1	2	1

[1]Kingston boundaries for all alternatives reflect those approved by the Board of County Commissioners in December 2005. With remand of the Kingston Sub-Area Plan, review of the proposed action would include 3 requests in December 2005 proposed boundaries. This also applies to Alternative 1.

[2]Some reclass requests made through the Silverdale Sub-Area Plan process involve sites included in the Central Kitsap UGA expansion.

[3]Gorst Request made with Port Orchard/South Kitsap Sub-Area Plan and with the 10-Year Update. Attributed reclass request to Gorst only.

Employment growth would be accommodated through expansion of employment areas, including mixed-use areas. The capacity for new employment would occur in both commercial and industrial designated lands. (See Table 2.6-4 for UGA shares.) Table 2.6-7 summarizes the employment capacity of each alternative on a countywide scale.

Table 2.6-7. Employment Capacity of Alternatives: Countywide Totals

	Alternative 1	Alternative 2	Alternative 3	Preferred Alternative
Projected Industrial Jobs	16,700	22,700	26,900	22,700
Projected Commercial Jobs	96,400	111,000	115,600	108,900
Total Projected Jobs	113,100	133,700	142,500	131,600

Note: See DEIS Appendix D for a description of the employment capacity methodology.

On a countywide basis, the amount of land in each land use designation would change as compared to existing conditions, with the amount of land in urban categories, particularly urban residential, increasing, and the amount of land in rural designations decreasing. Table 2.6-8 summarizes the amount of acreage in each land use designation under each alternative. More detailed acre breakdowns for the Preferred Alternative can be found in Section 3.2.1, *Land and Shoreline Use*.

Table 2.6-8. Future Land Use Acreage of Alternatives

	Alternative 1		Alternative 2		Alternative 3		Preferred	
Plan Designation	Acres	Percent of Total	Acres	Percent of Total	Acres	Percent of Total	Acres	Percent of Total
Urban Residential Designations (Urban Restricted, Urban Cluster, Urban Low, Urban Medium, Urban High)	13,064	5.1%	18,837	7.4%	22,024	8.7%	18,566	7.3%
Rural Designations (Rural Residential, Rural Protection, Urban Reserve, Rural Wooded, Forest Resource)	163,624	64.4%	155,981	61.4%	152,689	60.1%	156,397	61.5%
Commercial and Mixed Use Designations – Urban and Rural (Highway/Tourist Commercial, Regional Commercial, Urban Commercial, Urban Town Center, Mixed Use, Urban Village Center, Neighborhood Commercial)	1,789	0.7%	2,649	1.0%	2,746	1.1%	2,564	1.0%
Industrial Designations – Urban and Rural (Industrial, Business Park, Business Center)	4,322	1.7%	3,960	1.6%	5,373	2.1%	4,003	1.6%
Other (e.g., public, mineral overlay, Poulsbo Urban Transition Area, IMPRA, rights of way, cities, Tribal, federal, etc.)[1]	71,367	28.1%	72,752	28.6%	71,346	28.1%	72,650	28.6%
Total	**254,167**	**100%**	**254,179**	**100%**	**254,180**	**100%**	**254,182**	**100%**

Source: Kitsap County GIS 2006.

It should be noted that in the descriptions of the alternatives, the existing land use designations in the 1998 Comprehensive Plan directly correspond to zoning in the Kitsap County Code (KCC). For the purpose of the DEIS and this FEIS analysis, the land use maps illustrating each of the alternatives use the current Plan land use designation and one new land use designation (Mixed Use). This allows for a review of the more detailed Plan categories that are similar to zoning. The Draft and Final Plan proposed new consolidated Land Use Map designations (described below) and development regulations in Volume III include a more detailed zoning map for reference. As proposed in the 10-Year Update, the Land Use Map designations will be consolidated, particularly in the UGAs. In the rural areas only LAMIRD, commercial, and industrial categories would be consolidated. These categories reflect the policy intent of the Preferred Alternative that is chosen for adoption, while simplifying the resulting map. One or more zoning classifications would be available to implement each of the new consolidated Land Use Map designations. The Preferred Alternative includes amendments to the KCC to implement the policy changes described above. The proposed consolidated Land Use Map designations are shown in Table 2.6-9. Figures 2.6-7 and 2.6-8 illustrate the consolidated categories based on the detailed zoning.

Table 2.6-9. Consolidated Comprehensive Plan Land Use Map Designations

Consolidated Comprehensive Plan Land Use Category	Encompasses Which Implementing Zones
Urban Consolidations	
Urban Low Density Residential	Urban Cluster Residential, Urban Restricted, Urban Low Residential
Urban Medium/High Density Residential	Urban Medium Residential, Urban High Residential
Urban Low Intensity Commercial/Mixed Use	Neighborhood Commercial, Urban Village Commercial
Urban High Intensity Commercial/Mixed Use	Highway/Tourist Commercial, Regional Commercial, Urban Commercial[1], Urban Town Center, Mixed Use
Urban Industrial	Airport, Business Center, Business Park, Industrial
Rural Consolidations[2]	
Limited Areas of More Intensive Rural Development (LAMIRDs) – George's Corner and Port Gamble	George's Corner and Port Gamble would be designated of LAMIRD (similar to Suquamish and Manchester), with the implementing zones the same as apply today. In George's Corner, the implementing zone is Neighborhood Commercial. In Port Gamble, the implementing zones include Rural Historic Town Commercial, Rural Historic Town Residential, and Rural Historic Town Waterfront.
Rural Commercial	Highway/Tourist Commercial, Neighborhood Commercial
Rural Industrial	Business Park, Industrial
Other Consolidations	
Public Facilities	Combines Parks/Open Space and Public Facilities. Implemented by new Parks Zone for parks/open space properties. Public facilities are allowed in multiple zones.

[1]The Urban Commercial designation applies to a minimal amount of acres presently, and would be rezoned to Highway Tourist Commercial.

[2]Other designations in the rural area would retain their present direct correlation with zoning districts.

Policy Amendments

Alternative 1 (No Action) would maintain current plan policies. Alternatives 2 and 3 and the Preferred Alternative would result in policy amendments. Most of the policy topics are similar for Alternatives 2 and 3 and the Preferred Alternative. The unique policy issues for these alternatives are listed below. See Volume I for detailed policies.

- Revision of the Urban Low and Urban Cluster density range from 5–9 du/ac to 4–9 du/ac and corresponding revision to Urban Restricted density range from 1–5 du/ac to 1–4 du/ac—Alternative 2.
- Revision of the Urban Low and Urban Cluster density range from 5–9 du/ac to 4–9 du/ac but maintaining the Urban Restricted density range from 1–5 du/ac—Preferred Alternative
- Allowing increased density ranges for Urban High Residential and commercial zones, up to 30 du/ac instead of 24 du/ac—Alternative 2 and the Preferred Alternative.
- Revisions of policy and map consolidating Land Use Map designations—Alternative 2 and the Preferred Alternative.
- Update of greenway and open space policies to match the 2006 Kitsap Parks, Recreation, and Open Space Plan (POS) and any identified corridors (e.g., rural corridor between Silverdale and Central Kitsap) —Alternative 2 and the Preferred Alternative.
- Update of housing and economic development policies to reflect greater diversity of choices—Alternative 2 and the Preferred Alternative.
- Update of transportation and capital facility policies—Alternative 2 and the Preferred Alternative.
- Update of utilities and natural system policies—Alternative 2 and the Preferred Alternative.
- Update of land use policies, including rural and resource lands policies—Alternative 2 and the Preferred Alternative.
- Inclusion of population allocation "banking" with respect to the Central Kitsap, East and West Bremerton UGAs—Alternative 2 and the Preferred Alternative.
- Inclusion of UGA Association and UGA Management Agreement (UGAMA) policies—Alternative 2 and the Preferred Alternative.
- Revision of the TDR Program policies—Alternatives 2 and 3 and the Preferred Alternative.
- Inclusion of policies to encourage sewer connections for all new development and/or implementation of new innovate wastewater technologies (i.e., wastewater membrane systems)—Alternative 2 and the Preferred Alternative.
- Revisions to low impact development (LID) policies—Alternative 2 and the Preferred Alternative.

- Additions of reasonable measure policies—Alternative 2 and the Preferred Alternative.
- SKIA sub-area policy amendment for Industrial Multipurpose Recreational Area (IMPRA), and Urban Holding Area—Alternative 2 and the Preferred Alternative.
- Inclusion of Rural Wooded Incentive Program policies—Alternative 3 and the Preferred Alternative.

Regulatory Amendments

Plan maps and policies are implemented by development regulations including zoning, subdivision, and other regulations. Table 2.6-11 identifies the proposed regulation amendments analyzed in the DEIS and this FEIS in association with the alternatives. The proposed regulation amendments identified in Table 2.6-11 are included in Volume III. In addition to land use and dimensional changes are proposed amendments to improve the clarity, consistency and functionality of existing development regulations (e.g., Title 16 – Land Division and Development, Title 17 - Zoning, Chapter 18.04 -SEPA, Title 21 - Land Use and Development Procedures). Volume III contains a detailed list of regulatory changes that meet the intents described below by the regulation topics.

Table 2.6-10. Potential Regulation Topics – Address in 10-Year Update/EIS Analysis

Regulation Topic	Alternative
1. Revise development regulations to bring them into consistency with the 10-Year Update and related sub-area plans (e.g., area-wide rezones, zoning regulations, SEPA regulations).	
Land Use Regulations	
1.a. Areawide rezones to implement land use designations. Includes new zones such as Mixed Use, Parks, and Urban Holding Area.	Alternative 2 and the Preferred Alternative
1.b. New Mixed Use zone and designation, for Silverdale, East and West Bremerton, Central Kitsap, Port Orchard, and related development regulations (e.g., density, setbacks, height, design criteria).	Alternative 2 and the Preferred Alternative
1.c. Revisions to some rarely used commercial designations (e.g., Urban Commercial).	Alternative 2 and the Preferred Alternative
1.d. New consolidated use table, including 10-Year regulation topics noted above, consolidated land use designations, and revised zones.	Alternative 2 and the Preferred Alternative
Density, Dimension and Design Regulations	
1.e. Revisions to minimum densities in urban areas, including exemptions.	Alternative 2 and the Preferred Alternative
1.f. Revisions to *countywide* maximum height limits and new incentive provisions to exceed height limits.	Alternative 2 and the Preferred Alternative
1.g Revisions to maximum densities in some multifamily, commercial, and mixed-use zones.	Alternative 2 and the Preferred Alternative
1.h. New consolidated density and dimensions table, including 10-Year regulation topics noted above and new Silverdale sub-area density and dimension regulations.	Alternative 2 and the Preferred Alternative

Regulation Topic		Alternative
	1.i. New design review process for implementation of new Silverdale Downtown Design Guidelines.	Alternative 2 and the Preferred Alternative
	SEPA Regulations	
	1.j. SEPA categorical exemptions for mixed use and infill development in the Silverdale UGA and increased thresholds for SEPA categorical exemptions.	Alternative 2 and the Preferred Alternative
2.	**Revise other potential development regulations identified during public review of DEIS and 10-Year Update.**	Preferred Alternative: Add a provision requiring adequate sewer service for new development to implement proposed policies Modifies the density calculation for Urban Restricted to be gross acres minus critical areas
3.	**Revise development regulations to ensure that the Rural Wooded polices are implemented consistent with the direction of prior CPSGMHB orders (e.g., development regulations to implement Rural Wooded clustering goals and polices and clarify program parameters).**	Alternative 3 and the Preferred Alternative
4.	**In tandem with policy updates, revise development regulations that address urban/rural growth levels and reasonable measures, such as TDR programs.**	Alternatives 2 and 3 and the Preferred Alternative
5.	**Revisions to improve the clarity, consistency and functionality of existing development regulations, including, but not limited to permit procedures (e.g., conditional uses, rezones, pre-application, etc.).**	Alternative 2 and the Preferred Alternative

Two regulatory amendments would modify the environmental review process for site-specific developments. The first is intended to facilitate the permit process for minor new construction in unconstrained areas and would raise general categorical thresholds for minor new construction. The second would allow an exemption for infill/mixed use in Silverdale. Each is described further below.

SEPA Categorical Exemption Thresholds for Minor New Construction

Some land use and building activities are exempt from SEPA due to their small size and lack of likelihood to result in significant adverse impacts. SEPA rules allow cities and counties to raise the exemption limit for minor new construction to better accommodate the needs in their jurisdiction. For example, cities and counties may choose to exempt residential developments at any level between 4 and 20 dwelling units. The exemption for commercial buildings can range from 4,000 to 12,000 square feet. Under Alternative 2 and the Preferred Alternative, the County's SEPA rules would be amended to raise thresholds for SEPA categorical exemptions. The new exemptions would be as follows:

- Construction/location of residential structures: from 4 dwelling units currently to 9 dwelling units total, in urban areas (no change in exemption in rural areas).
- Barn and similar agricultural structures from 10,000 square feet to 15,000 square feet (footprint).

- Construction of an office, school, commercial, recreational, service, or storage building, and associated parking: from 4,000 square feet of gross floor area; associated parking facilities for 20 automobiles to 8,000 square feet; 40 automobiles.
- Construction of a parking lot from 20 automobiles to 40 automobiles.
- Any landfill or excavation currently at 100 cubic yards to 500 cubic yards outside of shoreline jurisdiction; 150 cubic yards in shoreline jurisdiction.

These exemptions do not apply when a rezone or any license governing emissions to the air or discharges to water is required, nor when a proposal includes a series of non-exempt actions that cumulatively have a probable significant adverse impact, nor when a proposal is in a critical area and the jurisdiction has eliminated categorical exemptions for proposals in critical areas. Where exemptions do apply, other KCC requirements for transportation, stormwater, and other issues will continue to apply.

SEPA Mixed Use/Infill Categorical Exemption

SEPA allows a categorical exemption for new residential or mixed-use development if the development is within a UGA and current density/intensity of use is lower than called for in the goals and polices of the comprehensive plan, provided the plan was previously subjected to environmental analysis through an EIS. This mixed use/infill exemption is proposed for application in the downtown Silverdale area (see Volume III) and is based on the development standards described in the Draft Silverdale Downtown Design Guidelines, August 2006, included in the Draft Volume III. These design standards are anticipated to be adopted in a final form in the first part of 2007. The criteria for the exemption are listed below.

1. Must be limited to new residential or mixed-use development within a designated UGA.
2. Existing density/intensity of use in the UGA must be lower than that called for in the comprehensive plan.
3. An EIS must have been completed for the adoption of the comprehensive plan.
4. Proposed development must not exceed the density/intensity of use called for in the comprehensive plan.

It is anticipated that the SEPA exemption will be administered generally according to the steps shown below.

- Create a "bank" of dwelling units and square footage/employees assumed and/or of traffic trips.
- Individual residential/mixed use development proposals within the defined location may use trips up to the maximum in the "bank" on a first-come first-served basis.

Like the general SEPA thresholds for minor new construction, the mixed use/infill exemption will not apply in the following circumstances.

- The proposal is a segment of a proposal that contains both exempt and non-exempt actions.
- The jurisdiction determines that the proposal includes a series of non-exempt actions that cumulatively have a probable significant adverse impact.
- The proposal is in a critical area where the jurisdiction has eliminated categorical exemptions for proposals in critical areas.

Additional guidelines may apply.

Description of Preferred Alternative

The Preferred Alternative would revise Plan goals and policies, UGA boundaries, and the Land Use Map to include the capacity for approximately 15,169 housing units, 36,444 new persons, and about 36,000 jobs within the Kitsap County UGAs. This alternative would achieve a population level about 5% below the CPP population growth target for the planning area as a whole. All nine UGAs with population growth targets have less capacity than the target to varying degrees. Table 2.6-5 compares the CPP population and housing unit capacity of the alternatives for each UGA.

The Preferred Alternative would nearly accommodate the targeted population growth primarily by increasing the allowed density within specific portions of the Silverdale, Central Kitsap, East Bremerton, West Bremerton, Gorst, and Port Orchard UGAs, including increases in the amount of land available for mixed use and infill development. The Preferred Alternative would also include intermediate expansion of certain UGA boundaries (Silverdale, Central Kitsap, West Bremerton, Gorst, and Port Orchard) and a larger expansion of the SKIA UGA, described further below. The Silverdale and Central Kitsap UGA boundaries would contract at their joint boundary in the Barker Creek corridor. The UGAs would encompass approximately 51.1 square miles of land, an increase of approximately 33%. UGA expansions would generally reflect lot patterns and environmental constraints, and would substantially meet the CPP target. Population not yet accommodated would be "banked" to allow for Urban Growth Area Management Agreements with other jurisdictions or potential CPP amendments to reallocate population, as needed.

The Preferred Alternative would concentrate housing and population growth in growth nodes. This alternative would provide the capacity for a greater variety of new housing unit types than is currently allowed. In UGAs, housing would consist primarily of single-family unit types (75%); but there would be a greater percentage of multifamily housing than under other alternatives studied (25%), and densities would range from 4–30 du/ac. Allowed densities for new single-family residential development in Urban Low and Urban Cluster areas within the UGAs would be reduced somewhat, to 4–9 du/ac; Urban Restricted would equal 1–5 du/ac. Higher-density residential/mixed use zones would allow up to 30 du/ac in some locations rather than the current maximum of 24 du/ac. Minimum densities would be established for residential development

within all urban zones, and future countywide densities would be expected to meet CPSGMHB urban density requirements.

The Preferred Alternative reflects the priority study areas/recommended land use plans studied by the Port Orchard/South Kitsap CAG. For Silverdale, significant portions of the Preferred Alternative reflect the CACs recommended land use plan. Differences with CAC recommendations include a revision to industrial lands west of Dickey Road, a revision to low-density residential adjacent to the Chico Creek estuary, exclusion of the Barker Creek corridor, revising the Anderson Hill frontage in Downtown as Mixed Use, and revising the Schold Farm area as Urban Restricted. The Preferred Alternative also includes some land use concepts of the citizen-sponsored Illahee Community Plan. Land use redesignation requests for 82 properties are also assumed to occur under this alternative. See Tables 2.6-3 through 2.6-6 for a comparison of densification, UGA boundary changes, and land use redesignations under the alternatives.

Employment growth under this alternative would be accommodated through intensification within specific employment and mixed-use areas. Some Industrial-designated land along State Route (SR) 3 within the Silverdale UGA would be converted to Highway Tourist Commercial and Regional Commercial designations. The Silverdale UGA boundary would expand to include more land designated for Business Center and Regional Commercial uses, allowing a mix of light industrial, office, and technology uses as well as commercial (in the appropriate zone). The Port Orchard UGA would also contain more land under commercial and industrial classifications, but less commercial than under Alternatives 2 or 3.

A new land use designation, IMPRA, is proposed in the SKIA area. The designation would be an urban designation (i.e., within the urban growth boundary), and would be reserved for development of employment uses, such as a speedway or other unique recreational uses. No development could occur until certain criteria, specified in policies, are met, to provide for a subsequent detailed planning process. As a prerequisite to development, proposed policies require that a master plan and development agreement be approved. The master plan would identify, at a minimum, the general location of uses, access, project phasing, and infrastructure to serve the development. The development agreement would include a list of allowed uses and development standards, and it would be adopted as the zoning regulation for the area of the master plan. Approval of the development regulations would be legislative; this approach would ensure full public process. The policies would also require issuance of a project-level SEPA analysis, in accordance with SEPA rules, for the master plan and implementing zoning and development regulations. Through the master plan and SEPA analysis, capital facilities needs and impacts would be evaluated. The County could update the Capital Facilities Plan (Volume I, Appendix A) based on the analysis in the site-specific environmental review. The process would ensure that sufficient capital facilities planning can occur at a project level. Given the speculative nature of future development, the policies include a sunset provision and a termination clause. Provisions may be included that would require a determination at intervals that the project is progressing as envisioned in the master plan. If County decision makers deny the proposal, if the work on the project ceases, if progress does not meet the time frames outlined in the policies, or if

the project is substantially changed from the uses proposed in the master plan, the site would revert to the prior land use designation and zoning (i.e., the current SKIA land uses under Alternative 1).

As under Alternative 1, all UGAs would see some employment gains, but SKIA, Silverdale, and Port Orchard, (in that order) would experience the most significant gains. See Tables 2.6-4 and 2.6-7 above for a general comparison of employment capacity under the alternatives.

On a countywide basis, the amount of land in urban uses would increase and the amount of land in rural uses would decrease. However, UGA boundaries would increase and rural areas would decrease less than under Alternatives 2 or 3. (See Table 2.6-8 for a comparison.)

The Preferred Alternative would result in the policy amendments listed below and listed more fully in Volume I.

- Revision of the Urban Low and Urban Cluster density range from 5–9 du/ac to 4–9 du/ac.
- Allowing increased density ranges for Urban High Residential and commercial zones, up to 30 du/ac instead of 24 du/ac.
- Revisions of policy and map to consolidate Land Use Map categories.
- Update of greenway and open space policies to match the 2006 Kitsap County Parks, Recreation, and Open Space Plan and any identified corridors (e.g., rural corridor between Silverdale and Central Kitsap).
- Update of housing and economic development policies to reflect a greater diversity of choices.
- Update of transportation and capital facility policies.
- Update of utilities and natural systems policies.
- Update of land use policies, including rural and resource lands.
- Inclusion of population allocation "banking" with respect to the Central Kitsap, East and West Bremerton UGAs.
- Inclusion of UGA Association and UGAMA policies.
- Revision of the TDR Program policies.
- Revision of Rural Wooded policies.
- Inclusion of policies to encourage sewer connections for all new development and/or implementation of new innovative wastewater technologies (i.e., wastewater membrane systems).
- Revisions to LID policies.

- Addition of reasonable measure policies.
- SKIA sub-area policy for IMPRA, and Urban Holding Area (UHA).

Under the Preferred Alternative, the following regulation amendments are proposed.

- Areawide redesignation and rezones to implement Land Use Map and policy changes.
- Density and dimension amendments to match policy/map changes in Volume I, Chapter 2, *Land Use.*
- New mixed-use zone, parks zone, and urban holding area.
- Consolidation of some commercial categories.
- Consolidated Use Table and Densities and Dimensions Table in Title 17.
- Minimum densities in urban areas.
- Revisions to maximum height restrictions in some multifamily, commercial, mixed use, and industrial zones.
- Revisions to the density calculation for Urban Restricted zone to be gross acres minus critical areas.
- Categorical exemptions from further environmental review for minor new construction countywide, and for mixed use and infill development within the Silverdale UGA.
- Adds a regulation that implements policies to require adequate sanitary sewer service in UGAs for new residential development.
- Revisions to improve the clarity, consistency and functionality of existing development regulations, including, but not limited to permit procedures (e.g., conditional uses, rezones, pre-application, etc).
- New TDR regulations that promote transfer of density from rural categories to urban areas. New UGA expansions or UGA land use reclassifications would require use of the TDR program. (See below.)
- Inclusion of Rural Wooded Incentive Program regulations. (See below.)

Under GMA, a TDR program would help direct new growth away from rural lands and toward urbanizing areas where urban services are both appropriate and efficiently provided. Development rights would be purchased by either developers or individuals seeking rezone applications or site-specific comprehensive plan changes and used to increase the density of development (or to allow for greater commercial floor area or increased or reduced parking requirements) on a receiving site. (It is anticipated that the purchase would be between willing sellers and buyers in private transactions.) They would be incorporated into the site-specific review process or development permit review process, and the new units would be permitted

under the standard permit review process. The Preferred Alternative modifies the TDR program in comparison to Alternatives 2 and 3 by allowing for rural properties that have sold a development right to restore the right by purchasing one from another rural property, and by restoring development rights to properties if and when they are added to the UGA. The revised TDR regulations allow the County flexibility to determine, at the time of a comprehensive plan docking resolution, whether to require TDRs for sub-area or comprehensive planning efforts. Proposed sending and receiving areas are identified below.

- The proposed sending areas would include all Rural Wooded and Rural Lands, areas identified as significant landscape or habitat features, environmentally sensitive (critical) areas, scenic views, rural character, and open space corridors. Sending area maps and parcel lists would be updated annually.
- The proposed receiving area is made up of all incorporated and unincorporated UGAs. Landowners may place development rights onto a receiving site either by transferring them from a qualifying parcel they own or by purchasing the development rights from a qualified sending site landowner. With transferred development rights and a site-specific rezone application, a landowner may develop the receiving site at a higher density than previously allowed by the former zoning. Further environmental review under SEPA would be required for a rezone.

Changes to the TDR program that was proposed under Alternative 2 include allowing for rural properties that have sold a development right to restore the right by purchasing one from another rural property, and restoring development rights to properties if and when they are added to the UGA. However, this latter restoration would depend on the BOCC authorization at the time of an areawide UGA land use review or sub-area plan.

Under the Preferred Alternative, a Rural Wooded Incentive Program would apply, allowing cluster development at a range of densities—from 1–5 du/20 ac—depending on the percentage of open space retained and the period of time protected. The program would first apply to 5,000 acres; once monitored, the program could be extended to a greater area designated Rural Wooded.

For a description of DEIS alternatives, please see Chapter 2 of the DEIS.

Appendix B

Updated Land Capacity Analysis for Preferred Alternative

Appendix B:
Updated Land Capacity Analysis – Preferred Alternative

The Washington State Growth Management Act calls for Kitsap County to designate Urban Growth Areas to accommodate the County's expected growth for the next 20 years. Determining this includes conducting an Updated Land Capacity Analysis (ULCA) for residential, commercial and industrial lands, which is a model used to implement growth management programs and be an estimate of available lands for development. The method discounts vacant and underutilized lands based on critical areas, public facilities, market factors, etc.

Kitsap County approved the ULCA in December 2005. Because of the July 26, 2006 Central Puget Sound Growth Management Hearings Board decision on the consistency of the Kingston Sub-Area Plan and ULCA with the Growth Management Act (case number 06-3-0007) the ULCA method that discounted un-sewered areas of existing UGAs is no longer valid since it was found inconsistent with the Growth Management Act. However, the CPSGMHB did find in favor of Kitsap County for other discount factors in the ULCA because they were tailored to local circumstances and were balanced by a relatively low market factor.

The Draft Environmental Impact Statement for the 10-Year Update was based on a land capacity analysis of Alternatives 1, 2, and 3 and reviewed capacity results without the sewer factor. The results of the ULCA for the DEIS Alternatives were shown on maps showing gross developable acres, tables showing net developable acres, and tables showing resulting dwelling units and population.

This FEIS applies the amended ULCA to the Preferred Alternative, and excludes the sewer factor. The following pages show ULCA summary sheets for each Urban Growth Area based on the Preferred Alternative.

It should be noted that the ULCA is a product of the approved/amended method and the use of a Geographic Information System (GIS). GIS analysis is an analytic tool that allows analysis of land use characteristics useful for growth management planning. The GIS analysis prepared in conjunction with this has been intended to allow for a policy-level comparison of alternatives. Because the GIS analysis depends on databases with varying dates and assumptions, minor variances in acreage estimates and boundary locations are expected. The Growth Management Act encourages monitoring, and the County can further refine and update its databases and its approach over time as appropriate. The regular monitoring process is addressed in Land Use Element policies.

KINGSTON UGA (Unincorporated)

Kitsap County
Updated Land Capacity Analysis
Board of County Commissioner Approved
November 6, 2006

Final

		VACANT LAND							UNDERUTILIZED LAND							
		Urban Low (4 Du/Ac)	Urban Medium (10 Du/Ac)	Urban High (19 Du/Ac)	Urban Cluster (4 DU/Ac)	Urban Restricted (1 DU/Ac)	*Urban Village Center (up to 18 Du/Ac)	SUBTOTAL	Urban Low (4 Du/Ac)	Urban Medium (10 Du/Ac)	Urban High (19 Du/Ac)	Urban Cluster (4 DU/Ac)	Urban Restricted (1 DU/Ac)	*Urban Village Center (up to 18 Du/Ac)	SUBTOTAL	TOTAL ACREAGE BY ROW
	Acres	61.95	31.47	0.00	388.39	234.90	3.82	680.33	321.43	52.21	8.61	0.00	225.02	27.06	635.53	1315.86
Redevelopement	Vacant (Actual Acres) (-)	47.74	30.05	0.00	360.39	168.87	2.43	609.48								
	Underutilized (Actual Acres) (-)								55.48	20.93	0.00	0.00	23.31	8.05	107.77	717.25
Critical Areas	Vacant (Actual Acres)	38.12	22.84	0.00	237.47	106.66	2.35	407.44								
Includes Buffers	Area of Concern (50% reduction)															
	Critical Area (75% reduction)															
	Underutilized (Actual Acres)								41.09	47.23	0.00	0.00	12.67	7.38	78.37	485.81
	Area of Concern (50% reduction)															
	Critical Area (75% reduction)															
Roads/ROW (Future)	Vacant 20% (-)	30.50	16.27	0.00	188.97	85.33	1.88	325.95								
	Underutilized 20% (-)								32.87	13.78	0.00	0.00	10.43	5.90	62.69	388.65
Public Facilities (Future)	Vacant 15% (-)	25.92	15.53	0.00	161.48	72.53	1.60	277.06								
	Underutilized 15% (-)								27.94	11.72	0.00	0.00	8.81	5.02	53.29	330.35
Unavailable Lands	Vacant 5% (-)	24.63	14.75	0.00	153.40	68.90	1.52	263.21								
	Underutilized 15% (-)								23.75	9.96	0.00	0.00	7.32	4.26	45.29	308.50
														1.00		
	Net Developable Acres	24.63	14.75	0.00	153.40	68.90	0.76	262.45	23.75	9.91	0.00	0.00	7.32	3.26	44.24	306.69
							1.52									

*Urban Village Center is divided to reflect 50% Net developable acres-Residential and 50% Net developable acres-Commercial per Updated Land Capacity Analysis Methodology (ULCA)

Updated Land Capacity Analysis (ULCA) 2005
Method Direction from the Kitsap County Board of Commissioners
April 25, 2005

Updated Land Capacity Analysis (ULCA)
per KCRP IV Hearings Board Decision August 2006

Critical Area Ordinance 351-2005
adopted December 1, 2005

Prepared by Kitsap County
Community Development
GIS Division
Created November 6, 2006

KINGSTON UGA (Unincorporated)
Commerical/Industrial

Kitsap County
Updated Land Capacity Analysis
Board of County Commissioner Approved
November 6, 2006

Final

		COMMERCIAL/INDUSTRIAL VACANT LAND									COMMERCIAL/INDUSTRIAL UNDERUTILIZED LAND									
		Highway Tourist Commercial	Neighborhood Commercial	Urban Commercial	Regional Commercial	Business Park	Business Center	Industrial	*Urban Village Center	SUBTOTAL	Highway Tourist Commercial	Neighborhood Commercial	Urban Commercial	Regional Commercial	Business Park	Business Center	Industrial	*Urban Village Center	SUBTOTAL	TOTAL ACREAGE BY ROW
	Total Gross Acres	20.11	0.00	0.00	0.00	0.00	0.00	26.37	0.00	46.48	27.44	25.34	0.00	0.00	0.00	0.00	0.00	6.90	62.68	103.16
Redevelopement	Vacant (Actual Acres) (-)	18.14	0.00	0.00	0.00	0.00	0.00	10.17	0.00	28.31										
	Underutilized (Actual Acres) (-)										12.08	0.00	0.00	0.00	0.00	0.00	0.00	3.96	16.04	44.35
Critical Areas	Vacant (Actual Acres)	17.29	0.00	0.00	0.00	0.00	0.00	7.07	0.00	24.35										
Includes Buffers	Area of Concern (50% reduction)																			
	Critical Area (75% reduction)																			
	Underutilized (Actual Acres)										10.75	0.00	0.00	0.00	0.00	0.00	0.00	3.93	14.68	39.03
	Area of Concern (50% reduction)																			
	Critical Area (75% reduction)																			
Roads/ROW (Future)	Vacant 20% (-)	13.83	0.00	0.00	0.00	0.00	0.00	5.65	0.00	19.48										
	Underutilized 20% (-)										8.60	0.00	0.00	0.00	0.00	0.00	0.00	3.14	11.74	31.22
Public Facilities (Future)	Vacant 15% (-)	11.76	0.00	0.00	0.00	0.00	0.00	4.80	0.00	16.56										
	Underutilized 15% (-)										7.31	0.00	0.00	0.00	0.00	0.00	0.00	2.67	9.98	26.54
Unavailable Lands	Vacant 5% (-)	11.17	0.00	0.00	0.00	0.00	0.00	4.56	0.00	15.73										
	Underutilized 15% (-)										6.21	0.00	0.00	0.00	0.00	0.00	0.00	2.27	8.48	24.22
																		1.13		
									1.52									2.13		
	Net Developable Acres	11.17	0.00	0.00	0.00	0.00	0.00	4.56	0.76	16.49	6.21	0.00	0.00	0.00	0.00	0.00	0.00	3.26	9.47	25.97

*Urban Village Center is divided to reflect 50% Net developable acres-Residential and 50% Net developable acres-Commercial per Updated Land Capacity Analysis Methodology (ULCA)

Updated Land Capacity Analysis (ULCA) 2005
Method Direction from the Kitsap County Board of Commissioners
April 25, 2005

Updated Land Capacity Analysis (ULCA)
per KCRP IV Hearings Board Decision August 2006

Critical Area Ordinance 351-2005
adopted December 1, 2005

Prepared by Kitsap County Department of Community Development GIS Division Created November 6, 2006

Poulsbo (Unincorporated)
Transition Area

Kitsap County
Updated Land Capacity Analysis
Board of County Commissioner Approved
November 6, 2006

Final

		VACANT LAND					UNDERUTILIZED LAND					
		Residential Low (4 Du/Ac)	Residential Medium (5 Du/Ac)	Residential High (10 Du/Ac)	Redevelopment Zone (1 Du/Ac)	SUBTOTAL	Residential Low (4 Du/Ac)	Residential Medium (5 Du/Ac)	Residential High (10 Du/Ac)	Redevelopment Zone (1 Du/Ac)	SUBTOTAL	TOTAL ACREAGE BY ROW
	Acres	174.62	0.00	0.00	0.00	174.62	553.33	0.00	0.00	0.00	553.33	727.95
Redevelopement	Vacant	174.62	0.00	0.00	0.00	174.62						
	Underutilized						282.25	0.00	0.00	0.00	282.25	456.87
Critical Areas	Vacant 22% (-)	136.20	0.00	0.00	0.00	136.20						
	Underutilized 22% (-)						220.16	0.00	0.00	0.00	220.16	356.36
Roads/Right-of-way	Vacant 20% (-)	108.96	0.00	0.00	0.00	108.96						
	Underutilized 20% (-)						176.12	0.00	0.00	0.00	176.12	285.09
Public Facilities	Vacant 15% (-)	92.62	0.00	0.00	0.00	92.62						
	Underutilized 15% (-)						149.71	0.00	0.00	0.00	149.71	242.32
Unavailable Land	Vacant 5% (-)	87.99	0.00	0.00	0.00	87.99						
	Underutilized 15% (-)						127.25	0.00	0.00	0.00	127.25	215.24
	Net Developable Acres	**87.99**	**0.00**	**0.00**	**0.00**	**87.99**	**127.25**	**0.00**	**0.00**	**0.00**	**127.25**	**215.24**
	Dwelling Unit Capacity	**352**	**0**	**0**	**0**	**352**	**509**	**0**	**0**	**0**	**509**	**861**
		2.5 pph	2.5 pph	1.8 pph	2.5 pph		2.5 pph	2.5 pph	1.8 pph	2.5 pph		
	Population Capacity	**880**	**0**	**0**	**0**	**880**	**1272**	**0**	**0**	**0**	**1272**	**2152**

Updated Land Capacity Analysis (ULCA) 2005
Method Direction from the Kitsap County Board of Commissioners with City Modification

Prepared by Kitsap County
Community Development
GIS Division
Created November 6, 2006

Po...bo (Unincorporated)
Transition Area

Kitsap County
Updated Land Capacity Analysis
Board of County Commissioner Approved
November 6, 2006

		Commercial/Industrial Vacant Land		Commercial/Industrial Underutilized Land		
		Light Industrial	SUBTOTAL	Light Industrial	SUBTOTAL	TOTAL ACREAGE BY ROW
	Total Gross Acres	10.35	**10.35**	12.83	**12.83**	**23.18**
Redevelopement	**Vacant (Actual Acres) (-)**	10.35	**10.35**			
	Underutilized (Actual Acres) (-)			0.00	**0.00**	**10.35**
Critical Areas	**Vacant 22% (-)**	8.07	**8.07**			
	Underutilized 22% (-)			0.00	**0.00**	**8.07**
Roads/ROW (Future)	**Vacant 20% (-)**	6.46	**6.46**			
	Underutilized 20% (-)			0.00	**0.00**	**6.46**
Public Facilities (Future)	**Vacant 15% (-)**	5.49	**5.49**			
	Underutilized 15% (-)			0.00	**0.00**	**5.49**
Unavailable Lands	**Vacant 5% (-)**	5.22	**5.22**			
	Underutilized 15% (-)			0.00	**0.00**	**5.22**
	Net Developable Acres	**5.22**	**5.22**	**0.00**	**0.00**	**5.22**

Updated Land Capacity Analysis (ULCA) 2005
Method Direction from the Kitsap County Board of Commissioners with City Modification

Prepared by Kitsap County Department of
Community Development
GIS Division
Created November 6, 2006

Silverdale UGA (Unincorporated)

Kitsap County
Updated Land Capacity Analysis
Board of County Commissioner Approved
November 6, 2006

Final

		VACANT LAND						UNDERUTILIZED LAND						
		Urban Low (4 Du/Ac)	Urban Medium (10 Du/Ac)	Urban High (19 Du/Ac)	Urban Restricted (1 Du/Ac)	*Mixed-Use (10 Du/Ac)	SUBTOTAL	Urban Low (4 Du/Ac)	Urban Medium (10 Du/Ac)	Urban High (19 Du/Ac)	Urban Restricted (1 Du/Ac)	*Mixed-Use (10 Du/Ac)	SUBTOTAL	TOTAL ACREAGE BY ROW
	Acres	712.67	0.57	47.70	294.87	37.07	1092.98	2657.18	74.09	186.58	795.63	83.23	3796.61	4889.59
Redevelopement	Vacant (Actual Acres) (-)	632.89	0.57	20.45	286.85	35.98	976.74							
	Underutilized (Actual Acres) (-)							502.49	5.36	12.08	177.83	24.25	722.01	1698.75
Critical Areas	Vacant (Actual Acres)	545.02	0.57	16.31	184.89	18.79	767.57							
Includes Buffers	Area of Concern (50% reduction)													
	Critical Area (75% reduction)													
	Underutilized (Actual Acres)							418.34	5.14	9.96	90.97	20.19	544.60	1312.17
	Area of Concern (50% reduction)													
	Critical Area (75% reduction)													
Roads/ROW (Future)	Vacant 20% (-)	436.02	0.46	14.65	147.91	15.03	614.06							
	Underutilized 20% (-)							334.67	4.11	7.96	72.78	16.15	435.68	1049.74
Public Facilities (Future)	Vacant 15% (-)	370.61	0.39	12.45	125.72	12.78	521.95							
	Underutilized 15% (-)							284.47	3.50	6.77	61.86	13.73	370.33	892.28
Unavailable Lands	Vacant 5% (-)	352.08	0.37	11.83	119.44	12.14	495.85							
	Underutilized 15% (-)							241.80	2.97	5.75	52.58	11.67	314.78	810.63
	Net Developable Acres	**352.08**	**0.37**	**11.83**	**119.44**	**12.14**	**495.85**	**241.80**	**2.97**	**5.75**	**52.58**	**11.67**	**314.78**	**810.63**
						6.07						5.84		
	Dwelling Unit Capacity	**1408**	**4**	**225**	**119**	**109**	**1865**	**765**	**28**	**100**	**41**	**102**	**1036**	**2901**
		2.5 pph	2.5 pph	1.8 pph	2.5 pph	1.8 pph		2.5 pph	2.5 pph	1.8 pph	2.5 pph	1.8 pph		
	Population Capacity	**3521**	**9**	**405**	**299**	**197**	**4430**	**1913**	**69**	**181**	**101**	**183**	**2447**	**6877**

*Mixed Use Zone is divided to reflect 100% Net developable acres-Residential and 50% Net developable acres-Commercial

Updated Land Capacity Analysis (ULCA) 2005
Method Direction from the Kitsap County Board of Commissioners
April 25, 2005

Updated Land Capacity Analysis (ULCA)
per KCRP IV Hearings Board Decision August 2006

Critical Area Ordinance 351-2005
adopted December 1, 2005

Prepared by Kitsap County
Community Development
GIS Division
Created November 6, 2006

Silverdale UGA (Unincorporated)
Commerical/Industrial

Kitsap County
Updated Land Capacity Analysis
Board of County Commissioner Approved
November 6, 2006

Final

		COMMERCIAL/INDUSTRIAL VACANT LAND								COMMERCIAL/INDUSTRIAL UNDERUTILIZED LAND								
		Highway Tourist Commercial	Neighborhood Commercial	*Mixed Use (10 Du/Ac)	Regional Commercial	Business Park	Business Center	Industrial	SUBTOTAL	Highway Tourist Commercial	Neighborhood Commercial	*Mixed Use (10 Du/Ac)	Regional Commercial	Business Park	Business Center	Industrial	SUBTOTAL	TOTAL ACREAGE BY ROW
	Total Gross Acres	28.57	3.36	37.07	110.39	0.00	46.36	329.19	554.94	53.82	44.01	63.23	454.71	4.76	134.00	305.60	1077.23	1632.17
Redevelopement	Vacant (Actual Acres) (-)	28.57	2.99	0.00	77.23	0.00	46.36	324.13	479.28									
	Underutilized (Actual Acres) (-)									26.58	1.55	0.00	118.98	4.76	117.08	78.93	347.88	827.16
Critical Areas	Vacant (Actual Acres)	22.10	2.55	0.00	58.65	0.00	27.99	262.93	372.20									
Includes Buffers	Area of Concern (50% reduction)																	
	Critical Area (75% reduction)																	
	Underutilized (Actual Acres)									16.85	1.14	0.00	84.36	3.51	84.29	60.08	260.24	632.44
	Area of Concern (50% reduction)																	
	Critical Area (75% reduction)																	
Roads/ROW (Future)	Vacant 20% (-)	17.68	2.04	0.00	45.32	0.00	22.39	210.34	297.76									
	Underutilized 20% (-)									13.48	0.91	0.00	75.49	2.82	67.43	48.06	208.19	505.95
Public Facilities (Future)	Vacant 15% (-)	15.02	1.73	0.00	38.52	0.00	19.03	178.79	253.10									
	Underutilized 15% (-)									11.46	0.78	0.00	64.16	2.40	57.31	40.85	176.96	430.06
Unavailable Lands	Vacant 5% (-)	14.27	1.65	0.00	36.59	0.00	18.08	169.85	240.44									
	Underutilized 15% (-)									9.74	0.66	0.00	54.54	2.04	48.72	34.72	150.42	390.86
	Net Developable Acres	14.27	1.65	6.07	36.59	0.00	18.08	169.85	246.51	9.74	0.66	5.84	54.54	2.04	48.72	34.72	156.26	402.77

*Mixed Use Zone is divided to reflect 100% Net developable acres-Residential and 50% Net developable acres-Commercial

Updated Land Capacity Analysis (ULCA) 2005
Method Direction from the Kitsap County Board of Commissioners
April 25, 2005

Updated Land Capacity Analysis (ULCA)
per KCRP IV Hearings Board Decision August 2006

Critical Area Ordinance 351-2005
adopted December 1, 2005

Prepared by Kitsap County Department of Community Development GIS Division
Created November 6, 2006

Central Kitsap UGA (Unincorporated)

Kitsap County
Updated Land Capacity Analysis
Board of County Commissioner Approved
November 6, 2006

Final

		VACANT LAND						UNDERUTILIZED LAND						
		Urban Low (4 Du/Ac)	Urban Medium (10 Du/Ac)	Urban High (19 Du/Ac)	Urban Restricted (1 Du/Ac)	*Mixed-Use (10 DU/Ac)	SUBTOTAL	Urban Low (4 Du/Ac)	Urban Medium (10 Du/Ac)	Urban High (19 Du/Ac)	Urban Restricted (1 Du/Ac)	*Mixed-Use (10 DU/Ac)	SUBTOTAL	TOTAL ACREAGE BY ROW
	Acres	332.81	2.00	28.10	914.72	46.81	1324.44	2252.16	183.51	179.42	1534.99	80.00	4229.98	5554.42
Redevelopement	Vacant (Actual Acres) (-)	324.61	2.00	27.89	530.05	46.81	931.36							
	Underutilized (Actual Acres) (-)							375.05	65.99	32.93	252.32	30.46	756.75	1688.11
Critical Areas	Vacant (Actual Acres)	284.55	2.00	19.96	303.64	28.65	588.79							
Includes Buffers	Area of Concern (50% reduction)													
	Critical Area (75% reduction)													
	Underutilized (Actual Acres)							292.27	61.09	28.50	150.54	28.35	560.75	1149.54
	Area of Concern (50% reduction)													
	Critical Area (75% reduction)													
Roads/ROW (Future)	Vacant 20% (-)	187.64	1.60	15.96	242.91	22.92	471.03							
	Underutilized 20% (-)							233.82	48.87	22.80	120.43	22.68	448.60	919.63
Public Facilities (Future)	Vacant 15% (-)	169.49	1.36	13.57	206.48	19.48	400.38							
	Underutilized 15% (-)							198.74	41.54	19.38	102.37	19.28	381.31	781.69
Unavailable Lands	Vacant 5% (-)	151.52	1.29	12.89	196.15	18.51	380.36							
	Underutilized 15% (-)							168.93	35.31	16.47	87.01	16.39	324.11	704.47
	Net Developable Acres	**151.52**	**1.29**	**12.89**	**196.15**	**18.51**	**380.36**	**168.93**	**35.31**	**16.47**	**87.01**	**16.39**	**324.11**	**704.47**
						9.25						8.19		
	Dwelling Unit Capacity	**606**	**13**	**245**	**196**	**167**	**1227**	**523**	**335**	**294**	**59**	**157**	**1368**	**2594**
		2.5 pph	2.5 pph	1.8 pph	2.5 pph	1.8 pph		2.5 pph	2.5 pph	1.8 pph	2.5 pph	1.8 pph		
	Population Capacity	**1515**	**32**	**441**	**490**	**300**	**2779**	**1307**	**838**	**529**	**148**	**282**	**3104**	**5882**

*Mixed Use Zone is divided to reflect 100% Net developable acres-Residential and 50% Net developable acres-Commercial

Updated Land Capacity Analysis (ULCA) 2005
Method Direction from the Kitsap County Board of Commissioners
April 25, 2005

Updated Land Capacity Analysis (ULCA)
per KCRP IV Hearings Board Decision August 2006

Critical Area Ordinance 351-2005
adopted December 1, 2005

Prepared by Kitsap County
Community Development
GIS Division
Created November 6, 2006

Central Kitsap UGA (Unincorporated)
Commerical/Industrial

Kitsap County
Updated Land Capacity Analysis
Board of County Commissioner Approved
November 6, 2006

Final

		COMMERCIAL/INDUSTRIAL VACANT LAND								COMMERCIAL/INDUSTRIAL UNDERUTILIZED LAND								
		Highway Tourist Commercial	Neighborhood Commercial	*Mixed Use (10 Du/Ac)	Regional Commercial	Business Park	Business Center	Industrial	SUBTOTAL	Highway Tourist Commercial	Neighborhood Commercial	*Mixed Use (10 Du/Ac)	Regional Commercial	Business Park	Business Center	Industrial	SUBTOTAL	TOTAL ACREAGE BY ROW
	Total Gross Acres	41.06	7.77	0.00	0.00	0.00	0.00	0.00	48.83	73.16	8.45	0.00	0.00	0.00	0.00	12.25	93.91	142.74
Redevelopement	Vacant (Actual Acres) (-)	41.06	7.77	0.00	0.00	0.00	0.00	0.00	48.83									
	Underutilized (Actual Acres) (-)									3.70	2.06	0.00	0.00	0.00	0.00	0.00	5.76	54.59
Critical Areas	Vacant (Actual Acres)	26.89	7.08	0.00	0.00	0.00	0.00	0.00	33.97									
Includes Buffers	Area of Concern (50% reduction)																	
	Critical Area (75% reduction)																	
	Underutilized (Actual Acres)									3.08	1.99	0.00	0.00	0.00	0.00	0.00	5.07	39.03
	Area of Concern (50% reduction)																	
	Critical Area (75% reduction)																	
Roads/ROW (Future)	Vacant 20% (-)	21.51	5.66	0.00	0.00	0.00	0.00	0.00	27.17									
	Underutilized 20% (-)									2.46	1.59	0.00	0.00	0.00	0.00	0.00	4.05	31.23
Public Facilities (Future)	Vacant 15% (-)	18.29	4.81	0.00	0.00	0.00	0.00	0.00	23.10									
	Underutilized 15% (-)									2.09	1.35	0.00	0.00	0.00	0.00	0.00	3.44	26.54
Unavailable Lands	Vacant 5% (-)	17.37	4.57	0.00	0.00	0.00	0.00	0.00	21.94									
	Underutilized 15% (-)									1.78	1.15	0.00	0.00	0.00	0.00	0.00	2.93	24.87
	Net Developable Acres	17.37	4.57	9.25	0.00	0.00	0.00	0.00	31.19	1.78	1.15	8.19	0.00	0.00	0.00	0.00	11.12	42.31

*Mixed Use Zone is divided to reflect 100% Net developable acres-Residential and 50% Net developable acres-Commercial

Updated Land Capacity Analysis (ULCA) 2005
Method Direction from the Kitsap County Board of Commissioners
April 25, 2005

Updated Land Capacity Analysis (ULCA)
per KCRP IV Hearings Board Decision August 2005

Critical Area Ordinance 351-2005
adopted December 1, 2005

Prepared by Kitsap County Department of Community Development GIS Division Created November 6, 2006

Bremerton East UGA (Unincorporated)

Kitsap County
Updated Land Capacity Analysis
Board of County Commissioner Approved
November 6, 2006

Final

		VACANT LAND						UNDERUTILIZED LAND						
		Urban Low (4 Du/Ac)	Urban Medium (10 Du/Ac)	Urban High (19 Du/Ac)	Urban Restricted (1 Du/Ac)	*Mixed Use (10 Du/Ac)	SUBTOTAL	Urban Low (4 Du/Ac)	Urban Medium (10 Du/Ac)	Urban High (19 Du/Ac)	Urban Restricted (1 Du/Ac)	*Mixed Use (10 Du/Ac)	SUBTOTAL	TOTAL ACREAGE BY ROW
	Acres	158.77	26.73	0.99	14.12	6.23	206.84	703.15	66.41	5.28	92.59	20.17	888.60	1095.44
Redevelopement	Vacant (Actual Acres) (-)	141.86	26.73	0.99	12.63	6.23	188.44							
	Underutilized (Actual Acres) (-)							158.22	16.61	2.38	0.00	7.15	184.36	372.80
Critical Areas	Vacant (Actual Acres)	83.39	20.65	0.61	5.38	3.93	113.96							
Includes Buffers	Area of Concern (50% reduction)													
	Critical Area (75% reduction)													
	Underutilized (Actual Acres)							93.41	12.95	1.67	0.00	5.30	113.33	227.29
	Area of Concern (50% reduction)													
	Critical Area (75% reduction)													
Roads/ROW (Future)	Vacant 20% (-)	66.71	16.52	0.49	4.30	3.15	91.17							
	Underutilized 20% (-)							74.73	10.36	1.33	0.00	4.24	90.66	181.83
Public Facilities (Future)	Vacant 15% (-)	66.71	14.04	0.41	3.66	2.67	77.49							
	Underutilized 15% (-)							63.52	8.81	1.13	0.00	3.60	77.06	154.56
Unavailable Lands	Vacant 5% (-)	53.87	13.34	0.39	3.46	2.54	73.62							
	Underutilized 15% (-)							53.99	7.49	0.96	0.00	3.06	65.50	139.12
	Net Developable Acres	**53.87**	**13.34**	**0.39**	**3.48**	**2.54**	**73.62**	**53.99**	**7.49**	**0.96**	**0.00**	**3.06**	**65.50**	**139.12**
						1.27						1.53		
	Dwelling Unit Capacity	**215**	**133**	**7**	**3**	**23**	**383**	**151**	**64**	**17**	**0**	**30**	**262**	**644**
		2.5 pph	2.5 pph	1.8 pph	2.5 pph	1.8 pph		2.5 pph	2.5 pph	1.8 pph	2.5 pph	1.8 pph		
	Population Capacity	**539**	**333**	**13**	**9**	**41**	**935**	**377**	**160**	**31**	**0**	**53**	**622**	**1557**

*Mixed Use Zone is divided to reflect 100% Net developable acres-Residential and 50% Net developable acres-Commercial

Updated Land Capacity Analysis (ULCA) 2005
Method Direction from the Kitsap County Board of Commissioners
April 25, 2005

Updated Land Capacity Analysis (ULCA)
per KCRP IV Hearings Board Decision August 2006

Critical Area Ordinance 351-2005
adopted December 1, 2005

Prepared by Kitsap County
Community Development
GIS Division
Created November 6, 2006

Bremerton East UGA (Unincorporated)
Commerical/Industrial

Kitsap County
Updated Land Capacity Analysis
Board of County Commissioner Approved
November 6, 2006

Final

		COMMERCIAL/INDUSTRIAL VACANT LAND								COMMERCIAL/INDUSTRIAL UNDERUTILIZED LAND								
		Highway Tourist Commercial	Neighborhood Commercial	*Mixed Use	Regional Commercial	Business Park	Business Center	Industrial	SUBTOTAL	Highway Tourist Commercial	Neighborhood Commercial	*Mixed Use	Regional Commercial	Business Park	Business Center	Industrial	SUBTOTAL	TOTAL ACREAGE BY ROW
	Total Gross Acres	0.00	0.74	0.00	0.00	0.00	0.00	0.00	0.74	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.74
Redevelopement	Vacant (Actual Acres) (-)	0.00	0.74	0.00	0.00	0.00	0.00	0.00	0.74									
	Underutilized (Actual Acres) (-)									0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.74
Critical Areas	Vacant (Actual Acres)	0.00	0.46	0.00	0.00	0.00	0.00	0.00	0.46									
Includes Buffers	Area of Concern (50% reduction)																	
	Critical Area (75% reduction)																	
	Underutilized (Actual Acres)									0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.46
	Area of Concern (50% reduction)																	
	Critical Area (75% reduction)																	
Roads/ROW (Future)	Vacant 20% (-)	0.00	0.36	0.00	0.00	0.00	0.00	0.00	0.36									
	Underutilized 20% (-)									0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.36
Public Facilities (Future)	Vacant 15% (-)	0.00	0.31	0.00	0.00	0.00	0.00	0.00	0.31									
	Underutilized 15% (-)									0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.31
Unavailable Lands	Vacant 5% (-)	0.00	0.29	0.00	0.00	0.00	0.00	0.00	0.29									
	Underutilized 15% (-)									0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.29
	Net Developable Acres	**0.00**	**0.29**	**1.27**	**0.00**	**0.00**	**0.00**	**0.00**	**1.56**	**0.00**	**0.00**	**1.53**	**0.00**	**0.00**	**0.00**	**0.00**	**1.53**	**3.09**

*Mixed Use Zone is divided to reflect 100% Net developable acres-Residential and 50% Net developable acres-Commercial

Updated Land Capacity Analysis (ULCA) 2005
Method Direction from the Kitsap County Board of Commissioners
April 25, 2005

Updated Land Capacity Analysis (ULCA)
per KCRP IV Hearings Board Decision August 2006

Critical Area Ordinance 351-2005
adopted December 1, 2005

Prepared by Kitsap County Department of Community Development GIS Division Created November 6, 2006

Bremerton West UGA (Unincorporated)

Kitsap County
Updated Land Capacity Analysis
Board of County Commissioner Approved
November 6, 2006

Final

		VACANT LAND						UNDERUTILIZED LAND						
		Urban Low (4 Du/Ac)	Urban Medium (10 Du/Ac)	Urban High (19 Du/Ac)	Urban Restricted (1 Du/Ac)	*Mixed Use (10 Du/Ac)	SUBTOTAL	Urban Low (4 Du/Ac)	Urban Medium (10 Du/Ac)	Urban High (19 Du/Ac)	Urban Restricted (1 Du/Ac)	*Mixed Use (10 Du/Ac)	SUBTOTAL	TOTAL ACREAGE BY ROW
	Acres	131.07	48.90	0.00	0.00	0.12	180.09	466.96	136.42	0.00	0.00	14.63	637.01	817.10
Redevelopement	Vacant (Actual Acres) (-)	131.07	48.90	0.00	0.00	0.12	180.09							
	Underutilized (Actual Acres) (-)							66.72	52.81	0.00	0.00	1.16	120.69	300.78
Critical Areas	Vacant (Actual Acres)	77.03	27.50	0.00	0.00	0.12	104.65							
Includes Buffers	Area of Concern (50% reduction)													
	Critical Area (75% reduction)													
	Underutilized (Actual Acres)							43.86	29.65	0.00	0.00	1.16	74.67	179.32
	Area of Concern (50% reduction)													
	Critical Area (75% reduction)													
Roads/ROW (Future)	Vacant 20% (-)	51.62	22.09	0.00	0.00	0.10	83.72							
	Underutilized 20% (-)							35.09	23.72	0.00	0.00	0.93	59.74	143.46
Public Facilities (Future)	Vacant 15% (-)	52.38	18.70	0.00	0.00	0.08	71.16							
	Underutilized 15% (-)							29.82	20.16	0.00	0.00	0.79	50.78	121.94
Unavailable Lands	Vacant 5% (-)	49.76	17.77	0.00	0.00	0.08	67.60							
	Underutilized 15% (-)							25.35	17.14	0.00	0.00	0.67	43.16	110.76
	Net Developable Acres	49.76	17.77	0.00	0.00	0.08	67.60	25.35	17.14	0.00	0.00	0.67	43.16	110.76
						0.04						0.34		
	Dwelling Unit Capacity	199	178	0	0	1	377	74	119	0	0	5	198	576
		2.5 pph	2.5 pph	1.8 pph	2.5 pph	1.8 pph		2.5 pph	2.5 pph	1.8 pph	2.5 pph	1.8 pph		
	Population Capacity	498	444	0	0	1	943	186	298	0	0	8	493	1436

*Mixed Use Zone is divided to reflect 100% Net developable acres-Residential and 50% Net developable acres-Commercial

Updated Land Capacity Analysis (ULCA) 2005
Method Direction from the Kitsap County Board of Commissioners
April 25, 2005

Updated Land Capacity Analysis (ULCA)
per KCRP IV Hearings Board Decision August 2006

Critical Area Ordinance 351-2005
adopted December 1, 2005

Prepared by Kitsap County
Community Development
GIS Division
Created November 6, 2006

Bremerton West UGA (Unincorporated)
Commerical/Industrial

Kitsap County
Updated Land Capacity Analysis
Board of County Commissioner Approved
November 6, 2006

Final

		COMMERCIAL/INDUSTRIAL VACANT LAND								COMMERCIAL/INDUSTRIAL UNDERUTILIZED LAND								
		Highway Tourist Commercial	Neighborhood Commercial	*Mixed Use	Regional Commercial	Business Park	Business Center	Industrial	SUBTOTAL	Highway Tourist Commercial	Neighborhood Commercial	*Mixed Use	Regional Commercial	Business Park	Business Center	Industrial	SUBTOTAL	TOTAL ACREAGE BY ROW
	Total Gross Acres	4.44	0.00	0.00	0.00	0.00	0.00	9.49	13.93	25.14	0.00	0.00	0.00	0.00	0.00	42.83	71.97	**85.90**
Redevelopement	**Vacant (Actual Acres) (-)**	4.44	0.00	0.00	0.00	0.00	0.00	9.49	13.93									
	Underutilized (Actual Acres) (-)									11.35	0.00	0.00	0.00	0.00	0.00	26.76	38.11	**52.04**
Critical Areas	**Vacant (Actual Acres)**	2.81	0.00	0.00	0.00	0.00	0.00	5.84	8.64									
Includes Buffers	**Area of Concern (50% reduction)**																	
	Critical Area (75% reduction)																	
	Underutilized (Actual Acres)									7.81	0.00	0.00	0.00	0.00	0.00	21.70	29.51	**38.15**
	Area of Concern (50% reduction)																	
	Critical Area (75% reduction)																	
Roads/ROW (Future)	**Vacant 20% (-)**	2.24	0.00	0.00	0.00	0.00	0.00	4.67	6.91									
	Underutilized 20% (-)									6.25	0.00	0.00	0.00	0.00	0.00	17.36	23.61	**30.52**
Public Facilities (Future)	**Vacant 15% (-)**	1.91	0.00	0.00	0.00	0.00	0.00	3.97	5.88									
	Underutilized 15% (-)									5.31	0.00	0.00	0.00	0.00	0.00	14.76	20.07	**25.94**
Unavailable Lands	**Vacant 5% (-)**	1.81	0.00	0.00	0.00	0.00	0.00	3.77	5.58									
	Underutilized 15% (-)									4.52	0.00	0.00	0.00	0.00	0.00	12.54	17.06	**22.64**
	Net Developable Acres	**1.81**	**0.00**	**0.04**	**0.00**	**0.00**	**0.00**	**3.77**	**5.62**	**4.52**	**0.00**	**0.34**	**0.00**	**0.00**	**0.00**	**12.54**	**17.40**	**23.02**

*Mixed Use Zone is divided to reflect 100% Net developable acres-Residential and 50% Net developable acres-Commercial

Updated Land Capacity Analysis (ULCA) 2005
Method Direction from the Kitsap County Board of Commissioners
April 25, 2005

Updated Land Capacity Analysis (ULCA)
per KCRP IV Hearings Board Decision August 2006

Critical Area Ordinance 351-2005
adopted December 1, 2005

Prepared by Kitsap County Department of Community Development GIS Division
Created November 6, 2006

Gorst UGA (Unincorporated)

Kitsap County
Updated Land Capacity Analysis
Board of County Commissioner Approved
November 6, 2006

Final

		VACANT LAND						UNDERUTILIZED LAND						
		Urban Low (4 Du/Ac)	Urban Medium (10 Du/Ac)	Urban High (19 Du/Ac)	Urban Restricted (1 Du/Ac)	Urban Village Center (up to 18 Du/Ac)	SUBTOTAL	Urban Low (4 Du/Ac)	Urban Medium (10 Du/Ac)	Urban High (19 Du/Ac)	Urban Restricted (1 Du/Ac)	Urban Village Center (up to 18 Du/Ac)	SUBTOTAL	TOTAL ACREAGE BY ROW
	Acres	3.86	0.00	0.00	2.77	0.00	6.63	21.88	0.00	0.00	9.03	0.00	30.91	37.54
Redevelopement	Vacant (Actual Acres) (-)	3.86	0.00	0.00	2.77	0.00	6.63							
	Underutilized (Actual Acres) (-)							9.86	0.00	0.00	0.00	0.00	9.86	16.49
Critical Areas	Vacant (Actual Acres)	2.26	0.00	0.00	0.98	0.00	3.24							
Includes Buffers	Area of Concern (50% reduction)													
	Critical Area (75% reduction)													
	Underutilized (Actual Acres)							7.39	0.00	0.00	0.00	0.00	7.39	10.63
	Area of Concern (50% reduction)													
	Critical Area (75% reduction)													
Roads/ROW (Future)	Vacant 20% (-)	1.61	0.00	0.00	0.78	0.00	2.59							
	Underutilized 20% (-)							5.91	0.00	0.00	0.00	0.00	5.91	8.50
Public Facilities (Future)	Vacant 15% (-)	1.54	0.00	0.00	0.67	0.00	2.20							
	Underutilized 15% (-)							5.03	0.00	0.00	0.00	0.00	5.03	7.23
Unavailable Lands	Vacant 5% (-)	1.46	0.00	0.00	0.63	0.00	2.09							
	Underutilized 15% (-)							4.27	0.00	0.00	0.00	0.00	4.27	6.36
	Net Developable Acres	**1.46**	**0.00**	**0.00**	**0.63**	**0.00**	**2.09**	**4.27**	**0.00**	**0.00**	**0.00**	**0.00**	**4.27**	**6.36**
	Dwelling Unit Capacity	**6**	**0**	**0**	**1**	**0**	**6**	**14**	**0**	**0**	**0**	**0**	**14**	**21**
		2.5 pph	2.5 pph	1.8 pph	2.5 pph	1.8 pph		2.5 pph	2.5 pph	1.8 pph	2.5 pph	1.8 pph		
	Population Capacity	**15**	**0**	**0**	**2**	**0**	**16**	**35**	**0**	**0**	**0**	**0**	**35**	**51**

Updated Land Capacity Analysis (ULCA) 2005
Method Direction from the Kitsap County Board of Commissioners
April 25, 2005

Updated Land Capacity Analysis (ULCA)
per KCRP IV Hearings Board Decision August 2006

Critical Area Ordinance 351-2005
adopted December 1, 2005

Prepared by Kitsap County
Community Development
GIS Division
Created November 6, 2006

Gorst UGA (Unincorporated)
Commerical/Industrial

Kitsap County
Updated Land Capacity Analysis
Board of County Commissioner Approved
November 6, 2006

Final

		COMMERCIAL/INDUSTRIAL VACANT LAND									COMMERCIAL/INDUSTRIAL UNDERUTILIZED LAND									
		Airport	Highway Tourist Commercial	Neighborhood Commercial	Urban Commercial	Regional Commercial	Business Park	Business Center	Industrial	SUBTOTAL	Airport	Highway Tourist Commercial	Neighborhood Commercial	Urban Commercial	Regional Commercial	Business Park	Business Center	Industrial	SUBTOTAL	TOTAL ACREAGE BY ROW
	Total Gross Acres	0.00	13.64	0.00	8.34	0.00	0.00	0.00	32.92	54.90	0.00	90.30	0.00	5.72	0.00	0.00	0.00	89.30	189.32	244.22
Redevelopement	Vacant (Actual Acres) (-)	0.00	10.80	0.00	8.34	0.00	0.00	0.00	31.36	50.50										
	Underutilized (Actual Acres) (-)										0.00	45.63	0.00	1.16	0.00	0.00	0.00	11.90	58.69	109.19
Critical Areas	Vacant (Actual Acres)	0.00	4.91	0.00	4.50	0.00	0.00	0.00	15.92	25.33										
Includes Buffers	Area of Concern (50% reduction)																			
	Critical Area (75% reduction)																			
	Underutilized (Actual Acres)										0.00	26.24	0.00	0.58	0.00	0.00	0.00	4.94	31.76	57.09
	Area of Concern (50% reduction)																			
	Critical Area (75% reduction)																			
Roads/ROW (Future)	Vacant 20% (-)	0.00	3.93	0.00	3.60	0.00	0.00	0.00	12.73	20.26										
	Underutilized 20% (-)										0.00	20.98	0.00	0.46	0.00	0.00	0.00	3.95	25.41	45.67
Public Facilities (Future)	Vacant 15% (-)	0.00	3.34	0.00	3.06	0.00	0.00	0.00	10.82	17.22										
	Underutilized 15% (-)										0.00	17.84	0.00	0.39	0.00	0.00	0.00	3.36	21.60	38.82
Unavailable Lands	Vacant 5% (-)	0.00	3.17	0.00	2.91	0.00	0.00	0.00	10.28	16.36										
	Underutilized 15% (-)										0.00	15.17	0.00	0.34	0.00	0.00	0.00	2.86	18.36	34.72
	Net Developable Acres	0.00	3.17	0.00	2.91	0.00	0.00	0.00	10.28	16.36	0.00	15.17	0.00	0.34	0.00	0.00	0.00	2.86	18.36	34.72

Updated Land Capacity Analysis (ULCA) 2005
Method Direction from the Kitsap County Board of Commissioners
April 25, 2005

Updated Land Capacity Analysis (ULCA)
per KCRP IV Hearings Board Decision August 2006

Critical Area Ordinance 351-2005
adopted December 1, 2005

Prepared by Kitsap County Department of Community Development GIS Division
Created November 6, 2006

Port Orchard/South Kitsap UGA (Unincorporated)

Kitsap County
Updated Land Capacity Analysis
Board of County Commissioner Approved
November 6, 2006

Final

		VACANT LAND						UNDERUTILIZED LAND						
		Urban Low (4 Du/Ac)	Urban Medium (10 Du/Ac)	Urban High (19 Du/Ac)	Urban Restricted (1 Du/Ac)	*Mixed Use (10 Du/Ac)	SUBTOTAL	Urban Low (4 Du/Ac)	Urban Medium (10 Du/Ac)	Urban High (19 Du/Ac)	Urban Restricted (1 Du/Ac)	*Mixed Use (10 Du/Ac)	SUBTOTAL	TOTAL ACREAGE BY ROW
	Acres	843.99	8.71	2.39	154.02	74.58	1083.69	3390.92	84.06	2.98	175.13	174.49	3827.58	4911.27
Redevelopement	Vacant (Actual Acres) (-)	784.73	8.71	2.39	147.48	68.68	1011.99							
	Underutilized (Actual Acres) (-)							929.22	6.81	0.52	9.95	59.65	1006.15	2018.14
Critical Areas	Vacant (Actual Acres)	569.77	4.75	2.39	59.80	53.66	690.37							
Includes Buffers	Area of Concern (50% reduction)													
	Critical Area (75% reduction)													
	Underutilized (Actual Acres)							711.25	6.08	0.51	3.93	38.59	760.35	1450.71
	Area of Concern (50% reduction)													
	Critical Area (75% reduction)													
Roads/ROW (Future)	Vacant 20% (-)	455.82	3.80	1.91	47.64	42.93	552.29							
	Underutilized 20% (-)							569.00	4.86	0.41	3.14	30.87	608.28	1160.57
Public Facilities (Future)	Vacant 15% (-)	387.44	3.23	1.63	40.66	36.49	469.45							
	Underutilized 15% (-)							483.65	4.13	0.35	2.67	26.24	517.04	986.48
Unavailable Lands	Vacant 5% (-)	368.07	3.07	1.54	38.63	34.66	445.98							
	Underutilized 15% (-)							411.10	3.51	0.29	2.27	22.31	439.48	885.46
	Net Developable Acres	368.07	3.07	1.54	38.63	34.66	445.98	411.10	3.51	0.29	2.27	22.31	439.48	885.46
						17.33						11.15		
	Dwelling Unit Capacity	1472	31	29	39	312	1883	1319	29	5	0	201	1554	3437
		2.5 pph	2.5 pph	1.8 pph	2.5 pph	1.8 pph		2.5 pph	2.5 pph	1.8 pph	2.5 pph	1.8 pph		
	Population Capacity	3681	77	53	97	562	4468	3298	73	8	0	362	3742	8210

*Mixed Use Zone is divided to reflect 100% Net developable acres-Residential and 50% Net developable acres-Commercial

Updated Land Capacity Analysis (ULCA) 2005
Method Direction from the Kitsap County Board of Commissioners
April 25, 2005

Updated Land Capacity Analysis (ULCA)
per KCRP IV Hearings Board Decision August 2006

Critical Area Ordinance 351-2005
adopted December 1, 2005

Prepared by Kitsap County
Community Development
GIS Division
Created November 6, 2006

Port Orchard/South Kitsap UGA (Unincorporated)
Commerical/Industrial

Kitsap County
Updated Land Capacity Analysis
Board of County Commissioner Approved
November 6, 2006

Final

		COMMERCIAL/INDUSTRIAL VACANT LAND								COMMERCIAL/INDUSTRIAL UNDERUTILIZED LAND								
		Highway Tourist Commercial	Neighborhood Commercial	*Mixed Use	Regional Commercial	Business Park	Business Center	Industrial	SUBTOTAL	Highway Tourist Commercial	Neighborhood Commercial	*Mixed Use	Regional Commercial	Business Park	Business Center	Industrial	SUBTOTAL	TOTAL ACREAGE BY ROW
	Total Gross Acres	197.88	4.12	0.00	0.00	0.00	0.00	46.15	**248.15**	512.44	99.10	0.00	0.00	0.00	0.00	51.82	663.36	**911.51**
Redevelopement	Vacant (Actual Acres) (-)	188.89	2.18	0.00	0.00	0.00	0.00	44.28	235.35									
	Underutilized (Actual Acres) (-)									342.47	2.84	0.00	0.00	0.00	0.00	49.00	394.31	**629.66**
Critical Areas	Vacant (Actual Acres)	134.07	2.18	0.00	0.00	0.00	0.00	25.36	161.61									
Includes Buffers	Area of Concern (50% reduction)																	
	Critical Area (75% reduction)																	
	Underutilized (Actual Acres)									265.58	2.57	0.00	0.00	0.00	0.00	28.56	287.71	**449.32**
	Area of Concern (50% reduction)																	
	Critical Area (75% reduction)																	
Roads/ROW (Future)	Vacant 20% (-)	107.26	1.74	0.00	0.00	0.00	0.00	20.29	129.29									
	Underutilized 20% (-)									204.46	2.06	0.00	0.00	0.00	0.00	23.65	230.17	**359.46**
Public Facilities (Future)	Vacant 15% (-)	91.17	1.48	0.00	0.00	0.00	0.00	17.24	109.89									
	Underutilized 15% (-)									173.79	1.75	0.00	0.00	0.00	0.00	20.10	195.64	**305.54**
Unavailable Lands	Vacant 5% (-)	86.61	1.41	17.33	0.00	0.00	0.00	16.38	121.73									
	Underutilized 15% (-)									147.73	1.49	11.15	0.00	0.00	0.00	17.09	177.45	**299.18**
	Net Developable Acres	**86.61**	**1.41**	**17.33**	**0.00**	**0.00**	**0.00**	**16.38**	**121.73**	**147.73**	**1.49**	**11.15**	**0.00**	**0.00**	**0.00**	**17.09**	**177.45**	**299.18**

*Mixed Use Zone is divided to reflect 100% Net developable acres-Residential and 50% Net developable acres-Commercial

Updated Land Capacity Analysis (ULCA) 2005
Method Direction from the Kitsap County Board of Commissioners
April 25, 2005

Updated Land Capacity Analysis (ULCA)
per KCRP IV Hearings Board Decision August 2006

Critical Area Ordinance 351-2005
adopted December 1, 2005

Prepared by Kitsap County Department of Community Development
GIS Division
Created November 6, 2006

ULID6 UGA (Unincorporated)

Kitsap County
Updated Land Capacity Analysis
Board of County Commissioner Approved
November 6, 2006

Final

		VACANT LAND						UNDERUTILIZED LAND						
		Urban Low (4 Du/Ac)	Urban Medium (10 Du/Ac)	Urban High (19 Du/Ac)	Urban Cluster (4 DU/Ac)	*Urban Village Center (up to 18 Du/Ac)	SUBTOTAL	Urban Low (4 Du/Ac)	Urban Medium (10 Du/Ac)	Urban High (19 Du/Ac)	Urban Cluster (4 DU/Ac)	*Urban Village Center (up to 18 Du/Ac)	SUBTOTAL	TOTAL ACREAGE BY ROW
	Acres	496.53	77.95	0.00	705.81	10.22	1289.51	742.49	1.13	0.00	34.34	0.00	777.95	2067.47
Redevelopement	Vacant (Actual Acres) (-)	495.53	77.95	0.00	705.81	10.22	1289.51							
	Underutilized (Actual Acres) (-)							0.00	0.00	0.00	0.00	0.00	0.00	1289.51
Critical Areas	Vacant (Actual Acres)	397.73	59.26	0.00	574.29	10.22	1051.49							
Includes Buffers	Area of Concern (50% reduction)													
	Critical Area (75% reduction)													
	Underutilized (Actual Acres)							0.00	0.00	0.00	0.00	0.00	0.00	1051.49
	Area of Concern (50% reduction)													
	Critical Area (75% reduction)													
Sewer Availability	Vacant (Actual Acres) (-)	397.73	59.26	0.00	574.29	10.22	1051.50							
	Underutilized (Actual Acres) (-)							0.00	0.00	0.00	0.00	0.00	0.00	1051.50
Roads/ROW (Future)	Vacant 20% (-)	316.18	55.41	0.00	469.43	8.18	841.20							
	Underutilized 20% (-)							0.00	0.00	0.00	0.00	0.00	0.00	841.20
Public Facilities (Future)	Vacant 15% (-)	270.46	47.10	0.00	390.52	6.95	715.02							
	Underutilized 15% (-)							0.00	0.00	0.00	0.00	0.00	0.00	715.02
Unavailable Lands	Vacant 5% (-)	256.93	44.74	0.00	370.99	6.60	679.27							
	Underutilized 15% (-)							0.00	0.00	0.00	0.00	0.00	0.00	679.27
	Net Developable Acres	**256.93**	**44.74**	**0.00**	**370.99**	**3.30**	**675.97**	**0.00**	**0.00**	**0.00**	**0.00**	**0.00**	**0.00**	**675.97**
						6.60								
	Dwelling Unit Capacity	**1028**	**447**	**0**	**1484**	**59**	**3019**	**0**	**0**	**0**	**0**	**0**	**0**	**3019**
		2.5 pph	2.5 pph	1.8 pph	2.5 pph	1.8 pph		2.5 pph	2.5 pph	1.8 pph	2.5 pph	1.8 pph		
	Population Capacity	**2569**	**1119**	**0**	**3710**	**107**	**7505**	**0**	**0**	**0**	**0**	**0**	**0**	**7505**

*Urban Village Center is divided to reflect 50% Net developable acres-Residential
and 50% Net developable acres-Commercial per Updated Land Capacity Analysis Methodology (ULCA)

Updated Land Capacity Analysis (ULCA) 2005
Method Direction from the Kitsap County Board of Commissioners
April 25, 2005

Updated Land Capacity Analysis (ULCA)
per KCRP IV Hearings Board Decision August 2006

Critical Area Ordinance 351-2005
adopted December 1, 2005

Prepared by Kitsap County
Community Development
GIS Division
Created November 6, 2006

ULID6 UGA (Unincorporated)
Commerical/Industrial

Kitsap County
Updated Land Capacity Analysis
Board of County Commissioner Approved
November 6, 2006

Final

		COMMERCIAL/INDUSTRIAL VACANT LAND									COMMERCIAL/INDUSTRIAL UNDERUTILIZED LAND								
		Highway Tourist Commercial	Neighborhood Commercial	Urban Commercial	Regional Commercial	Business Park	Business Center	Industrial	*Urban Village Center	SUBTOTAL	Highway Tourist Commercial	Neighborhood Commercial	Urban Commercial	Regional Commercial	Business Park	Business Center	Industrial	SUBTOTAL	TOTAL ACREAGE BY ROW
	Total Gross Acres	0.00	0.00	0.00	0.00	52.94	0.00	0.00	0.00	52.94	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	52.94
Redevelopement	Vacant (Actual Acres) (-)	0.00	0.00	0.00	0.00	52.94	0.00	0.00	0.00	52.94									
	Underutilized (Actual Acres) (-)										0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	52.94
Critical Areas	Vacant (Actual Acres)	0.00	0.00	0.00	0.00	47.13	0.00	0.00	0.00	47.13									
Includes Buffers	Area of Concern (50% reduction)																		
	Critical Area (75% reduction)																		
	Underutilized (Actual Acres)										0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	47.13
	Area of Concern (50% reduction)																		
	Critical Area (75% reduction)																		
Roads/ROW (Future)	Vacant 20% (-)	0.00	0.00	0.00	0.00	37.71	0.00	0.00	0.00	37.71									
	Underutilized 20% (-)										0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	37.71
Public Facilities (Future)	Vacant 15% (-)	0.00	0.00	0.00	0.00	32.05	0.00	0.00	0.00	32.05									
	Underutilized 15% (-)										0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	32.05
Unavailable Lands	Vacant 5% (-)	0.00	0.00	0.00	0.00	30.45	0.00	0.00	0.00	30.45									
	Underutilized 15% (-)										0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	30.45
									6.60										
	Net Developable Acres	0.00	0.00	0.00	0.00	30.45	0.00	0.00	3.30	33.75	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	33.75

*Urban Village Center is divided to reflect 50% Net developable acres-Residential and 50% Net developable acres-Commercial per Updated Land Capacity Analysis Methodology (ULCA)

Updated Land Capacity Analysis (ULCA) 2005
Method Direction from the Kitsap County Board of Commissioners
April 25, 2005

Updated Land Capacity Analysis (ULCA)
per KCRP IV Hearings Board Decision August 2006

Critical Area Ordinance 351-2005
adopted December 1, 2005

Prepared by Kitsap County Department of Community Development GIS Division Created November 6, 2006

South Kitsap Industrial Park (SKIA)

Kitsap County
Updated Land Capacity Analysis
Board of County Commissioner Approved
November 6, 2006

Final

		COMMERCIAL/INDUSTRIAL VACANT LAND				COMMERCIAL/INDUSTRIAL UNDERUTILIZED LAND				TOTAL ACREAGE BY ROW
		Airport	Business Center	Industrial	SUBTOTAL	Airport	Business Center	Industrial	SUBTOTAL	
	Total Gross Acres	0.00	211.55	68.43	**279.98**	253.98	1293.60	1751.97	**3299.55**	**3579.53**
Redevelopement	Vacant (Actual Acres) (-)	0.00	207.60	68.43	**276.03**					
	Underutilized (Actual Acres) (-)					0.00	1147.30	330.53	**1477.83**	**1753.86**
Critical Areas	Vacant (Actual Acres)	0.00	158.34	66.65	**224.98**					
Includes Buffers	Area of Concern (50% reduction)									
	Critical Area (75% reduction)									
	Underutilized (Actual Acres)					0.00	977.33	320.26	**1297.58**	**1522.56**
	Area of Concern (50% reduction)									
	Critical Area (75% reduction)									
Roads/ROW (Future)	Vacant 20% (-)	0.00	126.67	53.32	**179.99**					
	Underutilized 20% (-)					0.00	781.87	256.20	**1038.06**	**1218.05**
Public Facilities (Future)	Vacant 15% (-)	0.00	107.67	45.32	**152.99**					
	Underutilized 15% (-)					0.00	664.59	217.77	**882.35**	**1035.34**
Unavailable Lands	Vacant 5% (-)	0.00	102.29	43.05	**145.34**					
	Underutilized 15% (-)					0.00	564.90	185.10	**750.00**	**895.34**
	Net Developable Acres	**0.00**	**102.29**	**43.05**	**145.34**	**0.00**	**564.90**	**185.10**	**750.00**	**895.34**

Updated Land Capacity Analysis (ULCA) 2005
Method Direction from the Kitsap County Board of Commissioners
April 25, 2005

Critical Area Ordinance 351-2005
adopted December 1, 2005

Updated Land Capacity Analysis (ULCA)
per KCRP IV Hearings Board Decision August 2006

Prepared by Kitsap County Department of Community Development
GIS Division
Created November 6, 2006

Appendices 2
CP 107,
AR 55

App. 2
Final
Decision
&
Order

CENTRAL PUGET SOUND
GROWTH MANAGEMENT HEARINGS BOARD
STATE OF WASHINGTON

SUQUAMISH TRIBE, KITSAP CITIZENS FOR RESPONSIBLE PLANNING and JERRY HARLESS, Petitioners, PORT GAMBLE S'KLALLAM TRIBE Interveners, v. KITSAP COUNTY, Respondent.	Case No. 07-3-0019c *(Suquamish II)* **FINAL DECISION and ORDER**

SYNOPSIS

In late 2006, Kitsap County completed its 10-Year review and update of its Comprehensive Plan and development regulation as required by the Growth Management Act. The Suquamish Tribe, Kitsap Citizens for Responsible Planning, and Jerry Harless filed timely petitions for review challenging a number of the County's actions.

*Petitioners took issue with the County's reduction of urban densities in its Plan and development regulations, which reduced the minimum density in certain low-density residential designations from 5 dwelling units per acre (**du/ac**) to 4 du/ac. This same reduction was used by the County in its land capacity analysis (**LCA**). Petitioners argued that the building industry trend in the County supported a continuing minimum density of at least 5 du/ac and the County's reduction allowed for an unnecessarily expansion of urban growth areas. The Board noted that in Kitsap County, 4 dwelling units has historically been an "appropriate" urban density, and the GMA did not compel the County to follow its experienced trend. Likewise, the use of the lower assumption in the LCA was not precluded by the GMA.*

However, while finding the Petitioners did not carry their burden in demonstrating noncompliance with the Urban Density and LCA issues, the Board did find that the County's Capital Facilities Plan was noncompliant with goals and requirements of the

Central Puget Sound
Growth Management Hearings Board
800 Fifth Avenue, Suite 2356, Seattle, WA 98104
Tel. (206) 389-2625 Fax (206) 389-2588

Act because it did not demonstrate that there would be adequate public facilities and services [sanitary sewer] available to serve the expanded urban growth areas during the planning period.

Petitioners also prevailed on challenges to the County's Rural Wooded Incentive Program and Transfer of Development Rights program, primarily due to the "temporary" [40-year] nature of these programs, which created ambiguity and uncertainty as to the status of development on these lands when the period lapsed.

On all other matters challenged by Petitioners - reasonable measures, SEPA categorical exemption and notice provisions, open space corridors, and GMA goals balanced - the Board concluded the Petitioners had not carried the burden of proof.

The Board found certain provisions of the County's Capital Facilities Plan, Rural Wooded Incentive Program and Transfer of Development Rights Program noncompliant and invalid. These provisions were remanded to the County to bring into compliance with the Act, and a compliance schedule was set for early 2008.

I. BACKGROUND[1]

In December of 2006, Kitsap County adopted a series of Ordinances [Ordinance Nos. 367-2006, 368-2006, 369-2006 and 370-2006] [collectively the "Plan Update"] to complete the 10-Year Plan Update and development regulation review required by the Growth Management Act.

In February of 2007, the Board received several challenges to the County's Plan Update effort. The Board issued a notice of hearing that consolidated two of those petitions for review (**PFR**) into the present proceeding – Suquamish Tribe [PFR 07-3-0018], Kitsap Citizens for Responsible Planning and Jerry Harless [PFR 07-3-0019] [collectively, **Petitioners** or **Suquamish**].

The Board conducted the prehearing conference (**PHC**) in March. The Port Gamble S'Klallam Tribe was granted intervention following the PHC and the Board issued its prehearing order (**PHO**) setting the final schedule and stating the Legal Issues to be resolved by the Board. There were five common issues raised by both Petitioners that the Board organized topically – Urban Density, Land Capacity Analysis, Rural Wooded Reserve, Capital Facilities and Transferable Development Rights. Five additional issues pertaining to Transportation[2], Reasonable Measures, Categorical Exemptions under SEPA, Open Space Corridors, and the Balancing of Goals with Local Circumstances, were posed solely by the Suquamish Tribe.

---

[1] The complete Procedural History of filings and orders is contained in Appendix A.

[2] Suquamish Tribe's Legal Issue 4, alleging transportation issues, was dismissed by the Board's May 3, 2007 Order Granting Dispositive Motion.

Central Puget Sound
Growth Management Hearings Board
800 Fifth Avenue, Suite 2356, Seattle, WA 98104
Tel. (206) 389-2625 Fax (206) 389-2588

There were no motions to supplement the record filed during the Board's motion practice; however, the County and Petitioners having consulted on the record for this proceeding, identified items inadvertently omitted from the Index, and in May, prior to briefing, the County filed an amended Index of the Record. During the motions' filing period, the County moved to dismiss Suquamish Tribe's Legal Issue 4, arguing that the Tribe did not have standing to raise this issue before the Board. The Board granted the County's Motion in May.

All prehearing briefing was timely filed with appropriate exhibits. Petitioners filed a joint brief. The briefing filed will be referred to throughout this Final Decision and Order (**FDO**) as follows:

- Petitioners Suquamish Tribe, Kitsap Citizens for Responsible Planning and Jerry Harless – **Suquamish PHB**;
- Intervener Port Gamble S'Klallam Tribe - **S'Klallam PHB**[3];
- Respondent Kitsap County's Prehearing Brief – **Kitsap Response**;
- Petitioners Reply Brief – **Suquamish Reply**.

On June 28, 2007, the Board held the Hearing on the Merits (**HOM**) in Kitsap County at the Eagles Nest Room at the Kitsap County Fairgrounds, 1200 NW Fairgrounds Road, Bremerton, WA. Board members Edward G. McGuire, Presiding Officer, David Earling and Margaret Pageler were present. The Board's Law Clerk, Julie Taylor, and Extern, Linda Jenkins, were also present for the Board. Petitioner Suquamish Tribe was represented by Melody Allen. Petitioner KCRP was represented by David Bricklin. Petitioner Jerry Harless appeared *pro se*. Respondent Kitsap County was represented by Lisa J. Nickel and Andrew S. Lane. Intervenor Port Gamble S'Klallam Tribe was represented by Lauren Rasmussen. Court reporting services were provided by Barbara L. Brace of Byers and Anderson, Inc. The following persons also attended the HOM to observe: Eric Baker, Angie Silva, Chris Dunagan, Tom Donnelly, John Taylor, Alison O'Sullivan, Tom Nevins, Patrick Haas, Charles Michael, Fred DePee, Beth Wilson, Michele McFadden and Dorothy Reinhardt. The hearing convened at 1:30 p.m. and adjourned at approximately 5:00 p.m. The HOM afforded the Board the opportunity to ask a number of questions and gain a thorough understanding of the matters at issue. The Board ordered a transcript of the proceeding, which was received electronically on July 10, 2007. (**HOM Transcript.**)

Several proposed exhibits were presented with the briefing that were addressed at the HOM (*see* Preliminary Matters, *infra*) and the Board requested, and received, post-hearing briefing on one HOM Exhibit.

---

[3] Intervenor Port Gamble/S'Klallam Tribe intervened on the following issues: Transfer of Development Rights (Squamish Issue 10; KCRP Issue 5), Rural Wooded Incentive Program (Suquamish Issue 3; KCRP Issue 4), Open Space and GMA Balancing (Squamish Issues 8 and 9).

Central Puget Sound
Growth Management Hearings Board
800 Fifth Avenue, Suite 2356, Seattle, WA 98104
Tel. (206) 389-2625 Fax (206) 389-2588

II. PRESUMPTION OF VALIDITY, BURDEN OF PROOF, STANDARD OF REVIEW, AND DEFERENCE TO LOCAL JURISDICTIONS

Upon receipt of a petition challenging a local jurisdiction's GMA actions, the Legislature directed the Boards to hear and determine whether the challenged actions are in compliance with the requirements and goals of the Act. *See* RCW 36.70A.280. The Legislature directed that the Boards "after full consideration of the petition, shall determine whether there is compliance with the requirements of [the GMA]." RCW 36.70A.320(3); *see also*, RCW 36.70A.300(1). As articulated most recently by the Supreme Court, "the Board is empowered to determine whether county decisions comply with GMA requirements, to remand noncompliant ordinances to counties, and even to invalidate part or all of a comprehensive plan or development regulation until it is brought into compliance." *Lewis County v. Western Washington Growth Management Hearings Board (**Lewis County**)*, 157 Wn.2d 488 at 498, fn. 7, 139 P.3d 1096 (2006).

Legislative enactments adopted by Kitsap County pursuant to the Act are presumed valid upon adoption. RCW 36.70A.320(1). The burden is on the Petitioners, here, Suquamish Tribe, Kitsap Citizens for Responsible Planning and Jerry Harless, to demonstrate that the actions taken by Kitsap County are not in compliance with the Act. RCW 36.70A.320(2).

Pursuant to RCW 36.70A.320(3), the Board "shall find compliance unless it determines that the actions taken by [Kitsap County] are clearly erroneous in view of the entire record before the board and in light of the goals and requirements of [the GMA]." For the Board to find the action of Kistap County clearly erroneous, the Board must be "left with the firm and definite conviction that a mistake has been made." *Dep't of Ecology v. PUD 1*, 121 Wn.2d 179, 201, 849 P.2d 646 (1993).

The GMA affirms that local jurisdictions have discretion in adapting the requirements of the GMA to local circumstances and that the Board shall grant deference to local decisions that comply with the goals and requirements of the Act. RCW 36.70A.3201. Pursuant to RCW 36.70A.3201, the Board will grant deference to Kitsap County in how it plans for growth, provided that its policy choices are consistent with the goals and requirements of the GMA. The Supreme Court has stated: "We hold that deference to county planning actions that are consistent with the goals and requirements of the GMA . . . cedes only when it is shown that a county's planning action is in fact a 'clearly erroneous' application of the GMA." *Quadrant Corporation, et al., v. State of Washington Growth Management Hearings Board*, 154 Wn.2d 224, 248, 110 P.3d 1132 (2005). In *Lewis County,* the Court reaffirmed and clarified its holding in *Quadrant,* stating that: "... the GMA says that Board deference to county decisions extends only as far as such decisions comply with GMA goals and requirements. In other words, there are bounds." 157 Wn. 2d at 506, fn. 16.[4]

---

[4] The *Lewis County* majority is in accord with prior rulings that "Local discretion is bounded . . . by the goals and requirements of the GMA." *King County v. Central Puget Sound Growth Management Hearing*

Central Puget Sound
Growth Management Hearings Board
800 Fifth Avenue, Suite 2356, Seattle, WA 98104
Tel. (206) 389-2625 Fax (206) 389-2588

The scope of the Board's review is limited to determining whether a jurisdiction has achieved compliance with the GMA with respect to only those issues presented in a timely petition for review. RCW 36.70A.290(1).

III. BOARD JURISDICTION, PREFATORY NOTE, PRELIMINARY MATTERS and ABANDONED or NEW ISSUES

A. BOARD JURISDICTION

The Board finds that each Petitioner's PFR was timely filed, pursuant to RCW 36.70A.290(2); the Suquamish Tribe, KCRP and Jerry Harless each have standing to appear before the Board, pursuant to RCW 36.70A.280(2); and the Board has subject matter jurisdiction over the challenged Ordinances, which update Kitsap County's GMA Plan and development regulations, pursuant to RCW 36.70A.280(1)(a).

B. PREFATORY NOTE

The Action Challenged:

Petitioners challenge portions of the County's 10-year update of its Comprehensive Plan and various development regulations adopted to implement the goals and policies of the Comprehensive Plan and its update. A total of four ordinances, all adopted on December 11, 2006, are involved in this challenge.

Ordinance 367-2006 amended various sections of the County's Zoning Ordinance. The amendments under challenge include those to Chapter 17.301 – Rural Wooded Zone (specifically the Rural Wooded Incentive Program [**RWIP**], KCC 17.301.080 and Chapter 17.430 – Transfer of Development Rights [**TDRs**]). Petitioners' primary challenge to these provisions is that the "temporary" nature of these programs induces suburban sprawl and does not protect natural resources, open space, and environmentally sensitive lands.

Ordinance 368-2006 amended Chapter 18.04 – State Environmental Policy Act [**SEPA**], to include a categorical exemption, based on local conditions, from SEPA Threshold Determinations and Environmental Impact Statement requirements for development proposals of up to 4 dwelling units outside of the UGA and up to 9 dwelling units within the UGA. Challenge to this Ordinance is limited to the Suquamish Tribe's assertion that

---

Board, 142 Wn.2d 543, 561, 14 P.3d 133, 142 (2000). See also, *Cooper Point Association v. Thurston County*, 108 Wash. App. 429, 444, 31 P.3d 28 (2001) ("notwithstanding the 'deference' language of RCW 36.70A.3201, the Board acts properly when it foregoes deference to a . . . plan that is not 'consistent' with the requirements and goals of the GMA"); *affirmed Thurston County v. Western Washington Growth Management Hearings Board*, 148 Wn.2d 1, 15, 57 P.3rd 1156 (2002).

Central Puget Sound
Growth Management Hearings Board
800 Fifth Avenue, Suite 2356, Seattle, WA 98104
Tel. (206) 389-2625 Fax (206) 389-2588

application of this categorical exemption will preclude historic and archeological preservation.

Ordinance 369-2006 amends certain sections of Chapter 21.04 – Land Use and Development Procedures.

Ordinance 370-2006 amends the Comprehensive Plan and the County's Future Land Use Map [**FLUM**]. These amendments include the expansion of urban growth areas [**UGAs**], the re-designation of certain lands from rural to urban uses, and modifications to the County's Capital Facilities Element [CFE] and Capital Facilities Plan [**CFP**]. Petitioners' challenge to this Ordinance stems from amendments involving urban density, the Land Capacity Analysis, CFE, reasonable measures, open space, and balancing of GMA goals.

Topics and Order of Discussion of Legal Issues:

There are five common Legal Issues raised by the Petitioners that the Board organized topically in the PHO – Urban Density, Land Capacity Analysis, Rural Wooded Incentive Program, Capital Facilities and Transferable Development Rights. Petitioner Suquamish Tribe presents four additional Legal Issues pertaining to Reasonable Measures, Categorical Exemptions and Notice, Open Space and Balancing of GMA Goals.[5] Although the Board discusses these issues topically, each specific Legal Issue is set forth under each topical heading.

The Board's discussion of the Legal Issues occurs in the following order:

A. Urban Density
B. Land Capacity Analysis
C. Capital Facilities
D. Rural Wooded Incentive Program
E. Transferable Development Rights
F. Reasonable Measures
G. Categorical Exemptions – SEPA
H. Open Space
I. Balancing of GMA Goals
J. Invalidity

[5] As noted *supra,* the Suquamish Tribe originally presented 5 distinct issues. However, one of these issues was dismissed by the Board in May 2007.

Central Puget Sound
Growth Management Hearings Board
800 Fifth Avenue, Suite 2356, Seattle, WA 98104
Tel. (206) 389-2625 Fax (206) 389-2588

C. PRELIMINARY MATTERS

Oral Rulings at the HOM:

At the HOM, the Board briefly reviewed the Core Documents presented and ruled on several matters. .

Core Documents: The Board acknowledged it had received and continued to use various Core Documents from Kitsap County in a prior matter. [January 11, 2007 submittals in CPSGMHB Case NO. 06-3-0007 – 7 Core Documents labeled A-G, including Kitsap County's 10-Year Plan Update, the integrated DEIS and integrated FEIS, amendment to the County's development regulations, and four approval matrices.]

The County moved to strike Exhibits A, B, H, I, J and K, attached to Petitioners' prehearing brief. Kitsap Response, at 11-14. Petitioners subsequently filed a motion to supplement the record with these challenged exhibits. At the HOM, the PO ruled as follows on these motions:

- Exhibit A – *see* "Post-HOM Exhibits," *infra*.
- Exhibit B – Puget Sound Regional Council, "Growth Trends in Central Puget Sound," dated November 2005. The Board takes **official notice** per WAC 242-02-670(2) – **HOM Ex. 1**.
- Exhibit H – Washington State Conservation Commission, "Salmonid Habitat Limiting Factors," dated November 2000. The Board takes **official notice** per WAC 242-02-670(2) – **HOM Ex. 2**.
- Exhibit I – May 21, 2007, Declaration of Dennis E. Lewarch, Re: archeological fieldwork in Kitsap County. The declaration was prepared *after* the County adopted the challenged Ordinances and could not have been part of the record. Supplementing the record with Ex. I is **denied**; however, the Board will not strike reference in Petitioners' briefing that there are significant archeological sites within Kitsap County.
- Exhibit J – August 4, 1989, Centennial Accord, between the Federally-recognized Indian Tribes in Washington State and the State of Washington. The Board takes **official notice** per WAC 242-02-660(5) – **HOM Ex. 3**.
- Exhibit K – April 28, 2005, Proclamation of Governor Christine Gregoire, Re: Centennial Accord. The Board takes **official notice** per WAC 242-02-660(2) – **HOM Ex. 4**.

Additionally, both Petitioners and Respondent attached Exhibits to their briefing that were not part of the official record, nor were these documents included in the Amended Index. Neither party objected to the inclusion of these items. The Board can take **official notice** of these items and assigns the following Exhibit Numbers:

Central Puget Sound
Growth Management Hearings Board
800 Fifth Avenue, Suite 2356, Seattle, WA 98104
Tel. (206) 389-2625 Fax (206) 389-2588

Petitioners' HOM Exhibits:

- Exhibit C – KCRP/Harless Prehearing Brief in CPSGMHB Case No. 06-3-0007 – **HOM Ex. 5**
- Exhibit D – Thurston County Superior Court – 12/21/05 Decision of the Court following Trial held December 2, 2005 – **HOM Ex. 6.**
- Exhibit E – Declaration of Laura Overton Joannes in CPSGMHB Case No. 04-3-0009c – **HOM Ex. 7.**
- Exhibit F – Kitsap County Ordinance No. 351-2005 – **HOM Ex. 8.**
- Exhibit G – Kitsap County webpage showing environmental maps, specifically "Building Limitations" map – **HOM Ex. 9**

Respondent HOM Exhibits:

- Exhibit A – *see* **HOM Ex. 5**
- Exhibit B – Kitsap County Coordinated Water System Plan – Regional Supplement, 2005 Revision – **HOM Ex. 10.**
- Exhibit C – Kitsap County Code (**KCC**) Chapter 17.301 Rural Wooded Zone – **HOM Ex. 11.**
- Exhibit D – KCC Chapter 17.430 Transfer of Development Rights – **HOM Ex. 12**
- Exhibit E – KCC 21.04.060 thorough KCC 21.04.110 – **HOM Ex. 13**
- Exhibit F – KCC 22.28.080 – **HOM Ex. 14.**

Post-HOM Exhibits – "Illustrative" Exhibits from the HOM:

- Exhibit A - "Illustrative" Summary Table compiled from FEIS Appendix B – Land Capacity Analysis. The Board did not rule on this Exhibit at the HOM, but rather directed the parties to discuss their objections regarding the methodology used to derive the table and provide the Board with a copy of figures showing the combined UGA Capacity for Kitsap County. The parties did reconcile their differences and provided a "*Corrected*" copy of the proposed exhibit within the timeframe specified. Corrected Exhibit A from Suquamish PHB is **admitted – Post-HOM Ex. 1.**
- Pie Chart "Illustrating" figures – The Pie Chart has been modified to reflect the corrected figure from Post-HOM Ex. 1 – **admitted - Post-HOM Ex. 2.**
- Line graph depicting hypothetical residential density development trend lines – **denied.**
- Rural Wooded conceptual layouts – **admitted - Post-HOM Ex. 3.**
- Rural Wooded layout illustration – McCormick Woods – **denied.**

While the above-noted items have been included as part of the record in this proceeding, the Board will assess their relevancy, and the weight to be accorded each, in reaching this decision.

Central Puget Sound
Growth Management Hearings Board
800 Fifth Avenue, Suite 2356, Seattle, WA 98104
Tel. (206) 389-2625 Fax (206) 389-2588

D. ABANDONED ISSUES and NEW ISSUES

The Board's Rules of Practice and Procedure provide:

> A petitioner . . . shall submit a brief on each legal issue it expects a board to determine. *Failure by such a party to brief an issue shall constitute abandonment of the unbriefed issue.* Briefs shall enumerate and set forth the legal issue(s) as specified in the prehearing order if one has been entered.

WAC 242-02-570(1), (emphasis supplied).

Additionally, the Board's March 23, 2007, PHO in this matter states: "**Legal issues, or portions of legal issues, not briefed in the Prehearing Brief will be deemed to have been abandoned and cannot be resurrected in Reply Briefs or in oral argument at the Hearing on the Merits.**" PHO, at 8, (emphasis in original). *See City of Bremerton, et al., v. Kitsap County,* CPSGMHB Consolidated Case No. 04-3-0009c, Final Decision and Order (Aug. 9, 2004), at 5; *and Tulalip Tribes of Washington v. Snohomish County,* CPSGMHB Case No. 96-3-0029, Final Decision and Order (Jan. 8, 1997), at 7.

Also, the Board has stated, "Inadequately briefed issues would be considered in a manner similar to consideration of unbriefed issues and, therefore, should be deemed abandoned." *Sky Valley, et al., v. Snohomish County*, CPSGMHB Case No. 95-3-0068c, Order on Motions to Reconsider and Correct (Apr. 15, 1996), at 3.

Further, RCW 36.70A.290(1) properly constrains the Board's review; it provides, in relevant part,

> *The board shall not issue advisory opinions on issues not presented and to the board in the statement of the issues* [*i.e.* the statement of Legal Issues in the PFR], as modified by any prehearing order.

(Emphasis supplied).

In other words, it is the Legal Issues in the PHO[6] that frame the questions the Board is asked to address. Briefing and argument on issues that are beyond the scope of the Legal Issues presented in the PHO are **new issues** which the Board cannot address, per .290(1). Any such issue and argument that appears in briefing will be ignored by the Board and dismissed. The Board will only address the Legal Issues from the PHO that are briefed by Petitioners. Petitioners must demonstrate (through evidence and argument) that the

[6] Often the Statement of Legal Issues in the PHO merely replicates the statement of issues from the PFR; on occasion, the original statement(s) of issues are modified after discussion at the PHC, and it is the end result that is reflected in the Statement of Legal Issues set forth in the PHO.

Central Puget Sound
Growth Management Hearings Board
800 Fifth Avenue, Suite 2356, Seattle, WA 98104
Tel. (206) 389-2625 Fax (206) 389-2588

action challenged does not comply with the specific goals or requirements set forth in the statement of the Legal Issues in the PHO.

In the present matter, Kitsap County argues several of the Legal Issues set forth in the PHO have been abandoned, and new issues have been argued that do not fall within the scope of the Legal Issues in the PHO. Kitsap Response, at 5-13. The Board addresses these arguments in the context of the Board's discussion of the Legal Issues, *infra*.

IV. LEGAL ISSUES AND DISCUSSION

A. URBAN DENSITY

[Suquamish Tribe Legal Issue No. 1 and KCRP/Harless Legal Issue No. 1]

The Board's PHO, at 8, sets forth the Urban Density Legal Issues as follows:

1. *Did Kitsap County (**the County**) fail to follow guidance under RCW 36.70A.020(1), (2), (3), (4), (10) and (12), and fail to comply with RCW 36.70A.070 (internally consistent plans) and RCW 36.70A.110 by allowing reduced urban residential densities, and expanding Urban Growth Areas (**UGAs**) by about 35%, as part of the 10-Year Update to its Comprehensive Plan (**Plan Update**) adopted by Ordinance No. 370-2006, thereby promoting sprawl in direct contradiction to the fundamental goals of the GMA? [Suquamish PFR]*

1. *Did the County fail to be guided by RCW 36.70A.020(1), (2), (3), (4) and (12), and fail to comply with RCW 36.70A.110 when it reduced permitted urban residential densities by twenty percent, triggering the otherwise unnecessary expansion of several UGAs), as part of the Plan Update and zoning adopted with Ordinance Nos. 370-2006 and 367-2006? [KCRP PFR]*

The Challenged Action

Petitioners challenge the County's actions in adopting Ordinances 370-2006 and 367-2006 as contrary to the GMA's mandate to reduce sprawl and accommodate urban density. Although the County retained the Comprehensive Plan land use designation - Urban Low Density Residential - two of the implementing zoning districts were modified, changing the density ranges from 5-9 dwelling units per acre (du/acre) to 4-9 du/acre in Urban Low density residential zone and Urban cluster residential zone.

Applicable Law

Petitioners allege that the County has not been guided by, nor complied with 6 different Goals of the GMA – RCW 36.70A.020 – as follows:

Central Puget Sound
Growth Management Hearings Board
800 Fifth Avenue, Suite 2356, Seattle, WA 98104
Tel. (206) 389-2625 Fax (206) 389-2588

(1) Urban growth. Encourage development in urban areas where adequate public facilities and services exist or can be provided in an efficient manner.

(2) Reduce sprawl. Reduce the inappropriate conversion of undeveloped land into sprawling, low-density development.

(3) Transportation. Encourage efficient multimodal transportation systems that are based on regional priorities and coordinated with county and city comprehensive plans.

(4) Housing. Encourage the availability of affordable housing to all economic segments of the population of this state, promote a variety of residential densities and housing types, and encourage the preservation of existing housing stock.

(10) Environment. Protect the environment and enhance the state's high quality of life, including air and water quality, and the availability of water.

(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.

RCW 36.70A.070 (Preamble), provides in relevant part:

"...The plan shall be an internally consistent document and all elements shall be consistent with the future land use map..."

RCW 36.70A.110, provides in relevant part:

(1) Each county that is required or chooses to plan under RCW 36.70A.040 shall designated an urban growth area or areas within which urban growth shall be encouraged and outside of which growth can only occur if it not urban in nature.

(2) . . .[T]he county and each city within the county shall include areas and densities sufficient to permit the urban growth that is projected to occur in the county or city for the succeeding twenty-year period. . .

Central Puget Sound
Growth Management Hearings Board
800 Fifth Avenue, Suite 2356, Seattle, WA 98104
Tel. (206) 389-2625 Fax (206) 389-2588

Discussion

Position of the Parties:

Petitioners argue that the County's decision to reduce minimum residential densities from five dwelling units per acre (5 du/acre) to four dwelling units per acre (4 du/acre) within UGAs ignores the GMA's mandate for a compact urban form (as articulated by the combined purpose of Goals 1, 2, and 12) and forces a 35 percent expansion of UGAs, thereby perpetuating low-density sprawl. Petitioners assert that (1) the County has failed to reasonably justify its change in minimum density and the subsequent UGA expansions and (2) reduction in residential densities contradicts both County policies and the GMA's goals and requirements. Petitioners assert that the County's rationale is not supported by the GMA's requirements for urban density, transportation, affordable housing, urban facilities and services, and environmental protection. Suquamish PHB, at 6 - 26.

In response, the County asserts that the Petitioners have abandoned allegations pertaining to 36.70A.110, providing only conclusory arguments without specifically citing to which of the 7 sections contained in .110 that the County failed to satisfy. The County notes that it modified densities, from 5-9 du/acre to 4-9 du/acre, only within two zoning districts - Urban Low Residential and Urban Cluster Residential – and that the GMA does not maintain a duty demanding a specific density. The County asserts that its decision is justified by (1) community desire, (2) long-standing 4 du/acre "appropriate" urban density standard, (3) the provision of a greater variety of residential densities and housing types, (4) coordination and consistency with urban densities in County cities, (5) is not contrary to the stated GMA goals, and (6) is consistent with the County's Comprehensive Plan policies. Kitsap Response, at 6-7, 16-33.

In reply, Petitioners assert that they have not abandoned any issues, rather they have provided sufficient supporting facts and legal arguments to meet their burden of proof. The Petitioners note that the issue raised with their challenge is a change from one minimum density to another and whether the County has documented local conditions which would allow for such a modification, and the County failed to respond to this assertion focusing on 4 du/acre being an "appropriate" urban density. Petitioners reassert their arguments in regard to historic development patterns, housing variety, efficiency of services, and inconsistency with GMA mandates and County policies. Suquamish Reply, at 4-14.

Board Discussion:

As an initial matter, the Board addresses the County's contention that Petitioners have not adequately briefed their allegation that the County has not complied with the provisions of RCW 36.70A.110. *See* Kitsap Response, at 6-7, referring to Suquamish PHB, at 6-26. The Board has reviewed the arguments presented by Petitioners in their PHB, at 6-26 and finds that a recurring theme is the impact of the density reduction on the UGAs. The Legal Issues reference to .110 and the various goals of the Act clearly puts this

Central Puget Sound
Growth Management Hearings Board
800 Fifth Avenue, Suite 2356, Seattle, WA 98104
Tel. (206) 389-2625 Fax (206) 389-2588

relationship in play. Therefore, the Board finds and concludes that Petitioners have not abandoned their challenge to RCW 36.70A.110.

It is undisputed that the County's Urban Low Density Residential (**ULDR**) Plan designation [in the Plan text and on the Future Land Use Map or **FLUM**] was modified to reduce the permitted density ranges from a minimum density of 5 dwelling units per acre (**du/ac**) to 4 du/ac. There are three implementing zones for the ULDR designation: 1) Urban Restricted Residential (**URR**), used where critical areas are present, which allows 1-5 du/ac; 2) Urban Low Density Residential (**ULR**), which allows 4-9 du/ac; and 3) Urban Cluster Residential (**UCR**), which also allows 4-9 du/ac. Plan Update, at 2-20, 2-21. It is also undisputed that 90% of the lands designated for *urban* residential growth are within these three zoning designations [URR = 21%, ULR and UCR = 69%]. See Post HOM Ex. 2.

At the outset, the Board acknowledges that 4 du/ac is an "appropriate" urban density; it is not low-density sprawl. In fact, the County is correct in noting that since 1995, 4 du/ac has been an approved and accepted minimum urban density for Kitsap County. *See Bremerton v. Kitsap County*, CPSGMHB Case No. 95-3-0039c, Final Decision and Order, (Oct. 6, 1995). What, then, is the basis for Petitioners' complaint? Doesn't the County have discretion to plan for and regulate land use within the parameters of the Act?

As the Board understands it, Petitioners' argument is based upon the fact that the County's prior Plan and zoning had a minimum density range for the affected designations of 5 du/ac and that between 2000 and 2005, the County has achieved an average density for urban residential plats of 5.6 units /net acre. *See* Plan Update, at 2-9. The County's Plan appeared to be encouraging increased densities in the urban area. *Id.* Therefore, Petitioners argue, given this trend of increasing urban residential densities and compact urban growth, the County's new reduction of its minimum densities will cause this trend to be reversed requiring more land to be needed in the UGA to accommodate projected growth. In addition to adjusting the required densities, Petitioners also argue that the County has lowered the urban/rural split for accommodating population growth from 83% to 76% for urban areas and increased from 17% to 24% in rural areas, a modification that is contrary to GMA's mandate for compact urban growth.

Petitioners point to numerous exhibits within the Record, very impressive evidence,[7] which support the notion that higher densities are more cost-effective for jurisdictions

[7] Exhibit 29761 is a letter from Petitioner Jerry Harless urging retention of the higher densities which includes the following significant attached documents: Ten Principles for Successful Development Around Transit, by the Urban Land Institute; Appropriate Urban Densities in the Central Puget Sound Region: Local Plans, Regional Visions and the Growth Management Act, by Joseph W. Tovar; Taking Its Toll: The Hidden Costs of Sprawl in Washington State, by Patrick Mazza and Eben Fodor; Higher Density Development – Myth and Fact, by the Urban Land Institute; Creating Great Neighborhoods: Density in Your Community, by the National Association of Realtors; and The Economics of Conservation Subdivisions – Price Premiums, Improvement Costs and Absorption Rates, by Rayman Mohamed.

Central Puget Sound
Growth Management Hearings Board
800 Fifth Avenue, Suite 2356, Seattle, WA 98104
Tel. (206) 389-2625 Fax (206) 389-2588

when providing services (i.e. water, sewer, public transit) than at lower densities. The Board agrees that there is certainly persuasive evidence providing a solid basis and rationale for increased densities and compact urban growth, but is the County's chosen action outside the boundaries of what the GMA allows? It is apparent that Petitioners see a wiser choice and a wiser, more cost-effective course of action for the County than the one chosen, but the Board is not persuaded that the County's reduction of its minimum density from 5 to 4 du/ac falls outside the GMA's requirements.

Petitioners also question whether the recommendations of a Citizen Advisory Group merely perpetuate historic low densities; whether changing minimum densities from 5 to 4 du/ac encourages anything other than single-family development; and whether adding area to the UGA will lower the costs of providing capital facilities and services to the urban area. The Board notes, as stated *supra,* that 4 du/ac is an appropriate urban density and not the historic pattern previously found in Kitsap County. Further, although the Board notes that a change in density from 5 to 4 du/ac alone is not likely to increase the variety of housing types, nor will adding area to the UGA necessarily lower the costs of providing services, but it will affect the distribution of the costs incurred. The Board agrees with Petitioners that a reduction of the minimum urban density will have intended or unintended consequences on the size of the UGA. Regardless of these adjustments, the County must assure that urban facilities and services will be adequate and available to provide for the UGA – a separate Legal Issue in this matter. Nonetheless, the Board does not find that the County's action of establishing a minimum urban density of 4 du/ac is clearly erroneous or contrary to the challenged provisions of the GMA.

Conclusion

The Board finds and concludes that the County's action **was not clearly erroneous.** Additionally, Petitioners have **failed to carry the burden of proof** in demonstrating noncompliance with RCW 36.70A.020(1), .020(2), .020(3), .020(4), .020(10), .020(12), .070 (Preamble), and .110. **Legal Issue No. 1 (Suquamish) and Legal Issue No. 1 (KCRP) is DISMISSED.**

B. LAND CAPACITY ANALYSIS

[Suquamish Tribe Legal Issue No. 2 and KCRP/Harless Legal Issue No. 2]

The Board's PHO, at 8-9, sets forth the Land Capacity Analysis Legal Issues as follows:

2. *Did the County fail to follow guidance under RCW 36.70A.020(1) (2), and fail to comply with RCW 36.70A.070 (internally consistent plans) and RCW 36.70A.110 by expanding UGAs based on a non-compliant Urban Land Capacity Analysis (LCA), which results in substantially over-sized UGAs as part of the Plan Update*

Central Puget Sound
Growth Management Hearings Board
800 Fifth Avenue, Suite 2356, Seattle, WA 98104
Tel. (206) 389-2625 Fax (206) 389-2588

adopted by Ordinance No. 370-2006, thereby promoting sprawl in direct contradiction of the fundamental goals of the GMA? [Suquamish PFR]

2. *Did the County fail to be guided by RCW 36.70A.020(1) and (2), and fail to comply with RCW 36.70A.070 (internally consistent plans) and RCW 36.70A.110 when it expanded several UGAs based on a non-compliant Urban Land Capacity Analysis (LCA), resulting in an excessively oversized UGA as part of the Plan Update and zoning adopted with Ordinance Nos. 370-2006 and 367-2006? [KCRP PFR]*

The Challenged Action

The challenged action here is the County's Land Capacity Analysis (**LCA**) as found in Appendix B of the Final Environmental Impact Statement (**FEIS**). The LCA describes the vacant lands and underutilized lands designated for residential, commercial and industrial development. A separate table is included that breaks down the land capacity for the following unincorporated areas: 1) Kingston UGA; 2) Poulsbo Transition Area; 3) Silverdale UGA; 4) Central Kitsap UGA; 5) Bremerton East UGA; 6) Bremerton West UGA; 7) Gorst UGA; 8) Port Orchard UGA; 9)ULID #6 UGA; and 10) South Kitsap Industrial Area. The Board notes that there is no table showing the cumulative total of the County's land capacity for different uses in the urban areas. See FEIS, Appendix B. However, Petitioner Harless and the County have stipulated to a composite table that shows the individual area totals and a cumulative total in gross, net, and dwelling units for the Urban Residential classifications. *See* Post HOM Ex. 1.

Applicable Law

Petitioners pose additional challenges here pertaining to Goals 1 and 2 and RCW 36.70A.110, both set forth *supra*.

Additionally, Petitioners assert noncompliance with the internal consistency requirements of RCW 36.70A.070(preamble) which provides in relevant part:

> The plan shall be an internally consistent document and all elements shall be consistent with the future land use map.

Discussion

Position of the Parties:

Petitioners assert that the GMA requires that when a UGA is being designated, such designation must be supported by two analyses – a Land Capacity Analysis [**LCA**] and a Capital Facilities Element [**CFE**] – which ensure properly-sized UGAs and adequate infrastructure. With the challenged ordinances, and in response to the Board's holding in *KCRP VI v. Kitsap County,* CPSGMHB Case No. 06-3-0007, the County removed "sewer

Central Puget Sound
Growth Management Hearings Board
800 Fifth Avenue, Suite 2356, Seattle, WA 98104
Tel. (206) 389-2625 Fax (206) 389-2588

constrained lands" from its LCA and reduced residential zoning density (*see* Legal Issues 1, *supra*) but did not adjust the size of the UGAs. Petitioners asset that the density assumptions utilized within the LCA are a clear error because (1) with the Urban Restricted Residential [URR] zone, the County has "double-dipped" the reduction for critical areas, (2) fails to show consistency with the BLR's on-the-ground densities of recent development projects (5.6 du/acre), and (3) is inconsistent with density factors and policies stated in the Comprehensive Plan. The Petitioners do not dispute that the County "showed its work." Rather, they assert that this showing falls short by not providing explanation. Suquamish PHB, at 27-35.

In response, the County concurs with Petitioners that the County has "shown its work" and that the LCA density factor must, at least, be the minimum density allowed in FLUM designations. The County asserts that the LCA satisfies the challenged GMA Goals – urban growth and reduce sprawl – by demonstrating that urban level densities will be provided for within the UGA and that the LCA is consistent with Comprehensive Plan Policies in regard to target densities and higher density within UGAs than rural areas and with .110's UGA sizing requirements. The County argues that it is not double counting critical areas by providing a reduced density within the URR zone (1-5 du/acre) while utilized minimum-density factors in the LCA. Essentially, according to the County, the Petitioners' challenge is based solely on the fact that they do not like the density assumptions utilized by the County. Kitsap Response, at 33-40.

In reply, Petitioners assert that the County, as it did with the density reduction issue, is sidestepping the real issue – that the LCA uses a predicted density that is lower than measured trends in direct contradiction to County planning policies and leading to an oversized UGA. Petitioners assert that the "inconsistency" they allege stems from the common goal of County land use policies to achieve higher densities within UGA, to conserve rural and resource lands, and to provide efficient transportation and governmental services, which is not supported when land supply is allocated on a lower density. Petitioners provide further clarification of their "double dipping" argument in regard to URR zone lands, asserting that the LCA subtracts mapped critical areas and buffers and that the URR zone is predicated on this very reduction. Suquamish Reply, at 15-18.

Board Discussion:

The parties and the Board agree that whether the County "showed its work" pertaining to the LCA is not disputed in this matter. The County clearly showed its work by publishing the LCA in the FEIS.

However, what Petitioners object to is that reducing the low end of the urban residential density assumption from 5 du/ac to 4 du/ac yields lesser land capacity within existing UGAs, thereby precipitating the need to expand the UGAs in order to accommodate allocated population growth. Much like the argument presented in Legal Issue 1, Petitioners assert that a higher density assumption – the 5.6 du/acre trend – or at least a

Central Puget Sound
Growth Management Hearings Board
800 Fifth Avenue, Suite 2356, Seattle, WA 98104
Tel. (206) 389-2625 Fax (206) 389-2588

mid-range density, should be used in determining land capacity. The County counters that there is no GMA requirement that compels the result that Petitioners seek and that the County has discretion in sizing its UGAs so long as urban densities are provided for in the UGA and low-density sprawl is not encouraged. The County, as it did in Legal Issue 1, claims that a 4 du/ac LCA assumption is an urban density and that, as a conservative measure, the lower end of the density range is an acceptable choice when calculating land capacity. The County asserts that while Petitioners may wish to have higher density assumptions used in the LCA, the GMA does not compel such a choice and that Petitioners have simply failed to meet the burden of proof in demonstrating noncompliance with the noted GMA provisions.

Just as the Board agreed with the County in regard to urban density, the Board here also agrees with the County on its methodology. The LCA largely rests upon a residential density assumption of 4 du/ac, which, as the Board has stated *supra*, is an "appropriate" urban density. The consequence of adopting this lower assumption is, in fact, to demonstrate a need for more urban land. The methodology of the County is not flawed, nor is the use of a minimum of 4 du/acre rather than a trend or mid-range density flawed or in violation of any GMA directive. However, the Board does agree with Petitioners that adopting this approach may dampen the recent success the County has had in encouraging higher densities in the UGAs, since the County concedes that between 2000 and 2005, the County achieved an average of 5.6 units/net acre for urban low density plats. *See* Plan Update, at 2-9. Again, if the County is expanding its urban areas, the County must assure that urban facilities and services will be adequate and available to provide for these UGAs. Nonetheless, the Board cannot find that the County's action was clearly erroneous or noncompliant with the cited provisions of the GMA.

Conclusion

The Board finds and concludes that the County's action **was not clearly erroneous.** Additionally, Petitioners have **failed to carry the burden of proof** in demonstrating noncompliance with RCW 36.70A.020(1), .020(2), .070 (Preamble), and .110. **Legal Issue No. 2 (Suquamish) and Legal Issue No. 2 (KCRP) is DISMISSED.**

C. CAPITAL FACILITIES

[Suquamish Tribe Legal Issue No. 5 and KCRP/Harless Legal Issue No. 3]

The Board's PHO, at 9, sets forth the Capital Facilities Legal Issues as follows:

5. *Did the County fail to follow guidance under RCW 36.70A.020(1), (2) and (12), and fail to comply with RCW 36.70A.070(3) when it designated several expanded UGAs as part of the Plan Update – Ordinance 370-2006 – without a compliant Capital Facilities Element and Plan to ensure that necessary facilities and*

Central Puget Sound
Growth Management Hearings Board
800 Fifth Avenue, Suite 2356, Seattle, WA 98104
Tel. (206) 389-2625 Fax (206) 389-2588

services will be adequate and available to support development within the 20-year planning period? [Suquamish PFR]

3. *Did the County fail to be guided by RCW 36.70A.020(1), (2) and (12), and fail to comply with RCW 36.70A.070(3) when it designated several expanded UGAs as part of the Plan Update and zoning adopted with Ordinance Nos. 370-2006 and 367-2006 without a compliant Capital Facilities Element and Plan to ensure that necessary facilities and services will be adequate and available to support development within the 20-year planning period? [KCRP PFR]*

The Challenged Action

In essence, Petitioners challenge the adequacy of the County's Capital Facilities Element [**CFE**], Chapter 11 of the County's Comprehensive Plan, and the County's 6-year Capital Facilities Plan [**CPF**], Appendix A of the County's Comprehensive Plan. The basis of the Petitioners' challenge is that these two documents do not demonstrate that the County can provide necessary facilities and services that are adequate and available to support both existing and recently expanded UGAs during the 20-year planning period.

Applicable Law

Petitioners pose additional challenges here pertaining to Goals 1, 2 set forth *supra.*

Goal 12 is worth repeating here, since it is a critical requirement of this Legal Issue. RCW 36.70A.020(12) provides:

> (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 minimums.

(Emphasis supplied).

RCW 36.70A.070(3) governs the requirements for the County's Capital Facilities Element. The provisions are as follows:

> A capital facilities plan element consisting of:
>
> > (a) An inventory of existing capital facilities owned by public entities, showing the locations and capacities of the capital facilities;
> > (b) a forecast of the future needs for such capital facilities
> > (c) the proposed locations and capacities of expanded or new capital facilities;

Central Puget Sound
Growth Management Hearings Board
800 Fifth Avenue, Suite 2356, Seattle, WA 98104
Tel. (206) 389-2625 Fax (206) 389-2588

(d) at least a six-year plan that will finance such capital facilities within projected funding capacities and clearly identifies sources of public money for such purposes; and
(e) a requirement to reassess the land use element if probable funding falls short of meeting existing needs and to ensure that the land use element, capital facilities plan element, and financing plan within the capital facilities plan element are coordinated and consistent. Park and recreation facilities shall be included in the capital facilities plan element.

Discussion

Position of the Parties:

Petitioners point out that the Board has previously found the County's Capital Facilities Element and Plan [**CFE/CFP**], in regard to sanitary sewers and the Kingston Sub-area Plan, non-compliant with Goals 1, 2, and 12, entering an order of invalidity which currently remains in effect. *See KCRP VI v. Kitsap County,* CPSGMHB Case No. 06-3-0007. Petitioners now assert that the County has once again failed to ensure adequate and available urban services within the UGA. Petitioners assert that the CFE/CFP: (1) fails to address concurrency and financial planning for all necessary capital facilities, (2) fails to identify the geographic locations and capacities of facilities for serving new and existing populations, and (3) therefore, fails to adequately plan for future needs of facilities in support of the Land Use Element. Suquamish PHB, at 36-45.

In response, the County asserts that the Petitioners erroneously rely on the Board's holding in *KCRP VI* to support their argument that if Kingston's sewer plan was found to be noncompliant with the GMA, then the entire CFE/CFP is noncompliant. The County argues that if it has acted in compliance with RCW 36.70A.070(3) – requiring an inventory, a needs analysis, proposed future facilities location, 6-year funding plan, and a reassessment requirement – it is also compliant with 36.70A.020(12). The County states that the Petitioners' argument is flawed because certain facilities and services are not "necessary to support development" and "concurrency," as defined by the Act, is not required. In addition, the County points out that Petitioners do not dispute that the CFE/CFP satisfies the requirements of 36.70A.070(3). Rather, Petitioners assert that the County has failed to provide enough detail, but cite to no "level of detail" requirement in the GMA. The County then counters the Petitioners' assertion that information is lacking by pointing to supporting facts within the CFE/CFP. Kitsap Response, at 40-53.

In reply, Petitioners claim that the CFE/CFP fails Goal 12's test of ensuring that facilities necessary to support urban growth will be adequate and available during the 20-year life of the Comprehensive Plan. Petitioners assert that the Board's finding in *KCRP VI* is directly on point and that the "overreaching" nature of the requirement to serve UGAs still exists today. The Petitioners reiterate their claims that the CFE/CFP fails to meet the requirements of 36.70A.070(3). Suquamish Reply, at 18-23.

Central Puget Sound
Growth Management Hearings Board
800 Fifth Avenue, Suite 2356, Seattle, WA 98104
Tel. (206) 389-2625 Fax (206) 389-2588

Board Discussion:

The essence of Petitioners' complaint is that the County has expanded certain UGAs and that the County has failed to demonstrate that the new UGA areas can be supported by the County's 20-year CFE. The basis of this complaint is rooted in Goal 12 which requires that the County ensure that it has the necessary capital facility "capacity" (*i.e.* adequate capacity and available facilities) to support the new and existing development within the various UGAs – *i.e.* the urban areas are served with urban level facilities.

It is undisputed that the County's Plan Update expanded the previous UGA areas by approximately 33% over the previous UGA areas. *See* FEIS, at 2-56. The total unincorporated UGA area in the Plan Update includes approximately 51.1 square miles. *Id.* Thus in general terms, the Plan Update's UGA expansion added approximately 17 square miles to the UGAs [17 square miles is roughly 1/3 of the 51 square miles in the new UGAs].

The Plan Update identifies 10 UGAs in Kitsap County. Seven of these UGAs were to be expanded under Alternative 2 of the EIS, but in the County's final action, only six were expanded as indicated in Alternative 2 in the FEIS, at 2-36. The Plan Update, Ordinance No. 370-2006, Section 4, at 8, indicates that Alternative 2 from the FEIS is adopted *absent* the Poulsbo UGA expansion, which leaves the Poulsbo UGA at the "no action" level as described in the FEIS – *i.e,* no UGA expansion for Poulsbo. Therefore, the Board will focus on the *six UGAs where expansion occurred.*

The Plan Update, at 2-11, illustrates the 10 UGA areas and their respective acreages. The following Table is based upon information contained in the Plan Update, at 2-11, and depicts the UGA areas for those "expanded UGAs" and those UGAs that were not altered.

Kitsap County's 10 UGAs

Expanded UGAs	Total UGA Acreage	Non-Expanded UGAs	Total UGA Acreage
Silverdale	7400	Kingston	1600
Central Kitsap	6400	Poulsbo	850
West Bremerton	1100	East Bremerton	1300
Gorst	330	ULID #6 [McCormick Woods]	2400
Port Orchard	6600		
SKIA	4700		

Of these 10 UGAs, which are factors in the Board's present inquiry?

Central Puget Sound
Growth Management Hearings Board
800 Fifth Avenue, Suite 2356, Seattle, WA 98104
Tel. (206) 389-2625 Fax (206) 389-2588

Five UGAs are **not of significance** in the present inquiry:

- Poulsbo UGA = Not expanded, therefore not part of the present inquiry;
- East Bremerton = Not expanded, therefore not part of the present inquiry;
- ULID#6 [McCormick Woods] = Not expanded, therefore not part of the present inquiry;
- SKIA = An *industrial area* UGA expansion, therefore not part of the present inquiry;
- Kingston = No present expansion. However, the Kingston Subarea Plan was addressed in *KCRP VI v. Kitsap County*, 06-3-0007, FDO, (Jul. 26, 2006) and KCRP VI, Order of Partial Compliance and Order of Continuing Noncompliance and Invalidity [Re: Kingston Wastewater Facilities Plan].

However, **five UGAs** are a factor in the Board's present inquiry because they involve expansions that include Urban Low-Density Residential development. These UGAs are:

- Silverdale UGA
- Central Kitsap UGA
- West Bremerton UGA
- Gorst UGA
- Port Orchard UGA

With regards to these five UGA expansion areas, the Board makes the following observations based upon a comparison of the maps showing the "No Action Alternative" and the "Preferred Alternative 2" from the DEIS and the Plan Update.

- **Silverdale UGA** – substantial urban low-density residential capacity is added to the UGA to the northwest and southwest of the previous UGA for Silverdale; some of this expansion is adjacent to Dyes Inlet.
- **Central Kitsap UGA** – urban low-density residential capacity is added to the UGA at the northeast portion of the area on Port Orchard Bay, and residential capacity is added to the UGA to the southwest portion of the area along Dyes Inlet.
- **West Bremerton UGA** – substantial low-density residential capacity is added to the UGA on the peninsula extending from Phinney Bay up to Rocky Point, with an additional area inland, west of Kitsap Way and near Sinclair Inlet.
- **Gorst UGA** – a modest low-density residential capacity is added to the UGA west of Sinclair Inlet near Hamilton Road.
- **Port Orchard UGA** – the Port Orchard UGA expansion is significant. It adds significant acreage of low-density residential capacity to the east and southeast portion of the City's prior UGA.

Central Puget Sound
Growth Management Hearings Board
800 Fifth Avenue, Suite 2356, Seattle, WA 98104
Tel. (206) 389-2625 Fax (206) 389-2588

The Central Kitsap, West Bremerton and Gorst UGAs are addressed in the Plan Update, generally, and the Capital Facilities Element goals and policies are applicable. *See* Plan Update, Chapter 11. The Plan Update also applies to the Silverdale and Port Orchard areas, including the UGAs, but these areas are also subject to goals and policies articulated in their respective Sub-area Plans. *See* Plan Update, at 14.1 and 13.1 respectively.

The Plan Update Capital Facility Element's Goal 1, at 11-2, states:

> Define types of public facilities, establish standards for levels of service for each type of public facility, and *determine what capital improvements are needed to achieve and maintain the standards for existing and future populations*, and to repair and replace existing public facilities.

(Emphasis supplied).

Policy CF-1 defines 13 different types of capital improvements and systems that the County deems to be public facilities – sanitary sewer and water are public facilities. *Id.*

Policy CF-2 establishes categories for the various public facilities. Sanitary sewer and water fall within Category C and Category D public facilities and are explained as follows.

> **Category C**. Category C public facilities are *facilities owned or operated by the County* but not subject to the concurrency requirement. The LOS standards of Category C facilities do not apply to development permits issued by the County (beginning in the 2007 fiscal year and following adoption of the County's budget and Capital Improvements Program beginning in the 2007 fiscal year) or to the concurrency management system set forth in Policy CF-15. Category C facilities LOS standards apply to GMA and other statutory requirements (*i.e.* GMA Planning Goal 12, Subdivision Approvals, Impact Fees), regarding the provision of appropriate and adequate public facilities. Category C facilities include community centers, open space, trails, *sanitary sewer (County-owned)*, solid waste and surface water management.
>
> **Category D**. Category D public facilities are facilities *owned or operated by federal, state, or city governments; independent districts, or private organizations*; but not subject to the requirement for concurrency. The LOS standards of Category D facilities do not apply to the concurrency management system as set forth in Policy CF-15. Category D facilities are provided by entities other than Kitsap County; therefore the LOS standards do not apply to the County's budget or the County's Capital

Central Puget Sound
Growth Management Hearings Board
800 Fifth Avenue, Suite 2356, Seattle, WA 98104
Tel. (206) 389-2625 Fax (206) 389-2588

> Improvements Program. However, the LOS standards apply to the budgets and capital improvements programs of the entities that provide the public facilities, GMA (*i.e.* GMA Planning Goal 12, Subdivision Approvals, Impact Fees) and other statutory requirements regarding the provision of appropriate and adequate public facilities, and other chapters of the Plan. Category D facilities include fire and emergency medical services, school district and *water facilities* and *non-county sanitary sewer* facilities.

Plan Update, at 11-3, 11-4; (emphasis supplied).

The County notes that CF-15 applies *only* to Category A and Category B public facilities and is actually limited exclusively to transportation infrastructure – *i.e.* roads. Kitsap Response, at 41-44. The Board agrees. The County then explains that Category C and Category D facilities require a different type of concurrency – *i.e.* the provision of appropriate and adequate public facilities – per Goal 12 of the GMA. This type of concurrency is based upon maintaining the established levels of service. *Id.* at 47. The Board does not dispute this, since these "concurrency" management approaches deal with *new development at the permitting level.* However, the County does not respond to Petitioners' argument that the CFE does not support *existing* and planned development within the UGAs – the same argument offered in the *KCRP VI* case involving the Kingston UGA and sewer plan. At issue here is the question of drawing UGAs where urban services are available, adequate and can be provided to "meet existing needs" (RCW 36.70A.070(3)(e)), not just support future growth, throughout the UGA. This is the crux of Petitioners' concern.

For the five UGAs of interest, who provides capital facilities and services – specifically sanitary sewer - to these five UGAs?

The Central Kitsap UGA and the Silverdale UGA are provided sanitary sewer service by Kitsap County. Plan Appendix A, at 60-61 states:

> Kitsap County owns and operates conveyance and treatment facilities in the Central Kitsap service area. This service area is the largest system in Kitsap County and includes the naval facilities at Bangor, Keyport, and the City of Poulsbo along with developed areas in the Silverdale and Central UGAs. The service area extends northerly from Waaga Way along Silverdale Way to include the Ridgetop area. To the east, the service area includes much of the existing urban areas located south of Waaga Way and north of Bremerton. The plant also treats septic tank waste hauled to the plant.
>
> . . .
>
> Treatment facilities at the Central Kitsap WWTP [wastewater treatment plant] are currently rated for an Average Daily Flow (ADF) of 6.0 mgd [million gallons per day]. . . . The County plans to expand the plant based

Central Puget Sound
Growth Management Hearings Board
800 Fifth Avenue, Suite 2356, Seattle, WA 98104
Tel. (206) 389-2625 Fax (206) 389-2588

on the extent of growth predicted within the existing sewer service area. The second phase of construction at the plant will upgrade to 10.6 mgd ADF. The existing 68-acre site is expected to accommodate layout of facilities for capacity in excess of 25 mgd ADF. Table SS.2 shows the 2012 and 2025 population allocations for the areas served by Central Kitsap wastewater facilities.

Table SS.2, in relevant part shows the following:

Table SS.2 Kitsap County Sewer System Population Allocation

Sewer Facilities	2003	2012	2025
Central Kitsap Service Area			
Sewered	27,898	49,324	65,406
Unsewered	15,074	11,305	7,537

Id. at 65. The County explains "unsewered" as follows: "Estimate that as density increases and septic systems fail, one quarter of existing septic system in UGA/LAMIRD's will connect to sewer by 2012 and one quarter by 2025." *Id.* footnote 3.

What is striking about this table is that the County acknowledges that by 2025, 7,537 existing residents will remain without sewer service in the UGA. The County appears to be acknowledging that sanitary sewer facilities will not be adequate and available for over 7,000 residents during the planning period within this UGA. This is exactly the point the Board understands Petitioners to be making, yet the County does not address this concern. This Table alone is sufficient for the Board to find and conclude that the County's sizing, of at least the Central Kitsap and Silverdale UGAs, is contrary to Goal 12 and RCW 36.70A.070(3).

The Board also notes that for the Gorst UGA Plan Appendix A, at 66, states:

> In 1996, the Bremerton-Kitsap County Health District (now Kitsap Health District) published a study "Gorst Area On-site Sewage Systems Sanitary Sewer Project," that concluded that 14 percent of the Gorst septic systems had failed (49 failures out of 341 systems surveyed) and that 81 percent had either failed or were in danger of failing in the near future (277 out of 341). By 1998 the Health District had declared Gorst and the surrounding area a "severe public health hazard" and defined an LID boundary that encompassed only those properties that had on-site system failures or the potential for failure. This project will construct a sewer collection system for Gorst to connect to an existing treatment plant, or allow for

Central Puget Sound
Growth Management Hearings Board
800 Fifth Avenue, Suite 2356, Seattle, WA 98104
Tel. (206) 389-2625 Fax (206) 389-2588

> construction of a satellite treatment facility should that prove to be technically and financially feasible.

Yet there is no indication in the Plan Update whether or how the problems in this "severe public health hazard area" have been addressed. The Board notes that the Gorst area is not apparently part of the County-owned or operated system.

For the Port Orchard and West Bremerton UGAs, sanitary sewer service is provided by the Cities of Port Orchard and Bremerton, respectively; they are not County-owned and operated systems. However, there is no indication in the Plan Update that these City systems can make sanitary sewer service adequate and available to serve the UGAs the County has drawn, including "meeting existing needs" as required by RCW 36.70A.070(3)(e).

In 1997, the Board addressed the County's CFE in another case, and stated:

> The Board notes a concern with sanitary sewers. The County manages only five of the twelve wastewater treatment facilities operating within the County. The County indicates that "[c]urrently, the county does not have planned sewage treatment works in the south area that could provide service to the Port [of Bremerton industrial area] or to Gorst. The closest sewage treatment works are in Port Orchard, managed jointly by the City of Port Orchard and Sewer District #5; and in Bremerton, owned and operated by the City of Bremerton. [*citing* CFP, at 3-58].
>
> Additionally, for facilities not owned or operated by Kitsap County, the County indicates that the financing and locational information is described elsewhere. [*citing* CFP 3-65]. However, there is no indication where "elsewhere" might be. Obviously, for cities within the County, the information would be available in the CFP of each city's comprehensive plan. But for tribes and private sewer districts, there is no capital facility planning requirement. If the County designates a UGA that is to be served by such a provider, the County should at least cite, reference or otherwise indicate where such locational or financing information may be found that supports the County's UGA designations and GMA duty to ensure that adequate public facilities will be available within the area during the twenty-year planning period.

Bremerton, et al. v. Kitsap County, CPSGMHB Case No. 95-3-0039c, coordinated with *Port Gamble, et al. v. Kitsap County*, CPSGMHB Case No. 97-3-0024c, Finding of Noncompliance and Determination of Invalidity in *Bremerton* and Order Dismissing *Port Gamble*, (Sep. 8, 1997), at 41.

The Board has reiterated the importance of capital facility planning, by all entities, when a *County is setting UGA* boundaries. The County must be sure that the areas within the

Central Puget Sound
Growth Management Hearings Board
800 Fifth Avenue, Suite 2356, Seattle, WA 98104
Tel. (206) 389-2625 Fax (206) 389-2588

UGAs will have adequate and available urban services provided over the 20-year planning period – otherwise, the UGAs must be adjusted or other remedial measures taken. See *Hensley III v. City of Woodinville*, CPSGMHB Case No. 96-3-0031, Final Decision and Order, (Feb. 25, 1997); *Johnson II v. King County*, CPSGMHB Case No. 97-3-0002, Final Decision and Order, (Jul. 23, 1997); [*Bremerton coordinated with*] *Alpine Evergreen v. Kitsap County*, CPSGMHB Case No. 98-3-0030c, Order Rescinding Invalidity in Bremerton and Final Decision and Order in Alpine, (Feb. 8, 1999); and most recently, *KCRP VI v. Kitsap County*, CPSGMHB Case No. 06-3-0007, Order of Partial Compliance [Re: Kingston Sub-area Plan], Order of Continuing Noncompliance and Invalidity [Re: Kingston Wastewater Treatment Plan], (Mar. 16, 2007).

Given that the Central Kitsap UGA and the Silverdale UGA are reliant upon sanitary sewer service from the County and the County acknowledges that by 2025, over 7,000 residents in that sub-area will likely go unsewered and un-served, the Board finds and concludes that the County has not complied with the provisions of RCW 36.70A.020(12) and .070(3). The County may chose to rethink or redraw the UGAs in these areas, accommodate a lesser OFM population [within the range projected], modify its urban densities to increase the efficiency of the existing sewer system without extensions for new development, or draw up a plan to service the area. This is not to say that the Board is requiring each existing residence to be connected, but that the service provider should have the capacity (i.e. treatment facilities, trunk lines) to make adequate service available to the area.

Regarding the Gorst UGA, the Board finds and concludes that the County has not indicated how or who will address the septic system failure issue[8] for the Gorst area. Thus, the County should either retract the UGA, increase densities, or obtain assurances that sanitary sewer service will be adequate and available within the 20-year period for these areas.

For the West Bremerton and Port Orchard UGAs, again, the County should retract UGAs, increase densities, or obtain assurances that sanitary sewer service will be adequate and available within the 20-year planning period for these areas. While the Board's analysis has focused on sewer services, other capital facilities may be similarly deficient in providing service to existing residents in the UGA. 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.

Conclusion

The Board finds and concludes that the County's adoption of Ordinance 370-2006, specifically the CFP at Appendix A, was **clearly erroneous.** Additionally, the Board finds and concludes that the County **has not complied with RCW 36.70A.020(12) and**

[8] The Board notes that the Governor's Puget Sound Partnership recognizes that one of the major contributors to water pollution, and the health of Puget Sound, is failing septic tanks

Central Puget Sound
Growth Management Hearings Board
800 Fifth Avenue, Suite 2356, Seattle, WA 98104
Tel. (206) 389-2625 Fax (206) 389-2588

36.70A.070(3)'s mandate to provide necessary services to support existing and new development within the UGAs within the 20-year planning period.

D. RURAL WOODED INCENTIVE PROGRAM

[Suquamish Tribe Legal Issue No. 3 and KCRP/Harless Legal Issue No. 4]

The Board's PHO, at 9, set forth the Rural Wooded Lands Legal Issues as follows:

3. *Did the County fail to follow guidance under RCW 36.70A.020(9) and (10), and fail to comply with RCW 36.70A.070(5) and RCW 36.70A.030(16) when the Plan Update – Ordinance No. 370-2006 – and implementing development regulation Ordinance No. 367-2006 allow for a very large number of clustered residential developments to occur on a phased basis, but without clear objective standards for proceeding with each next phase, on up to 50,000 acres of Rural Wooded designated areas, and which relies upon substantial amounts of temporary 40-year open space called Wooded Reserve, thereby promoting sprawl in direct contradiction to the fundamental goals of the GMA? [Suquamish PFR]*

4. *Did the County fail to be guided by RCW 36.70A.020(1), (2), (8), (9), and (10), and fail to comply with RCW 36.70A.070(5)(c) when it instituted, as part of its Plan update – Ordinance No. 370-2006 – a phased program to encourage forestry by creating additional rural residential lots but does not contain adequate controls to protect rural character or prevent eventual conversion of most of the forested lands to residential use? [KCRP PFR]*

The Challenged Action

Kitsap County's provisions for its Rural Wooded Incentive Program (**RWIP**) are found in its zoning code, recently amended by Ordinance No. 367-2006, and codified at chapter 17.301 Kitsap County Code (**KCC**), HOM Ex. 11. The provisions of the RWIP [KCC 17.301.080] are set forth in full in **Appendix B**. Relevant provisions are included in the Board's Discussion.

Applicable Law

Petitioners raise compliance with numerous Goals of the GMA – Goals 1, 2, 9 and 10, each set forth *supra*. However, Petitioners also challenge compliance with RCW 36.70A.020(8) – Goal 8 – which provides:

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

Central Puget Sound
Growth Management Hearings Board
800 Fifth Avenue, Suite 2356, Seattle, WA 98104
Tel. (206) 389-2625 Fax (206) 389-2588

RCW 36.70A.030(16), noted in the Legal Issue statement, is the GMA's definition of "rural development" which states:

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

(Emphasis supplied.)

RCW 36.70A.070(5) establishes the components of a county's mandatory rural element. This section of the Act provides, in relevant part:

> Rural Element. Counties shall include a *rural element including lands that are not designated for urban growth,* agriculture, *forest* or mineral *resources.* The following provisions shall apply to the rural element:
>
> a. Growth management goals and local circumstances. Because circumstances vary from county to county, in establishing patterns of rural densities and uses, *a county may consider local circumstances, but shall develop a written record explaining how the rural element harmonizes the planning goals in RCW 36.70A.020 and meets the requirements of this chapter.*
>
> b. Rural development. *The rural element shall permit rural development, forestry,* and agriculture *in rural areas. The rural element shall provide for a variety of rural densities,* uses, essential public facilities, and rural governmental services needed to serve the permitted densities and uses. *In order to achieve a variety of rural densities* and uses, *counties may provide for clustering,* density transfer, design guidelines, conservation easements, and other innovative techniques *that will accommodate appropriate rural densities and uses that are not characterized by urban growth and are consistent with rural character.*[9]

---

[9] The Act defines "rural character" as:

> [Rural character] refers to the patterns of land use and development *established by a county* in the rural element of its comprehensive plan:
>
> a. In which open space, the natural landscape, and vegetation predominate over the built environment;

Central Puget Sound
Growth Management Hearings Board
800 Fifth Avenue, Suite 2356, Seattle, WA 98104
Tel. (206) 389-2625 Fax (206) 389-2588

c. Measures governing rural development. *The rural element shall include measures that apply to rural development and protect the rural character of the area*, as established by the county, by:

i. Containing or otherwise *controlling rural development;*

ii. *Assuring visual compatibility* of rural development with the surrounding rural area;

iii. *Reducing the inappropriate conversion of undeveloped land into sprawling, low-density development in the rural area;*

iv. *Protecting critical areas*, as provided in RCW 36.70A.060, and surface water and ground water resources; and

v. *Protecting against conflicts with the use of* agricultural, *forest*, and mineral resource lands designated under RCW 36.70A.170.

(Emphasis supplied).

Discussion

Position of the Parties:

Petitioners Suquamish Tribe and KCRP/Harless challenge the County's RWIP generally arguing that the RWIP program cannot be borne out on the ground and specifically argue: 1) the RWIP cluster and bonus density provisions[10] encompass a large area [up to 50,000 acres in 10 phases of 5,000 acres each] thereby promoting urban type sprawl [through high-density clusters] that will not preserve and protect the area's rural character; 2) the RWIP does not contain specific standards on lot sizes, internal and external cluster separation requirements, limits on the number of clusters or locational requirements for clusters; 3) the County failed to asses the cumulative effects of the incremental phasing of this program; 4) the 40-year "temporary reservation" of Wooded Reserves is ambiguous; 5) the monitoring and approval process does not thwart negative effects of incremental

---

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

c. That provide visual landscapes that are traditionally found in the rural areas and communities;

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

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

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

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

RCW 36.70A.030(15), (emphasis supplied).

[10] The base density for the RWIP is 1 dwelling unit per 20 acres, but incentives and bonuses allow this base to be adjusted to 1 du per 5 acres, which *could* yield homes on lots of just over one acre.

Central Puget Sound
Growth Management Hearings Board
800 Fifth Avenue, Suite 2356, Seattle, WA 98104
Tel. (206) 389-2625 Fax (206) 389-2588

development, since it is "after the fact" monitoring; 6) the RWIP promotes development which will require urban-type services; 7) the RWIP fails to foster compact urban development or further the environmental and resource industries goals of the Act; and 8) the County failed to document how the RWIP harmonizes the various goals of the GMA. Suquamish PHB, at 61-83.

Intervenor argues: 1) the RWIP would increase densities that are inconsistent with the County's rural character; 2) the RWIP would "lure people out of the UGA" into the rural area rather than directing growth into the urban area; and 3) the RWIP provides bonuses and incentives which saves land temporarily but encourages future development of the Wooded Reserve. S'Klallam PHB, at 8-10.

The County explains the context of the RWIP Plan policies and development regulations and argues: 1) Petitioners have abandoned the challenge to compliance with RCW 36.70A.070(5)(a) or (c) since there in no argument as to how 5(c) is violated and 5(a) is not cited, and there is no explanation of how the goals are violated; 2) Petitioners' arguments 7 and 8, *supra* are new arguments not within the scope of the Legal Issues (SEPA, 36.70A.110(2), 36.70A.170); 3) the extent or scope of RWIP is phased and limited; 4) there are specific and clear standards governing the clusters; 5) monitoring and phasing and evaluation of RWIP allow cumulative effects to be addressed; 6) the 40-year limitation is consistent with planning cycles; 7) urban services cannot be extended to clusters; and 8) the RWIP adds protections to resource lands. Kitsap Response, at 7-8, 11-12, 64-88.

In reply, Suquamish reiterates and embellishes the arguments made in its PHB, but emphasizes the lack of 'on the ground' analysis to support the expectations of the RWIP. Suquamish Reply, at 30-45.

Board Discussion:

Petitioners mention the long history of disputes pertaining to the County's efforts to address its forest lands and Rural Wooded lands, noting that a similar program to the one challenged here was addressed by this Board in *Bremerton, et al. v. Kitsap County [Manke Lumber Company, Overton Family, McCormick Land Company, Olympic Property Group and Port of Bremerton – Intervenors; 1000 Friends of Washington – Amicus Curiae]* (***Bremerton II***), CPSGMHB Consolidated Case No. 04-3-0009c, Final Decision and Order, (Aug. 9, 2004).

As the Board observed in *Bremerton II*,

> Forestry activities are permissible on lands designated as "Rural" in the County's Plan. *See* RCW 36.70A.070(5)(b). However, forestry on these "wooded lands" is not entitled to the protections from encroachment of incompatible uses that attach to lands designated as forest resource lands

Central Puget Sound
Growth Management Hearings Board
800 Fifth Avenue, Suite 2356, Seattle, WA 98104
Tel. (206) 389-2625 Fax (206) 389-2588

of long-term commercial significance. *See* RCW 36.70A.170, .060, .030(8) and .020(8).

> Likewise, the Act permits the County to include cluster development and density bonus incentive programs for "Rural" lands (*i.e.* in the Rural Element of the Plan), as mechanisms to provide for a variety of rural densities. *See* RCW 36.70A.070(5)(b) and .090. The County can rely on local circumstances to help shape its rural density provisions. *Id.* As articulated by the parties in briefing and at the HOM,[11] the relevant local circumstances in Kitsap County include, at a minimum: 1) a large number of nonconforming small lots in the rural area; 2) a significant number of large ownerships and large lots in the rural area; 3) ongoing forestry activities in the rural area that does not have long-term commercial significance (*i.e.*, not forest resource lands); and 4) the lack of aggregation of smaller nonconforming lots in the rural area.
>
> As all the parties briefing this issue acknowledge, the County has been pursuing some form of incentive program in the forested portions of its rural area for some time. *See* City PHB, Tribe PHB, County Response I, Manke Response and Overton Response. There does not appear to be any dispute regarding the *need* for some type of an incentive program in light of the local circumstances found within these rural areas of Kitsap County.

Bremerton II, FDO, at 23. The Board notes that the "local circumstances" articulated in *Bremerton II* have apparently not changed, but have not been specifically articulated in briefing. The Board therefore assumes that these "local circumstances" have not changed and remain the problem that the County is attempting to solve with the RWIP.

In *Bremerton II*, the Board found noncompliance pertaining to Kitsap County's Plan Policies that were adopted to address Rural Wooded Lands. Among the reasons the Board found noncompliance was the fact that the County's Plan policies were ambiguous, there were *no implementing development regulations* to carry out the Plan policies[12] and there was no environmental assessment of the impact of such a program. *See Bremerton II*, at 23-26.

The present challenge is to the County's latest effort to address the local circumstances it faces. Unlike the situation in *Bremerton II*, the County now has both Comprehensive Plan Policies to address the Rural Wooded Lands (*See* Ordinance No. 370-2006; Plan Update, at 3-17 through 3-19) and development regulations – zoning and an incentive program to implement these policies (*See* Ordinance No. 367-2006; chapter 17.301 KCC, HOM Ex. 11.)

---

[11] *See* HOM Transcript, at 35, 46, 49, 55, 60-61, 65 and 75.

[12] The Board declined to enter a determination of invalidity simply because without implementing regulations, potential project proposals would have no basis for vesting. *See Bremerton II*, at 56.

Central Puget Sound
Growth Management Hearings Board
800 Fifth Avenue, Suite 2356, Seattle, WA 98104
Tel. (206) 389-2625 Fax (206) 389-2588

Petitioners have alleged noncompliance with RCW 36.70A.070(5) in their Legal Issues. This allegation provides ample latitude to argue noncompliance with RCW 36.70A.070(5)(a) and (c), as well as its others provisions. Petitioners' arguments are within the scope of the Legal Issue and are not abandoned or new; the Board will entertain them. However, in their briefing for Legal Issues 3 and 4, Petitioners present argument in regard to inconsistency between the RWIP and the Comprehensive Plan and violations of Chapter 43.21C RCW (SEPA), RCW 36.70A.020(3), .110(2) and .170, none of which were cited within these Legal Issues. The County correctly asserts that Petitioners are attempting to raise new issues not properly before the Board, and the Board agrees. These allegations will not be addressed by the Board.[13]

The scope and extent of the RWIP:

Petitioners assert that the scope of the RWIP is too extensive, that it will promote suburban sprawl, and that it will not protect the rural character of the area. The RWIP is available to all properties with the "Rural Wooded" (**RW**) zoning district that are 20 acres or larger in size; with individual projects not to exceed 500 contiguous acres. KCC 17.301.080(B), HOM Ex. 11. There are 49,500 acres zoned RW in the County. Ex. 30515. Of that acreage, an estimated 42,108 acres are within parcels 20 acres or larger, approximately 85% of the RW lands, and therefore potentially eligible for this program. *Id.* The bulk of the eligible parcels are located in the northern portion of the County, a second cluster within the westerly portion, along Hood Canal, and a third cluster in the southern portion of the County, south of State Route 3. *Id.* Figures 1, 2 and 3. These areas are not in close proximity to any of the County's cities or UGAs. *See* Plan Update, FLUM, at 2-3 and 2-5. Land available for use in the program is to be released in a series of 10 phases. KCC 17.301.080(B)(1) states,

> Land available for use in this program will be *designated in the Comprehensive Plan* in an incremental phased approach consisting of *10 phases*. The phased process of this program is described below:
>
> a. Initial phase shall be limited to a total of five-thousand (5000) acres of Rural Wooded (RW) land.
> b. All parcel acreage utilized in [RWIP] developments, including any Permanent Open Space, Wooded Reserve, fresh water bodies, critical areas, and residential acreage, shall be included for calculations toward the remaining available Phase acreage.
> c. Subsequent phases may be released based upon the provisions identified in subsection 17.301.080(B) with each limited to a total of five-thousand (5000) acres of Rural Wooded (RW) land.

HOM Ex. 11, (emphasis supplied).

---

[13] At the HOM, Petitioners acknowledges that these were new issues. Suquamish Reply, at 4.

Central Puget Sound
Growth Management Hearings Board
800 Fifth Avenue, Suite 2356, Seattle, WA 98104
Tel. (206) 389-2625 Fax (206) 389-2588

The Plan Update designates the entirety of RW lands – approximately 50,000 acres – but the Board finds no reference, nor do any of the parties direct the Board to, any designation in the Plan Update *where the initial "5000 acre" phase is identified or located.* If the language of KCC 17.301.080(B)(1)(a) is the authorization of the "initial phase" designation, then only 5000 acres have been authorized or released for this phase of the program. The Board finds that the scope and extent of this "release" is modest – less than 10% of all RW lands eligible. However, how are subsequent phases released? Are the next nine phases automatically and incrementally released, until the entire RW designation has been phased?

KCC 17.301.080(B)(2) details the requirements for "monitoring" of the program. The criteria for determining whether to release subsequent phase [a new decision] is set forth as follows:

> a. Monitoring shall be conducted every two years to evaluate the effectiveness of the [RWIP] . . .
> b. Releases of the subsequent phases of acreage available for the [RWIP] *shall* be determined based upon *all* the following decision criteria.
>
> (1) Satisfactory progress toward achieving the Rural/Urban split identified in the County-Wide Planning Policies[14]
> (2) Final approval of the [RWIP] developments comprising more than 30 per cent or 1,500 acres, whichever is greater of the total phase acreage;
> (3) Determination of no level-of-service failures on roadways serving existing [RWIP] developments.
> (4) Satisfactory maintenance of rural character as defined in subsection 17.301.080.(C) [Type III subdivision approval process] for [RWIP] developments.
>
> . . .
>
> c. *Prior to the release of each subsequent phase, the Department of Community Development [**DCD**] shall prepare a "Rural Wooded Incentive Program: Phase Assessment Report."* This report shall assess the program's consistency with the purposes outlined in subsection 17.301.080A and the monitoring requirements of 17.301.080B. The report shall be submitted to the board of County Commissioners.

HOM Ex. 11, (emphasis supplied).

KCC 17.301.080(B)(3), headed "Authority," provides:

---

[14] Currently the rural-urban split is 76% of population growth for the UGA and 24% for the rural areas. *Kitsap Comprehensive Plan, Land Use Policy LU-2.*

Central Puget Sound
Growth Management Hearings Board
800 Fifth Avenue, Suite 2356, Seattle, WA 98104
Tel. (206) 389-2625 Fax (206) 389-2588

a. *The Board of County Commissioners shall have the authority to* recommend, recommend with conditions, or disapprove *release of each subsequent phase of acreage available to [RWIP]* developments, subject to the provisions of this section.
b. The Board of County Commissioner's decision on a subsequent [RWIP] phase may be appealed as set forth in Title 21 of this code.

(Emphasis supplied).

These RWIP provisions set the parameters for the release process. The RWIP is apparently consistently monitored and evaluated at least every two years by DCD. A release of each subsequent phase is subject to specific criteria that must be applied by the County Commissioners in making any decision to release subsequent phases. It appears that the DCD evaluation must precede any release. The decision of the County Commissioners to release additional *RWIP phases* generally does not involve any proposed development,[15] but rather a broader assessment of the RWIP program, a component of the County's Plan and its development regulations – a legislative action that is subject to review by this Board. **Thus, it appears to the Board that the initial scope of the RWIP program [Phase I – 5000 acres] is modest and reasonable and not clearly erroneous.**

The Density Bonus Alternatives:

The County's RWIP *sliding scale* of density bonuses is depicted on the following table:

Table 1: RWIP Density Bonus Options

	Alternative One	Alternative Two	Alternative Three	Alternative Four
Density Bonus (Base density = 1 du/20 acres)	1 du/10 ac.	3 du/20 ac. (1 du/6.67 ac)	1 du/ 5 ac.	1 du/5 ac.
Wooded Reserve (WR)	75% of site designated as RW for a minimum of 40 years	50% of site designated as RW for a minimum of 40 years	25% of site designated as RW for a minimum of 40 years	None Required
Permanent Open Space (POS)	None Required	25% of site designated as permanent open	50% of site designated as permanent open	75% of site designated as permanent open

[15] These decisions – RWIP development project decisions – are made by the hearing examiner. *See* 17.301.080(H). However, *see* 17.301.080.B(4)(c), which apparently allows a request for phase release in conjunction with a development application. The Board notes with interest that there are no provisions for any such application or request for phase release.

Central Puget Sound
Growth Management Hearings Board
800 Fifth Avenue, Suite 2356, Seattle, WA 98104
Tel. (206) 389-2625 Fax (206) 389-2588

		space	space	space
Uses Permitted in WR or POS	**WR** = Forestry [consistent with an approved Timber Harvest Permit], existing Agriculture, other Resource Activities, water lines, community wells, drainfields, re/detention ponds, logging and access roads etc. **POS** = Forestry, existing agriculture, other resource activities, logging and access roads, trails, docks, picnic areas, and non-motorized passive recreation.	**WR** = Same as Alternative One **POS** = Same as Alternative One	**WR** = Same as Alternative One **POS** = Same as Alternative One	**WR** = N/A **POS** = No development or forestry permitted
Total Open Space and/or RW	75%	75%	75%	75%

Under any of the four alternatives, only 25% of the site is developable. The development potential of the Density Bonus options as applied to a 100-acre site would be as follows:

- *Not using the density bonus options* = 5 lots with no deed restrictions (1 du/20 ac)
- *Alternative One* = 10 residential lots on 25 acres, with 75 % of the site designated as RW for a minimum of 40 years.

Central Puget Sound
Growth Management Hearings Board
800 Fifth Avenue, Suite 2356, Seattle, WA 98104
Tel. (206) 389-2625 Fax (206) 389-2588

- *Alternative Two* = 15 residential lots on 25 acres, with 50% of the site designated as RW and 25% designated as permanent open space.
- *Alternative Three* = 20 residential lots on 25 acres, with 25% of the site designated as RW and 50% designated as permanent open space.
- *Alternative Four* = 20 residential lots on 25 acres, with 75% of the site designated as permanent open space.

Derived from KCC 17.301.080E, and KCC 17.301.080F. *See* Appendix B.

Given that RCW 36.70A.070(5)(b) provides that "*counties may provide for clustering,* density transfer, design guidelines, conservation easements, and other innovative techniques *that will accommodate appropriate rural densities and uses that are not characterized by urban growth and are consistent with rural character,*" there is no inherent error in the County's clustering program provided for in the RWIP. The Board notes that under the most generous option, a 100-acre parcel is allowed up to a maximum of 20 residences, a net residential density of 1 du/5 acres – a rural, not urban, density, that is consistent with preserving the rural character. The Board acknowledges that the clustered design of the development appears more dense when viewed in isolation, but it is nonetheless a rural density when viewed in the context of the entire parcel. **The County's clustering alternatives are not clearly erroneous.**

Specific standards pertaining to clusters:

Petitioners complain that the RWIP has no specific standards governing clusters. Petitioners are in error. KCC 17.301.080(E) details development standards. These standards govern base density, the bonus densities for the different RWIP alternatives, minimum and maximum contiguous acreage requirements, clustering requirements [including setbacks, but not a minimum lot size], the maximum number of units in a cluster, vegetative buffers from roads and buffers between clusters, require compliance with the County's critical areas regulations and road standards. *See* 17.301.080(E), HOM Ex. 11. There are ample specific standards here governing the RWIP program.

The Board also notes that the lack of a required minimum lot size is not fatal, since one of the purposes of clustering is to concentrate development on a smaller portion of the eligible parcel while preserving a larger portion from development. Additionally, Kitsap Comprehensive Plan Policy RL-61 directs that clustering be limited and monitored, "such that clustering does not become the predominant pattern in the rural area."

Because of the specific standards provided for in the RWIP program and the County directive to prevent clustering from becoming a predominant land use pattern in the rural area, **the Board concludes that the County's actions were not clearly erroneous.**

Central Puget Sound
Growth Management Hearings Board
800 Fifth Avenue, Suite 2356, Seattle, WA 98104
Tel. (206) 389-2625 Fax (206) 389-2588

Cumulative effects of clustering and "after-the-fact" monitoring:

Petitioners assert that the cumulative effects of clustering have not been assessed, implying that if they had been, the assessment would indicate urban sprawl and the destruction of rural character.

In *KCRP I v. Kitsap County*, CPSGMHB Case No. 94-3-0005, Final Decision and Order, (Oct. 25, 1994), at 11, the Board said,

> The 'true test of whether' a development regulation results in urban growth is to determine what the regulation permits to be 'physically constructed on the ground, in the real world' and 'how that potential outcome squares with the Act's definition of urban growth."

The County's RWIP monitoring program addresses an on-the-ground evaluation of how the RWIP is progressing.[16] The provisions for the biennial monitoring program are contained in KCC 17.301.080B)(2). *See* HOM Ex. 11. Further, the Board notes that Ex. 30515 identifies the outer boundaries of the RWIP program – the maximum allowable acreages that could be subject to RWIP. So its potential scope, as discussed *supra*, is known, which provides a context for monitoring and assessing whether clustering is trending toward becoming a predominant pattern of development threatening the rural character. See Plan Policy RL-61. **The Board finds that this approach is not clearly erroneous.**

The 40-year period:

In *Bremerton II*, one of the reasons the Board remanded the RWIP was the ambiguity surrounding the end of the 40-year period. The challenged Plan Policies did not clearly address this question.

In the present RWIP implementing regulations, what happens at the end of 40 years in a wooded reserve is addressed. KCC 17.301.080(F) – Uses Permitted Within the Wooded Reserve and Permanent Open Space – provides:

> 1. Wooded Reserve. This area shall be designated wooded reserve for a minimum of forty (40) years. . . .*After this period has expired, the owner may seek additional development on the wooded reserve. The density and lot requirements for the wooded reserve area shall be consistent with the County Code at the time of the future application.*

(Emphasis supplied).

---

[16] The Board notes again that in the hypothetical situation, the most generous clustering provisions yields a net density of 1 du/5 acres on a 100 acre parcel – this is not an urban density or urban growth.

Central Puget Sound
Growth Management Hearings Board
800 Fifth Avenue, Suite 2356, Seattle, WA 98104
Tel. (206) 389-2625 Fax (206) 389-2588

Petitioners assert that the County's development regulations, as was the case in *Bremerton II*, remain ambiguous in that the regulations do not clearly state whether this area could only accommodate the remainder of previously approved but unused units, or whether a new development proposal could be sought for the undeveloped Wooded Reserve [WR]. Petitioners' PHB, at 69-70.

At the HOM, the County argued that at the time of original RWIP application, the entire site is platted with individual lots for residential development and tracts containing the WR, Permanent Open Space, and/or critical areas. HOM Transcript, at 104. According to the County, if, in 40 years, the property owner wishes to develop the WR tract, the densities permitted under the then-existing zoning would need to be applied to the entire plat and not just the percentage retained within the WR. Only if the zoning has been amended to allow for the overall density to increase will the property owner have the opportunity to essentially re-plat the entire property and develop at those higher densities. *Id.* at 105-108.

The County's iteration of the WR 40-year development restriction seems reasonable, as the site would be approved as a plat. However, the code reads that after 40 years, *additional development may be sought on the WR*, with this subsequent development subject to conformance with density and lot requirements in place at that time. No reference is made to the "parcel as a whole" as the County asserts. From these code provisions, an applicant could reasonably believe that only the acreage contained in the WR tract would be under consideration.

The **Board concludes that the County's development regulations**, as the plan policies did in *Bremerton II,* **fail to address how much density could be accommodated within the WR after the 40-year period has expired** by creating ambiguity as to the total base acreage for density calculation.

Urban services for clusters:

Petitioners claim that a proliferation of clusters will require urban services and that uncapped clusters will result in the creation of a suburban village or LAMIRD "springing up willy-nilly" in the most remote and rural wooded lands of the County. Suquamish PHB at 74-75. The County argues there is no basis for this speculative assertion by Petitioners, especially since 17.301.080(H)(2) provides: [The examiner *shall* find that *all* 8 decision criteria are met including] "[T]he proposed development will not require the extension or provision of sanitary sewer service or other urban services to the development."

Although the Board can understand that clustered residential development gives the appearance of a suburban environment and a need for urban services, the property subject to the RWIP remains in the rural area and clusters are limited to 25 units with specific location and buffering requirements. The Petitioners have failed to adequately demonstrate that clustered development within a rural area will result in a demand for

Central Puget Sound
Growth Management Hearings Board
800 Fifth Avenue, Suite 2356, Seattle, WA 98104
Tel. (206) 389-2625 Fax (206) 389-2588

urban services and the Board must presume that the County, and its examiner, will adhere to the approval criteria for the RWIP. **The Board finds no clear error on the part of the County.**

Fostering compact growth and preserving rural character:

Petitioners argue that the RWIP does not encourage compact urban growth in urban areas by failing to promote infill development, perpetuating small non-conforming lots, and directing growth away from urban areas. Petitioners' PHB, at 77-78. Intervenor asserts that the location of lands eligible for the RWIP are near enough to existing UGA that residential units will be an attractive option for County residents, effectively "luring" people out of the UGA and into the rural area. Intervenor's PHB, at 9-10. Petitioners further assert that the RWIP allows a pattern of lot sizes – number, location, and configuration – that constitute urban-type sprawl within the rural area contrary to RCW 36.70A.070(5)(b), which states that clustering may be provided only when it will accommodate *appropriate rural densities* and uses that are *not characterized by urban growth* and that are *consistent with rural character*. Suquamish PHB at 65, 69.

On its face, permitting clustered development within the rural area seems contrary to a key tenet of the GMA – encouraging urban-style growth within urban area. However, the GMA promotes the use of innovative land use management techniques such as clustering and the Act specifically defines rural development to include clustered residential development, at levels that are consistent with the preservation of rural character and the requirements of the rural element. *See* RCW 36.70A.030(16), 36.70A.090. Although clustering is permitted in the rural areas, the GMA is cognizant that the magnitude of such clustering can potentially affect rural character. This is why it is important that rural clustering be monitored to ensure that its magnitude and extent is not overreaching. The County has included such monitoring provisions in the RWIP.

Approval criteria for RWIP developments specifically require that rural character be preserved. KCC 17.301.080(H)(4). Comprehensive Plan policies and design standards are also in place to ensure that one of the stated purposes of the RWIP – "produce a development pattern in rural areas that is consistent with rural character" – is met. KCC 17.301.080(A)(1). These same design standards also address cluster size, location, and aesthetic buffering. KCC 17.301.080(E). The biennial monitor program also works to ensure maintenance of the qualities of rural character. KCC 17.301.080(B)(2).

Given the GMA's allowance for clustering within rural areas, the County's RWIP, including the supporting Plan Policies and monitoring provisions to protect the rural character, cannot be seen to be in violation of the Act.

Maintenance of natural resource industries and preserving rural character:

Petitioners argue that residential development of lands through the RWIP will "frustrate efforts to maintain forestry on those reserved forest lands based on the RWIP

Central Puget Sound
Growth Management Hearings Board
800 Fifth Avenue, Suite 2356, Seattle, WA 9810
Tel. (206) 389-2625 Fax (206) 389-258

development patterns," thereby thwarting the GMA's Goal 8 in regard to protection of natural resource lands. Petitioners' PHB, at 76-77. The County asserts that the RWIP's regulations actually provide additional protection, over and above that which is required by the GMA. Kitsap Response, at 83-84. In essence, it seems that Petitioners argue that the lands in question [WR and RWIP lands] are forest resource lands. The County appears to argue forestry is allowed in rural lands and that there are additional protections to the "industry" in the RWIP provisions.

The GMA basically defines three fundamental and significant land use categories: Resource, Rural and Urban lands. Each category is distinct and each merits specific direction under the GMA. *See MBA/Brink v. Pierce County*, CPSGMHB Case No. 02-3-0010, Order on Motions, (Oct. 21, 2002). These fundamental statutory land use categories cannot be altered by local discretion. Under the GMA, natural resource industries, such as productive timber industries, are to be maintained and enhanced through the conservation of productive natural resource lands. RCW 36.70A.020(8). Lands that have been designated as natural resource lands (RCW 36.70A.170) because of their long-term commercial significance and lack of urban growth maintain special protection under the GMA. *See* RCW 36.70A.060 (development regulations to protect continued use of resource land and plat notification). Rural lands are lands that "are not designated for urban growth, agriculture, forest or mineral resources." RCW 36.70A.070(5). Rural development, not urban development, is allowed, and protection of the rural character [defined in RCW 36.70A.030(15)] is the GMA mandate. *Id.* Lands designated as natural resource lands are to protect the resource *and the industry* from incompatible uses. Lands designated rural are to foster rural development and preserve the rural character. While forestry, agriculture and mining are permitted in rural areas, they are not accorded the same protections from incompatible uses as those lands formally designated as resource lands. Rural development, even clusters, may encroach upon such operations in the rural areas.

It appears to the Board that the question is whether the RWIP, as applied to the Rural Wooded lands, is a program to provide for a variety of rural densities while preserving rural character, or is this an effort to preserve forestry, while preserving future development options and bestowing the protections of designated forest resource lands upon these *rural lands,* without designating them as *resource lands.*

Pursuant to the County's Comprehensive Plan, the Rural Wooded designation is applied to larger parcels of land in contiguous blocks that are *forested in character*, that *have been actively managed for forestry and harvested*, and that *may be currently taxed as timber lands*. The stated objective of this designation is to *promote continued forestry practices, provide on-going opportunities for large- and small-scale timber management*, and maintain large contiguous blocks of forested lands to protect significant environmental features (i.e. wildlife corridors, steep slopes, wetlands, streams), while allowing limited residential development in keeping with rural character. Kitsap Comprehensive Plan, Chapter 3 – Rural and Resource Lands, at 3-5. This land use designation is implemented by the Rural Wooded zoning district – KCC 17.301.

Central Puget Sound
Growth Management Hearings Board
800 Fifth Avenue, Suite 2356, Seattle, WA 98104
Tel. (206) 389-2625 Fax (206) 389-2588

As for Forest Resource Lands, the County's zoning designation focuses on lands that contain long-term, commercially-significant forestry resources. And this designation is intended to keep these lands available for commercially-significant resource production. *Id.* at 3-12. Kitsap County has a zoning district applicable to natural resource (forestry) lands – KCC 17.300 Forest Resource Lands (FRL).

Comparing the two zoning districts [table derived from KCC 17.300 and KCC 17.301]:

	Forest Resource Land	Rural Wooded
Primary purpose	• Commercial timber production and harvesting; • Discourage activities and facilities which are detrimental to commercial timber production and harvesting.	• Encourage preservation of forest uses, conservation of natural resources; provide some residential use; • Discourage activities and facilities which are detrimental to the maintenance of timber production. • Density: Varies under RWIP, with base of 1 du/20 acre
Notice to Residents (adjacent and within)	• Residents will be subject to normal and accepted forestry practices which do not give rise to a nuisance claim; KCC 17.300.010 and 17.300.070	• Same; KCC 17.301.010 and 17.301.080(E)(12)
Uses	• Commercial timber production and harvesting • Residential: Density of 1 du/40 acre	*Within Wooded Reserve:* • Forestry activities consistent with Timber Harvest Permit • Community services (wells, drainfields, access roads, water systems, etc) • Residential: Various densities, base of 1 du/20 acre

The only discernible feature between these two zoning districts, except for residential density, appears to be the use of the word "commercial" which is undoubtedly linked to the GMA's "long-term commercial significance" requirement for natural resource production. The County acknowledges that it has not designated the 49,500 acres of Rural Wooded lands (primarily forested lands) as Forest Lands of Long-Term Commercial Significance (LTCS), asserting that these lands are "not productive enough"

Central Puget Sound
Growth Management Hearings Board
800 Fifth Avenue, Suite 2356, Seattle, WA 98104
Tel. (206) 389-2625 Fax (206) 389-2588

while still recognizing some potential for contribution to the timber industry. Kitsap Response, at 83-84. However, more significantly, the RWIP development provisions of KCC 17.301.080(E)(12) provide:

> A disclosure statement shall be placed on the final plat for all Rural Wooded Incentive Program developments stating that:
>
> The Wooded Reserve designated parcel or tract within the [insert name of plat] plat is reserved for forestry operations. A variety of forestry activities may occur on the Wooded Reserve that are not compatible with residential development for limited periods. Residents may be subject to inconvenience or discomforts arising from forestry activities, including but not limited to noise, odors, fumes, dust, smoke, the operations of machinery of any kind, timber harvest, brush control, the application by spraying or otherwise chemical or organic fertilizers, soil amendments, herbicides and pesticides, hours of operation, and other forestry activities. So long as such forestry operations are in compliance with the Washington Forest Practices Act, RCW Ch. 76.009, they shall not constitute a nuisance. No perimeter buffers are required within the Wooded Reserve area. Urban levels of service will not be provided by Kitsap County or the developer of this property.

RCW 36.70A.069(1)(b), pertaining to designated natural resource lands provides, in relevant part:

> Counties and cities shall require that all plats, short plats, development permits, and building permits issued for development activities on, or within five hundred feet of, lands designated as agricultural lands, forest lands, or mineral resource lands, contain a notice that the subject property is within or near designated agricultural lands, forest lands or mineral resource lands on which a variety of commercial activities may occur that are not compatible with residential development for certain periods of limited duration.

Comparing these two "plat note" requirements, the Board is struck that Rural Wooded lands, which are all potentially subject to the RWIP, are accorded the same "industry protections" accorded to Forest Resource Land, yet are permitted increased development densities through clustering. Either these lands are forest resource lands or they are rural – they cannot be both. The County cannot, under the guise of preserving rural character and providing for a variety of rural densities, create a new category of forest lands that are accorded resource land and industry protection AND encourage potential incompatible residential development.

The County's RWIP clearly sets forth various mechanisms to protect the timber industry, namely density, based on percentage of Wooded Reserve set aside, notice provisions,

Central Puget Sound
Growth Management Hearings Board
800 Fifth Avenue, Suite 2356, Seattle, WA 98104
Tel. (206) 389-2625 Fax (206) 389-2588

preservation of interconnectivity of open space, and compliance with the applicable Timber Harvest Permit. These factors, and the RWIP's stated purpose of encouraging the continuation of forestry, demonstrate that although Rural Wooded lands are not "resource lands" as defined by the GMA, the County is offering protection to rural lands which serve to provide limited, as opposed to significant, resources to the community.

The RWIP, absent 17.301.080(E)(12) could conceivably be consistent with the goals and requirements of the Rural Element, RCW 36.70A.070(5), but with such a provision, the RWIP is a resource land and industry protection scheme as well as a rural development incentive program. Alternatively, the County could designate these lands as Forest Resource Lands pursuant to the Act if the industry requires protection. However, the County cannot blur the lines between these two fundamental land use categories. Including such a provision in the RWIP is **clearly erroneous** and contrary to the requirements of RCW 36.70A.070(5).

A written record explaining how the rural element harmonizes the planning goals:

Petitioners assert that there is no written record explaining how the rural element, in the context of the RWIP, harmonizes the goals of the Act.[17] Suquamish PHB, at 82. The Board found a similar flaw in the County's prior effort with the RWIP in *Bremerton II*. The County merely claims that it has an adequate written record, citing Section 3.2.2 of the DEIS and the findings of Ordinance Nos. 367-2006 and 370-2006. Kitsap Response, at 88. In reply, Petitioners claim there is no discrete document that accomplishes the harmonizing of goals. Petitioners' Reply, at 45-46.

Exhibit 30984 is the County's DEIS for the Plan Update. The County contends that the written record is found in the DEIS between pages 3.2-61 and 3.2-99. Kitsap Response, at 88. These pages of the DEIS contain a general description of the relationship between the Plan Update and various Plans and Policies. The RWIP program is mentioned at 3.2-80, "The County's Rural Wooded Incentive Program was the subject of a CPSGMHB case that resulted in the remand of the program back to the County. One of the goals of this 10-year Update is to resolve these issues." This hardly appears to be a harmonizing of the goals in light of local circumstances. The County points to nothing specific in Ordinance Nos. 367-2006 or 370-2006, nor can the Board discern any reference to RWIP and harmonizing the goals of the Act, in these Ordinances. The Board concludes that the County has **failed to comply** with the provisions of RCW 36.70A.070(5)(a) by ignoring this requirement to explain how local circumstances as reflected in the rural element (i.e. the RWIP) are harmonized with the goals of the Act.

---

[17] RCW 36.70A.070(5)(a) provides: Growth Management Act goals and local circumstances. Because circumstances vary from county to county, in establishing patterns of rural densities and uses, a county may consider local circumstances, but *shall develop a written record explaining how the rural element harmonizes the planning goals in RCW 36.70A.020* and meets the requirements of this chapter.

Central Puget Sound
Growth Management Hearings Board
800 Fifth Avenue, Suite 2356, Seattle, WA 98104
Tel. (206) 389-2625 Fax (206) 389-2588

Conclusion

The Board finds and concludes that the County's action in adopting Ordinance No. 367-2006, specifically the development regulations pertaining to the 40-year limitation and disclosure statement requirements of the RWIP program contained in KCC 17.301.080(E)(12) and .080(F), **failed to comply** with the requirements of RCW 36.70A.020(8). Additionally, the Board finds that the County **failed to comply** with RCW 36.70A.070(5) which requires that the County harmonize the goals of the GMA.

E. TRANSFERABLE DEVELOPMENT RIGHTS

[Suquamish Tribe Legal Issue No. 10 and KCRP/Harless Legal Issue No. 5]

The Board's PHO, at 9-10, sets forth the Transferable Development Rights Legal Issues as follows:

> *10. Did the County fail to follow the guidance under RCW 36.70A.020(2), (9) and (10) and fail to comply with RCW 36.70A.090 when Ordinance No. 370-2006 and the Draft Ordinance for Transfer of Development Rights allow for restoration of the transferred development rights to the transferor property after 40 years? [Suquamish PFR]*
>
> *5. Did the County fail to be guided by RCW 36.70A.020(1), (2), (8), (9), and (10), and fail to comply with RCW 36.70A.070(5)(c) and .090 when it designated several expanded UGAs and implemented a Transfer of Development Rights Program as part of the Plan Update by instituting a program to allow rural property owners to sell the development rights from their lands to property owners within the urban growth areas while simultaneously prohibiting application to and implementation in this update? [KCRP PFR]*

The Challenged Action

The Plan Update [Ordinance No. 370-2006][18] includes a section in its Rural Element pertaining to the Transfer of Development Rights (**TDRs**). The following Plan Update polices set forth the basic structure of the TDR program.

> Policy RL-68 - Support and work actively to facilitate the transfer of rural development rights to:
>
> a. Preserve the rural environment, encourage retention of resource-based uses, and reduce service demands in the rural area.
> b. Provide protection to significant natural resources.

[18] Tab F of the Core Documents includes the revisions to KCC 17.430 – the County's TDR program.

Central Puget Sound
Growth Management Hearings Board
800 Fifth Avenue, Suite 2356, Seattle, WA 98104
Tel. (206) 389-2625 Fax (206) 389-2588

c. Increase the regional open space system.

Policy RL-69 – *Promote transfers of development rights by facilitating the transfers from private property owners with sending sites to property owners with receiving sites*, and by working with cities to develop interlocal agreements that encourage transfers into cities and within adopted appropriations.

Policy RL-70 – Require private properties qualified as sending sites to provide a protected area of sufficient size to provide public benefit. Priority candidates for *sending sites* are:

a. All Rural lands
b. Lands contributing to the protection of significant landscape or habitat features.
c. Lands contributing to the protection of environmentally-sensitive features including but not limited to aquifer recharge areas.
d. Lands that contribute to the preservation of scenic views or maintaining the rural character or that are suitable for inclusion in and provide important links to the regional open space system.

Policy RL-71 – Consider the following as candidates for TDR *receiving sites*:

a. Unincorporated UGAs and incorporated cities may receive transfers of development rights.
b. Preferences should be given for locations within designated urban centers, or adjacent to transit stations and park and ride lots. Transfers to incorporated areas shall be detailed in interlocal agreements between the city and County.

Plan Update Core Document, at 3-20, 3-21; (emphasis supplied).

Ordinance No. 367-2006 adopted the development regulations to implement the Plan Update's TDR provisions. Chapter 17.430 Kitsap County Code (**KCC**) contains the TDR provisions. The relevant provisions are as follows:

KCC 17.430.050 Sending areas.

A. Designation of Sending Areas. In addition to those areas that qualify as sending areas according to the Kitsap County Comprehensive Plan, the board of county commissioners may

Central Puget Sound
Growth Management Hearings Board
800 Fifth Avenue, Suite 2356, Seattle, WA 98104
Tel. (206) 389-2625 Fax (206) 389-2588

approve *additional sending areas* through a change to the Kitsap County Code or a Comprehensive Plan amendment.

B. *Rural Sending Areas. All parcels located within rural designated lands* and zoned Rural Wooded, Rural Residential, Rural Protection, or Forest Resource are available to be certified as TDRs based on the zone's permitted density.

KCC 17.430.060 Receiving areas.

A. Designation of Receiving Areas. In addition to those areas that qualify as receiving areas according to the Kitsap County Comprehensive Plan, the board of county commissioners may approve *additional areas as receiving areas*. Additional areas may be approved through a change to the Kitsap County Code or a Comprehensive Plan amendment. The designation of additional TDR receiving areas is base on findings that the area or site is appropriate for higher residential densities, is not limited by significant critical areas, and no significant adverse impacts to the surrounding properties would occur.

B. Designated Receiving Areas. *Receiving areas or parcels must be within the urban growth area.*

KCC 17.430.100 Reinstituting development rights of a sending site.

A. Properties that have transferred their development right(s) to an allowed receiving site may have them reinstituted *if a separate development right is purchased* from a property with an allowed sending site. The purchase of a development right must be consistent with the process established by this chapter. *The reinstitution shall not create an increase in density beyond that allowed at the time of original transfer* unless a subsequent code change allows.

B. Unless otherwise prohibited by the board of county commissioners in the annual Comprehensive Plan Amendment docketing resolution, *properties who have transferred their development rights to an approved receiving site and have been included in an urban growth area* expansion through sub-area plan or similar area-wide planning effort may have their development rights reinstituted for development at urban densities. The reinstitution shall be automatic after review and approval of the Comprehensive Plan Amendment and associated SEPA review.

HOM Ex. 12, at 17-184-185 and 17-187; (emphasis supplied).

Central Puget Sound
Growth Management Hearings Board
800 Fifth Avenue, Suite 2356, Seattle, WA 98104
Tel. (206) 389-2625 Fax (206) 389-2588

Applicable Law

Petitioners allege noncompliance with Goals 1 [urban growth], 2 [reduce sprawl], 8 [natural resource industries], 9 [open space and recreation] and 10 [environment]; each of these Goals is set forth *supra*.

RCW 36.70A.070(5)(c), pertaining to measures governing rural development in the Rural Element of the Comprehensive Plan, is also set forth *supra*.

RCW 36.70A.090 provides:

> *A comprehensive plan should provide for innovative land use management techniques, including* but not limited to, density bonuses, cluster housing, planned unit developments and the *transfer of development rights*.

(Emphasis supplied.)

Discussion

Position of the Parties:

In challenging the County's TDR program, Petitioners assert that: 1) the TDR program creates growth capacity of an unknown magnitude in excess of the capacity needed to accommodate the County's share of the 20-year growth target; 2) reinstating development rights to the transferor after 40 years is inconsistent with preserving habitat, resource and environmental goals and policies geared toward creating permanent open space networks and protecting resource lands and critical areas; and 3) the County has no written record explaining how the TDR program harmonizes GMA Goals. Suquamish PHB, at 83-93.

Intervener Port Gamble S'Klallam Tribe concurs with Petitioners and questions: 1) the County Commission's discretion to adopt new receiving areas in the future, and 2) whether the protection and preservation of critical areas and open space can be achieved, since transferred rights may be reinstated. S'Klallam PHB, at 5-8.

The County argues that Petitioners have abandoned portions of these Legal Issues by not briefing (36.70A.090) or by making only conclusory statements (36.70A.020(1), (2), and (8)). Kitsap Response, at 8-9. The County also argues: 1) the purpose of the TDR program is to reduce rural development as evidenced by the requirement that sending areas must be rural or forest resource areas and the receiving areas must be within the UGA; 2) the TDR program will not upset the land capacity analysis or urban capacity because the population capacity will be monitored as part of the buildable lands program and adjusted if needed; 3) the reinstatement period of 40 years is appropriate since it mirrors two complete 20-year planning cycles; 4) habitat and critical areas are protected through the County's critical areas regulations, regardless of where the land is located;

Central Puget Sound
Growth Management Hearings Board
800 Fifth Avenue, Suite 2356, Seattle, WA 98104
Tel. (206) 389-2625 Fax (206) 389-2588

and 5) the County has a written record of how the TDR program harmonizes the Goals of the Act in the DEIS, FEIS, adopting ordinances and Ex. 30518. Kitsap Response, at 89-96.

In reply, Petitioners assert; 1) they did not abandon any issues, nor are there any new arguments; 2) the TDR program applies to the whole County; and 3) the TDR is temporary since the transferor gets the rights reinstated after 40 years, which violates Goals 8, 9 and 10. Suquamish Reply, at 3-4, 46-49.

Board Discussion:

After reviewing the briefing and argument, the Board has determined that Petitioners have not abandoned their respective Legal Issues related to the TDR question, but the Board questions their challenge to the entire TDR program.

First, the transfer of development rights is considered an innovative technique and specifically encouraged by RCW 36.70A.090. The County's choice to pursue a TDR program cannot be noncompliant with this section of the Act – it is permissive and encouraged, imposing no duty upon the County. Further, the purpose of a TDR program is typically to provide incentives for encouraging urban growth within UGAs, directing growth pressures away from rural and resource lands – compact urban development and sprawl avoidance – while equalizing property values. This is a laudable purpose that is also considered a reasonable measure in avoiding the expansion of UGAs. Kitsap's TDR program is consistent with this general purpose.[19]

Second, the Board finds no problem with the current extent of the TDR program. It is presently limited by the Plan Update and chapter 17.430 KCC since the sending sites are Rural and the receiving sites must be Urban – in the UGA. Plan Update Policies RL 70 and 71; and 17.430.050 and .060 KCC, *supra*. The existing TDR system is clearly designed to reduce development pressures in the rural area and focus them in the urban areas, which preserves the rural character. Further, the potential addition of sending or receiving areas by the county commissioners in the future is simply speculative. If and when such an action occurred, it would be appealable to the Board since the necessary amendment would involve an amendment to either the Plan or development regulations.

---

[19] KCC 17.430.010 provides, in relevant part:

> The transfer of development rights from one property to another is allowed in order to provide flexibility and better use of land and building techniques; to help preserve critical areas, watersheds and open space; to provide increased *equalization of property values* between various zones, and to work toward *achieving county-wide land use planning goals* as determined by the Kitsap County Comprehensive Plan, the objectives of approved sub-area Plans and the purpose of county implemented regulations.

(Emphasis supplied).

Central Puget Sound
Growth Management Hearings Board
800 Fifth Avenue, Suite 2356, Seattle, WA 98104
Tel. (206) 389-2625 Fax (206) 389-2588

Third, while Petitioners' argument that allowing a TDR program creates additional unknown capacity and exceeds the capacity needed is a creative argument, it is not persuasive. It does not appear to the Board that a TDR program *creates* capacity as much as it *reallocates* existing capacity to different locations. TDRs are specifically encouraged in the GMA; they are a means of *directing growth to different geographic locations* – in Kitsap County's case – creating an incentive to direct growth from the rural areas to the urban areas. This is a direction the County, as well as Petitioners, have been pursuing since the GMA was enacted. Further, as the County argues, the Buildable Lands Program required by RCW 36.70A.215, enables the County to monitor development and assess how the GMA generally, and a TDR program, are succeeding. If necessary, mid-course corrections can be made. The Board is not persuaded by Petitioners that the TDR program upsets the County's present planned-for population capacity or creates an inconsistency with the GMA Goals.

Fourth, the Board finds no error in the County's reinstatement provisions as found in KCC 17.430.100. The language of that section allows a transferor to purchase a separate property right from a property within an allowed sending site – it can be bought back. The reinstitution cannot increase the density beyond that allowed at the time of the original transfer unless a subsequent code change allows increased density. KCC 17.430.100A. The other option for reinstatement can occur when the sending property gets included in a UGA through a legislative action of the county commissioners – again, an appealable event. One of the things that distinguishes Urban from Rural areas is the increased intensity and density of land uses and the availability of urban facilities and services. The Board is not persuaded that the County's limited TDR reinstitution provisions run afoul of any of the cited provisions of the Act.

Fifth, Petitioners make a conclusory suggestion that the County has not prepared a written record supporting the TDR program that harmonizes the Goals of the Act, as required by RCW 36.70A.070(5)(a) [not specifically cited in the statement of the Legal Issue]. The Board finds that the written record contained in the Core Document DEIS, at 3.2-61 through 3.2-100; Ex. 30518; the Plan Update, at 3.1 through 3.8 and 3-20, 21; and chapter 17.430 KCC, satisfies this requirement.

Lastly, however, the Board pauses in looking at 17.43.090(F)(3) and especially (F)(4), dealing with requirements for final approval of a TDR transfer, which respectively provide:

> 3. Recording of a deed restriction, as specified by the county on all of the sending parcels from which development rights are obtained. A copy of the recorded deed restriction must be submitted to the Department, which certifies the transfer of all development rights on each sending parcel. The deed restriction must be approved as to form by the Department. The document notifies all owners and successors that the transfer and its concomitant restrictions run with the land and are binding on all future owners.

Central Puget Sound
Growth Management Hearings Board
800 Fifth Avenue, Suite 2356, Seattle, WA 98104
Tel. (206) 389-2625 Fax (206) 389-2588

4. *For all sending parcels, the deed restriction is sufficient to retire all transferred development rights on the sending parcel for a period of 40 years.*

(Emphasis supplied).

The Board notes that the preliminary draft of subsection 4 stated:

> (4) The deed restriction shall be approved as to form by the prosecuting attorney. The document shall notify all owners and successors that the transfer and its concomitant restrictions run with the land and be binding on all future owners. [Note that these sentences parallel subsection 3, *supra*.] *For all sending parcels, the deed restriction shall be sufficient to retire all transferred development rights upon the sending parcel in perpetuity.*

Ex. 30518, 5/2/06 preliminary draft of Kitsap County TDR program, proposed draft code language, at .077 (emphasis supplied). The *draft* language recognizes that these transfers are in perpetuity and is consistent with the structure of the TDR program.[20] However, the adopted language "for a period of 40 years" calls into question and makes it unclear as to the ability of the TDR program in achieving its purpose – protecting critical areas, watersheds and open space. Are these areas now in need of new protections while the benefits initially transferred to the receiving areas [the development rights to build] are constructed and permanent? The Board has previously found ambiguity in the 40-year provision within the RWIP, and found noncompliance due to this ambiguity. Likewise, the Board finds ambiguity here as to the effect and impact of the 40-year, or "temporary," transfer of development rights on the County's TDR program. The Board finds and concludes that the adoption of KCC 17.430.090.F.4 was **clearly erroneous** in that it creates ambiguity in the TDR program and creates uncertainty as to whether the TDR program can achieve its purposes.

Conclusion

The County's adoption of the Plan Update [Ordinance No. 370-2006] and the Transfer of Development Rights program – chapter 17.430 KCC [Ordinance No. 367-2006] **generally complies** with RCW 36.70A.090, .070(5)(c), and is guided by Goals 1, 2, 8, 9 and 10 [RCW 36.70A.020(1), (2), (8), (9) and (10), **except** that the "temporary" or 40-year provision of KCC 17.430.090(F)(4), is **clearly erroneous** and **does not comply** with RCW 36.70A.070(5), .020(1), .020(2), .020(9), and .020(10) due to the ambiguity and uncertainty it creates in the County's TDR program.

---

[20] To the Board, it appears that the considered alternatives were silent on this 40-year timeline, looking more at permanent status.

Central Puget Sound
Growth Management Hearings Board
800 Fifth Avenue, Suite 2356, Seattle, WA 98104
Tel. (206) 389-2625 Fax (206) 389-2588

F. REASONABLE MEASURES
[Suquamish Tribe Legal Issue No. 6]

The Board's PHO, at 10, set forth the Reasonable Measure Legal Issue as follows:

> 6. *Did the County fail to comply with RCW 36.70A.215 and RCW 36.70A.070 (internally consistent plans) when Ordinance No. 370-2006 only lists proposed reasonable measures and does not evaluate whether the listed reasonable measures are reasonably likely to increase consistency with the Countywide Planning Policies (**CPPs**) pertaining to increasing residential densities in UGAs, and does not adopt or implement any measures that are reasonably likely to increase consistency with the CPPs? [Amended PFR language is underlined.]*

Applicable Law

RCW 36.70A.215, in relevant part:

> (1) ... The purpose of the review and evaluation program shall be to:
>
> (a) Determine whether a county and its cities are achieving urban densities within urban growth areas by comparing growth and development assumptions, targets, and objectives contained in the county-wide planning policies and the county and city comprehensive plans with actual growth and development that has occurred in the county and its cities;
>
> (b) *Identify reasonable measures, other than adjusting urban growth areas*, that will be taken to comply with the requirements of this chapter.
>
> (4) If the evaluation required by subsection (3) of this section demonstrates an *inconsistency between what has occurred since the adoption of the county-wide planning policies and the county and city comprehensive plans and development regulations and what was envisioned in those policies and plans* and the planning goals and the requirements of this chapter, as the inconsistency relates to the evaluation factors specified in subsection (3) of this section, the county and its cities *shall adopt and implement measures that are reasonably likely to increase consistency during the subsequent five-year period.* If necessary, a county, in consultation with its cities as required by RCW 36.70A.210, shall adopt amendments to county-wide planning policies to increase consistency. The county and its cities shall *annually monitor the measures adopted under this subsection to determine their effect and may revise or rescind them as appropriate.*

(Emphasis supplied).

Central Puget Sound
Growth Management Hearings Board
800 Fifth Avenue, Suite 2356, Seattle, WA 98104
Tel. (206) 389-2625 Fax (206) 389-2588

Discussion

Position of the Parties:

The crux of Suquamish's argument is that the County has failed to evaluate just how the identified and adopted reasonable measures are reasonably likely to resolve inconsistencies pertaining to residential urban densities. According to Suquamish, the GMA requires (1) identification, (2) adoption/implementation, and (3) evaluation – with the evaluation prong missing in this matter.

Suquamish asserts that the County is required to resolve inconsistencies that were identified in the County's Buildable Lands Analysis Report (**BLR**) by adopting reasonable measures which are likely to increase consistency during the subsequent 5-year period, and that such measures must be implemented with the results monitored *prior to expansion of the UGA.* Suquamish PHB, at 47-49 (citing to *Bremerton II,* CPSGMHB Case No. 04-3-0009c; *1000 Friends et al v. Kitsap County,* CPSGMHB Case No. 04-4-0031c, Final Decision and Order(June 28, 2005), consolidated before Thurston County Superior Court Cause Nos. 04-2-02138-1, 05-2-01564-8, 05-2-01678-4 and appealed to Court of Appeals (Div. II), Docket No. 35267-2). With the cited court case, Suquamish asserts that the Superior Court's holding – finding that 36.70A.215 requires that there must be an evaluation to determine if reasonable measures are achieving the desired results – is binding.

Suquamish argues that all the County has done is provide a list of new and expanded reasonable measures without *evaluating* whether these measures are reasonably likely to increase "on the ground" residential densities within the UGA. *Id.* at 45. Suquamish asserts that any evaluation provided by the County was merely an "inadequate consideration ... bare assertions, unsupported conclusions." *Id.* at 55. Suquamish further argues that the County expanded its UGA boundaries without considering the reasonable measures, as required by 36.70A.215, and that the County has failed to evaluate the interplay of measures (*i.e.* RWIP) between urban and rural areas. *Id.* at 54-55, 57. Therefore, this action was inconsistent with the County's Comprehensive Plan because of conflicts between the BLR and the LCA, with the LCA thwarting the very purpose of the BLR and reasonable measures. *Id.* at 57-58.

In response, the County notes that the Court of Appeals issued its decision pertaining to reasonable measures on May 30, 2007, and held that the previously-adopted reasonable measures (Kitsap Resolution 158-2004) in existence during the time of an inconsistency were not reasonable measures and therefore the County had violated 36.70A.215 when it relied on these measures. Kitsap Response, at 53-54 (*citing Kitsap County v. CPSGMHB,* Court of Appeal (Div II) Docket 35267-2 (May 30, 2007)). Kitsap County has since adopted and implemented new reasonable measures through the Plan Update and the measures utilized have been found to be compliant by the Board (*see KCRP VI,* CPSGHMB Case No. 06-3-0007, Compliance Order, at 7.). *Id.* at 54. The County

Central Puget Sound
Growth Management Hearings Board
800 Fifth Avenue, Suite 2356, Seattle, WA 98104
Tel. (206) 389-2625 Fax (206) 389-2588

asserts that it did assess and consider the newly-adopted reasonable measures, which is demonstrated by a variety of documents, and that it looked at how the measures were intended to work, potential benefits, and implementation procedures. *Id.* at 58-61.

The County further argues that the Court of Appeals determined that the County's obligation to review and revise its UGAs under RCW 36.70A.130(3) is *not affected* by the requirement to adopt reasonable measures under .215.[21] *Id.* The County asserts that the GMA requires it to accommodate its allocated growth by reviewing its UGAs, conducting a LCA, and allocating areas to accommodate growth – not merely adopting reasonable measures and hoping that these measures will accommodate all of the 20-year growth population. *Id.* at 54-55; 62-64.

In sum, the County alleges three flaws with Suquamish's argument in regard to reasonable measures in that the GMA does *not* require: (1) a quantitative assessment; (2) a guarantee of success, but rather only a finding that the measure is "reasonably likely" to resolve inconsistencies; and (3) a "show your work" requirement for reasonable measures. *Id.* at 56-57. In addition, the County asserts that Suquamish's position is contrary to RCW 36.70A.320's presumption of validity. *Id.* at 57.

In reply, Suquamish reiterates RCW 36.70A.215's requirement that if inconsistencies are found between actual growth and that envisioned by the Comprehensive Plan, then reasonable measures to resolve this conflict are required, a conclusion that is supported by the Court of Appeals' May 30, 2007 decision, and the County must show its work or perform a quantitative assessment. Suquamish Reply, at 23-24, 27. Suquamish also argues that the County has misinterpreted the Court of Appeals decision in regard to the application of reasonable measures and UGA expansions and that the Board's holding in *KCRP VI* does not automatically ensure compliance of adopted measures. *Id.* at 26-28. Suquamish's position is essentially that the GMA requires the implementation of reasonable measures *prior to* expansion of a UGA. *Id.* at 29-30.

Board Discussion:

Reasonable measures are actions that should be taken by a jurisdiction to facilitate increased urban density and infilling that will lessen the need to expand UGAs and the necessary supporting infrastructure. At the end of the day, the parties simply disagree about what is required by RCW 36.70A.215. Is it solely a list of measures that are reasonably likely to address inconsistencies between actual growth and adopted policies, or does .215 require something more – an analysis that these measures will actually address/resolve these inconsistencies revealed by the BLR?

---

[21] The County provides no specific page citation for this assertion. Rather, it appears to be derived from a single footnote of the Court's decision which states that "[T]his does not affect the county's obligations under RCW 36.70A.215" when the Court found that the County had until December 2008 to submit its UGA review. *Kitsap County v. CSPGHMB,* Docket 35267-2, fn. 4 at 17.

Central Puget Sound
Growth Management Hearings Board
800 Fifth Avenue, Suite 2356, Seattle, WA 98104
Tel. (206) 389-2625 Fax (206) 389-2588

RCW 36.70A.215 sets forth a review and evaluation program, the purpose of which is to allow counties to determine whether they are achieving urban densities in line with their policies and plans under the GMA. The Board has previously held that the purpose of 36.70A.215's reasonable measures is to identify mechanisms to accommodate growth other than the expansion of existing UGAs. RCW 36.70A.215(1)(b) (Identify reasonable measures, other than adjusting urban growth areas), *see e.g. Hensley VI 03309c, FDO at 27, KCRP VI 06307 FDO at 17; Strahm v. Everett,* 05-3-0042 FDO 9/15/06.

RCW 36.70A.215(4) requires that reasonable measures must be *reasonably likely* to increase consistency during the subsequent five-year period, with a jurisdiction *annually monitoring* the measures to determine their effect so as to make necessary adjustments. From this provision two distinct evaluation requirements can be drawn: (1) adoption and implementation of "reasonably likely" measures and (2) annual monitoring. Therefore, the Board concludes that the GMA requires both pre-adoption (will the measure work) and post-adoption (has the measure actually worked) evaluation of adopted reasonable measures. The pre-adoption analysis does not equate to a 100 percent guarantee but rather a threshold determination that there is a probability of occurrence, or something more than mere speculation. It is the pre-adoption evaluation that Suquamish questions in this matter.

Suquamish asserts that the County has failed to perform this evaluation, with the County relying on bare assertions or simply providing no analysis at all. Suquamish relies on Appendix C of the FEIS – Reasonable Measures Review – to support its argument, pointing to the column entitled "Quantified or Analyzed for Review in 10-year Update." This document lists the 46 measures developed by the Kitsap Regional Coordinating Council (KRCC) (*see* Index 31064), most of which provide no analysis as to their potential success. Suquamish further cites to the County's analysis of reasonable measures in Appendix C of the FEIS which revealed that some of these measures[22] were shown not to have significantly increased the capacity within the UGAs – in other words, they were not reasonably likely to produce the desired effect.

The County points to various documents in support of its assertion that it did assess and consider the functionality of the newly-adopted reasonable measures, including the Reasonable Measures Review (Index 30987 – Appendix C), the KRCC Reasonable Measures Desktop Reference Guide (Index 31064), and Silverdale and Port Orchard Citizens' Advisory Committees discussion matrixes (Index 30682) – all presumably before the County Commissioners when adopting the challenged action. Both Index 31064 and 30682 appear to list the same 46 measures and provide a description, potential benefits, jurisdictions using the measure, and for the Advisory Committees' matrix - the effectiveness of the measure.

---

[22] These measures included duplexes, condominiums, cluster development, ADUs, mixed-used development, and density bonuses.

Central Puget Sound
Growth Management Hearings Board
800 Fifth Avenue, Suite 2356, Seattle, WA 98104
Tel. (206) 389-2625 Fax (206) 389-2588

It is Index 30682 that is of particular emphasis. Although Appendix C to the FEIS omits analysis of the effectiveness of the stated reasonable measures, one of the provided matrices offers a brief analysis of the effectiveness of each measure while another matrix provides a low-to-high rating system of effectiveness based on the jurisdiction implementing the measure. This is the pre-adoption analysis that the GMA requires.

Section 2.2.3 of the County's Comprehensive Plan addresses the updated reasonable measures and provides a non-exclusive list of 17 measures, with previous unsuccessful measures removed or slated for revision (*i.e.*, mixed-use and density bonuses).

The Board concludes that Kitsap County's actions in adopting reasonable measures was not in violation of RCW 36.70A.215. The County's comprehensive plan provides for a list of adopted reasonable measures and the Record demonstrates that reasonable measures under consideration for inclusion within the plan were analyzed to determine whether they were reasonably likely to address inconsistencies in regard to residential density. Future monitoring of these measures will provide analysis of their success or failure.

Conclusion

The Board finds and concludes that the County's adoption of Ordinance No. 370-2006, pertaining to reasonable measures, **was not clearly erroneous**. Additionally, the Board finds and concludes that the Petitioners' **failed to carry the burden of proof** in demonstrating noncompliance with RCW 36.70A.215. **Legal Issue No. 6 is DISMISSED.**

G. CATEGORICAL EXEMPTIONS AND NOTICE

[Suquamish Tribe Legal Issue No. 7]

The Board's PHO, at 10, sets forth the Categorical Exemption and Notice Legal Issue as follows:

7. *Did the County fail to follow guidance under RCW 36.70A.020(1), (2) and (13) when Ordinance No. 368-2006 (SEPA implementation ordinance) amendments allow for new categorical exemptions that will make it easier for new up to four unit short plat residential developments to occur outside of UGAs, and will allow for excavation and fill which may destroy and/or desecrate possible archeological sites and cultural resources without providing for notice and opportunity for comment by agencies and Indian Tribes with expertise on such possible sites and resources?*

Central Puget Sound
Growth Management Hearings Board
800 Fifth Avenue, Suite 2356, Seattle, WA 98104
Tel. (206) 389-2625 Fax (206) 389-2588

The Challenged Action

Ordinance No. 368-2006 amended KCC 18.04 to categorically exempt certain minor new construction activities from environmental review. KCC 18.04.090(A), entitled "flexible thresholds for categorical exemptions," provides in relevant part:

> The county establishes the following exempt levels for minor new construction under WAC 197-11-800(1)(b) based on local conditions:
>
> 1. For residential dwelling units in WAC 197-11-800(1)(b)(i):
>   a. up to 9 residential dwelling units within the boundaries of an urban growth area; or
>   b. up to 4 residential dwelling units outside the boundaries of an urban growth area

Petitioner Suquamish Tribe asserts that this categorical exemption will allow development to occur that may destroy or desecrate possible archeological sites and cultural resources without prior notification to relevant agencies and the Tribe.

Applicable Law

Goals 1 and 2, related to urban growth and sprawl are set forth *supra*. Goal 13 – RCW 36.70A.020(13) provides :

> Historic preservation. Identify and encourage the preservation of lands, sites and structures, that have historic or archeological significance.

The SEPA rules include a section identifying *categorically exempt actions* that are exempt from the threshold determination and EIS requirements. WAC 197-11-800. Minor new construction, a categorically-exempt action, is defined in WAC 197-11-800(1), which provides in relevant part:

> (a) . . . To be exempt under this subsection, the project must be smaller than the exempt level. For a specific proposal, the exempt level in (b) of this subsection shall control, unless the county/city in which the project is located establishes an exempt level under (c) of this subsection. . . .
>
> (b) The following types of construction *shall be exempt*, except when undertaken wholly or partly on lands covered by water:
>
> i. The construction or location of any residential structures of *four dwelling units*.
>
> . . .

Central Puget Sound
Growth Management Hearings Board
800 Fifth Avenue, Suite 2356, Seattle, WA 98104
Tel. (206) 389-2625 Fax (206) 389-2588

(c) Cities, towns and *counties may raise the exempt levels to the maximum specified below* by implementing ordinance or resolution. . . . A newly-established exempt level shall be supported by local conditions, including zoning or other land use plans or regulations. An agency may adopt a system of several exempt levels (such as different levels for different geographic areas). The maximum exempt level for the exemptions in (1)(b) of this section shall be, respectively:

i. *20 dwelling units.*

(Emphasis supplied).

Discussion

Position of the Parties:

The Suquamish Tribe's issue here stems from its concern and tribal responsibilities over archeological and cultural sites. It is undisputed that there are archeological sites throughout Kitsap County, many associated with shorelines. It is also common knowledge that many sites are discovered in association with development projects that disturb the land. The essence of the Tribe's issue here is that if developments of four dwelling units in the rural areas and nine dwelling units in the urban areas are categorically exempt from environmental review, the Tribe will not have notice of possible and potential archeological sites. Thus, the Tribe argues that the categorical exemption is not supported by the GMA's goal for historic preservation. Additionally, to support its allegation of noncompliance with Goal 13, the Suquamish Tribe relies upon the 1989 Centennial Accord [acknowledging the government-to-government relationship between the federally-recognized Tribes and the State], and an April 28, 2005 Proclamation of Governor Gregoire reaffirming the Centennial Accord. *See* HOM Ex. 3 and HOM Ex. 4. Suquamish PHB, at 103-113.

Respondent counters that its adoption of the SEPA categorical exemption for new construction of four dwelling units or less is in accord with the levels established by the State in WAC 197-11-800(1). Likewise, the categorical exemption of nine dwelling units is also within the parameters permitted by SEPA. Kitsap Response, at 104-106. The County also argues that the notice that the Tribe is concerned about will be provided through its notice requirements for short plats (KCC 21.04.030), as well as through its shoreline master program and regulations which require notification to affected tribes upon discovery of archaeological artifacts. Kitsap asserts that the Tribes' expertise in addressing archeological and cultural issues will continue to be sought out and employed. Additionally, the County contends it will continue to adhere to the Centennial Accord and Proclamation. *Id.* at 106-108.

Central Puget Sound
Growth Management Hearings Board
800 Fifth Avenue, Suite 2356, Seattle, WA 98104
Tel. (206) 389-2625 Fax (206) 389-2588

In reply, the Tribe argues that the County is not required to adopt the categorical exemptions that it has adopted, and continues to voice its concern about being given notice of pending development activity. Suquamish Reply, at 53-56.

Board Discussion:

Review of WAC 197-11-800 leads the Board to find and conclude that the categorical exemption levels the County has selected and adopted are consistent with the SEPA requirements articulated in this section of WAC. The 4-dwelling-unit level is specified as a minimum level in the WAC, and the County clearly has discretion to adjust it up to *20* dwelling units and still fall within the parameters of WAC 197-11-800. The County's action was not clearly erroneous.

Categorically exempt actions are those that do not significantly affect the environment and "neither a threshold determination nor any environmental document, including an environmental checklist or environmental impact statement, is required for any categorically-exempt action." WAC 197-11-720, *citing* RCW 43.21C.031. If environmental review is not required for categorical exemptions, there are no environmental review documents to circulate for review and comment.

Goal 13 – identification and preservation of significant historic and archeological sites is an important, yet seldom challenged, Goal of the GMA. Here, it is undisputed that the Tribe has recognized expertise in this area and the Tribe asserts that without notice, it will be unable to assist the County in achieving Goal 13. However, the Tribe grounds its complaint in SEPA and the Centennial Accord and Gubernatorial Proclamation. The Board has already noted that reliance upon SEPA is misplaced. The Tribe seems to have recognized this by supplementing the record with the Centennial Accord and the Gubernatorial Proclamation. However, these documents are beyond this Board's scope of review. This Board is charged with determining compliance with the goals and requirements of the GMA, and SEPA as it relates to GMA.[23] RCW 36.70A.280. Therefore, the Board finds and concludes that it lacks subject matter jurisdiction to determine whether the County's actions are consistent with the terms of these agreements.

The Board notes that the County did indicate in argument and briefing that it values the Tribe's expertise and assistance in identifying and preserving significant historical and archeological sites and that through other regulatory means [*e.g.* short-plat review, shoreline master program activities], notice will be provided. The Board concludes that the Tribe has failed to carry the burden of proof in demonstrating noncompliance with Goal 13 – RCW 36.70A.020(13). However, it would serve the County well to explore additional government-to-government communications' avenues to foster continued cooperation between the County and the Tribe.

---

[23] Chapter 90.58 RCW – the Shoreline Management Act (SMA) – also falls within the Board's jurisdiction; however, the SMA is not alleged in the present matter.

Central Puget Sound
Growth Management Hearings Board
800 Fifth Avenue, Suite 2356, Seattle, WA 98104
Tel. (206) 389-2625 Fax (206) 389-2588

Conclusion

The Board finds and concludes that the County's adoption of Ordinance No. 368-2006, pertaining to categorically-exempt new minor construction, was **not clearly erroneous** and **complies** with SEPA, specifically WAC 197-11-800. Further, Petitioner has **failed to carry the burden of proof** in demonstrating noncompliance with RCW 36.70A.020(13). **Legal Issue No. 7 is DISMISSED.**

H. OPEN SPACE

[Suquamish Tribe Legal Issue No. 8]

The Board's PHO, at 10, sets forth the Open Space Legal Issue as follows:

> 8. *Did the County fail to follow guidance under RCW 36.70A.020(9) and (10), and fail to comply with RCW 36.70A.070 (internally consistent plans) and RCW 36.70A.160 when Ordinance No. 370-2006 and Maps related thereto, do not provide (or do not provide adequate) open space corridors for protecting wildlife and fisheries habitat in certain streams and creeks, especially Chico Creek and Gorst Creek?*

Applicable Law

Petitioners allege noncompliance with Goals 9 [open space and recreation] and 10 [environment]; each of these Goals is set forth *supra*.

The relevant provision of RCW 36.70A.070(preamble) provides: "The plan shall be an internally consistent document and all elements shall be consistent with the future land use map.

RCW 36.70A.160 provides, in relevant part:

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

Discussion

Position of the Parties:

Suquamish argues: 1) the County failed to identify and prioritize open space corridors in the UGA element and other elements of its Plan or the future land use map (**FLUM**); 2)

Central Puget Sound
Growth Management Hearings Board
800 Fifth Avenue, Suite 2356, Seattle, WA 98104
Tel. (206) 389-2625 Fax (206) 389-2588

the County's references to maps depicting open space is confusing; 3) the County's Open Space Plan is not clear; and 4) the lack of identified and prioritized open spaces is inconsistent with various Plan policies. Suquamish PHB, at 93-103.

Intervener Port Gamble S'Klallam Tribe incorporates by reference the Suquamish arguments. S'Klallam PHB, at 11.

In response, the County asserts: 1) Suquamish has abandoned its challenge regarding Goals 9 and 10, because they were not briefed; 2) RCW 36.70A.160 does not require mapping or regulating open space corridors, citing *LMI/Chevron v. Town of Woodway*, (***LMI/Chevron***) CPSGMHB Case No. 98-3-0012, Final Decision and Order, (Jan. 8, 1999) and *Agriculture for Tomorrow v. City of Arlington* (***AFT***), CPSGMHB Case No. 95-3-0056, Final Decision and Order, (Feb. 13, 1996); 3) the Parks, Recreation and Opens Space Plan, referenced in Chapter 10 of the Plan Update, includes a clear inventory of open space areas and graphic depictions of the inventory; and 4) having identified and mapped open space corridors, there is no inconsistency with any Plan policy. Kitsap Response, at 8-9 and 96-103.

In reply, Suquamish contends: 1) the challenge to Goals 9 and 10 had not been abandoned, since they were cited, and Petitioner briefed RCW 36.70A.160, a GMA requirement supporting both goals; 2) *AFT* supports the Suquamish position, not the County's; and 3) identification of open spaces necessarily infers they should be designated and protected. Suquamish Reply, at 49-53.

Board Discussion:

Petitioner Suquamish Tribe has not abandoned the challenge to Goals 9 and 10. The Tribe has adequately made the linkage between RCW 36.70A.160 and these two Goals to merit their consideration in this Legal Issue.

In *AFT*, the Board concluded that the City of Arlington had not identified open space corridors, and directed the City to do so in order for the public to know which lands are intended to be considered open space corridors. *AFT*, at 17. However, the Board observed,

> RCW 36.70A.160 is silent as to how identification is to be accomplished, and where the identification is to be recorded. There is no requirement to adopt an ordinance, to incorporate the identification within the jurisdiction's comprehensive plan, or to prepare implementing development regulations for identified areas.

Id.

Central Puget Sound
Growth Management Hearings Board
800 Fifth Avenue, Suite 2356, Seattle, WA 98104
Tel. (206) 389-2625 Fax (206) 389-2588

In *LMI/Chevron*, the Board held,

> Thus, while .160 requires identification of open space corridors, it does not require regulating to protect open space corridors, it does not provide that mere identification is protection of an open space corridor, nor does it provide an independent source of authority for regulating land use activities within an open space corridor.

LMI/Chevron, at 54.

Therefore, based upon these two cases' interpretation of RCW 36.70A.160, which the Board affirms, Kitsap County is required to identify open space corridors pursuant to .160, but there is no GMA requirement that these areas be regulated or protected. So has the County identified and mapped the necessary open space corridors, recreation areas, trails and fish and wildlife habitat areas?

The Kitsap County Parks, Recreation & Open Space Plan includes an inventory that *identifies* parks, recreation facilities, open spaces and trails. Ex. 31139, at 7-15. Additionally, this document includes maps depicting: 1) Habitat Priority [Figure 6-A]; and 2) Open Space Corridors [Figure 6-B]. Ex. 31139, at 42-43. Therefore, the Board finds and concludes that Kitsap County has complied with the requirements of RCW 36.70A.160 and Goals 9 and 10. Having found that the County has identified the requisite open space corridors, the Board further finds that the Tribe's basis for arguing inconsistency with the Plan policies is dissolved and therefore Petitioner has not carried the burden of proof in demonstrating internal inconsistencies.

Conclusion

The Board finds and concludes that Kitsap County's adoption of Ordinance No. 370-2006 **complies** with the requirements of RCW 36.70A.160 and **is guided by** Goals 9 and 10 [RCW 36.70A.020(9) and (10)], and that Petitioner has **failed to carry the burden of proof** in demonstrating inconsistency – RCW 36.70A.070(preamble). **Legal Issue No. 8 is DISMISSED.**

I. BALANCING GMA GOALS

[Suquamish Tribe Legal Issue No. 9]

The Board's PHO, at 10-11, sets forth the Balancing GMA Goals Legal Issue as follows:

> 9. *Did the County fail to comply with RCW 36.70A.040, .070, .110, .130, .215 and .3201 when Ordinance No. 370-2006 and Ordinance No. 369-2006 make substantive findings and/or conclusions, but fails to explain how Ordinance 370-2006 reflects a careful balance of the GMA goals and local circumstances, in addition to failing to provide any detailed explanation or analysis and/or*

Central Puget Sound
Growth Management Hearings Board
800 Fifth Avenue, Suite 2356, Seattle, WA 98104
Tel. (206) 389-2625 Fax (206) 389-2588

descriptive text, including but not limited to the statements that Ordinance No. 370-2006 amendments reflect a careful balance of the GMA goals and the local conditions of Kitsap County, that circumstances have substantially changed since the 1998 Plan was adopted, that there is new information available that was not considered when the 1998 Plan was adopted, and the Plan Update adopts reasonable measures? [Amended PFR language is underlined.]

Discussion

The preamble to the Goals' provision of the Act states, "The following *goals are not listed in order of priority* . . ." RCW 36.70A.020, (emphasis supplied). Additionally, RCW 36.70A.3201 provides in relevant part, "Local comprehensive plans and development regulations *require cities and counties to balance priorities and options for action* in full consideration of local circumstances." (Emphasis supplied.)

The premise of Petitioner Suquamish Tribe's argument on this Legal Issue is that Petitioner, through prior argument on the previous eight Legal Issues, has demonstrated that the County has not complied with the Goals and requirements of the Act. Having demonstrated noncompliance, Petitioner asserts, is essentially *prima facia* evidence that Kitsap County has not properly balanced the Goals of the Act. Suquamish PHB, at 113-120.

The County, obviously, offers the counter argument that it has complied on each Legal Issue presented, which illustrates a proper balancing of the various Goals of the Act. Further, the County asserts that there is no GMA requirement that compels a jurisdiction to explain *how* it has balanced the competing Goals other than reference to the extensive public participation process where all points of view are presented. The adopted action, itself, is the product of this balancing and nothing more is required. Kitsap Response, at 108-112.

The Board finds these arguments to be self-evident. If any portion of a jurisdiction's challenged legislative action, the product of its public process, is determined to not comply with a provision(s) of the Act; then the jurisdiction's balancing of Goals can be inferred to be faulty. Conversely, plans and development regulations found to be compliant reflect appropriate balancing. The action stands by itself as a testament to balancing, no explicit explanation of balancing is required.[24]

---

[24] The Board notes that RCW 36.70A.070(5)(a), pertaining to the Rural Element, does provide:

> Because local circumstances vary from county to county, in establishing patterns of rural densities and uses, a county may consider local circumstances, but *shall develop a written record explaining how the rural element harmonizes the planning goals* in RCW 36.70A.020 and meets the requirements of this chapter.

(Emphasis supplied.) This requirement to develop a written record explaining how the Goals of the Act have been harmonized, is a specific requirement within the Rural Element; it does not apply to the

Central Puget Sound
Growth Management Hearings Board
800 Fifth Avenue, Suite 2356, Seattle, WA 98104
Tel. (206) 389-2625 Fax (206) 389-2588

The Board notes that if the noncompliant action is determined to substantially interfere with the fulfillment of the Goals and requirements of the Act, the Board may enter a determination of invalidity, discussed *infra*.

Conclusion

Petitioner Suquamish Tribe's Legal Issue No. 9 is **DISMISSED**.

J. INVALIDITY

The Board has previously held that a request for invalidity is a prayer for relief and, as such, does not need to be framed in the PFR as a legal issue. *See King County v. Snohomish County*, CPSGMHB Case No. 03-3-0011, Final Decision and Order, (Oct. 13, 2003) at 18.

Here, Petitioner Suquamish Tribe and Petitioners' KCRP and Harless have asked the Board to not only find noncompliance on the presented issues and remand, but also they have requested that the Board make a determination of invalidity. *See* Suquamish Amended PFR, at 5; and KCRP/Harless PFR, at 4.

Applicable Law

RCW 36.70A.302 provides:

> (1) A board may determine that part or all of a comprehensive plan or development regulation are invalid if the board:
>
> (a) Makes a finding of noncompliance and issues an order of remand under RCW 36.70A.300;
>
> (b) 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; and
>
> (c) Specifies in the final order the particular part or parts of the plan or regulation that are determined to be invalid, and the reasons for their invalidity.
>
> (2) A determination of invalidity is prospective in effect and does not extinguish rights that vested under state or local law before receipt of the board's order by the city or City. The determination of invalidity does not apply to a completed development permit application for a

---

jurisdiction's overall balancing of Goals in its entire Plan. The Board notes that noncompliance with the provisions of RCW 36.70A.070(5)(a) is not alleged in any Legal Issue presented in this matter.

Central Puget Sound
Growth Management Hearings Board
800 Fifth Avenue, Suite 2356, Seattle, WA 98104
Tel. (206) 389-2625 Fax (206) 389-2588

project that vested under state or local law before receipt of the board's order by the City or city or to related construction permits for that project.

Findings of Fact and Conclusions of Law

In its discussion of the Capital Facilities Plan (**CFP**), Rural Wooded Incentive Program (**RWIP**) and Transfer of Development Rights Program (**TDR**), *supra*, the Board found and concluded that the certain provisions of the CFP, RWIP and TDR did **not comply** with the requirements of RCW 36.70A.070(3) and .070(5), respectively. Further, these provisions were **not guided** by Goals (12), (8), (1), (2), (9) and (10), respectively. The Board is also **remanding** Ordinance Nos. 367-2006 and 370-2006 with direction to the County to comply with the requirements of the GMA.

In light of these deficiencies the Board further finds and concludes that the continued validity of the CFP, specifically Appendix A, pertaining to sanitary sewer services, [Ordinance No. 370-2006] substantially interferes with Goal 12 – RCW 36.70A.020(12), because the CFP does not demonstrate that adequate public facilities and services [sanitary sewer] will be available within the planning period for the population within certain expanded urban growth areas. Therefore, the Board enters a **determination of invalidity** with respect to these provisions of the Plan Update - Ordinance No. 370-2006, as discussed *supra*.

Further the Board finds and concludes that the continued validity of the RWIP and TDR Programs, specifically KCC 17.301.080(E)(12) and KCC 17.301.080(F) [*i.e.* RWIP] and KCC 17.430.090(F)(12), substantially interfere with Goals (1), (2), (8), (9) and (10) because the temporary 40-year provision of these sections is ambiguous and creates uncertainty as to the extent and intensity of development, if any, to be allowed upon lands affected by these programs. Therefore, the Board enters a **determination of invalidity** with respect to these provisions of the County's implementing development regulations – Ordinance No. 367-2006, as discussed *supra*.

V. ORDER

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

1. Petitioners' challenge to urban density, Land Capacity Analysis, reasonable measures, SEPA categorical exemption and notice, open space corridors, and the balancing of GMA goals, as discussed *supra,* were each **dismissed with prejudice.**

Central Puget Sound
Growth Management Hearings Board
800 Fifth Avenue, Suite 2356, Seattle, WA 98104
Tel. (206) 389-2625 Fax (206) 389-2588

2. As discussed *supra*, Kitsap County's adoption of certain provisions of Ordinance Nos. 370-2006 [10-year Plan Update] and 367-2006 [implementing regulations, specifically sections of Title 17 of the Kitsap County Code], was **clearly erroneous**.

3. As discussed *supra*, the Plan Update [Ordinance No. 370-2006], specifically the Capital Facility Plan, at Appendix A, **does not comply** with the requirements of RCW 36.70A.070(3) and .020(12), since it does not demonstrate that adequate public facilities and services [*sanitary sewer*] will be available within the planning period for the population within certain expanded urban growth areas.

4. As discussed *supra*, certain implementing development regulations of Title 17 of the Kitsap County Code [Ordinance No. 367-2006], specifically KCC 17.301.080(F), 17.301.080(E)(12), and 17.430.090(F)(4), related to the County's Rural Wooded Incentive Program and Transferable Development Rights program **do not comply** with the requirements of RCW 36.70A.070(5) and .020(1), (2), (8), (9) and (10).

5. Additionally, as discussed *supra*, the Board has found that the continued validity of the Capital Facility Plan in Appendix A, related to certain sanitary sewer provisions, in the 10-Year Plan Update [Ordinance No 370-2006], substantially interferes with the fulfillment of Goal 12 – RCW 36.70A.020(12). Further, the Board has found that the continued validity of certain provisions of the Rural Wooded Land Program [KCC 17.301.080(E)(12) and 17.301.080(F)] and a certain provision of the Transfer of Development Rights Program [KCC 17.430.090(F)(4)] [Ordinance No. 367-2006], substantially interfere with the fulfillment of Goals 1, 2, 8, 9 and 10 – RCW 36.70A.020(1), (2), (8), (9) and (10). Consequently, the Board has entered a **determination of invalidity** with respect to these noted Plan Update and implementing development regulation provisions.

6. The Board **remands** Ordinance Nos. 367-2006 and 370-2006 to Kitsap County with direction to take the necessary legislative actions to comply with the requirements of RCW 36.70A.070(3), .070(5) and the Goals of RCW 36.70A.020(1), (2), (8), (9), (10) and (12), as set forth and interpreted in this Order.

   - The Board establishes **February 11, 2008,** as the deadline for Kitsap County to take appropriate legislative action to comply with the GMA as interpreted and set forth in this Order.
   - By no later than **February 21, 2008**, Kitsap County shall file with the Board an original and four copies of the legislative enactment described above, along with a statement of how the enactment complies with the

Central Puget Sound
Growth Management Hearings Board
800 Fifth Avenue, Suite 2356, Seattle, WA 98104
Tel. (206) 389-2625 Fax (206) 389-2588

GMA and this Order (**Statement of Actions Taken to Comply - SATC**). The County shall simultaneously serve a copy of the legislative enactment(s) and compliance statement, with attachments, on Petitioners. By this same date, the County shall also file a "**Compliance Index**," listing the procedures (meetings, hearings etc.) occurring during the compliance period and materials (documents, reports, analysis, testimony, etc.) considered during the compliance period in taking the compliance action.

- By no later than **March 6, 2008**,[25] the Petitioners may file with the Board an original and four copies of Response to the County's SATC. Petitioners shall simultaneously serve a copy of their Response to the County's SATC on the County.
- By no later than **March 13, 2008**, the County may file with the Board an original and four copies of the County Reply to Petitioners' Response. The County shall simultaneously serve a copy of their Reply on Petitioners.
- Pursuant to RCW 36.70A.330(1), the Board hereby schedules the Compliance Hearing in this matter for **10:00 a.m. March 24, 2008**, at the Board's offices. If the parties so stipulate, the Board will consider conducting the Compliance Hearing telephonically. If the County takes the required legislative action prior to the **February 11, 2008**, deadline set forth in this Order, the County may file a motion with the Board requesting an adjustment to this compliance schedule.

So ORDERED this 15th day of August, 2008.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

David O. Earling
Board Member

Edward G. McGuire, AICP
Board Member

[25] **March 6, 2008** is also the deadline for a person to file a request to participate as a "participant" in the compliance proceeding. *See* RCW 36.70A.330(2). The Compliance Hearing is limited to determining whether the Town's remand actions comply with the Legal Issues addressed and remanded in this FDO.

Central Puget Sound
Growth Management Hearings Board
800 Fifth Avenue, Suite 2356, Seattle, WA 98104
Tel. (206) 389-2625 Fax (206) 389-2588

Margaret A. Pageler

Margaret A. Pageler
Board Member [Board Member Pageler also files a separate dissenting opinion]

Note: This order constitutes a final order as specified by RCW 36.70A.300 unless a party files a motion for reconsideration pursuant to WAC 242-02-832.[26]

Dissent of Board Member Pageler

I respectfully dissent from the analysis and conclusions of the Board majority in deciding Legal Issues 1 and 2. The Board majority relies too heavily on the notion of four dwelling units per acre (4du/acre) as an "appropriate" urban density. As I read the Supreme Court's opinion in *Viking Properties v. Holmes,* 155 Wn.2d 112 (2005), neither the Board nor the parties can take refuge in a "bright line" urban density measure when cogent facts point in another direction.

The cogent facts in this case are that Kitsap County's average residential density for urban low density (ULDR) plats for the past five years has been 5.6 du/acre and its minimum density in ULDR designations, except where critical areas are especially protected, has been 5 du/acre.

In updating its UGA to accommodate new population targets, the task before a county is to determine whether there is capacity within its UGA to absorb the additional housing or whether more land is needed. A county's assumption about the density of development on the available land is the nub [core] of that calculation. This is why the Board has long insisted that counties "show their work" in support of UGA sizing. The "show your

---

[26] Pursuant to RCW 36.70A.300 this is a final order of the Board.

Reconsideration. Pursuant to WAC 242-02-832, you have ten (10) days from the date of mailing of this Order to file a motion for reconsideration. The original and three copies of a motion for reconsideration, together with any argument in support thereof, should be filed with the Board by mailing, faxing or otherwise delivering the original and three copies of the motion for reconsideration directly to the Board, with a copy served on all other parties of record. Filing means actual receipt of the document at the Board office. RCW 34.05.010(6), WAC 242-02-240, WAC 242-020-330. The filing of a motion for reconsideration is not a prerequisite for filing a petition for judicial review.

Judicial Review. Any party aggrieved by a final decision of the Board may appeal the decision to superior court as provided by RCW 36.70A.300(5). Proceedings for judicial review may be instituted by filing a petition in superior court according to the procedures specified in chapter 34.05 RCW, Part V, Judicial Review and Civil Enforcement. The petition for judicial review of this Order shall be filed with the appropriate court and served on the Board, the Office of the Attorney General, and all parties within thirty days after service of the final order, as provided in RCW 34.05.542. Service on the Board may be accomplished in person or by mail, but service on the Board means actual receipt of the document at the Board office within thirty days after service of the final order. A petition for judicial review may not be served on the Board by fax or by electronic mail.

Service. This Order was served on you the day it was deposited in the United States mail. RCW 34.05.010(19)

Central Puget Sound
Growth Management Hearings Board
800 Fifth Avenue, Suite 2356, Seattle, WA 98104
Tel. (206) 389-2625 Fax (206) 389-2588

work" rule is meaningless, however, if the work that's shown doesn't have to be based in reality [is unsupported by the facts]. Here Kitsap County has abandoned the facts in its own record and on its own land that support a residential density of at least 5 du/acre. It has expanded its UGA based on a hypothetical 4 du/acre and seeks to hide behind an outdated "bright line."

I am left with a "definite and firm conviction that a mistake has been made." I would find noncompliance on Legal Issues 1 and 2 and would remand for a recalculation of the land capacity and resizing of the UGAs.

In all other respects, I concur with the decision of the Board.

Margaret A. Pageler
Board Member

Central Puget Sound
Growth Management Hearings Board
800 Fifth Avenue, Suite 2356, Seattle, WA 98104
Tel. (206) 389-2625 Fax (206) 389-2588

APPENDIX A

Procedural Background

A. General

On February 15, 2007, the Central Puget Sound Growth Management Hearings Board (the **Board**) received a Petition for Review (**PFR**) from the Suquamish Tribe (**Petitioner I** or **Suquamish**). The matter was assigned Case No. 07-3-0018, and is captioned, *Suquamish II v. Kitsap County*. Board member Edward G. McGuire will serve at the Presiding Officer (**PO**) for this matter. Petitioner challenges Kitsap County's (**Respondent, Kitsap** or the **County**) adoption of Ordinance Nos. 367-2006, 368-2006, 369-2006 and 370-2006 amending Kitsap County's Comprehensive Plan (collectively the **Plan Update**). Petitioner contends that certain provisions of the County's Plan Update are noncompliant with various provisions of the Growth Management Act (**GMA** or **Act**).

On February 16, 2007, the Board received a PFR from the Kitsap Citizens for Responsible Planning and Jerry Harless (**Petitioner II** or **KCRP/Harless**). The matter was assigned Case No. 07-3-0019, and is captioned *KCRP/Harless II v. Kitsap County*. Board member Edward G. McGuire will serve at the Presiding Officer (**PO**) for this matter. Petitioners challenge Kitsap County's adoption of Ordinance Nos. 367-2006 and 370-2006 amending Kitsap County's Comprehensive Plan – the Plan Update. Petitioners contend that certain provisions of the County's Plan Update are noncompliant with various provisions of the GMA.

On February 22, 2007, the Board issued its "Notice of Hearing and Consolidation" (**NOH**), in the above-captioned case. The NOH set a date for a prehearing conference (**PHC**) and established a tentative schedule for the case. The two matters were consolidated into CPSGMHB Case No. 07-3-0019c, and are captioned *Suquamish II v. Kitsap County*.

On March 21, 2007, the Board received: 1) "Motion to Intervene by Port Gamble S'Klallam Tribe" (**S'Klallam Motion**); and 2) "Motion to Amend Petition for Review" from the Suquamish Tribe. (**Motion to Amend PFR**).

On March 22, 2007, the Board held the PHC. The parties and the Board discussed the Legal Issues, as proposed by the Suquamish Tribe. All agreed the Amended PFR clarified the Legal Issues to be decided. The PO orally **granted** the Motion to Amend the PFR. Following the PHC, and after the County had the opportunity to review Port Gamble S'Klallam Tribes Motion to Intervene, the County informed the PO that it had no objection to the S'Klallam Tribes' intervention.

On March 23, 2007, the Board issued a "Prehearing Order" (**PHO**) setting the schedule and Legal Issues for this case. The PHO listed five topic areas where Petitioners

Central Puget Sound
Growth Management Hearings Board
800 Fifth Avenue, Suite 2356, Seattle, WA 98104
Tel. (206) 389-2625 Fax (206) 389-2588

Suquamish Tribe and KCRP/Harless had overlapping issues. There were six additional Legal Issues that were only posed by the Suquamish Tribe. The PHO also granted the Port Gamble S'Klallam Tribe's Motion to Intervene and established the conditions and parameters for their intervention.

B. Motions to Supplement the Record and Amend the Index

On March 22, 2007, the Board received Kitsap County's "Ten Year Comprehensive Plan Update- Index to the Record" (**Index**). The Index is 73 pages, with approximately 25 items listed on each page.

Core Documents: The Board agreed to use the Core Documents, labeled A through G, in a prior case [CPSGMHB Case No. 06-3-0007] involving Kitsap County's 10-year Plan Update. The Core Documents, received January 11, 2007, included: the County's 10-year Plan Update, DEIS, FEIS, amendments to the Kitsap County Code [development regulations and zoning] and four "approval matrices."

On April 2, 2007, the Board received copies of the Kitsap County County-wide Planning Polices [Ordinance No. 327-2004], and signed copies of Ordinance Nos. 367-2006, 368-2006 and 369-2006. Each item is a Core Document.

On May 18, 2007, the Board received Kitsap County's "Amended Index to the Record" (**Amended Index**). The cover letter noted that the parties had worked together to review the record to make sure all necessary items were included in the Amended Index. The Amended Index includes several items inadvertently omitted by the County.

There were no motions to supplement the record within the timeframes for motions set forth in the PHO. However, there were motions to supplement the record attached to briefing that were addressed at the Hearing on the Merits (**HOM**).

C. Dispositive Motions

On April 10, 2007, the Board received Kitsap County's "Motion to Dismiss Petitioner Suquamish Tribe's Legal Issue 4" (**Kitsap Motion**). Attached to the motion was a "Declaration of Angie Silva" (**Silva Declaration**).

On April 16, 2007, the Board received "Petitioner Suquamish Tribe's Reply in Opposition to Kitsap County's Motion to Dismiss Petitioner Suquamish Tribe's Legal Issue 4" (**Suquamish Response**).

On April 24, 2007, the Board received "Kitsap County's Response to Suquamish Tribe's Reply re: County's Motion to Dismiss Legal Issue No. 4" (**Kitsap Reply**).

All filings were timely. The Board did not hold a hearing on the motions.

Central Puget Sound
Growth Management Hearings Board
800 Fifth Avenue, Suite 2356, Seattle, WA 98104
Tel. (206) 389-2625 Fax (206) 389-2588

On May 3, 2007, the Board issued its "Order Granting Dispositive Motion – Legal Issue No. 4." The Order **granted** Kitsap's Motion to dismiss a Legal Issue pertaining to the Transportation Element of the County's Plan, for lack of participation standing.

D. Briefing and Hearing on the Merits

On May 24, 2007, the Board received "Petitioners' Suquamish Tribe, Kitsap Citizens for Responsible Planning and Jerry Harless Opening Brief" (**Suquamish PHB**), with a List of Exhibits, 22 tabbed Exhibits, 11 noted as A-K and 11 Exhibits from the record. On the same day, the Board also received "Intervener Port Gamble S'Klallam Tribes Prehearing Brief" (**S'Klallam PHB**), with six attached Exhibits.

On June 4, 2007, the Board received and accepted an "Errata Sheet" for the Suquamish PHB.

On June 15, 2007, the Board received "Kitsap County's Prehearing Brief" (**Kitsap Response**), with a List of Exhibits, six noted as A-F and eight Exhibits from the record. Within its brief, the County moved to strike certain Exhibits attached to the Suquamish PHB.

On June 19, 2007, the Board received "Motion Requesting Relief from Prehearing Order Deadline: Motion to Supplement the Record; and Reply to County's Motion to Dismiss Petitioners' Exhibits." This Motion asked that the record be supplemented with six items.

On June 22, 2007, the Board received "Petitioners' Suquamish Tribe, Kitsap Citizens for Responsible Planning and Jerry Harless Reply to Respondent Kitsap County's Prehearing Brief" (**Suquamish Reply**). No additional Exhibits were attached.

On June 25, 2007, the Board received and accepted an "Errata Sheet" for the Kitsap Response.

On June 28, 2007, the Board held the Hearing on the Merits (**HOM**) in Kitsap County at the Eagles Nest Room at the Kitsap County Fairgrounds, 1200 NW Fairgrounds Road, Bremerton, WA. Board members Edward G. McGuire, Presiding Officer, David Earling and Margaret Pageler were present. The Board's Law Clerk, Julie Taylor, and Extern, Linda Jenkins, were also present for the Board. Petitioner Suquamish Tribe was represented by Melody Allen. Petitioner KCRP was represented by David Bricklin. Petitioner Jerry Harless appeared *pro se*. Respondent Kitsap County was represented by Lisa J. Nickel and Andrew S. Lane. Intervenor Port Gamble S'Klallam Tribe was represented by Lauren Rasmussen. Court reporting services were provided by Barbara L. Brace of Byers and Anderson, Inc. The following persons also attended the HOM to observe: Eric Baker, Angie Silva, Chris Dunagan, Tom Donnelly, John Taylor, Alison O'Sullivan, Tom Nevins, Patrick Haas, Charles Michael, Fred DePee, Beth Wilson, Michele McFadden and Dorothy Reinhardt. The hearing convened at 1:30 p.m. and

Central Puget Sound
Growth Management Hearings Board
800 Fifth Avenue, Suite 2356, Seattle, WA 98104
Tel. (206) 389-2625 Fax (206) 389-2588

adjourned at approximately 5:00 p.m. The Board ordered a transcript of the proceeding, which was received electronically a week later. (**HOM Transcript**).

At the HOM, the Board asked the County and Petitioner Harless to collaborate and resolve questions on a proposed Exhibit illustrating "Urban Density and Land Capacity" and file an agreed-upon Exhibit with the Board.

On July 9, 2007, the Board received hard copy of: 1) "Response of Petitioners' Kitsap Citizens for Responsible Planning, Suquamish Tribe and Jerry Harless to Kitsap County's Objections to Urban Density, Land Capacity and RWIP Exhibits;" and 2) "Post-Hearing on the Merits Response of Kitsap County to Petitioners' Exhibits, *as requested by the Board*."

On July 10, 2007, the Board received the HOM Transcript.

Central Puget Sound
Growth Management Hearings Board
800 Fifth Avenue, Suite 2356, Seattle, WA 98104
Tel. (206) 389-2625 Fax (206) 389-2588

APPENDIX B

Rural Wooded Incentive Program – KCC 17.301.080

A. Purpose. The purpose of this section is to provide a clustering program for land designated Rural Wooded, which provides incentives to landowners, promotes coordinated open space, and encourages the continuation of forestry. This chapter encourages development to occur on the most buildable and least environmentally sensitive portions of sites while retaining a substantial portion of each site in restricted open space tracts or easements. Specifically, this chapter is designed:

1. To produce a development pattern in rural areas that is consistent with rural character and to produce a rural development pattern which encourages variety in design, placement of buildings, more efficient use of the most buildable portion of sites, and retention of the environmentally sensitive and scenic portions of sites as permanent open space;
2. To encourage the development of cluster housing, which provides greater compatibility with surrounding development and land uses in rural areas by providing larger buffer areas;
3. To encourage the retention of permanent open space with its natural vegetative cover, which protects continued groundwater recharge and reduces potential water pollution, flooding, erosion and other drainage-related problems often associated with rural development;
4. To minimize adverse development impacts on the county's productive forestry, mineral and other important resource lands;
5. To minimize adverse impacts on the county's environmentally-sensitive streams, shorelines, wetlands, fish and wildlife habitat areas and corridors, areas of unique vegetation or wildlife species, steep slopes, and other critical areas;
6. To minimize impervious surfaces and the cost of installing essential public and private capital facilities necessary for a rural infrastructure; and
7. To protect rural natural features and landscape by minimizing tree, vegetation, and soil removal.

B. Applicability. This program applies to all properties within the Rural Wooded zone 20 acres or greater in size. Individual projects using this program may not exceed more than 500 contiguous acres.

1. Phase Description. Land available to use this program will be designated in the Comprehensive Plan in an incremental phased approach consisting of 10 phases. The phased process of this program is described below:
   a. Initial phase shall be limited to a total of five-thousand (5,000) acres of Rural Wooded (RW) land.
   b. All parcel acreage utilized in Rural Wooded Incentive Program developments, including any Permanent Open Space, Wooded Reserve, fresh water bodies, critical areas, and residential acreage, shall be included for calculations toward the remaining available Phase acreage.
   c. Subsequent phases may be released based upon the provisions identified in subsection 17.301.080.B with each limited to a total of five-thousand (5,000) additional acres of Rural Wooded (RW) land.
2. Monitoring.

Central Puget Sound
Growth Management Hearings Board
800 Fifth Avenue, Suite 2356, Seattle, WA 98104
Tel. (206) 389-2625 Fax (206) 389-2588

a. Monitoring shall be conducted every two years to evaluate the effectiveness of the Rural Wooded Incentive Program. The monitoring shall include:
   (1) Evaluation of the county-wide split between rural and urban dwelling unit development and lot creation. The methodology shall be consistent with that approved in the most recent Buildable Lands Report;
   (2) Evaluation of the total acreage within the Rural Wooded Incentive Program that has submitted a complete application, that has received preliminary approval, and that has received final approval as well as the total acreage of Permanent Open Space and Wooded Reserve in these approved developments;
   (3) A transportation analysis of the roadways adjacent to and serving Rural Wooded Incentive Program developments;
   (4) Evaluation of the Rural Wooded (RW) designated lands for the maintenance of qualities of "Rural Character" as defined in this section; and
   (5) Evaluation of development in the Rural Wooded zone in regards to critical area buffers, on-site and adjacent parcel well levels, on-site stream flow levels and increases in project-based impervious surfaces.

b. Releases of the subsequent phases of acreage available for the Rural Wooded Incentive Program shall be determined based upon all the following decision criteria.
   (1) Satisfactory progress toward achieving the Rural/Urban split identified in the County-Wide Planning Policies.
   (2) Final approval for Rural Wooded Incentive Program developments comprising more than 30 percent or 1,500 acres, whichever is greater, of the total Phase acreage.
   (3) Determination of no level of service failures on roadways serving existing Rural Wooded Incentive Program developments.
   (4) Satisfactory maintenance of rural character as defined in subsection 17.301.080.C for Rural Wooded Incentive Program developments.

c. Prior to the release of each subsequent phase, the Department of Community Development shall prepare a "Rural Wooded Incentive Program: Phase Assessment Report." This report shall assess the program's consistency with the purposes outlined in subsection 17.301.080.A and the monitoring requirements of 17.301.080.B. The report shall be submitted to the Board of County Commissioners.

3. Authority.
   a. The Board of County Commissioners shall have the authority to recommend, recommend with conditions, or disapprove release of each subsequent phase of acreage available to Rural Wooded Incentive Program developments, subject to the provisions of this section.
   b. The Board of County Commissioner's decision on a subsequent Rural Wooded Incentive Program phase may be appealed as set forth in Title 21 of this code.
4. Phase Process.
   a. Should an application for a Rural Wooded Incentive Program development be submitted that would exceed the 5,000 acres available for that phase, that application will be rejected, however that applicant will be permitted to amend the application to reduce the number of proposed acres for which development is sought to remain under the 5,000-acre phase limit.

Central Puget Sound
Growth Management Hearings Board
800 Fifth Avenue, Suite 2356, Seattle, WA 98104
Tel. (206) 389-2625 Fax (206) 389-2588

b. Once 5,000 acres of Rural Wooded Incentive Program developments have received preliminary approval, no future applications will be accepted that exceed the 5,000 acres available for that phase until the subsequent phase is recommended for release subject to the provisions of this Section.

c. An application may include a request for a subsequent phase to be released concurrent with the Rural Wooded Incentive Program development application; however, that application will not be deemed complete until the subsequent phase is recommended for release subject to the provisions of this section.

C. Approval procedure. Rural Wooded Incentive Program developments shall be approved through a Type III subdivision approval process.

D. Submittal requirements. In addition to the subdivision submittal requirements, each application for a Rural Wooded Incentive Program development shall include the following information to be considered a complete application:

1. The approximate location and general dimensions for all lots, tracts, easements, roadways, and other improvements;
2. The proposed location and acreage of the Wooded Reserve and Permanent Open Space, as applicable;
3. The approximate location of all existing or proposed pedestrian walkways, landscaped areas and areas to permanently remain in a natural condition;
4. The location of existing and proposed on-site water sources and generalized designation of sewage disposal drainfields and reserve areas;
5. The location and width of proposed roadways and driveway areas for turning and maneuvering of vehicles, and the relationship of circulation to adjacent properties;
6. A general description of any major physiographic or other natural features, such as drainage ways, wetlands, fish and wildlife habitats, geologic hazard areas, steep slopes, shorelines and all other critical areas, as well as a topographic map with contour lines as 5-feet contours;
7. The location and approximate acreage, either on or adjacent to the property(s), designated as natural resource lands and the approximate size (in square feet or acres);
8. The approximate area proposed to be included in paved or other impervious surfaces, Wooded Reserve, Permanent Open Space, and the total area of the site;
9. A description of, and proposed schedule for, any proposed phasing of the project;
10. A general landscape, clearing and buffering plan, drawn to scale and showing: community areas, pathways or other recreation areas, significant landscape features and vegetation on the site, natural vegetation and mature trees to be retained, and the location and conceptual design of landscaped areas and buffers. Detailed site analysis and design information shall not be required for those portions of the site proposed for retention in Wooded Reserves or Permanent Open Space tracts, except for portions of Permanent Open Space tracts which contain proposed recreation facilities;
11. A vicinity sketch to identify the effect of proposed development on surrounding properties and uses;
12. A conceptual storm drainage plan, prepared by a qualified engineer, showing that the project will comply with the Kitsap County storm water standards in effect at the time of the application; and
13. A report from a certified septic system installer, showing that there is a drainfield and a replacement drainfield available for each dwelling unit within each proposed cluster, or if a community or group drainfield is to be used, that there is a site and a replacement site for such community or group drainfield, that will meet the standards of the

Central Puget Sound
Growth Management Hearings Board
800 Fifth Avenue, Suite 2356, Seattle, WA 98104
Tel. (206) 389-2625 Fax (206) 389-2588

Washington Department of Health or the Kitsap County Health Department, whichever is more stringent.

E. Development Standards. A Rural Wooded Incentive Program development shall meet the following development standards:

1. The base density permitted within a Rural Wooded Incentive Program development shall be one (1) dwelling unit per twenty (20) acres.
2. Additional density may be allowed based upon the designation of a portion of the development as "Wooded Reserve" and a portion of the development acreage as "Permanent Open Space" under one of the following ratio alternatives.
   a. Alternative One.
      (1) The maximum number of dwelling units permitted within a Rural Wooded Incentive Program development shall be one (1) dwelling unit per ten (10) acres; and
      (2) A minimum of seventy-five percent (75%) of the Rural Wooded Incentive Program development site must be designated Wooded Reserve for a period of 40 years or greater.
   b. Alternative Two.
      (1) The maximum number of dwelling units permitted within a Rural Wooded Incentive Program development shall be three (3) dwelling units per twenty (20) acres;
      (2) A minimum of fifty percent (50%) of the Rural Wooded Incentive Program development site must designated Wooded Reserve for a period of 40 years or greater; and
      (3) A minimum of twenty-five percent (25%) of the Rural Wooded Incentive Program development site shall be designated as Permanent Open Space tract(s).
   c. Alternative Three.
      (1) The maximum number of dwelling units permitted within a Rural Wooded Incentive Program development utilizing Alternative Three shall be one (1) dwelling unit per five (5) acres.
      (2) A minimum of twenty-five percent (25%) of the Rural Wooded Incentive Program development site must be designated Wooded Reserve for a period of 40 years or greater.
      (3) A minimum of fifty percent (50%) of the Rural Wooded Incentive Program development site shall designated as Permanent Open Space tract(s).
   d. Alternative Four.
      (1) The maximum number of dwelling units permitted within a Rural Wooded Incentive Program development utilizing Alternative Four shall be one (1) dwelling units per five (5) acres.
      (2) A minimum of seventy-five percent (75%) of the Rural Wooded Incentive Program development site shall be placed in a Permanent Open Space tract(s) where no development or forestry uses will be allowed.
3. The maximum number of acres for any single Rural Wooded Incentive Program development application shall be limited to a total of 500 gross acres, including all Wooded Reserve, Permanent Open Space and development acreage.
4. The minimum number of acres for any Rural Wooded Incentive Program development application shall be limited to a minimum of twenty (20) acres, including all Wooded Reserve, Permanent Open Space and development acreage.

Central Puget Sound
Growth Management Hearings Board
800 Fifth Avenue, Suite 2356, Seattle, WA 98104
Tel. (206) 389-2625 Fax (206) 389-2588

5. Development shall be clustered.
   a. Lot Requirements.
      (1) Front Yard. Minimum front yard setback shall be twenty (20) feet.
      (2) Side and Rear Yard. Minimum side and rear yard setbacks shall be five (5) feet and fifty (50) feet for accessory structures used for agricultural purposes.
      (3) Minimum Lot Size: None
6. Each cluster shall be limited to 25 units or fewer. Clusters within a development should be sited to achieve the following objectives and criteria. The Director may allow exceptions based upon site-specific conditions or when conflicts occur between the criteria.
   a. Optimize protection of critical areas, including wetlands and stream corridors, by keeping clusters and other development away from critical areas to the extent possible;
   b. Optimize preservation and interconnectivity of open space, either for continuation of forestry practices or as a permanent preservation of open space;
   c. Avoid development on ridgelines, in the center of open field, or located on other prominent topographical features or scenic elements, visible to adjacent and vicinity properties when other locations are available; and
   d. Minimize topographic alteration.
7. Clusters developed under this program shall provide a 100-foot vegetated buffer from existing public roadways and adjoining properties and a 150-foot buffer between clusters in order to preserve rural character and the aesthetic values of Rural Wooded lands.
   a. Where two Rural Wooded Incentive Program developments abut each other, they are encouraged, where practical, to coordinate required Wooded Reserves and Permanent Open Space to provide interconnectivity;
   b. Buffers are encouraged to incorporate natural features to maximize retention of views and rural character;
   c. Where native vegetation is available to create a sight-obscuring buffer, that vegetation should be preserved to the extent consistent with public safety. Hazard trees may be removed with approval of the Director;
   d. Preservation of trees greater than 10 inches diameter breast height (dbh) is encouraged;
   e. Except where an exception is needed to preserve or create scenic views from county or state roads, internal roads and building locations within a Rural Wooded development should be designed to maximize the extent to which the external buffer obscures the planned development from existing county or state roads; and
   f. Where native vegetation is not available to create a sight-obscuring buffer between the planned development and existing county or state roads, fast-growing native vegetation that will grow to obscure the planned development should be planted within the buffer area.
8. Water provision from new wells drilled within the Rural Wooded designated lands are encouraged to minimize impacts to surface and groundwater resources. For projects proposing new wells, submission of well log records and a report by a Washington State certified hydrogeologist demonstrating utilization of deep aquifers and the lack of continuity with surface water features is encouraged during project review and may be included as a condition of approval.

Central Puget Sound
Growth Management Hearings Board
800 Fifth Avenue, Suite 2356, Seattle, WA 98104
Tel. (206) 389-2625 Fax (206) 389-2588

9. Development shall fully comply with Kitsap County Code Title 19 (Critical Areas). All environmentally sensitive areas such as streams, shorelines, wetlands, fish and wildlife habitat areas and corridors, steep slopes, and other critical areas regulated by Title 19 and/or other applicable county ordinances or policies are encouraged to be located within the Wooded Reserve or Permanent Open Space areas of the development, except to the extent development in those areas is permitted by Title 19.
10. Roads should be designed to comply with adopted Kitsap County Road Standards for rural roads.
    a. Rural Wooded Incentive Program developments shall meet applicable rural concurrency standards;
    b. Roads should have shoulders and grass-lined ditches, rather than curbs, gutters and adjacent sidewalks;
    c. Pedestrian and/or bike paths through a development are encouraged but may be separate from roads and should be narrow and designed to adapt to the natural contours and features of the land; and
    d. To the extent consistent with adopted Kitsap County Road Standards, roads should follow topography, and other natural features, such as major trees or other elements that contribute to rural character.
11. In designating the areas for Permanent Open Space tracts, the following is encouraged:
    a. Preserve areas along saltwater shoreline;
    b. Include open water bodies, creeks, rivers and other natural water features;
    c. Protect scenic views and significant natural features;
    d. Conserve areas of significant terrestrial wildlife, salmonid habitat, and groundwater supply; and
    e. Coordinate with Washington State Department of Fish & Wildlife, Washington State Department of Natural Resources, non-profit agencies, and local Tribes to identify priority conservation areas.
12. A disclosure statement shall be placed on the final plat for all Rural Wooded Incentive Program developments stating that:

> "The Wooded Reserve designated parcels or tracts within the *(insert name of plat)* plat is reserved for forestry operations. A variety of forestry activities may occur on the Wooded Reserve that are not compatible with residential development for limited periods. Residents may be subject to inconvenience or discomforts arising from forestry activities, including but not limited to noise, odors, fumes, dust, smoke, the operations of machinery of any kind, timber harvest, brush control, the application by spraying or otherwise of chemical or organic fertilizers, soil amendments, herbicides and pesticides, hours of operation, and other forestry activities. So long as such forestry operations are in compliance with the Washington Forest Practices Act, RCW Ch. 76.09, they shall not constitute a nuisance. No perimeter buffers are required within the Wooded Reserve area. Urban levels of service will not be provided by Kitsap County or the developer of this property."

F. Uses permitted within the Wooded Reserve and Permanent Open Space.

1. Wooded Reserve. This area shall be designated Wooded Reserve for a minimum of forty (40) years. Uses allowed with the Wooded Reserve during this period include:

Central Puget Sound
Growth Management Hearings Board
800 Fifth Avenue, Suite 2356, Seattle, WA 98104
Tel. (206) 389-2625 Fax (206) 389-2588

a. Forestry, existing agricultural and other resource activities; and
b. Community wells, well houses, water lines, community drainfields, retention and detention ponds, logging and access roads, water recharge and infiltration facilities, water system appurtenances and biofiltration swales. After this period has expired, the owner may seek additional development on the Wooded Reserve. The density and lot requirements for the Wooded Reserve area shall be consistent with the County Code in effect at the time of future application.

2. Forestry activities within the Wooded Reserve area must be consistent with an approved Timber Harvest permit. The Wooded Reserve will require an updated Forest Management Plan pursuant to Washington State Department of Revenue "Guidelines for Forest Land Management Plans." Such plan shall be prepared by a certified forester.

3. Permanent Open Space tract. A Permanent Open Space tract created under this section may be used for the following resource and passive recreational and roadway uses:
   a. Forestry, existing agricultural or other resource uses;
   b. Trails/pedestrian walkways, beaches, docks, swimming areas or any non-motorized passive recreational facilities;
   c. Logging and access roads; and
   d. Open space uses along a shoreline shall allow for visual and physical access to the shoreline and may include view corridors, community beaches, docks, swimming areas, picnic areas, trails/pedestrian walkways, or any non-motorized passive recreational facilities.

4. Vegetation removal in a Permanent Open Space tract shall be in accordance with an approved open space management plan. Permanent vegetation removal within the Permanent Open Space tract shall not be permitted, except that the following activities shall be allowed where vegetation removal is the minimum necessary to conduct the activity:
   a. Construction of pedestrian or equestrian trails;
   b. Maintenance of existing pastures;
   c. Forestry, existing agricultural or other resource activities;
   d. Removal of dead, diseased or hazardous vegetation, consistent with best management practices;
   e. Fire breaks provided in accordance with fire district requirements; and
   f. A management plan which details the required maintenance and management tasks and responsibilities may be required by the department for all Wooded Reserve and Open Space areas. These plans shall include monitoring to assess compliance with the approved plan(s).

G. Ownership of the Wooded Reserve and Permanent Open Space.

1. Upon recording of a final plat for a Rural Wooded Incentive Program development, Permanent Open Space tracts may be held by the original owner, conveyed to a homeowners association or to the owner or owners of a lot or lots within the subdivision as tenants in common or to a land trust or other non-profit steward, subject to the restrictions on the future use of the Permanent Open Space described in 17.301.080.F.
2. Ownership of the Wooded Reserve may, at the discretion of the proponent of the development, remain with the original owner, or may be conveyed to a third party or parties, or may be conveyed to a homeowners association or to the owners of lots

Central Puget Sound
Growth Management Hearings Board
800 Fifth Avenue, Suite 2356, Seattle, WA 98104
Tel. (206) 389-2625 Fax (206) 389-2588

within the subdivision, as tenants in common, provided, however, that upon recording of a final plat of a Rural Wooded Incentive Program a restrictive covenant will be recorded in favor of the lot owners and in favor of Kitsap County, restricting future use of the Wooded Reserve as provided in 17.301.080.F.

H. Decision Criteria. An application for a Rural Wooded Incentive Program development may be approved or approved with modification if the Examiner finds that all of the following requirements, as established by this section, are met:

1. The site plan complies with the Development Standards of 17.301.080.E and the other requirements of this chapter.
2. The proposed development will not require the extension or provision of sanitary sewer service or other urban services to the development.
3. The proposed development complies with all applicable County Codes.
4. The development demonstrates preservation of rural character by incorporating the following:
   a. Clustering of development, as applicable;
   b. Preservation of critical areas, resource areas, groundwater recharge, and natural features;
   c. Provision for a coordinated, comprehensive, interconnected, and integrated system of Wooded Reserve and Permanent Open Space areas; and
   d. Placement of structures, circulation systems and utilities that minimize impervious surfaces and the alteration of the land and also responds to physical characteristics of the property.
5. The development is consistent with the goals and policies of the Kitsap County comprehensive plan.
6. The development complies with all other applicable codes and policies of the county.
7. If Rural Wooded Incentive Program development will be phased, each phase of a proposed development must contain adequate infrastructure, open space dedication, forest reserve dedication, and all other conditions of the development to stand alone if no other subsequent phases are developed.
8. If no reasonable conditions or modifications can be imposed to ensure the application meets the criteria set forth above, then the application shall be denied.

I. Vesting.

1. Approval of a Rural Wooded Incentive Program development shall be effective for five years from the date of final approval.
2. Property owners with an approved Rural Wooded Incentive Program development may receive one five-year extension from the hearing examiner in accordance with the criteria below:
   a. An extension request must be filed in writing with the director at least sixty days prior to the expiration of the approval period;
   b. The applicant must demonstrate to the hearing examiner tangible progress toward completion of the approved Rural Wooded Incentive Program development; and
   c. The applicant must demonstrate to the hearing examiner that there are no significant changes in conditions that would render approval of the extension contrary to the public health, safety or general welfare.

Central Puget Sound
Growth Management Hearings Board
800 Fifth Avenue, Suite 2356, Seattle, WA 98104
Tel. (206) 389-2625 Fax (206) 389-2588

3. The hearing examiner may take any of the following actions upon receipt of a timely extension request:
   a. Approve the extension if no significant issues are presented under the criteria set forth in this section.
   b. Conditionally approve the extension if any significant issues presented are substantially mitigated by minor revisions to the original Rural Wooded Incentive Program development.
   c. Deny the extension if any significant issues presented cannot be substantially mitigated by minor revisions to the Rural Wooded Incentive Program development.

J. Forest Practice Permits. All forest practices in the Wooded Reserve shall be conducted pursuant to a Timber Harvest Permit issued by the Department of Natural Resources. The Wooded Reserve shall not be deemed to have been converted to another use or likely to convert to urban development under WAC 222-16-050(2). Except to the extent that jurisdiction has been transferred to Kitsap County pursuant to RCW 76.09.240(3), the Department of Natural Resources shall remain the agency responsible for permitting of forest practices in the Rural Wooded area.

K. Taxation Status. Under the Current Use Assessment Program, all property located within the Permanent Open Space or developed portion of the project shall be removed from the Program and all compensating tax paid prior to final approval of the subdivision.

L. Third Party Review. The county may require third party review in cases where additional professional or technical expertise is required.

Central Puget Sound
Growth Management Hearings Board
800 Fifth Avenue, Suite 2356, Seattle, WA 98104
Tel. (206) 389-2625 Fax (206) 389-2588

App. 2
HOM
Ex.1

PUGET SOUND Trends ..... Nº D5 • NOVEMBER 2005

Urban Growth Trends in Central Puget Sound

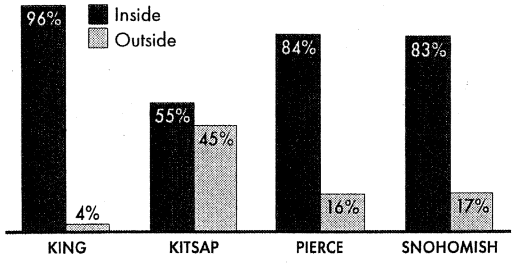
The region's designated urban growth areas are home to the overwhelming majority of the region's population and employment. As of 2003, 85 percent of the region's total population and 96 percent of covered jobs were located within designated urban growth areas.

The adopted VISION 2020 strategy aims to focus population growth and new development in designated urban growth areas (UGAs). Concentrating growth in this way enlivens compact, efficient, and vibrant urban communities and centers of activity throughout the region's metropolitan core. By curbing urban sprawl, our region also protects the environment, conserving natural resources and preserving farms and forests.

During the period from 1995 to 2000 — when the region's counties implemented development regulations to enact their GMA comprehensive plans — 78 percent of the region's population growth went into its designated urban growth areas. In the following years from 2000 to 2003, the region succeeded in directing an even greater share of its population growth — 87 percent — to the UGAs.

Figure 1 shows the variability between counties' urban growth trends during 2000-03, due to differences in historical development patterns, existing urban landscapes, and levels of pre-Growth Management Act vested development that may have occurred in each county. It is expected over time, however, that the proportions of new growth taking place within each county's urban growth areas will become increasingly comparable.

Figure 1. Population Growth Inside and Outside the Urban Growth Area: 2000-2003



Note: Based on 2003 urban growth area boundaries

Table 2 presents the percent of new housing units permitted for construction within urban areas, by county, from 1995 through 2003. The data show that each county, and the region overall, is making progress in directing a greater proportion of new development to the urban growth areas over time.

For more information on urban growth trends, see the Puget Sound Milestones "Population, Employment and Housing" report series, available for viewing or downloading at http://www.psrc.org/projects/monitoring/peh.htm. Hard copies can be requested from the Information Center at (206) 464-7532 or info@psrc.org. For questions about the data presented in this article, contact Carol Naito at (206) 464-7535 or cnaito@psrc.org.

Growth Management Act

The four counties of the central Puget Sound region were required by the Washington Growth Management Act (GMA) of 1990 to establish urban growth areas. The UGAs were to be drawn in a manner that encourages development in urban areas, where adequate public facilities and services exist or can be provided in an efficient manner, and reduces the inappropriate conversion of undeveloped land into sprawling low-density development. The Act also stipulates that UGAs must have enough capacity to accommodate each county's 20-year forecast of population growth from the state Office of Financial Management. After preliminary interim designations, King and Pierce counties formally adopted their UGAs in 1994, Snohomish County in 1995, and Kitsap County in 1998. Note: King County had initiated its growth management efforts during the 1980s prior to passage of the GMA.

Puget Sound Regional Council
information center
1011 Western Avenue, Suite 500 • Seattle, Washington 98104-1035
206-464-7532 • FAX 206-587-4825 • infoctr@psrc.org

TABLE 1. Population and Covered Employment Inside the Urban Growth Area: 2003

	Population	Percent In UGA	Covered Employment	Percent In UGA
King	1,652,900	92.9%	1,059,600	98.3%
Kitsap	133,600	56.4%	62,200	82.0%
Pierce	584,500	79.7%	223,000	92.7%
Snohomish	515,900	80.9%	194,000	94.2%
Region Total	**2,886,900**	**85.2%**	**1,538,800**	**96.1%**

SOURCE: OFM, ESD, PSRC

TABLE 2. New Housing Units Permitted Inside the Urban Growth Area: 1995-2003

Total Permitted New Housing Units:

	1995	1996	1997	1998	1999	2000	2001	2002	2003
King	7,300	11,700	12,000	13,400	13,900	14,600	13,200	13,600	13,200
Kitsap	1,600	2,000	1,700	1,400	1,500	1,600	1,400	1,400	1,500
Pierce	5,200	6,200	5,900	6,700	6,300	6,100	6,000	5,900	5,600
Snohomish	5,300	6,000	6,900	9,000	7,400	6,700	5,600	5,200	5,100
Region Total	**17,800**	**23,900**	**24,800**	**30,600**	**29,100**	**29,000**	**26,300**	**26,100**	**25,400**

Percent Permitted New Housing Units Inside the Urban Growth Area:

	1995	1996	1997	1998	1999	2000	2001	2002	2003
King	88.3%	92.4%	92.6%	90.9%	94.9%	95.3%	95.8%	96.5%	96.2%
Kitsap*	–	–	–	42.3%	51.1%	52.9%	46.1%	45.1%	49.0%
Pierce	64.0%	65.4%	65.6%	68.8%	72.2%	74.4%	75.6%	75.7%	72.9%
Snohomish**	80.2%	82.3%	83.0%	85.5%	85.0%	82.3%	84.3%	81.5%	82.7%
Region Total*	**78.7%**	**82.8%**	**83.5%**	**82.3%**	**85.3%**	**85.6%**	**86.0%**	**86.0%**	**85.6%**

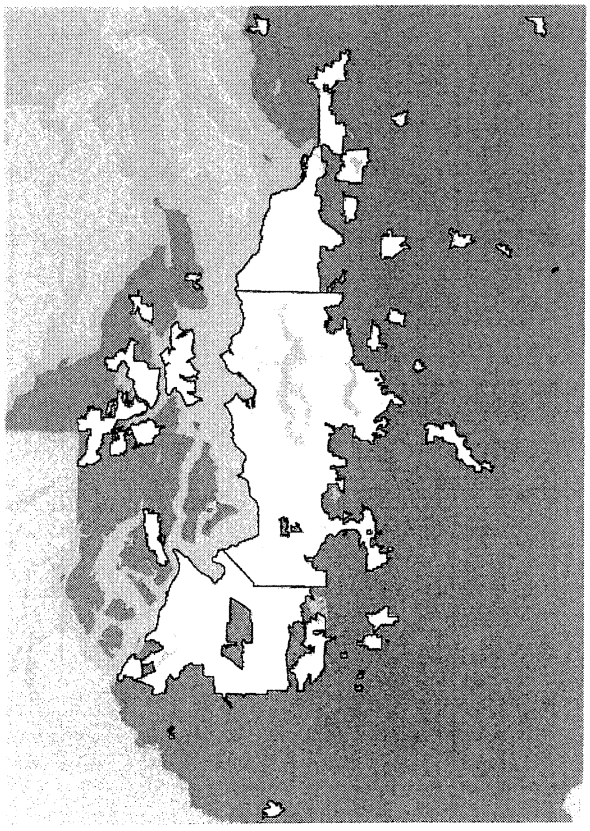
SOURCE: U.S. Census Bureau, King County Annual Growth Report, PSRC

NOTE: Table reports permit activity by calendar year, using the urban growth area boundaries in place at the end of each calendar year. Table reports permitted new units only, and excludes demolitions and other unit losses.

* Kitsap County's urban growth areas were not formally approved and adopted until 1998. Regional estimates for 1995, 1996 and 1997 exclude Kitsap County permit activity.

** The decrease in percent of new housing units permitted inside Snohomish County's urban growth areas after 1998 may be the result of a change in methodology used to geocode (assign x,y coordinates to) the permit data, rather than an actual shift in permit activity patterns.

MAP 1. Central Puget Sound Urban Growth Area



App. 2
Post-HOM
Ex. 1

Petitioner Opening Brief Exhibit A
CORRECTED
by Petitioner Harless and Respondent Kitsap County

Gross Residential Acres

Kingston	1315.86		
	vacant	undertutil	
UL	51.95	321.43	373.38
UC	360.39	0	360.39
			733.77
UR	234	225.02	459.02
UM, UH, UVC, ML	33.99	89.08	123.07

Silverdale	4889.59		
	vacant	undertutil	
UL	712.67	2657.18	3369.85
UC	0	0	0
			3369.85
UR	294.97	795.53	1090.5
UM, UH, UVC, ML	85.34	343.9	429.24

CK UGA	5554.42		
	vacant	undertutil	
UL	332.81	2252.16	2584.97
UC	0	0	0
			2584.97
UR	914.72	1534.89	2449.61
UM, UH, UVC, ML	76.91	442.93	519.84

Bremerton East	1095.44		
	vacant	undertutil	
UL	158.77	703.15	861.92
UC	0	0	0
			861.92
UR	14.12	92.59	106.71
UM, UH, UVC, ML	33.95	92.86	126.81

Bremerton West	817.1		
	vacant	undertutil	
UL	131.07	488.96	620.03
UC	0	0	0
			620.03
UR	0	0	0
UM, UH, UVC, ML	49.02	148.05	197.07

PO/SK	4911.27		
	vacant	undertutil	
UL	843.99	3390.92	4234.91
UC	0	0	0
			4234.91
UR	154.02	175.13	329.15
UM, UH, UVC, ML	85.68	261.53	347.21

ULID#6	2067.47		
	vacant	undertutil	
UL	495.53	742.49	1238.02
UC	705.81	34.34	740.15
			1978.17
UR	0	0	0
UM, UH, UVC, ML	88.17	1.13	89.3

Gorst	37.54		
	vacant	undertutil	
UL	3.86	21.88	25.74
UC	0	0	0
			25.74
UR	2.77	9.03	11.8
UM, UH, UVC, ML	0	0	0

Net Developable Acres

Kingston	306.69		
	vacant	undertutil	
UL	24.63	23.75	48.38
UC	153.4	0	153.4
	178.03	**23.75**	**201.78**
UR	68.9	7.32	76.22
UM, UH, UVC, ML	15.51	13.17	28.68

Silverdale	810.63		
	vacant	undertutil	
UL	352.08	241.8	593.88
UC	0	0	0
	352.08	**241.8**	**593.88**
UR	119.44	52.58	172.02
UM, UH, UVC, ML	24.34	20.21	44.55

CK UGA	704.47		
	vacant	undertutil	
UL	151.52	168.93	320.45
UC	0	0	0
	151.52	**168.93**	**320.45**
UR	196.15	87.01	283.16
UM, UH, UVC, ML	32.69	68.17	100.86

Bremerton East	139.12		
	vacant	undertutil	
UL	53.87	53.99	107.86
UC	0	0	0
	53.87	**53.99**	**107.86**
UR	3.48	0	3.48
UM, UH, UVC, ML	16.27	11.51	27.78

Bremerton West	110.76		
	vacant	undertutil	
UL	49.76	25.35	75.11
UC	0	0	0
	49.76	**25.35**	**75.11**
UR	0	0	0
UM, UH, UVC, ML	17.85	17.81	35.66

PO/SK	885.46		
	vacant	undertutil	
UL	368.07	411.1	779.17
UC	0	0	0
	368.07	**411.1**	**779.17**
UR	38.63	2.27	40.9
UM, UH, UVC, ML	39.27	26.11	65.38

ULID#6	675.97		
	vacant	undertutil	
UL	256.93	0	256.93
UC	370.99	0	370.99
	627.92	**0**	**627.92**
UR	0	0	0
UM, UH, UVC, ML	48.04	0	48.04

Gorst	6.36		
	vacant	undertutil	
UL	1.46	4.27	5.73
UC	0	0	0
	1.46	**4.27**	**5.73**
UR	0.63	0	0.63
UM, UH, UVC, ML	0	0	0

Dwelling Unit Capacity

Kingston	1107		
	vacant	undertutil	
UL	99	71	170
UC	614	0	614
	713	**71**	**784**
UR	69	3	72
UM, UH, UVC, ML	162	91	253

Silverdale	2901		
	vacant	undertutil	
UL	1408	765	2173
UC	0	0	0
	1408	**765**	**2173**
UR	119	41	160
UM, UH, UVC, ML	338	230	568

CK UGA	2594		
	vacant	undertutil	
UL	606	523	1129
UC	0	0	0
	606	**523**	**1129**
UR	196	59	255
UM, UH, UVC, ML	425	786	1211

Bremerton East	644		
	vacant	undertutil	
UL	215	151	366
UC	0	0	0
	215	**151**	**366**
UR	3	0	3
UM, UH, UVC, ML	163	111	274

Bremerton West	576		
	vacant	undertutil	
UL	199	74	273
UC	0	0	0
	199	**74**	**273**
UR	0	0	0
UM, UH, UVC, ML	179	124	303

PO/SK	3437		
	vacant	undertutil	
UL	1472	1319	2791
UC	0	0	0
	1472	**1319**	**2791**
UR	39	0	39
UM, UH, UVC, ML	372	235	607

ULID#6	3019		
	vacant	undertutil	
UL	1028	0	1028
UC	1484	0	1484
	2512	**0**	**2512**
UR	0	0	0
UM, UH, UVC, ML	506	0	506

Gorst	21		
	vacant	undertutil	
UL	6	14	20
UC	0	0	0
	6	**14**	**20**
UR	1	0	1
UM, UH, UVC, ML	0	0	0

Gross Urban Residential	20688.69	100.00%	
Gross in UM/UH/UVC/MU	1832.54	8.86%	
Gross In UL/UC	14409.36	69.65%	
Gross In UR	4446.79	21.49%	
Total Gross in UL/UC/UR	18856.15	91.14%	91%

Net Urban Residential	3639.46	100.00%	
Net in UM/UH/UVC/MU	350.95	9.64%	
Net in UL/UC	2711.9	74.51%	
Net in UR	576.41	15.84%	90%
Total Net in UL/UC/UR	3288.31	90.35%	

Dwelling Units in Urban Residential	14299	100.00%	2512
DU in UM/UH/UVC/MU	3722	26.03%	530
DU in UL/UC	10048	70.27%	3042
DU in UR	530	3.71%	
Total DU in UL/UC/UR	10578	73.98%	

542.4
530
1072

3.70515137

2560

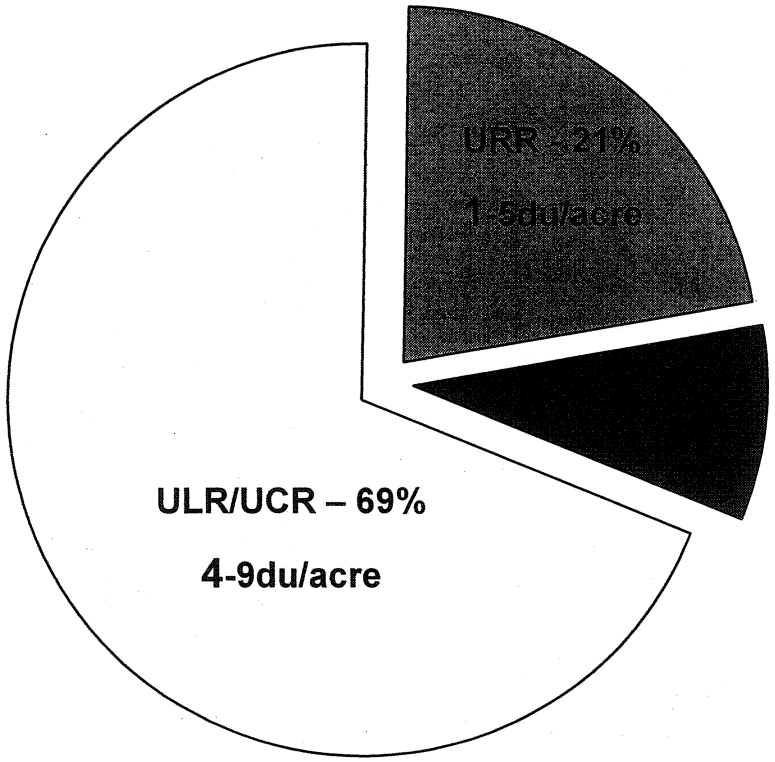
235

AR 55
Post HOM EX. 1

App. 2
Post-HOM
Ex. 2

Urban Low Density Residential

90% of lands designated for urban residential growth allow the lowest densities.



Source: FEIS Appendix B

(summary totals in Opening Brief Exhibit A)

--As amended subsequent to HOM--

Harless Amended HOM Exhibit B

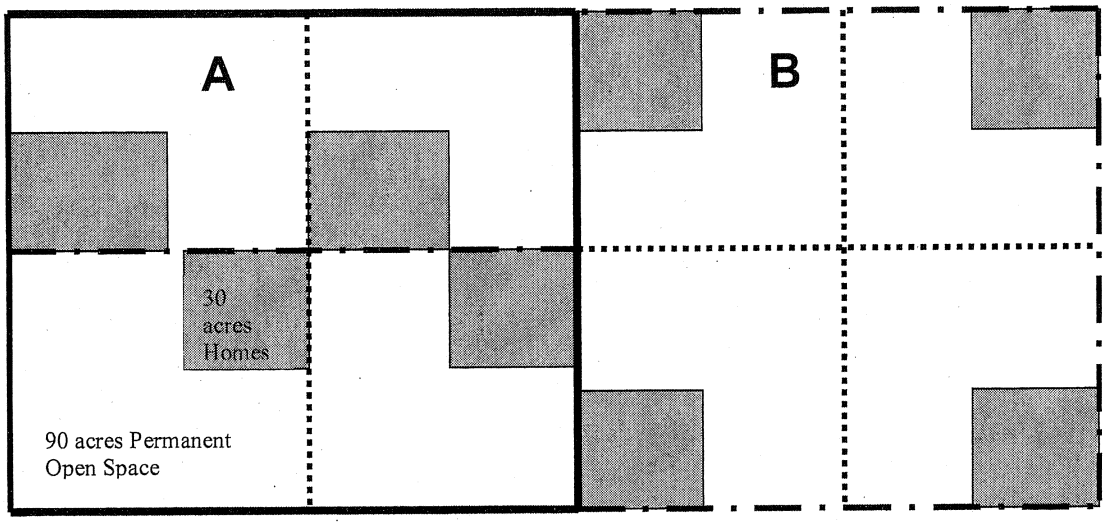
AR 55
Post-HOM EX. 2

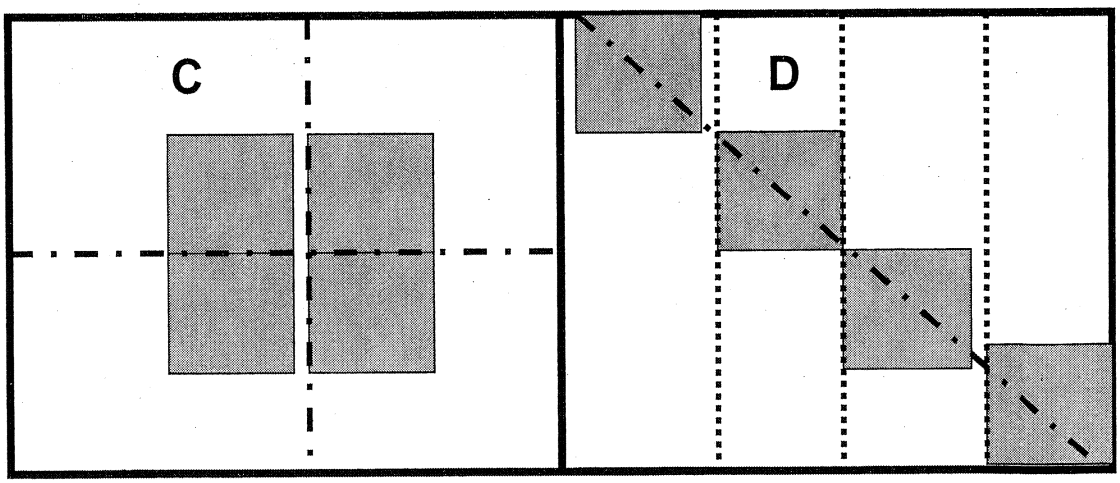
App. 2
Post-HOM
Ex. 3

ILLUSTRATION OF CLUSTER POTENTIAL:

(4) 120-acre projects
120 acres split 25/75% = 30 acres residential / 90 acres open space
30 acres / 24 units = 1 ¼ acre lots
24 units per project = 96 units total on 480 consumed acres

Each of the patterns below is possible:





(1) 30-acre parcel

Project boundaries other than roads

Road frontage (public visibility)

Appendices 3
CP 262,
AR 103

App. 3
Order
Finding
Compliance

JUN 5 2008
OFFICE OF TRIBAL ATTORNEY

CENTRAL PUGET SOUND
GROWTH MANAGEMENT HEARINGS BOARD
STATE OF WASHINGTON

SUQUAMISH TRIBE, KITSAP CITIZENS FOR RESPONSIBLE PLANNING, and JERRY HARLESS, Petitioners, PORT GAMBLE S'KLALLAM TRIBE Intervenor, v. KITSAP COUNTY, Respondent.	**Case No. 07-3-0019c** ***(Suquamish II)*** **ORDER FINDING COMPLIANCE**

I. PROCEDURAL HISTORY[1]

In August of 2007, the Board issued its Final Decision and Order (**FDO**) in the above-captioned case. The Board found Kitsap County's Transferable Development Rights Program (**TDR**) and Rural Wooded Incentive Program (**RWIP**) noncompliant with the GMA and invalid. The Board also determined that the County's Capital Facilities Plan (**CFP**) was deficient and did not support a proposed expansion of five urban growth areas (**UGAs**). On reconsideration, the Board invalidated the five UGA expansion areas since they were inextricably linked to the noncompliant CFP.

Following a March 2008 compliance hearing, the Board issued an Order (**4/4/08 Order**) finding that the County's revisions to the TDR Program complied with the Act and that most of the County's refinements to the RWIP were compliant. However, there were two areas in the RWIP where the Board found continuing noncompliance: the disclosure statement and the goal-harmonizing document. Additionally, since the County had not completed its work on the capital facilities and UGA issues, the Board found continuing noncompliance and continuing invalidity with respect to these aspects of the Plan. A second compliance hearing was set with an associated briefing schedule.

[1] The complete Procedural History for this matter is found in Appendix A.

Central Puget Sound
Growth Management Hearings Board
800 Fifth Avenue, Suite 2356, Seattle, WA 98104
Tel. (206) 389-2625 Fax (206) 389-2588

For the second compliance hearing the Board received the following submittals:

- March 24, 2008 County's Supplemental Statement of Actions Taken to Comply – **SSATC**
- May 8, 2008 Petitioners' Response to County SSATC – **Petitioners Response SSATC**
- May 14, 2008 County Reply to Comments on SSATC – **County Reply SSATC**
- May 9, 2008 County's Second Supplemental Statement of Actions Taken to Comply – **2SSATC**
- May 14, 2008 Petitioners' Motion to Supplement – **Petitioners Motion to Supplement**
- May 16, 2008 Petitioners' and Intervenor Response - **Petitioners Response 2SSATC**
- May 16, 2008 County Objection and Motion to Strike – **County Reply 2SSATC**

On May 19, 2008, the Board conducted the Second Compliance Hearing, at 10:00 a.m. at the Chief Sealth Training Center, 20th Floor, 800 Fifth Avenue, Seattle, Washington. Board Member Edward G. McGuire presided. Board members David O. Earling and Margaret A. Pageler, and Board attorney Julie Ainsworth-Taylor also attended. *Pro se* Petitioner Jerry Harless participated as did Melody Allen, representing the Suquamish Tribe, and Tom Donnelly, representing Kitsap Citizens for Responsible Planning. Lauren Rasmussen represented Intervenor Port Gamble S'Klallam Tribe. Shelley E. Kneip represented Respondent Kitsap County. Also attending the hearing were Eric Brown and Nancy Povonanno-Gennan of Kitsap County. Court reporting services were provided by Rebecca L. Mayse of Byers and Anderson, Inc. The Second Compliance Hearing adjourned at 11:50 a.m.

II. PRELIMINARY MATTERS

The first matter addressed at the Second Compliance Hearing was Petitioners' Motion to Supplement the Record with Kitsap County Resolution 078-2008 adopting the 2007 Buildable Lands Report and the 2007 Buildable Lands Report itself (**2007 BLR**). *See* Petitioners' Motion to Supplement. The Board entertained argument from the parties and then ruled that the Board would take **official notice** of Resolution 078-2008 and the 2007 BLR. These Compliance Hearing Exhibits are noted as: **CH Ex. 1** – Resolution 078-2008 and **CH Ex. 2** – 2007 BLR. In light of this ruling, the Board **denied** the County's motion to strike reference to the 2007 BLR in Petitioners' briefing.

III. THE BOARD'S PRIOR NONCOMPLIANCE ORDER

The Board's April 4, 2008, Order Finding Partial Compliance and Finding Continuing Noncompliance [RWIP] and Finding Continuing Noncompliance and Invalidity [Capital Facilities and UGAs] (**4/4/08 Order**), provided in relevant part:

Central Puget Sound
Growth Management Hearings Board
800 Fifth Avenue, Suite 2356, Seattle, WA 98104
Tel. (206) 389-2625 Fax (206) 389-2588

- Kitsap County's adoption of Ordinance No. 407-2008, has addressed the remand issue pertaining to the ambiguity concerning future development of Wooded Reserve areas at the end of 40-years [40-year limitation]. The Board will enter a **Finding of Compliance** on this aspect of the RWIP program. However, as discussed and detailed *supra*, pertaining to the blurring of resource and rural lands as evidenced by the disclosure statement, and to the document harmonizing RWIP with the goals of the Act the Board finds that the defects are minor; but nonetheless the Board will enter a **Finding of Continuing Noncompliance** and **remand** these matters to the County to take corrective action. Additionally, as noted *supra*, the presence of the RWIP moratorium [Ordinance No. 408-2008] eliminates the need for a determination of invalidity on the RWIP program. Consequently, the Board **rescinds** the Determination of Invalidity for the RWIP program.

- Kitsap County failed to correct the compliance deficiencies in the Capital Facilities Plan (specifically sanitary sewers) and the related UGAs within the compliance period established in the FDO. Therefore the Board enters a **Finding of Continuing Noncompliance and Invalidity** on these issues.

4/4/08 Order, at 14-16.

The Board will first address the RWIP and then the Capital Facilities and UGA remand issues.

IV. DISCUSSION

A. Remand Issue 1 – the RWIP

The Disclosure Statement:

Regarding the *Disclosure Statement*, the Board's 4/4/08 Order stated, at 9-10:

> At the HOM, the Board questioned the County as to why it retained the following language in the disclosure statement: "So long as such forestry operations are in compliance with the Washington Forest Practices Act RCW 76.09 they shall not constitute a nuisance." The County responded that this sentence was inadvertently left in the final draft that was adopted and that the County intends to delete it. [Footnote omitted.]
>
> The Board is familiar with the local circumstances that have shaped Kitsap County's policies for rural wooded lands [*Kitsap Citizens for Rural*

Central Puget Sound
Growth Management Hearings Board
800 Fifth Avenue, Suite 2356, Seattle, WA 98104
Tel. (206) 389-2625 Fax (206) 389-2588

Preservation, et al., v. Kitsap County, CPSGMHB Case No. 94-3-0005, Final Decision and Order (Oct. 25, 1994); *Bremerton, et al., v. Kitsap County*, CPSGMHB Case No. 95-3-0039c, Finding of Noncompliance and Determination of Invalidity in *Bremerton* and Order Dismissing *Port Gamble*, (Sep. 8, 1997); and *Bremerton, et al., v. Kitsap County*, CPSGMHB Case No. 04-3-0019c, Final Decision and Order, (Aug. 9, 2004]. Owners of large tracts of timberland [Footnote omitted] within the County wish to continue harvesting timber while at the same time developing residential subdivisions on portions of their own lands. Forestry practices are acknowledged by statute to be incompatible with residential development. [RCW 36.70A.060(1)(b)]. Nevertheless, some Kitsap timber owners want to be able to create residential development that is incompatible with forestry while at the same time seeking to be protected from the consequences of incompatibility. However, the fact remains that some degree of forestry is permitted in the rural areas.

The Board recognizes the County's desire to have some form of disclosure statement/plat notice as a consumer protection device. The Board also acknowledges that the County has taken significant steps to clarify the distinction between resource and rural lands. However, retention of the "shall not constitute a nuisance" language leans heavily towards protection for the timber industry, not for the consumers of residential lots in the RWIP and continues to blur the distinction between resource and rural designations. Therefore, the Board finds and concludes that the disclosure statement/plat notice aspect of the RWIP program merits a finding of **Continuing Noncompliance** and this provision will be **remanded** for the County to take corrective action.

In response to this remand issue, the County adopted Ordinance No. 411-2008, which deleted the sentence, "So long as such forestry operations are in compliance with the Washington Forest Practices Act, RCW 76.09, they shall not constitute a nuisance." from the RWIP regulations. *See* 2SSATC, at 3; and Attachment A, Ordinance No. 411-2008, Section 1, at 7.

None of the Petitioners or Intervenor commented on this remand issue. *See* Petitioners Response 2SSATC, at 1-10.

Therefore, with respect to the disclosure statement revision, the Board will enter a **Finding of Compliance** for the County on this remand issue.

The Goal Harmonizing Document:

Regarding the *Goal Harmonizing Document*, the Board's 4/4/08 Order stated, at 11:

Central Puget Sound
Growth Management Hearings Board
800 Fifth Avenue, Suite 2356, Seattle, WA 98104
Tel. (206) 389-2625 Fax (206) 389-2588

> Generally, the Board agrees with the County. The "Goal Harmonizing Document" prepared by the County explains the RWIP [and TDR] program and then methodically evaluates each of the GMA's goals in light of the general provisions of the two programs. However, the Board finds that Petitioners make a valid point by asserting that there needs to be an explanation of how the RWIP is responding to local circumstances.
>
> The Rural Element is required to provide for a variety of rural densities and uses. RCW 36.70A.070(5)(b). The Board construes the purpose of .070(5)(a) as acknowledging that local circumstances may lead to different approaches and programs to achieve the variety of densities and uses. Here, the County is offering the RWIP as a means of meeting the GMA requirement for a variety of densities and uses, but has not explained how the RWIP addresses the unique local circumstances in the County. To comply, the County merely needs to briefly explain what local circumstances the RWIP is designed to address. Therefore, the Board finds **Continuing Noncompliance** and will **remand** the Goal Harmonizing Document for this simple explanation to be added. The Board notes that Petitioners' continued questioning of rural densities was addressed in the FDO in the discussion of clustering, the bottom line being that the clustering provisions yielded rural densities. [Footnote omitted.]

In response, the County modified the document to add several paragraphs explaining the "local circumstances" the RWIP program was designed to address. *See* 2SSATC, at 3; Attachment B, at 9-14. The County contends these additions merit a finding of compliance on this remand issue. 2SSATC, at 3-4.

Petitioners and Intervenor take issue with the County's revisions to its Goal Harmonizing Document, contending that the RWIP is not in harmony with Goals 1, 2, 9 and 10. Petitioners Response 2SSATC, at 2-9. Petitioners assert that the County has done little to minimize the abundance of vested nonconforming lots – "legacy lots" – in rural Kitsap County and that the RWIP will exacerbate this problem. *Id.* at 3-4. Further, Petitioners point out that the County's recent 2007 BLR indicates that the urban/rural split for development in the County during 2000-2005 is 57% urban to 43% rural, contrary to the Kitsap County-wide Planning Policy (**CPP**) target of 76% urban to 24% rural. *Id.* at 5-7. Finally, Petitioners contend that the "permanent open space in the RWIP is a misnomer," since other uses are permitted; and the alleged interconnectivity of open spaces will not be achieved with clustering due to the discretion allowed in the permitting process. *Id.* at 7-9.

In reply the County contends that Petitioners and Intervenor are attempting to re-litigate the RWIP issues decided in the FDO and 4/4/08 Order. County Reply, at 4-6. Respondent asserts that the remand Order required the County to revise the Goal Harmonizing Document in order to articulate the local circumstances addressed by the RWIP, yet

Central Puget Sound
Growth Management Hearings Board
800 Fifth Avenue, Suite 2356, Seattle, WA 98104
Tel. (206) 389-2625 Fax (206) 389-2588

Petitioners continue to argue about the merits of the RWIP and its anticipated effects on legacy lots and open space. *Id.*

The pre-GMA nonconforming lots – legacy lots – that Petitioners are concerned about are not unique to Kitsap County. Jurisdictions throughout Puget Sound, and the state, have such lots to contend with in their GMA planning. Establishing deadlines for development on such lots and regulations requiring lot aggregations are methods to deal with this concern that Kitsap County should consider. However, the RWIP program was not designed to address existing legacy lots; rather it is meant to provide incentives for conserving open space while allowing limited timber production and *rural* residential development on lands designated as "Rural Wooded." Further, participation in the RWIP is limited to parcels of 20 acres or more,[2] and existing nonconforming lots below this threshold would not be eligible. Petitioners' fear that development of RWIP residential clusters will spawn further development of legacy lots is speculative, but may not be unwarranted.[3] Nonetheless, the County's treatment of legacy lots is beyond the scope of the Board's review for determining compliance on the limited remand issue for the RWIP.

Likewise, whether the County is achieving its urban/rural growth target is beyond the scope of this remand proceeding. However, the Board notes that the prior Buildable Lands Report indicated that from 1995-1999 the split was 43% urban and 57% rural. Thus, the change from 2000-2005 to 57% urban and 43% rural is a move in the right direction – encouraging growth in the urban areas.[4] Again, the Petitioners' arguments do not go to the remand issue of modifying the Goal Harmonizing Document to reflect local circumstances.

Also, the Board notes that the time to have challenged the uses permitted in the permanent open space of the RWIP was at the Hearing on the Merits or at the prior compliance hearing. Thus the Board finds that Petitioners' argument is not within the scope of this limited remand proceeding.

The Board's August 15, 2007 FDO and 4/4/08 Order addressed the merits of the County's RWIP program. The arguments offered by Petitioners in this proceeding continue to attack the merits of the RWIP. For the Goal Harmonizing Document, the Board's remand was specific to expanding the County's explanation of the local circumstances supporting the need for the RWIP. This the County has done. *See* 2SSATC, at 3; Attachment B, at 9-14. Consequently, the Board will enter a **Finding of Compliance** for the County on this remand issue.

---

[2] *See* Kitsap County Code 17.301.080B; Ordinance No. 411-2008, Section 1, at 2.

[3] The Board notes that the County's 2007 BLR indicates that "84% of all new permitted housing in the rural areas was located on pre-existing lots." 2007 BLR, at 1. However, the BLR does not indicate lot size or how many of these lots were nonconforming.

[4] Additionally, the County indicates "the [CPP urban/rural split] target may be reaffirmed or explicitly modified through the KRCC process during the next five year population distribution review." *See* 2007 BLR, at 1-2.

Central Puget Sound
Growth Management Hearings Board
800 Fifth Avenue, Suite 2356, Seattle, WA 98104
Tel. (206) 389-2625 Fax (206) 389-2588

B. Remand Issue 2 – the Capital Facilities Plan and UGAs

Capital Facilities and UGAs – The August 15, 2007 FDO:

The Board stated, in its August 15, 2007 FDO:

> 3. As discussed *supra*, the Plan Update [Ordinance No. 370-2006], specifically the Capital Facility Plan, at Appendix A, **does not comply** with the requirements of RCW 36.70A.070(3) and .020(12), since it does not demonstrate that adequate public facilities and services [*sanitary sewer*] will be available within the planning period for the population within certain expanded urban growth areas.
>
> 4. . . .
>
> 5. Additionally, as discussed *supra*, the Board has found that the continued validity of the Capital Facility Plan in Appendix A, related to certain sanitary sewer provisions, in the 10-Year Plan Update [Ordinance No 370-2006], substantially interferes with the fulfillment of Goal 12 – RCW 36.70A.020(12). . . . Consequently, the Board has entered a **determination of invalidity** with respect to these noted Plan Update . . . provisions.

FDO, at 65.

In its September 13, 2007 Order on Reconsideration, the Board further stated:

> 3. The Board hereby enters a **determination of invalidity** for the *Silverdale* UGA expansion, *Central Kitsap* UGA expansion, *West Bremerton* UGA expansion, *Gorst* UGA expansion and the *Port Orchard* UGA expansion, for substantially interfering with the fulfillment of Goal 12 – RCW 36.70A.020(12). Further, the Board refines its determination of invalidity for the County's Capital Facilities Element, Appendix A, pertaining to sanitary sewers, to be limited to those provisions dealing with those entities (*i.e.* Kitsap County, Port Orchard and Bremerton) that allegedly provide sanitary sewer service to these five UGA expansion areas.

Order on Reconsideration, at 4.

Thus, the Capital Facilities Plan, as it related to sanitary sewers, and five UGA areas [Silverdale, Central Kitsap, West Bremerton, Gorst, and Port Orchard] were determined by the Board to be noncompliant and invalid.

Central Puget Sound
Growth Management Hearings Board
800 Fifth Avenue, Suite 2356, Seattle, WA 98104
Tel. (206) 389-2625 Fax (206) 389-2518

The County was unable to meet the compliance deadline indicated in the FDO. Consequently, the 4/4/08 Order found continuing noncompliance and invalidity on this remand issue. Although the County's work on this issue was not completed within the compliance schedule, the County had taken action to address it by the first compliance hearing and submitted its SSATC at that hearing. As a result, the Board accelerated the second compliance hearing while allowing adequate time for Petitioners and Intervenors to comment on the SSATC and time for the County to reply.

The County's Remand Action and Position of the Parties:

In its SSATC, the County explained that it enacted Ordinance No. 409-2008, which adopted changes to certain provisions of the County's Comprehensive Plan, changed provisions in the Capital Facilities Plan, and added several technical addenda to the CFP for sewer service in the five expanded UGA areas.[5] The County also renewed the preexisting moratorium until September 7, 2008 for the five UGA expansion areas. *See* Ordinance No. 410-2008.

The Comprehensive Plan amendments: 1) associate the Gorst UGA with the City of Bremerton which is planning to serve the area; 2) commit the County to work with the City of Port Orchard and the West Sound Utility District to ensure the respective UGAs are served within the 20-year planning period; and 3) incorporate the new Central Kitsap Wastewater Facilities Plan, which describes how the County will serve Silverdale and Central Kitsap UGAs. SSATC, at 6.

The amendments to the Capital Facilities Plan – Appendix A – clarify the entities responsible for providing sewer service for the various areas of the County and update the inventories of existing systems, including locations and capacities. Bremerton is identified as the provider of sewer service for the West Bremerton and Gorst UGAs; Port Orchard and the West Sound Utility District are indicated as the sewer providers for the Port Orchard UGA. The County provides sewer service to the Silverdale and Central Kitsap UGAs.[6] *Id.* at 7.

The several technical addenda address the sanitary sewer systems serving the various UGAs. The Silverdale and Central Kitsap UGAs are intended to be covered by the "Central Kitsap Wastewater GMA Compliance Plan" (**CKW Plan**). The CKW Plan extends to 2025 and contains the necessary components of a Capital Facilities Plan as identified in RCW 36.70A.070(3), including a needs assessment and financing of needed improvements. This document also recognizes that, in some instances, properly

---

[5] *See* Ordinance No. 409-2008, Sections 2 [Land Use], 3 [Port Orchard/Central Kitsap Subarea], 4 [Silverdale Subarea], 5 [Appendix A – 6-year capital facilities plan], and 6 [incorporating the Technical Addenda, Attachments A, B, C and D].

[6] The County is also in discussions with the City of Bremerton regarding the transfer of certain sewer facilities serving the West Bremerton UGA to the City.

Central Puget Sound
Growth Management Hearings Board
800 Fifth Avenue, Suite 2356, Seattle, WA 98104
Tel. (206) 389-2625 Fax (206) 389-2588

functioning septic systems may be continued so as to allow limited groundwater supplies to be recharged. Also alternative technologies such as water reuse and biosolids disposal are discussed as potential options for the County in ensuring that wastewater facilities will be adequate and available to serve the UGAs within the 20-year planning period. *Id.* at 8-13; and Attachment A to Ordinance No. 409-2008.

For West Bremerton and Gorst UGAs, the City of Bremerton will provide sewer service. The technical addenda incorporated in the County's CFP includes: 1) the "City of Bremerton Sewer UGA Planning" (**Bremerton UGA Sewer Plan**) which addresses needed improvements and financing strategies; and 2) City of Bremerton Resolution 3049 providing assurances that Bremerton will provide sanitary sewer service for the West Bremerton and Gorst UGAs. *Id.* at 13-15; and Attachment B to Ordinance No. 409-2008.

For the Port Orchard UGA, the County identifies two service providers of sanitary sewer – the City of Port Orchard and the West Sound Utility District (formerly Karcher Creek Sewer District). The technical addenda incorporated into the County's CFP include: 1) "City of Port Orchard Comprehensive Sanitary Sewer Plan Update" (**Port Orchard UGA Sewer Plan**) which identifies needs and funding options; 2) Port Orchard Resolution 034-07 where the City commits to serving its portion of the UGA area; 3) "Karcher Creek Sewer District 2007 Comprehensive Sewer Plan" (**Sewer District UGA Plan**) which identifies needs and funding options; and 4) West Sound Utility District Resolution 02-07, committing the District to providing service for its portion of the area. *Id.* at 15-16; and Attachments C and D to Ordinance No. 409-2008. The County also notes that a petition for a ULID [utility local improvement district] was submitted to the County to bring service closer to existing areas. *Id.* at 16.

The County contends that the sum of these actions demonstrate that the County can ensure that the needed sanitary sewer services will be adequate and available to support development within the planning horizon – 2025. Consequently, the County urges the Board to enter a finding of compliance on the Capital Facilities Element and UGA remand issues. Id. at 17.

Although Petitioners and Intervenor agree that the County has undertaken more sewer planning since the FDO than it had previously done, they continue to assert that the County's actions fail to comply with the GMA. Petitioners Response SSATC, at 1-3. Petitioners argue that the County's efforts "fail to demonstrate that sanitary sewers will be adequate and available within *existing* UGAs (prior to the most recent UGA expansions invalidated by the Board) *within the twenty year planning period* immediately following initial designation of each particular UGA." *Id.* at 3, (emphasis supplied). The premise to this argument is that sanitary sewers are inadequate within existing UGAs; therefore, the expansion areas must also be deficient. Additionally, Petitioners assert that the County is using a "rolling" twenty year period to skirt the GMA's requirement to provide the necessary facilities. *Id.* at 4-5. Petitioners claim that the latest effort of the County is geared toward having services provided in the five UGA expansion areas by 2025, but

Central Puget Sound
Growth Management Hearings Board
800 Fifth Avenue, Suite 2356, Seattle, WA 98104
Tel. (206) 389-2625 Fax (206) 389-2588

ignores deficiencies in the *existing* UGAs which are required to be served by either 2012, 2017, or 2025, depending upon the date of the initial UGA designation. *Id.* at 6-10. In support of their argument, Petitioners identify an area in the City of Bremerton, along Marine Drive, and an area in the Port Orchard UGA along SE Salmonberry Road that have neither existing sewer nor planned sewer capacity. *Id.* at 7.

In reply, the County counters that Petitioners are raising entirely new issues and that the County adhered to the direction provided in the Board's FDO by addressing the provision of sanitary sewer service in the five expanded UGA areas. County Reply SSATC, at 1-5. The County notes that Petitioners find little fault with the County's work on remand, but rather focus on alleged deficiencies within preexisting UGAs that were not part of the original appeal, or part of the Board's FDO. *Id.* at 6-9. The County notes that the two alleged noncompliant existing areas are served by other jurisdictions, not the County, and therefore Petitioners' challenge is misplaced. *Id.* at 10-11. The County urges the Board to find compliance on its remand action. *Id.* at 15.

The County took varying approaches to the different UGAs at issue; consequently, the Board will examine the merits of each area respectively.

Silverdale and Central Kitsap UGAs:

Regarding the Silverdale and Central Kitsap UGA, the Board stated in the FDO:

> Given that the Central Kitsap UGA and the Silverdale UGA are reliant upon sanitary sewer service from the County and the County acknowledges that by 2025, over 7,000 residents in that sub-area will likely go unsewered and un-served, the Board finds and concludes that the County has not complied with the provisions of RCW 36.70A.020(12) and .070(3). *The County may choose to rethink or redraw the UGAs in these areas, accommodate a lesser OFM population [within the range projected], modify its urban densities to increase the efficiency of the existing sewer system without extensions for new development, or draw up a plan to service the area.* This is not to say that the Board is requiring each existing residence to be connected, but that the service provider should have the capacity (*i.e.* treatment facilities, trunk lines) to make adequate service available to the area.

FDO, at 26, (emphasis supplied).

As a threshold question, the Board addresses whether the Board's FDO was limited only to the proposed UGA expansion areas, or whether the remand pertained to the entire area of the UGAs, including existing areas. In short, assessment of the ability to provide sanitary sewer service to a proposed expansion area for a UGA requires that the service provider(s) evaluate the UGA as a whole, including existing as well as proposed expansion area.

Central Puget Sound
Growth Management Hearings Board
800 Fifth Avenue, Suite 2356, Seattle, WA 98104
Tel. (206) 389-2625 Fax (206) 389-2588

First, the Board notes that its FDO did in fact speak to *existing* areas as well as the expanded UGAs.

> The Board finds and concludes that the County's adoption of Ordinance No. 370-2006, specifically the CFP at Appendix A, was **clearly erroneous**. Additionally, the Board finds and concludes that the County **has not complied with RCW 36.70A.020(12) and 36.70A.070(3)'s** mandate to provide necessary services to support *existing* and new *development within the UGAs within the 20-year planning period.*

FDO, at 26-27, (italics supplied).

Second, the Board explained the importance of the County being confident that services can be provided to areas it was considering for inclusion in a UGA, whether the County or another service provider would supply the services necessary to support urban development. *See* FDO, at 24.

Third, the FDO suggested several choices for the County in addressing the remand issue:

- Rethink or redraw the UGAs;
- Accommodate a lesser OFM population;
- Modify urban densities to increase the efficiencies of existing sewer without extensions for new development; or
- Draw up a plan to serve the area.

Each option, by necessity and implication, involves reassessing the *entire UGA* – existing and proposed expansion areas – to evaluate service capabilities within the planning horizon. The County chose the last option – Draw up a plan to serve the area – and produced the CKW Plan. The CKW Plan encompasses the *entire* Silverdale and Central Kitsap UGAs – the existing UGAs and proposed expansion areas. *Compare* Plates 1 and 2 of the CKW Plan *with* the County's Comprehensive Plan Land Use Maps – Figure 2.1 and 2.2. The County contends that the CKW Plan ensures that sewer service will be adequate and available to support development in the Silverdale and Central Kitsap UGAs within the 20-year planning horizon. SSATC, at 8-13.

Review of the maps for the Central Kitsap UGA Conceptual Plan for Wastewater Conveyance and the Silverdale Conceptual Plan for Wastewater Conveyance (Plates 1 and 2, respectively, in the CKW Plan) illustrate the locations of existing, replacement and future lift stations, force and gravity mains and collectors. Both maps show facilities extending throughout the length and width of the respective UGA borders and parcels located in relative proximity to the existing, replacement or future facilities. It appears to the Board that the CKW Plan, if executed, will ensure that sanitary sewer facilities will be adequate and available to support existing and new urban development in the Silverdale and Central Kitsap UGAs.

Central Puget Sound
Growth Management Hearings Board
800 Fifth Avenue, Suite 2356, Seattle, WA 98104
Tel. (206) 389-2625 Fax (206) 389-2588

The only criticism Petitioners offer for either of these UGAs is that Table SS.2 (Ordinance No. 409-2008, at 16) indicates that "in 2012 there will be an unserved population of 11,305 persons in the Central Kitsap Sewer Service Area [UGA] and 179 in Navy Yard City." Petitioners Response, Footnote 15, at 7. Petitioners contend that 2012 is the end of the 20-year planning horizon since the UGAs were initially designated in the County's 1994 and 1996 Plans. *Id.* at 6.

This assertion is without merit for two reasons. First, as the County correctly notes, the County's Comprehensive Plan was found compliant in 1998; therefore, the 20-year planning horizon for this area ends in 2018, not 2012 as asserted by Petitioners. County Response SSATC, at 7; *See also Kitsap Citizens for Responsible Planning & Harless v. Kitsap County* (***KCRP VI***), CPSGMHB Case No. 06-3-0007, Order Finding Compliance, (Nov. 5, 2007)[7] and *Kitsap County v. CPSGMHB*, 138 Wn. App. 863, 879-880, 158 P.3d 638 (2007). Second, the Board notes that Table SS.2 indicates that there will be no unsewered population in 2025. Therefore, sometime between 2012 and 2025 the remaining unsewered population will have adequate service made available. The GMA's requirement for a six-year financing plan [covering 2012-2018 for the unexpanded Central Kitsap UGA and the 2019-2025 financing plan for this recent UGA expansion] and the GMA requirement to reassess the land use element if probable funding falls short of meeting existing needs, provide the necessary safeguards to assure the County's UGA, land use and capital facilities elements are coordinated and consistent. RCW 36.70A.070(3)(d) and (e).

The Board finds and concludes that the adoption of Ordinance No. 409-2008, as it relates to the Silverdale and Central Kitsap UGAs, **complies** with RCW 36.70A.020(12) and RCW 36.70A.070(3). The Board will enter a **Finding of Compliance** and **Rescind the Determination of Invalidity**.

Gorst UGA:

Regarding the Gorst UGA, the Board stated in the FDO:

> Regarding the Gorst UGA, the Board finds and concludes that the County has not indicated how or who will address the septic system failure issue [footnote omitted] for the Gorst area. Thus, *the County should either retract the UGA, increase densities, or obtain assurances that sanitary sewer service will be adequate and available within the 20-year period for these areas.*

---

[7] In that Order the Board also concluded, at 9:

> [A]reas included in [UGA] *expansion areas* must have adequate urban services available within 20 years of the area's date of inclusion in the UGA.

Central Puget Sound
Growth Management Hearings Board
800 Fifth Avenue, Suite 2356, Seattle, WA 98104
Tel. (206) 389-2625 Fax (206) 389-2588

FDO, at 26, (emphasis supplied).

Again, the Board notes that of the choices mentioned, each involve a reassessment of the entire UGA – existing and proposed expansion areas. Since the County does not serve the Gorst area, it worked with Bremerton, the sanitary sewer service provider, to obtain assurances that sanitary sewer would be adequate and available for the entire Gorst UGA within the 20-year planning horizon. The Bremerton UGA Sewer Plan and Bremerton Resolution 3049 discussed *supra*, evidence this assurance. The Board notes that the Bremerton UGA Sewer Plan includes the entire Gorst UGA. *Compare* Bremerton UGA Sewer Plan, Figures 1 and 4 *with* the County's Comprehensive Plan Land Use Maps – Figure 2.1 and 2.2.

Petitioners offer no comment or criticism of this remand action by the County.

The Board finds and concludes that the adoption of Ordinance No. 409-2008, as it relates to the Gorst UGA [including Attachment B], **complies** with RCW 36.70A.020(12) and RCW 36.70A.070(3).The Board will enter a **Finding of Compliance** and **Rescind the Determination of Invalidity**.

West Bremerton and Port Orchard UGAs – sanitary sewer:

Regarding the West Bremerton and Port Orchard UGAs, the Board stated in the FDO:

> For the West Bremerton and Port Orchard UGAs, again, *the County should retract UGAs, increase densities, or obtain assurances that sanitary sewer service will be adequate and available within the 20-year planning period for these areas*. While the Board's analysis has focused on sewer services, other capital facilities may be similarly deficient in providing *service to existing residents* in the UGA. 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.

FDO, at 26 (emphasis supplied).

Here again, the Board notes that each of the choices offered in the FDO requires consideration of the entire UGA areas. As it did with the Gorst UGA, the County, which does not serve either area, sought and obtained assurances that sanitary sewer would be adequate and available within the 20-year planning horizon for the West Bremerton and Port Orchard UGAs.

For the West Bremerton UGA, the City of Bremerton provided the assurance. The Bremerton UGA Sewer Plan and Resolution 3049 discussed *supra*, evidence this assurance. The Board notes that the Bremerton UGA Sewer Plan includes the entire West

Central Puget Sound
Growth Management Hearings Board
800 Fifth Avenue, Suite 2356, Seattle, WA 98104
Tel. (206) 389-2625 Fax (206) 389-2588

Bremerton UGA. *Compare* Bremerton UGA Sewer Plan, Figures 1 and 3 *with* the County's Comprehensive Plan Land Use Maps – Figure 2.1 and 2.2.

For the Port Orchard UGA, which is served by two different providers, the assurances are given by the City of Port Orchard and the West Sound Utility District. The Port Orchard UGA Sewer Plan and Port Orchard Resolution 034-07 discussed *supra*, evidence the commitment of the City of Port Orchard; and the Sewer District UGA Plan and West Sound Utility District Resolution 02-07 discussed *supra*, evidence the commitment of the Utility District. The Board notes that the Port Orchard Sewer UGA Plan and the Sewer District UGA Plan cover the entire Port Orchard UGA. *Compare* Port Orchard UGA Sewer Plan, Figures 2, 5, 6, 9 and 10; and Sewer District UGA Plan, various maps *with* the County's Comprehensive Plan Land Use Maps – Figure 2.1 and 2.2.

However, Petitioners raise two objections, one apparently to the *original* Bremerton UGA and another to the Port Orchard UGA. First, Petitioners contend that an area within the city limits of Bremerton, along Marine Drive, has neither existing nor planned sewer service; therefore the County's compliance efforts should be found noncompliant. Petitioners Response SSATC, at 6-7. The County correctly notes, first, that this area is within the City of Bremerton, which the GMA requires to be designated as a UGA; second, the Bremerton UGA Sewer Plan includes a pump station at the access point to Marine Drive to make the sewer accessible; and third, Petitioners' complaint should be lodged against the City, not the County. County Reply SSATC, at 10-11. The Board agrees with the County.

Petitioners raise a second objection, claiming that an area along SE Salmonberry Road in the Port Orchard UGA is neither presently sewered nor proposed for sewer by the West Sound Sewer District; therefore, the County's compliance effort should be found noncompliant. Petitioners Response SSATC, Footnote 17, at 7. In the Sewer Districts' defense, the County notes that the District's Sewer Plan shows existing and proposed sewer on three sides of the area noted by Petitioners, which illustrates that service can be made available, and that the northern portion of the area is a wooded County Park requiring limited service. The County contends that Petitioners have not carried their burden of proof on this issue. County Reply SSATC, at 11. Again, the Board agrees with the County – **Petitioners have not carried their burden of proof** in demonstrating noncompliance with the GMA on this remand issue.

The Board finds and concludes that the adoption of Ordinance No. 409-2008, as it relates to the West Bremerton and Port Orchard UGAs [including Attachment B, C and D], **complies** with RCW 36.70A.020(12) and RCW 36.70A.070(3). The Board will enter a **Finding of Compliance** and **Rescind the Determination of Invalidity**.

Central Puget Sound
Growth Management Hearings Board
800 Fifth Avenue, Suite 2356, Seattle, WA 98104
Tel. (206) 389-2625 Fax (206) 389-2588

III. FINDING OF COMPLIANCE

Based upon review of the GMA, the August 15, 2007 FDO, the September 13, 2007 Order on Motion to Reconsider, the October 25, 2007 Order on Motion to Clarify, Modify or Rescind, the April 4, 2008 Compliance/Noncompliance Order, Ordinance No. 409-2008 and Attachments, Ordinance No. 411-2008, the SATC, the SSATC, the 2SSATC, the briefing filed by the parties, the arguments of the parties, and having deliberated on the matter, the Board enters a **Finding of Compliance** and **Rescission of Invalidity** for Kitsap County in CPSGMHB Case No. 07-3-0019c.

IV. ORDER

Based upon review of the GMA, the August 15, 2007 FDO, the September 13, 2007 Order on Motion to Reconsider, the October 25, 2007 Order on Motion to Clarify, Modify or Rescind, the April 4, 2008 Compliance/Noncompliance Order, Ordinance No. 409-2008 and Attachments, Ordinance No. 411-2008, the SATC, the SSATC, the 2SSATC, the briefing filed by the parties, the arguments of the parties, and having deliberated on the matter, the Board ORDERS:

- Kitsap County's adoption of Ordinance No. 409-2008, and Attachments A-D, has removed substantial interference with the GMA's Goals 12 [RCW 36.70A.020(12)]. Therefore, the Board **rescinds the determination of invalidity**.

- Kitsap County's adoption of Ordinance Nos. 409-2008, with Attachments A-D and Ordinance No. 411-2008 corrected the compliance deficiencies found by the Board and the County now **complies** with the goals and requirements of the GMA [RCW 36.70A.020(12), RCW 36.70A.070(3), and RCW 36.70A.070(5)] as set forth in the Board's August 15, 2007 Final Decision and Order, September 13, 2007 Order on Motion to Reconsider, and the April 4, 2008 Order Finding Partial Compliance [TDRs] and Finding Continuing Noncompliance [RWIP] and Finding Continuing Noncompliance and Invalidity [Capital Facilities and UGAs]. The Board therefore enters a **Finding of Compliance** for the matter of *Suquamish Tribe, Kitsap Citizens for Responsible Planning and Jerry Harless v. Kitsap County [Port Gamble S'Klallam Tribe – Intervenor]* with respect to the Petitioners' challenge.

- CPSGMHB Case No. 07-3-0019c is **closed.**

So ORDERED this 5th day of June, 2008.

Central Puget Sound
Growth Management Hearings Board
800 Fifth Avenue, Suite 2356, Seattle, WA 98104
Tel. (206) 389-2625 Fax (206) 389-2588

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

David O. Earling
Board Member

Edward G. McGuire, AICP
Board Member

Margaret A. Pageler
Board Member

Note: This order constitutes a final order, as specified by RCW 36.70A.300, unless a party files a motion for reconsideration pursuant to WAC 242-02-832. [8]

[8] Pursuant to RCW 36.70A.300 this is a final order of the Board.

Reconsideration. Pursuant to WAC 242-02-832, you have ten (10) days from the date of mailing of this Order to file a motion for reconsideration. The original and three copies of a motion for reconsideration, together with any argument in support thereof, should be filed with the Board by mailing, faxing or otherwise delivering the original and three copies of the motion for reconsideration directly to the Board, with a copy served on all other parties of record. Filing means actual receipt of the document at the Board office. RCW 34.05.010(6), WAC 242-02-240, WAC 242-020-330. The filing of a motion for reconsideration is not a prerequisite for filing a petition for judicial review.

Judicial Review. Any party aggrieved by a final decision of the Board may appeal the decision to superior Court as provided by RCW 36.70A.300(5). Proceedings for judicial review may be instituted by filing a petition in superior Court according to the procedures specified in chapter 34.05 RCW, Part V, Judicial Review and Civil Enforcement. The petition for judicial review of this Order shall be filed with the appropriate Court and served on the Board, the Office of the Attorney General, and all parties within thirty days after service of the final order, as provided in RCW 34.05.542. Service on the Board may be accomplished in person or by mail, but service on the Board means actual receipt of the document at the Board office within thirty days after service of the final order. A petition for judicial review may not be served on the Board by fax or by electronic mail.

Service. This Order was served on you the day it was deposited in the United States mail. RCW 34.05.010(19)

Central Puget Sound
Growth Management Hearings Board
800 Fifth Avenue, Suite 2356, Seattle, WA 98104
Tel. (206) 389-2625 Fax (206) 389-2588

APPENDIX A

On August 15, 2007, the Central Puget Sound Growth Management Hearings Board issued its Final Decision and Order (**FDO**) in the above captioned case. In the FDO the Board found the County's Capital Facility Plan, Rural Wooded Incentive Program, and Transfer of Development Rights Program noncompliant with the GMA. The Board entered a determination of invalidity for all three noncompliant provisions. A compliance schedule was established in the FDO. *See* FDO, at 64-67.

On September 13, 2007, the Board issued its "Order on Motion for Reconsideration." The Board granted Petitioners' motion for reconsideration and invalidated five UGA expansion areas[9] that were unsupported by urban services – sewer service – in the Capital Facility Plan. *See* 9/13/07 Order.

On October 25, 2007, the Board issued its "Order on Motion to Clarify, Modify or Rescind." The Board denied the County's request to modify the Board's decision pertaining to the five UGA expansion areas. *See* 10/25/07 Order.

On January 29, 2008, the Board issued its "Order Denying Motion for Extension of Compliance Period." The County stated that it needed more time to comply regarding the CFP and UGAs and asked that the 180-day deadline set forth in the FDO be extended. Citing statutory limitations, the Board denied the County's request. *See* 1/29/08 Order.

On March 24, 2008, the Board conducted the Compliance Hearing. At the hearing the County filed "Kitsap County's Supplemental Statement of Actions Taken to Comply;" "Respondent's Supplemental Compliance Index to the Record," noting 49 items; and 7 attached Exhibits.[10]

On April 4, 2008, the Board issued its "Order Finding Partial Compliance and Finding Continuing Noncompliance [RWIP] and Finding Continuing Noncompliance and Invalidity [Capital Facilities and UGAs]."

On May 7, 2008, the Board received "Petitioners' Response to Kitsap County's March 24, 2008 Supplemental Statement of Actions Taken to Comply." This filing was timely and was filed in response to the Capital Facilities and UGA remand issues.

On May 14, 2008, the Board received "Respondent's Reply to Petitioners' Response to the County's Supplemental Statement of Actions Taken to Comply." This filing was timely.

---

[9] The invalidated UGA expansion areas are: Silverdale, Central Kitsap, West Bremerton, Gorst, and Port Orchard.

[10] The attached Exhibits to the SSATC are as follows: Ordinance No. 409-2008 [**Ex. I** – Index #24]; Central Kitsap Wastewater GMA Compliance Plan, February 2008 [**Ex. A**]; City of Bremerton Resolution No. 3049 and City of Bremerton Sewer UGA Planning, February 2008 [**Ex. B**]; City of Port Orchard Resolution No. 034-07 [**Ex. C**]; West Sound Utility District Resolution 02-07 [**Ex. D**]; Ordinance No. 410-2008 [**Ex. II** – Index #49]; and Comment letter from Danny Horovitz [Index #20].

Central Puget Sound
Growth Management Hearings Board
800 Fifth Avenue, Suite 2356, Seattle, WA 98104
Tel. (206) 389-2625 Fax (206) 389-2588

On May 7, 2008, the County filed "Kitsap County's Second Supplemental Statement of Actions Taken to Comply," with two attached Exhibits.[11] This filing was timely.

On May 13, 2008, the Board received "Petitioners' Suquamish Tribe and Kitsap Citizens for Responsible Planning and Intervenor Port Gamble S'Klallam Tribe's Motion to Supplement the Second Supplemental Compliance Index to the Record," with two attached proposed Exhibits.[12]

On May 14, 2008, the Board received "Petitioners' Suquamish Tribe and Kitsap Citizens for Responsible Planning and Intervenor Port Gamble S'Klallam Tribe's Response to Kitsap County's Second Supplemental Statement of Actions Taken to Comply."

Also, on May 14, 2008, the Board received "Kitsap County's Opposition to Petitioners' Motion to Supplement the Record Re: County's Second Statement of Actions Taken to Comply and Motion to Strike."

On May 19, 2008, the Board conducted the Second Compliance Hearing, at 10:00 a.m. at the Chief Sealth Training Center, 20th Floor, 800 Fifth Avenue, Seattle, Washington. Board Member Edward G. McGuire presided. Board members David O. Earling and Margaret A. Pageler, and Board Attorney Julie Ainsworth-Taylor also attended. *Pro se* Petitioner Jerry Harless participated as did Melody Allen, representing the Suquamish Tribe, and Tom Donnelly, representing Kitsap Citizens for Responsible Planning. Lauren Rasmussen participated for Intervenor Port Gamble S'Klallam Tribe. Shelley E. Kneip represented Respondent Kitsap County. Also attending the hearing were Eric Brown and Nancy Povonanno-Geennan of Kitsap County. Court reporting services were provided by Rebecca L. Mayse of Byers and Anderson, Inc. The Second Compliance Hearing adjourned at 11:50 a.m.

---

[11] The attached Exhibits to the SSATC2 are as follows: Ordinance No. 411-2008, amending the RWIP [**Ex. A**]; and Rural Wooded Incentive and TDR Programs – GMA Evaluation – the "Goal Harmonizing Document" [**Ex. B**].

[12] The attached proposed Exhibits are: Resolution 078-2008, Adopting the County's 2007 Buildable Lands Report; and the 2007 Buildable Lands Report.

Central Puget Sound
Growth Management Hearings Board
800 Fifth Avenue, Suite 2356, Seattle, WA 98104
Tel. (206) 389-2625 Fax (206) 389-2588

CPSGMHB Case No. 07-3-0019c
Suquamish Tribe II, et al.,
v.
Kitsap County
DECLARATION OF SERVICE:

I certify that I mailed a copy of the **Order Finding Compliance** to the persons and addresses listed hereon, postage prepaid, in a receptacle for United States mail at Seattle, Washington, on **June 5, 2008.**

Signed: Linda Krusfores

Pr 360/394-8489 phone 360/598-4293 fax
Suquamish Tribe
mallen@suquamish.nsn.us
Melody Allen
Tribal Attorney
18490 Suquamish Way
P.O. Box 498
Suquamish, WA 98392

Rt 360/337-4992 phone 360/337-7083 fax
skneip@co.kitsap.wa.us
lnickel@co.kitsap.wa.us
Lisa J. Nickel & Shelley E. Kneip
Kitsap Co. Deputy Prosecuting Attnys.
614 Division Street, MS-35A
Port Orchard, WA 98366-4676

Pr 360/ 459-6558 phone
Harless
jlharless@wavecable.com
Jerry Harless
P.O. Box 8572
Port Orchard, WA 98366

Ir-Port Gamble S/Klallam Tribe
206/623-0900 phone 206/623-1432 fax
lauren@rasmussen-law.com
Lauren P. Rasmussen
Attorney at Law
1904 Third Avenue, Suite 1030
Seattle, WA 98101-1170

Pr 206/ 876-3129
KCRP
tdonnelly@silverlink.net
Tom Donnelly
Kitsap Citizens for Responsible Planning
10922 Horizon Lane ESE
Port Orchard, WA 98366

PR 206/264-8600 phone 206/264-9300
KCRP
bricklin@bnd-law.com
David A. Bricklin
Bricklin Newman Dold, LLP
1001 4h Avenue, Suite 3303
Seattle, WA 98154

Appendices 4
CP 107,
AR 61

App. 4
Order
on
Reconsideration

9/13/07

CENTRAL PUGET SOUND
GROWTH MANAGEMENT HEARINGS BOARD
STATE OF WASHINGTON

SUQUAMISH TRIBE, KITSAP CITIZENS FOR RESPONSIBLE PLANNING and JERRY HARLESS, Petitioners, PORT GAMBLE S'KLALLAM TRIBE Interveners, v. KITSAP COUNTY, Respondent.	**Case No. 07-3-0019c** ***(Suquamish II)*** **ORDER ON MOTION FOR RECONSIDERATION**

I. PROCEDURAL HISTORY

On August 15, 2007, the Central Puget Sound Growth Management Hearings Board (the **Board**) issued its "Final Decision and Order" (**FDO**) in the above-captioned matter.

On August 24, 2007, the Board received "Petitioners' Request for Reconsideration" (**Suquamish Motion**) filed pursuant to WAC 242-02-832(2)(a).[1] Petitioners' motion was timely filed.

On August 30, 2007, the Board issued an "Order Requesting Answer to Petitioners' Request for Reconsideration" (**Board Order**).[2]

Via e-mail communications, the County asserted that it had not received the Petitioners' Motion. The affidavit of service attached to the Petitioners' Motion indicated that mail service was provided. The Board provided an electronic copy of the Petitioners' Motion to the County on August 30, 2007.

On September 6, 2007, the Board received "Respondent Kitsap County's Response to Petitioners' Motion for Reconsideration" (**Kitsap Answer**).

[1] Pursuant to WAC 242-02-832(1), any party may file a Motion for Reconsideration within 10 days of service of the Board's final decision.
[2] WAC 242-02-832(1) provides that the Board may require a party to supply an answer.

Central Puget Sound
Growth Management Hearings Board
800 Fifth Avenue, Suite 2356, Seattle, WA 98104
Tel. (206) 389-2625 Fax (206) 389-2588

II. MOTION FOR RECONSIDERATION

FDO and the Motion:

In the Board's FDO, the Board dismissed Petitioners' challenge to Kitsap County's selected urban densities and the County's land capacity analysis [Legal Issues 1 and 2]. FDO, at 10-17, and 64. Also in the FDO, the Board found that Kitsap County's Capital Facilities Element (**CFE**) did not comply with RCW 36.70A.070(3) and .020(12); the Board also invalidated the CFE, at Appendix A, because it did not demonstrate that adequate public facilities and services [sanitary sewer] would be available within the planning period, thereby interfering with the fulfillment of Goal 12. [Legal Issue 3]. FDO, at 17-27, and 63-65.

On reconsideration, Petitioners ask the Board to:

1. Find noncompliance and invalidate the County's expanded urban growth areas (**UGAs**) that are based upon the noncompliant and invalid capital facilities element. Petitioners assert that the CFE and Land Use Element, including UGAs, are "inextricably linked." Petitioners cite to prior Board cases discussing the "inextricable linkage" of these two elements - Legal Issue 3. Suquamish Motion, at 3-6.

2. Address arguments offered in briefing that challenged the County's Urban Densities – Legal Issue 1. *Id.* at 7-9.

3. Address argument offered in briefing that challenged the County's Land Capacity Analysis – Legal Issue 2. *Id.* at 9-12.

The County responds by asserting:

1. No matter how "inextricably linked" the Capital Facilities Element and Land Use Element are, Petitioners did not challenge the land use element in their Petition for Review. Therefore, the County contends the Board may not rule on the validity of the UGA expansions – Legal Issue 3. Kitsap Answer, at 12-14.

2. The Board has already addressed Petitioners' arguments challenging the County's Urban Densities and found them unpersuasive. Therefore, the Board need not entertain additional argument. *Id.* at 2-7.

3. The Board has already addressed Petitioners' arguments challenging the County's Land Capacity Analysis and found them unpersuasive. Therefore, the Board need not entertain additional argument. *Id.* at 7-11.

Board Discussion

A motion for reconsideration must be based on alleged material errors of procedures, misinterpretation of fact, misinterpretation of law; an irregularity that occurred at the

Central Puget Sound
Growth Management Hearings Board
800 Fifth Avenue, Suite 2356, Seattle, WA 98104
Tel. (206) 389-2625 Fax (206) 389-2588

hearing preventing a fair hearing; or clerical mistakes in the final decision. WAC 242-02-832(2)(a)-(c). With the motion presented, the Petitioners allege a misinterpretation of law pertaining to Legal Issues 1, 2 and 3.

Regarding Legal Issue 1 [Urban Densities] and Legal Issue 2 [Land Capacity Analysis], the Board has reviewed the August 15, 2007 FDO, the Suquamish Motion and the Kitsap Answer and agrees with Kitsap County. On Legal Issues 1 and 2, Petitioners simply reargue, or attempt to offer new argument pertaining to these Legal Issues. The Board remains unpersuaded on these issues and finds and concludes that it has not misinterpreted the law. Petitioners' request for reconsideration on Legal Issues 1 and 2 is **DENIED**.

Regarding Legal Issue 3 [Capital Facilities Element], the Board reaches a different conclusion. The Board notes that Petitioners challenged Ordinance No. 370-2006, the County's Plan Update Ordinance, which included the Land Use and Capital Facilities Elements, among others. Additionally, the County acknowledges that Petitioners' issues and briefing addressed the UGA boundaries and their expansion. Kitsap Answer, at 12. Further, the Board's discussion and analysis of the Capital Facilities Element was narrowed to the five UGA expansion areas and the entities that are responsible for providing sewer service to them. *See* FDO, at 20-27. In the FDO, the Board found that the Capital Facilities Element, Appendix A, pertaining to sanitary sewer service, was noncompliant with RCW 36.70A.070(3) and RCW 36.70A.020(12). *See* FDO, at 26-27. Additionally, the Board entered a determination of invalidity for the Capital Facilities Element, Appendix A, pertaining to sanitary sewer service, for substantially interfering with the fulfillment of Goal 12 – RCW 36.70A.020(12).

Petitioners are correct. Urban facilities and services must be adequate and available for the urban areas included within the County's UGAs – the Capital Facilities Element and Land Use Element are "inextricably linked." *Bremerton v. Kitsap County* (***Bremerton***), CPSGMHB Case No. 95-3-0039c, Final Decision and Order, (Oct. 6, 1995), at 77; *West Seattle Defense Fund v. City of Seattle* (***WSDF***), CPSGMHB Case No. 94-3-0016, Final Decision and Order, (Apr. 4, 1995, at 45; *Suquamish II v. Kitsap County* (***Suquamish II***), CPSGMHB Case No. 07-3-0019c, Final Decision and Order, (Aug. 15, 2007), at 24.

If the Capital Facilities Element is found deficient, the UGAs, especially UGA expansions that will require urban services, will likewise be found deficient. Therefore, to avoid the possibility of proposals vesting within the UGA expansion areas lacking documented adequate and available public facilities and services, the Board finds that these UGA expansions do not comply with RCW 36.70A.020(12) and .110 and hereby enters a **determination of invalidity** for the Silverdale UGA expansion, Central Kitsap UGA expansion, West Bremerton UGA expansion, Gorst UGA expansion and the Port Orchard UGA expansion, for substantially interfering with the fulfillment of Goal 12 – RCW 36.70A.020(12). Further, the Board **refines** its determination of invalidity for the County's Capital Facilities Element, Appendix A, pertaining to sanitary sewers, to be limited to those provisions dealing with those entities that allegedly provide sanitary

Central Puget Sound
Growth Management Hearings Board
800 Fifth Avenue, Suite 2356, Seattle, WA 98104
Tel. (206) 389-2625 Fax (206) 389-2588

sewer service to these five UGA expansion areas – *i.e.* Kitsap County, Port Orchard and Bremerton.[3] Petitioners' request for reconsideration on Legal Issue 3 is **GRANTED**.

Conclusion

UGA expansions based upon a noncompliant, invalid Capital Facilities Element do not comply with the GMA's directive that necessary and adequate public facilities and services be available within the UGA. The Capital Facilities Element and the Land Use Element, especially UGA expansions, are inextricably linked. *See Bremerton, WSDF* and *Suquamish II*. A UGA expansion cannot be sustained if there is no provision for public facilities and services being adequate and available to support the planned-for development. The Petitioners' request for reconsideration is **GRANTED** and the five UGA expansions related to the noncompliant and invalid Capital Facilities Element are **invalid** for substantially interfering with the fulfillment of Goal 12 – RCW 36.70A.020(12).

III. ORDER

Having reviewed the August 15, 2007 FDO, the Suquamish Motion for Reconsideration, the County's Answer, and the relevant provisions of the GMA and the Board's Rules of Practice and Procedure, prior decisions of the Boards, and having deliberated on the matter, the Board ORDERS:

1. The Suquamish Motion for Reconsideration pertaining to Legal Issues 1 and 2 [Urban Densities and Land Capacity Analysis] is **DENIED.**

2. The Suquamish Motion for Reconsideration pertaining to Legal Issue 3 [Capital Facilities Element] is **GRANTED**.

3. The Board hereby enters a **determination of invalidity** for the *Silverdale* UGA expansion, *Central Kitsap* UGA expansion, *West Bremerton* UGA expansion, *Gorst* UGA expansion and the *Port Orchard* UGA expansion, for substantially interfering with the fulfillment of Goal 12 – RCW 36.70A.020(12). Further, the Board refines its determination of invalidity for the County's Capital Facilities Element, Appendix A, pertaining to sanitary sewers, to be limited to those provisions dealing with those entities (*i.e.* Kitsap County, Port Orchard and Bremerton) that allegedly provide sanitary sewer service to these five UGA expansion areas.

SO ORDERED this 13th day of September, 2007.

[3] It is not clear which entity, if any, would be responsible for providing urban sanitary sewer service to the Gorst area.

Central Puget Sound
Growth Management Hearings Board
800 Fifth Avenue, Suite 2356, Seattle, WA 98104
Tel. (206) 389-2625 Fax (206) 389-2588

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

Edward G. McGuire
Board Member

David O. Earling
Board Member

Margaret A Pageler
Board Member

Note: This order constitutes a final order as specified at WAC 242-02-832(4). Orders on Reconsideration are not subject to additional motions for reconsideration. WAC 242-02-832(3).

Central Puget Sound
Growth Management Hearings Board
800 Fifth Avenue, Suite 2356, Seattle, WA 98104
Tel. (206) 389-2625 Fax (206) 389-2588

CPSGMHB Case No. 07-3-0019c
Suquamish Tribe II, et al.,
v.
Kitsap County
DECLARATION OF SERVICE:

I certify that I mailed a copy of the **Order on Motion for Reconsideration** to the persons and addresses listed hereon, postage prepaid, in a receptacle for United States mail at Seattle, Washington, on **September 13, 2007.**

Signed: Linda Stevens

Pr 360/394-8489 phone 360/598-4293 fax
Suquamish Tribe
mallen@suquamish.nsn.us
Melody Allen
Tribal Attorney
18490 Suquamish Way
P.O. Box 498
Suquamish, WA 98392

Rt 360/337-4992 phone 360/337-7083 fax
skneip@co.kitsap.wa.us
lnickel@co.kitsap.wa.us
Lisa J. Nickel & Shelly E. Kneip
Kitsap Co. Deputy Prosecuting Attnys.
614 Division Street, MS-35A
Port Orchard, WA 98366-4676

Pr 360/ 459-6558 phone
Harless
jlharless@wavecable.com
Jerry Harless
P.O. Box 8572
Port Orchard, WA 98366

Ir-Port Gamble S/Klallam Tribe
206/623-0900 phone 206/623-1432 fax
lauren@rasmussen-law.com
Lauren P. Rasmussen
Attorney at Law
1904 Third Avenue, Suite 1030
Seattle, WA 98101-1170

Pr 206/ 876-3129
KCRP
tdonnelly@silverlink.net
Tom Donnelly
Kitsap Citizens for Responsible Planning
10922 Horizon Lane ESE
Port Orchard, WA 98366

PR 206/264-8600 phone 206/264-9300
KCRP
bricklin@bnd-law.com
David A. Bricklin
Bricklin Newman Dold, LLP
1001 40th Avenue, Suite 3303
Seattle, WA 98154

Appendices 5
CP 260,
AR 76

App. 5
Index 1

INDEX #1

DRAFT

ORDINANCE No. _____-2008

AMENDMENTS TO THE KITSAP COUNTY COMPREHENSIVE PLAN AND THE TITLE 17 ZONING ORDINANCE AS IT RELATES TO AN ORDER OF NON-COMPLIANCE AND PARTIAL INVAILDITY FOR THE TRANSFER OF DEVELOPMENT RIGHTS AND RURAL WOODED INCENTIVE PROGRAMS

BE IT ORDAINED:

Section 1. General Findings. The Kitsap County Board of Commissioners (Board) makes the following findings:

1. The Growth Management Act (GMA), pursuant to RCW 36.70A.130(3), requires Kitsap County to "review, at least every ten years, its designated urban growth area or areas, and the densities permitted within both the incorporated and unincorporated portions of each urban growth area." Additionally, "[t]he county comprehensive plan designating urban growth areas, and the densities permitted in the urban growth areas by the comprehensive plans of the county and each city located within the urban growth areas, shall be revised to accommodate the urban growth projected to occur in the county for the succeeding twenty-year period." (Referred to herein as the "10-Year Update").

2. On December 11, 2006, Kitsap County completed its 10-Year Update to the Comprehensive Plan pursuant to RCW 36.70A.130(3) and enacted Ordinance 367-2006, Ordinance 368-2006, Ordinance 369-2006 and Ordinance 370-2006 adopting the 2006 10-Year Comprehensive Plan Update, the Draft and Final Environmental Impact Statements, and amendments to Kitsap County Code Titles 17, 18, and 21.

3. On February 17, 2006, an appeal was filed with the Central Puget Sound Growth Management Hearings Board (Hearings Board) regarding the 10-Year Update to the Comprehensive Plan.

4. On August 15, 2007, the Hearings Board issued a Final Decision and Order in which it found partial non-compliance with the GMA on certain components of the 2006 Comprehensive Plan Update. The Hearings Board found the following items invalid and remanded those issues back to Kitsap County for resolution:

   a. Capital facilities planning as it relates to future wastewater conveyance systems for the expansion areas of the Silverdale, Central Kitsap, West Bremerton, Gorst and Port Orchard/South Kitsap UGAs;
   b. Rural Wooded Incentive Program as it relates to the Wooded Reserve 40-Year time period for use, as well as maintenance of natural resource industries and the need for a discrete planning document harmonizing GMA goals;
   c. Transfer of Development Rights Program as it relates to the 40-Year period of development right reuse.

The Hearings Board also ordered that Kitsap County must take legislative action to resolve this non-compliance and partial invalidity order no later than February 11, 2008.

5. On January 18, 2008, notice of intent to adopt was submitted to the Department of Community, Trade, and Economic Development.

6. On January 19, 2008, Kitsap County published, with the newspaper of record, a State Environmental Policy Act (SEPA) Determination of Non-Significance, and a notice of intent to adopt and public hearing. The SEPA Responsible Official found that the impacts of the RWIP and TDR program were previously analyzed in the Kitsap County Comprehensive Plan Draft and Final Environmental Impact Statement, dated August and December 2006, which was adopted by reference. A Determination of Non-Significance was issued for the changes in this Ordinance as they are relatively minor and have less potential impact on the environment than those previously adopted. The SEPA notices were also mailed to interested parties of record, agencies, and affected tribes.

7. On February 4, 2008 the SEPA comment and appeal period closed.

8. On February 11, 2008, the Board, following a timely and effective notice, held a public hearing to consider testimony on the proposed amendments.

9. The Board and County staff have evaluated the goals of the GMA pursuant to RCW 36.70A.020 and have prepared a discrete planning document regarding that evaluation. This discrete planning document evaluates the Transfer Development Rights Program and the Rural Wooded Incentive Program, as well as their proposed amendments explaining how the program elements are harmonized with the GMA goals, as required by RCW 36.70A.070(5)(a). This discrete document, incorporated herein as Attachment A, validates that the programs and proposed amendments are consistent with the goals governing the GMA and Kitsap County.

Section 2. BE IT FURTHER ORDAINED, that the Kitsap County Board of Commissioners, based on the foregoing findings, hereby provides amendments to the Kitsap County Comprehensive Plan and as it relates to the Transfer of Development Rights Program as follows:

Kitsap County Comprehensive Plan, Chapter Three, related to the Rural & Resource Chapter is amended as follows:

Section 3.2.8 Transfer of Development Rights

Transfer of Development Rights (TDR) is a market-based tool for conserving rural and resource land or structures determined to have a public benefit, as well as the rural character as defined in the GMA. It complements other incentive-based tools, land or easement acquisition programs, and other regulatory techniques intended to achieve

selected growth management objectives. The use of TDR is authorized by GMA in RCW 36.70A.090, as follows:

A comprehensive plan should provide for innovative land use management techniques, including, but not limited to, density bonuses, cluster housing, planned unit development, and the transfer of development rights.

See Chapter 2, *Land Use,* for policies relating to urban areas of the county, where TDR-receiving sites would be located.

Goal 15. Promote the TDR from land valuable to the public, especially rural and resource areas, to urban areas, in order to preserve the rural environment, rural character, encourage retention of rural resource-based uses, and avoid urban service demands in the rural area.

Policy RL-66 Continue efforts to implement an effective and focused TDR program, as an innovative means to preserve private lands with countywide public benefit, to encourage higher densities in urban ~~appropriate~~ areas, and to reduce residential development capacity in natural resource and rural areas.

Policy RL-68 Support and work actively to facilitate the transfer of rural development rights to:

a. Preserve the rural environment, rural character, encourage retention of resource-based uses, and reduce service demands in the rural area.
b. Provide protection to significant natural resources.
c. Increase the regional open space system.

Policy RL-70 Require private properties qualified as sending sites to provide a protected area of sufficient size to provide public benefit. Priority candidates for sending sites are:

a. All Rural and Resource Lands.
b. Lands contributing to the protection of significant landscape or habitat features.
c. Lands contributing to the protection of environmentally sensitive features including but not limited to aquifer recharge areas.
d. Lands that contribute to the preservation of scenic views or maintaining the rural character or that are suitable for inclusion in and provide important links to the regional open space system.

Section 3. Kitsap County Code Chapter 17.430.010, last amended by Ordinance 367-2006, is amended as follows:

17.430.010 Purpose.

The purpose of this chapter is to establish procedures for the transfer of development rights from one property (sending site) to another (receiving site). Where the applicable Comprehensive Plan policies, designated overlay zone or zoning map designation provide the option for transfer of development rights ("TDRs"), the rights shall be transferred consistent with the requirements of this chapter, the Kitsap County Zoning Map and other requirements of Title 17. The transfer of development rights from one property to another is allowed in order to provide the following: ~~provide flexibility and better use of land and building techniques; to help preserve critical areas, watersheds, and open space; to provide increased equalization of property values between various zones; and to work toward achieving county-wide land use planning goals as determined by the Kitsap County Comprehensive Plan, the objectives of approved sub-area plans and the purpose of County implementing regulations.~~

- Flexibility and efficient use of land and building techniques;
- Preservation of rural character, resource-based industries, critical areas, watersheds, and open space;
- Increased equalization of property values between various zones;
- A mechanism to work toward achieving polices outlined in the Kitsap County Countywide Planning Policies, Kitsap County Comprehensive Plan, applicable sub-area plans and development regulations.

Section 4. Kitsap County Code Chapter 17.430.090, last amended by Ordinance 367-2006, is amended as follows:

17.430.090 Procedures and requirements for certification and approval of transfer of development rights.

A. Certification for Future Sale or Transfer. A TDR that is not associated with a pending development application and that is not proposed for transfer to another parcel at the time of application may be certified administratively by the Department as a Type I decision. Upon satisfactory application for certification of TDRs for future sale or transfer, the number of TDRs on a sending area parcel is certified through the issuance of serially numbered individual certificates for each TDR verified for that parcel. The issuance of TDR certificates is recorded as a notice of title for the subject property(s). All certified TDRs and the value of such rights are deemed to be appurtenant to the sending area parcel until such rights are transferred by a recorded deed of transfer.

B. Intermediate Transfer. Certified TDRs may be approved administratively for transfer to another individual, intermediate buyer, or entity that may hold them for a period of time before the TDRs are transferred to a receiving area parcel. Under this provision, no certified TDR may be transferred to a receiving parcel or used in association with a development project without prior approval under the procedures established in this title and the appropriate Title 16 subdivision regulations, as applicable.

C. Initiation. An application for transfer of development rights (TDR) is initiated as follows:
   1. The process is initiated by submittal of an application for a transfer of development rights permit by the owner of the receiving parcel to the Department.
   2. An application for a TDR permit is accepted only for filing concurrently with an application for the associated development project, site-specific Comprehensive Plan amendment or rezone application pursuant to the requirements of the Kitsap County Code.
   3. Except as allowed by ~~Section 17.505.080(A)~~ Chapter 17.510, the TDR permit application is reviewed concurrently with the proposed development project according to the procedures prescribed in the Kitsap County Code.

D. Submittal Requirements. All requirements for a TDR permit or certification must include the following:
   1. A map showing the location and boundaries of the receiving parcel and sending parcel as applicable;
   2. The acreage of the receiving parcel and sending parcel as applicable;
   3. The zoning and current allowable gross density of the receiving or sending parcels as applicable;
   4. A lot of record confirmation application;
   5. Written and notarized consent to the transfer from all registered owners and lien holders of record of all property subject to the transfer of development rights;
   6. A calculation of the number of units available to be transferred from the sending parcel and the total number of dwelling units requested to be transferred to the receiving parcel as applicable. Any fraction of a unit of 0.50 or greater shall be considered as a whole unit;
   7. Except for purposes of certification or transfer under Section 17.430.090. A, all other submittal requirements for an application for the associated development project pursuant to the requirements of the Kitsap County Code; and
   8. The department may require the submission of other data, information, or drawings as deemed necessary to accomplish the purposes of this chapter.

E. Approval Process and Criteria.
   1. The procedures for approval of a TDR permit shall be those required for the development project, Comprehensive Plan amendment or rezone pursuant to the requirements of this code.
   2. The review authority may approve or approve with conditions the TDR permit upon making the finding that the purposes and requirements of this chapter have been met. If the purposes and requirements have not been met, the permit shall be denied.

F. Requirements for Final Approval. Approval of a TDR permit is finalized after the following actions:
   1. Final approval of the concurrent development project according to the provisions of this code, except as allowed by Chapter 17.510~~Section 17.505.080(A)~~.
   2. Execution and recording of an instrument legally sufficient in both form and content (using a form provided by the county) to effect the

development right transfer. The instrument must include at minimum a legal description of both the sending parcel(s) and receiving parcel(s) and the serial numbers of the certified TDRs being transferred.

3. Recording of a deed restriction, as specified by the county, on all of the sending parcels from which development rights are obtained. A copy of the recorded deed restriction must be submitted to the Department, which certifies the transfer of all development rights on each sending parcel. The deed restriction must be approved as to form by the Department. The document notifies all owners and successors that the transfer and its concomitant restrictions run with the land and are binding on all future owners.
4. For all sending parcels, the deed restriction is sufficient to retire all transferred development rights on the sending parcel ~~for a period of~~ in perpetuity ~~40 years~~.

Section 5. BE IT FURTHER ORDAINED, that the Kitsap County Board of Commissioners, based on the foregoing findings, hereby provides amendments to the Kitsap County Comprehensive Plan as it relates to the Rural Wooded Incentive Program as follows:

Policy RL-1 Consider the following issues when implementing the Rural Wooded Incentive Program:

~~Providing ongoing opportunities for large- and small-scale timber management;~~

1. Preserving rural character through a mix of rural densities, innovative rural planning, and clustered development;
2. Protecting the natural environment and promoting an interconnected system of open space in the rural areas;
3. Providing appropriate buffer widths from property boundaries, existing and potential resource uses, other residential development, rights-of-way and other appropriate factors;
4. Encouraging design that preserves environmentally sensitive areas and harmonizes with topography and landscape features;
5. Encouraging design that maintains or enhances the predominant rural character, scenic views, and open space corridors; and
6. Limiting the use of clustering through limited phases and bi-annual monitoring, such that clustering does not become the predominant pattern of development throughout the rural area.

Policy RL-2 Provide development regulations specifying the base residential density of lands zoned Rural Wooded at one dwelling unit per 20 acres, and allow

limited clustered residential development to be developed at greater density, subject to the following criteria:

1. The portion of the property site identified for clustered residential development may be developed for residential uses provided that clustered residential development shall comprise less than one quarter of the portion of the total site utilized to establish residential base density (or a maximum of 25% of the property(s) gross acreage ~~total site area).~~

2. The portions of the property not within a clustered residential development but utilized to establish base residential density would be placed in Permanent Open Space. ~~a combination of:~~

   ~~a. "Wooded Reserve" where forestry would be permitted and encouraged pursuant to the State Forest Practices Act. Properties in Wooded Reserve may not be developed or subdivided earlier than 40 years.~~

   ~~b. "Permanent Open Space" where an area, not included within a Wooded Reserve,~~ This area is to be permanently reserved as open space through conservation easements or other sufficient mechanisms, although it may be used for the limited forestry, recreational, and community utility uses. Such area is to be dedicated to a public entity or conservation group for future stewardship.

3. The maximum residential density incentive in any development using this program may not exceed one dwelling unit per five acres with 75% of the gross acreage reserved as Permanent Open Space described above. ~~is to be directly related to the ratio of "Permanent Open Space" to "Forest Reserve." The greater incentives are proposed for the developments with the greater proportion of "Permanent Open Space."~~

Section 6. Kitsap County Code Chapter 17.110.535, last amended by Ordinance 367-2006, is amended as follows:

17.110.535 Open space.

"Open space" shall mean land used for outdoor active and passive recreational purposes or for critical area or resource land protection, including structures incidental to these open space uses, including associated buffers, but excluding land occupied by dwellings or impervious surfaces not related to the open space uses and yards required by this title for such dwellings or impervious surfaces. "Open space" is further divided into the following categories:

A. "Common open space" shall mean space that may be used by all occupants of a development complex or, if publicly dedicated, by the general public;

B. "Active recreational open space" shall mean space that is intended to create opportunities for recreational activity. Active recreational open space may be

occupied by recreational facilities such as ball fields, playground equipment, trails (pedestrian, bicycle, equestrian or multi-modal), swimming pools, and game courts or sculptures, fountains, pools, benches or other outdoor furnishings.

C. "Passive open space" shall mean all common open space not meeting the definition of active recreational open space, including but not limited to, critical areas and their associated buffers.

D. "Permanent open space" means an area that is permanently reserved as open space and remains in native vegetation unless approved for forestry, passive recreational or access uses~~; In the Rural Wooded zone, areas within a wooded reserve shall not be considered permanent open space;~~ and

E. "Recreational open space" means an area that shall be improved and maintained for its intended use. Exterior as well as interior areas can constitute recreational open space. Examples of usable recreational space include swimming pools, community buildings, interior gyms, picnic areas, tennis courts, community gardens, improved playgrounds, paths and passive seating areas.

Section 7. Kitsap County Code Chapter 17.110.782, last amended by Ordinance 367-2006, is deleted as follows.

~~17.110.782 Wooded reserve.~~
~~"Wooded reserve" means the area of a Rural Wooded Incentive Program Development restricted to forestry uses for 40 years after the development approval.~~

Section 8. Kitsap County Code Chapter 17.301.080, last amended by Ordinance 367-2006, is amended as follows:

17.301.080 Rural Wooded Incentive Program.

A. Purpose. The purpose of this section is to provide a clustering program for land designated Rural Wooded, which provides incentives to landowners, promotes coordinated open space, and preserves rural character. ~~and encourages the continuation of forestry~~. This chapter encourages development to occur on the most buildable and least environmentally sensitive portions of sites while retaining a substantial portion of each site in restricted open space tracts or easements. Specifically, this chapter is designed:
   1. To produce a development pattern in rural areas that is consistent with rural character and to produce a rural development pattern which encourages variety in design, placement of buildings, more efficient use of the most buildable portion of sites, and retention of the environmentally sensitive and scenic portions of sites as permanent open space;
   2. To encourage the development of cluster housing, which provides greater compatibility with surrounding development and land uses in rural areas by providing larger buffer areas;
   3. To encourage the retention of permanent open space with its natural vegetative cover, which protects continued groundwater recharge and reduces potential

water pollution, flooding, erosion and other drainage-related problems often associated with rural development;

4. ~~To minimize adverse development impacts on the county's productive forestry, mineral and other important resource lands;~~
5. To minimize adverse impacts on the county's environmentally sensitive streams, shorelines, wetlands, fish and wildlife habitat areas and corridors, areas of unique vegetation or wildlife species, steep slopes, and other critical areas;
6. To minimize impervious surfaces and the cost of installing essential public and private capital facilities necessary for a rural infrastructure; and
7. To protect rural natural features and landscape by minimizing tree, vegetation, and soil removal.

B. Applicability. This program applies to all properties within the Rural Wooded zone 20 acres or greater in size. Individual projects using this program may not exceed more than 500 contiguous acres.

1. Phase Description. Land available to use this program will be designated in the Comprehensive Plan in an incremental phased approach consisting of 10 phases. The phased process of this program is described below:
   a. Initial phase shall be limited to a total of five-thousand (5,000) acres of Rural Wooded (RW) land.
   b. All parcel acreage utilized in Rural Wooded Incentive Program developments, including any Permanent Open Space, ~~Wooded Reserve,~~ fresh water bodies, critical areas, and residential acreage, shall be included for calculations toward the remaining available Phase acreage.
   c. Subsequent phases may be released based upon the provisions identified in subsection 17.301.080.B with each limited to a total of five-thousand (5,000) additional acres of Rural Wooded (RW) land.
2. Monitoring.
   a. Monitoring shall be conducted every two years to evaluate the effectiveness of the Rural Wooded Incentive Program. The monitoring shall include:
      (1) Evaluation of the county-wide split between rural and urban dwelling unit development and lot creation. The methodology shall be consistent with that approved in the most recent Buildable Lands Analysis~~Report~~;
      (2) Evaluation of the total acreage within the Rural Wooded Incentive Program that has submitted a complete application, that has received preliminary approval, and that has received final approval as well as the total acreage of Permanent Open Space ~~and Wooded Reserve~~ in these approved developments;
      (3) A transportation analysis of the roadways adjacent to and serving Rural Wooded Incentive Program developments;
      (4) Evaluation of the Rural Wooded (RW) designated lands for the maintenance of qualities of "Rural Character" as defined in this section; and
      (5) Evaluation of development in the Rural Wooded zone in regards to critical area buffers, on-site and adjacent parcel well levels, on-site stream flow levels and increases in project-based impervious surfaces.

b. Releases of the subsequent phases of acreage available for the Rural Wooded Incentive Program shall be determined based upon all the following decision criteria.
   (1) Satisfactory progress toward achieving the Rural/Urban split identified in the County-Wide Planning Policies.
   (2) Final approval for Rural Wooded Incentive Program developments comprising more than 30 percent or 1,500 acres, whichever is greater, of the total Phase acreage.
   (3) Determination of no level of service failures on roadways serving existing Rural Wooded Incentive Program developments.
   (4) Satisfactory maintenance of rural character as defined in subsection 17.301.080.C for Rural Wooded Incentive Program developments.

c. Prior to the release of each subsequent phase, the Department of Community Development shall prepare a "Rural Wooded Incentive Program: Phase Assessment Report." This report shall assess the program's consistency with the purposes outlined in subsection 17.301.080.A and the monitoring requirements of 17.301.080.B. The report shall be submitted to the Board of County Commissioners.

3. Authority.
   a. The Board of County Commissioners shall have the authority to recommend, recommend with conditions, or disapprove release of each subsequent phase of acreage available to Rural Wooded Incentive Program developments, subject to the provisions of this section.
   b. The Board of County Commissioner's decision on a subsequent Rural Wooded Incentive Program phase may be appealed as set forth in Title 21 of this code.
4. Phase Process.
   a. Should an application for a Rural Wooded Incentive Program development be submitted that would exceed the 5,000 acres available for that phase, that application will be rejected, however that applicant will be permitted to amend the application to reduce the number of proposed acres for which development is sought to remain under the 5,000-acre phase limit.
   b. Once 5,000 acres of Rural Wooded Incentive Program developments have received preliminary approval, no future applications will be accepted that exceed the 5,000 acres available for that phase until the subsequent phase is recommended for release subject to the provisions of this Section.
   c. An application may include a request for a subsequent phase to be released concurrent with the Rural Wooded Incentive Program development application; however, that application will not be deemed complete until the subsequent phase is recommended for release subject to the provisions of this section.

C. Approval procedure. Rural Wooded Incentive Program developments shall be approved through a Type III subdivision approval process.

D. Submittal requirements. In addition to the subdivision submittal requirements, each application for a Rural Wooded Incentive Program development shall include the following information to be considered a complete application:

1. The approximate location and general dimensions for all lots, tracts, easements, roadways, and other improvements;
2. The proposed location and acreage of the ~~Wooded Reserve and~~ Permanent Open Space~~, as applicable~~;
3. The approximate location of all existing or proposed pedestrian walkways, landscaped areas and areas to permanently remain in a natural condition;
4. The location of existing and proposed on-site water sources and generalized designation of sewage disposal drainfields and reserve areas;
5. The location and width of proposed roadways and driveway areas for turning and maneuvering of vehicles, and the relationship of circulation to adjacent properties;
6. A general description of any major physiographic or other natural features, such as drainage ways, wetlands, fish and wildlife habitats, geologic hazard areas, steep slopes, shorelines and all other critical areas, as well as a topographic map with contour lines as 5-feet contours;
7. The location and approximate acreage, either on or adjacent to the property(s), designated as natural resource lands and the approximate size (in square feet or acres);
8. The approximate area proposed to be included in paved or other impervious surfaces, ~~Wooded Reserve,~~ Permanent Open Space, and the total area of the site;
9. A description of, and proposed schedule for, any proposed phasing of the project;
10. A general landscape, clearing and buffering plan, drawn to scale and showing: community areas, pathways or other recreation areas, significant landscape features and vegetation on the site, natural vegetation and mature trees to be retained, and the location and conceptual design of landscaped areas and buffers. Detailed site analysis and design information shall not be required for those portions of the site proposed for retention in ~~Wooded Reserves or~~ Permanent Open Space tracts, except for portions of Permanent Open Space tracts which contain proposed recreation facilities;
11. A vicinity sketch to identify the effect of proposed development on surrounding properties and uses;
12. A conceptual storm drainage plan, prepared by a qualified engineer, showing that the project will comply with the Kitsap County storm water standards in effect at the time of the application; and
13. A report from a certified septic system installer, showing that there is a drainfield and a replacement drainfield available for each dwelling unit within each proposed cluster, or if a community or group drainfield is to be used, that there is a site and a replacement site for such community or group drainfield, that will meet the standards of the Washington Department of Health or the Kitsap County Health Department, whichever is more stringent.

E. Development Standards. A Rural Wooded Incentive Program development shall meet the following development standards:

~~1. The base density permitted within a Rural Wooded Incentive Program development shall be one (1) dwelling unit per twenty (20) acres.~~

2. ~~Additional density may be allowed based upon the designation of a portion of the development as "Wooded Reserve" and a portion of the development acreage as "Permanent Open Space".~~ Through the use of the Program, the number of dwelling units permitted in the Rural Wooded zone may be increased to 1 dwelling unit per 5 acres with the dedication of 75% of the property(s) gross acreage in Permanent Open Space. ~~under one of the following ratio alternatives.~~
   ~~a. Alternative One.~~
      ~~(1) The maximum number of dwelling units permitted within a Rural Wooded Incentive Program development shall be one (1) dwelling unit per ten (10) acres; and~~
      ~~(2) A minimum of seventy-five percent (75%) of the Rural Wooded Incentive Program development site must be designated Wooded Reserve for a period of 40 years or greater.~~
   ~~b. Alternative Two.~~
      ~~(1) The maximum number of dwelling units permitted within a Rural Wooded Incentive Program development shall be three (3) dwelling units per twenty (20) acres;~~
      ~~(2) A minimum of fifty percent (50%) of the Rural Wooded Incentive Program development site must designated Wooded Reserve for a period of 40 years or greater; and~~
      ~~(3) A minimum of twenty-five percent (25%) of the Rural Wooded Incentive Program development site shall be designated as Permanent Open Space tract(s).~~
   ~~c. Alternative Three.~~
      ~~(1) The maximum number of dwelling units permitted within a Rural Wooded Incentive Program development utilizing Alternative Three shall be one (1) dwelling unit per five (5) acres.~~
      ~~(2) A minimum of twenty-five percent (25%) of the Rural Wooded Incentive Program development site must be designated Wooded Reserve for a period of 40 years or greater.~~
      ~~(3) A minimum of fifty percent (50%) of the Rural Wooded Incentive Program development site shall designated as Permanent Open Space tract(s).~~
   ~~d. Alternative Four.~~
      ~~(1) The maximum number of dwelling units permitted within a Rural Wooded Incentive Program development utilizing Alternative Four shall be one (1) dwelling units per five (5) acres.~~
      ~~(2) A minimum of seventy-five percent (75%) of the Rural Wooded Incentive Program development site shall be placed in a Permanent Open Space tract(s) where no development or forestry uses will be allowed.~~
3. The maximum number of acres for any single Rural Wooded Incentive Program development application shall be limited to a total of 500 gross acres, including all ~~Wooded Reserve,~~ Permanent Open Space and development acreage.
4. The minimum number of acres for any Rural Wooded Incentive Program development application shall be limited to a minimum of twenty (20) acres,

including all ~~Wooded Reserve,~~ Permanent Open Space and development acreage.

5. Development shall be clustered.
   a. Lot Requirements.
      (1) Front Yard. Minimum front yard setback shall be twenty (20) feet.
      (2) Side and Rear Yard. Minimum side and rear yard setbacks shall be five (5) feet and fifty (50) feet for accessory structures used for agricultural purposes.
      (3) Minimum Lot Size: None
6. Each cluster shall be limited to 25 units or fewer. Clusters within a development should be sited to achieve the following objectives and criteria. The Director may allow exceptions based upon site-specific conditions or when conflicts occur between the criteria.
   a. Optimize protection of critical areas, including wetlands and stream corridors, by keeping clusters and other development away from critical areas to the extent possible;
   b. Optimize preservation and interconnectivity of open space~~, either for continuation of forestry practices or~~ as a permanent preservation of open space;
   c. Avoid development on ridgelines, in the center of open field, or located on other prominent topographical features or scenic elements, visible to adjacent and vicinity properties when other locations are available; and
   d. Minimize topographic alteration.
7. Clusters developed under this program shall provide a 100-foot vegetated buffer from existing public roadways and adjoining properties and a 150-foot buffer between clusters in order to preserve rural character and the aesthetic values of Rural Wooded lands.
   a. Where two Rural Wooded Incentive Program developments abut each other, they are encouraged, where practical, to coordinate ~~required Wooded Reserves and~~ Permanent Open Space to provide interconnectivity;
   b. Buffers are encouraged to incorporate natural features to maximize retention of views and rural character;
   c. Where native vegetation is available to create a sight-obscuring buffer, that vegetation should be preserved to the extent consistent with public safety. Hazard trees may be removed with approval of the Director;
   d. Preservation of trees greater than 10 inches diameter breast height (dbh) is encouraged;
   e. Except where an exception is needed to preserve or create scenic views from county or state roads, internal roads and building locations within a Rural Wooded development should be designed to maximize the extent to which the external buffer obscures the planned development from existing county or state roads; and
   f. Where native vegetation is not available to create a sight-obscuring buffer between the planned development and existing county or state roads, fast-growing native vegetation that will grow to obscure the planned development should be planted within the buffer area.

8. Water provision from new wells drilled within the Rural Wooded designated lands are encouraged to minimize impacts to surface and groundwater resources. For projects proposing new wells, submission of well log records and a report by a Washington State certified hydrogeologist demonstrating utilization of deep aquifers and the lack of continuity with surface water features is encouraged during project review and may be included as a condition of approval.
9. Development shall fully comply with Kitsap County Code Title 19 (Critical Areas). All environmentally sensitive areas such as streams, shorelines, wetlands, fish and wildlife habitat areas and corridors, steep slopes, and other critical areas regulated by Title 19 and/or other applicable county ordinances or policies are encouraged to be located within the ~~Wooded Reserve or~~ Permanent Open Space areas of the development, except to the extent development in those areas is permitted by Title 19.
10. Roads should be designed to comply with adopted Kitsap County Road Standards for rural roads.
    a. Rural Wooded Incentive Program developments shall meet applicable rural concurrency standards;
    b. Roads should have shoulders and grass-lined ditches, rather than curbs, gutters and adjacent sidewalks;
    c. Pedestrian and/or bike paths through a development are encouraged but may be separate from roads and should be narrow and designed to adapt to the natural contours and features of the land; and
    d. To the extent consistent with adopted Kitsap County Road Standards, roads should follow topography, and other natural features, such as major trees or other elements that contribute to rural character.
11. In designating the areas for Permanent Open Space tracts, the following is encouraged:
    a. Preserve areas along saltwater shoreline;
    b. Include open water bodies, creeks, rivers and other natural water features;
    c. Protect scenic views and significant natural features;
    d. Conserve areas of significant terrestrial wildlife, salmonid habitat, and groundwater supply; and
    e. Coordinate with Washington State Department of Fish & Wildlife, Washington State Department of Natural Resources, non-profit agencies, and local Tribes to identify priority conservation areas.
12. ~~A disclosure statement shall be placed on the final plat for all Rural Wooded Incentive Program developments stating that:~~
    ~~"The Wooded Reserve designated parcels or tracts within the *(insert name of plat)* plat is reserved for forestry operations. A variety of forestry activities may occur on the Wooded Reserve that are not compatible with residential development for limited periods. Residents may be subject to inconvenience or discomforts arising from forestry activities, including but not limited to noise, odors, fumes, dust, smoke, the operations of machinery of any kind, timber harvest, brush control, the application by spraying or otherwise of chemical or organic fertilizers, soil amendments, herbicides and pesticides, hours of operation, and other forestry activities.~~

~~So long as such forestry operations are in compliance with the Washington Forest Practices Act, RCW Ch. 76.09, they shall not constitute a nuisance. No perimeter buffers are required within the Wooded Reserve area. Urban levels of service will not be provided by Kitsap County or the developer of this property."~~

F. Uses permitted within the ~~Wooded Reserve and~~ Permanent Open Space.

~~1. Wooded Reserve. This area shall be designated Wooded Reserve for a minimum of forty (40) years. Uses allowed with the Wooded Reserve during this period include:~~

~~a. Forestry, existing agricultural and other resource activities; and~~

~~b. Community wells, well houses, water lines, community drainfields, retention and detention ponds, logging and access roads, water recharge and infiltration facilities, water system appurtenances and biofiltration swales. After this period has expired, the owner may seek additional development on the Wooded Reserve. The density and lot requirements for the Wooded Reserve area shall be consistent with the County Code in effect at the time of future application.~~

~~2. Forestry activities within the Wooded Reserve area must be consistent with an approved Timber Harvest permit. The Wooded Reserve will require an updated Forest Management Plan pursuant to Washington State Department of Revenue "Guidelines for Forest Land Management Plans." Such plan shall be prepared by a certified forester.~~

3. Permanent Open Space tract. A Permanent Open Space tract created under this section may be used for the following resource and passive recreational and roadway uses:
   a. Forestry, existing agricultural or other resource uses;
   b. Trails/pedestrian walkways, beaches, docks, swimming areas or any non-motorized passive recreational facilities;
   c. Logging and access roads; and
   d. Open space uses along a shoreline shall allow for visual and physical access to the shoreline and may include view corridors, community beaches, docks, swimming areas, picnic areas, trails/pedestrian walkways, or any non-motorized passive recreational facilities.

4. Vegetation removal in a Permanent Open Space tract shall be in accordance with an approved open space management plan. Permanent vegetation removal within the Permanent Open Space tract shall not be permitted, except that the following activities shall be allowed where vegetation removal is the minimum necessary to conduct the activity:
   a. Construction of pedestrian or equestrian trails;
   b. Maintenance of existing pastures;
   c. Forestry, existing agricultural or other resource activities;
   d. Removal of dead, diseased or hazardous vegetation, consistent with best management practices;
   e. Fire breaks provided in accordance with fire district requirements; and
   f. A management plan which details the required maintenance and management tasks and responsibilities may be required by the department

for all ~~Wooded Reserve and~~ Permanent Open Space areas. These plans shall include monitoring to assess compliance with the approved plan(s).

G. Ownership of the ~~Wooded Reserve and~~ Permanent Open Space.
   1. Upon recording of a final plat for a Rural Wooded Incentive Program development, Permanent Open Space tracts ~~may be held by the original owner, conveyed to a homeowners association or to the owner or owners of a lot or lots within the subdivision as tenants in common or to a~~ shall be dedicated to a public entity, land trust or other non-profit steward, subject to the restrictions on the future use of the Permanent Open Space described in 17.301.080.F.
   ~~2. Ownership of the Wooded Reserve may, at the discretion of the proponent of the development, remain with the original owner, or may be conveyed to a third party or parties, or may be conveyed to a homeowners association or to the owners of lots within the subdivision, as tenants in common, provided, however, that upon recording of a final plat of a Rural Wooded Incentive Program a restrictive covenant will be recorded in favor of the lot owners and in favor of Kitsap County, restricting future use of the Wooded Reserve as provided in 17.301.080.F.~~

H. Decision Criteria. An application for a Rural Wooded Incentive Program development may be approved or approved with modification if the Examiner finds that all of the following requirements, as established by this section, are met:
   1. The site plan complies with the Development Standards of 17.301.080.E and the other requirements of this chapter.
   2. The proposed development will not require the extension or provision of sanitary sewer service or other urban services to the development.
   3. The proposed development complies with all applicable County Codes.
   4. The development demonstrates preservation of rural character by incorporating the following:
      a. Clustering of development, as applicable;
      b. Preservation of critical areas, resource areas, groundwater recharge, and natural features;
      c. Provision for a coordinated, comprehensive, interconnected, and integrated system of ~~Wooded Reserve and~~ Permanent Open Space areas; and
      d. Placement of structures, circulation systems and utilities that minimize impervious surfaces and the alteration of the land and also responds to physical characteristics of the property.
   5. The development is consistent with the goals and policies of the Kitsap County comprehensive plan.
   6. The development complies with all other applicable codes and policies of the county.
   7. If Rural Wooded Incentive Program development will be phased, each phase of a proposed development must contain adequate infrastructure, open space dedication~~, forest reserve dedication,~~ and all other conditions of the development to stand-alone if no other subsequent phases are developed.
   8. If no reasonable conditions or modifications can be imposed to ensure the application meets the criteria set forth above, then the application shall be denied.

I. Vesting.

1. Approval of a Rural Wooded Incentive Program development shall be effective for five years from the date of final approval.
2. Property owners with an approved Rural Wooded Incentive Program development may receive one five-year extension from the hearing examiner in accordance with the criteria below:
   a. An extension request must be filed in writing with the director at least sixty days prior to the expiration of the approval period;
   b. The applicant must demonstrate to the hearing examiner tangible progress toward completion of the approved Rural Wooded Incentive Program development; and
   c. The applicant must demonstrate to the hearing examiner that there are no significant changes in conditions that would render approval of the extension contrary to the public health, safety or general welfare.
3. The hearing examiner may take any of the following actions upon receipt of a timely extension request:
   a. Approve the extension if no significant issues are presented under the criteria set forth in this section.
   b. Conditionally approve the extension if any significant issues presented are substantially mitigated by minor revisions to the original Rural Wooded Incentive Program development.
   c. Deny the extension if any significant issues presented cannot be substantially mitigated by minor revisions to the Rural Wooded Incentive Program development.

J. Forest Practice Permits. All forest practices in the Permanent Open Space ~~Wooded Reserve~~ shall be conducted pursuant to a Timber Harvest Permit issued by the Department of Natural Resources. The Permanent Open Space ~~Wooded Reserve~~ shall not be deemed to have been converted to another use or likely to convert to urban development under WAC 222-16-050(2). Except to the extent that jurisdiction has been transferred to Kitsap County pursuant to RCW 76.09.240(3), the Department of Natural Resources shall remain the agency responsible for permitting of forest practices in the Rural Wooded area.

K. Taxation Status. Under the Current Use Assessment Program, all property located within the Permanent Open Space or developed portion of the project shall be removed from the Program and all compensating tax paid prior to final approval of the subdivision.

L. Third Party Review. The county may require third party review in cases where additional professional or technical expertise is required.

Section 9. Kitsap County Code Chapter 17.382.110, last amended by Ordinance 405-2007, is amended as follows:

17.382.110 Footnotes for tables. (Density/Dimensions)

A. Where noted on the preceding tables, the following additional provisions apply:
   1. Except for those buildings directly associated with timber production and harvest.
   2. Except for silos and other uninhabited agricultural buildings.

3. Properties within the urban restricted (UR) zone may subdivide at densities below the minimum required for the zone under the following circumstances:
   a. The reduced density provides a greater protection for critical areas or environmentally sensitive areas; and
   b. The intent of the short subdivision or subdivision is to keep the property in the ownership of the immediate family members.
4. If a single lot of record, legally created as of April 19, 1999, is smaller in total square footage than that required under this chapter, or if the dimensions of the lot are less than required, said lot may be occupied by any reasonable use allowed within the zone subject to all other requirements of this chapter. If there are contiguous lots of record held in common ownership, each of the lots legally created as of April 19, 1999, and one or more of the lots is smaller in total square footage than required by this chapter, or the dimensions of one or more of them are less than required, said lots shall be combined to meet the minimum lot requirements for size and dimensions.
5. The Design Standards for the Community of Kingston sets forth policies and regulations for properties within the downtown area of Kingston. All development within this area must be consistent with these standards. A copy of the Design Standards for the Community of Kingston may be referred to on the Kitsap County web page or at the Department of Community Development front counter.
6. Building replacements and remodels shall not create in excess of a total of forty percent impervious surface for lot area or more than the total existing impervious surface area, whichever is greater.
7. Excess area from acreage used to support proposed densities but not devoted to residential lots and public improvements such as streets and alleys shall be permanently dedicated and reserved for community open space, park land, and similar uses. For developments proposing densities no greater than one dwelling unit per five acres, the minimum and maximum lot sizes shall not apply, except that existing dwelling units shall be allocated lot area between 3,500 and 7,500 square feet. New proposals may then proceed using the five-acre lot requirements of Section 17.310.030 for the rural residential (RR) zone.
8. Hotels may be developed with four above-ground floors and up to a height not exceeding fifty feet with approval of the fire marshal and relevant fire district.
9. May be reduced to ten feet for residential uses through the administrative conditional use or PBD process.
10. Uses allowed through the conditional use process shall provide minimum side setbacks of 10 feet and minimum rear setbacks of 20 feet.
11. Any newly created lot within the Suquamish Rural Village shall be subject to Chapter 16.48 of this code, Short Subdivisions, and must meet the lot requirements below:
    a. Lot Requirements.
       Minimum Lot Size: 21,780 square feet
       Minimum Lot Width: 100 feet
       Minimum Lot Depth: 100 feet
    b. Setbacks.

Front: 20 feet
Side: 5 feet
Rear: 5 feet

12. Nonconforming Lots in Single Ownership. If a single lot of record, legally created before the adoption of the Manchester Community Plan, is less than 8,712 square feet in size or does not meet the dimensional requirements of its zone, the lot may be occupied by any use allowed within the zone subject to all other requirements of this chapter.
    Nonconforming Lots in Common Ownership. Contiguous lots of record held in common ownership, each lot legally created before adoption of the Manchester Community Plan, must be combined to meet the minimum lot requirements of its zone if one or more of the lots is less than 8,712 square feet in size or does not meet the dimensional requirements of its zone and, at the time of adoption of the Manchester Community Plan (March 18, 2002), either 1) a residential structure encumbered more than one of the contiguous lots or 2) two or more of the contiguous lots were vacant. If one or more of the lots is sold or otherwise removed from common ownership after the adoption of the Manchester Community Plan, it will not be considered to meet the minimum lot requirements for non-conforming lots in single ownership. Property with two contiguous lots legally created before adoption of the Manchester Community Plan with a residential structure entirely on one lot may develop the second lot consistent with applicable zoning.
13. Residential structures within the MVC zone may not exceed 28 feet. Commercial or mixed-use structures within the MVC zone may not exceed two stories, excluding completely underground structures used solely for parking.
14. Within the view protection overlay, the maximum height shall be 28 feet. Height shall be measured from the average elevation of the property's buildable area to the structure's highest point. Buildable area is considered all portions of the property except wetlands and/or geologically hazardous areas. Properties within the view protection overlay zone may build as high as 35 feet under the following circumstances:
    a. There is no existing view of downtown Seattle, the Cascade Mountains, Mt. Rainier or the Puget Sound from the subject property or any adjacent property; or
    b. The owners of all adjacent properties approve the building height prior to building permit issuance; or
    c. It can be explicitly shown that the structure will not cause the blockage of existing views from any of the adjacent properties.
15. Clustering residential development is encouraged in all development. When clustering development, if a property owner designates 40% of the gross acreage as naturally vegetated open space, he or she may create one additional lot for every five lots clustered. The additional lot may not reduce the naturally vegetated open space to an amount less than 40% of the gross acreage of the development.
16. All properties within the Manchester Village must also meet the requirements of the Storm Water Management Ordinance, Chapters 12.04 through 12.32 of this

code. The use of pervious materials and other new technologies may be used in the construction of these areas and structures to reduce the impervious surface calculation.

17. A greater height may be allowed as set forth below and in accordance with the procedures in Title 21 of this code. Such approval must be consistent with the recommendations of the fire marshal/fire district and compatible with surrounding uses and zones. Such approval shall result in a decrease in building coverage, an increase in public amenities, and/or a more creative or efficient use of land. The maximum building height approved by the director shall not exceed:
    a. In the UM, NC, and P zones: 45 feet.
    b. In the UH, HTC, and RC zones: 65 feet.
    c. In the BP, BC, and IND zones: 50 feet.
    d. In the Mixed Use zone:
        i. Within Silverdale, the maximum height shall be consistent with the design guidelines;
        ii. Along the Highway 303 corridor, the maximum height shall be 65 feet;
        iii. Along Perry and National Avenues, the maximum height shall be 45 feet.
18. Density based on net acreage of the property(s) after the removal of critical areas.
19. The maximum number of residential units permitted in the South Kitsap UGA/ULID #6 Sub-Area Plan is 4,172 until such time as a further population allocation is made to the sub-area. All residential development within the sub-area is subject to this density limitation. To ensure that the density limit for the sub-area is not exceeded, the director shall use the county's land information system (LIS) to monitor the number of dwelling units remaining and available for development within the sub-area.
20. The minimum lot width within the ULID #6 Sub-Area shall be 40 feet.
21. 20 feet when abutting a residential zone.
22. Maximum height shall be 30 feet when located within the 200 foot shoreline area..
23. The minimum site setback shall be 75 feet for any yard abutting a residential zone, unless, based upon a site-specific determination, berming and landscaping approved by the director is provided that will effectively screen and buffer the business park activities from the residential zone that it abuts; in which case, the minimum site setback may be reduced to less than 75 feet but no less than 25 feet. In all other cases, minimum site setbacks shall be 20 feet.
24. An individual structure intended for future mixed commercial and residential uses may initially be used exclusively for residential use if designed and constructed for eventual conversion to mixed commercial and residential use once the Urban Village Center or Urban Town Center matures.
25. The Bethel Road Corridor Development Plan sets forth policies and regulations for development within the Highway Tourist Commercial Zone located along the Bethel Corridor in South Kitsap from SE Ives Mill Road to the Port Orchard City limits. Development within the Bethel Road Corridor Highway Tourist Commercial Zone shall be conducted in a manner consistent with the policies and regulations of the Land Use Element of the Bethel Road Corridor Development Plan.

26. No service road, spur track, or hard stand shall be permitted within required yard areas that abuts a residential zone.
27. Wherever an industrial zone abuts a residential zone, a fifty-foot landscaped setback area shall be provided with plantings, as approved by the director. No structures, open storage, or parking shall be allowed. The plan for landscaping may be approved only if the landscaping is designed to preserve the quality of the residential zone. The minimum lot setback shall be 50 feet for any yard abutting a residential zone unless, based upon a site-specific determination, berming and landscaping or other screening approved by the director is provided, which will effectively screen and buffer the industrial activities from the residential zone which it abuts, in which case the minimum setback may be 25 feet. These setbacks are the minimum setbacks required and may be increased by the director to ensure adequate buffering and compatibility between uses.
28. Unless part of an approved zero-lot line development.
29. 100-foot setback required for single-family buildings abutting FRL or RW zones.
30. No minimum lot size if property is used only for extraction.
31. 330 feet if activity includes any uses in 17.380.020.
32. Existing lots developed with existing single-family residences are permitted to be maintained, renovated and structurally altered. Additions to existing residential structures in order to provide commercial uses are also permitted regardless of density.
33. All development within the Silverdale Downtown Design District boundary must be consistent with the Silverdale Downtown Design Guidelines.
34. Development abutting a street for which a standard has been established by the Kitsap County Arterial Plan shall provide a special setback from the centerline of said street or a distance adequate to accommodate one-half of the right-of-way standard established by the arterial plans for the street. The building setback required by the underlying zone shall be in addition to the special setback and shall be measured from the edge of the special setback line. The special setback area shall be treated as additional required yard area and reserved for future street widening purposes.
35. Maximum density, ~~and~~ smaller lot sizes and reduced setbacks may be allowed based upon the designation of ~~a portion of the development as "wooded reserve" and~~ a portion of the development acreage as "permanent open space" through the Rural Wooded Incentive Program, ~~under one of the allowed alternatives in Chapter~~ Section 17.301.080.
36. For standards applicable to master planned industrial developments and approved industrial parks, see Section 17.370.090.
37. When an airport zone abuts a residential zone, there shall be a minimum of five hundred feet from the end of any runway and the residential zone. Adjacent to airports, the director may impose height restrictions and/or other land use controls, as deemed essential to prevent the establishment of air space obstructions in air approaches to protect the public health, safety and welfare consistent with Federal Aviation Regulations (FAR) Part 77.

38. Cornices, canopies, eaves, belt courses, sills or other similar architectural features, or fireplaces may extend up to twenty-four inches into any required yard area. For setbacks along shorelines, see Chapter 17.450.
39. Unless otherwise stated in this title, if a lot of record, which was legally created as of May 10, 1999, is smaller in total square footage than that required within the zone, or if the dimensions of the lot are less than that required within the zone, said lot may be occupied by any use allowed within that zone subject to all other requirements of the zone. Unless specifically stated within this title, where two or more contiguous lots which are nonconforming to the lot size or dimensions of the zone and are held in common ownership, said lots shall be considered separate legal nonconforming lots and each may be occupied by any use permitted within the zone subject to all other requirements of the zone. If a lot of record was lawfully occupied by two or more single-family residences (excluding accessory dwellings) as of May 10, 1999, the owner of such a lot may apply for a short plat approval in order to permit the segregated sale of such residences, even though some or all of the resulting new lots will have lot areas or dimensions less than required for the zone in which they are located. All other provisions of the Short Subdivision Ordinance (Chapter 16.48 of this code) shall apply to the application.
40. Height limitations set forth elsewhere in this title shall not apply to the following: barns, silos, or other farm buildings and structures, provided they are not less than fifty feet from every lot line; chimneys, spires on places of worship, belfries, cupolas, domes, smokestacks, flagpoles, grain elevators, cooling towers, solar energy systems, monuments, fire house towers, masts, aerials, elevator shafts, and other similar projections, and outdoor theater screens, provided said screens contain no advertising matter other than the name of the theater. The proponent seeking exception to the height limitation shall certify that the object being considered under this provision will not shade an existing solar energy system which, by the determination of the director, contributes substantially to the space or water-heating requirements of a building.
41. The following exceptions apply to front yard requirements:
    a. If there are dwellings on both abutting lots with front yards less than the required depth for the zone, the front yard for the lot need not exceed the average front yard of the abutting dwellings.
    b. If there is a dwelling on one abutting lot with a front yard less than the required depth for the zone, the front yard need not exceed a depth of half-way between the depth of the front yard on the abutting lot and the required front yard depth.
    c. If a modification to the front-yard requirement is necessary in order to site dwellings in a manner that maximizes solar access, the director may modify the requirement.
    d. On lots with multiple front yards, the front yard setback(s) in which the lot does not receive access may be modified by the director. Based upon topography, critical areas or other site constraints, the director may reduce these front yard setbacks to a minimum of twenty feet for properties requiring fifty feet and five feet for properties requiring twenty feet. The director may not

modify front yard setbacks from county arterials or collectors. Such reductions shall not have an adverse impact to surrounding properties.

42. The following exceptions apply to historic lots:
    a. Building setback lines that do not meet the requirements of this title but were legally established prior to the adoption of this title shall be considered the building line for alterations, remodels, and accessory structures on the lot or parcel, providing that no structure or portion of such addition may further project beyond the established building line.
    b. Any single-family residential lot of record as defined in Chapter 17.110 that has a smaller width or lot depth than that required by this title, or is less than one acre, may use that residential zoning classification that most closely corresponds to the dimension or dimensions of the lot of record, for the purpose of establishing setbacks from the property lines.
43. Any structure otherwise permitted under this section may be placed on a lot or parcel within a required yard area, if the director finds that such a location is necessary because existing sewer systems or roadways make compliance with the yard-area requirements of this title impossible without substantial changes to the site.
44. Outside of the Silverdale Sub-Area, densities required only with mixed use development.

Section 10. This ordinance is in response to an order filed with the Central Puget Sound Growth Management Hearings Board and is enacted as an exception to the schedule set forth in RCW 36.70A.130 and Kitsap County Code Chapter 21.08.

Section 11. Should any amendment to Comprehensive Plan and Zoning Code that was passed by the Board during its deliberations on February 11, 2008 be inadvertently left out upon publication or codification, the explicit action of the Board as discussed and passed shall prevail upon subsequent review and verification by the Board.

Effective Date: This Ordinance shall take effect immediately.

Severability: If any sentence, section, provision, or clause of this ordinance or its application to any person, entity or circumstance is for any reason held invalid or unconstitutional, the remainder of the ordinance, or the application of the provision to other persons, entities, or circumstances is not affected.

DATED this _____ day of _____, 2008.

KITSAP COUNTY BOARD OF COMMISSIONERS

_____
Steve Bauer, Chair

_____
Jan Angel, Commissioner

ATTEST:

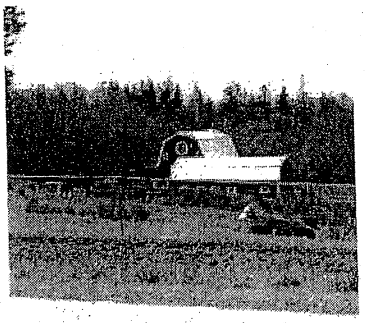
_____
Opal Robertson
Clerk of the Board

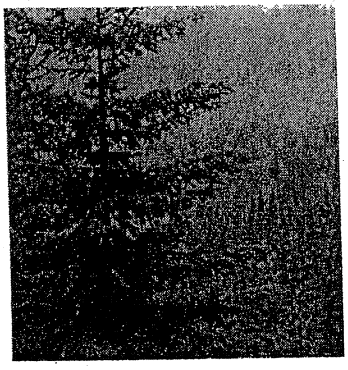
_____
Josh Brown, Commissioner

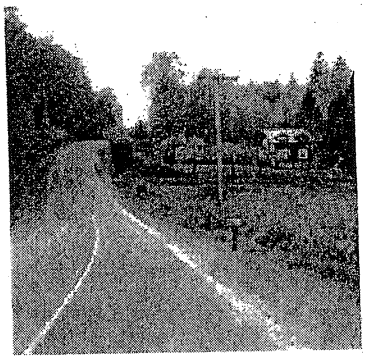
Approved as to Form:

_____
Lisa J. Nickel
Deputy Prosecuting Attorney

Attachment A







Rural Wooded Incentive & Transfer of Development Rights Programs

Growth Management Act Evaluation

Kitsap County Special Projects - January 2008

I. Introduction

As part of the 2006 10-Year Comprehensive Plan Update, the County adopted the Rural Wooded Incentive and the Transfer of Development Rights Programs as part the Rural Element of Comprehensive Plan. Subsequently, these programs were appealed to the Central Puget Sound Growth Management Hearings Board, which rendered a decision in August 2007. *Suquamish Tribe et al. v. Kitsap County,* CPSGMHB No. 07-3-0019c, FDO (8/15/07). The Hearings Board order determined the programs were partially invalid and non-compliant with the Growth Management Act (GMA). The Hearings Board decision directed the County to resolve the following:

a. Rural Wooded Incentive Program as it relates to the Wooded Reserve 40-Year time period for use, as well as reconciliation of natural resource industries and the need for a discrete planning document harmonizing GMA goals;

b. Transfer of Development Rights Program as it relates to the 40-Year period of development right reuse.

Additionally, GMA requires cities and counties to balance the goals of GMA in the planning efforts. The GMA goals are not prioritized and, in some circumstances, may appear to conflict. Thus, the Hearings Boards have noted that a jurisdiction is not required to reconcile all these seemingly inconsistent requirements by focusing totally on one requirement. For example, it may be impossible to meet the goal of preserving existing housing to the exclusion of other requirements, such as encouraging more affordable housing. Rather, jurisdictions must reconcile the Act's seemingly contradictory requirements by applying and necessarily balancing them (*See West Seattle Defense Fund v. City of Seattle,* CPSGMHB 94-3-0016, Final Decision & Order at 30 (4/4/95)).

As such, the purpose of this document is to demonstrate how these programs and their proposed amendments balance and achieve GMA goals and Rural Element provisions. Proposed amendments to these programs are noted in the adopting ordinance.

Attached to this document are the following exhibits:

- Exhibit A – TDR Sending & Receiving Areas Maps
- Exhibit B – Rural Wooded Lands Map
- Exhibit C – Forest Resource, Habitat Evaluation & Salmon Refugia Maps

II. Growth Management Act

The GMA establishes guidance for Kitsap County's Comprehensive Plan Rural Element. Both the Rural Wooded Incentive and Transfer of Development Rights

Programs are included in the Rural Element of the Comprehensive Plan and as such the most pertinent portions of the statue are noted below.

Legislative Findings: Rural Lands

In 2002, the state legislature added specific findings regarding rural lands. RCW 36.70A.011 states:

> The legislature finds that this chapter is intended to recognize the importance of rural lands and rural character to Washington's economy, its people, and its environment, while respecting regional differences. Rural lands and rural-based economies enhance the economic desirability of the state, help to preserve traditional economic activities, and contribute to the state's overall quality of life.
>
> The legislature finds that to retain and enhance the job base in rural areas, rural counties must have flexibility to create opportunities for business development. Further, the legislature finds that rural counties must have the flexibility to retain existing businesses and allow them to expand. The legislature recognizes that not all business developments in rural counties require an urban level of services; and that many businesses in rural areas fit within the definition of rural character identified by the local planning unit.
>
> Finally, the legislature finds that in defining its rural element under RCW 36.70A.070(5), a county should foster land use patterns and develop a local vision of rural character that will: Help preserve rural-based economies and traditional rural lifestyles; encourage the economic prosperity of rural residents; foster opportunities for small-scale, rural-based employment and self-employment; permit the operation of rural-based agricultural, commercial, recreational, and tourist businesses that are consistent with existing and planned land use patterns; be compatible with the use of the land by wildlife and for fish and wildlife habitat; foster the private stewardship of the land and preservation of open space; and enhance the rural sense of community and quality of life.

GMA Goals

The GMA, 36.70.020 RCW establishes goals to guide the development and adoption of comprehensive plans and development regulations for Kitsap County. The following goals are not listed in order of priority and intended to be used exclusively for the purpose of guiding the development of comprehensive plans and development regulations.

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

2. **Reduce sprawl.** Reduce the inappropriate conversion of undeveloped land into sprawling, low-density development.

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

4. **Housing.** Encourage the availability of affordable housing to all economic segments of the population of this state, promote a variety of residential densities and housing types, and encourage preservation of existing housing stock.

5. **Economic development.** Encourage economic development throughout the state that is consistent with adopted comprehensive plans, promote economic opportunity for all citizens of this state, especially for unemployed and for disadvantaged persons, promote the retention and expansion of existing businesses and recruitment of new businesses, recognize regional differences impacting economic development opportunities, and encourage growth in areas experiencing insufficient economic growth, all within the capacities of the state's natural resources, public services, and public facilities.

6. **Property rights.** Private property shall not be taken for public use without just compensation having been made. The property rights of landowners shall be protected from arbitrary and discriminatory actions.

7. **Permits.** Applications for both state and local government permits should be processed in a timely and fair manner to ensure predictability.

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

9. **Open space and recreation.** Retain open space, enhance recreational opportunities, conserve fish and wildlife habitat, increase access to natural resource lands and water, and develop parks and recreation facilities.

10. **Environment.** Protect the environment and enhance the state's high quality of life, including air and water quality, and the availability of water.

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

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

13. **Historic preservation**. Identify and encourage the preservation of lands, sites, and structures that have historical or archaeological significance.

Additionally, RCW 36.70A.480 incorporates the goals and policies of the shoreline management act as stated in RCW 90.58.020. RCW 90.58.020 sets out the generalized legislative policies to protect shorelines through shoreline management planning but does not enumerate discrete goals and policies. As this is a programmatic document, and not site-specific, the goals and policies of the SMA may not necessarily apply on a programmatic basis. Nevertheless, those goals and policies are addressed herein through the discussion of goals 9, 10 and 13.

GMA Rural Definitions RCW 36.70A.030

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

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

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

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

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

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

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

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

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

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

GMA Rural Element Applicable Mandates RCW 36.70.070

(5) Rural element. Counties shall include a rural element including lands that are not designated for urban growth, agriculture, forest, or mineral resources. The following provisions shall apply to the rural element:

(a) Growth management act goals and local circumstances. Because circumstances vary from county to county, in establishing patterns of rural densities and uses, a county may consider local circumstances, but shall develop a written record explaining how the rural element harmonizes the planning goals in RCW 36.70A.020 and meets the requirements of this chapter.

(b) Rural development. The rural element shall permit rural development, forestry, and agriculture in rural areas. The rural element shall provide for a variety of rural densities, uses, essential public facilities, and rural governmental services needed to serve the permitted densities and uses. To achieve a variety of rural densities and uses, counties may provide for clustering, density transfer, design guidelines, conservation easements, and other innovative techniques that will accommodate appropriate rural densities and uses that are not characterized by urban growth and that are consistent with rural character.

(c) Measures governing rural development. The rural element shall include measures that apply to rural development and protect the rural character of the area, as established by the county, by:

(i) Containing or otherwise controlling rural development;
(ii) Assuring visual compatibility of rural development with the surrounding rural area;
(iii) Reducing the inappropriate conversion of undeveloped land into sprawling, low-density development in the rural area;
(iv) Protecting critical areas, as provided in RCW 36.70A.060, and surface water and groundwater resources; and
(v) Protecting against conflicts with the use of agricultural, forest, and mineral resource lands designated under RCW 36.70A.170.

III. Program GMA Evaluation

Section three is intended to evaluate the Transfer of Development Rights and Rural Wooded Incentive Programs explaining how these programs of the Rural Element of Comprehensive Plan harmonize the 13 GMA goals.

Transfer of Development Rights Program

Kitsap County's Transfer of Development Rights (TDR) program is a market-based land use incentive program. The program provides opportunities for private landowners to achieve economic return through the sale of development rights to properties located within an Urban Growth Area (UGA). As shown in Exhibit A, all rural and resource lands designated in the Comprehensive Plan may have development potential as established in the Kitsap County Comprehensive Plan and Title 17 Zoning Ordinance. These lands are considered sending sites. All urban areas designated by the Comprehensive Plan are considered receiving areas of these additional development credits.

The proposed amendment to the TDR program replaces the deed restriction for transferred development rights from 40-years to in perpetuity or forever. This document evaluates how the TDR program and proposed amendments is harmonized with the GMA Goals and applicable mandates.

1. **Urban growth.**
   The TDR program and proposed revisions encourage development in urban areas where adequate public facilities and services exist or can be provided in an efficient manner. Essentially, the TDR program is removing potential development capacity in rural areas and locating it in urban areas where urban level of services can be provided. The TDR program also requires any site-specific comprehensive plan amendment or rezone to acquire development credits from rural and resource lands.

   As such, this program and the proposed amendments further achieve this goal by preserving rural character as defined in RCW 36.70A.030 (15) and not promoting urban growth or low-density sprawl in rural and resource areas.

2. **Reduce sprawl.**
   As noted above, the TDR program and the proposed amendments eliminate the inappropriate conversion of undeveloped land into sprawling, low-density development by transferring development potential into urban areas at urban densities. The purpose of the County's TDR program and proposed amendments is to direct growth pressures away from rural and resource lands into urban areas, while equaling property values. This program may be used to remove the development rights from substandard lots that were created prior to the enactment of the GMA and reduce development of those pre-existing parcels.

3. **Transportation.**

The County's TDR program and proposed amendments is to direct growth pressures away from rural and resource lands into urban areas where adequate public facilities and services exist or can be provided in an efficient manner. This program of directing rural capacity and growth in urban areas encourages efficient multimodal transportation systems where higher urban densities exist.

4. **Housing.**
The Kitsap County Comprehensive Plan provides a wide range of rural and urban densities and housing types. Specifically, the TDR program is a voluntary program in which additional housing opportunities are directed from rural areas with lower level of services to urban areas where higher level of services exist with the potential for more affordable housing choices.

5. **Economic development.**
The TDR program allows opportunity for rural landowners to receive financial compensation without developing or selling their land. In exchange, the public receives preservation of open space, rural character, and natural resource based industries as shown in Exhibits A and C. Additionally, the County does not set the selling price of the development credit, but rather utilizes a well-established market and industry professionals that can work with property owners on the development credit price.

   Additionally, urban properties receive additional economic opportunities for upzones in urban areas where public services are or will be available for development.

6. **Property rights.**
As noted in description of Goal 5 and shown in Exhibits A and C, the program allows rural property owners to receive financial compensation without developing or selling their land. In exchange, the public receives preservation of open space, rural character, and natural resource based industries. Additionally, urban properties receive additional economic opportunities for upzones in urban areas where public services are or will be available for development. As such, selling and purchasing of TDRs is a voluntary program.

7. **Permits.**
Kitsap County Title 21 Land Use Procedures provides timeframes in which permits should be processed to ensure a timely and fair manner and consistent with state law.

8. **Natural resource industries.**
Through implementation of the Comprehensive Plan Policy RL-70 and Kitsap County Code 17.430, the proposed amendments provide mechanisms for the County and property owners to maintain and enhance natural resource-based industries, including productive timber, agricultural, and fisheries industries. The

program encourages the conservation of productive forest lands, productive agricultural lands, and discourages incompatible uses.

9. **Open space and recreation.**
   Through implementation of the Comprehensive Plan Policy RL-70 and Kitsap County Code 17.430, the proposed amendments further identify rural properties that contain open space, potential recreational opportunities, preservation of fish and wildlife habitat as appropriate sending areas of development capacity. Exhibits A and C show areas that could utilize the TDR program, as well as areas that have exceptional fish and wildlife and open space opportunities.

10. **Environment.**
    Through implementation of the Comprehensive Plan Policy RL-70 and Kitsap County Code 17.430, the proposed amendments provide additional incentive-based protection on all aspects of the natural environment by directing growth pressures from the rural areas in perpetuity and directing growth in urban areas.

11. **Citizen participation and coordination.**
    Through the 2006 10-Year Comprehensive Plan Update, as well as through the public process for the proposed amendments, the County has ensured that citizens have an opportunity to be involved, and has ensured coordination between communities and jurisdictions to reconcile conflicts. Appendix A of the 2006 Final Environmental Impact Statement of the Comprehensive Plan and the adopting ordinance of the proposed amendments provides a summary of opportunity for citizen and local jurisdictional involvement.

12. **Public facilities and services.**
    The TDR program provides incentives for encouraging urban growth in UGAs where public facilities and services are or will be available to serve the increase in development. The program also directs growth pressures away from rural and resource lands to locations of compact urban development can occur to increase efficiency of public facilities and services.

13. **Historic preservation**.
    The TDR program and the proposed development deed restriction of perpetuity ensures that the preservation of lands, sites, and structures located within rural and resources lands will be secured forever and for future generations to enjoy.

TDR Conclusion

The TDR program, as amended, promotes virtually every GMA goal to some degree or another. The TDR program promotes urban growth; reduces the potential for urban sprawl; encourages growth where transportation and other public services are available; provides some degree of economic development opportunities; preserves property rights; ensures timely permit processing; protects and preserves natural resource industries, open space, recreational land, historic sites, and the environment;

and ensures adequate public participation. The TDR program harmonizes well with the GMA goals.

Rural Wooded Incentive Program

As authorized under GMA 36.70A.070(5)(b), and RCW 36.70A.090, the Rural Wooded Incentive Program(RWIP) provides a rural clustering program for land designated and zoned Rural Wooded. Rural Wooded lands are not classified as Forest lands of long-term commercial significance, but often include timber-related activities on the properties. This program and proposed amendments provides incentives for landowners, while promoting coordinated open space that would be permanent and providing opportunities to continue timber management techniques consistent with rural environments. As such, the Rural Wooded Incentive Program is appropriate in light of the local circumstances found within the rural areas of Kitsap County.

As shown in Exhibit B, there are 49,501 acres of eligible land (excluding rights-of-way) on 1,381 parcels. The average lot size is 14.1 acres with 231 dwelling units in the Rural Wooded area. The Rural Wooded Incentive Program, however, can only apply to 5,000 acres that are 20 acres or greater in size. Monitoring of the program is required before any additional acres are made available for use in the program. Individual projects using this program may not exceed 500 contiguous acres. These limitations as well as others included in this voluntary program are consistent the intent of clustered housing and the maintenance of rural character. The 75% open space requirement is equivalent to the density bonus allowed by the program.

1. **Urban growth.**
   The incentive program provides opportunity for a variety of rural densities as required under the GMA. It also provides for a development pattern in rural areas that is consistent with rural character and encourages rural character design. The program will provide innovative clustered housing techniques that are a more efficient use of Kitsap's rural landscape. Public services provided to these eligible areas are consistent with GMA definitions of rural services and rural development noted in Section Two of this document. Development regulations require the review authority to ensure that no urban services are required for a proposal using the program.

   Additionally, the base density of the Rural Wooded zone remains 1 d.u./20 acres, with a voluntary option to do a maximum of 1 d.u./5 acres if the development site provides clustered housing with 75% permanent open space. Also included in the program is monitoring through the County's Buildable Lands Analysis to evaluate in light of urban and rural growth ratios.

2. **Reduce sprawl.**
   As noted in description of Goal 1, the incentive program provides opportunity for a development pattern in rural areas that is consistent with rural character. It also provides rural densities that result in a development pattern that encourages

variety in rural character design, innovative clustered housing techniques that are more efficient use of Kitsap's rural landscape.

Additionally, the base density of the Rural Wooded zone remains 1 d.u./20 acres, with a voluntary option to do a maximum of 1 d.u./5 acres if the development site provides clustered housing and permanent open space. Even with the bonus density, rural densities are maintained, but with the added amenity of expansive permanent open space. Also included in the program is monitoring through the County's Buildable Lands Analysis to evaluate in light of urban and rural growth ratios.

3. **Transportation.**
The purpose of the incentive program is to minimize impervious surfaces and associated cost by clustering homes in a more efficient manner than traditional rural developed plats and consistent with the rural character and development GMA definitions noted in Section Two of this document. Development regulations require that road systems serving such developments meet applicable rural concurrency standards, should be narrow and designed to adapt to the natural contours and features of the land, and should have rural road characteristics, such as shoulders and grass-lined ditches. Finally, the phasing process ensures that there is no level of service failures on roads serving existing RWIP development. If such a failure is identified, the next phase of the program cannot be implemented.

4. **Housing.**
The clustered housing allowed by the program will reduce the cost of rural infrastructure, which is generally spread over the unit cost for housing. The ability for property owners to develop in uncoordinated 20-acre tracts without a formal land use subdivision review (as allowed under state law) will further increase the costs of roadways and their associated stormwater mitigation. Providing an alternative to that type of development may help keep development costs down. These issues, combined with base higher cost of 20-acre parcels, may affect the County's ability to provide workforce housing county-wide.

5. **Economic development.**
The program allows additional housing options for employees of the rural industrial and commercial business located in North and Central Kitsap. These housing options, while not intended to draw from the County's urban areas, will provide shorter commutes for employees traveling to these existing rural businesses, increasing their long-term viability. Providing expansive and inter-connected tracts of open spaces with trail infrastructure may encourage tourism to some of these areas.

6. **Property rights.**
The Rural Wooded Incentive Program provides Rural Wooded property owners a voluntary program in which a property owner can receive a density bonus up to (1 d.u./5 acres) if dedicating 75% of the development site for permanent open space.

Thus, the program helps ensure an economic return on some development and promotes individual property rights. Because the program is voluntary, it also preserves existing property rights.

7. **Permits.**
Kitsap County Title 21 Land Use Procedures provides timeframes in which permits should be processed to ensure a timely and fair manner and consistent with state law.

8. **Natural resource industries.**
As shown in Exhibit C, the incentive program, along with the proposed amendments maintains and enhances natural resource-based industries by allowing innovative timber techniques within open space. While these are not considered natural resource lands, it does preserve some smaller-scale natural resource based industries that would not be economically viable without the program.

9. **Open space and recreation.**
The incentive program, along with the proposed amendments provides a minimum of seventy-five percent (75%) of the Rural Wooded Incentive Program development site to be placed in a permanent open space tract(s), owned by a public entity where uses are limited to passive recreation, forestry or other timber management techniques. The program encourages the inter-connectivity of open space tracts and may include trails that connect the tracts over broader areas of land. This clustering and open space provisions ensure that there are larger open areas and recreational opportunities available in the rural areas.

10. **Environment.**
As shown in Exhibit C, the incentive program would optimize protection of critical areas by containing housing clusters and other development away from critical areas; preserving significant trees; optimizing the preservation and interconnectivity of open space; avoiding development on ridgelines, the centers of open field, or other prominent topographical features or scenic elements; and minimizing topographic alteration. The development regulations encourage the retention of open space in areas that will preserve saltwater shorelines; the inclusion of all water bodies within the open space; and the conservation of wildlife habitat. The development regulations also impose rural standards, such as road, water and sewer services. All of these measures further implement this GMA goal.

Additionally, the clusters developed under this program must provide a 100-foot vegetated buffer from existing public roadways and adjoining properties and a 150-foot buffer between clusters in order to preserve rural character and the aesthetic values of Rural Wooded lands.

11. Citizen participation and coordination.

The public process for this program extends over many years. Through adoption of a valid Comprehensive Plan in 1998, the proposed 2003 and the 2006 10-Year Comprehensive Plan Update, as well as through the public process for the proposed amendments, the County has ensured that citizens have an opportunity to be involved, and has ensured coordination between communities and jurisdictions to reconcile conflicts. As the CPSGMHB noted in 2004, "There does not appear to be any dispute regarding need for some type of an incentive program in light of the local circumstances found within these rural areas of Kitsap County." (*Bremerton et al. v. Kitsap County ("Bremerton II")*, CPSGMHB No. 04-3-0009c, FDO (8/9/04)). Appendix A of the 2006 Final Environmental Impact Statement of the Comprehensive Plan and the adopting ordinance of the proposed amendments provides a recent summary of opportunities for citizen and local jurisdictional involvement.

12. Public facilities and services.

Rural public facilities and services necessary to support development within the incentive program will be required and adequate to serve the development. Public services and facilities provided to lands eligible for the incentive program areas are consistent with GMA definitions of rural services and rural development noted in Section Two of this document.

13. Historic preservation.

Properties using the program will be required to receive land use subdivision approval with its associated SEPA determination. It is at this time that potential impacts to cultural, archeological and historic resources can be assessed on a larger-area basis. Without use of the program, properties may be subdivided into sectional 20-acre parcels without a formal subdivision process (as allowed under state law). SEPA determinations are not required with this form of subdivision and unless future parcel-specific development triggers a SEPA determination the impacts to these resources may go unaddressed.

RWIP Conclusion

On balance, the RWIP program, as amended, can be harmonized with the GMA goals. The RWIP ensures the retention of rural character; prohibits urban growth in the rural areas and thus reduces the potential for urban sprawl; only allows growth where adequate rural transportation and rural services are provided; provides some degree of economic development opportunities; preserves property rights; ensures timely permit processing; protects and preserves natural resource industries, open space, recreational land, historic sites, and the environment; and ensures adequate public participation. The RWIP harmonizes well with the GMA goals.

Exhibit A
TDR Sending & Receiving Areas

App. 5
Index 69

INDEX #69

AR 76
Index 69

ORDINANCE No. 407-2008

AMENDMENTS TO THE KITSAP COUNTY COMPREHENSIVE PLAN AND THE TITLE 17 ZONING ORDINANCE AS IT RELATES TO AN ORDER OF NON-COMPLIANCE AND PARTIAL INVAILDITY FOR THE TRANSFER OF DEVELOPMENT RIGHTS AND RURAL WOODED INCENTIVE PROGRAMS

BE IT ORDAINED:

Section 1. General Findings. The Kitsap County Board of Commissioners (Board) makes the following findings:

1. The Growth Management Act (GMA), pursuant to RCW 36.70A.130(3), requires Kitsap County to "review, at least every ten years, its designated urban growth area or areas, and the densities permitted within both the incorporated and unincorporated portions of each urban growth area." Additionally, "[t]he county comprehensive plan designating urban growth areas, and the densities permitted in the urban growth areas by the comprehensive plans of the county and each city located within the urban growth areas, shall be revised to accommodate the urban growth projected to occur in the county for the succeeding twenty-year period." (Referred to herein as the "10-Year Update").

2. On December 11, 2006, Kitsap County completed its 10-Year Update to the Comprehensive Plan pursuant to RCW 36.70A.130(3) and enacted Ordinance 367-2006, Ordinance 368-2006, Ordinance 369-2006 and Ordinance 370-2006 adopting the 2006 10-Year Comprehensive Plan Update, the Draft and Final Environmental Impact Statements, and amendments to Kitsap County Code Titles 17, 18, and 21.

3. On February 17, 2006, an appeal was filed with the Central Puget Sound Growth Management Hearings Board (Hearings Board) regarding the 10-Year Update to the Comprehensive Plan.

4. On August 15, 2007, the Hearings Board issued a Final Decision and Order in which it found partial non-compliance with the GMA on certain components of the 2006 Comprehensive Plan Update. The Hearings Board found the following items invalid and remanded those issues back to Kitsap County for resolution:

   a. Capital facilities planning as it relates to future wastewater conveyance systems for the expansion areas of the Silverdale, Central Kitsap, West Bremerton, Gorst and Port Orchard/South Kitsap UGAs;
   b. Rural Wooded Incentive Program as it relates to the Wooded Reserve 40-Year time period for use, as well as maintenance of natural resource industries and the need for a discrete planning document harmonizing GMA goals;
   c. Transfer of Development Rights Program as it relates to the 40-Year period of development right reuse.

The Hearings Board also ordered that Kitsap County must take legislative action to resolve this non-compliance and partial invalidity order no later than February 11, 2008.

5. On January 18, 2008, notice of intent to adopt was submitted to the Department of Community, Trade, and Economic Development.

6. On January 19, 2008, Kitsap County published, with the newspaper of record, a State Environmental Policy Act (SEPA) Determination of Non-Significance, and a notice of intent to adopt and public hearing. The SEPA Responsible Official found that the impacts of the RWIP and TDR program were previously analyzed in the Kitsap County Comprehensive Plan Draft and Final Environmental Impact Statement, dated August and December 2006, which was adopted by reference. A Determination of Non-Significance was issued for the changes in this Ordinance as they are relatively minor and have less potential impact on the environment than those previously adopted. The SEPA notices were also mailed to interested parties of record, agencies, and affected tribes.

7. On February 4, 2008 the SEPA comment and appeal period closed.

8. On February 11, 2008, the Board, following a timely and effective notice, held a public hearing to consider testimony on the proposed amendments.

9. On February 13, 2008, the Board reviewed testimony received and deliberated on the proposed amendments.

10. The Board and County staff have evaluated the goals of the GMA pursuant to RCW 36.70A.020 and have prepared a discrete planning document regarding that evaluation. This discrete planning document evaluates the Transfer Development Rights Program and the Rural Wooded Incentive Program, as well as their proposed amendments explaining how the program elements are harmonized with the GMA goals, as required by RCW 36.70A.070(5)(a). This discrete document, incorporated herein as Attachment A, validates that the programs and proposed amendments are consistent with the goals governing the GMA and Kitsap County.

Section 2. BE IT FURTHER ORDAINED, that the Kitsap County Board of Commissioners, based on the foregoing findings, hereby provides amendments to the Kitsap County Comprehensive Plan and as it relates to the Transfer of Development Rights Program as follows:

Kitsap County Comprehensive Plan, Chapter Three, related to the Rural & Resource Chapter is amended as follows:

Section 3.2.8 Transfer of Development Rights

Transfer of Development Rights (TDR) is a market-based tool for conserving rural and resource land or structures determined to have a public benefit, as well as the rural

character as defined in the GMA. It complements other incentive-based tools, land or easement acquisition programs, and other regulatory techniques intended to achieve selected growth management objectives. The use of TDR is authorized by GMA in RCW 36.70A.090, as follows:

A comprehensive plan should provide for innovative land use management techniques, including, but not limited to, density bonuses, cluster housing, planned unit development, and the transfer of development rights.

See Chapter 2, *Land Use,* for policies relating to urban areas of the county, where TDR-receiving sites would be located.

Goal 15. Promote the TDR from land valuable to the public, especially rural and resource areas, to urban areas, in order to preserve the rural environment, rural character, encourage retention of rural resource-based uses, and avoid urban service demands in the rural area.

Policy RL-66 Continue efforts to implement an effective and focused TDR program, as an innovative means to preserve private lands with countywide public benefit, to encourage higher densities in urban ~~appropriate~~ areas, and to reduce residential development capacity in natural resource and rural areas.

Policy RL-68 Support and work actively to facilitate the transfer of rural development rights to:

a. Preserve the rural environment, rural character, encourage retention of resource-based uses, and reduce service demands in the rural area.
b. Provide protection to significant natural resources.
c. Increase the regional open space system.

Policy RL-70 Require private properties qualified as sending sites to provide a protected area of sufficient size to provide public benefit. Priority candidates for sending sites are:

a. All Rural and Resource Lands.
b. Lands contributing to the protection of significant landscape or habitat features.
c. Lands contributing to the protection of environmentally sensitive features including but not limited to aquifer recharge areas.
d. Lands that contribute to the preservation of scenic views or maintaining the rural character or that are suitable for inclusion in and provide important links to the regional open space system.

Section 3. Kitsap County Code Chapter 17.430.010, last amended by Ordinance 367-2006, is amended as follows:

17.430.010 Purpose.
The purpose of this chapter is to establish procedures for the transfer of development rights from one property (sending site) to another (receiving site). Where the applicable Comprehensive Plan policies, designated overlay zone or zoning map designation provide the option for transfer of development rights ("TDRs"), the rights shall be transferred consistent with the requirements of this chapter, the Kitsap County Zoning Map and other requirements of Title 17. The transfer of development rights from one property to another is allowed in order to provide the following: ~~provide flexibility and better use of land and building techniques; to help preserve critical areas, watersheds, and open space; to provide increased equalization of property values between various zones; and to work toward achieving county-wide land use planning goals as determined by the Kitsap County Comprehensive Plan, the objectives of approved sub-area plans and the purpose of County implementing regulations.~~

- Flexibility and efficient use of land and building techniques;
- Preservation of rural character, resource-based industries, critical areas, watersheds, and open space;
- Increased equalization of property values between various zones;
- A mechanism to work toward achieving polices outlined in the Kitsap County Countywide Planning Policies, Kitsap County Comprehensive Plan, applicable sub-area plans and development regulations.

Section 4. Kitsap County Code Chapter 17.430.090, last amended by Ordinance 367-2006, is amended as follows:

17.430.090 Procedures and requirements for certification and approval of transfer of development rights.

A. Certification for Future Sale or Transfer. A TDR that is not associated with a pending development application and that is not proposed for transfer to another parcel at the time of application may be certified administratively by the Department as a Type I decision. Upon satisfactory application for certification of TDRs for future sale or transfer, the number of TDRs on a sending area parcel is certified through the issuance of serially numbered individual certificates for each TDR verified for that parcel. The issuance of TDR certificates is recorded as a notice of title for the subject property(s). All certified TDRs and the value of such rights are deemed to be appurtenant to the sending area parcel until such rights are transferred by a recorded deed of transfer.
B. Intermediate Transfer. Certified TDRs may be approved administratively for transfer to another individual, intermediate buyer, or entity that may hold them for a period of time before the TDRs are transferred to a receiving area parcel. Under this

provision, no certified TDR may be transferred to a receiving parcel or used in association with a development project without prior approval under the procedures established in this title and the appropriate Title 16 subdivision regulations, as applicable.

C. Initiation. An application for transfer of development rights (TDR) is initiated as follows:
   1. The process is initiated by submittal of an application for a transfer of development rights permit by the owner of the receiving parcel to the Department.
   2. An application for a TDR permit is accepted only for filing concurrently with an application for the associated development project, site-specific Comprehensive Plan amendment or rezone application pursuant to the requirements of the Kitsap County Code.
   3. Except as allowed by ~~Section 17.505.080(A)~~ Chapter 17.510, the TDR permit application is reviewed concurrently with the proposed development project according to the procedures prescribed in the Kitsap County Code.

D. Submittal Requirements. All requirements for a TDR permit or certification must include the following:
   1. A map showing the location and boundaries of the receiving parcel and sending parcel as applicable;
   2. The acreage of the receiving parcel and sending parcel as applicable;
   3. The zoning and current allowable gross density of the receiving or sending parcels as applicable;
   4. A lot of record confirmation application;
   5. Written and notarized consent to the transfer from all registered owners and lien holders of record of all property subject to the transfer of development rights;
   6. A calculation of the number of units available to be transferred from the sending parcel and the total number of dwelling units requested to be transferred to the receiving parcel as applicable. Any fraction of a unit of 0.50 or greater shall be considered as a whole unit;
   7. Except for purposes of certification or transfer under Section 17.430.090. A, all other submittal requirements for an application for the associated development project pursuant to the requirements of the Kitsap County Code; and
   8. The department may require the submission of other data, information, or drawings as deemed necessary to accomplish the purposes of this chapter.

E. Approval Process and Criteria.
   1. The procedures for approval of a TDR permit shall be those required for the development project, Comprehensive Plan amendment or rezone pursuant to the requirements of this code.
   2. The review authority may approve or approve with conditions the TDR permit upon making the finding that the purposes and requirements of this chapter have been met. If the purposes and requirements have not been met, the permit shall be denied.

F. Requirements for Final Approval. Approval of a TDR permit is finalized after the following actions:

1. Final approval of the concurrent development project according to the provisions of this code, except as allowed by Chapter 17.510~~Section 17.505.080(A)~~.
2. Execution and recording of an instrument legally sufficient in both form and content (using a form provided by the county) to effect the development right transfer. The instrument must include at minimum a legal description of both the sending parcel(s) and receiving parcel(s) and the serial numbers of the certified TDRs being transferred.
3. Recording of a deed restriction, as specified by the county, on all of the sending parcels from which development rights are obtained. A copy of the recorded deed restriction must be submitted to the Department, which certifies the transfer of all development rights on each sending parcel. The deed restriction must be approved as to form by the Department. The document notifies all owners and successors that the transfer and its concomitant restrictions run with the land and are binding on all future owners.
4. For all sending parcels, the deed restriction is sufficient to retire all transferred development rights on the sending parcel ~~for a period of~~ in perpetuity ~~40 years~~.

Section 5. BE IT FURTHER ORDAINED, that the Kitsap County Board of Commissioners, based on the foregoing findings, hereby provides amendments to the Kitsap County Comprehensive Plan as it relates to the Rural Wooded Incentive Program as follows:

Policy RL-1 Consider the following issues when implementing the Rural Wooded Incentive Program:

~~Providing ongoing opportunities for large- and small-scale timber management;~~

1. Preserving rural character through a mix of rural densities, innovative rural planning, and clustered development;
2. Protecting the natural environment and promoting an interconnected system of open space in the rural areas;
3. Providing appropriate buffer widths from property boundaries, existing and potential resource uses, other residential development, rights-of-way and other appropriate factors;
4. Encouraging design that preserves environmentally sensitive areas and harmonizes with topography and landscape features;
5. Encouraging design that maintains or enhances the predominant rural character, scenic views, and open space corridors; and
6. Limiting the use of clustering through limited phases and bi-annual monitoring, such that clustering does not become the predominant pattern of development throughout the rural area.

Policy RL-2 Provide development regulations specifying the base residential density of lands zoned Rural Wooded at one dwelling unit per 20 acres, and allow limited clustered residential development to be developed at greater density, subject to the following criteria:

1. The portion of the property site identified for clustered residential development may be developed for residential uses provided that clustered residential development shall comprise less than one quarter of the portion of the total site utilized to establish residential base density (or a maximum of 25% of the property(s) gross acreage ~~total site area).~~

2. The portions of the property not within a clustered residential development but utilized to establish base residential density would be placed in Permanent Open Space. ~~a combination of:~~

   ~~a. "Wooded Reserve" where forestry would be permitted and encouraged pursuant to the State Forest Practices Act. Properties in Wooded Reserve may not be developed or subdivided earlier than 40 years.~~

   ~~b. "Permanent Open Space" where an area, not included within a Wooded Reserve,~~ This area is to be permanently reserved as open space through conservation easements or other sufficient mechanisms, although it may be used for the limited forestry, recreational, and community utility uses.

3. The maximum residential density incentive in any development using this program may not exceed one dwelling unit per five acres with a minimum of 75% of the gross acreage designated as Permanent Open Space described above. ~~is to be directly related to the ratio of "Permanent Open Space" to "Forest Reserve." The greater incentives are proposed for the developments with the greater proportion of "Permanent Open Space."~~

Section 6. Kitsap County Code Chapter 17.110.535, last amended by Ordinance 367-2006, is amended as follows:

17.110.535 Open space.

"Open space" shall mean land used for outdoor active and passive recreational purposes or for critical area or resource land protection, including structures incidental to these open space uses, including associated buffers, but excluding land occupied by dwellings or impervious surfaces not related to the open space uses and yards required by this title for such dwellings or impervious surfaces. "Open space" is further divided into the following categories:

A. "Common open space" shall mean space that may be used by all occupants of a development complex or, if publicly dedicated, by the general public;

B. "Active recreational open space" shall mean space that is intended to create opportunities for recreational activity. Active recreational open space may be occupied by recreational facilities such as ball fields, playground equipment, trails

(pedestrian, bicycle, equestrian or multi-modal), swimming pools, and game courts or sculptures, fountains, pools, benches or other outdoor furnishings.

C. "Passive open space" shall mean all common open space not meeting the definition of active recreational open space, including but not limited to, critical areas and their associated buffers.

D. "Permanent open space" means an area that is permanently reserved as open space and remains in native vegetation unless approved for forestry, passive recreational or access uses~~; In the Rural Wooded zone, areas within a wooded reserve shall not be considered permanent open space;~~ and

E. "Recreational open space" means an area that shall be improved and maintained for its intended use. Exterior as well as interior areas can constitute recreational open space. Examples of usable recreational space include swimming pools, community buildings, interior gyms, picnic areas, tennis courts, community gardens, improved playgrounds, paths and passive seating areas.

Section 7. Kitsap County Code Chapter 17.110.782, last amended by Ordinance 367-2006, is deleted as follows.

~~17.110.782 Wooded reserve.~~

~~"Wooded reserve" means the area of a Rural Wooded Incentive Program Development restricted to forestry uses for 40 years after the development approval.~~

Section 8. Kitsap County Code Chapter 17.301.080, last amended by Ordinance 367-2006, is amended as follows:

17.301.080 Rural Wooded Incentive Program.

A. Purpose. The purpose of this section is to provide a clustering program for land designated Rural Wooded, which provides incentives to landowners, promotes coordinated open space, and preserves rural character, ~~and encourages the continuation of forestry~~. This chapter encourages development to occur on the most buildable and least environmentally sensitive portions of sites while retaining a substantial portion of each site in restricted open space tracts or easements. Specifically, this chapter is designed:

1. To produce a development pattern in rural areas that is consistent with rural character and to produce a rural development pattern which encourages variety in design, placement of buildings, more efficient use of the most buildable portion of sites, and retention of the environmentally sensitive and scenic portions of sites as permanent open space;
2. To encourage the development of cluster housing, which provides greater compatibility with surrounding development and land uses in rural areas by providing larger buffer areas;
3. To encourage the retention of permanent open space with its natural vegetative cover, which protects continued groundwater recharge and reduces potential water pollution, flooding, erosion and other drainage-related problems often associated with rural development;

~~4. To minimize adverse development impacts on the county's productive forestry, mineral and other important resource lands;~~

5. To minimize adverse impacts on the county's environmentally sensitive streams, shorelines, wetlands, fish and wildlife habitat areas and corridors, areas of unique vegetation or wildlife species, steep slopes, and other critical areas;
6. To minimize impervious surfaces and the cost of installing essential public and private capital facilities necessary for a rural infrastructure; and
7. To protect rural natural features and landscape by minimizing tree, vegetation, and soil removal.

B. Applicability. This program applies to all properties within the Rural Wooded zone 20 acres or greater in size. Individual projects using this program may not exceed more than 500 contiguous acres.

1. Phase Description. Land available to use this program will be designated in the Comprehensive Plan in an incremental phased approach consisting of 10 phases. The phased process of this program is described below:
   a. Initial phase shall be limited to a total of five-thousand (5,000) acres of Rural Wooded (RW) land.
   b. All parcel acreage utilized in Rural Wooded Incentive Program developments, including any Permanent Open Space, ~~Wooded Reserve,~~ fresh water bodies, critical areas, and residential acreage, shall be included for calculations toward the remaining available Phase acreage.
   c. Subsequent phases may be released based upon the provisions identified in subsection 17.301.080.B with each limited to a total of five-thousand (5,000) additional acres of Rural Wooded (RW) land.
2. Monitoring.
   a. Monitoring shall be conducted every two years to evaluate the effectiveness of the Rural Wooded Incentive Program. The monitoring shall include:
      (1) Evaluation of the county-wide split between rural and urban dwelling unit development and lot creation. The methodology shall be consistent with that approved in the most recent Buildable Lands Analysis~~Report~~;
      (2) Evaluation of the total acreage within the Rural Wooded Incentive Program that has submitted a complete application, that has received preliminary approval, and that has received final approval as well as the total acreage of Permanent Open Space ~~and Wooded Reserve~~ in these approved developments;
      (3) A transportation analysis of the roadways adjacent to and serving Rural Wooded Incentive Program developments;
      (4) Evaluation of the Rural Wooded (RW) designated lands for the maintenance of qualities of "Rural Character" as defined in this section; and
      (5) Evaluation of development in the Rural Wooded zone in regards to critical area buffers, on-site and adjacent parcel well levels, on-site stream flow levels and increases in project-based impervious surfaces.

b. Releases of the subsequent phases of acreage available for the Rural Wooded Incentive Program shall be determined based upon all the following decision criteria.
   (1) Satisfactory progress toward achieving the Rural/Urban split identified in the County-Wide Planning Policies.
   (2) Final approval for Rural Wooded Incentive Program developments comprising more than 30 percent or 1,500 acres, whichever is greater, of the total Phase acreage.
   (3) Determination of no level of service failures on roadways serving existing Rural Wooded Incentive Program developments.
   (4) Satisfactory maintenance of rural character as defined in subsection 17.301.080.C for Rural Wooded Incentive Program developments.
c. Prior to the release of each subsequent phase, the Department of Community Development shall prepare a "Rural Wooded Incentive Program: Phase Assessment Report." This report shall assess the program's consistency with the purposes outlined in subsection 17.301.080.A and the monitoring requirements of 17.301.080.B. The report shall be submitted to the Board of County Commissioners.

3. Authority.
   a. The Board of County Commissioners shall have the authority to recommend, recommend with conditions, or disapprove release of each subsequent phase of acreage available to Rural Wooded Incentive Program developments, subject to the provisions of this section.
   b. The Board of County Commissioner's decision on a subsequent Rural Wooded Incentive Program phase may be appealed as set forth in Title 21 of this code.
4. Phase Process.
   a. Should an application for a Rural Wooded Incentive Program development be submitted that would exceed the 5,000 acres available for that phase, that application will be rejected, however that applicant will be permitted to amend the application to reduce the number of proposed acres for which development is sought to remain under the 5,000-acre phase limit.
   b. Once 5,000 acres of Rural Wooded Incentive Program developments have received preliminary approval, no future applications will be accepted that exceed the 5,000 acres available for that phase until the subsequent phase is recommended for release subject to the provisions of this Section.
   c. An application may include a request for a subsequent phase to be released concurrent with the Rural Wooded Incentive Program development application; however, that application will not be deemed complete until the subsequent phase is recommended for release subject to the provisions of this section.

C. Approval procedure. Rural Wooded Incentive Program developments shall be approved through a Type III subdivision approval process.

D. Submittal requirements. In addition to the subdivision submittal requirements, each application for a Rural Wooded Incentive Program development shall include the following information to be considered a complete application:

1. The approximate location and general dimensions for all lots, tracts, easements, roadways, and other improvements;
2. The proposed location and acreage of the ~~Wooded Reserve and~~ Permanent Open Space~~, as applicable~~;
3. The approximate location of all existing or proposed pedestrian walkways, landscaped areas and areas to permanently remain in a natural condition;
4. The location of existing and proposed on-site water sources and generalized designation of sewage disposal drainfields and reserve areas;
5. The location and width of proposed roadways and driveway areas for turning and maneuvering of vehicles, and the relationship of circulation to adjacent properties;
6. A general description of any major physiographic or other natural features, such as drainage ways, wetlands, fish and wildlife habitats, geologic hazard areas, steep slopes, shorelines and all other critical areas, as well as a topographic map with contour lines as 5-feet contours;
7. The location and approximate acreage, either on or adjacent to the property(s), designated as natural resource lands and the approximate size (in square feet or acres);
8. The approximate area proposed to be included in paved or other impervious surfaces, ~~Wooded Reserve,~~ Permanent Open Space, and the total area of the site;
9. A description of, and proposed schedule for, any proposed phasing of the project;
10. A general landscape, clearing and buffering plan, drawn to scale and showing: community areas, pathways or other recreation areas, significant landscape features and vegetation on the site, natural vegetation and mature trees to be retained, and the location and conceptual design of landscaped areas and buffers. Detailed site analysis and design information shall not be required for those portions of the site proposed for retention in ~~Wooded Reserves or~~ Permanent Open Space tracts, except for portions of Permanent Open Space tracts which contain proposed recreation facilities;
11. A vicinity sketch to identify the effect of proposed development on surrounding properties and uses, including the approximate location of all existing or proposed community areas, pathways or other recreation areas and landscaped areas;
12. A conceptual storm drainage plan, prepared by a qualified engineer, showing that the project will comply with the Kitsap County storm water standards in effect at the time of the application; and
13. A report from a certified septic system installer, showing that there is a drainfield and a replacement drainfield available for each dwelling unit within each proposed cluster, or if a community or group drainfield is to be used, that there is a site and a replacement site for such community or group drainfield, that will meet the standards of the Washington Department of Health or the Kitsap County Health Department, whichever is more stringent.

E. Development Standards. A Rural Wooded Incentive Program development shall meet the following development standards:

~~1. The base density permitted within a Rural Wooded Incentive Program development shall be one (1) dwelling unit per twenty (20) acres.~~

2. ~~Additional density may be allowed based upon the designation of a portion of the development as "Wooded Reserve" and a portion of the development acreage as "Permanent Open Space".~~ Through the use of the Program, the number of dwelling units permitted in the Rural Wooded zone may be increased to 1 dwelling unit per 5 acres with the designation of a minimum of 75% of the property(s) gross acreage in Permanent Open Space. ~~under one of the following ratio alternatives.~~

~~a. Alternative One.~~

~~(1) The maximum number of dwelling units permitted within a Rural Wooded Incentive Program development shall be one (1) dwelling unit per ten (10) acres; and~~

~~(2) A minimum of seventy-five percent (75%) of the Rural Wooded Incentive Program development site must be designated Wooded Reserve for a period of 40 years or greater.~~

~~b. Alternative Two.~~

~~(1) The maximum number of dwelling units permitted within a Rural Wooded Incentive Program development shall be three (3) dwelling units per twenty (20) acres;~~

~~(2) A minimum of fifty percent (50%) of the Rural Wooded Incentive Program development site must designated Wooded Reserve for a period of 40 years or greater; and~~

~~(3) A minimum of twenty-five percent (25%) of the Rural Wooded Incentive Program development site shall be designated as Permanent Open Space tract(s).~~

~~c. Alternative Three.~~

~~(1) The maximum number of dwelling units permitted within a Rural Wooded Incentive Program development utilizing Alternative Three shall be one (1) dwelling unit per five (5) acres.~~

~~(2) A minimum of twenty-five percent (25%) of the Rural Wooded Incentive Program development site must be designated Wooded Reserve for a period of 40 years or greater.~~

~~(3) A minimum of fifty percent (50%) of the Rural Wooded Incentive Program development site shall designated as Permanent Open Space tract(s).~~

~~d. Alternative Four.~~

~~(1) The maximum number of dwelling units permitted within a Rural Wooded Incentive Program development utilizing Alternative Four shall be one (1) dwelling units per five (5) acres.~~

~~(2) A minimum of seventy-five percent (75%) of the Rural Wooded Incentive Program development site shall be placed in a Permanent Open Space tract(s) where no development or forestry uses will be allowed.~~

3. The maximum number of acres for any single Rural Wooded Incentive Program development application shall be limited to a total of 500 gross acres, including all ~~Wooded Reserve,~~ Permanent Open Space and development acreage.
4. The minimum number of acres for any Rural Wooded Incentive Program development application shall be limited to a minimum of twenty (20) acres, including all ~~Wooded Reserve,~~ Permanent Open Space and development acreage.
5. Development shall be clustered.
   a. Lot Requirements.
      (1) Front Yard. Minimum front yard setback shall be twenty (20) feet.
      (2) Side and Rear Yard. Minimum side and rear yard setbacks shall be five (5) feet and fifty (50) feet for accessory structures used for agricultural purposes.
      (3) Minimum Lot Size: None
6. Each cluster shall be limited to 25 units or fewer. Clusters within a development should be sited to achieve the following objectives and criteria. The Director may allow exceptions based upon site-specific conditions or when conflicts occur between the criteria.
   a. Optimize protection of critical areas, including wetlands and stream corridors, by keeping clusters and other development away from critical areas to the extent possible;
   b. Optimize preservation and interconnectivity of open space~~, either for continuation of forestry practices or~~ as a permanent preservation of open space;
   c. Avoid development on ridgelines, in the center of open field, or located on other prominent topographical features or scenic elements, visible to adjacent and vicinity properties when other locations are available; and
   d. Minimize topographic alteration.
7. Clusters developed under this program shall provide a 100-foot vegetated buffer from existing public roadways and adjoining properties and a 150-foot buffer between clusters in order to preserve rural character and the aesthetic values of Rural Wooded lands.
   a. Where two Rural Wooded Incentive Program developments abut each other, they are encouraged, where practical, to coordinate ~~required Wooded Reserves and~~ Permanent Open Space to provide interconnectivity;
   b. Buffers are encouraged to incorporate natural features to maximize retention of views and rural character;
   c. Where native vegetation is available to create a sight-obscuring buffer, that vegetation should be preserved to the extent consistent with public safety. Hazard trees may be removed with approval of the Director;
   d. Preservation of trees greater than 10 inches diameter breast height (dbh) is encouraged;
   e. Except where an exception is needed to preserve or create scenic views from county or state roads, internal roads and building locations within a Rural Wooded development should be designed to maximize the extent to which

the external buffer obscures the planned development from existing county or state roads; and

f. Where native vegetation is not available to create a sight-obscuring buffer between the planned development and existing county or state roads, fast-growing native vegetation that will grow to obscure the planned development should be planted within the buffer area.

8. Water provision from new wells drilled within the Rural Wooded designated lands are encouraged to minimize impacts to surface and groundwater resources. For projects proposing new wells, submission of well log records and a report by a Washington State certified hydrogeologist demonstrating utilization of deep aquifers and the lack of continuity with surface water features is encouraged during project review and may be included as a condition of approval.
9. Development shall fully comply with Kitsap County Code Title 19 (Critical Areas). All environmentally sensitive areas such as streams, shorelines, wetlands, fish and wildlife habitat areas and corridors, steep slopes, and other critical areas regulated by Title 19 and/or other applicable county ordinances or policies are encouraged to be located within the ~~Wooded Reserve or~~ Permanent Open Space areas of the development, except to the extent development in those areas is permitted by Title 19.
10. Roads should be designed to comply with adopted Kitsap County Road Standards for rural roads.
    a. Rural Wooded Incentive Program developments shall meet applicable rural concurrency standards;
    b. Roads should have shoulders and grass-lined ditches, rather than curbs, gutters and adjacent sidewalks;
    c. Pedestrian and/or bike paths through a development are encouraged but may be separate from roads and should be narrow and designed to adapt to the natural contours and features of the land; and
    d. To the extent consistent with adopted Kitsap County Road Standards, roads should follow topography, and other natural features, such as major trees or other elements that contribute to rural character.
11. In designating the areas for Permanent Open Space tracts, the following is encouraged:
    a. Preserve areas along saltwater shoreline;
    b. Include open water bodies, creeks, rivers and other natural water features;
    c. Protect scenic views and significant natural features;
    d. Conserve areas of significant terrestrial wildlife, salmonid habitat, and groundwater supply; and
    e. Coordinate with Washington State Department of Fish & Wildlife, Washington State Department of Natural Resources, non-profit agencies, and local Tribes to identify priority conservation areas.
12. A notice ~~disclosure statement~~ shall be placed on the final plat for all Rural Wooded Incentive Program developments stating that:

"This plat was established using the Kitsap County Rural Wooded Incentive Program and is subject to the conditions of that program at the time of approval (Kitsap County Code Chapter 17.301). It is required to include an open space

area, in which certain forestry activities may occur, subject to the provisions of KCC 17.301. ~~The Wooded Reserve designated parcels or tracts within the (insert name of plat) plat is reserved for forestry operations.~~ A variety of forestry activities may occur in ~~on~~ the open space ~~Wooded Reserve~~ that are not compatible with residential development for limited periods. Residents may be subject to inconvenience or discomforts arising from forestry activities, including but not limited to noise, odors, fumes, dust, smoke, the operations of machinery of any kind, timber harvest, brush control, the application by spraying or otherwise of chemical or organic fertilizers, soil amendments, herbicides and pesticides, hours of operation, and other forestry activities. So long as such forestry operations are in compliance with the Washington Forest Practices Act, RCW Ch. 76.09, they shall not constitute a nuisance. ~~No perimeter buffers are required within the Wooded Reserve area.~~ Urban levels of service will not be provided by Kitsap County or the developer of this property."

F. Uses permitted within the ~~Wooded Reserve and~~ Permanent Open Space.

~~1. Wooded Reserve. This area shall be designated Wooded Reserve for a minimum of forty (40) years. Uses allowed with the Wooded Reserve during this period include:~~

~~a. Forestry, existing agricultural and other resource activities; and~~

~~b. Community wells, well houses, water lines, community drainfields, retention and detention ponds, logging and access roads, water recharge and infiltration facilities, water system appurtenances and biofiltration swales. After this period has expired, the owner may seek additional development on the Wooded Reserve. The density and lot requirements for the Wooded Reserve area shall be consistent with the County Code in effect at the time of future application.~~

~~2. Forestry activities within the Wooded Reserve area must be consistent with an approved Timber Harvest permit. The Wooded Reserve will require an updated Forest Management Plan pursuant to Washington State Department of Revenue "Guidelines for Forest Land Management Plans." Such plan shall be prepared by a certified forester.~~

3. Permanent Open Space tract. A Permanent Open Space tract created under this section may be used for the following resource and passive recreational and roadway uses:
   a. Forestry, existing agricultural or other resource uses;
   b. Trails/pedestrian walkways, beaches, docks, swimming areas or any non-motorized passive recreational facilities;
   c. Logging and access roads; and
   d. Open space uses along a shoreline shall allow for visual and physical access to the shoreline and may include view corridors, community beaches, docks, swimming areas, picnic areas, trails/pedestrian walkways, or any non-motorized passive recreational facilities.

4. Vegetation removal in a Permanent Open Space tract shall be in accordance with an approved open space management plan. Permanent vegetation removal within the Permanent Open Space tract shall not be permitted, except that the

following activities shall be allowed where vegetation removal is the minimum necessary to conduct the activity:

a. Construction of pedestrian or equestrian trails;
b. Maintenance of existing pastures;
c. Forestry, existing agricultural or other resource activities;
d. Removal of dead, diseased or hazardous vegetation, consistent with best management practices;
e. Fire breaks provided in accordance with fire district requirements; and
f. A management plan which details the required maintenance and management tasks and responsibilities may be required by the department for all ~~Wooded Reserve and~~ Permanent Open Space areas. These plans shall include monitoring to assess compliance with the approved plan(s).

G. Ownership of the ~~Wooded Reserve and~~ Permanent Open Space.

1. Upon recording of a final plat for a Rural Wooded Incentive Program development, Permanent Open Space tracts may be held by the original owner, conveyed to a homeowners association or to the owner or owners of a lot or lots within the subdivision as tenants in common or to a shall be dedicated to a public entity, land trust or other non-profit steward, subject to the restrictions on the future use of the Permanent Open Space described in 17.301.080.F.
2. ~~Ownership of the Wooded Reserve may, at the discretion of the proponent of the development, remain with the original owner, or may be conveyed to a third party or parties, or may be conveyed to a homeowners association or to the owners of lots within the subdivision, as tenants in common, provided, however, that upon recording of a final plat of a Rural Wooded Incentive Program a restrictive covenant will be recorded in favor of the lot owners and in favor of Kitsap County, restricting future use of the Wooded Reserve as provided in 17.301.080.F.~~

H. Decision Criteria. An application for a Rural Wooded Incentive Program development may be approved or approved with modification if the Examiner finds that all of the following requirements, as established by this section, are met:

1. The site plan complies with the Development Standards of 17.301.080.E and the other requirements of this chapter.
2. The proposed development will not require the extension or provision of sanitary sewer service or other urban services to the development.
3. The proposed development complies with all applicable County Codes.
4. The development demonstrates preservation of rural character by incorporating the following:
   a. Clustering of development, as applicable;
   b. Preservation of critical areas, resource areas, groundwater recharge, and natural features;
   c. Provision for a coordinated, comprehensive, interconnected, and integrated system of ~~Wooded Reserve and~~ Permanent Open Space areas; and
   d. Placement of structures, circulation systems and utilities that minimize impervious surfaces and the alteration of the land and also responds to physical characteristics of the property.
5. The development is consistent with the goals and policies of the Kitsap County comprehensive plan.

6. The development complies with all other applicable codes and policies of the county.
7. If Rural Wooded Incentive Program development will be phased, each phase of a proposed development must contain adequate infrastructure, open space dedication, ~~forest reserve dedication,~~ and all other conditions of the development to stand-alone if no other subsequent phases are developed.
8. If no reasonable conditions or modifications can be imposed to ensure the application meets the criteria set forth above, then the application shall be denied.

I. Vesting.
1. Approval of a Rural Wooded Incentive Program development shall be effective for five years from the date of final approval.
2. Property owners with an approved Rural Wooded Incentive Program development may receive one five-year extension from the hearing examiner in accordance with the criteria below:
   a. An extension request must be filed in writing with the director at least sixty days prior to the expiration of the approval period;
   b. The applicant must demonstrate to the hearing examiner tangible progress toward completion of the approved Rural Wooded Incentive Program development; and
   c. The applicant must demonstrate to the hearing examiner that there are no significant changes in conditions that would render approval of the extension contrary to the public health, safety or general welfare.
3. The hearing examiner may take any of the following actions upon receipt of a timely extension request:
   a. Approve the extension if no significant issues are presented under the criteria set forth in this section.
   b. Conditionally approve the extension if any significant issues presented are substantially mitigated by minor revisions to the original Rural Wooded Incentive Program development.
   c. Deny the extension if any significant issues presented cannot be substantially mitigated by minor revisions to the Rural Wooded Incentive Program development.

~~J. Forest Practice Permits. All forest practices in the Wooded Reserve shall be conducted pursuant to a Timber Harvest Permit issued by the Department of Natural Resources. The Wooded Reserve shall not be deemed to have been converted to another use or likely to convert to urban development under WAC 222-16-050(2). Except to the extent that jurisdiction has been transferred to Kitsap County pursuant to RCW 76.09.240(3), the Department of Natural Resources shall remain the agency responsible for permitting of forest practices in the Rural Wooded area.~~

J.~~K.~~ Taxation Status. Under the Current Use Assessment Program, all property located within the Permanent Open Space or developed portion of the project shall be removed from the Program and all compensating tax paid prior to final approval of the subdivision.

K.~~L.~~ Third Party Review. The county may require third party review in cases where additional professional or technical expertise is required.

Section 9. Kitsap County Code Chapter 17.382.110, last amended by Ordinance 405-2007, is amended as follows:

17.382.110 Footnotes for tables. (Density/Dimensions)

A. Where noted on the preceding tables, the following additional provisions apply:
   1. Except for those buildings directly associated with timber production and harvest.
   2. Except for silos and other uninhabited agricultural buildings.
   3. Properties within the urban restricted (UR) zone may subdivide at densities below the minimum required for the zone under the following circumstances:
      a. The reduced density provides a greater protection for critical areas or environmentally sensitive areas; and
      b. The intent of the short subdivision or subdivision is to keep the property in the ownership of the immediate family members.
   4. If a single lot of record, legally created as of April 19, 1999, is smaller in total square footage than that required under this chapter, or if the dimensions of the lot are less than required, said lot may be occupied by any reasonable use allowed within the zone subject to all other requirements of this chapter. If there are contiguous lots of record held in common ownership, each of the lots legally created as of April 19, 1999, and one or more of the lots is smaller in total square footage than required by this chapter, or the dimensions of one or more of them are less than required, said lots shall be combined to meet the minimum lot requirements for size and dimensions.
   5. The Design Standards for the Community of Kingston sets forth policies and regulations for properties within the downtown area of Kingston. All development within this area must be consistent with these standards. A copy of the Design Standards for the Community of Kingston may be referred to on the Kitsap County web page or at the Department of Community Development front counter.
   6. Building replacements and remodels shall not create in excess of a total of forty percent impervious surface for lot area or more than the total existing impervious surface area, whichever is greater.
   7. Excess area from acreage used to support proposed densities but not devoted to residential lots and public improvements such as streets and alleys shall be permanently dedicated and reserved for community open space, park land, and similar uses. For developments proposing densities no greater than one dwelling unit per five acres, the minimum and maximum lot sizes shall not apply, except that existing dwelling units shall be allocated lot area between 3,500 and 7,500 square feet. New proposals may then proceed using the five-acre lot requirements of Section 17.310.030 for the rural residential (RR) zone.
   8. Hotels may be developed with four above-ground floors and up to a height not exceeding fifty feet with approval of the fire marshal and relevant fire district.

9. May be reduced to ten feet for residential uses through the administrative conditional use or PBD process.
10. Uses allowed through the conditional use process shall provide minimum side setbacks of 10 feet and minimum rear setbacks of 20 feet.
11. Any newly created lot within the Suquamish Rural Village shall be subject to Chapter 16.48 of this code, Short Subdivisions, and must meet the lot requirements below:
    a. Lot Requirements.
       Minimum Lot Size: 21,780 square feet
       Minimum Lot Width: 100 feet
       Minimum Lot Depth: 100 feet
    b. Setbacks.
       Front: 20 feet
       Side: 5 feet
       Rear: 5 feet
12. Nonconforming Lots in Single Ownership. If a single lot of record, legally created before the adoption of the Manchester Community Plan, is less than 8,712 square feet in size or does not meet the dimensional requirements of its zone, the lot may be occupied by any use allowed within the zone subject to all other requirements of this chapter.
    Nonconforming Lots in Common Ownership. Contiguous lots of record held in common ownership, each lot legally created before adoption of the Manchester Community Plan, must be combined to meet the minimum lot requirements of its zone if one or more of the lots is less than 8,712 square feet in size or does not meet the dimensional requirements of its zone and, at the time of adoption of the Manchester Community Plan (March 18, 2002), either 1) a residential structure encumbered more than one of the contiguous lots or 2) two or more of the contiguous lots were vacant. If one or more of the lots is sold or otherwise removed from common ownership after the adoption of the Manchester Community Plan, it will not be considered to meet the minimum lot requirements for non-conforming lots in single ownership. Property with two contiguous lots legally created before adoption of the Manchester Community Plan with a residential structure entirely on one lot may develop the second lot consistent with applicable zoning.
13. Residential structures within the MVC zone may not exceed 28 feet. Commercial or mixed-use structures within the MVC zone may not exceed two stories, excluding completely underground structures used solely for parking.
14. Within the view protection overlay, the maximum height shall be 28 feet. Height shall be measured from the average elevation of the property's buildable area to the structure's highest point. Buildable area is considered all portions of the property except wetlands and/or geologically hazardous areas. Properties within the view protection overlay zone may build as high as 35 feet under the following circumstances:
    a. There is no existing view of downtown Seattle, the Cascade Mountains, Mt. Rainier or the Puget Sound from the subject property or any adjacent property; or

b. The owners of all adjacent properties approve the building height prior to building permit issuance; or
c. It can be explicitly shown that the structure will not cause the blockage of existing views from any of the adjacent properties.

15. Clustering residential development is encouraged in all development. When clustering development, if a property owner designates 40% of the gross acreage as naturally vegetated open space, he or she may create one additional lot for every five lots clustered. The additional lot may not reduce the naturally vegetated open space to an amount less than 40% of the gross acreage of the development.
16. All properties within the Manchester Village must also meet the requirements of the Storm Water Management Ordinance, Chapters 12.04 through 12.32 of this code. The use of pervious materials and other new technologies may be used in the construction of these areas and structures to reduce the impervious surface calculation.
17. A greater height may be allowed as set forth below and in accordance with the procedures in Title 21 of this code. Such approval must be consistent with the recommendations of the fire marshal/fire district and compatible with surrounding uses and zones. Such approval shall result in a decrease in building coverage, an increase in public amenities, and/or a more creative or efficient use of land. The maximum building height approved by the director shall not exceed:
    a. In the UM, NC, and P zones: 45 feet.
    b. In the UH, HTC, and RC zones: 65 feet.
    c. In the BP, BC, and IND zones: 50 feet.
    d. In the Mixed Use zone:
        i. Within Silverdale, the maximum height shall be consistent with the design guidelines;
        ii. Along the Highway 303 corridor, the maximum height shall be 65 feet;
        iii. Along Perry and National Avenues, the maximum height shall be 45 feet.
18. Density based on net acreage of the property(s) after the removal of critical areas.
19. The maximum number of residential units permitted in the South Kitsap UGA/ULID #6 Sub-Area Plan is 4,172 until such time as a further population allocation is made to the sub-area. All residential development within the sub-area is subject to this density limitation. To ensure that the density limit for the sub-area is not exceeded, the director shall use the county's land information system (LIS) to monitor the number of dwelling units remaining and available for development within the sub-area.
20. The minimum lot width within the ULID #6 Sub-Area shall be 40 feet.
21. 20 feet when abutting a residential zone.
22. Maximum height shall be 30 feet when located within the 200 foot shoreline area..
23. The minimum site setback shall be 75 feet for any yard abutting a residential zone, unless, based upon a site-specific determination, berming and landscaping approved by the director is provided that will effectively screen and buffer the business park activities from the residential zone that it abuts; in which case, the

minimum site setback may be reduced to less than 75 feet but no less than 25 feet. In all other cases, minimum site setbacks shall be 20 feet.

24. An individual structure intended for future mixed commercial and residential uses may initially be used exclusively for residential use if designed and constructed for eventual conversion to mixed commercial and residential use once the Urban Village Center or Urban Town Center matures.
25. The Bethel Road Corridor Development Plan sets forth policies and regulations for development within the Highway Tourist Commercial Zone located along the Bethel Corridor in South Kitsap from SE Ives Mill Road to the Port Orchard City limits. Development within the Bethel Road Corridor Highway Tourist Commercial Zone shall be conducted in a manner consistent with the policies and regulations of the Land Use Element of the Bethel Road Corridor Development Plan.
26. No service road, spur track, or hard stand shall be permitted within required yard areas that abuts a residential zone.
27. Wherever an industrial zone abuts a residential zone, a fifty-foot landscaped setback area shall be provided with plantings, as approved by the director. No structures, open storage, or parking shall be allowed. The plan for landscaping may be approved only if the landscaping is designed to preserve the quality of the residential zone. The minimum lot setback shall be 50 feet for any yard abutting a residential zone unless, based upon a site-specific determination, berming and landscaping or other screening approved by the director is provided, which will effectively screen and buffer the industrial activities from the residential zone which it abuts, in which case the minimum setback may be 25 feet. These setbacks are the minimum setbacks required and may be increased by the director to ensure adequate buffering and compatibility between uses.
28. Unless part of an approved zero-lot line development.
29. 100-foot setback required for single-family buildings abutting FRL or RW zones.
30. No minimum lot size if property is used only for extraction.
31. 330 feet if activity includes any uses in 17.380.020.
32. Existing lots developed with existing single-family residences are permitted to be maintained, renovated and structurally altered. Additions to existing residential structures in order to provide commercial uses are also permitted regardless of density.
33. All development within the Silverdale Downtown Design District boundary must be consistent with the Silverdale Downtown Design Guidelines.
34. Development abutting a street for which a standard has been established by the Kitsap County Arterial Plan shall provide a special setback from the centerline of said street or a distance adequate to accommodate one-half of the right-of-way standard established by the arterial plans for the street. The building setback required by the underlying zone shall be in addition to the special setback and shall be measured from the edge of the special setback line. The special setback area shall be treated as additional required yard area and reserved for future street widening purposes.
35. Maximum density, ~~and~~ smaller lot sizes and reduced setbacks may be allowed based upon the designation of ~~a portion of the development as "wooded reserve" and~~ a portion of the development acreage as "permanent open space" through

the Rural Wooded Incentive Program per ~~under one of the allowed alternatives in Chapter~~ Section 17.301.080.

36. For standards applicable to master planned industrial developments and approved industrial parks, see Section 17.370.090.
37. When an airport zone abuts a residential zone, there shall be a minimum of five hundred feet from the end of any runway and the residential zone. Adjacent to airports, the director may impose height restrictions and/or other land use controls, as deemed essential to prevent the establishment of air space obstructions in air approaches to protect the public health, safety and welfare consistent with Federal Aviation Regulations (FAR) Part 77.
38. Cornices, canopies, eaves, belt courses, sills or other similar architectural features, or fireplaces may extend up to twenty-four inches into any required yard area. For setbacks along shorelines, see Chapter 17.450.
39. Unless otherwise stated in this title, if a lot of record, which was legally created as of May 10, 1999, is smaller in total square footage than that required within the zone, or if the dimensions of the lot are less than that required within the zone, said lot may be occupied by any use allowed within that zone subject to all other requirements of the zone. Unless specifically stated within this title, where two or more contiguous lots which are nonconforming to the lot size or dimensions of the zone and are held in common ownership, said lots shall be considered separate legal nonconforming lots and each may be occupied by any use permitted within the zone subject to all other requirements of the zone. If a lot of record was lawfully occupied by two or more single-family residences (excluding accessory dwellings) as of May 10, 1999, the owner of such a lot may apply for a short plat approval in order to permit the segregated sale of such residences, even though some or all of the resulting new lots will have lot areas or dimensions less than required for the zone in which they are located. All other provisions of the Short Subdivision Ordinance (Chapter 16.48 of this code) shall apply to the application.
40. Height limitations set forth elsewhere in this title shall not apply to the following: barns, silos, or other farm buildings and structures, provided they are not less than fifty feet from every lot line; chimneys, spires on places of worship, belfries, cupolas, domes, smokestacks, flagpoles, grain elevators, cooling towers, solar energy systems, monuments, fire house towers, masts, aerials, elevator shafts, and other similar projections, and outdoor theater screens, provided said screens contain no advertising matter other than the name of the theater. The proponent seeking exception to the height limitation shall certify that the object being considered under this provision will not shade an existing solar energy system which, by the determination of the director, contributes substantially to the space or water-heating requirements of a building.
41. The following exceptions apply to front yard requirements:
    a. If there are dwellings on both abutting lots with front yards less than the required depth for the zone, the front yard for the lot need not exceed the average front yard of the abutting dwellings.
    b. If there is a dwelling on one abutting lot with a front yard less than the required depth for the zone, the front yard need not exceed a depth of half-

way between the depth of the front yard on the abutting lot and the required front yard depth.

c. If a modification to the front-yard requirement is necessary in order to site dwellings in a manner that maximizes solar access, the director may modify the requirement.

d. On lots with multiple front yards, the front yard setback(s) in which the lot does not receive access may be modified by the director. Based upon topography, critical areas or other site constraints, the director may reduce these front yard setbacks to a minimum of twenty feet for properties requiring fifty feet and five feet for properties requiring twenty feet. The director may not modify front yard setbacks from county arterials or collectors. Such reductions shall not have an adverse impact to surrounding properties.

42. The following exceptions apply to historic lots:

a. Building setback lines that do not meet the requirements of this title but were legally established prior to the adoption of this title shall be considered the building line for alterations, remodels, and accessory structures on the lot or parcel, providing that no structure or portion of such addition may further project beyond the established building line.

b. Any single-family residential lot of record as defined in Chapter 17.110 that has a smaller width or lot depth than that required by this title, or is less than one acre, may use that residential zoning classification that most closely corresponds to the dimension or dimensions of the lot of record, for the purpose of establishing setbacks from the property lines.

43. Any structure otherwise permitted under this section may be placed on a lot or parcel within a required yard area, if the director finds that such a location is necessary because existing sewer systems or roadways make compliance with the yard-area requirements of this title impossible without substantial changes to the site.

44. Outside of the Silverdale Sub-Area, densities required only with mixed use development.

Section 10. This ordinance is in response to an order filed with the Central Puget Sound Growth Management Hearings Board and is enacted as an exception to the schedule set forth in RCW 36.70A.130 and Kitsap County Code Chapter 21.08.

Section 11. Should any amendment to Comprehensive Plan and Zoning Code that was passed by the Board during its deliberations on February 13, 2008 be inadvertently left out upon publication or codification, the explicit action of the Board as discussed and passed shall prevail upon subsequent review and verification by the Board.

Effective Date: This Ordinance shall take effect immediately.

Severability: If any sentence, section, provision, or clause of this ordinance or its application to any person, entity or circumstance is for any reason held invalid or unconstitutional, the remainder of the ordinance, or the application of the provision to other persons, entities, or circumstances is not affected.

DATED this 13th **day of** Feb, **2008.**

KITSAP COUNTY BOARD OF COMMISSIONERS

BOARD OF COMMISSIONERS STATE OF WASHINGTON KITSAP COUNTY

Steve Bauer, Chair

NOT PRESENT

Jan Angel, Commissioner

ATTEST:

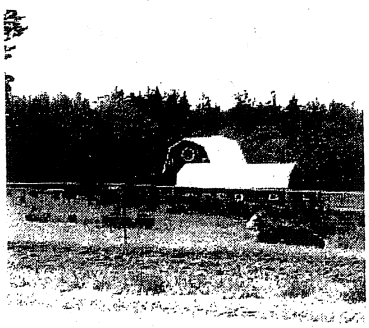
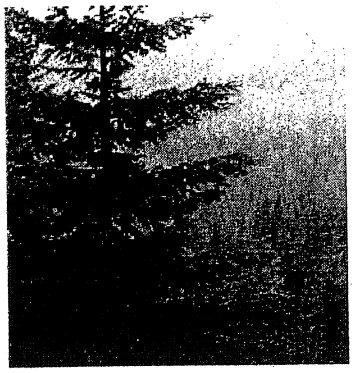
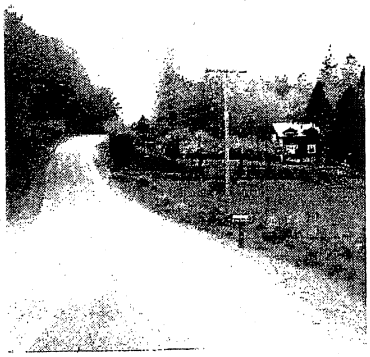
Opal Robertson
Clerk of the Board

Josh Brown, Commissioner

Approved as to Form:

Deputy Prosecuting Attorney

Attachment A

Rural Wooded Incentive & Transfer of Development Rights Programs

Growth Management Act Evaluation

Kitsap County Special Projects - February 2008

I. Introduction

As part of the 2006 10-Year Comprehensive Plan Update, the County adopted the Rural Wooded Incentive and the Transfer of Development Rights Programs as part the Rural Element of Comprehensive Plan. Subsequently, these programs were appealed to the Central Puget Sound Growth Management Hearings Board, which rendered a decision in August 2007. *Suquamish Tribe et al. v. Kitsap County,* CPSGMHB No. 07-3-0019c, FDO (8/15/07). The Hearings Board order determined the programs were partially invalid and non-compliant with the Growth Management Act (GMA). The Hearings Board decision directed the County to resolve the following:

a. Rural Wooded Incentive Program (RWIP) as it relates to the Wooded Reserve 40-Year time period for use, as well as reconciliation of natural resource industries and the need for a discrete planning document harmonizing GMA goals;

b. Transfer of Development Rights (TDR) Program as it relates to the 40-Year period of development right reuse.

Additionally, GMA requires cities and counties to balance the goals of GMA in the planning efforts. The GMA goals are not prioritized and, in some circumstances, may appear to conflict. Thus, the Hearings Boards have noted that a jurisdiction is not required to reconcile all these seemingly inconsistent requirements by focusing totally on one requirement. For example, it may be impossible to meet the goal of preserving existing housing to the exclusion of other requirements, such as encouraging more affordable housing. Rather, jurisdictions must reconcile the Act's seemingly contradictory requirements by applying and necessarily balancing them (*See West Seattle Defense Fund v. City of Seattle,* CPSGMHB 94-3-0016, Final Decision & Order at 30 (4/4/95)).

As such, the purpose of this document is to demonstrate how these programs and their proposed amendments balance and achieve GMA goals and Rural Element provisions. Proposed amendments to these programs are noted in the adopting ordinance. Attached to this document are the following exhibits:

- Exhibit A – TDR Sending & Receiving Areas Maps
- Exhibit B – Rural Wooded Lands Map
- Exhibit C – Forest Resource, Habitat Evaluation & Salmon Refugia Maps

II. Growth Management Act

The GMA establishes guidance for Kitsap County's Comprehensive Plan Rural Element. Both the Rural Wooded Incentive and Transfer of Development Rights Programs are included in the Rural Element of the Comprehensive Plan and the most pertinent portions are noted below.

Legislative Findings: Rural Lands

In 2002, the state legislature added specific findings regarding rural lands. RCW 36.70A.011 states:

> The legislature finds that this chapter is intended to recognize the importance of rural lands and rural character to Washington's economy, its people, and its environment, while respecting regional differences. Rural lands and rural-based economies enhance the economic desirability of the state, help to preserve traditional economic activities, and contribute to the state's overall quality of life.
>
> The legislature finds that to retain and enhance the job base in rural areas, rural counties must have flexibility to create opportunities for business development. Further, the legislature finds that rural counties must have the flexibility to retain existing businesses and allow them to expand. The legislature recognizes that not all business developments in rural counties require an urban level of services; and that many businesses in rural areas fit within the definition of rural character identified by the local planning unit.
>
> Finally, the legislature finds that in defining its rural element under RCW 36.70A.070(5), a county should foster land use patterns and develop a local vision of rural character that will: Help preserve rural-based economies and traditional rural lifestyles; encourage the economic prosperity of rural residents; foster opportunities for small-scale, rural-based employment and self-employment; permit the operation of rural-based agricultural, commercial, recreational, and tourist businesses that are consistent with existing and planned land use patterns; be compatible with the use of the land by wildlife and for fish and wildlife habitat; foster the private stewardship of the land and preservation of open space; and enhance the rural sense of community and quality of life.

GMA Goals

The GMA, 36.70.020 RCW establishes goals to guide the development and adoption of comprehensive plans and development regulations for Kitsap County. The following goals are not listed in order of priority and intended to be used exclusively for the purpose of guiding the development of comprehensive plans and development regulations.

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

2. **Reduce sprawl.** Reduce the inappropriate conversion of undeveloped land into sprawling, low-density development.

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

4. **Housing.** Encourage the availability of affordable housing to all economic segments of the population of this state, promote a variety of residential densities and housing types, and encourage preservation of existing housing stock.

5. **Economic development.** Encourage economic development throughout the state that is consistent with adopted comprehensive plans, promote economic opportunity for all citizens of this state, especially for unemployed and for disadvantaged persons, promote the retention and expansion of existing businesses and recruitment of new businesses, recognize regional differences impacting economic development opportunities, and encourage growth in areas experiencing insufficient economic growth, all within the capacities of the state's natural resources, public services, and public facilities.

6. **Property rights.** Private property shall not be taken for public use without just compensation having been made. The property rights of landowners shall be protected from arbitrary and discriminatory actions.

7. **Permits.** Applications for both state and local government permits should be processed in a timely and fair manner to ensure predictability.

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

9. **Open space and recreation.** Retain open space, enhance recreational opportunities, conserve fish and wildlife habitat, increase access to natural resource lands and water, and develop parks and recreation facilities.

10. **Environment.** Protect the environment and enhance the state's high quality of life, including air and water quality, and the availability of water.

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

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

13. **Historic preservation**. Identify and encourage the preservation of lands, sites, and structures that have historical or archaeological significance.

Shoreline Management Act

Additionally, RCW 36.70A.480 incorporates the goals and policies of the shoreline management act as stated in RCW 90.58.020. RCW 90.58.020 sets out the generalized legislative policies to protect shorelines through shoreline management planning but does not enumerate discrete goals and policies. As this is a programmatic document, and not site-specific, the goals and policies of the Shoreline Management Act of 1971 (SMA) may not necessarily apply on a programmatic basis.

Nonetheless, RCW 90.58.020 identified three basic policy areas to the SMA: 1) shoreline use, 2) environmental protection and 3) public access. The SMA emphasizes accommodation of reasonable and appropriate uses, protection of shoreline environmental resources and protection of the public's right to access and use the shorelines.

Specifically, the RWIP achieves these goals by providing an ability to cluster homes in an efficient manner, by encouraging the inter-connectivity of open space tracts that include trails that connect over broader areas of land. On the other hand, the TDR program further identifies rural properties that contain open space, potential recreational opportunities, preservation of fish and wildlife habitat as appropriate sending areas of development capacity. Both programs minimize adverse impacts to shoreline natural resources by either directing growth pressures to urban environments or by clustering homes that encourages interconnectivity of open space. Both the TDR and RWIP are voluntary programs and provide avenues for additional permanent, open space along the shorelines of the state. Additionally discussion of these goals and policies are also addressed herein through the discussion of GMA goals 9, 10 and 13.

GMA Rural Definitions RCW 36.70A.030

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

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

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

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

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

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

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

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

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

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

<u>GMA Rural Element Applicable Mandates RCW 36.70.070</u>

(5) Rural element. Counties shall include a rural element including lands that are not designated for urban growth, agriculture, forest, or mineral resources. The following provisions shall apply to the rural element:

(a) Growth management act goals and local circumstances. Because circumstances vary from county to county, in establishing patterns of rural densities and uses, a county may consider local circumstances, but shall develop a written record explaining how the rural element harmonizes the planning goals in RCW 36.70A.020 and meets the requirements of this chapter.

(b) Rural development. The rural element shall permit rural development, forestry, and agriculture in rural areas. The rural element shall provide for a variety of rural densities, uses, essential public facilities, and rural governmental services needed to serve the permitted densities and uses. To achieve a variety of rural densities and uses, counties may provide for clustering, density transfer, design guidelines, conservation easements, and other innovative techniques that will accommodate appropriate rural densities and uses that are not characterized by urban growth and that are consistent with rural character.

(c) Measures governing rural development. The rural element shall include measures that apply to rural development and protect the rural character of the area, as established by the county, by:

(i) Containing or otherwise controlling rural development;
(ii) Assuring visual compatibility of rural development with the surrounding rural area;
(iii) Reducing the inappropriate conversion of undeveloped land into sprawling, low-density development in the rural area;
(iv) Protecting critical areas, as provided in RCW 36.70A.060, and surface water and groundwater resources; and
(v) Protecting against conflicts with the use of agricultural, forest, and mineral resource lands designated under RCW 36.70A.170.

III. Program GMA Evaluation

Section three is intended to evaluate the Transfer of Development Rights and Rural Wooded Incentive Programs explaining how these programs of the Rural Element of Comprehensive Plan harmonize the 13 GMA goals.

Transfer of Development Rights Program

Kitsap County's Transfer of Development Rights (TDR) program is a market-based land use incentive program. The program provides opportunities for private landowners to achieve economic return through the sale of development rights to properties located within an Urban Growth Area (UGA). As shown in Exhibit A, all rural and resource lands designated in the Comprehensive Plan may have development potential as established in the Kitsap County Comprehensive Plan and Title 17 Zoning Ordinance. These lands are considered sending sites. All urban areas designated by the Comprehensive Plan are considered receiving areas of these additional development credits.

The proposed amendment to the TDR program replaces the deed restriction for transferred development rights from 40-years to in perpetuity or forever. This document evaluates how the TDR program and proposed amendments are harmonized with the GMA Goals and applicable mandates.

1. **Urban growth**.
   The TDR program and proposed revisions encourage development in urban areas where adequate public facilities and services exist or can be provided in an efficient manner. Essentially, the TDR program is removing potential development capacity in rural areas and locating it in urban areas where urban level of services can be provided. The TDR program also requires any site-specific comprehensive plan amendment or rezone to acquire development credits from rural and resource lands.

As such, this program and the proposed amendments further achieve this goal by preserving rural character as defined in RCW 36.70A.030 (15) and not promoting urban growth or low-density sprawl in rural and resource areas.

2. **Reduce sprawl.**
   As noted above, the TDR program and the proposed amendments eliminate the inappropriate conversion of undeveloped land into sprawling, low-density development by transferring development potential into urban areas at urban densities. The purpose of the County's TDR program and proposed amendments are to direct growth pressures away from rural and resource lands into urban areas, while equaling property values. This program may be used to remove the development rights from substandard lots that were created prior to the enactment of the GMA and reduce development of those pre-existing parcels.

3. **Transportation.**
   The County's TDR program and proposed amendments is to direct growth pressures away from rural and resource lands into urban areas where adequate public facilities and services exist or can be provided in an efficient manner. This program of directing rural capacity and growth in urban areas encourages efficient multimodal transportation systems where higher urban densities exist.

4. **Housing.**
   The Kitsap County Comprehensive Plan provides a wide range of rural and urban densities and housing types. Specifically, the TDR program is a voluntary program in which additional housing opportunities are directed from rural areas with lower level of services to urban areas where higher level of services exist with the potential for more affordable housing choices.

5. **Economic development.**
   The TDR program allows opportunity for rural landowners to receive financial compensation without developing or selling their land. In exchange, the public receives preservation of open space, rural character, and natural resource based industries as shown in Exhibits A and C. Additionally, the County does not set the selling price of the development credit, but rather utilizes a well-established market and industry professionals that can work with property owners on the development credit price.

   Additionally, urban properties receive additional economic opportunities for upzones in urban areas where public services are or will be available for development.

6. **Property rights.**
   As noted in the description of Goal 5 and shown in Exhibits A and C, the program allows rural property owners to receive financial compensation without developing or selling their land. In exchange, the public receives preservation of open space, rural character, and natural resource based industries. Additionally, urban

properties receive additional economic opportunities for upzones in urban areas where public services are or will be available for development. As such, selling and purchasing of TDRs is a voluntary program.

7. **Permits.**
   Kitsap County Title 21 Land Use Procedures provides timeframes in which permits should be processed to ensure a timely and fair manner and consistent with state law.

8. **Natural resource industries.**
   Through implementation of the Comprehensive Plan Policy RL-70 and Kitsap County Code 17.430, the proposed amendments provide mechanisms for the County and property owners to maintain and enhance natural resource-based industries, including productive timber, agricultural, and fisheries industries. The program encourages the conservation of productive forest lands, productive agricultural lands, and discourages incompatible uses.

9. **Open space and recreation.**
   Through implementation of the Comprehensive Plan Policy RL-70 and Kitsap County Code 17.430, the proposed amendments further identify rural properties that contain open space, potential recreational opportunities, preservation of fish and wildlife habitat as appropriate sending areas of development capacity. Exhibits A and C show areas that could utilize the TDR program, as well as areas that have exceptional fish and wildlife and open space opportunities.

10. **Environment.**
    Through implementation of the Comprehensive Plan Policy RL-70 and Kitsap County Code 17.430, the proposed amendments provide additional incentive-based protection on all aspects of the natural environment by directing growth pressures from the rural areas in perpetuity and directing growth in urban areas.

11. **Citizen participation and coordination.**
    Through the 2006 10-Year Comprehensive Plan Update, as well as through the public process for the proposed amendments, the County has ensured that citizens have an opportunity to be involved, and has ensured coordination between communities and jurisdictions to reconcile conflicts. Appendix A of the 2006 Final Environmental Impact Statement of the Comprehensive Plan and the adopting ordinance of the proposed amendments provides a summary of opportunity for citizen and local jurisdictional involvement.

12. **Public facilities and services.**
    The TDR program provides incentives for encouraging urban growth in UGAs where public facilities and services are or will be available to serve the increase in development. The program also directs growth pressures away from rural and resource lands to locations where compact urban development can occur to increase efficiency of public facilities and services.

13. **Historic preservation.**
The TDR program and the proposed development deed restriction of perpetuity ensures that the preservation of lands, sites, and structures located within rural and resources lands will be secured forever and for future generations to enjoy.

TDR Conclusion
The TDR program, as amended, promotes virtually every GMA goal to some degree or another. The TDR program promotes urban growth; reduces the potential for urban sprawl; encourages growth where transportation and other public services are available; provides some degree of economic development opportunities; preserves property rights; ensures timely permit processing; protects and preserves natural resource industries, open space, recreational land, historic sites, and the environment; and ensures adequate public participation. The TDR program harmonizes well with the GMA goals.

Rural Wooded Incentive Program
As authorized under GMA 36.70A.070(5)(b), and RCW 36.70A.090, the Rural Wooded Incentive Program(RWIP) provides a rural clustering program for land designated and zoned Rural Wooded. Rural Wooded lands are not classified as forest lands of long-term commercial significance, but include timber-related activities on the properties. This program and proposed amendments provides incentives for landowners, while promoting coordinated open space that would be permanent and providing opportunities to continue timber management techniques consistent with rural environments. As such, the Rural Wooded Incentive Program is appropriate in light of the local circumstances found within the rural areas of Kitsap County.

As shown in Exhibit B, there are 49,501 acres of eligible land (excluding rights-of-way) on 1,381 parcels. The average lot size is 14.1 acres with 231 dwelling units in the Rural Wooded area. The Rural Wooded Incentive Program, however, can only apply to 5,000 acres that are 20 acres or greater in size. Monitoring of the program is required before any additional acres are made available for use in the program. Individual projects using this program may not exceed 500 contiguous acres. These limitations as well as others included in this voluntary program are consistent with the intent of clustered housing and the maintenance of rural character. The 75% open space requirement is equivalent to the density bonus allowed by the program.

1. **Urban growth.**
The incentive program provides opportunity for a variety of rural densities as required under the GMA. It also provides a development pattern in rural areas that is consistent with rural character and encourages rural character design. The program will provide innovative clustered housing techniques that are a more efficient use of Kitsap's rural landscape. Public services provided to these eligible areas are consistent with GMA definitions of rural services and rural development noted in Section Two of this document. Development regulations require the

review authority to ensure that no urban services are required for a proposal using the program.

Additionally, the base density of the Rural Wooded zone remains 1 d.u./20 acres, with a voluntary option to do a maximum of 1 d.u./5 acres if the development site provides clustered housing with 75% permanent open space. Also included in the program is monitoring through the County's Buildable Lands Analysis to evaluate in light of urban and rural growth ratios.

2. **Reduce sprawl.**
As noted in description of Goal 1, the incentive program provides opportunity for a development pattern in rural areas that is consistent with rural character. It also provides rural densities that result in a development pattern that encourages variety in rural character design, innovative clustered housing techniques that are more efficient use of Kitsap's rural landscape.

Additionally, the base density of the Rural Wooded zone remains 1 d.u./20 acres, with a voluntary option to do a maximum of 1 d.u./5 acres if the development site provides clustered housing and permanent open space. Even with the bonus density, rural densities are maintained, but with the added amenity of expansive permanent open space. Also included in the program is monitoring through the County's Buildable Lands Analysis to evaluate in light of urban and rural growth ratios.

3. **Transportation.**
The purpose of the incentive program is to minimize impervious surfaces and associated cost by clustering homes in a more efficient manner than traditional rural developed plats and consistent with the rural character and GMA development definitions noted in Section Two of this document. Development regulations require that road systems serving such developments meet applicable rural concurrency standards, should be narrow and designed to adapt to the natural contours and features of the land, and should have rural road characteristics, such as shoulders and grass-lined ditches. Finally, the phasing process ensures that there is no level of service failures on roads serving existing RWIP development. If such a failure is identified, the next phase of the program cannot be implemented.

4. **Housing.**
The clustered housing allowed by the program will reduce the cost of rural infrastructure, which is generally spread over the unit cost for housing. The ability for property owners to develop in uncoordinated 20-acre tracts without a formal land use subdivision review (as allowed under state law) will further increase the costs of roadways and their associated stormwater mitigation. Providing an alternative to that type of development may help keep development costs down. These issues, combined with the base higher cost of 20-acre parcels, may affect the County's ability to provide workforce housing county-wide.

5. **Economic development.**
The program allows additional housing options for employees of the rural industrial and commercial business located in North and Central Kitsap. These housing options, while not intended to draw from the County's urban areas, will provide shorter commutes for employees traveling to these existing rural businesses, increasing their long-term viability. Providing expansive and inter-connected tracts of open spaces with trail infrastructure may encourage tourism to some of these areas.

6. **Property rights.**
The Rural Wooded Incentive Program provides Rural Wooded property owners a voluntary program in which a property owner can receive a density bonus up to (1 d.u./5 acres) if dedicating 75% of the development site for permanent open space. Thus, the program helps ensure an economic return on some development and promotes individual property rights. Because the program is voluntary, it also preserves existing property rights.

7. **Permits.**
Kitsap County Title 21 Land Use Procedures provides timeframes in which permits should be processed to ensure a timely and fair manner and consistent with state law.

8. **Natural resource industries.**
As shown in Exhibit C, the incentive program, along with the proposed amendments maintains and enhances natural resource-based industries by allowing innovative timber techniques within open space. While these are not considered natural resource lands, it does preserve some smaller-scale natural resource based industries that would not be economically viable without the program.

9. **Open space and recreation.**
The incentive program, along with the proposed amendments provides a minimum of seventy-five percent (75%) of the Rural Wooded Incentive Program development site to be placed in a permanent open space tract(s) where uses are limited to passive recreation, forestry or other timber management techniques. The program encourages the inter-connectivity of open space tracts and may include trails that connect the tracts over broader areas of land. These clustering and open space provisions ensure that there are larger open areas and recreational opportunities available in the rural areas.

10. **Environment.**
As shown in Exhibit C, the incentive program would optimize protection of critical areas by containing housing clusters and other development away from critical areas; preserving significant trees; optimizing the preservation and interconnectivity of open space; avoiding development on ridgelines, the centers of

open field, or other prominent topographical features or scenic elements; and minimizing topographic alteration. The development regulations encourage the retention of open space in areas that will preserve saltwater shorelines; the inclusion of all water bodies within the open space; and the conservation of wildlife habitat. The development regulations also impose rural standards, such as road, water and sewer services. All of these measures further implement this GMA goal.

Additionally, the clusters developed under this program must provide a 100-foot vegetated buffer from existing public roadways and adjoining properties and a 150-foot buffer between clusters in order to preserve rural character and the aesthetic values of Rural Wooded lands.

11. Citizen participation and coordination.

The public process for this program extends over many years. Through adoption of a valid Comprehensive Plan in 1998, the proposed 2003 and the 2006 10-Year Comprehensive Plan Update, as well as through the public process for the proposed amendments, the County has ensured that citizens had an opportunity to be involved, and has ensured coordination between communities and jurisdictions to reconcile conflicts. As the CPSGMHB noted in 2004, "There does not appear to be any dispute regarding need for some type of an incentive program in light of the local circumstances found within these rural areas of Kitsap County." (*Bremerton et al. v. Kitsap County ("Bremerton II"),* CPSGMHB No. 04-3-0009c, FDO (8/9/04)). Appendix A of the 2006 Final Environmental Impact Statement of the Comprehensive Plan and the adopting ordinance of the proposed amendments provides a recent summary of opportunities for citizen and local jurisdictional involvement.

12. Public facilities and services.

Rural public facilities and services necessary to support development within the incentive program will be required and adequate to serve the development. Public services and facilities provided to lands eligible for the incentive program areas are consistent with GMA definitions of rural services and rural development noted in Section Two of this document.

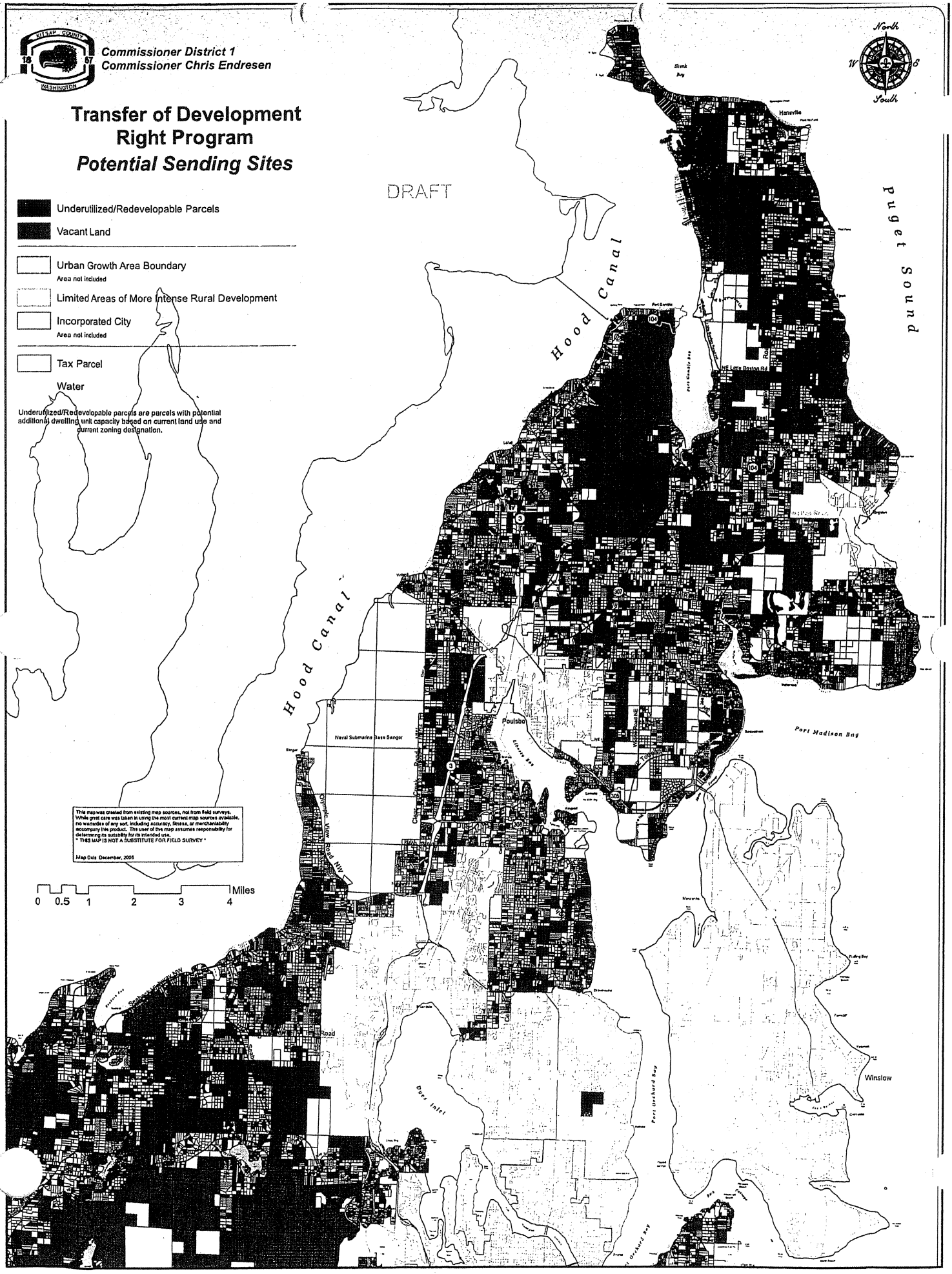
13. Historic preservation.

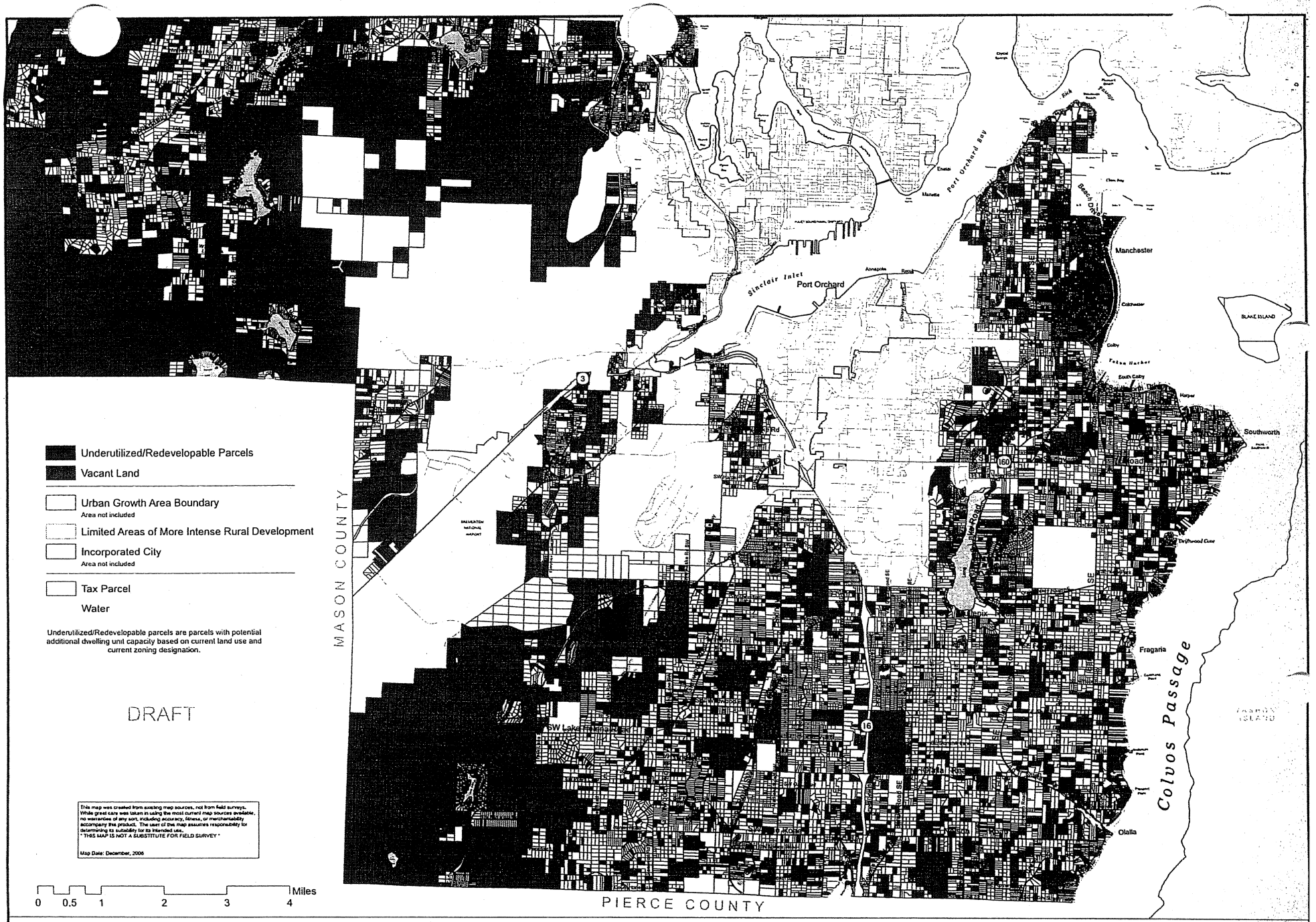
Properties using the program will be required to receive land use subdivision approval with its associated SEPA determination. It is at this time that potential impacts to cultural, archeological and historic resources can be assessed on a larger-area basis. Without use of the program, properties may be subdivided into sectional 20-acre parcels without a formal subdivision process (as allowed under state law). SEPA determinations are not required with this form of subdivision and unless future parcel-specific development triggers a SEPA determination the impacts to these resources may go unaddressed.

RWIP Conclusion

On balance, the RWIP program, as amended, can be harmonized with the GMA goals. The RWIP ensures the retention of rural character; prohibits urban growth in the rural areas and thus reduces the potential for urban sprawl; only allows growth where adequate rural transportation and rural services are provided; provides some degree of economic development opportunities; preserves property rights; ensures timely permit processing; protects and preserves natural resource industries, open space, recreational land, historic sites, and the environment; and ensures adequate public participation. The RWIP harmonizes well with the GMA goals.

Exhibit A
TDR Sending & Receiving Areas


Commissioner District 1
Commissioner Chris Endresen
Transfer of Development Right Program
Potential Sending Sites
DRAFT
Underutilized/Redevelopable Parcels
Vacant Land
Urban Growth Area Boundary
Area not included
Limited Areas of More Intense Rural Development
Incorporated City
Area not included
Tax Parcel
Water
Underutilized/Redevelopable parcels are parcels with potential additional dwelling unit capacity based on current land use and current zoning designation.
This map was created from existing map sources, not from field surveys. While great care was taken in using the most current map sources available, no warranties of any sort, including accuracy, fitness, or merchantability accompany this product. The user of this map assumes responsibility for determining its suitability for its intended use.
* THIS MAP IS NOT A SUBSTITUTE FOR FIELD SURVEY *
Map Date: December, 2006
0 0.5 1 2 3 4 Miles
North
West
East
South
Hood Canal
Hood Canal
Puget Sound
Port Madison Bay
Port Orchard Bay
Dyes Inlet
Agate Pass
Keyport
Poulsbo
Naval Submarine Base Bangor
Hansville
Port Gamble
Winslow
Olympic View Road NW
NE Lofall Road
NE Lofall Road NE
NE Lofall Road NW
NE Lofall Road
NE Lofall Road
NE Lofall Road


Underutilized/Redevelopable Parcels
Vacant Land
Urban Growth Area Boundary
Area not included
Limited Areas of More Intense Rural Development
Incorporated City
Area not included
Tax Parcel
Water
Underutilized/Redevelopable parcels are parcels with potential additional dwelling unit capacity based on current land use and current zoning designation.
DRAFT
This map was created from existing map sources, not from field surveys. While great care was taken in using the most current map sources available, no warranties of any sort, including accuracy, fitness, or merchantability accompany this product. The user of this map assumes responsibility for determining its suitability for its intended use.
* THIS MAP IS NOT A SUBSTITUTE FOR FIELD SURVEY *
Map Date: December, 2006
0 0.5 1 2 3 4 Miles
MASON COUNTY
PIERCE COUNTY
Port Orchard
Manchester
Southworth
Fragaria
Olalla
Sinclair Inlet
Colvos Passage
Port Orchard Bay
BLAKE ISLAND
McCormick Woods
SW Lake Flora Road
Mile Hill Drive
Bethel Burley Road SE
Sedgwick Road
Beach Drive
Tremont Road
Old Clifton Road
Bay Shore Drive
Harper
Tolmie State Park
Tahuya
Clifton
Annapolis
Retsil
Manette
Ehlers
Colchester
Gorst
Tekon Harbor
South Colby
Tracyton
Tryon Creek
Tryon Creek Cove
Bethel
Burley
Olalla
Vaughn
Gig Harbor
Purdy
Key Peninsula
Kitsap Peninsula
Olympic Peninsula
Vashon Island
Maury Island
Dash Point
Federal Way
Auburn
Kent
Renton
Seattle
Tacoma
Puyallup
Sumner
Bonney Lake
Enumclaw
Black Diamond
Ravensdale
Maple Valley
Covington
Kent-Kangley Road
Kent-Des Moines Road
Pacific Highway South
Military Road
Military Road South
Enchanted Parkway
Enchanted Parkway South
Auburn-Black Diamond Road
Auburn-Enumclaw Road
Green River Gorge
Green River
Soos Creek
Lake Meridian
Lake Sawyer
Lake Wilderness
Lake Desire
Lake Youngs
Lake Fenwick
Lake Morton
Lake Kathleen
Lake Retreat
Lake Holm
Lake Geneva
Lake Killarney
Lake Twelve
Lake Stevens
Lake Goodwin
Lake Roesiger
Lake Cassidy
Lake Ballinger
Lake Serene
Lake Chaplain
Lake Howard
Lake Tapps
Lake Tanwax
Lake Kapowsin
Lake Ohop
Lake Alice
Lake Susan
Lake Desire
Lake Wilderness
Lake Meridian
Lake Sawyer
Lake Youngs
Lake Fenwick
Lake Morton
Lake Kathleen
Lake Retreat
Lake Holm
Lake Geneva
Lake Killarney
Lake Twelve
Lake Stevens
Lake Goodwin
Lake Roesiger
Lake Cassidy
Lake Ballinger
Lake Serene
Lake Chaplain
Lake Howard
Lake Tapps
Lake Tanwax
Lake Kapowsin
Lake Ohop
Lake Alice
Lake Susan
3
16
160
SE
Commissioner District 2
Commissioner Jan Angel
Transfer of Development Right Program
Potential Sending Sites
North

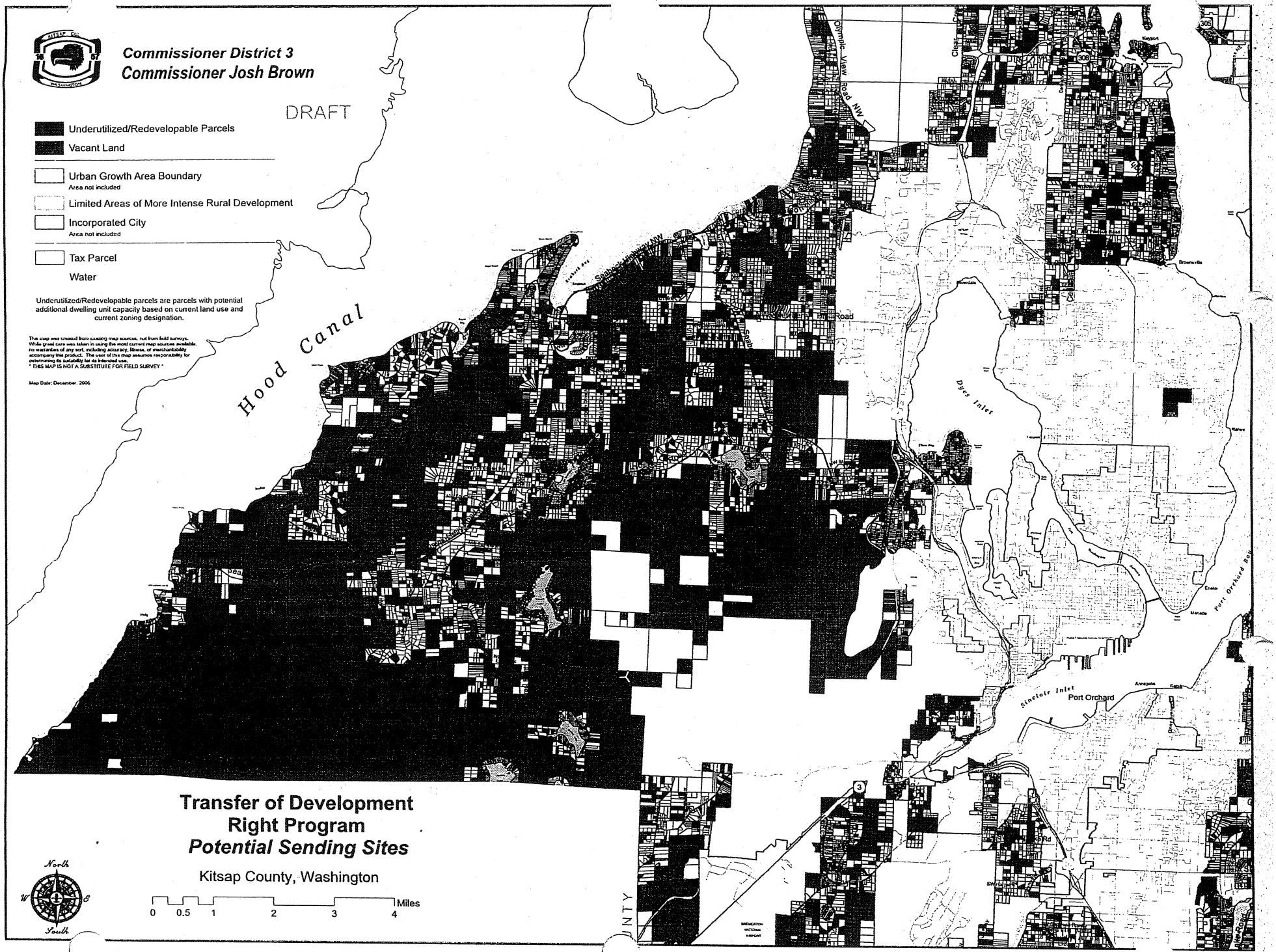

Commissioner District 3
Commissioner Josh Brown
DRAFT
Underutilized/Redevelopable Parcels
Vacant Land
Urban Growth Area Boundary
Area not included
Limited Areas of More Intense Rural Development
Incorporated City
Area not included
Tax Parcel
Water
Underutilized/Redevelopable parcels are parcels with potential additional dwelling unit capacity based on current land use and current zoning designation.
This map was created from existing map sources, not from field surveys. While great care was taken in using the most current map sources available, no warranties of any sort, including accuracy, fitness, or merchantability accompany this product. The user of this map assumes responsibility for determining its suitability for its intended use.
* THIS MAP IS NOT A SUBSTITUTE FOR FIELD SURVEY *
Map Date: December, 2006
Hood Canal
Olympic View Road NW
Dyes Inlet
Sinclair Inlet
Port Orchard
Transfer of Development Right Program
Potential Sending Sites
Kitsap County, Washington
North
West
East
South
0 0.5 1 2 3 4 Miles

Exhibit B
Rural Wooded Lands

KITSAP COUNTY

Washington

RURAL WOODED
LAND USE DESIGNATION

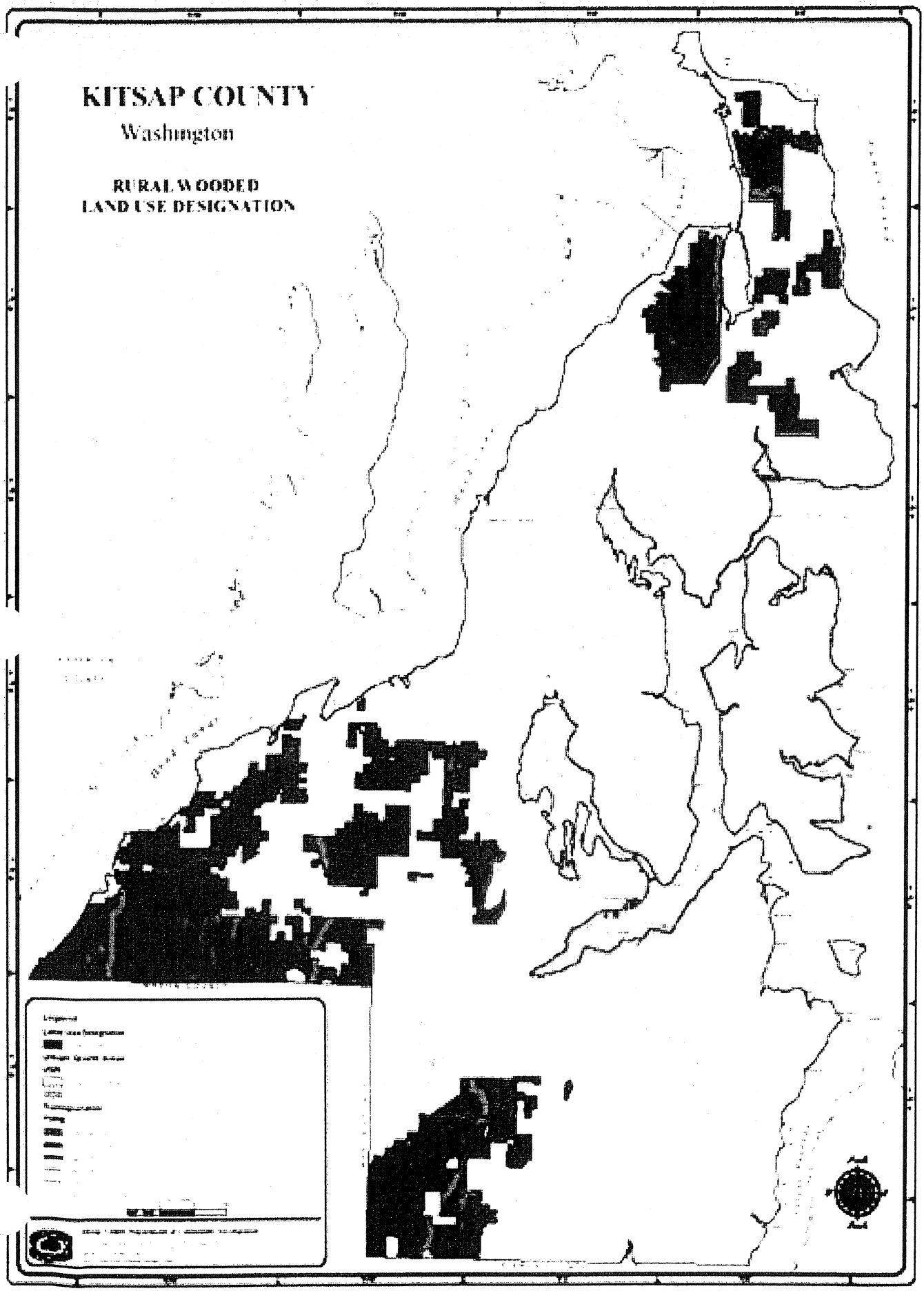


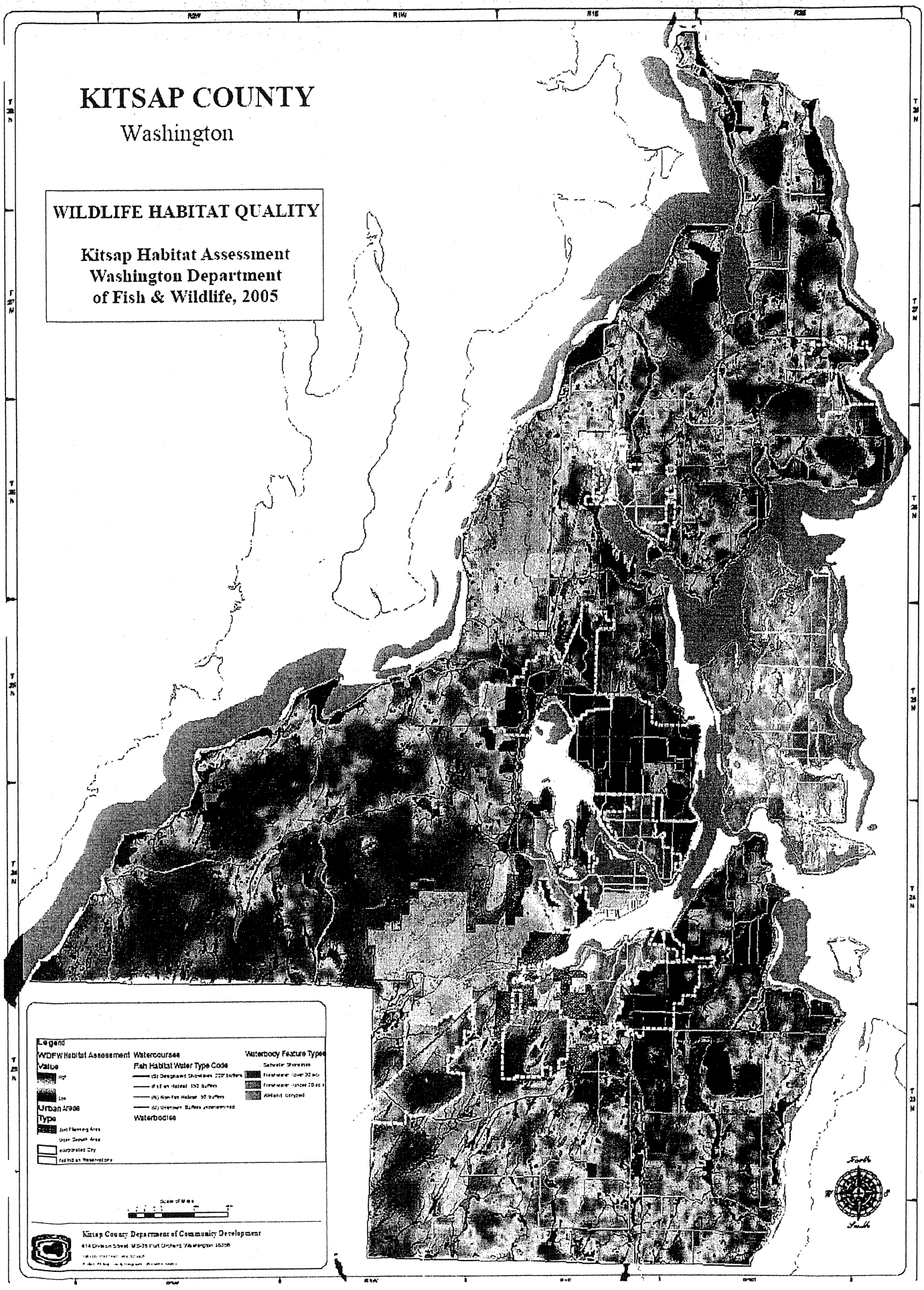
Exhibit C
Forest Resource, Wildlife Habitat & Salmon Refugia Maps

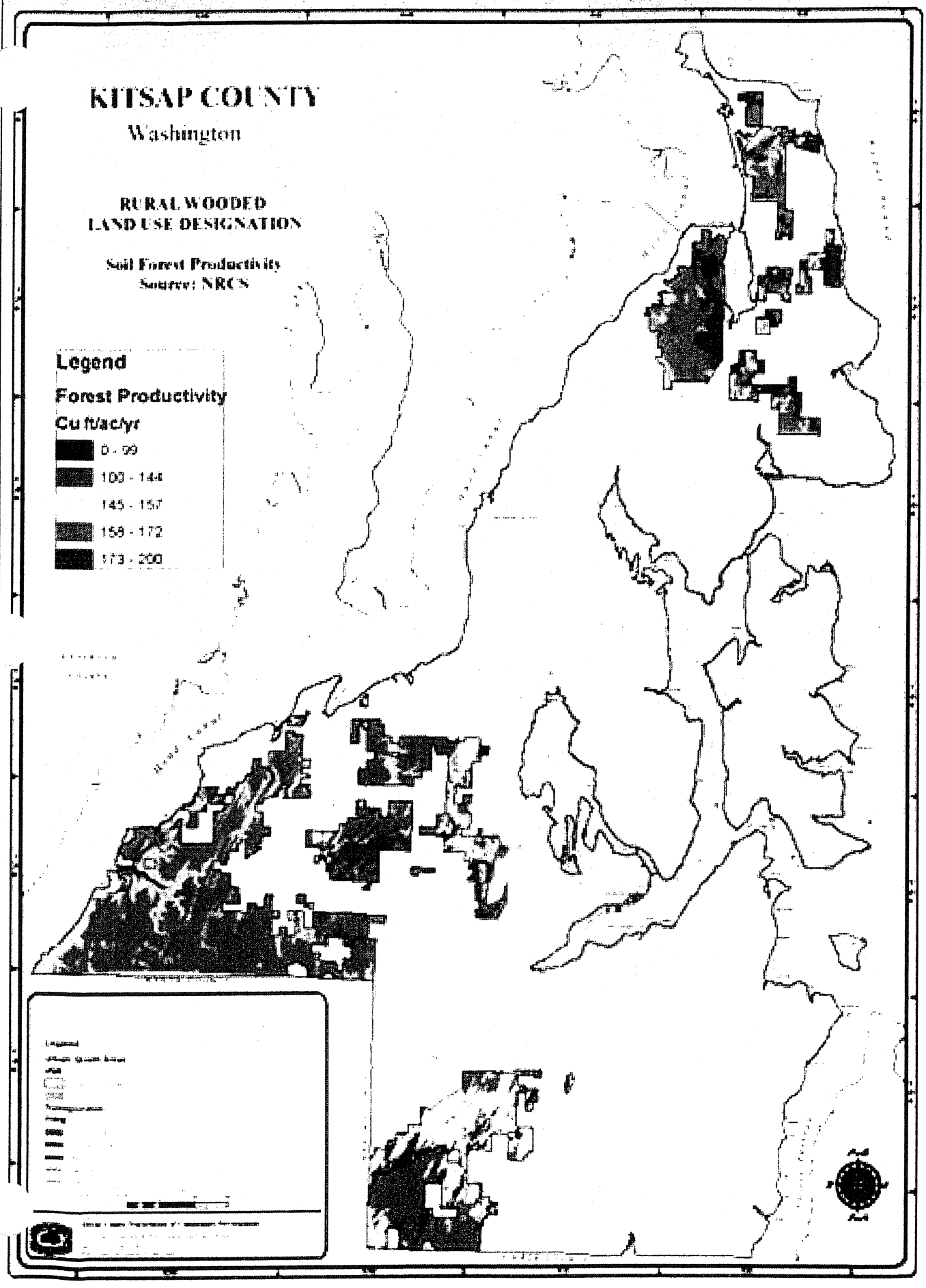
KITSAP COUNTY

Washington

WILDLIFE HABITAT QUALITY

Kitsap Habitat Assessment
Washington Department
of Fish & Wildlife, 2005



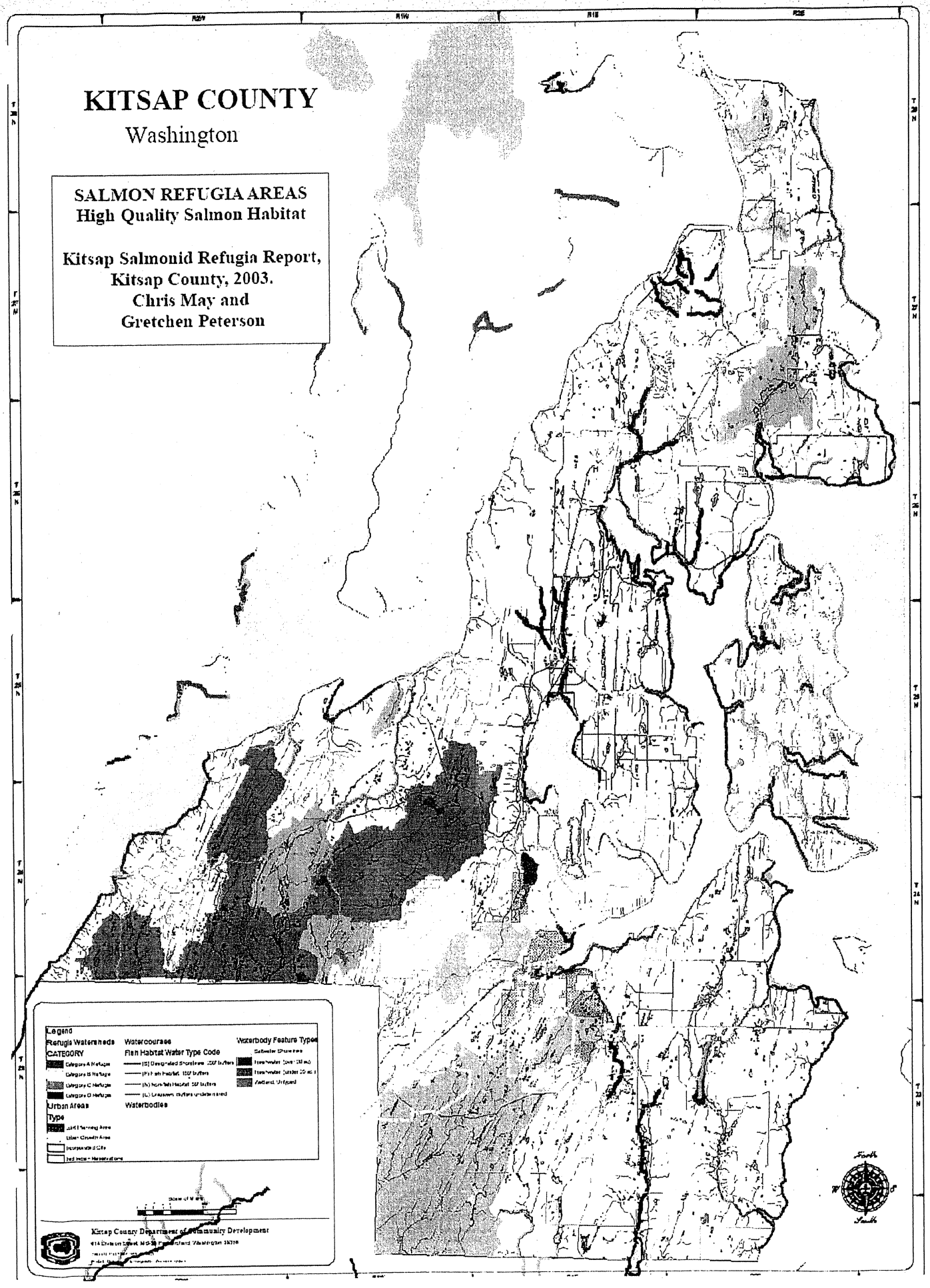

KITSAP COUNTY
Washington
RURAL WOODED
LAND USE DESIGNATION
Soil Forest Productivity
Source: NRCS
Legend
Forest Productivity
Cu ft/ac/yr
0 - 99
100 - 144
145 - 157
158 - 172
173 - 200

KITSAP COUNTY

Washington

SALMON REFUGIA AREAS
High Quality Salmon Habitat

Kitsap Salmonid Refugia Report, Kitsap County, 2003.
Chris May and Gretchen Peterson



Appendices 6
CP 261,
AR 89

App. 6
Order Finding Compliance/ Partial Non-Compliance

CENTRAL PUGET SOUND
GROWTH MANAGEMENT HEARINGS BOARD
STATE OF WASHINGTON

SUQUAMISH TRIBE, KITSAP CITIZENS FOR RESPONSIBLE PLANNING, and JERRY HARLESS, Petitioners, v. KITSAP COUNTY, Respondent, PORT GAMBLE S'KLALLAM TRIBE Intervenor.	Case No. 07-3-0019c *(Suquamish II)* **ORDER FINDING PARTIAL COMPLIANCE [TDRs] and FINDING CONTINUING NONCOMPLIANCE [RWIP] and FINDING CONTINUING NONCOMPLIANCE AND INVALIDITY [Capital Facilities and UGAs]**

I. PROCEDURAL HISTORY

On August 15, 2007, the Central Puget Sound Growth Management Hearings Board (the **Board**) issued its "Final Decision and Order" (**FDO**) in the above captioned case. In the FDO the Board found the County's Capital Facility Plan (**CFP**), Rural Wooded Incentive Program (**RWIP**), and Transfer of Development Rights Program (**TDR**) noncompliant with the GMA. The Board entered a determination of invalidity for all three noncompliant provisions. A compliance schedule was established in the FDO. *See* FDO, at 64-67.

On September 13, 2007, the Board issued its "Order on Motion for Reconsideration" (**9/13/07 Order**). The Board granted Petitioner's motion for reconsideration and invalidated five UGA expansion areas[1] that were unsupported by urban services – sewer service – in the Capital Facility Plan. The compliance period was not altered in the 9/13/07 Order. *See* 9/13/07 Order, at 4.

On October 25, 2007, the Board issued its "Order on Motion to Clarify, Modify or Rescind" (**10/25/07 Order**). The Board denied the County's request to modify the

[1] The invalidated UGA expansion areas are: Silverdale, Central Kitsap, West Bremerton, Gorst, and Port Orchard.

Central Puget Sound
Growth Management Hearings Board
800 Fifth Avenue, Suite 2356, Seattle, WA 98104
Tel. (206) 389-2625 Fax (206) 389-2588

Board's decision pertaining to the five UGA expansion areas. The compliance period was not altered in the 10/25/07 Order. *See* 10/25/07 Order, at 4.

On January 29, 2008, the Board issued its "Order Denying Motion for Extension of Compliance Period" (1/29/08 Order). The County stated that it needed more time to comply regarding the CFP and UGAs and asked that the 180-day deadline set forth in the FDO be extended. Citing statutory limitations, the Board denied the County's request. The compliance schedule was not altered in the 1/29/08 Order.

On February 21, 2008,[2] the Board received: 1) "Kitsap County's Statement of Actions Taken to Comply" (**Kitsap SATC**), with 11 attached exhibits; and 2) "Respondent's Index to the Record" (**Remand Index**), listing 103 items. Kitsap's SATC was timely filed.

On February 25, 2008, the Board received "Petitioner Harless' Response to Kitsap County's February 21, 2008 Statement of Actions Taken to Comply" (**Harless Response**); no exhibits were attached.

On March 6, 2008, the Board received "Petitioner Suquamish Tribe and Citizens for Responsible Planning and Intervenor Port Gamble Tribe Response to Kitsap County's Statement of Actions Taken to Comply" (**Suquamish Response**), with two attached exhibits.

On March 12, 2008, the Board received "Kitsap County's Reply to Statement of Actions Taken to Comply" (**Kitsap Reply**); no exhibits were attached.

The Board conducted the Compliance Hearing on March 24, 2008, at 10:00 a.m. at the Sealth Training Center, 20th Floor, 800 Fifth Avenue, Seattle, Washington. Board Member Edward G. McGuire presided. Board members David O. Earling and Margaret A. Pageler, and Board Attorney Julie Ainsworth-Taylor also attended. *Pro se* Petitioner Jerry Harless participated as did Melody Allen, representing the Suquamish Tribe, and Tom Donnelly, representing Kitsap Citizens for Responsible Planning. Lauren Rasmussen participated for Intervenor Port Gamble S'Klallam Tribe. Shelly E. Kneip represented the Respondent Kitsap County. Also attending the hearing were Commissioner Josh Brown, Eric Baker, Tom Nevins and Alison O'Sullivan. Court reporting services were provided by Rebecca L. Meyers of Byers and Anderson, LLC. The Compliance Hearing was adjourned at 11:40 a.m.

On March 24, 2008, at the compliance hearing, the County submitted: 1) "Kitsap County's Supplemental Statement of Actions Taken to Comply" (**Kitsap SATC2**), with six attached exhibits; and 2) "Respondent's Supplemental Compliance Index to the

[2] The Board received hard copy of this filing on February 25, 2008.

Central Puget Sound
Growth Management Hearings Board
800 Fifth Avenue, Suite 2356, Seattle, WA 98104
Tel. (206) 389-2625 Fax (206) 389-2588

Record" (**Remand Index 2**), listing 49 items. This late filing addressed the County's actions pertaining to the CFP and UGAs.

II. BOARD DISCUSSION

Context – FDO and Order for Reconsideration:

In its August 15, 2007 FDO the Board stated:

> Based upon review of the Petition for Review, the briefs and exhibits submitted by the parties, having considered the arguments of the parties, and having deliberated on the matter, the Board ORDERS:
>
> . . .
>
> 3. As discussed *supra*, the Plan Update [Ordinance No. 370-2006], specifically the Capital Facility Plan, at Appendix A, **does not comply** with the requirements of RCW 36.70A.070(3) and .020(12), since it does not demonstrate that adequate public facilities and services [*sanitary sewer*] will be available within the planning period for the population within certain expanded urban growth areas.
>
> 4. As discussed *supra*, certain implementing development regulations of Title 17 of the Kitsap County Code [Ordinance No. 367-2006], specifically KCC 17.301.080(F), 17.301.080(E)(12), and 17.430.090(F)(4), related to the County's Rural Wooded Incentive Program and Transferable Development Rights program **do not comply** with the requirements of RCW 36.70A.070(5) and .020(1), (2), (8), (9) and (10).
>
> 5. Additionally, as discussed *supra*, the Board has found that the continued validity of the Capital Facility Plan in Appendix A, related to certain sanitary sewer provisions, in the 10-Year Plan Update [Ordinance No 370-2006], substantially interferes with the fulfillment of Goal 12 – RCW 36.70A.020(12). Further, the Board has found that the continued validity of certain provisions of the Rural Wooded Land Program [KCC 17.301.080(E)(12) and 17.301.080(F)] and a certain provision of the Transfer of Development Rights Program [KCC 17.430.090(F)(4)] [Ordinance No. 367-2006], substantially interfere with the fulfillment of Goals 1, 2, 8, 9 and 10 – RCW 36.70A.020(1), (2), (8), (9) and (10). Consequently, the Board has entered a **determination of invalidity** with respect to these noted Plan Update and implementing development regulation provisions.

Central Puget Sound
Growth Management Hearings Board
800 Fifth Avenue, Suite 2356, Seattle, WA 98104
Tel. (206) 389-2625 Fax (206) 389-2588

6. The Board **remands** Ordinance Nos. 367-2006 and 370-2006 to Kitsap County with direction to take the necessary legislative actions to comply with the requirements of RCW 36.70A.070(3), .070(5) and the Goals of RCW 36.70A.020(1), (2), (8), (9), (10) and (12), as set forth and interpreted in this Order.

FDO, at 64-65.

Additionally, in its September 13, 2007 Order on Motion for Reconsideration, the Board stated:

> Having reviewed the August 15, 2007 FDO, the Suquamish Motion for Reconsideration, the County's Answer, and the relevant provisions of the GMA and the Board's Rules of Practice and Procedure, prior decisions of the Boards, and having deliberated on the matter, the Board ORDERS:
>
> . . .
>
> 2. The Suquamish Motion for Reconsideration pertaining to Legal Issue 3 [Capital Facilities Element] is **GRANTED**.
>
> 3. The Board hereby enters a **determination of invalidity** for the *Silverdale* UGA expansion, *Central Kitsap* UGA expansion, *West Bremerton* UGA expansion, *Gorst* UGA expansion and the *Port Orchard* UGA expansion, for substantially interfering with the fulfillment of Goal 12 – RCW 36.70A.020(12). Further, the Board refines its determination of invalidity for the County's Capital Facilities Element, Appendix A, pertaining to sanitary sewers, to be limited to those provisions dealing with those entities (*i.e.* Kitsap County, Port Orchard and Bremerton) that allegedly provide sanitary sewer service to these five UGA expansion areas.

Order on Reconsideration, at 4.

In short, provisions of the County's Transferable Development Rights program and Rural Wooded Incentive programs were found noncompliant and declared invalid. Also the Board found the County's Capital Facilities Plan, as it related to sanitary sewers, noncompliant and invalid as were five UGA expansion areas.

On February 13, 2008,[3] the County adopted Ordinance No. 407-2008 (Ex. 69), with attachments and Ordinance No. 408-2008 (Ex. 78). Ordinance No. 407-2008 amends the

[3] February 11, 2008 was the deadline established in the August 15, 2008 FDO for the County to take legislative action.

Central Puget Sound
Growth Management Hearings Board
800 Fifth Avenue, Suite 2356, Seattle, WA 98104
Tel. (206) 389-2625 Fax (206) 389-2588

County's Comprehensive Plan and development regulations to address the TDR and RWIP remand issues. Kitsap SATC, at 4-21. As of the date the County filed the SATC [2/21/08], the County had not completed its remand work on the Capital Facilities Plan and the UGA expansion areas. *Id.* at 21-22.

The Board will address the remand issues in the following order: Transferable Development Rights; Rural Wooded Incentives; and finally, the Capital Facilities Element and UGA expansion areas.

Discussion and Analysis:

A. Transferable Development Rights

The Board's discussion of the County's TDR program is contained in the FDO at 44-50. Significantly, the only error the Board found with the County's program was with a provision in the County Code (17.430.090(F)(4)) that provided for a 40-year limitation on the transferred right. *See* FDO, at 49-50.

To comply with the Act, the County amended: 1) the Kitsap County Comprehensive Plan to change Land Use Goal 15, and Rural Lands Policies RL-66, RL-68, and RL-70; Kitsap SATC, at 5; Ex., 69, Sec. 2, at 3; and 2) Kitsap County Code (**KCC**) sections 17.430.010 and 17.430.090. *Id.* at Sec 3 and 4. At 4-6. Specifically, the County amended KCC 17.430.090(F)(4) as follows [deletions shown in ~~strikethrough~~ and new language in underlining]:

> 4. For all sending parcels, the deed restriction is sufficient to retire all transferred development rights on the sending parcel ~~for a period of~~ in perpetuity ~~40 years~~.

Petitioners agree that the County's legislative action, particularly the amendment to KCC 17.430.090(F)(4) which removes the provision reinstating development rights after forty years, achieves compliance with the GMA. Suquamish Response, at 2. The Board agrees.

The Board finds and concludes that by adopting Ordinance No. 407-2008, specifically the noted Plan and development regulation amendments pertaining to the County's TDR program, the County now **complies** with the requirements of the Act [RCW 36.70A.070(5) and .020(1), (2), (8), (9) and (10)]. The Board will enter a **Finding of Compliance** on this issue and **rescind** the **Determination of Invalidity**.

B. Rural Wooded Incentive Program

The Board's discussion of the County's RWIP occurs in the FDO at 27-44. It states:

Central Puget Sound
Growth Management Hearings Board
800 Fifth Avenue, Suite 2356, Seattle, WA 98104
Tel. (206) 389-2625 Fax (206) 389-2588

> The Board finds and concludes that the County's action in adopting Ordinance No. 367-2006, specifically the development regulations pertaining to the 40-year limitation and disclosure statement requirements of the RWIP program contained in KCC 17.301.080(E)(12) and .080(F), failed to comply with the requirements of RCW 36.70A.020(8). Additionally, the Board finds that the County failed to comply with RCW 36.70A.070(5) which requires that the County harmonize the goals of the GMA.

FDO, at 44.

Essentially the RWIP remand involved three parts: 1) the ambiguity concerning future development of wooded reserve areas at the end of 40-years; 2) the blurring of resource and rural lands as evidenced by the disclosure statement; and 3) absence of a document harmonizing RWIP with the goals of the Act. However, as an initial matter, the Board will address an objection made by Petitioners to the County's adoption of Ordinance No. 408-2008 – the moratorium.

The Moratorium

It is undisputed that on the same day the County adopted Ordinance No. 407-2008 to address the TDR and RWIP issues on remand in this case, it also adopted Ordinance No. 408-2008 – a 180-day moratorium on acceptance of new applications for development using the RWIP, Chapter 17.301 KCC. Ex. 78, at 1-4. The County contends that the moratorium allows the County to address additional issues[4] that were raised during the public hearings on Ordinance No. 407-2008 while still seeking compliance from the Board on the adoption of Ordinance No. 407-2008. Kitsap SATC, at 19-20.

Petitioners assert that the establishment of the moratorium and the County's intent to modify the RWIP in the future precludes the Board from reviewing Ordinance No. 407-2008 and entering a finding of compliance now. Suquamish Response, at 3. Given the moratorium, Petitioners contend that Ordinance No. 407-2008 is nothing more than an interim ordinance and the Board should not review it until the County makes its final decision on the RWIP program. *Id.* at 4-5. To support their position, Petitioners cite to several prior Board decisions: *King County v. Snohomish County*, CPSGMHB Case No.

[4] Issues the County would like to consider during the moratorium period include, but are not limited to, (1) management plans for privately-owned opens space tracts which also address forestry activities; (2) increased minimum project size to ensure public and environmental benefits; (3) increased maximum project size to increase flexibility in project development; (4) increased connectivity of open spaces and trails; (5) additional protections for critical areas; (6) a requirement for the use of low impact development techniques; (7) mechanisms to address the perpetual nature of the open space. See Kitsap SATC, at 19; Ex. 78, Sec. 1(H), at 3.

Central Puget Sound
Growth Management Hearings Board
800 Fifth Avenue, Suite 2356, Seattle, WA 98104
Tel. (206) 389-2625 Fax (206) 389-2588

03-3-0025, Order Finding Continuing Noncompliance and Continuing Invalidity and Notice of Second Compliance Hearing, (May 26, 2004) and *Vashon-Maury v. King County*, CPSGMHB Case No. 95-3-0008c, Correcting Order Finding Partial Noncompliance and Partial Invalidity, (Nov. 8, 2000). *Id.*

The County counters that Ordinance No. 407-2008 was not adopted pursuant to RCW 36.70A.390, does not contain a sunset clause and in fact is not an interim ordinance. Thus, the County asserts, the Board has authority to, and should, review the Ordinance for compliance. Kitsap Reply, at 3-4. The County notes, however, that the "unchallenged" moratorium is an interim control that is scheduled to sunset in August of 2008. Nonetheless, the County claims that if no further action is taken, Ordinance No. 407-2008 will control RWIP development. But if the RWIP (Ordinance No. 407-2008) is amended Petitioners will have the opportunity to challenge that action. *Id.* The County also argues that the prior Board authority Petitioners rely upon for their position is either distinguishable, off point, or has been stricken by the Board. *Id.* at 5-7. The Board concurs with the County's analysis of the prior Board decisions referenced by Petitioners. None are on point to the present circumstances.

Further, the Board agrees with the County's position on the moratorium. Ordinance No. 407-2008 has been adopted to comply with the GMA – it is not an interim regulation. In essence, Ordinance 407-2008's effective date has been *delayed* by the moratorium. The effect of the moratorium, which prevents vesting in the newly adopted program, is two-fold: 1) it allows the County to proceed through the compliance review without concern for projects vesting in a new untested program; and 2) it allows the County to address additional issues uncovered and unanticipated during the course of adopting Ordinance No. 407-2008. As the County correctly points out, if the RWIP program is revised in the future, that revision could be challenged and brought before the Board. The Board is not troubled by the County's approach given its long history with RWIP; nor does the Board read RCW 36.70A.302(7) as inhibiting the Board's ability to proceed with its review of Ordinance No. 407-2008 as adopted for compliance with the GMA. **The Board also notes that the presence of the moratorium negates the need for continued invalidity on the RWIP.**

The 40-year Limitation

The Board's discussion in the FDO focused on the problem that the Plan and development regulations failed to address how much density could be accommodated within the Wooded Reserve after the 40-year period had expired. It was not clear whether additional density could be added or whether development was limited to the initial proposal. The 40-year limitation issue was only tied to the Wooded Reserve alternatives to be offered in the prior RWIP. *See* FDO, at 37-38.

Central Puget Sound
Growth Management Hearings Board
800 Fifth Avenue, Suite 2356, Seattle, WA 98104
Tel. (206) 389-2625 Fax (206) 389-2588

The most significant change the County made to the RWIP program on this issue was to amend KCC 17.301.080(E) and remove all alternatives using the Wooded Reserve concept. The only remaining incentive option to obtain a bonus density in the RWIP is if development is clustered and 75% of the site remains in permanent open space. The bonus allows clustered development at a density of 1 dwelling unit per five acres rather than 1 du/20 acres. Additionally, all references to the "Wooded Reserve" in the Plan and development regulations were deleted. Kitsap SATC, at 5-6, and 12; Ex. 69, Section 5, 6, 7 and 8, at 6-12.

Petitioners agree that the County's deletion of all reference to the Wooded Reserve and the single remaining incentive option complies with the Board's Order. Suquamish Response, at 2-3.

The Board concurs. With the removal of the Wooded Reserve concept, and elimination of the reference to the 40-year limitation, retention of the single incentive option removes the ambiguity about potential development in the future on RWIP lands. KCC 17.301.080(E)2 [*sic* 1] now provides:

> Through the use of the Program [RWIP], the number of dwelling units permitted in the Rural Wooded zone may be increased to 1 dwelling unit per 5 acres with the designation of a minimum of 75% of the property(s) gross acreage in Permanent Open Space.

Ex. 69, Sec. 8, at 12. The Board finds and concludes that the Plan and development regulation revisions that eliminated reference to the wooded reserve and the 40-year limitation **comply** with the GMA. The Board will enter a **Finding of Compliance** on this aspect of the RWIP program.

The Disclosure Statement – Blurring of Rural and Resource Lands

In the FDO the Board couched its concern over the blurring of Resource and Rural designations as follows:

> It appears to the Board that the question of whether the RWIP, as applied to the Rural Wooded lands, is a program to provide for a variety of rural densities, while preserving the rural character; or is this an effort to preserve forestry, while preserving future development options and bestowing the protections of designated forestry resource lands upon these rural lands, without designating them as resource lands.

FDO, at 40.

Central Puget Sound
Growth Management Hearings Board
800 Fifth Avenue, Suite 2356, Seattle, WA 98104
Tel. (206) 389-2625 Fax (206) 389-2588

The Board concluded that the RWIP was geared more towards protecting timber interests and future development options rather than preserving rural character. The Board stated:

> The County's RWIP clearly sets forth various mechanisms to protect the timber industry, namely density, based on percentage of Wooded Reserve set aside, notice provisions, the interconnecting of open space, and compliance with applicable Timber Harvest Permits.

FDO, at 42-43. Pertaining to the disclosure statement provisions, the Board noted that the deletion of KCC 17.301.080(E)(12) could conceivably be consistent with the GMA. *Id.*

In response, the County removed all reference to the Wooded Reserve and the requirement for a Timber Harvest Permit, but chose to retain the disclosure statement [plat notice] as a consumer protection measure. SATC, at 14-15. The County states that the plat notice will only apply to clustered portions of any RWIP property. *Id.* at 16. The County asks the Board to reconsider its reference to deletion of the disclosure statement of KCC 17.301.080(E)(12). *Id.* at 15.

Petitioners agree that the removal of reference to the Wooded Reserve in the Plan and zoning regulations [KCC 17.301.080] concerning large and small scale timber management and allowing a variety of forestry activities, complies with the Board's Order. Suquamish Response, at 2-3.

The Board notes that although the County retained much of the disclosure statement of KCC 17.301.080(E)(12), it was specifically amended to delete references to the Wooded Reserve and reference to perimeter buffers. *See* Ordinance No. 407-2008, Section 8, at 15.

At the HOM, the Board questioned the County as to why it retained the following language in the disclosure statement: "So long as such forestry operations are in compliance with the Washington Forest Practices Act RCW 76.09 they shall not constitute a nuisance." The County responded that this sentence was inadvertently left in the final draft that was adopted and that the County intends to delete it.[5]

The Board is familiar with the local circumstances that have shaped Kitsap County's policies for rural wooded lands [*Kitsap Citizens for Rural Preservation, et al., v. Kitsap County*, CPSGMHB Case No. 94-3-0005, Final Decision and Order (Oct. 25, 1994); *Bremerton, et al., v. Kitsap County*, CPSGMHB Case No. 95-3-0039c, Finding of Noncompliance and Determination of Invalidity in Bremerton and Order Dismissing Port Gamble, (Sep. 8, 1997); and *Bremerton, et al., v. Kitsap County*, CPSGMHB Case No.

[5] The Board did not order a transcript of the hearing, but if this reference is disputed, the Board can do so.

Central Puget Sound
Growth Management Hearings Board
800 Fifth Avenue, Suite 2356, Seattle, WA 98104
Tel. (206) 389-2625 Fax (206) 389-2588

04-3-0019c, Final Decision and Order, (Aug. 9, 2004]. Owners of large tracts of timberland[6] within the County wish to continue harvesting timber while at the same time developing residential subdivisions on portions of their own lands. Forestry practices are acknowledged by statute to be incompatible with residential development. [RCW 36.70A.060(1)(b)]. Nevertheless, some Kitsap timber owners want to be able to create residential development that is incompatible with forestry while at the same time seeking to be protected from the consequences of incompatibility. However, the fact remains that some degree of forestry is permitted in the rural areas.

The Board recognizes the County's desire to have some form of disclosure statement/plat notice as a consumer protection device. The Board also acknowledges that the County has taken significant steps to clarify the distinction between resource and rural lands. However, retention of the "shall not constitute a nuisance" language leans heavily towards protection for the timber industry, not for the consumers of residential lots in the RWIP and continues to blur the distinction between resource and rural designations. Therefore, the Board finds and concludes that the disclosure statement/plat notice aspect of the RWIP program merits a finding of **Continuing Noncompliance** and this provision will be **remanded** for the County to take corrective action.

Document Harmonizing GMA Goals

RCW 36.70A.070(5)(a) provides:

> Growth Management Act goals and local circumstances. Because circumstances vary from county to county, in establishing patterns of rural densities and uses, a county may consider local circumstances, but *shall develop a written record explaining how the rural element harmonizes the planning goals in RCW 36.70A.020* and meets the requirements of this chapter.

In the FDO, the Board found that the County had not followed this direction, and stated: "The Board concludes that the County has failed to comply with the provisions of RCW 36.70A.070(5)(a) by ignoring this requirement to explain how local circumstances as reflected in the rural element (*i.e.* the RWIP) are harmonized with the goals of the Act." *See* FDO, at 43.

On remand the County compiled a discrete document entitled Rural Wooded Incentive & Transfer of Development Rights Programs – Growth Management Act Evaluation that is offered as meeting this GMA requirement. See Ex. 69, Attachment A. The County contends that this document provides a goal-by-goal evaluation of how the RWIP [and

[6] The County acknowledges that large landowners such as Olympic Property Group, Overton, Manke, and Alpine Evergreen, have been involved in the evolution of the RWIP proposal since its inception. Kitsap SATC, at 11.

Central Puget Sound
Growth Management Hearings Board
800 Fifth Avenue, Suite 2356, Seattle, WA 98104
Tel. (206) 389-2625 Fax (206) 389-2588

TDR] programs meet each goal. As such, the County asserts, it explains how the rural element is harmonized with the goals of the Act. Kitsap SATC, at 13-14.

Petitioners contend that the discrete document prepared by the County fails to consider the local circumstances creating the need for the County to establish a pattern of densities and uses that would not otherwise be considered rural. Suquamish Response, at 6. Petitioners assert that while the Board is aware of the local circumstances present in rural Kitsap County, the County neglected to address them in the context of this document. *Id.* Petitioners then recite prior holdings of this Board pertaining to noncompliant rural densities. *Id.* at 6-10.

In reply, the County contends the Act requires the County to have a written record harmonizing the goals of the Act to the RWIP – which the County asserts it has done. Kitsap Reply, at 9. The County also counters that prior cases involving rural densities are not relevant in the present compliance proceeding. However, the County notes that the rural densities resulting from the RWIP still maintain a rural density of 5 acre lots. *Id.* at 10.

Generally, the Board agrees with the County. The "Goal Harmonizing Document" prepared by the County explains the RWIP [and TDR] program and then methodically evaluates each of the GMA's goals in light of the general provisions of the two programs. However, the Board finds that Petitioners' make a valid point by asserting that there needs to be an explanation of how the RWIP is responding to local circumstances.

The Rural Element is required to provide for a variety of rural densities and uses. RCW 36.70A.070(5)(b). The Board construes the purpose of .070(5)(a) as acknowledging that local circumstances may lead to different approaches and programs to achieve the variety of densities and uses. Here, the County is offering the RWIP as a means of meeting the GMA requirement for a variety of densities and uses, but has not explained how the RWIP addresses the unique local circumstances in the County. To comply, the County merely needs to briefly explain what local circumstances the RWIP is designed to address. Therefore, the Board finds **Continuing Noncompliance** and will **remand** the Goal Harmonizing Document for this simple explanation to be added. The Board notes that Petitioners' continued questioning of rural densities was addressed in the FDO in the discussion of clustering, the bottom line being that the clustering provisions yielded rural densities.[7]

---

[7] The FDO, at 36, states:

> Given that RCW 36.70A.070(5)(b) provides that "*counties may provide for clustering,* density transfer, design guidelines, conservation easements, and other innovative techniques *that will accommodate appropriate rural densities and uses that are not characterized by urban growth and are consistent with rural character,*" there is no inherent error in the County's clustering program provided for in the RWIP. The Board notes that under the most generous option, a 100-acre parcel is allowed up to a maximum

Central Puget Sound
Growth Management Hearings Board
800 Fifth Avenue, Suite 2356, Seattle, WA 98104
Tel. (206) 389-2625 Fax (206) 389-2588

To summarize:

The adoption of Ordinance No. 407-2008, has addressed the remand issue pertaining to the ambiguity concerning future development of Wooded Reserve areas at the end of 40-years [40-year limitation]. The Board will enter a **Finding of Compliance** on this aspect of the RWIP program.

However, as discussed and detailed *supra*, pertaining to the blurring of resource and rural lands as evidenced by the disclosure statement, and to the document harmonizing RWIP with the goals of the Act the Board finds that the remaining defects are minor; but nonetheless the Board will enter a **Finding of Continuing Noncompliance** and **remand** these matters to the County to take corrective action.

Additionally, as noted supra, the presence of the RWIP moratorium [Ordinance No. 408-2008] eliminates the need for a determination of invalidity on the RWIP program. Consequently, the Board **rescinds** the Determination of Invalidity for the RWIP program.

C. Capital Facilities Element and UGA Expansion Areas

The Board's discussion of the County's CFP and UGAs is contained in the FDO at 17-27 and in the Reconsideration Order at 2-4. In essence, the Board found that the CFP did not provide for adequate and available sanitary sewer service throughout the noted UGAs.

In the Board's January 20, 2008 Order Denying Motion for Extension of Compliance Period, the Board stated:

> As to the Capital Facilities Plan, the County acknowledges[8] that it will not be able to adhere to the maximum 180-day compliance schedule established in the FDO. County Motion, at 1. Consequently, if the County cannot complete its remand work by February 11, 2008, it should so indicate in the SATC and the Board will address it at the March 24, 2008

---

of 20 residences, a net residential density of 1 du/5 acres – a rural, not urban, density, that is consistent with preserving the rural character. The Board acknowledges that the clustered design of the development appears more dense when viewed in isolation, but it is nonetheless a rural density when viewed in the context of the entire parcel.

[8] "Because of the complexity of the issues involved on remand, as well as the fact that the County must rely on other jurisdictions for certain actions and information to comply, *it has taken longer than the County expected to meet the deadlines set out in the Order*." County Motion, at 2; (emphasis supplied).

Central Puget Sound
Growth Management Hearings Board
800 Fifth Avenue, Suite 2356, Seattle, WA 98104
Tel. (206) 389-2625 Fax (206) 389-2588

> compliance hearing. If this work is not finished, a likely outcome would be that the Board would issue an Order Finding Continuing Noncompliance pertaining to the Capital Facilities Plan in the *Suquamish II* matter (CPSGMHB Case No. 07-3-0019c). However, a new compliance schedule would be provided which could accommodate the County's work plan and allow the County to complete its compliance work.

1/29/08 Order, at 3.

In the County's SATC, the County again acknowledges that it has not completed all its work on the Capital Facilities Plan and UGA expansion issues, but urged the Board to consider reviewing the entire CFP package rather than proceed in a piecemeal manner. Kitsap SATC, at 21. The County states:

> The County expects to finalize the capital facilities work by the date of the compliance hearing, and may file a supplemental SATC before the hearing. [The County anticipated taking action on the CFE issues on March 10, 2008]. We realize that the Petitioners may not feel that they have adequate time to review and respond to the County's action, and will defer to the Board's decision on the schedule for filing responses to the CFE. Having said that, however, the County would desire a decision as early as practical to alleviate the issues associated with a pending moratorium regarding development in the expansion UGAs.

Id. at 21-22.

Petitioners do not object to the County filing a supplemental SATC on the "entire package" by the compliance hearing; but request adequate time to review and comment upon the County's action. Suquamish Response, at 2; Harless Response, at 2.

As noted *supra*, at the Compliance Hearing, the County provided the Board with a Supplemental SATC and apparently the "entire CFP package" including copies of Ordinance No. 409-2008 [Kitsap County], Resolution No. 3049 [City of Bremerton], Resolution No. 034-07 [Port Orchard], and Resolution 02-07 [West Sound Utility District], and Ordinance No. 410-2008 [Kitsap County]. The Board acknowledges the amount of time, effort and coordination that went into this compliance effort. Nonetheless, as explained at the hearing, due to the untimeliness of the submittal, the Board is compelled to issue a **Finding of Continuing Noncompliance and Invalidity** pertaining to the Capital Facilities Plan and UGAs. However, the Board will accelerate the compliance period and set a second compliance hearing that allows adequate time for the Petitioners and the Board to review the Supplemental SATC and related materials.

Central Puget Sound
Growth Management Hearings Board
800 Fifth Avenue, Suite 2356, Seattle, WA 98104
Tel. (206) 389-2625 Fax (206) 389-2588

The Board finds and concludes that County failed to take legislative action to address the remand of the CFP issue, pertaining to sanitary sewers, and the UGA issue within the compliance period established in the FDO. Therefore the Board will issue a **Finding of Continuing Noncompliance and Invalidity** on these issues, and set a second compliance hearing.

IV. ORDER

Based upon review of the GMA, the August 15, 2007 Final Decision and Order, the September 13, 2007 Order on Reconsideration, the Statement of Actions Taken to Comply, the Response and Reply briefs and exhibits, and presentations at the Compliance Hearing, the Board ORDERS:

- Kitsap County's adoption of Ordinance No. 407-2008, specifically the noted Plan and development regulation amendments pertaining to the County's TDR program, **complies** with the requirements of the Act [RCW 36.70A.070(5) and .020(1), (2), (8), (9) and (10)]. Therefore, the Board enters a **Finding of Compliance** on this issue and **rescinds** the **Determination of Invalidity**.

- Kitsap County's adoption of Ordinance No. 407-2008, has addressed the remand issue pertaining to the ambiguity concerning future development of Wooded Reserve areas at the end of 40-years [40-year limitation]. The Board will enter a **Finding of Compliance** on this aspect of the RWIP program. However, as discussed and detailed *supra*, pertaining to the blurring of resource and rural lands as evidenced by the disclosure statement, and to the document harmonizing RWIP with the goals of the Act the Board finds that the defects are minor; but nonetheless the Board will enter a **Finding of Continuing Noncompliance** and **remand** these matters to the County to take corrective action. Additionally, as noted *supra*, the presence of the RWIP moratorium [Ordinance No. 408-2008] eliminates the need for a determination of invalidity on the RWIP program. Consequently, the Board **rescinds** the Determination of Invalidity for the RWIP program.

- Kitsap County failed to correct the compliance deficiencies in the Capital Facilities Plan (specifically sanitary sewers) and the related UGAs within the compliance period established in the FDO. Therefore the Board enters a **Finding of Continuing Noncompliance and Invalidity** on these issues.

- The Board, however, acknowledges that Kitsap County has taken legislative action to comply with the CFP and UGA remand issues on March 10, 2008 [Ordinance Nos. 409-2008 and 410-2008] and has filed a Supplemental SATC. Additionally, the County may take the necessary corrective actions to

Central Puget Sound
Growth Management Hearings Board
800 Fifth Avenue, Suite 2356, Seattle, WA 98104
Tel. (206) 389-2625 Fax (206) 389-2588

bring the RWIP program into compliance [disclosure statement/title notice deletion and supplementing the Goal Harmonizing Document] within the accelerated timeframe. Therefore, the Board establishes the following schedule for the second compliance hearing.

RWIP and Goal Harmonizing Document

- By no later than **May 12, 2008**, the County shall take the necessary legislative action to address the RWIP disclosure statement/title notice remand issue and take the necessary administrative action to address the Goal Harmonizing Document remand issue. The County shall provide an original and four copies to the Board, and serve copies on Petitioners and Intervenors.
- Petitioners may file a comment on the County's actions to comply on the two RWIP issues by no later than **May 14, 2008**. Petitioners shall simultaneously serve a copy of their Response on the County.
- These matters will be addressed at the compliance hearing on the schedule established below.

Capital Facilities Plan and UGAs

- By no later than **May 7, 2008**,[9] the Petitioners and Intervenor may file with the Board an original and four copies of Response to the Supplemental SATC [CFE/UGAs issue]. Petitioners shall simultaneously serve a copy of their Response on the County.
- By no later than **May 14, 2008**, Kitsap County may file with the Board an original and four copies of the County's Reply. The County shall simultaneously serve a copy of their Reply on Petitioners and Intervenor.
- Pursuant to RCW 36.70A.330(1) and WAC 242-02-891,[10] the Board hereby gives notice of and schedules the Second Compliance Hearing in this matter for **10:00 a.m. May 19, 2008**, at the Board's offices. **The second compliance hearing shall be limited to consideration of the matters found to be of continuing noncompliance in this Order**. If the parties so stipulate, the Board will consider conducting the Compliance Hearing telephonically. If the County takes the required legislative action prior to the deadline set forth in this Order, or the County determines it needs more time – up to 180 days of the date of this Order, the County may file a motion with the Board requesting an adjustment to this compliance schedule.

---

[9] May 7, 2008 is also the deadline for a person to file a request to participate as a "participant" in the compliance proceeding. *See* RCW 36.70A.330(2).

[10] The Presiding Officer may issue an additional notice after receipt of the SATC to set the format and additional procedures for the compliance hearing.

Central Puget Sound
Growth Management Hearings Board
800 Fifth Avenue, Suite 2356, Seattle, WA 98104
Tel. (206) 389-2625 Fax (206) 389-2588

may file a motion with the Board requesting an adjustment to this compliance schedule.

So ORDERED this 4th day of April, 2008.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

David O. Earling
Board Member

Edward G. McGuire, AICP
Board Member

Margaret A. Pageler
Board Member

Note: This order constitutes a final order, as specified by RCW 36.70A.300, unless a party files a motion for reconsideration pursuant to WAC 242-02-832.[11]

---

[11] Pursuant to RCW 36.70A.300 this is a final order of the Board.

Reconsideration. Pursuant to WAC 242-02-832, you have ten (10) days from the date of mailing of this Order to file a motion for reconsideration. The original and three copies of a motion for reconsideration, together with any argument in support thereof, should be filed with the Board by mailing, faxing or otherwise delivering the original and three copies of the motion for reconsideration directly to the Board, with a copy served on all other parties of record. Filing means actual receipt of the document at the Board office. RCW 34.05.010(6), WAC 242-02-240, WAC 242-020-330. The filing of a motion for reconsideration is not a prerequisite for filing a petition for judicial review.

Judicial Review. Any party aggrieved by a final decision of the Board may appeal the decision to superior Court as provided by RCW 36.70A.300(5). Proceedings for judicial review may be instituted by filing a petition in superior Court according to the procedures specified in chapter 34.05 RCW, Part V, Judicial Review and Civil Enforcement. The petition for judicial review of this Order shall be filed with the appropriate Court and served on the Board, the Office of the Attorney General, and all parties within thirty days after service of the final order, as provided in RCW 34.05.542. Service on the Board may be accomplished in person or by mail, but service on the Board means actual receipt of the document at the Board office within thirty days after service of the final order. A petition for judicial review may not be served on the Board by fax or by electronic mail.

Service. This Order was served on you the day it was deposited in the United States mail. RCW 34.05.010(19)

Central Puget Sound
Growth Management Hearings Board
800 Fifth Avenue, Suite 2356, Seattle, WA 98104
Tel. (206) 389-2625 Fax (206) 389-2588

CPSGMHB Case No. 07-3-0019c
Suquamish Tribe II, et al.,
v.
Kitsap County
DECLARATION OF SERVICE:

I certify that I mailed a copy of the **Order Finding Partial Compliance [TDRs] and Finding Continuing Noncompliance and Invalidity [RWIP and Capital Facilities]** to the persons and addresses listed hereon, postage prepaid, in a receptacle for United States mail at Seattle, Washington, on **April 4, 2008.**

Signed: Vmakemstores

Pr 360/394-8489 phone 360/598-4293 fax
Suquamish Tribe
mallen@suquamish.nsn.us
Melody Allen
Tribal Attorney
18490 Suquamish Way
P.O. Box 498
Suquamish, WA 98392

Rt 360/337-4992 phone 360/337-7083 fax
skneip@co.kitsap.wa.us
lnickel@co.kitsap.wa.us
Lisa J. Nickel & Shelley E. Kneip
Kitsap Co. Deputy Prosecuting Attnys.
614 Division Street, MS-35A
Port Orchard, WA 98366-4676

Pr 360/ 459-6558 phone
Harless
jlharless@wavecable.com
Jerry Harless
P.O. Box 8572
Port Orchard, WA 98366

Ir-Port Gamble S/Klallam Tribe
206/623-0900 phone 206/623-1432 fax
lauren@rasmussen-law.com
Lauren P. Rasmussen
Attorney at Law
1904 Third Avenue, Suite 1030
Seattle, WA 98101-1170

Pr 206/ 876-3129
KCRP
tdonnelly@silverlink.net
Tom Donnelly
Kitsap Citizens for Responsible Planning
10922 Horizon Lane ESE
Port Orchard, WA 98366

PR 206/264-8600 phone 206/264-9300
KCRP
bricklin@bnd-law.com
David A. Bricklin
Bricklin Newman Dold, LLP
1001 4^{h} Avenue, Suite 3303
Seattle, WA 98154

Appendices 7
CP 261,
AR 93

App. 7
Ex. A

EXHIBIT A

AR 93
EX. A

Ordinance No. 411 - 2008

AN ORDINANCE AMENDING ORDINANCE 407-2008 AND KITSAP COUNTY CODE § 17.301.080.E.12

WHEREAS, on March 13, 2008, the Kitsap County Board of County Commissioners adopted Ordinance No. 407-2008, amending in part Kitsap County Code Section 17.301.080.E.12, the "Rural Wooded Incentive Program" (RWIP); and

WHEREAS, this action was taken in response to the Central Puget Sound Growth Management Hearings Board decision rendered on August 15, 2007 in *Suquamish II v. Kitsap County*, CPSGMHB Case No. 047-3-0019c, Final Decision and Order (August 15, 2007); and

WHEREAS, the Growth Management Hearings Board's Order indicated that the County's Rural Wooded Incentive Program "blurred the lines" between rural and resource lands and suggested that the County could cure this problem by removing a disclosure statement required under the program; and

WHEREAS, during deliberation on Ordinance 407-2008, the Board of County Commissioners indicated they would prefer to retain a notice to title on Rural Wooded Incentive Program properties, which would provide notice to residents regarding possible activities on the open space, but not necessarily provide protection to the forestry industry; and

WHEREAS, the final Ordinance 407-2008 included a clerical error that does not reflect the Board of Commissioners' intent regarding such notice and which needs to be corrected and presented to the Central Puget Sound Growth Management Hearings Board as soon as possible.

NOW THEREFORE THE KITSAP COUNTY BOARD OF COMMISSIONERS DO ORDAIN AS FOLLOWS:

Section 1. Kitsap County Code Chapter 17.301.080, last amended by Ordinance 407-2008, is amended as follows:

17.301.080 Rural Wooded Incentive Program.

A. Purpose. The purpose of this section is to provide a clustering program for land designated Rural Wooded, which provides incentives to landowners, promotes coordinated open space, and preserves rural character. This chapter encourages development to occur on the most buildable and least environmentally sensitive

portions of sites while retaining a substantial portion of each site in restricted open space tracts or easements. Specifically, this chapter is designed:

1. To produce a development pattern in rural areas that is consistent with rural character and to produce a rural development pattern which encourages variety in design, placement of buildings, more efficient use of the most buildable portion of sites, and retention of the environmentally sensitive and scenic portions of sites as permanent open space;
2. To encourage the development of cluster housing, which provides greater compatibility with surrounding development and land uses in rural areas by providing larger buffer areas;
3. To encourage the retention of permanent open space with its natural vegetative cover, which protects continued groundwater recharge and reduces potential water pollution, flooding, erosion and other drainage-related problems often associated with rural development;
4. To minimize adverse impacts on the county's environmentally sensitive streams, shorelines, wetlands, fish and wildlife habitat areas and corridors, areas of unique vegetation or wildlife species, steep slopes, and other critical areas;
5. To minimize impervious surfaces and the cost of installing essential public and private capital facilities necessary for a rural infrastructure; and
6. To protect rural natural features and landscape by minimizing tree, vegetation, and soil removal.

B. Applicability. This program applies to all properties within the Rural Wooded zone 20 acres or greater in size. Individual projects using this program may not exceed more than 500 contiguous acres.

1. Phase Description. Land available to use this program will be designated in the Comprehensive Plan in an incremental phased approach consisting of 10 phases. The phased process of this program is described below:
   a. Initial phase shall be limited to a total of five-thousand (5,000) acres of Rural Wooded (RW) land.
   b. All parcel acreage utilized in Rural Wooded Incentive Program developments, including any Permanent Open Space, fresh water bodies, critical areas, and residential acreage, shall be included for calculations toward the remaining available Phase acreage.
   c. Subsequent phases may be released based upon the provisions identified in subsection 17.301.080.B with each limited to a total of five-thousand (5,000) additional acres of Rural Wooded (RW) land.
2. Monitoring.
   a. Monitoring shall be conducted every two years to evaluate the effectiveness of the Rural Wooded Incentive Program. The monitoring shall include:
      (1) Evaluation of the county-wide split between rural and urban dwelling unit development and lot creation. The methodology shall be consistent with that approved in the most recent Buildable Lands Analysis;
      (2) Evaluation of the total acreage within the Rural Wooded Incentive Program that has submitted a complete application, that has received preliminary approval, and that has received final approval as well as

the total acreage of Permanent Open Space in these approved developments;

(3) A transportation analysis of the roadways adjacent to and serving Rural Wooded Incentive Program developments;

(4) Evaluation of the Rural Wooded (RW) designated lands for the maintenance of qualities of "Rural Character" as defined in this section; and

(5) Evaluation of development in the Rural Wooded zone in regards to critical area buffers, on-site and adjacent parcel well levels, on-site stream flow levels and increases in project-based impervious surfaces.

b. Releases of the subsequent phases of acreage available for the Rural Wooded Incentive Program shall be determined based upon all the following decision criteria.

(1) Satisfactory progress toward achieving the Rural/Urban split identified in the County-Wide Planning Policies.

(2) Final approval for Rural Wooded Incentive Program developments comprising more than 30 percent or 1,500 acres, whichever is greater, of the total Phase acreage.

(3) Determination of no level of service failures on roadways serving existing Rural Wooded Incentive Program developments.

(4) Satisfactory maintenance of rural character as defined in subsection 17.301.080.C for Rural Wooded Incentive Program developments.

c. Prior to the release of each subsequent phase, the Department of Community Development shall prepare a "Rural Wooded Incentive Program: Phase Assessment Report." This report shall assess the program's consistency with the purposes outlined in subsection 17.301.080.A and the monitoring requirements of 17.301.080.B. The report shall be submitted to the Board of County Commissioners.

3. Authority.

a. The Board of County Commissioners shall have the authority to recommend, recommend with conditions, or disapprove release of each subsequent phase of acreage available to Rural Wooded Incentive Program developments, subject to the provisions of this section.

b. The Board of County Commissioner's decision on a subsequent Rural Wooded Incentive Program phase may be appealed as set forth in Title 21 of this code.

4. Phase Process.

a. Should an application for a Rural Wooded Incentive Program development be submitted that would exceed the 5,000 acres available for that phase, that application will be rejected, however that applicant will be permitted to amend the application to reduce the number of proposed acres for which development is sought to remain under the 5,000-acre phase limit.

b. Once 5,000 acres of Rural Wooded Incentive Program developments have received preliminary approval, no future applications will be accepted that exceed the 5,000 acres available for that phase until the subsequent phase is recommended for release subject to the provisions of this Section.

c. An application may include a request for a subsequent phase to be released concurrent with the Rural Wooded Incentive Program development application; however, that application will not be deemed complete until the subsequent phase is recommended for release subject to the provisions of this section.

C. Approval procedure. Rural Wooded Incentive Program developments shall be approved through a Type III subdivision approval process.

D. Submittal requirements. In addition to the subdivision submittal requirements, each application for a Rural Wooded Incentive Program development shall include the following information to be considered a complete application:

1. The approximate location and general dimensions for all lots, tracts, easements, roadways, and other improvements;
2. The proposed location and acreage of the Permanent Open Space;
3. The approximate location of all existing or proposed pedestrian walkways, landscaped areas and areas to permanently remain in a natural condition;
4. The location of existing and proposed on-site water sources and generalized designation of sewage disposal drainfields and reserve areas;
5. The location and width of proposed roadways and driveway areas for turning and maneuvering of vehicles, and the relationship of circulation to adjacent properties;
6. A general description of any major physiographic or other natural features, such as drainage ways, wetlands, fish and wildlife habitats, geologic hazard areas, steep slopes, shorelines and all other critical areas, as well as a topographic map with contour lines as 5-feet contours;
7. The location and approximate acreage, either on or adjacent to the property(s), designated as natural resource lands and the approximate size (in square feet or acres);
8. The approximate area proposed to be included in paved or other impervious surfaces, Permanent Open Space, and the total area of the site;
9. A description of, and proposed schedule for, any proposed phasing of the project;
10. A general landscape, clearing and buffering plan, drawn to scale and showing: community areas, pathways or other recreation areas, significant landscape features and vegetation on the site, natural vegetation and mature trees to be retained, and the location and conceptual design of landscaped areas and buffers. Detailed site analysis and design information shall not be required for those portions of the site proposed for retention in Permanent Open Space tracts, except for portions of Permanent Open Space tracts which contain proposed recreation facilities;
11. A vicinity sketch to identify the effect of proposed development on surrounding properties and uses, including the approximate location of all existing or proposed community areas, pathways or other recreation areas and landscaped areas;
12. A conceptual storm drainage plan, prepared by a qualified engineer, showing that the project will comply with the Kitsap County storm water standards in effect at the time of the application; and

13. A report from a certified septic system installer, showing that there is a drainfield and a replacement drainfield available for each dwelling unit within each proposed cluster, or if a community or group drainfield is to be used, that there is a site and a replacement site for such community or group drainfield, that will meet the standards of the Washington Department of Health or the Kitsap County Health Department, whichever is more stringent.

E. Development Standards. A Rural Wooded Incentive Program development shall meet the following development standards:

1. Through the use of the Program, the number of dwelling units permitted in the Rural Wooded zone may be increased to 1 dwelling unit per 5 acres with the designation of a minimum of 75% of the property(s) gross acreage in Permanent Open Space.
2. The maximum number of acres for any single Rural Wooded Incentive Program development application shall be limited to a total of 500 gross acres, including all Permanent Open Space and development acreage.
3. The minimum number of acres for any Rural Wooded Incentive Program development application shall be limited to a minimum of twenty (20) acres, including all Permanent Open Space and development acreage.
4. Development shall be clustered.
   a. Lot Requirements.
      (1) Front Yard. Minimum front yard setback shall be twenty (20) feet.
      (2) Side and Rear Yard. Minimum side and rear yard setbacks shall be five (5) feet and fifty (50) feet for accessory structures used for agricultural purposes.
      (1) Minimum Lot Size: None
5. Each cluster shall be limited to 25 units or fewer. Clusters within a development should be sited to achieve the following objectives and criteria. The Director may allow exceptions based upon site-specific conditions or when conflicts occur between the criteria.
   a. Optimize protection of critical areas, including wetlands and stream corridors, by keeping clusters and other development away from critical areas to the extent possible;
   b. Optimize preservation and interconnectivity of open space as a permanent preservation of open space;
   c. Avoid development on ridgelines, in the center of open field, or located on other prominent topographical features or scenic elements, visible to adjacent and vicinity properties when other locations are available; and
   d. Minimize topographic alteration.
6. Clusters developed under this program shall provide a 100-foot vegetated buffer from existing public roadways and adjoining properties and a 150-foot buffer between clusters in order to preserve rural character and the aesthetic values of Rural Wooded lands.
   a. Where two Rural Wooded Incentive Program developments abut each other, they are encouraged, where practical, to coordinate Permanent Open Space to provide interconnectivity;

b. Buffers are encouraged to incorporate natural features to maximize retention of views and rural character;
c. Where native vegetation is available to create a sight-obscuring buffer, that vegetation should be preserved to the extent consistent with public safety. Hazard trees may be removed with approval of the Director;
d. Preservation of trees greater than 10 inches diameter breast height (dbh) is encouraged;
e. Except where an exception is needed to preserve or create scenic views from county or state roads, internal roads and building locations within a Rural Wooded development should be designed to maximize the extent to which the external buffer obscures the planned development from existing county or state roads; and
f. Where native vegetation is not available to create a sight-obscuring buffer between the planned development and existing county or state roads, fast-growing native vegetation that will grow to obscure the planned development should be planted within the buffer area.

8. Water provision from new wells drilled within the Rural Wooded designated lands are encouraged to minimize impacts to surface and groundwater resources. For projects proposing new wells, submission of well log records and a report by a Washington State certified hydrogeologist demonstrating utilization of deep aquifers and the lack of continuity with surface water features is encouraged during project review and may be included as a condition of approval.
9. Development shall fully comply with Kitsap County Code Title 19 (Critical Areas). All environmentally sensitive areas such as streams, shorelines, wetlands, fish and wildlife habitat areas and corridors, steep slopes, and other critical areas regulated by Title 19 and/or other applicable county ordinances or policies are encouraged to be located within the Permanent Open Space areas of the development, except to the extent development in those areas is permitted by Title 19.
10. Roads should be designed to comply with adopted Kitsap County Road Standards for rural roads.
    a. Rural Wooded Incentive Program developments shall meet applicable rural concurrency standards;
    b. Roads should have shoulders and grass-lined ditches, rather than curbs, gutters and adjacent sidewalks;
    c. Pedestrian and/or bike paths through a development are encouraged but may be separate from roads and should be narrow and designed to adapt to the natural contours and features of the land; and
    d. To the extent consistent with adopted Kitsap County Road Standards, roads should follow topography, and other natural features, such as major trees or other elements that contribute to rural character.
11. In designating the areas for Permanent Open Space tracts, the following is encouraged:
    a. Preserve areas along saltwater shoreline;
    b. Include open water bodies, creeks, rivers and other natural water features;
    c. Protect scenic views and significant natural features;

d. Conserve areas of significant terrestrial wildlife, salmonid habitat, and groundwater supply; and
e. Coordinate with Washington State Department of Fish & Wildlife, Washington State Department of Natural Resources, non-profit agencies, and local Tribes to identify priority conservation areas.

12. A notice shall be placed on the final plat for all Rural Wooded Incentive Program developments stating that:

"This plat was established using the Kitsap County Rural Wooded Incentive Program and is subject to the conditions of that program at the time of approval (Kitsap County Code Chapter 17.301). It is required to include an open space area, in which certain forestry activities may occur, subject to the provisions of KCC 17.301. A variety of forestry activities may occur in the open space that are not compatible with residential development for limited periods. Residents may ~~be subject to inconvenience or discomforts arising from forestry activities,~~ including but not limited to noise, odors, fumes, dust, smoke, the operations of machinery of any kind, timber harvest, brush control, the application by spraying or otherwise of chemical or organic fertilizers, soil amendments, herbicides and pesticides, hours of operation, and other forestry activities. ~~So long as such forestry operations are in compliance with the Washington Forest Practices Act, RCW Ch. 76.09, they shall not constitute a nuisance.~~ Urban levels of service will not be provided by Kitsap County or the developer of this property."

F. Uses permitted within the Permanent Open Space.

1. Permanent Open Space tract. A Permanent Open Space tract created under this section may be used for the following resource and passive recreational and roadway uses:
   a. Forestry, existing agricultural or other resource uses;
   b. Trails/pedestrian walkways, beaches, docks, swimming areas or any non-motorized passive recreational facilities;
   c. Logging and access roads; and
   d. Open space uses along a shoreline shall allow for visual and physical access to the shoreline and may include view corridors, community beaches, docks, swimming areas, picnic areas, trails/pedestrian walkways, or any non-motorized passive recreational facilities.
2. Vegetation removal in a Permanent Open Space tract shall be in accordance with an approved open space management plan. Permanent vegetation removal within the Permanent Open Space tract shall not be permitted, except that the following activities shall be allowed where vegetation removal is the minimum necessary to conduct the activity:
   a. Construction of pedestrian or equestrian trails;
   b. Maintenance of existing pastures;
   c. Forestry, existing agricultural or other resource activities;
   d. Removal of dead, diseased or hazardous vegetation, consistent with best management practices;
   e. Fire breaks provided in accordance with fire district requirements; and
   f. A management plan which details the required maintenance and management tasks and responsibilities may be required by the department

for all Permanent Open Space areas. These plans shall include monitoring to assess compliance with the approved plan(s).

G. Ownership of the Permanent Open Space.
   1. Upon recording of a final plat for a Rural Wooded Incentive Program development, Permanent Open Space tracts may be held by the original owner, conveyed to a homeowners association or to the owner or owners of a lot or lots within the subdivision as tenants in common or to a shall be dedicated to a public entity, land trust or other non-profit steward, subject to the restrictions on the future use of the Permanent Open Space described in 17.301.080.F.

H. Decision Criteria. An application for a Rural Wooded Incentive Program development may be approved or approved with modification if the Examiner finds that all of the following requirements, as established by this section, are met:
   1. The site plan complies with the Development Standards of 17.301.080.E and the other requirements of this chapter.
   2. The proposed development will not require the extension or provision of sanitary sewer service or other urban services to the development.
   3. The proposed development complies with all applicable County Codes.
   4. The development demonstrates preservation of rural character by incorporating the following:
      a. Clustering of development, as applicable;
      b. Preservation of critical areas, resource areas, groundwater recharge, and natural features;
      c. Provision for a coordinated, comprehensive, interconnected, and integrated system of Permanent Open Space areas; and
      d. Placement of structures, circulation systems and utilities that minimize impervious surfaces and the alteration of the land and also responds to physical characteristics of the property.
   5. The development is consistent with the goals and policies of the Kitsap County comprehensive plan.
   6. The development complies with all other applicable codes and policies of the county.
   7. If Rural Wooded Incentive Program development will be phased, each phase of a proposed development must contain adequate infrastructure, open space dedication and all other conditions of the development to stand-alone if no other subsequent phases are developed.
   8. If no reasonable conditions or modifications can be imposed to ensure the application meets the criteria set forth above, then the application shall be denied.

I. Vesting.
   1. Approval of a Rural Wooded Incentive Program development shall be effective for five years from the date of final approval.
   2. Property owners with an approved Rural Wooded Incentive Program development may receive one five-year extension from the hearing examiner in accordance with the criteria below:
      a. An extension request must be filed in writing with the director at least sixty days prior to the expiration of the approval period;

b. The applicant must demonstrate to the hearing examiner tangible progress toward completion of the approved Rural Wooded Incentive Program development; and
c. The applicant must demonstrate to the hearing examiner that there are no significant changes in conditions that would render approval of the extension contrary to the public health, safety or general welfare.

3. The hearing examiner may take any of the following actions upon receipt of a timely extension request:
   a. Approve the extension if no significant issues are presented under the criteria set forth in this section.
   b. Conditionally approve the extension if any significant issues presented are substantially mitigated by minor revisions to the original Rural Wooded Incentive Program development.
   c. Deny the extension if any significant issues presented cannot be substantially mitigated by minor revisions to the Rural Wooded Incentive Program development.

J. Taxation Status. Under the Current Use Assessment Program, all property located within the Permanent Open Space or developed portion of the project shall be removed from the Program and all compensating tax paid prior to final approval of the subdivision.

K Third Party Review. The county may require third party review in cases where additional professional or technical expertise is required.

Section 2. This ordinance is in response to an order filed with the Central Puget Sound Growth Management Hearings Board and is enacted as an exception to the schedule set forth in RCW 36.70A.130 and Kitsap County Code Chapter 21.08.

Section 3. This ordinance solely corrects the provision in KCC 17.301.080.G.12. No other changes are made to KCC 17.301.080 or the amendments adopted pursuant to Kitsap County Ordinance 407-2008. Nor does this Ordinance affect in any manner the moratorium established under Ordinance 408-2008, that Ordinance also remains unchanged and in effect.

Section 4. Should any amendment to Comprehensive Plan and Zoning Code that was passed by the Board during its deliberations on February 13, 2008 be inadvertently left out upon publication or codification, the explicit action of the Board as discussed and passed shall prevail upon subsequent review and verification by the Board.

Effective Date: This Ordinance shall take effect immediately.

Severability: If any sentence, section, provision, or clause of this ordinance or its application to any person, entity or circumstance is for any reason held invalid or unconstitutional, the remainder of the ordinance, or the application of the provision to other persons, entities, or circumstances is not affected.

//

//

DATED this 14th day of April, 2008.

KITSAP COUNTY BOARD OF COMMISSIONERS

Steve Bauer, Chair

Jan Angel, Commissioner

Josh Brown, Commissioner

ATTEST:

Opal Robertson
Clerk of the Board

Approved as to Form:

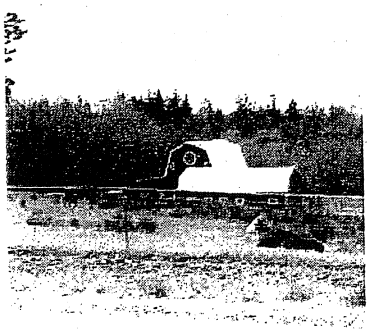
Deputy Prosecuting Attorney

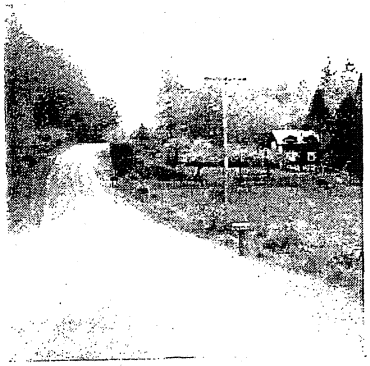
App. 7
Ex. B

EXHIBIT B

AR 93
EX. B

Attachment A





Rural Wooded Incentive & Transfer of Development Rights Programs

Growth Management Act Evaluation

Kitsap County Special Projects - February 2008

I. Introduction

As part of the 2006 10-Year Comprehensive Plan Update, the County adopted the Rural Wooded Incentive and the Transfer of Development Rights Programs as part the Rural Element of Comprehensive Plan. Subsequently, these programs were appealed to the Central Puget Sound Growth Management Hearings Board, which rendered a decision in August 2007. *Suquamish Tribe et al. v. Kitsap County,* CPSGMHB No. 07-3-0019c, FDO (8/15/07). The Hearings Board order determined the programs were partially invalid and non-compliant with the Growth Management Act (GMA). The Hearings Board decision directed the County to resolve the following:

a. Rural Wooded Incentive Program (RWIP) as it relates to the Wooded Reserve 40-Year time period for use, as well as reconciliation of natural resource industries and the need for a discrete planning document harmonizing GMA goals;

b. Transfer of Development Rights (TDR) Program as it relates to the 40-Year period of development right reuse.

Additionally, GMA requires cities and counties to balance the goals of GMA in the planning efforts. The GMA goals are not prioritized and, in some circumstances, may appear to conflict. Thus, the Hearings Boards have noted that a jurisdiction is not required to reconcile all these seemingly inconsistent requirements by focusing totally on one requirement. For example, it may be impossible to meet the goal of preserving existing housing to the exclusion of other requirements, such as encouraging more affordable housing. Rather, jurisdictions must reconcile the Act's seemingly contradictory requirements by applying and necessarily balancing them (*See West Seattle Defense Fund v. City of Seattle,* CPSGMHB 94-3-0016, Final Decision & Order at 30 (4/4/95)).

As such, the purpose of this document is to demonstrate how these programs and their proposed amendments balance and achieve GMA goals and Rural Element provisions. Proposed amendments to these programs are noted in the adopting ordinance. Attached to this document are the following exhibits:

- Exhibit A – TDR Sending & Receiving Areas Maps
- Exhibit B – Rural Wooded Lands Map
- Exhibit C – Forest Resource, Habitat Evaluation & Salmon Refugia Maps

II. Growth Management Act

The GMA establishes guidance for Kitsap County's Comprehensive Plan Rural Element. Both the Rural Wooded Incentive and Transfer of Development Rights Programs are included in the Rural Element of the Comprehensive Plan and the most pertinent portions are noted below.

I. Introduction

As part of the 2006 10-Year Comprehensive Plan Update, the County adopted the Rural Wooded Incentive and the Transfer of Development Rights Programs as part the Rural Element of Comprehensive Plan. Subsequently, these programs were appealed to the Central Puget Sound Growth Management Hearings Board, which rendered a decision in August 2007. *Suquamish Tribe et al. v. Kitsap County,* CPSGMHB No. 07-3-0019c, FDO (8/15/07). The Hearings Board order determined the programs were partially invalid and non-compliant with the Growth Management Act (GMA). The Hearings Board decision directed the County to resolve the following:

a. Rural Wooded Incentive Program (RWIP) as it relates to the Wooded Reserve 40-Year time period for use, as well as reconciliation of natural resource industries and the need for a discrete planning document harmonizing GMA goals;

b. Transfer of Development Rights (TDR) Program as it relates to the 40-Year period of development right reuse.

Additionally, GMA requires cities and counties to balance the goals of GMA in the planning efforts. The GMA goals are not prioritized and, in some circumstances, may appear to conflict. Thus, the Hearings Boards have noted that a jurisdiction is not required to reconcile all these seemingly inconsistent requirements by focusing totally on one requirement. For example, it may be impossible to meet the goal of preserving existing housing to the exclusion of other requirements, such as encouraging more affordable housing. Rather, jurisdictions must reconcile the Act's seemingly contradictory requirements by applying and necessarily balancing them (*See West Seattle Defense Fund v. City of Seattle,* CPSGMHB 94-3-0016, Final Decision & Order at 30 (4/4/95)).

As such, the purpose of this document is to demonstrate how these programs and their proposed amendments balance and achieve GMA goals and Rural Element provisions. It also described the local circumstances that exist in Kitsap County and which have given rise to the development of these programs. Proposed amendments to these programs are noted in the adopting ordinance. Attached to this document are the following exhibits:

- Exhibit A – TDR Sending & Receiving Areas Maps
- Exhibit B – Rural Wooded Lands Map
- Exhibit C – Forest Resource, Habitat Evaluation & Salmon Refugia Maps

II. Growth Management Act

The GMA establishes guidance for Kitsap County's Comprehensive Plan Rural Element. Both the Rural Wooded Incentive and Transfer of Development Rights

Programs are included in the Rural Element of the Comprehensive Plan and the most pertinent portions are noted below.

Legislative Findings: Rural Lands

In 2002, the state legislature added specific findings regarding rural lands. RCW 36.70A.011 states:

> The legislature finds that this chapter is intended to recognize the importance of rural lands and rural character to Washington's economy, its people, and its environment, while respecting regional differences. Rural lands and rural-based economies enhance the economic desirability of the state, help to preserve traditional economic activities, and contribute to the state's overall quality of life.
>
> The legislature finds that to retain and enhance the job base in rural areas, rural counties must have flexibility to create opportunities for business development. Further, the legislature finds that rural counties must have the flexibility to retain existing businesses and allow them to expand. The legislature recognizes that not all business developments in rural counties require an urban level of services; and that many businesses in rural areas fit within the definition of rural character identified by the local planning unit.
>
> Finally, the legislature finds that in defining its rural element under RCW 36.70A.070(5), a county should foster land use patterns and develop a local vision of rural character that will: Help preserve rural-based economies and traditional rural lifestyles; encourage the economic prosperity of rural residents; foster opportunities for small-scale, rural-based employment and self-employment; permit the operation of rural-based agricultural, commercial, recreational, and tourist businesses that are consistent with existing and planned land use patterns; be compatible with the use of the land by wildlife and for fish and wildlife habitat; foster the private stewardship of the land and preservation of open space; and enhance the rural sense of community and quality of life.

GMA Goals

The GMA, 36.70.020 RCW establishes goals to guide the development and adoption of comprehensive plans and development regulations for Kitsap County. The following goals are not listed in order of priority and intended to be used exclusively for the purpose of guiding the development of comprehensive plans and development regulations.

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

2. **Reduce sprawl.** Reduce the inappropriate conversion of undeveloped land into sprawling, low-density development.

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

4. **Housing.** Encourage the availability of affordable housing to all economic segments of the population of this state, promote a variety of residential densities and housing types, and encourage preservation of existing housing stock.

5. **Economic development.** Encourage economic development throughout the state that is consistent with adopted comprehensive plans, promote economic opportunity for all citizens of this state, especially for unemployed and for disadvantaged persons, promote the retention and expansion of existing businesses and recruitment of new businesses, recognize regional differences impacting economic development opportunities, and encourage growth in areas experiencing insufficient economic growth, all within the capacities of the state's natural resources, public services, and public facilities.

6. **Property rights.** Private property shall not be taken for public use without just compensation having been made. The property rights of landowners shall be protected from arbitrary and discriminatory actions.

7. **Permits.** Applications for both state and local government permits should be processed in a timely and fair manner to ensure predictability.

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

9. **Open space and recreation.** Retain open space, enhance recreational opportunities, conserve fish and wildlife habitat, increase access to natural resource lands and water, and develop parks and recreation facilities.

10. **Environment.** Protect the environment and enhance the state's high quality of life, including air and water quality, and the availability of water.

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

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

13. **Historic preservation**. Identify and encourage the preservation of lands, sites, and structures that have historical or archaeological significance.

Shoreline Management Act

Additionally, RCW 36.70A.480 incorporates the goals and policies of the shoreline management act as stated in RCW 90.58.020. RCW 90.58.020 sets out the generalized legislative policies to protect shorelines through shoreline management planning but does not enumerate discrete goals and policies. As this is a programmatic document, and not site-specific, the goals and policies of the Shoreline Management Act of 1971 (SMA) may not necessarily apply on a programmatic basis.

Nonetheless, RCW 90.58.020 identified three basic policy areas to the SMA: 1) shoreline use, 2) environmental protection and 3) public access. The SMA emphasizes accommodation of reasonable and appropriate uses, protection of shoreline environmental resources and protection of the public's right to access and use the shorelines.

Specifically, the RWIP achieves these goals by providing an ability to cluster homes in an efficient manner, by encouraging the inter-connectivity of open space tracts that include trails that connect over broader areas of land. On the other hand, the TDR program further identifies rural properties that contain open space, potential recreational opportunities, preservation of fish and wildlife habitat as appropriate sending areas of development capacity. Both programs minimize adverse impacts to shoreline natural resources by either directing growth pressures to urban environments or by clustering homes that encourages interconnectivity of open space. Both the TDR and RWIP are voluntary programs and provide avenues for additional permanent, open space along the shorelines of the state. Additionally discussion of these goals and policies are also addressed herein through the discussion of GMA goals 9, 10 and 13.

GMA Rural Definitions RCW 36.70A.030

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

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

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

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

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

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

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

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

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

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

GMA Rural Element Applicable Mandates RCW 36.70.070

(5) Rural element. Counties shall include a rural element including lands that are not designated for urban growth, agriculture, forest, or mineral resources. The following provisions shall apply to the rural element:

(a) Growth management act goals and local circumstances. Because circumstances vary from county to county, in establishing patterns of rural densities and uses, a county may consider local circumstances, but shall develop a written record explaining how the rural element harmonizes the planning goals in RCW 36.70A.020 and meets the requirements of this chapter.

(b) Rural development. The rural element shall permit rural development, forestry, and agriculture in rural areas. The rural element shall provide for a variety of rural densities, uses, essential public facilities, and rural governmental services needed to serve the permitted densities and uses. To achieve a variety of rural densities and uses, counties may provide for clustering, density transfer, design guidelines, conservation easements, and other innovative techniques that will accommodate appropriate rural

densities and uses that are not characterized by urban growth and that are consistent with rural character.

(c) Measures governing rural development. The rural element shall include measures that apply to rural development and protect the rural character of the area, as established by the county, by:

(i) Containing or otherwise controlling rural development;
(ii) Assuring visual compatibility of rural development with the surrounding rural area;
(iii) Reducing the inappropriate conversion of undeveloped land into sprawling, low-density development in the rural area;
(iv) Protecting critical areas, as provided in RCW 36.70A.060, and surface water and groundwater resources; and
(v) Protecting against conflicts with the use of agricultural, forest, and mineral resource lands designated under RCW 36.70A.170.

GMA Provisions Regarding Innovative Techniques RCW 36.70A.090:

A comprehensive plan should provide for innovative land use management techniques, including, but not limited to, density bonuses, cluster housing, planned unit developments, and the transfer of development rights.

III. Program GMA Evaluation

Section three is intended to evaluate the Transfer of Development Rights and Rural Wooded Incentive Programs explaining how these programs of the Rural Element of Comprehensive Plan harmonize the 13 GMA goals.

Transfer of Development Rights Program

Kitsap County's Transfer of Development Rights (TDR) program is a market-based land use incentive program. The program provides opportunities for private landowners to achieve economic return through the sale of development rights to properties located within an Urban Growth Area (UGA). As shown in Exhibit A, all rural and resource lands designated in the Comprehensive Plan may have development potential as established in the Kitsap County Comprehensive Plan and Title 17 Zoning Ordinance. These lands are considered sending sites. All urban areas designated by the Comprehensive Plan are considered receiving areas of these additional development credits.

The proposed amendment to the TDR program replaces the deed restriction for transferred development rights from 40-years to in perpetuity or forever. This document evaluates how the TDR program and proposed amendments are harmonized with the GMA Goals and applicable mandates.

Local Circumstances. As do many jurisdictions, there are pre-GMA "legacy lots" in the rural areas, that are vested to lot sizes smaller than currently permitted. There are also many areas within the County that have building constraints, such as critical areas. The TDR program will be a tool that can be used to discourage the development of such lots and to encourage development in urban areas.

1. **Urban growth.**
   The TDR program and proposed revisions encourage development in urban areas where adequate public facilities and services exist or can be provided in an efficient manner. Essentially, the TDR program is removing potential development capacity in rural areas and locating it in urban areas where urban level of services can be provided. The TDR program also requires any site-specific comprehensive plan amendment or rezone to acquire development credits from rural and resource lands.

   As such, this program and the proposed amendments further achieve this goal by preserving rural character as defined in RCW 36.70A.030 (15) and not promoting urban growth or low-density sprawl in rural and resource areas.

2. **Reduce sprawl.**
   As noted above, the TDR program and the proposed amendments eliminate the inappropriate conversion of undeveloped land into sprawling, low-density development by transferring development potential into urban areas at urban densities. The purpose of the County's TDR program and proposed amendments are to direct growth pressures away from rural and resource lands into urban areas, while equaling property values. This program may be used to remove the development rights from substandard lots that were created prior to the enactment of the GMA and reduce development of those pre-existing parcels.

3. **Transportation.**
   The County's TDR program and proposed amendments is to direct growth pressures away from rural and resource lands into urban areas where adequate public facilities and services exist or can be provided in an efficient manner. This program of directing rural capacity and growth in urban areas encourages efficient multimodal transportation systems where higher urban densities exist.

4. **Housing.**
   The Kitsap County Comprehensive Plan provides a wide range of rural and urban densities and housing types. Specifically, the TDR program is a voluntary program in which additional housing opportunities are directed from rural areas with lower level of services to urban areas where higher level of services exist with the potential for more affordable housing choices.

5. **Economic development.**
   The TDR program allows opportunity for rural landowners to receive financial compensation without developing or selling their land. In exchange, the public

receives preservation of open space, rural character, and natural resource based industries as shown in Exhibits A and C. Additionally, the County does not set the selling price of the development credit, but rather utilizes a well-established market and industry professionals that can work with property owners on the development credit price.

Additionally, urban properties receive additional economic opportunities for upzones in urban areas where public services are or will be available for development.

6. **Property rights.**
As noted in the description of Goal 5 and shown in Exhibits A and C, the program allows rural property owners to receive financial compensation without developing or selling their land. In exchange, the public receives preservation of open space, rural character, and natural resource based industries. Additionally, urban properties receive additional economic opportunities for upzones in urban areas where public services are or will be available for development. As such, selling and purchasing of TDRs is a voluntary program.

7. **Permits.**
Kitsap County Title 21 Land Use Procedures provides timeframes in which permits should be processed to ensure a timely and fair manner and consistent with state law.

8. **Natural resource industries.**
Through implementation of the Comprehensive Plan Policy RL-70 and Kitsap County Code 17.430, the proposed amendments provide mechanisms for the County and property owners to maintain and enhance natural resource-based industries, including productive timber, agricultural, and fisheries industries. The program encourages the conservation of productive forest lands, productive agricultural lands, and discourages incompatible uses.

9. **Open space and recreation.**
Through implementation of the Comprehensive Plan Policy RL-70 and Kitsap County Code 17.430, the proposed amendments further identify rural properties that contain open space, potential recreational opportunities, preservation of fish and wildlife habitat as appropriate sending areas of development capacity. Exhibits A and C show areas that could utilize the TDR program, as well as areas that have exceptional fish and wildlife and open space opportunities.

10. **Environment.**
Through implementation of the Comprehensive Plan Policy RL-70 and Kitsap County Code 17.430, the proposed amendments provide additional incentive-based protection on all aspects of the natural environment by directing growth pressures from the rural areas in perpetuity and directing growth in urban areas.

11. Citizen participation and coordination.

Through the 2006 10-Year Comprehensive Plan Update, as well as through the public process for the proposed amendments, the County has ensured that citizens have an opportunity to be involved, and has ensured coordination between communities and jurisdictions to reconcile conflicts. Appendix A of the 2006 Final Environmental Impact Statement of the Comprehensive Plan and the adopting ordinance of the proposed amendments provides a summary of opportunity for citizen and local jurisdictional involvement.

12. Public facilities and services.

The TDR program provides incentives for encouraging urban growth in UGAs where public facilities and services are or will be available to serve the increase in development. The program also directs growth pressures away from rural and resource lands to locations where compact urban development can occur to increase efficiency of public facilities and services.

13. Historic preservation.

The TDR program and the proposed development deed restriction of perpetuity ensures that the preservation of lands, sites, and structures located within rural and resources lands will be secured forever and for future generations to enjoy.

TDR Conclusion

The TDR program, as amended, promotes virtually every GMA goal to some degree or another. The TDR program promotes urban growth; reduces the potential for urban sprawl; encourages growth where transportation and other public services are available; provides some degree of economic development opportunities; preserves property rights; ensures timely permit processing; protects and preserves natural resource industries, open space, recreational land, historic sites, and the environment; and ensures adequate public participation. The TDR program harmonizes well with the GMA goals.

Rural Wooded Incentive Program

As authorized under GMA 36.70A.070(5)(b), and RCW 36.70A.090, the Rural Wooded Incentive Program(RWIP) provides a rural clustering program for land designated and zoned Rural Wooded. Rural Wooded lands are not classified as forest lands of long-term commercial significance, but include timber-related activities on the properties. This program and proposed amendments provides incentives for landowners, while promoting coordinated open space that would be permanent and providing opportunities to continue timber management techniques consistent with rural environments. As such, the Rural Wooded Incentive Program is appropriate in light of the local circumstances found within the rural areas of Kitsap County.

As shown in Exhibit B, there are 49,501 acres of eligible land (excluding rights-of-way) on 1,381 parcels. The average lot size is 14.1 acres with 231 dwelling units in the Rural Wooded area. The Rural Wooded Incentive Program, however, can only apply to 5,000 acres that are 20 acres or greater in size. Monitoring of the program is

required before any additional acres are made available for use in the program. Individual projects using this program may not exceed 500 contiguous acres. These limitations as well as others included in this voluntary program are consistent with the intent of clustered housing and the maintenance of rural character. The 75% open space requirement is equivalent to the density bonus allowed by the program.

Local Circumstances. The cumulative record of Kitsap County's GMA planning reflects a long history regarding the local circumstances giving rise to the RWIP. The GMA encourages the use of innovative programs, such as clustering in the rural area. RCW 36.70A.070(5)(B); .090. The GMA also expressly allows forestry as a rural use. *See* RCW 36.70A.030(16); .070(5)(b). The GMA states that in defining its rural element, a county should develop a local vision of rural character that will help preserve rural-based economies and traditional rural lifestyles and provide opportunities for small-scale, rural-based employment. RCW 36.70A.011.

The County's GMA record reflects that while forestry operations occur in Kitsap County, such operations do not constitute "forest resource lands" as defined by the GMA. There exists no or limited infrastructure necessary to support such commercial operations. Nevertheless, there remains some small-scale forest operations scattered in rural areas throughout the County. The majority of these operations are under the control of a handful of landowners. Many of the existing rural parcels were segregated prior to GMA and may not meet current zoning. Thus, even with minimum lot sizes of 20 acres, such pre-GMA lots could be developed under Washington's vested rights doctrine.

Kitsap County has been studying and proposing a rural clustering program since GMA's inception. The rural clustering program has been refined over the years to provide an incentive of preserving large tracts of rural open space in exchange for an increase in density. The program provides that such open spaces shall be associated as much as practicable to assure connection of the open space, trails and wildlife corridors. The RWIP provides an incentive for owners of large tracts of land to realize a better economic return while preserving open space, and possibly encouraging aggregation of nonconforming rural lots.

1. **Urban growth.**
   The incentive program provides opportunity for a variety of rural densities as required under the GMA. It also provides a development pattern in rural areas that is consistent with rural character and encourages rural character design. The program will provide innovative clustered housing techniques that are a more efficient use of Kitsap's rural landscape. Public services provided to these eligible areas are consistent with GMA definitions of rural services and rural development noted in Section Two of this document. Development regulations require the review authority to ensure that no urban services are required for a proposal using the program.

Additionally, the base density of the Rural Wooded zone remains 1 d.u./20 acres, with a voluntary option to do a maximum of 1 d.u./5 acres if the development site provides clustered housing with 75% permanent open space. Also included in the program is monitoring through the County's Buildable Lands Analysis to evaluate in light of urban and rural growth ratios.

2. **Reduce sprawl.**
   As noted in description of Goal 1, the incentive program provides opportunity for a development pattern in rural areas that is consistent with rural character. It also provides rural densities that result in a development pattern that encourages variety in rural character design, innovative clustered housing techniques that are more efficient use of Kitsap's rural landscape.

   Additionally, the base density of the Rural Wooded zone remains 1 d.u./20 acres, with a voluntary option to do a maximum of 1 d.u./5 acres if the development site provides clustered housing and permanent open space. Even with the bonus density, rural densities are maintained, but with the added amenity of expansive permanent open space. Also included in the program is monitoring through the County's Buildable Lands Analysis to evaluate in light of urban and rural growth ratios.

3. **Transportation.**
   The purpose of the incentive program is to minimize impervious surfaces and associated cost by clustering homes in a more efficient manner than traditional rural developed plats and consistent with the rural character and GMA development definitions noted in Section Two of this document. Development regulations require that road systems serving such developments meet applicable rural concurrency standards, should be narrow and designed to adapt to the natural contours and features of the land, and should have rural road characteristics, such as shoulders and grass-lined ditches. Finally, the phasing process ensures that there is no level of service failures on roads serving existing RWIP development. If such a failure is identified, the next phase of the program cannot be implemented.

4. **Housing.**
   The clustered housing allowed by the program will reduce the cost of rural infrastructure, which is generally spread over the unit cost for housing. The ability for property owners to develop in uncoordinated 20-acre tracts without a formal land use subdivision review (as allowed under state law) will further increase the costs of roadways and their associated stormwater mitigation. Providing an alternative to that type of development may help keep development costs down. These issues, combined with the base higher cost of 20-acre parcels, may affect the County's ability to provide workforce housing county-wide.

5. **Economic development.**

The program allows additional housing options for employees of the rural industrial and commercial business located in North and Central Kitsap. These housing options, while not intended to draw from the County's urban areas, will provide shorter commutes for employees traveling to these existing rural businesses, increasing their long-term viability. Providing expansive and inter-connected tracts of open spaces with trail infrastructure may encourage tourism to some of these areas.

6. **Property rights.**
The Rural Wooded Incentive Program provides Rural Wooded property owners a voluntary program in which a property owner can receive a density bonus up to (1 d.u./5 acres) if dedicating 75% of the development site for permanent open space. Thus, the program helps ensure an economic return on some development and promotes individual property rights. Because the program is voluntary, it also preserves existing property rights.

7. **Permits.**
Kitsap County Title 21 Land Use Procedures provides timeframes in which permits should be processed to ensure a timely and fair manner and consistent with state law.

8. **Natural resource industries.**
As shown in Exhibit C, the incentive program, along with the proposed amendments maintains and enhances natural resource-based industries by allowing innovative timber techniques within open space. While these are not considered natural resource lands, it does preserve some smaller-scale natural resource based industries that would not be economically viable without the program.

9. **Open space and recreation.**
The incentive program, along with the proposed amendments provides a minimum of seventy-five percent (75%) of the Rural Wooded Incentive Program development site to be placed in a permanent open space tract(s) where uses are limited to passive recreation, forestry or other timber management techniques. The program encourages the inter-connectivity of open space tracts and may include trails that connect the tracts over broader areas of land. These clustering and open space provisions ensure that there are larger open areas and recreational opportunities available in the rural areas.

10. **Environment.**
As shown in Exhibit C, the incentive program would optimize protection of critical areas by containing housing clusters and other development away from critical areas; preserving significant trees; optimizing the preservation and interconnectivity of open space; avoiding development on ridgelines, the centers of open field, or other prominent topographical features or scenic elements; and minimizing topographic alteration. The development regulations encourage the

retention of open space in areas that will preserve saltwater shorelines; the inclusion of all water bodies within the open space; and the conservation of wildlife habitat. The development regulations also impose rural standards, such as road, water and sewer services. All of these measures further implement this GMA goal.

Additionally, the clusters developed under this program must provide a 100-foot vegetated buffer from existing public roadways and adjoining properties and a 150-foot buffer between clusters in order to preserve rural character and the aesthetic values of Rural Wooded lands.

11. Citizen participation and coordination.

The public process for this program extends over many years. Through adoption of a valid Comprehensive Plan in 1998, the proposed 2003 and the 2006 10-Year Comprehensive Plan Update, as well as through the public process for the proposed amendments, the County has ensured that citizens had an opportunity to be involved, and has ensured coordination between communities and jurisdictions to reconcile conflicts. As the CPSGMHB noted in 2004, "There does not appear to be any dispute regarding need for some type of an incentive program in light of the local circumstances found within these rural areas of Kitsap County." (*Bremerton et al. v. Kitsap County ("Bremerton II")*, CPSGMHB No. 04-3-0009c, FDO (8/9/04)). Appendix A of the 2006 Final Environmental Impact Statement of the Comprehensive Plan and the adopting ordinance of the proposed amendments provides a recent summary of opportunities for citizen and local jurisdictional involvement.

12. Public facilities and services.

Rural public facilities and services necessary to support development within the incentive program will be required and adequate to serve the development. Public services and facilities provided to lands eligible for the incentive program areas are consistent with GMA definitions of rural services and rural development noted in Section Two of this document.

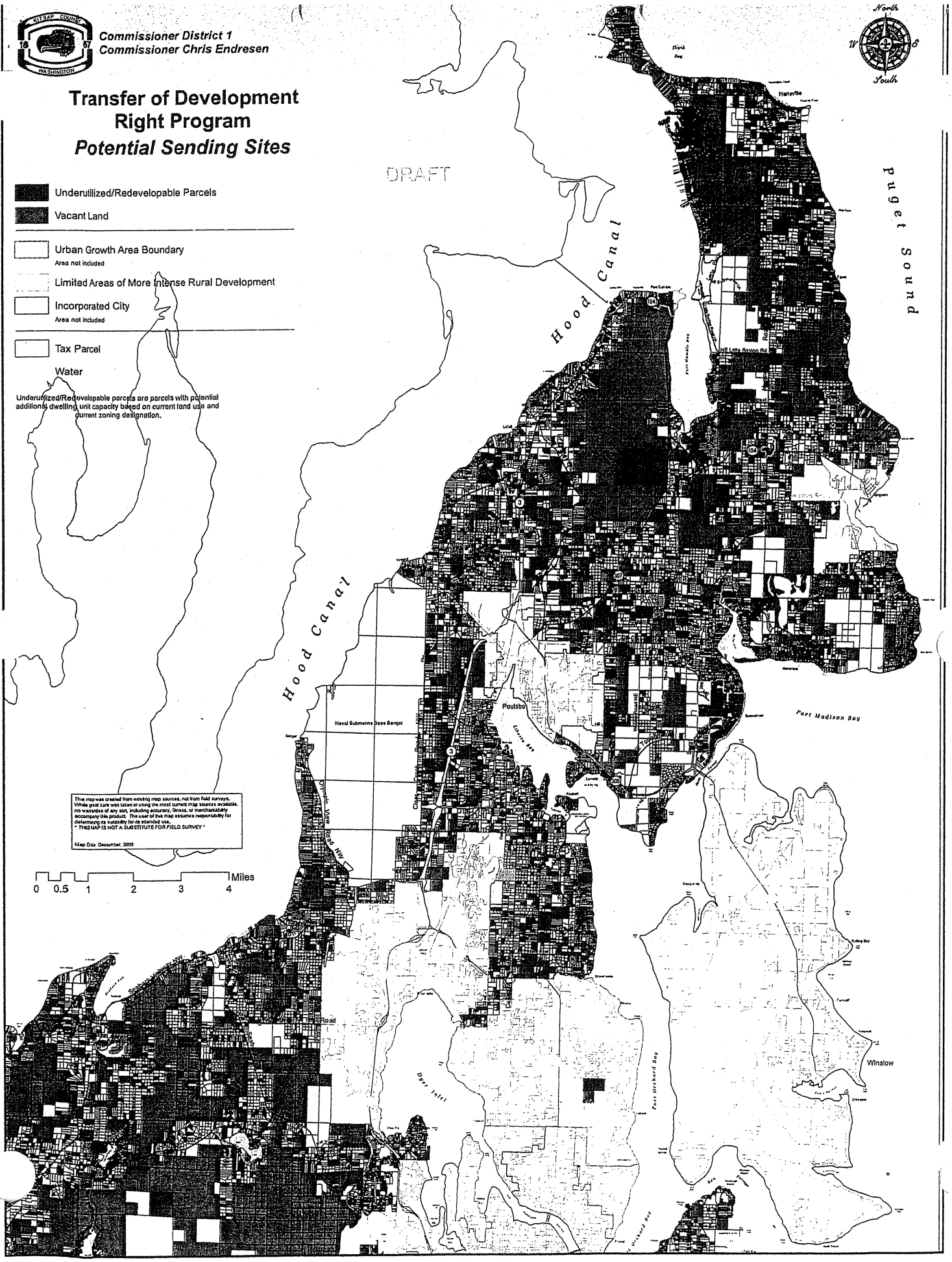
13. Historic preservation.

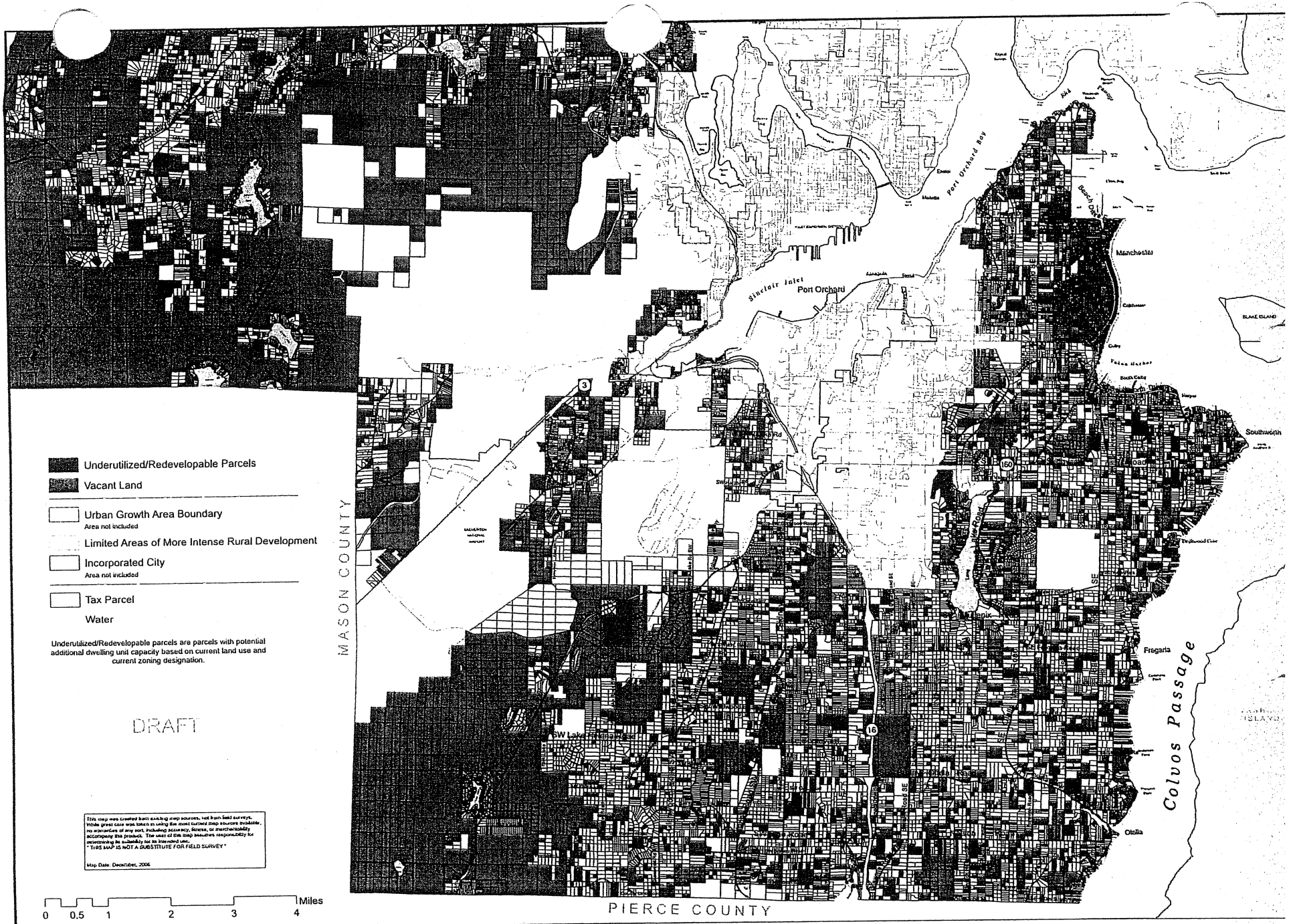
Properties using the program will be required to receive land use subdivision approval with its associated SEPA determination. It is at this time that potential impacts to cultural, archeological and historic resources can be assessed on a larger-area basis. Without use of the program, properties may be subdivided into sectional 20-acre parcels without a formal subdivision process (as allowed under state law). SEPA determinations are not required with this form of subdivision and unless future parcel-specific development triggers a SEPA determination the impacts to these resources may go unaddressed.

RWIP Conclusion

On balance, the RWIP program, as amended, can be harmonized with the GMA goals. The program is appropriate in light of GMA requirements and local circumstances. The RWIP preserves local rural-based economies (small scale forestry), while providing an incentive to preserve large tracts of open space, which in turn will provide wildlife habitat and outdoor recreation activities. The RWIP ensures the retention of rural character; prohibits urban growth in the rural areas and thus reduces the potential for urban sprawl; only allows growth where adequate rural transportation and rural services are provided; provides some degree of economic development opportunities; preserves property rights; ensures timely permit processing; protects and preserves natural resource industries, open space, recreational land, historic sites, and the environment; and ensures adequate public participation. The RWIP harmonizes well with the GMA goals.

Exhibit A
TDR Sending & Receiving Areas


Commissioner District 1
Commissioner Chris Endresen
Transfer of Development Right Program
Potential Sending Sites
DRAFT
Underutilized/Redevelopable Parcels
Vacant Land
Urban Growth Area Boundary
Area not included
Limited Areas of More Intense Rural Development
Incorporated City
Area not included
Tax Parcel
Water
Underutilized/Redevelopable parcels are parcels with potential additional dwelling unit capacity based on current land use and current zoning designation.
This map was created from existing map sources, not from field surveys. While great care was taken in using the most current map sources available, no warranties of any sort, including accuracy, fitness, or merchantability accompany this product. The user of this map assumes responsibility for determining its suitability for its intended use.
* THIS MAP IS NOT A SUBSTITUTE FOR FIELD SURVEY *
Map Date: December, 2006
0 0.5 1 2 3 4 Miles
North
West
South
Hood Canal
Hood Canal
Puget Sound
Port Madison Bay
Poulsbo
Naval Submarine Base Bangor
Winslow
Port Orchard Bay
Dyes Inlet
Clear Creek
Olympic View Road NW
NE Little Boston Rd
Harrow Point
Port Gamble
Port Gamble Bay
Eglon Bay
Killing Bay



Transfer of Development Right Program

Potential Sending Sites

Commissioner District 2
Commissioner Jan Angel

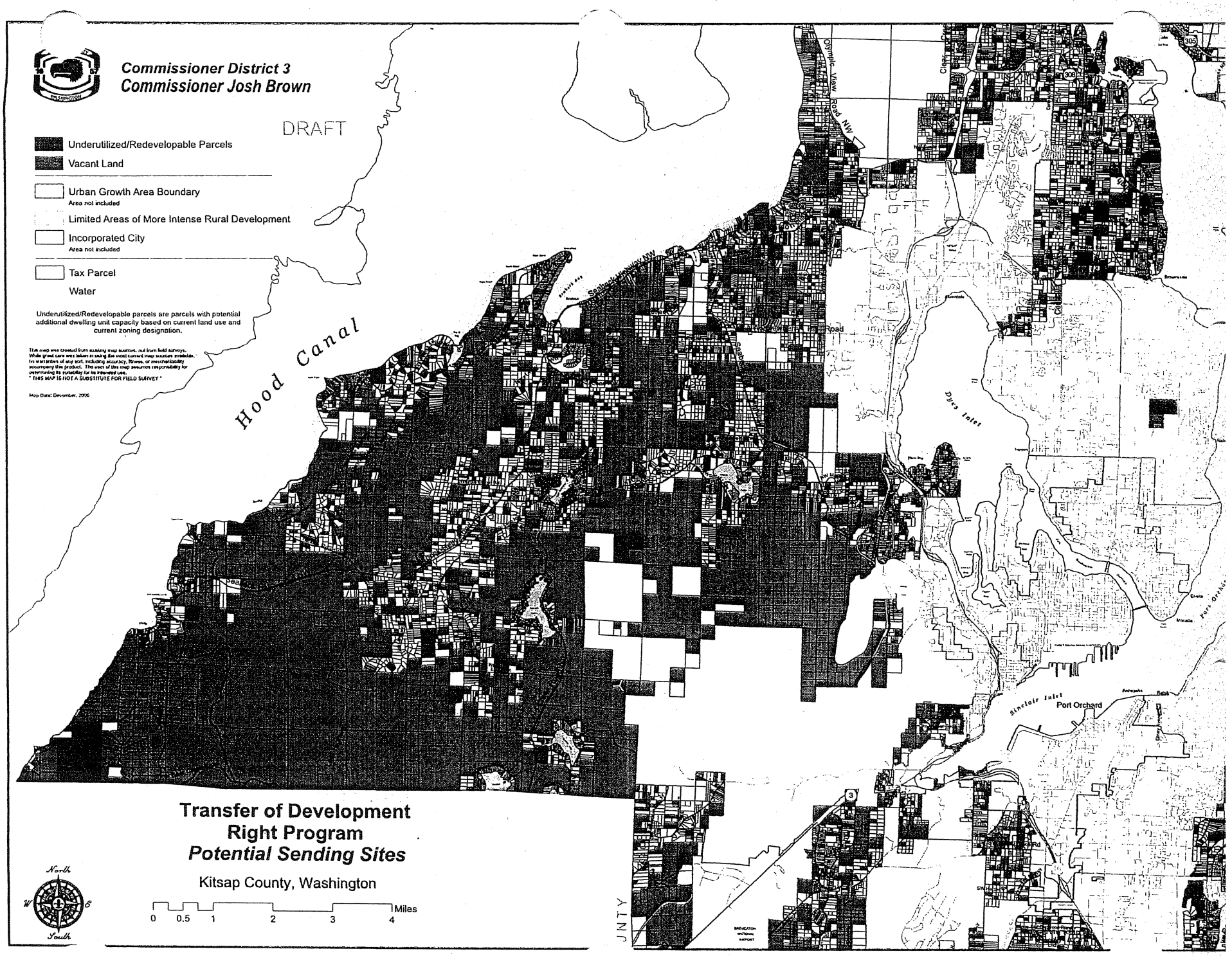

Commissioner District 3
Commissioner Josh Brown
DRAFT
Underutilized/Redevelopable Parcels
Vacant Land
Urban Growth Area Boundary
Area not included
Limited Areas of More Intense Rural Development
Incorporated City
Area not included
Tax Parcel
Water
Underutilized/Redevelopable parcels are parcels with potential additional dwelling unit capacity based on current land use and current zoning designation.
Map Date: December, 2006
Hood Canal
Olympic View Road NW
Dyes Inlet
Sinclair Inlet
Port Orchard
Transfer of Development Right Program
Potential Sending Sites
Kitsap County, Washington
North
West
East
South
0 0.5 1 2 3 4 Miles

Exhibit B
Rural Wooded Lands

KITSAP COUNTY

Washington

RURAL WOODED
LAND USE DESIGNATION

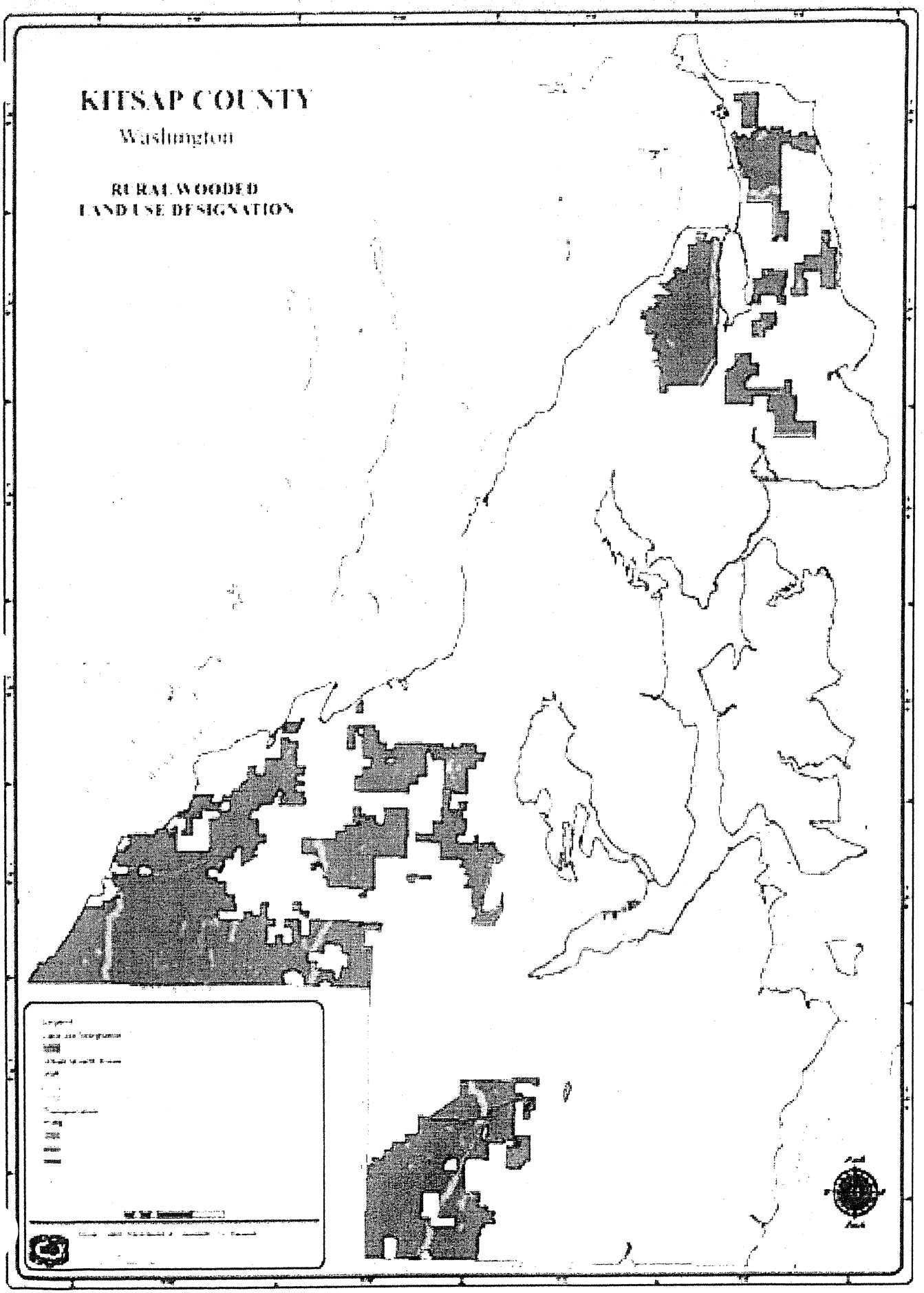


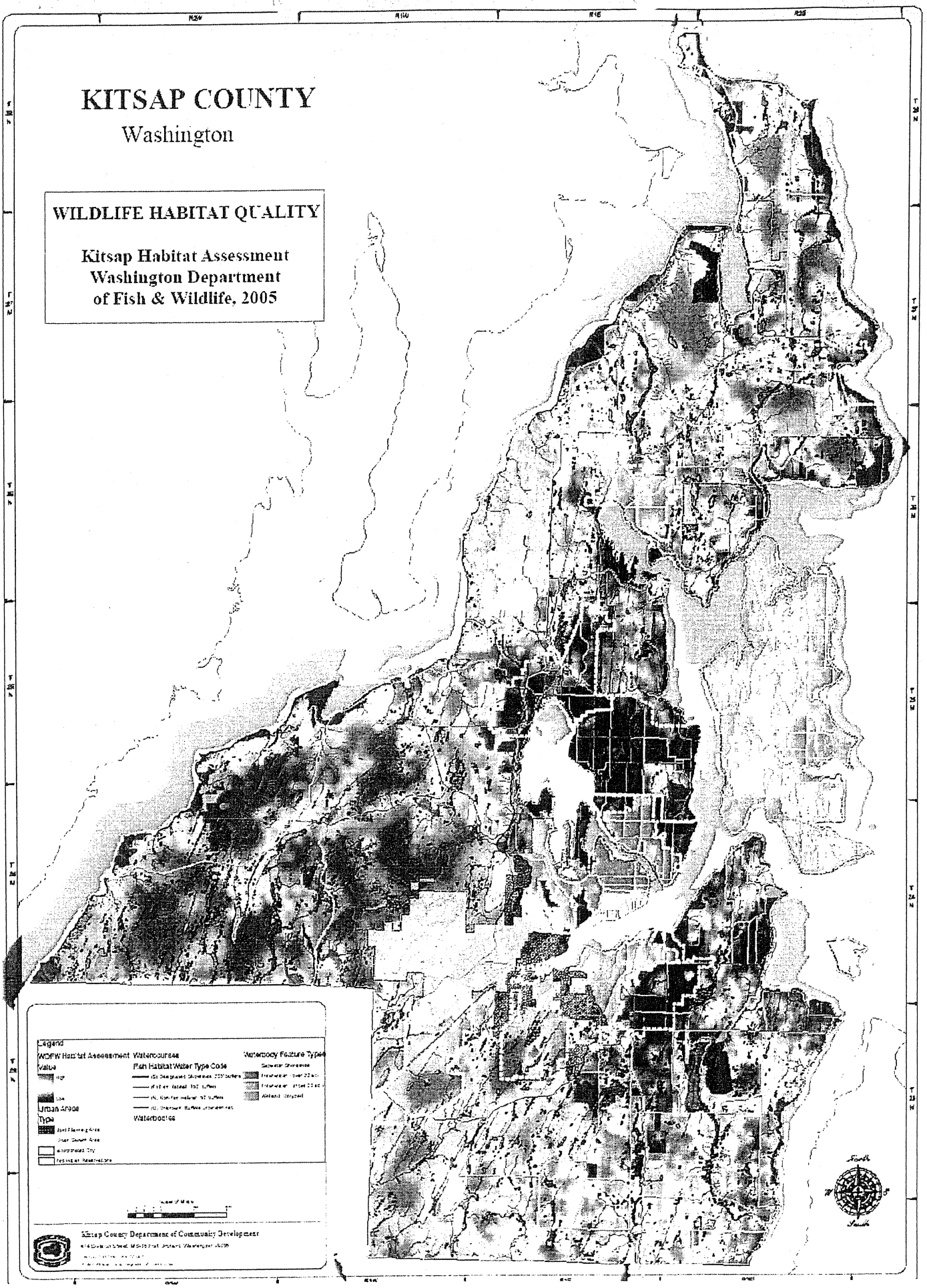
Exhibit C
Forest Resource, Wildlife Habitat & Salmon Refugia Maps

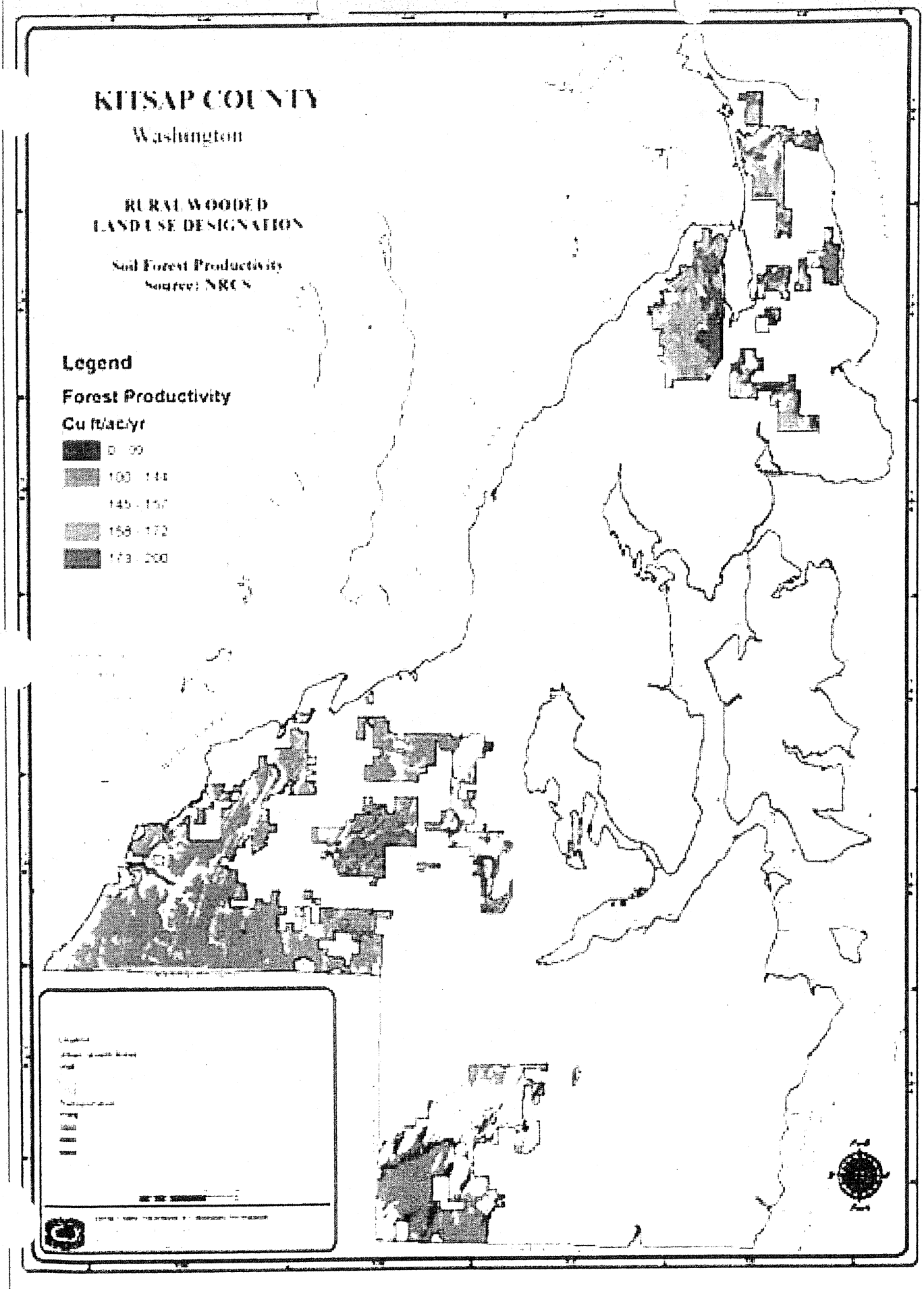
KITSAP COUNTY

Washington

WILDLIFE HABITAT QUALITY

Kitsap Habitat Assessment
Washington Department
of Fish & Wildlife, 2005



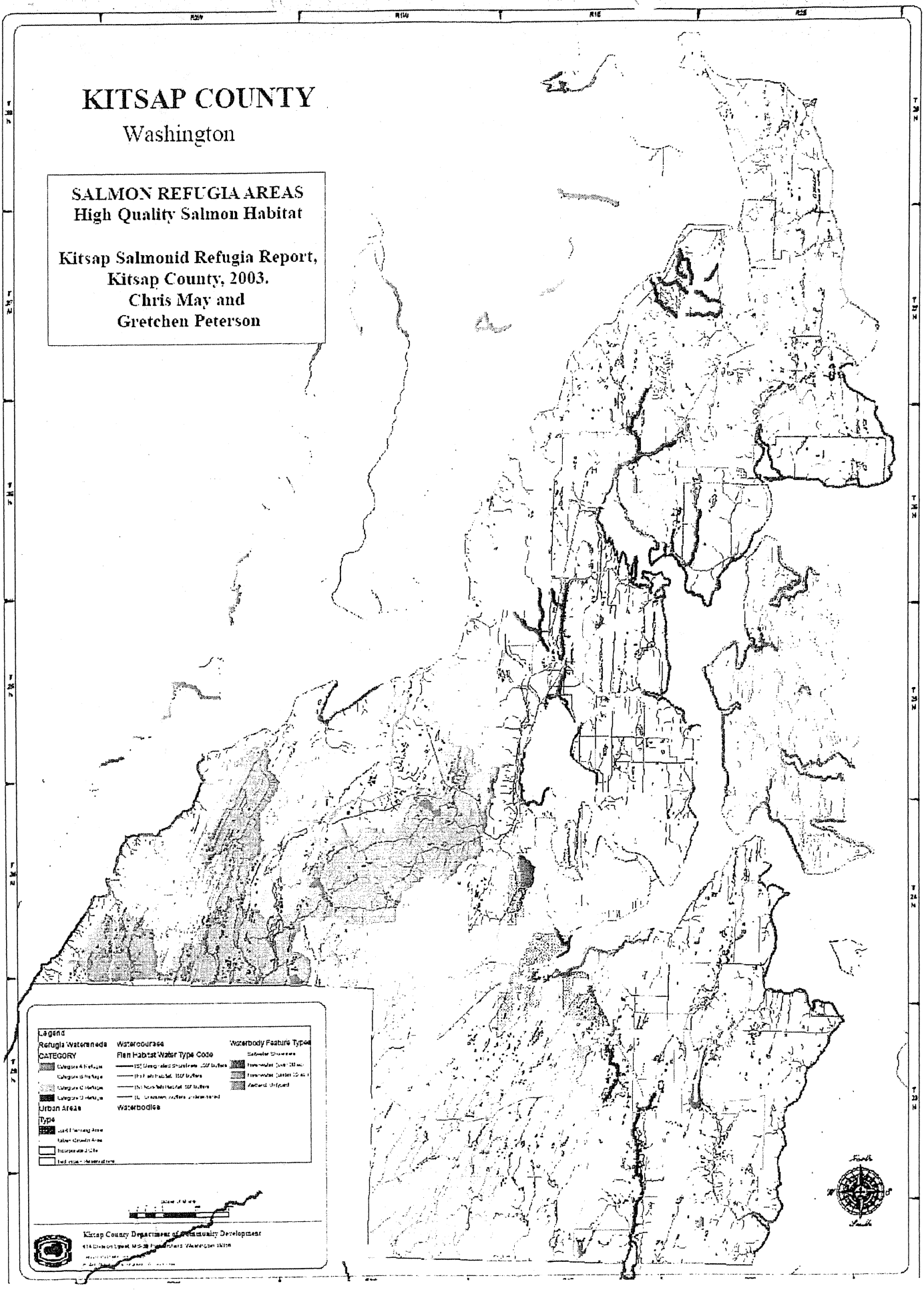

KITSAP COUNTY
Washington
RURAL WOODED
LAND USE DESIGNATION
Soil Forest Productivity
Source: NRCS
Legend
Forest Productivity
Cu ft/ac/yr
0 - 99
100 - 144
145 - 157
158 - 172
173 - 200

KITSAP COUNTY

Washington

SALMON REFUGIA AREAS
High Quality Salmon Habitat

Kitsap Salmonid Refugia Report, Kitsap County, 2003.
Chris May and Gretchen Peterson

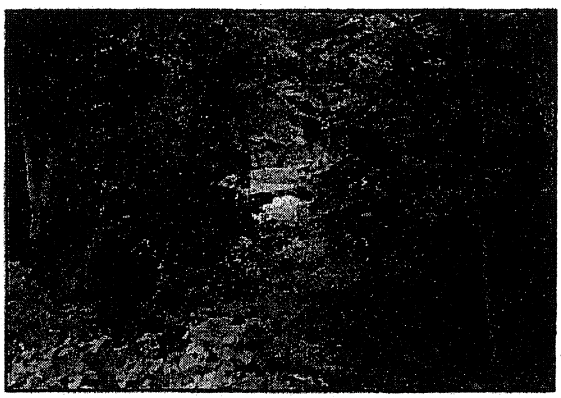


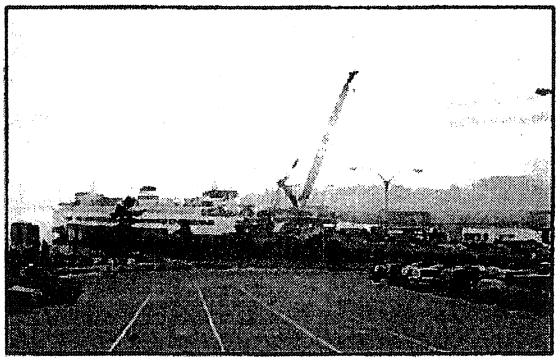
Appendices 8
CP 106,
AR 32

App. 8
Buildable Lands Analysis #31052

BUILDABLE LANDS ANALYSIS
1995-1999

KITSAP COUNTY





August 2002

Buildable Lands Analysis

Kitsap County

Prepared for:

Kitsap County
Department of Community Development

Darryl Piercy
Laura Ditmer
Jason Rice

State of Washington
Office of Community Development

Sam Wentz
Leonard Bauer

Prepared by:

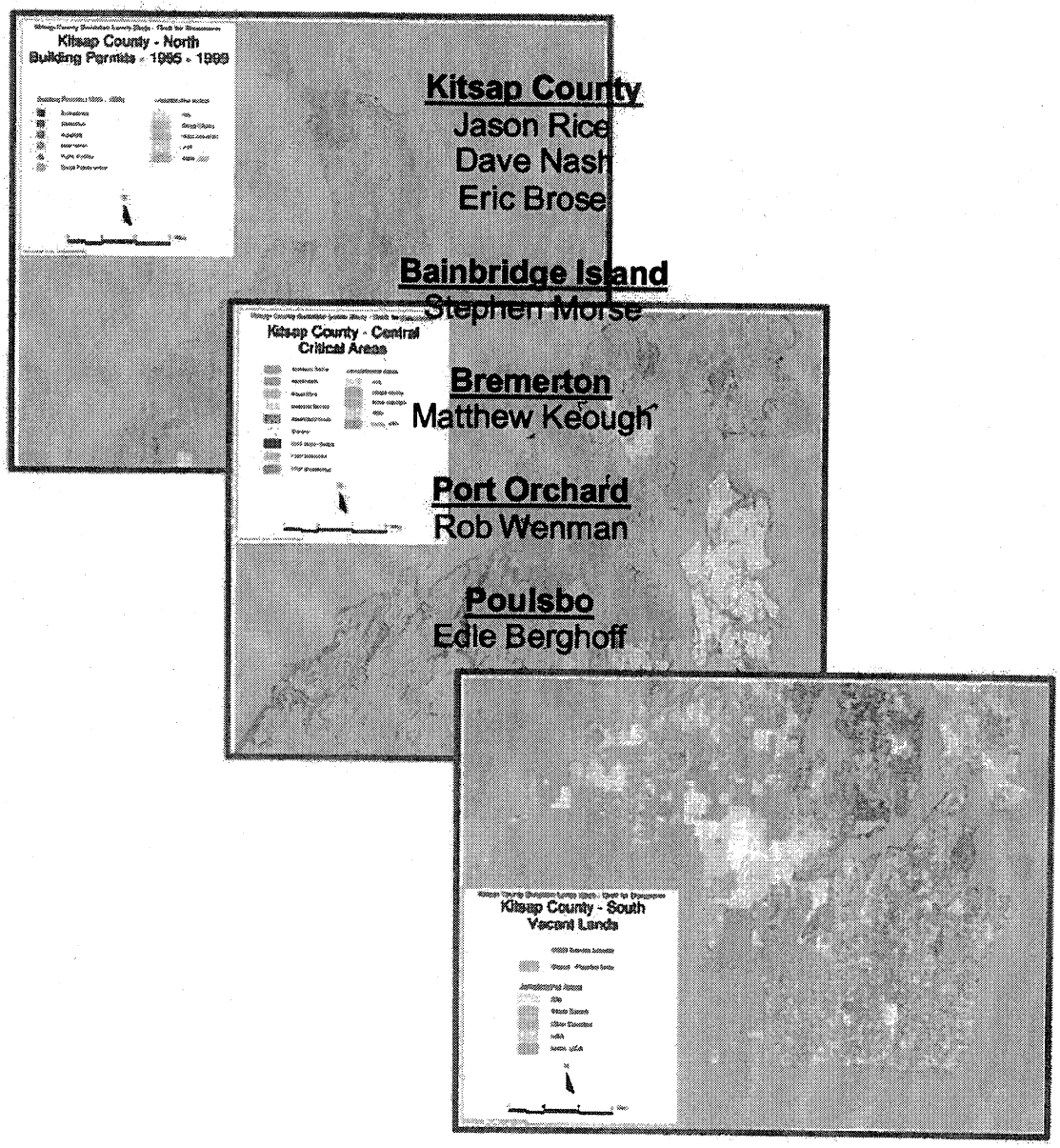
The Shea Group, a Parametrix company
8830 Tallon Lane
P O Box 3485
Lacey, WA 98516
Phone: (360) 459-3609
Fax: (360) 459-0154

Contact: Susan Graham
Jean Carr
Jennifer Bradford
Cathie Carlson

Project Number: 244-1578-089
File Number: k:\1578\cont\089\def\reports

Acknowledgements

This analysis was completed with technical guidance and valuable input from the Buildable Lands Technical Advisory Committee. This dedicated group met regularly during the four years of data collection and refinement, as well as the final year of report preparation. Without this team of professionals, the Analysis could not have been completed.



Kitsap County
Jason Rice
Dave Nash
Eric Brose

Bainbridge Island
Stephen Morse

Bremerton
Matthew Keough

Port Orchard
Rob Wenman

Poulsbo
Edie Berghoff

Table of Contents

I. Executive Summary 1

II. Introduction 4

III. Local Context 6

IV. Analysis Background 9

V. The Questions 10

VI. Approach and Methodology 11

VII. Jurisdiction Findings

Cities and Associated UGAs 18
UGAs 46
Areas of More Intense Rural Development (AMIRDs) 59
Rural Unincorporated Kitsap County 66

VIII. Commercial and Industrial Lands 69

IX. Summary Findings and Conclusions 73

X. Recommendations and Possible Reasonable Measures 89

XI. Technical Appendix

Glossary A1
GIS Methods A3

Executive Summary

Why is the County preparing this report?

Kitsap County has prepared this report in response to requirements outlined in Washington State's 1990 Growth Management Act. More specifically, this report addresses a set of 1997 amendments to the act, which are referred to as the *Buildable Lands Program* (BLP). [1]

This report is the first required evaluation report for the BLP. It is due September 1, 2002, with periodic evaluation reports due each five years thereafter.

What is the Buildable Lands Program?

The BLP is a process for counties and their cities to monitor development trends with an eye toward growth management objectives. Planning and monitoring activities that stem from BLP include annual data collection, jurisdictional coordination, and updates to buildable lands inventories.

BLP requirements are framed around two central questions:

1) Are buildable lands within the county's Urban Growth Areas sufficient to accommodate future growth?
2) If not, what corrective measures are available to address the land need?

To answer the first question, counties must use 20-year projections for housing and employment to estimate growth expected for UGAs. Assumptions on future growth rates and densities should be based on development activity occurring during the most recent five-year period.

The second question is more qualitative. It may be addressed through policy changes, such as allowing a wider range of housing types/densities. If no other options exist, it may be addressed alternatively through a UGA amendment.

This report is:

- Prepared in response to the legislative requirement to address 6 key GMA questions.
- A snap-shot in time –shows development densities and land supply only through 1999.
- Generally indicative of whether land supply is adequate for forecasted demand.
- Intended to show whether the County and cities are achieving urban densities.
- Intended to reflect development trends in rural areas.

This report is not:

- A market analysis of economic conditions – it does not indicate number, size and availability of buildable lots; and does not include market factors affecting development.
- A predictor of where and when development activity may occur.
- Intended to be accurate at extremely small levels of geography – data analyzed is aggregated for analysis.

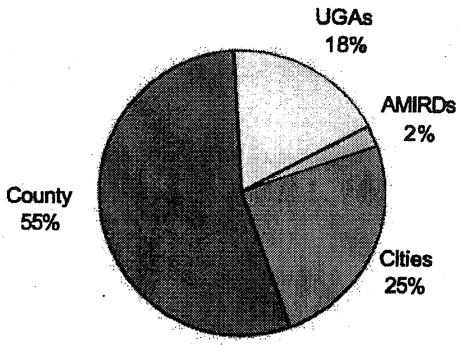
[1] The requirements are detailed in RCW 36.70A.215

- Intended to be a tool for comparison amongst communities – each jurisdiction has unique issues regarding implementation of comprehensive plans and varying development regulations that affect densities and development patterns.
- Able to reflect more recent changes in development regulations – it takes time for these to become apparent in the data.

What are the findings?

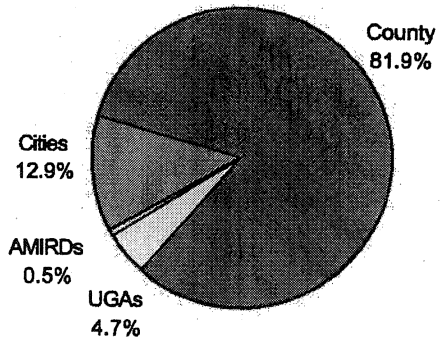
Residential development has been active in Kitsap County between 1995 and 1999, with a slight majority of all new residential permits issued in the rural unincorporated area. Cities have captured about one fourth of new residential permits, with UGAs close behind, followed by areas of more intense rural development (AMIRDs), which include Manchester Village, Port Gamble and Suquamish Village.

1995 - 1999: Residential Units Permitted
Type of Jurisdiction



In terms of land area, the vast majority of new residential land consumed is in the jurisdiction of rural unincorporated Kitsap County. This is due primarily to the lower rural development densities prescribed for that area. For most of Kitsap County's cities, development has been occurring either at, or close to, the densities outlined in their comprehensive plans and implementing ordinances.

1995 - 1999: Residential Acres Permitted
Type of Jurisdiction

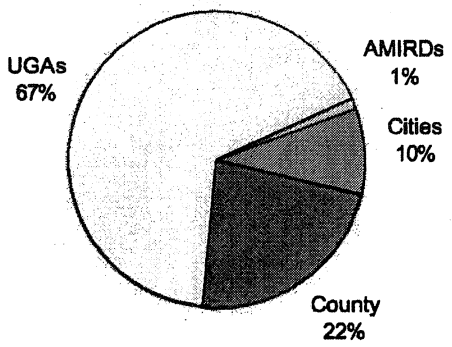


When looking at cities and their associated UGAs together, there appears to be sufficient land to accommodate projected growth, *should development continue to occur at densities roughly equivalent to those occurring between 1995-1999.* Individually, Bainbridge Island and Port Orchard appear to have adequate supply, while Bremerton and Poulsbo may not. For the city of Bremerton however, where zoning densities as high as 44 units per acre currently coexist with a lower relative demand, additional land may not be necessary or desirable. In the case of Poulsbo, the City has undergone a subarea planning effort to determine its future needs. This study also found that additional land would be available for all jurisdictions if future development averages closer to four (4) units per acre.

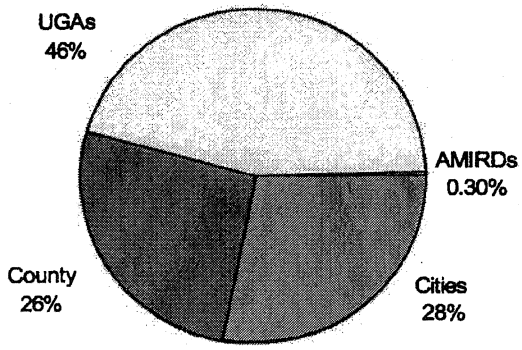
In rural unincorporated Kitsap County, development densities average approximately 1 unit per acre, which represents a midpoint between extremely rural and urban-style densities. One development constraint is the large number of smaller, nonconforming lots of record. Until these parcels are fully absorbed, the County may face obstacles in directing new growth towards urban areas.

This analysis, which is based largely on geocoded building permit data, has also found that about 4,000 acres of land have been absorbed for commercial and industrial uses during the 1995 – 1999 analysis period. While it has been beyond the scope of this study to trace specific uses and activities associated with these permits, research into development types (warehousing, retail, office), location, and number of employees, may help answer questions resulting from Comprehensive Plan commercial and industrial land need projections of 3,900 acres through 2012. Further study is recommended in order to address this possible discrepancy.

1995 - 1999: Commercial and Industrial Permits - Type of Jurisdiction



1995 - 1999: Commercial and Industrial Acres Permitted - Type of Jurisdiction



Approximately 46 percent of land with new commercial and industrial permits is inside of UGAs, with Silverdale, SKIA, Central Kitsap County and Port Orchard UGA using the bulk. Of the roughly 28 percent that went to cities, Bremerton's land base absorbed the vast majority. Finally, just over one quarter of the new commercial and industrial land base occurred in rural Kitsap County.

This analysis, which has relied on established employment density ratios and standards outlined in Kitsap County's comprehensive plan, indicates that Kitsap County has sufficient commercial and industrial land supply to accommodate projected employment growth.

4. To what extent have capital facilities, critical areas, and rural development affected the supply of land suitable for development over the comprehensive plan's 20-year timeframe?

This question points to those factors occurring both inside and outside of UGAs that may increase the amount of land needed, or that may impede efficient land use patterns.

Streets and right of way areas that accompany new development consume a great deal of land. This study assumes that new streets and capital facilities will increase the acreage required for new residential uses by approximately 35 percent.

Critical areas must also be taken into account in estimating land need. Rather than increasing estimates of land need to account for likely unbuildable areas, however, this study accounts for critical areas when looking at land supply. Using GIS, specific critical areas (which are detailed in the following response to Question #5) are removed from the supply of vacant and underutilized areas on a site-specific basis. This method gives a more accurate portrayal of whether sufficient *buildable* land exists to accommodate land need. Summary tables showing vacant and underutilized land estimates that appear for each study area indicate the amount of critical land that has been removed from vacant and underutilized areas.

Rural, low-density development also impedes land use efficiency, as it is often characterized by a more dispersed pattern of land use. To address this question, this study evaluated growth patterns in rural unincorporated Kitsap County apart from other study areas. Summary tables for the county, appearing at the end of the following section, generally indicate that lower development densities (averaging between ½ acre – 1 acre) are occurring in the County. A central issue concerning rural development is that much of it occurs on parcels that are smaller than the prescribed density standard for that zone, or "legacy lots". Until these lots are fully absorbed, the County may face some obstacles in its efforts to direct most of the new growth towards urban areas.

5. Is there enough suitable land in each county and its cities to accommodate the countywide population growth for the remainder of the 20-year planning period (based on the forecast by the state Office of Financial management and the subsequent allocations between the county and cities)?

This question focuses on determining how much vacant, buildable land exists that is appropriately zoned and planned for the land uses needed. County GIS and assessment information was used to answer this question.

Kitsap County uses a set of 5-digit land use codes. The code "91000" defines all undeveloped areas.[3] It was noted as this study began that some of the parcels in the county assessment database were incorrectly coded as "vacant" when they should have been coded as "common area", or "91100". Kitsap County GIS staff provided a file of such identified parcels, which were checked against the vacant lands database. Individual meetings with each city also allowed for local review and update of the vacant lands layer.

[3] The code "91000" is used specifically to denote undeveloped land. Other land use codes exist for areas such as "bare land removed from assessment", "non-common forest", "state forest", "tide lands", and "other undeveloped lands". Only those lands with the code "91000" have been included in these vacant land totals.

Rural Kitsap County: Summary of Residential Land Need						
2012 Pop Target	Single Family Units Needed	Multi-Family Units Needed	1995-1999 SF Density	1995-1999 MF Density	Net Buildable Acres Needed	Gross Buildable Acres Needed
10,112	4,044	-	**0.80**	**N/A**	5,056	6,673

* This study assumes that new streets (17%) and public facilities (15%) will increase the acreage required for new residential uses.

Residential/Buildable Land Supply

Land supply was determined by first looking at gross available vacant and underutilized land. Vacant lands include all undeveloped parcels that have never had residential permits issued on them. Underutilized lands are those areas that may be likely to redevelop at higher densities in the future. For more details regarding assumptions for redevelopment potential, see **Chapter VI, Approach and Methodology**. To determine net available suitable lands, critical areas were removed. Specific critical areas removed are also noted in that chapter.

Rural Kitsap County: Summary of Vacant and Underutilized Residential Lands By Major Zoning Category									
	Vacant Areas			Underutilized Areas			Total		
	Gross	Critical	Net	Gross	Critical	Net	Gross	Critical	Net
Single Family	36,589	7,270	29,319	3,446	608	2,838	40,035	7,878	32,157
Multi-Family	-	-	-	-	-	-	-	-	-
Total	36,589	7,270	29,319	3,446	608	2,838	40,035	7,878	32,157

Note: Numbers in this table have been reported as whole numbers. Small differences in totals may occur due to rounding.

General Findings

- According to this analysis, there are sufficient buildable residential lands (32,157 acres) available to meet the projected demand (11,720 acres) in rural Kitsap County.
- If multifamily densities are adjusted to reflect current standards instead of observed development patterns during the analysis period, the land needed to meet projected population growth goes down by over 50% to just over 4,000 acres.
- Overall, both permitted and platted densities in the County are higher than current zoning designations allow. Regarding permitted densities, the higher-than-currently-allowed densities are likely due to the large number of "legacy lots" that have been approved under old density standards.

It should be noted that several of the county's zoning designations, while considered single family residential in this analysis, are not expected, nor intended to be areas with a great deal of development. These areas include the Interim Rural Forestry Zones, and the Mineral Resource Overlay zones, where densities are intentionally low to protect the resource values of these areas.

Summary Table 7
Comparison of Estimated Land Need with Supply

Jurisdiction	Land Need Assuming Current Development Trends	Land Need Assuming Average of 4 Units per Acre	Estimated Buildable Land Supply
Bainbridge Island City	1,620	577	4,659
Bremerton City	3,189	2,822	670
Bremerton UGA	895	443	879
Bremerton Total	4,084	3,265	1,549
Port Orchard City	52	43	465
Port Orchard UGA	459	420	575
Port Orchard Total	511	463	1,030
Poulsbo City	751	407	667
Poulsbo JPA	1,615	497	193
Poulsbo Total	2,267	904	860
Cities and Associated UGAs	***8,482***	***5,209***	***8,098***
Central Kitsap UGA	1,883	951	1,138
Gorst	0	0	0
Kingston	323	219	187
McCormick Woods	243	262	224
Silverdale	370	631	739
Manchester Village	58	42	187
Port Gamble Village	79	104	4
Suquamish Village	23	30	91
Rural Kitsap County	11,854	*	32,157

**** Urban Densities are not expected/anticipated for rural areas.***

App. 8
Ex. L

The Fiscal Impacts of Alternative Single Family Housing Densities:
Infrastructure Costs

AR 32
EX. L

The Fiscal Impacts of Alternative Single Family Housing Densities: Infrastructure Costs

Authors:
Mohammad Najafi
Rayman Mohamed
Abdelkader Tayebi
Soji Adelaja
Mary Beth Lake
Paul Gottlieb
William Rustem

A Market Based Solutions Report Prepared by

MSU Land Policy Institute
Report # 2006-2

May 2006

In conjunction with
Center for Underground Infrastructure Research & Education
Michigan State University
Department of Agricultural Economics
Michigan State University
Department of Geography and Urban Planning
Wayne State University

and the
Michigan Economic and Environmental Roundtable

Acknowledgements

Aligning the behavior of township officials, developers, realtors, homeowners and others involved in land development decision making toward smart growth principles is an important objective of land use policy reform advocates in Michigan. This goal was embraced by the Michigan Land Use Leadership Council (MLULC), empanelled by Governor Jennifer Granholm, and the subsequent report of the Council in 2003. The report calls for greater understanding of the benefits of smart growth and the encouragement of such practices. One of the critical issue areas where more information is needed is the benefits associated with denser development patterns. More precisely, the long-term infrastructure and other public costs of large lot development patterns are not well understood. This report focuses on the implications of denser single family home development patterns for infrastructure costs.

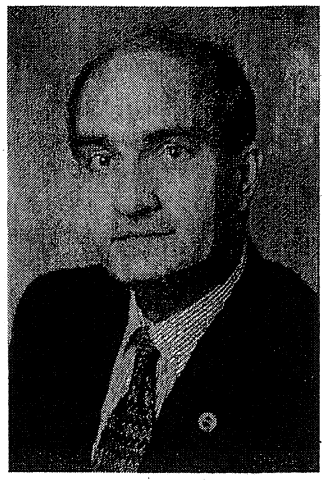
We are grateful to the W.K. Kellogg Foundation (WKKF) for generously taking the lead in providing funding for this project. The work would not have been possible without a grant from the Foundation. The study team would like to thank Gail Imig for her valuable insights and strong support of this project. WKKF funds were supplemented by financial support from Michigan State University. The Office of the John A. Hannah Distinguished Professor in Land Policy, the Michigan Agricultural Experiment Station (MAES), Michigan State University Extension (MSUE), the Office of the Provost, the Office of the Dean of the College of Agriculture and Natural Resources, the Office of the Dean of the College of Social Sciences, and the Office of the Vice President for Research and Graduate Studies collectively contributed fifty percent of the total cost of the projects. Without the continued support of President Lou Anna K. Simon, Provost Kim Wilcox, Vice President Ian Gray, Dean Jeffrey Armstrong, Dean Marietta Baba, MAES Director Steven Pueppke, Associate Director John Baker, Former MSUE Director Margaret Bethel, and Director Tom Coon, this study would not have been completed.

This study emerged from discussions with the Michigan Environmental and Economic Roundtable (MEER). The study team wishes to give special thanks to Jim DuBay (President of MEER), Gil White (former President of the Michigan Realtors Association), Doug Roberts, Jr. (Michigan Chamber of Commerce), Julie Metty Bennett and Amy Spray (Public Sector Consultants, Inc.) and other members of MEER for their vision, leadership and wisdom in the conceptualization of this study. The authors would like to thank Francisco Llinas, Engineer, Ingham County Road Commission; Michelle Haugen, Deputy Planner, Grand Traverse County; Kris Lewis, Alpena Township; Bill Serchak, from the City of Canton; and Debbie Mason, realtor, Briarwood Realty. They were extremely helpful in providing necessary information and guidance.

The authors are grateful to Lisa Marckini for providing program evaluation. Research and logistical support were provided by Dr. Oleh Kinash, Research Associate, and Suzie von Bernuth and Amanda Simpson, graduate students with the Center for Underground Research and Education. Research support was also provided by Malika Chaudhuri, Graduate Assistant in the Department of Agricultural Economics and the Land Policy Institute. Final editing was conducted by Laila Racevskis, Research Coordinator and Assistant Professor in the Land Policy Institute. Finally, the authors would like to thank the teams at the Center for Underground Infrastructure and the Land Policy Institute for their support.

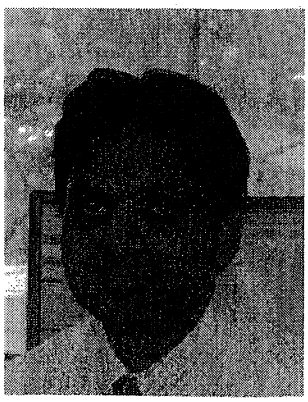
About the Authors

Mohammad Najafi



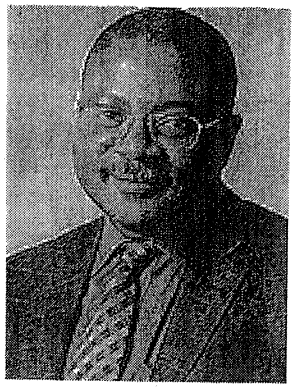
Dr. Mohammad Najafi, P.E., is Director of the Center for Underground Infrastructure Research and Education (CUIRE) at Michigan State University. He has completed his Doctoral education in Civil Engineering from Louisiana Tech University and M.S. and B.S. both in Civil Engineering from Purdue University and Texas Tech University respectively. From 1976 to 1987, for more than 12 years, he worked with several construction companies on multi-million dollar projects in positions of project engineer and project manager. From 1990 to 1993, he was Program Manager of the Trenchless Technology Center (TTC) at Louisiana Tech University, on numerous research and consulting assignments. From 1993 to 2001, he was Assistant and Associate Professor with tenure of Construction Engineering Technology at Missouri Western State University, St. Joseph, Missouri. From 2001 to 2002, he was Visiting Associate Professor at the Department of Civil and Environmental Engineering at the University of Missouri – Columbia and Director of the Trenchless Research and Development Center (TRDC). Currently he is area editor for pipelines for the American Society of Civil Engineers (ASCE) *Journal of Transportation Engineering*. His interest area is in infrastructure asset management and innovative technologies for underground infrastructure construction and renewal. He is active with ASCE in developing several manual of practices and guidelines specifications.

Rayman Mohamed



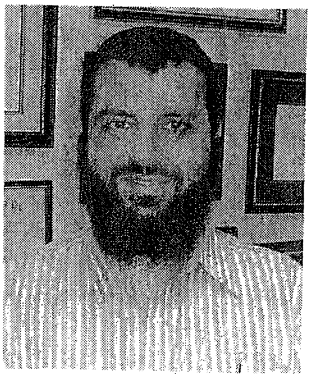
Dr. Rayman Mohamed is assistant professor at Wayne State University. He has a PhD in City and Regional Planning from Cornell University and a Master of Science degree in Civil and Environmental Engineering from the University of South Florida. His research examines developer decision-making, the implications of smart growth for developers' profits, the costs of infrastructure and land use, Brownfield redevelopment, and citizens' attitudes to smart growth. His teaching interests include environmental planning and policy, economic development policy, geographic information systems (GIS), real estate, and economics for planners. Dr. Mohamed's role in this initiative was to conduct the analysis of road infrastructure costs, draft sections of the final report, and present findings to relevant audiences.

Soji Adelaja



Dr. Soji Adelaja is the John A. Hannah Distinguished Professor in Land Policy, the Director of the Land Policy Institute at Michigan State University (MSU) and Co-Principal Investigator of the People and Land Cluster of the W.K. Kellogg Foundation. He holds joint faculty appointments as Professor in the Departments of Agricultural Economics; Geography; and Community, Agriculture, Recreation, and Resource Studies. Dr. Adelaja has a Bachelor's degree in Agricultural Mechanization from the Pennsylvania State University, two Master's degrees in Agricultural Economics and in Economics from West Virginia University, and a Ph.D. in Economics from West Virginia University. Prior to joining the faculty at MSU, he served as the Executive Dean of Agriculture and Natural Resources at Rutgers University, the Dean of Cook College, the Executive Director of the New Jersey Agricultural Experiment Station, and Director of Rutgers Cooperative Extension. Previously, he was a faculty member at Rutgers University where he served in various capacities, including Chair of Agricultural Economics, Founder and Director of the Food Policy Institute, and Founder and Director of the Ecopolicy Center. Recognition and awards include the Rutgers Presidential Award for Distinguished Public Service, the New Jersey Legislature Citation for Outstanding Scholarship, the New Jersey Governor's Recognition for Outstanding Contributions to the Garden State, and the NAREA Award for Outstanding Contributions to Public Policy through Economics. Dr. Adelaja is an eclectic scholar whose research programs span a variety of areas. He is best known for his work in agricultural policy at the urban fringe, land use policy, and public/private partnerships.

Abdelkader Tayebi

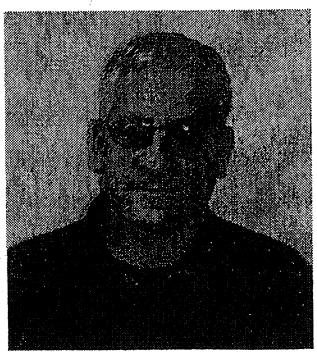


Dr. A.K. Tayebi is the former research manager of the Center for Underground Research and Education (CUIRE). Dr. Tayebi received his B.S. from the Ecole Nationale Polytechnique, his Masters from McGill University and PhD from Cornell University. Dr. Tayebi was assistant professor at Louisiana Tech University for three years working with the Trenchless Technology Center and the Louisiana Department of Transportation and Development. During his tenure at Louisiana Tech University, he was awarded three grants from the Louisiana Department of Transportation dealing with bridge structural systems and bridge monitoring. He is currently active with MDOT in exploring new asset management strategies and with the Land Policy Institute at MSU in relating asset management to city revitalization. His general areas of expertise are in infrastructure monitoring, reliability and optimization.

Mary Beth Lake

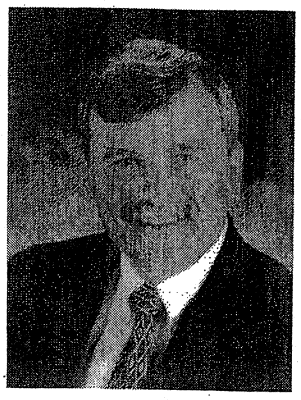
Ms. Mary Beth Lake is the Associate Director and the People and Land (PAL) Manager for the Land Policy Institute at MSU. Her faculty appointment is in the Department of Agricultural Economics as a Visiting Academic Specialist. Ms. Lake has a Master of Science degree in Applied Economics from the University of Minnesota and a Bachelor of Arts degree in International Relations from Michigan State University. In the past, she has served in the AmeriCorps program at the Iowa Department of Natural Resources, and worked as an environmental educator for the Michigan Groundwater Stewardship Program. Ms. Lake has conducted research and published work on a variety of agricultural topics, including the implicit value of natural areas and farmland in the urban fringe in St. Paul, Minnesota. She currently manages the Institute's fiduciary role in the People and Land Initiative, funded by the W.K. Kellogg Foundation. She is involved in building MSU Extension capacity through the Land Policy Educators Program, coordinating re-grants to higher education partners, and assisting in several research and outreach programs through PAL.

Paul Gottlieb



Dr. Paul Gottlieb is Associate Professor and Extension Specialist in Agricultural, Food, and Resource Economics at Cook College, Rutgers University. He holds an A.B. in history from Harvard University and a masters' and PhD in public affairs from Princeton University. Before returning to Princeton, Dr. Gottlieb served for three years as a senior research associate at the New Jersey Office of State Planning, that state's growth management agency. He authored numerous technical reports for the agency and has published articles on growth management in the journals *Society and Natural Resources, Forum for Social Economics,* and *Computers, Environment, and Urban Systems*. From 1993 to 2002, Dr. Gottlieb served as associate director and ultimately director of the Center for Regional Economic Issues at Case Western Reserve University in Cleveland. At Case Western, he oversaw an extensive community research and outreach program working on issues of economic development and amenity management. He was a co-principal investigator on a $100,000 grant from the U.S. Environmental Protection Agency (Region V) entitled *Consensus-based Analysis of Alternative Development Patterns.* Dr. Gottlieb looks forward to applying both his Eastern and Midwestern land use policy experience to the challenges facing the state of Michigan.

William Rustem



Mr. Bill Rustem is the President and CEO of Public Sector Consultants, Inc. (PSC) and Co-Principal Investigator of the People and Land Cluster of the W.K. Kellogg Foundation. Mr. Rustem has a Bachelor of Science degree in Social Science and a Master of Science degree in Resource Development from MSU. He was Governor William G. Milliken's Chief Staff Advisor on environmental matters and Interim Director of the Toxic Substances Control Commission. Following his service with the State of Michigan, Mr. Rustem became the first Executive Director of the newly established Center for the Great Lakes in Chicago and then joined the Michigan United Conservation Clubs as Director of Development. He co-chaired the 1980 campaign to shift education funding from the property tax to other sources and coordinated the 1984 statewide campaign for the constitutional amendment creating a Michigan Natural Resources Trust Fund. Since joining Public Sector Consultants, he has directed studies on the status of Michigan cities, wastewater treatment needs, recycling, and land use. Mr. Rustem holds special expertise in public policy relating to land use, urban development, and water policy. He is an adjunct professor in three colleges at Michigan State University, and has chaired or been the principal staff for statewide task forces on Department of Natural Resources organization, the MSU Museum, wetland protection, and the Michigan Land Use Leadership Council.

The Fiscal Impacts of Alternative Single family Housing Densities: Infrastructure Costs

Executive Summary

In the realm of land use issues, "density" is a loaded term. It has a negative connotation for those people who do not want to live too closely together. It is seen in a positive light by people who are concerned about the provision of municipal services, traffic congestion, and walkability of their neighborhoods. Density means different things to different people. Trying to achieve high density without regard to design and impact on a community could be problematic. However, high density does have its benefits.

This report analyzes one aspect of density and its relationship to the way we live. It investigates how high and low density single family housing development influences the cost of providing services to residents, particularly water, sewer, and transportation services. The construction, operation, and maintenance costs of these valuable infrastructures are taken into account in this analysis, providing a comprehensive look at life cycle costs of service provision. It should be noted that this analysis is limited to those subdivisions that are within local government public service boundaries and to the three public services listed above (e.g. storm water infrastructure was not included in this analysis). Eight case studies across Michigan, including both a high and low density development in each community, provide a real comparison of these specific costs. While the developments are real, standard infrastructure measurements and materials are used to isolate the differences that density causes.

The analysis shows that the length of the infrastructure for roads, sewer and water provided to each unit increases with lot size. Subsequently, the *cost* of building these types of infrastructure increases with lot size. It should be noted that the cost of constructing public service infrastructure is not always borne by the local government, but sometimes by the developer, and thus homeowners. The net present value of life cycle costs (including construction, operation, and maintenance up until replacement age) also increases with the lot size of each unit. Finally, the study shows that, while annual life cycle costs for provision of sewer and water increase as lot size increases, the annual user fees for sewer and water actually *decrease* for the case study communities. Although there is no physical or economic reason why it should be so, owners of large lots appear to pay lower user fees for public services than owners of small lots. User fees are not solely based on the infrastructure, or the density requiring different lengths of infrastructure; other factors are often considered in the setting of user fees. In communities where this pattern of pricing exists, it suggests that large lots are less fiscally sustainable than small lots on revenue grounds, as well as on cost grounds.

In a preliminary examination of Meridian Township, Michigan, results suggested that higher property values were statistically correlated with smaller lots, holding other factors constant. This relationship suggests the potential for smaller lots, or higher density, to pay off for local units of government, since property tax revenues are based on property values. To the extent that the provision of non-infrastructure services (e.g. police and fire protection) realize this inverse relationship between lot size and taxable value, municipalities can also benefit from higher

density development on the revenue side. Further analysis of the impact of density on non-infrastructure costs and revenues is needed.

Due to the positive relationship between smaller lots and fiscal health, both from a cost and revenue perspective, this report recommends that consideration be given to density in the drafting of Master Plans and the approval of neighborhood developments. Additional benefits of high density development (e.g. alleviation of traffic congestion, availability of walking opportunities), as well as disadvantages, must also be analyzed and considered in development decisions. Finally, design is a major factor in ensuring that high density development meets the needs and desires of residents.

Another main issue to emerge from this study is the degree to which local jurisdictions in Michigan lack asset management systems. The degree to which data were not available on either the physical extent of infrastructure or the costs for maintaining and replacing these infrastructures makes it difficult to understand the relationship between public service provision, public revenues and residential density. With this in mind, future research is recommended to increase the capacity for local jurisdictions to perform detailed fiscal impact analysis by investing time and thought into appropriate asset management systems.

Other important areas of research were made apparent through this analysis. In addition to infrastructure costs, there are a host of fiscal impact multipliers associated with density that are required to fully analyze the effects of local development policy. Among these multipliers are the number of jobs created per investment dollar, new treatment plant requirements, school expenditures, etc. Updating these multipliers and making them specific to Michigan is of critical importance. These multipliers can be used to develop a methodology for jurisdictions to perform comprehensive fiscal impact analysis.

In addition, a fiscal impact analysis of the different impacts of residential property versus commercial, industrial, farmland, and open space on local government costs and revenues is needed to determine whether certain types of land use "subsidize" others. Finally, it is important to note that the results of this study are not applicable to houses that have septic tanks, wells, and private roads. Further analysis with the inclusion of these types of residential development, as well as larger lot sizes, would be valuable to local governments, particularly in the suburban and rural areas of Michigan.

The Fiscal Impacts of Alternative Single family Housing Densities: Infrastructure Costs

Table of Contents

1.0 Introduction 12
1.1 Background 12
1.2 Project Objective 12

2.0 Literature Review 13

3.0 Data and Methodology 14
3.1 Selection criteria for Communities and Subdivisions 14
3.2 Type of Information Collected 15
3.3 Sources of Information 19
3.4 Methodology 24

4.0 Data Preparation for Cost Calculations 25
4.1 Estimation of Cost Multipliers for Capital Investments 25
4.1.1 Cost Multipliers for Roads 25
4.1.2 Cost Multipliers for Sewer and Water 26
4.3 Estimation of Multipliers for Operation and Maintenance Costs 27
4.2.1 Roads 27
4.2.2 Sewer and Water 27

5.0 Results 29
5.1 Lengths of Infrastructure and Density 29
5.2 Costs of Infrastructure and Density 35
5.3 Life Cycle Costs 39

6.0 Revenue Considerations 41
6.1 User Fees 41
6.1.2 User Fees for Sewer and Water 41
6.2 Property Tax Revenue 43

7.0 Expenditures and Revenues 44

8.0 Beyond Infrastructure Costs 47
8.1 Approach 47
8.2 Analysis of Correlation between Lot Size and Property Value 48
8.3 Regression Analysis 49
8.4 Summary 53

9.0 Conclusions 55

10.0 References 57

End Notes 59

The Fiscal Impacts of Alternative Single family Housing Densities: Infrastructure Costs

List of Tables

Table 3.1: Basic Data on Selected Communities and Subdivisions 15
Table 4.1: Road Cross Sections and Costs..... 26
Table 4.2: Capital Cost Multipliers for Sewer and Water 27
Table 5.1: Total Length of Infrastructure in Different Subdivisions (2004) 29
Table 5.2: Infrastructure Length per Lot in Different Subdivisions 30
Table 5.3: R^2 Values of Regressions Using Alternate Functional Forms..... 32
Table 5.4: Results of Simple Linear Regressions for Infrastructure Length 35
Table 5.5: Per Unit Infrastructure Cost..... 36
Table 5.6: Results of Simple Linear Regressions for Costs of Infrastructure 38
Table 5.7: Life Cycle Costs (Net Present Value for the Maintenance and Replacement) of Roads, Sewer and Water Infrastructure 40
Table 6.1: Water and Sewer User Rates 42
Table 6.2: Average Household Size..... 42
Table 6.3: Annual User Fees for Sewer and Water and Annual Total Revenues per Household 43
Table 7.1: Annual Life Cycle Costs, User Fees and Total Revenues 44
Table 8.1: Effects of Attributes on Property Values, Meridian Twp, Michigan 51

The Fiscal Impacts of Alternative Single family Housing Densities: Infrastructure Costs

List of Figures

Figure 3.1: Typical Cross Section of the Grand Traverse County Road 16
Figure 3.2: Cross Section of the Silver Lake Farms No. 2 Road 17
Figure 3.3: Cross Section of the Stone Ridge Road 18
Figure 3.4: Silver Lakes Farms No.2, Plat 20
Figure 3.5: Stone Ridge II, Plat 21
Figure 3.6: Bailey's Grove No.22, Plat 22
Figure 3.7: Long Lake Meadows No.2, Plat 23
Figure 5.1: Road Length per Lot and Average Lot Size 31
Figure 5.2: Length of Sewer Pipe per Lot and Average Lot Size 31
Figure 5.3: Length of Water Pipe per Lot and Average Lot Size 32
Figure 5.4: Length of Roads per Lot Regressed Against Average Lot Size 33
Figure 5.5: Sewer Pipe Length per Lot Regressed Against Average Lot Size 34
Figure 5.6: Unit Water Pipe Length Regression 34
Figure 5.7: Road Cost per Lot 37
Figure 5.8: Sewer Pipe Cost per Lot 37
Figure 5.9: Water Pipe Cost per Lot 38
Figure 5.10: Net Present Value Cycle Costs for Roads, Sewer & Water Lines 40
Figure 7.1: User Fees and Annual Life Cycle Costs for Sewer and Water vs. Lot Size 45
Figure 7.2: Life Cycle Costs as Percent of Revenue versus Average Lot Size 46
Figure 8.1: Taxable Value versus Lot sizes of Recently Sold Houses in Meridian Township, MI (October 2004 - March 2005) 48
Figure 8.2: Taxable Value per Acre by Range of Lot Size 49

1.0 Introduction

Throughout Michigan, new residential developments are emerging every day, many in towns and communities that do not have sufficient infrastructure in place to accommodate the needs of new businesses and residences. To support each new development, developers and local governments have to construct new roads, expand sewer and water lines, and provide other infrastructure and public services to new residents. However, financing the construction and maintenance of new infrastructure has become a contentious issue due to the various demands placed on local government budgets. Thus, there have been calls on local governments to ensure that new developments generate sufficient tax revenues to cover the costs of the new services that they require.

1.1 Background

The fiscal impacts of new developments on local governments depend on the type of development. For instance, costs relative to revenue for single family homes have been shown to be higher than that of different housing categories, such as townhouses, apartments, or assisted living facilities, as well as industrial and commercial facilities. Further, with the category of single family homes, the density of development can affect the costs of road construction and sewer and water lines, and the economies of scale for providing services such as police, fire protection, libraries, and recreational park services. However, information on the additional financial burden placed on the community to support single family residential development is lacking. This report is a preliminary step toward filling this gap in knowledge in Michigan. In particular, this report attempts to understand the fiscal implications of building single family homes at alternative densities within public service boundaries.

1.2 Project Objective

The objective of this study is to ascertain how the costs of certain infrastructure improvements vary with the density of single family residential development. Specifically, this study examines how capital and life-cycle costs of roads and sewer and water lines vary with density, or lot size. The report examines only on-site costs, that is, the costs for infrastructure located within subdivisions. It should be noted that this analysis is limited to those subdivisions that are within the local government public service boundary (i.e. on public sewer, water and road lines). In addition, the report takes an initial look at how density might impact the revenues that accrue to the community through public service user fees and property tax revenues.

This report begins with a look at existing literature and previous studies that have analyzed the relationship between residential density and public service provision. Next, an analysis of eight communities in Michigan, or sixteen subdivisions, compares costs and revenues between high and low density developments. Following this analysis is a preliminary study of the relationship between lot size and the taxable value of a home and its associated property (i.e. public revenue). The conclusion provides a summary of the project findings, recommendations for state and local governments and suggestions for further research.

2.0 Literature Review

The costs associated with low density and discontinuous development have attracted extensive research, particularly with regard to the costs of infrastructure. Among the early studies, Isard and Coughlin (1957) found that costs per lot for sewer lines and roads increase with average lot size. Similar results have been reported by Downing et al. (1969; 1974). Archer (1973) found that leapfrogging development in Lexington, Kentucky, increased costs to the public compared with other types of developments. Similarly, the Real Estate Research Corporation (RERC, 1974) found that compact and continuous development reduced the costs of providing utility services. Kelly (1993) and Ewing (1994) reported that using existing infrastructure reduced costs and increased efficiency. Others who have noted higher costs associated with additional low density development infrastructure include Dougharty et al. (1975), Frank (1989), and Speir and Stephenson (2002).

Some researchers believe that what is called sprawl (low density development) is an efficient outcome of market forces at work (Richardson & Gordon, 1993). Others criticize the studies that show that sprawl results in additional costs. Windsor (1979), for instance, believes that the cost savings discovered in the RERC (1974) study are a result of incorrect assumptions about the type of housing, construction standards, and the socioeconomic status of residents in urban neighborhoods. Peiser (1984) found that there is not much difference in costs between communities with "planned" and "unplanned" growth, though he did not investigate the effect that lot size might have had on his results. Ladd (1992) showed that costs could actually increase with higher density.

Much of the literature has tended to combine on- and off-site costs when analyzing the costs of sprawl. This practice most likely reflects the fact that on-site infrastructure eventually becomes the property of local governments that are then responsible for maintenance, repair, and replacement; thus, it is reasonable to combine these costs with off-site costs (Nelson and Duncan, 1995). This practice was reinforced by the fact that after the 1980s, local governments were forced to take on more responsibility for the provision and maintenance of infrastructure because the federal government scaled back its subsidies (Nelson and Duncan, 1995). Grouping on- and off-site costs would therefore appear to be a reasonable approach for researchers attempting to understand how the costs of sprawl affect local government finances.

However, such an approach masks the effects of lot size on on-site infrastructure costs because many of the fixed costs included in such analyses might not be as sensitive to density in on-site infrastructure costs. This report aims to specifically understand how on-site costs for certain infrastructures vary with density. It updates previous studies, such as by Isard and Coughlin (1957), and improves on those studies by using actual construction information and by determining life-cycle costs. This report also lays the groundwork for future studies on determining how a community may "subsidize" the supply and maintenance of infrastructure for single family residential developments.

3.0 Data and Methodology

This report employs a case study approach to understand how the costs of roads and sewer and water lines vary with density. Because of logistical and financial constraints, the study is limited to eight communities across six regions (southeast, southwest, central, northeast, northwest, and Upper Peninsula) in Michigan. Within each community, two developments of different densities were examined.

3.1 Selection criteria for Communities and Subdivisions

Identifying communities and subdivisions for analysis was challenging. Many communities do not collect, maintain, or have access to the information necessary to perform the analysis. Thus, the final list of communities and subdivisions selected for study was partially determined by the availability of data. Nonetheless, two criteria were borne in mind when selecting communities and subdivisions within them for analysis:

- The community is experiencing growth or is an important urban center or suburb.
- The community contains a pair of subdivisions such that one could be considered low and the other considered high density. Furthermore, the two subdivisions in each community should:
    - Be approximately of the same size in terms of the number of lots.
    - Be approximately of the same socio-economic status.
    - Contain approximately the same number of single family homes.
    - Be of approximately the same age.
    - Be serviced by public sewer and water.

Subdivisions were designated low or high density based on lot sizes related to the other subdivision selected in the community. Whether a subdivision was considered low or high density, however, is not important for the analysis. In the results to be presented, lot size is treated as a continuous variable that ranges from small to large.

Using these criteria, and working within the constraints of data availability, the following eight communities were selected:

1. Alpena Township, Alpena County.
2. Canton Township, Wayne County.
3. City of Kentwood, Kent County.
4. City of Marquette, Marquette County.
5. City of Troy, Oakland County.
6. Garfield Township, Grand Traverse County.
7. Lincoln Township, Berrien County.
8. Meridian Township, Ingham County.

The subdivisions selected from these communities for further study are shown in Table 3.1 along with basic data on each.

Table 3.1: Basic Data on Selected Communities and Subdivisions

Region*	County	Jurisdiction	Subdivision	No. of Units	Average Density (Acres/Lot)	Density
NW	Grand Traverse	Garfield	Silver Lake Farms #2	44	0.50	Low
			Stone Ridge #2	47	0.35	High
NE	Alpena	Alpena	Wyndham Gardens	25	0.85	Low
			Forest Hills	21	0.33	High
CL	Ingham	Meridian	Ember Oaks	34	0.79	Low
			Whispering Oaks	36	0.30	High
SW	Berrien	Lincoln	Hidden Pines	40	0.44	Low
			Alabaster 2 and 3	43	0.30	High
SE	Wayne	Canton	Kimberly Meadows	126	0.49	Low
			Lexington Square	77	0.19	High
SE	Oakland	Troy	Somerset North	61	0.38	Low
			Long Lake Meadows #2	44	0.25	High
SW	Kent	Kentwood	Princeton Estates #14	33	0.27	Low
			Bailey's Grove #22	25	0.17	High
UP	Marquette	Marquette	Premeau's Peak*	17	0.91	Low
			Granite Pointe*	53	0.44	High

*NW—Northwest; NE—Northeast; SE—Southeast; SW—Southwest; CL—Central; UP—Upper Peninsula

3.2 Type of Information Collected

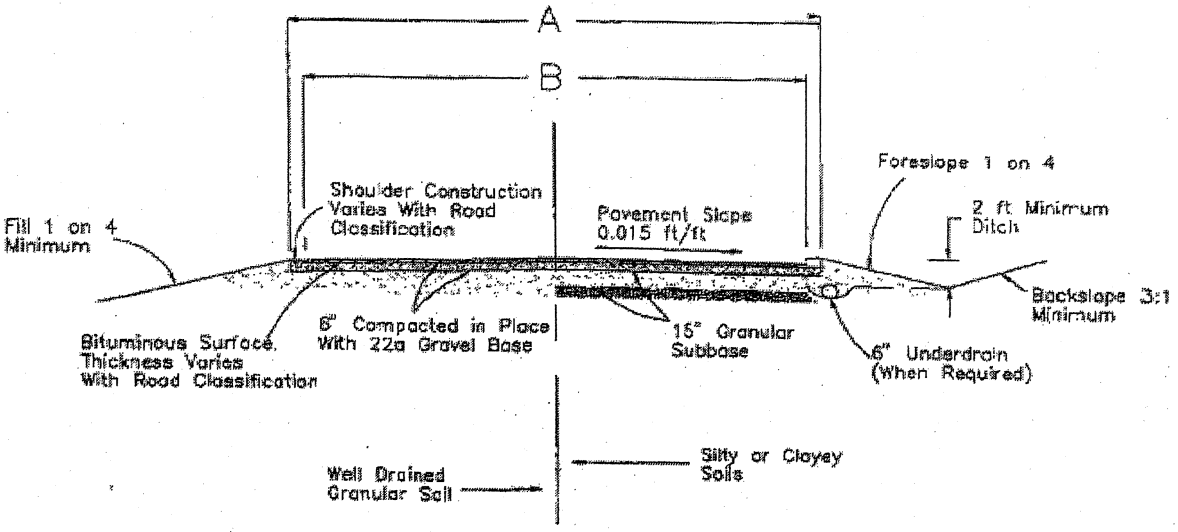
Information was collected on the physical dimensions and structural characteristics of roads and sewer and water lines within each subdivision that was examined. With regard to sewer and water lines, only information on the main lines was collected, that is, lateral extensions from the main lines to each house are not included in this analysis.[1] The following information was obtained for each subdivision:

1. Total length of roads.
2. Right-of-way of roads (different roads and streets may have specific requirements for right-of-ways).
3. Structural characteristics of roads.
4. Total length of pipes used for sewer and water lines.
5. Diameter of pipes used for sewer and water lines.
6. Structural characteristics of pipes used for sewer and water lines.

Basic information for the roads was obtained from the typical road cross section drawings from each of the case study communities. Three examples of these drawings are provided in Figures 3.1 through 3.3).

Figure 3.1: Typical Cross Section of the Grand Traverse County Road

Typical Road Cross Section



ROAD CLASSIFICATIONS	A	B
Alleys	20'(6m)	18'(5.5m)
Residential	32'(10m)	30'(9m)
Local Access (1)	34'(11m)	32'(10m)
Commercial	36'(11m)	34'(11m)
Industrial	42'(13m)	40'(12m)
Secondary Collector	42'(13m)	40'(12m)
Principal Collector	56'(17m)	54'(16m)
Local Arterial	71'(22m)	69'(21m)

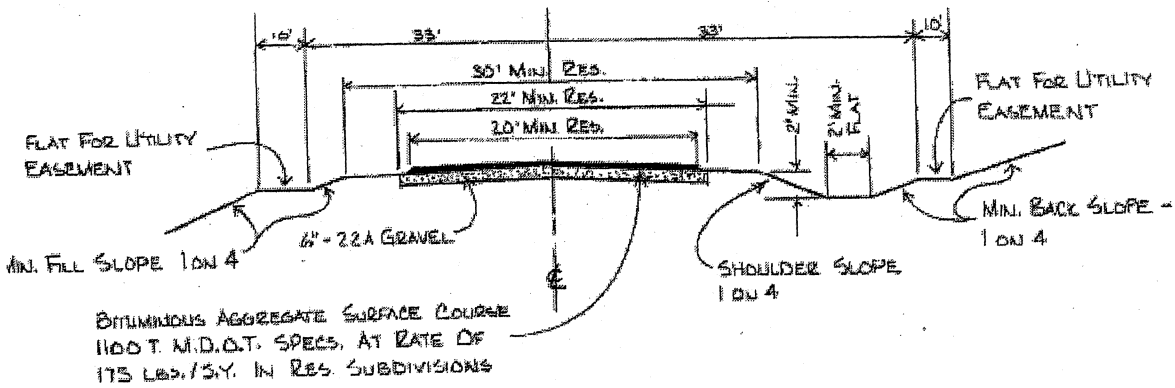
(1) = Pavement widths of local access roadways with less than 5% grades may be 22 feet with a 25 foot transition required for paved shoulders. (Except in Subdivisions)

Figure No. 1

rv. 3/97

GRAND TRAVERSE COUNTY ROAD COMMISSION
3949 SILVER LAKE ROAD
TRAVERSE CITY, MI. 49684

Figure 3.2: Cross Section of the Silver Lake Farms No. 2 Road



NOTE: WHERE GRADES ARE STEEPER THAN 5% BUT LESS THAN 7% THE BITUMINOUS SURFACE WIDTH SHALL BE 26 FEET. WHEN GRADES ARE STEEPER THAN 7% THE SURFACE WIDTH SHALL BE 30 FEET IN RES. SUBDIVISIONS.

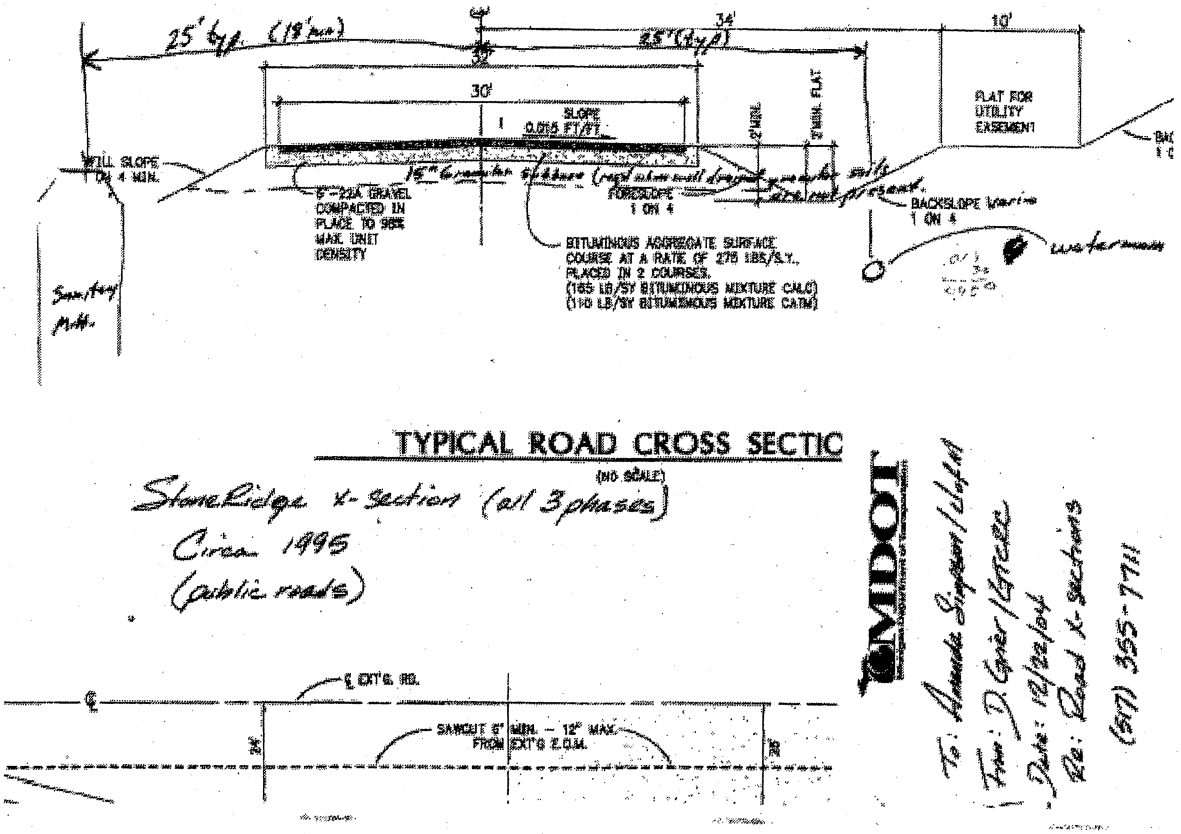
TYPICAL CROSS SECTION

NO SCALE

NOTE: SEE CURRENT RD. COMM. SPECS. FOR ADD'L. DETAILS

Silver Lake Farms #2 X-Section
Circa 1989
(is a public road)

Figure 3.3: Cross Section of the Stone Ridge Road



3.3 Sources of Information

A variety of local government and private sources were contacted to provide the relevant information. At the local government level, Planning, Public Works, and Engineering Departments were contacted. In many instances, these departments were not able to provide the required data. In cases where data on sewer and water lines were not available, the information was obtained from developers or subdivision plat maps and maps of sewer and water infrastructure. In instances where plat maps were not available from local government agencies, the maps were obtained from the following two State of Michigan government agency websites: the Center for Geographic Information (Michigan CGI, 2005) and the Department of Labor and Economic Growth (Michigan DLEG, 2005).

For incorporated jurisdictions, data on roads were usually available from Public Works or Engineering Departments. Outside of incorporated jurisdictions, data on roads were collected from County Road Commissions. In some instances, structural data were provided by developers. Subdivisions plat maps (Figures 3.4-3.7) and other engineering drawings were also used to obtain information that could not be obtained from local government departments or developers.

Figure 3.4: Silver Lakes Farms No.2 Plat Map

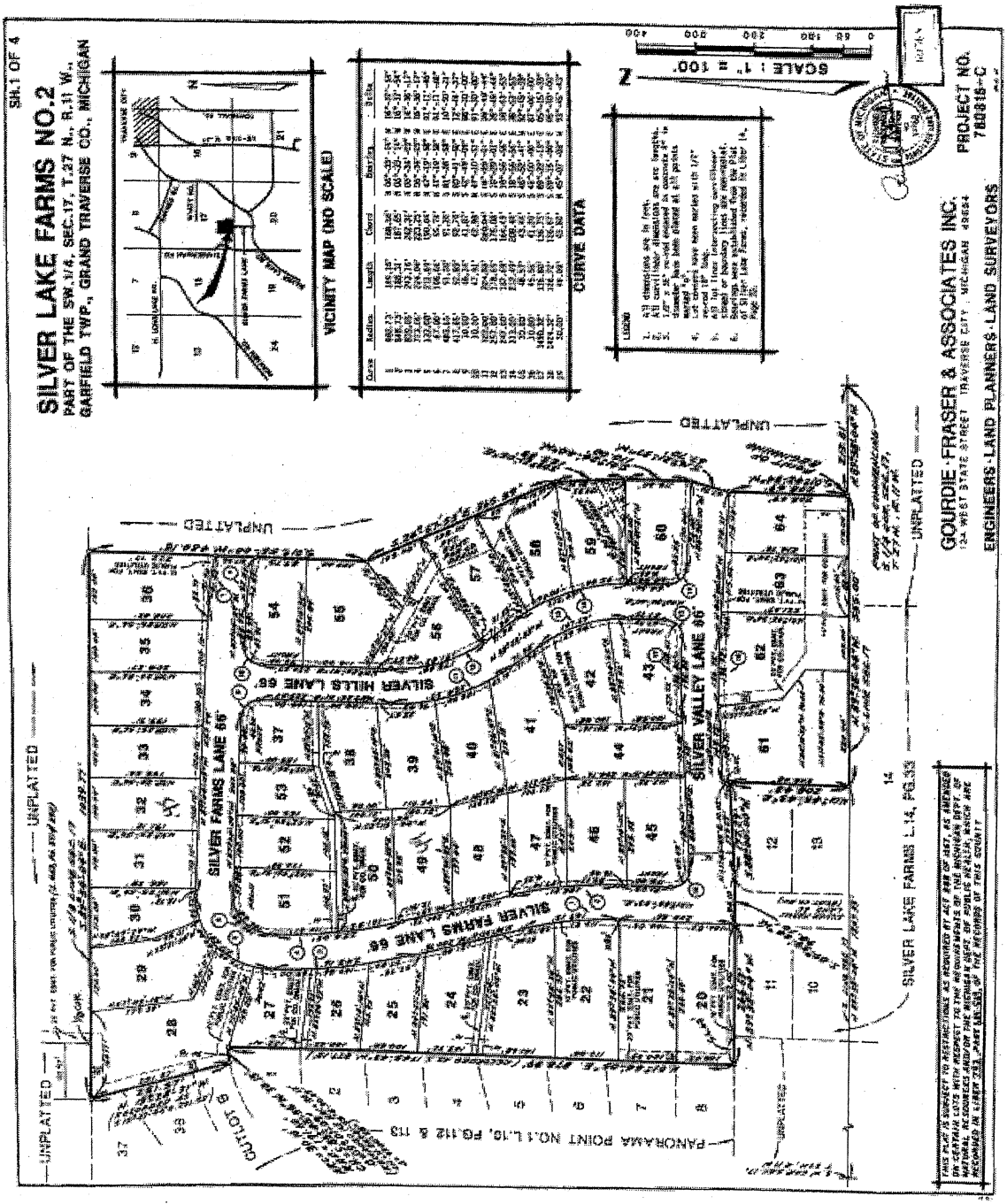


Figure 3.5: Stone Ridge II Plat Map

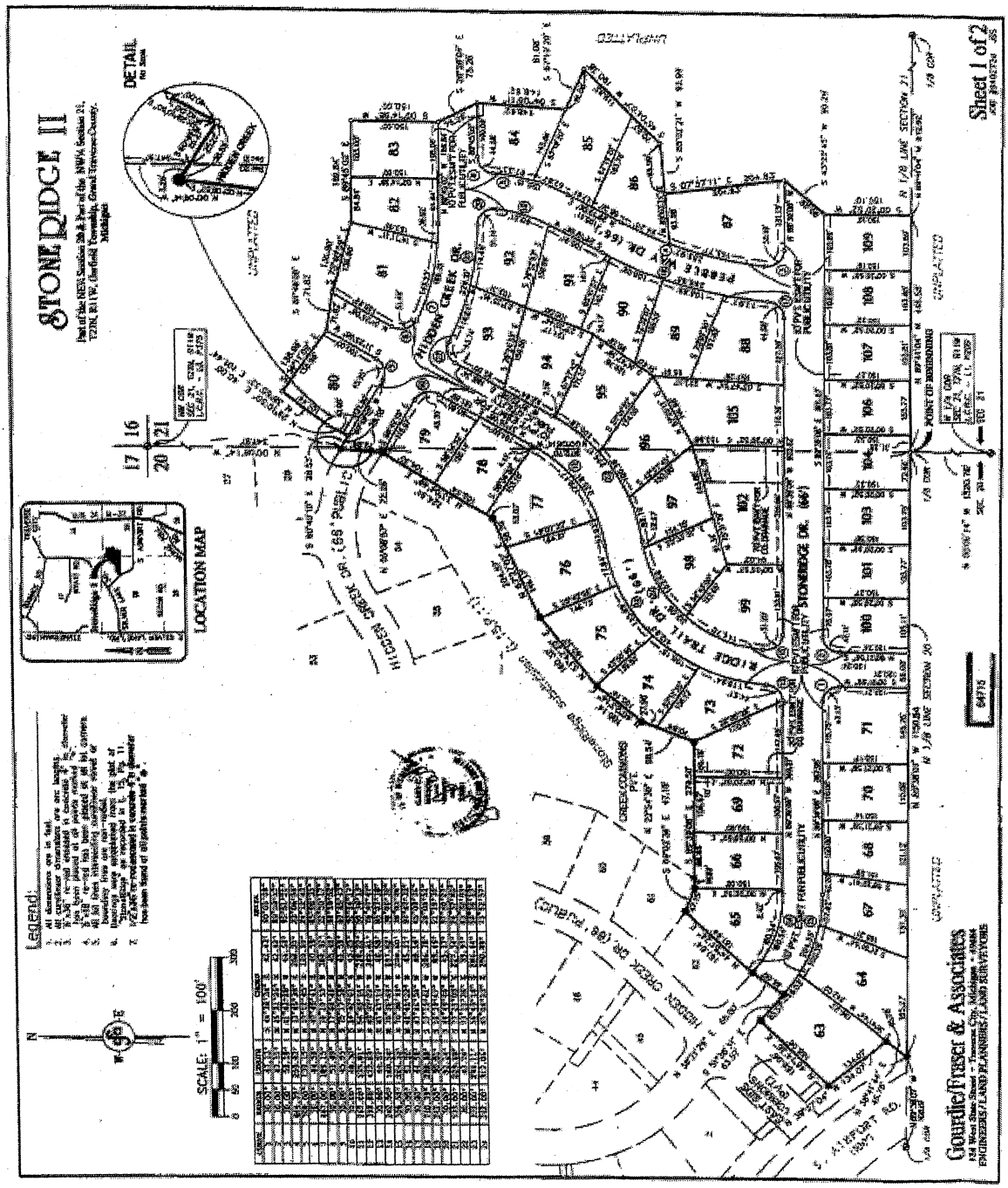


Figure 3.6: Bailey's Grove No.22 Plat Map

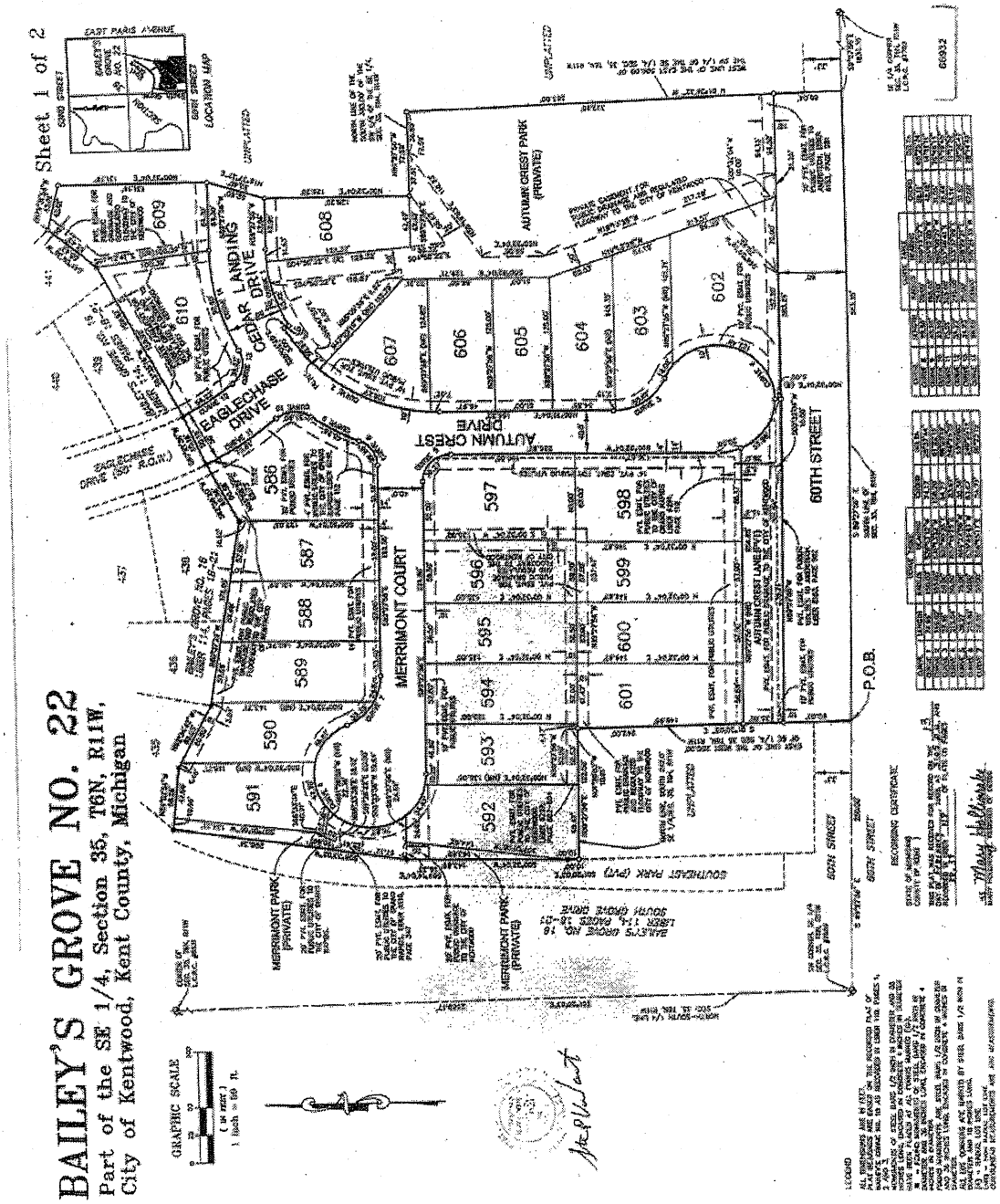
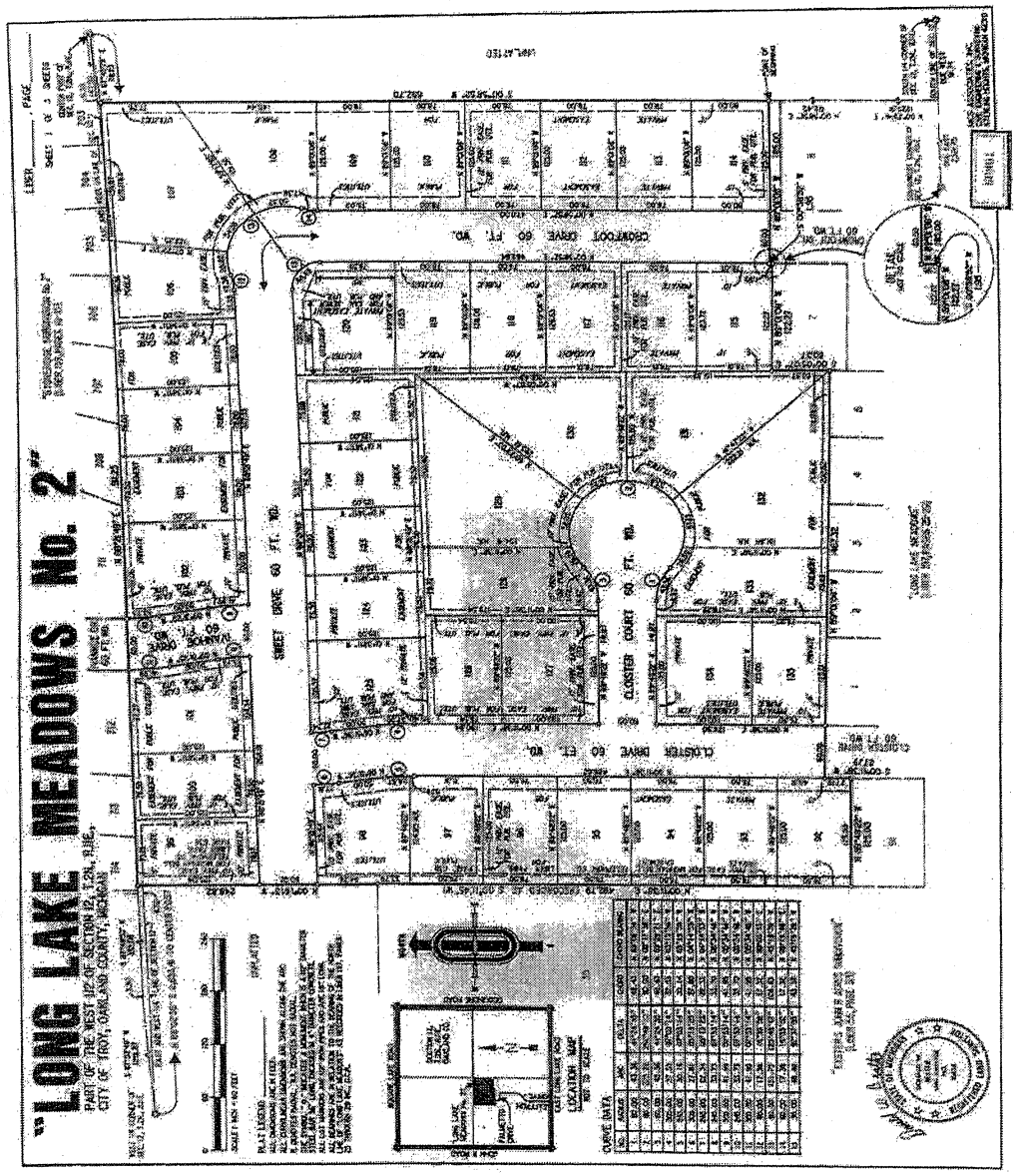


Figure 3.7: Long Lake Meadows No.2 Plat Map



3.4 Methodology

Using the data described above on the physical extent and structural characteristics of roads and sewer and water lines in each subdivision, three types of costs were analyzed to see how they vary with density. First, the capital costs of constructing roads and sewer and water lines were ascertained. Capital costs were determined by applying standard cost multipliers, obtained from *R. S. Means*, to the known physical extent and structural characteristics of these infrastructures. Second, again using information from *R. S. Means*, standard annual maintenance costs were determined.

The capital and maintenance costs were inflation adjusted (using inflation rates provided by *R. S. Means*) to project replacement and maintenance costs over the typical life of these infrastructures. Using standard discounting techniques, the replacement and maintenance costs were then aggregated to determine the third cost, that is, the life cycle costs for roads and sewer and water lines.

Simple graphs were constructed, as appropriate, to show how the different costs vary with density. Where applicable, regression analyses that assume different functional forms are reported to ascertain the best relationship to describe how costs vary with density. It should be noted that differences in road costs are due to length of infrastructure based on lot size and are not the result of differences in road design, which is standard across most cases.

4.0 Data Preparation for Cost Calculations

With information on the physical extent and structural characteristics of roads and sewer and water lines, the costs of these infrastructures could be easily established through the use of cost multipliers that are expressed in terms of costs per foot of infrastructure.

4.1 Estimation of Cost Multipliers for Capital Investments

Choosing cost multipliers to apply to roads and sewer and water lines is complicated by the fact that the structural characteristics of these infrastructures vary from one subdivision to the other. Thus, assumptions had to be made about the most appropriate multiplier to employ such that results would be consistent and robust across a range of densities. The multipliers cover the full costs of installation.

4.1.1 Cost Multipliers for Roads

The unit costs for roads depend on a number of factors, including expected traffic (which affects the required right-of-way and other structural features of the road), soil conditions, topography, climate, etc. As such, there is no universal cost multiplier for all subdivision roads. Indeed, for the 11 subdivisions for which data were available, the records show that the structural characteristics of the roads in these subdivisions varied. These variations translated into costs that range from $33 per ft to $55 per ft for bituminous roads and from $143 per ft to $158 per ft for concrete roads.

This large variability in costs is primarily related to the type of materials used. Expensive concrete roads tend to be found in upscale subdivisions or in areas where soil conditions dictate stronger pavements. However, the majority of subdivisions were found to contain bituminous roads. Thus, bituminous roads are assumed as the standard.

Table 4.1 reports the structural characteristics of each subdivision included in the analysis.

A common cross section of 12" sub-base, 6" base and 3" coating, with a paved road width of 30 ft., yields a cost of $47 per ft. This figure was converted into 2004 dollars,[2] yielding an estimate of $47.36 per ft. This inflation-adjusted figure was used in the calculations of capital costs for road infrastructure in the next chapter. This figure is close to the one reported by the Ingham County Road Commission of $39/ft for local roads.

Table 4.1: Road Cross Sections and Costs

Subdivision	Coating (in)	Base (in)	Sub-base (in)	Paved Rd (ft)	Cost ($/ft)
Bitumen					
Ember Oaks	3.0	6.0	8.0	30.0	43.7
Alabaster	3.0	8.0	12.0	30.0	50.8
Bailey Grove	3.0	8.0	12.0	28.0	47.4
Silver Lake	3.0	6.0	12.0	22.0	33.2
Stone Ridge	3.0	6.0	15.0	32.0	51.8
Princeton Estates	2.0	7.0	8.4	30.0	54.5
Granite Point	3.0	8.0	18.0	24.0	44.9
Premeau's Peak	3.0	6.0	17.0	30.0	41.3
Average	2.9	6.9	12.8	28.3	45.9
Median	3.0	6.5	12.0	30.0	46.1
Concrete					
Long Lake Meadows	7.0			30.0	142.8
Somerset North	7.0			30.0	142.8
Lexington Square	7.0	6.0		30.0	158.2
Kimberly Meadows	7.0	6.0		30.0	158.2
Average	7.0	6.0		30.0	150.5

4.1.2 Cost Multipliers for Sewer and Water

As in the case of roads, different sewer and water pipes were used in different subdivisions. From the data collected, sewer lines were found to range from 8 to 12 inches in diameter and to be made of PVC. Water lines were found to range in diameter from 6 to 10 inches, and were mostly made of ductile iron pipe (DIP). The most common size for both infrastructures was 8 inch diameter pipes. Thus, the study team adopted an 8 inch PVC pipe as the standard for the sewer lines and an 8 inch DIP as the standard for water lines.

The type of pipes used dictates specifications on the type of trenching and bedding, the mechanism for joining pipes, and the mobilization method. According to the data from *R. S. Means*, pipe diameters of 6 to 12 inches require 2 ft wide beddings, and therefore require trenching of 2 ft. The analysis assumes a 4 ft depth for water and an 8 ft depth for sewer. This study adopted a trench excavation slope of 0.5/1.

Similar to roads, the cost multipliers for these activities were also determined. Capital cost multipliers for trenching, bedding, pipe laying, mobilization and demobilization are included in Table 4.2.

Table 4.2: Capital Cost Multipliers for Sewer and Water

Infrastructure	Trenching ($/ft)	Bedding ($/ft)	Pipe (Including Installation - $/ft)	Mobilization and Demobilization (Lump Sum - $)	Capital Cost Multiplier ($)
Sewer pipe: 8 in. PVC pipe laid 8 ft. deep	16.24	2.68	9.05	584	27.97 per ft. plus 584
Water pipe: 8 in. class 50 DIP laid 4 ft. deep	7.28	2.68	32	584	41.96 per ft. plus 584

4.3 Estimation of Multipliers for Operation and Maintenance Costs

4.2.1 Roads

Residential road operation and maintenance (O&M) costs include the costs of street lighting, street sweeping and cleaning, snow removal, and resurfacing as needed. No published data could be obtained on residential road maintenance costs. Most available O&M data is for highways, the cost of which is far higher than for local residential roads. The study team therefore relied on information from counties that had such data and the Southeast Michigan Council of Governments (SEMCOG, 2005). These two sources provided the lower and upper limits of O&M costs.

The SEMCOG data provided information on collector, but not local, roads. In addition, the data concentrates on the resurfacing of roads. These data indicated that annual O&M costs for roads were $1.26 per ft. This figure is used as a benchmark against which figures obtained from other sources can be examined.

Local road O&M figures were obtained from the following six counties and local governments:

- Berrien County $1.48/ft/year (includes local and primary roads)
- City of Kentwood $0.17/ft/year (includes local and primary roads)
- Grand Traverse County $1.13/ft/year
- Ingham County $0.90/ft/year
- Marquette County $2.73/ft/year
- Wayne County $1.80/ft/year

For Berrien County and the City of Kentwood, road maintenance costs are applicable to both local and primary roads. The average O&M costs with and without these two communities are $1.37 and $1.64 per ft per year, respectively. The lower average is adopted as it is closer to the figure reported by SEMCOG.

4.2.2 Sewer and Water

Data on the O&M costs of sewer and water are not maintained by the jurisdictions studied. Thus, this analysis relies on a study conducted by the American Society of Civil Engineers (ASCE, 1999) on O&M costs for the minimum acceptable performance of wastewater collection systems.

It was found that a minimum of $0.53 and a maximum of $1.90 per foot per year were required to meet minimum performance standards. A mid-range estimate of $1.25 is adopted. This figure is consistent with responses to a survey conducted by SEMCOG in 2001 (SEMCOG, 2001). The SEMCOG estimate was chosen and adjusted to 2004 dollars using MEANS historical indices.

No similar costs were found for water lines. However, O&M requirements for water lines are not much different from those for sewer lines. The figure adopted for sewer lines is therefore also appropriate to use for water lines. The total O&M cost (adjusted to 2004 dollars) is $1.33/ft/year.

5.0 Results

5.1 Lengths of Infrastructure and Density

This section reports the general findings of the analysis and potential explanations. Table 5.1 summarizes the study findings on the lengths of roads and sewer and water lines in the 16 subdivisions that were examined. Table 5.2 presents the results in terms of length of infrastructure per lot. Figures 5.1 to 5.3 show how the lengths of roads and sewer and water lines per lot, respectively, vary with average lot size. It does appear that the length for each infrastructure increases with average lot size, though the relationship is not unambiguous.

Table 5.1: Total Length of Infrastructure in Different Subdivisions (2004)

Subdivision	Road Length (ft)	Sewer Length (ft)	Water Length (ft)	Density
Silver Lake Farms #2	1,523	2,874	2,600	Low
Stone Ridge #2	1,658	4,800	4,750	High
Wyndham Gardens	2,155	4,000	4,000	Low
Forest Hills	1,447	3,450	3,450	High
Ember Oaks	3,940	3,187	2,840	Low
Whispering Oaks	2,849	1,909	1,718	High
Hidden Pines	2,356	4,395	2,699	Low
Alabaster 2 and 3	1,967	2,700	3,130	High
Kimberly Meadows	3,720	4,495	3,566	Low
Lexington Square	5,190	5,290	4,880	High
Somerset North	3,625	3,400	3,525	Low
Long Lake Meadows #2	2,250	1,831	2,294	High
Princeton Estates #14	1,510	1,387	890	Low
Bailey's Grove #22	1,450	1,300	1,359	High
Granite Pointe	3,295	3,821	3,206	Low
Premeau's Peak	920	1,048	1,170	High

Table 5.2: Infrastructure Length per Lot in Different Subdivisions

Subdivision	Road Width (ft)	Sewer Length (ft)	Water Length (ft)	Density
Silver Lake Farms #2	35	65	59	Low
Stone Ridge #2	35	102	101	High
Wyndham Gardens	86	160	160	Low
Forest Hills	69	164	164	High
Ember Oaks	116	94	84	Low
Whispering Oaks	79	53	48	High
Hidden Pines	59	110	67	Low
Alabaster 2 and 3	46	63	73	High
Kimberly Meadows	48	58	46	Low
Lexington Square	41	42	39	High
Somerset North	59	56	58	Low
Long Lake Meadows #2	51	42	52	High
Princeton Estates #14	46	42	27	Low
Bailey's Grove #22	58	52	54	High
Granite Pointe	62	72	60	Low
Premeau's Peak	54	62	69	High

Figure 5.1: Road Length per Lot and Average Lot Size

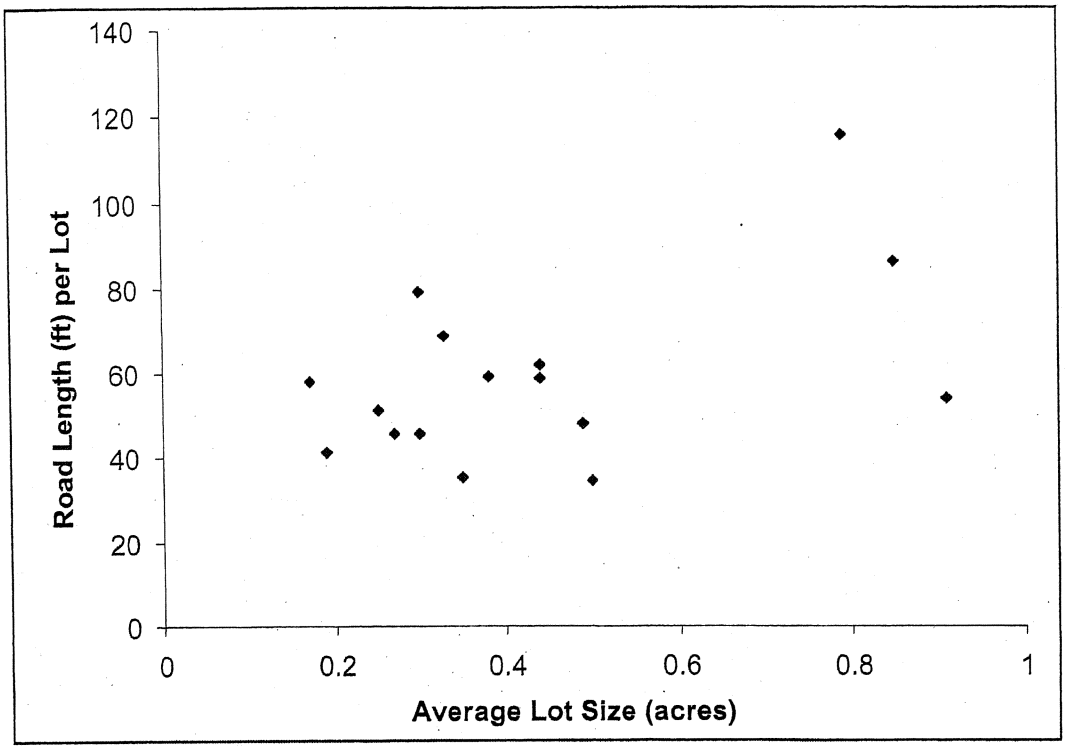


Figure 5.2: Length of Sewer Pipe per Lot and Average Lot Size

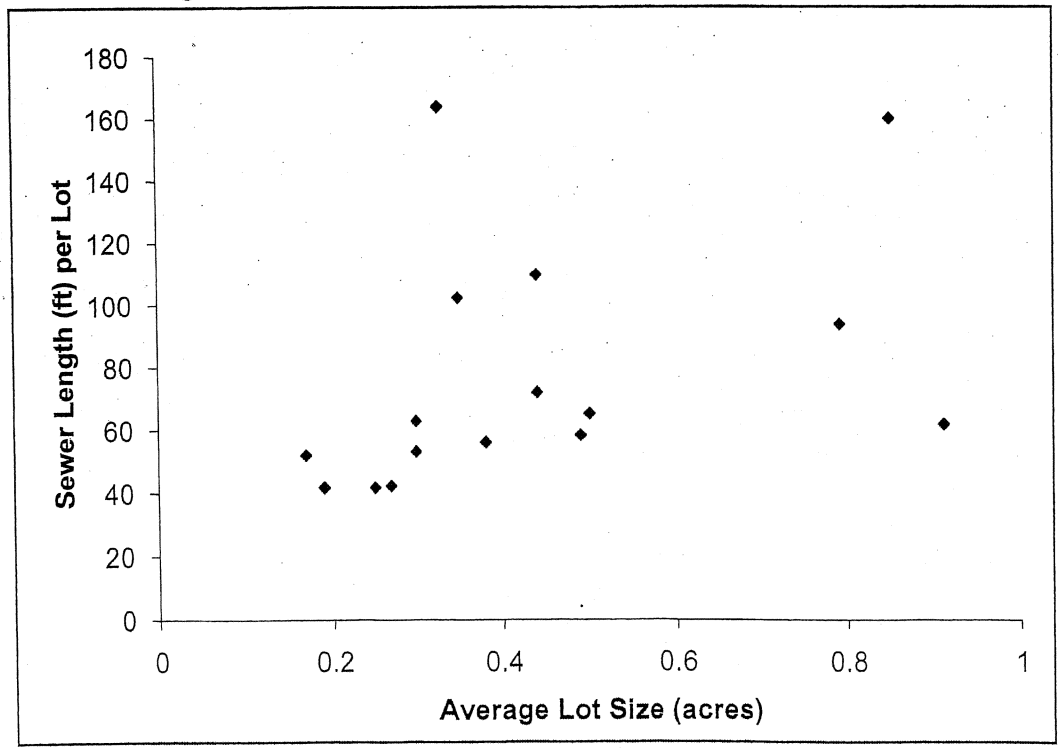
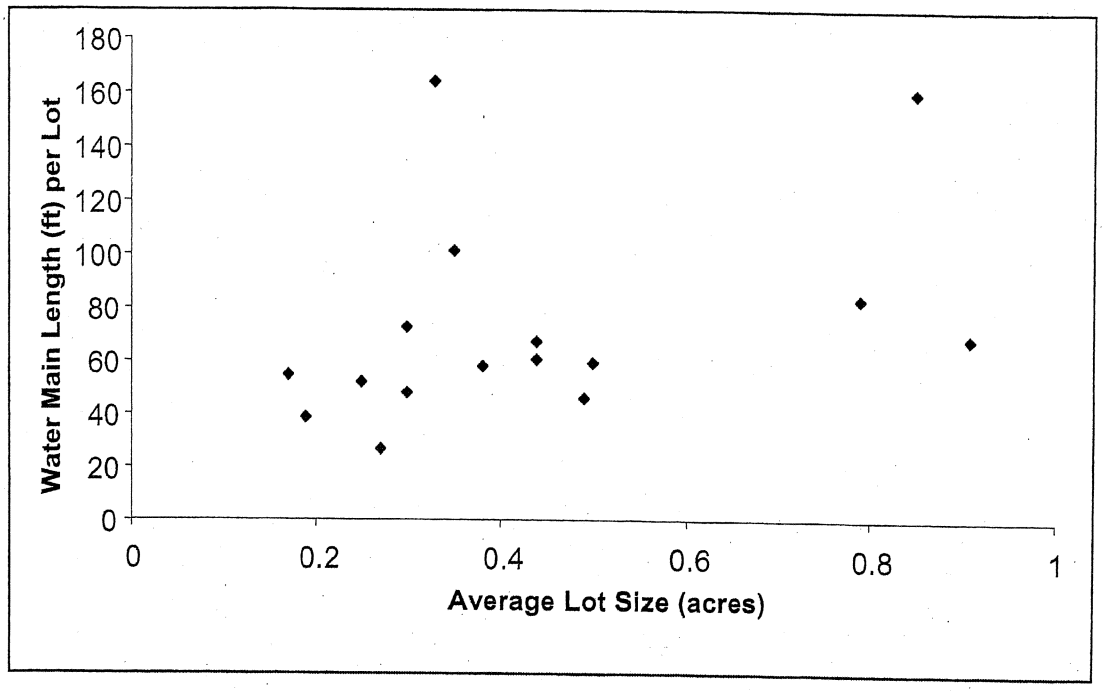


Figure 5.3: Length of Water Pipe per Lot and Average Lot Size



Because the strength of the relationship between the length of infrastructure and average lot size is not readily apparent from Figures 5.1 to 5.3, simple regression analyses were employed to shed additional light on the data. The regression analyses utilized different functional forms to ascertain which would result in the best fit of the data, as measured by R^2, and to reveal any underlying trends in the data. The dependent variable in the regression analyses is the length of infrastructure per lot and the independent variable is average lot size.

Table 5.3 contains the parameter estimates obtained from regressions using six different functional forms. This table shows that resulting R^2 values for all regressions are relatively low. With the exception of the power specification, the regressions have stronger explanatory power in predicting length of roads than in predicting length of sewer and water lines.

Table 5.3: R^2 Values of Regressions Using Alternate Functional Forms[1]

Regression	Road	Sewer	Water	Average
Linear	0.245	0.164	0.155	0.188
Log	0.205	0.194	0.157	0.185
Polynomial 2	0.250	0.199	0.155	0.201
Polynomial 3	0.201	0.199	0.162	0.187
Power	0.165	0.269	0.215	0.216
Exponential	0.250	0.164	0.203	0.206

[1] Length of infrastructure R^2 results demonstrate that average lot size alone does not predict length of infrastructure with strong explanatory power.

The linear, exponential, and power regression relationships are shown in Figures 5.4 to 5.6. In all of the regressions, it is clear that the length of infrastructure increases with lot size. The exponential specification shows a relationship where the length of roads per lot increases at a decreasing rate with lot size. In the case of sewer and water, however, the exponential specification shows that the length of pipes per lot increases at an increasing rate as average lot size increases. In the case of sewer and water, the power relationship shows that the length of pipes per lot increases at a declining rate as average lot size increases. In summary, nonlinear regressions do not result in a consistent relationship between the length of infrastructure per lot and average lot size. Because the linear regressions produce consistent results that are generally in agreement with expectations, linear regressions are taken to be acceptable representations of the data.

Figure 5.4: Length of Roads per Lot Regressed Against Average Lot Size

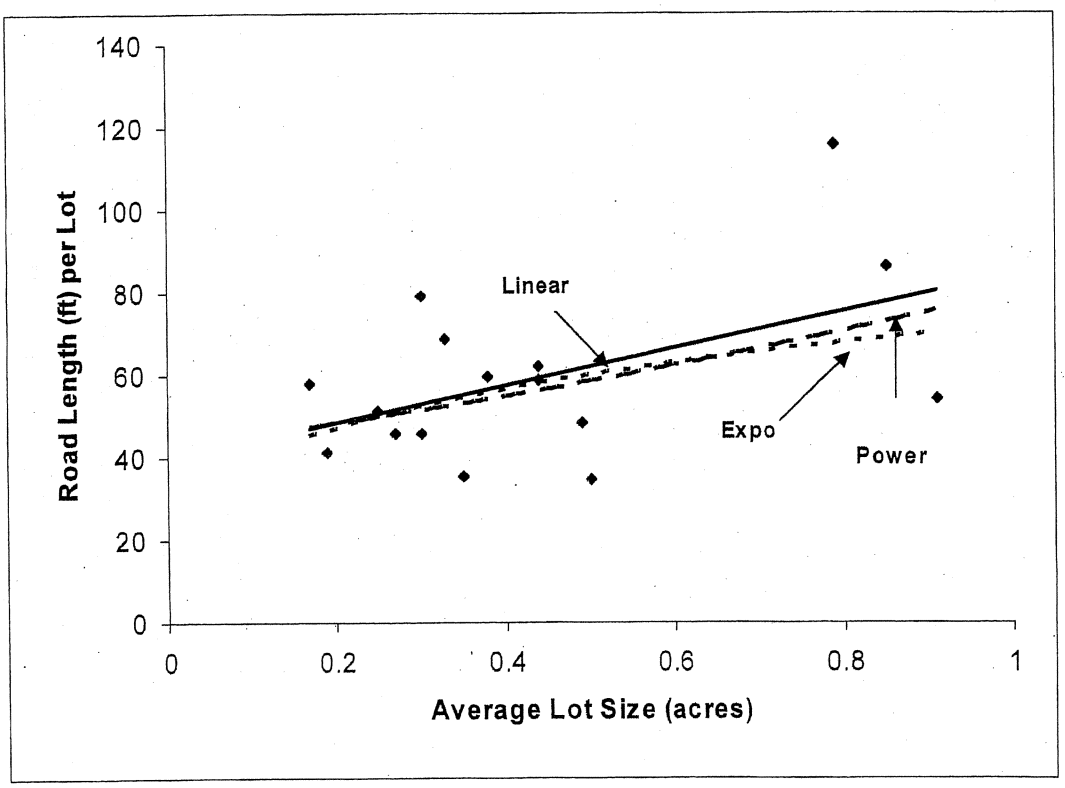


Figure 5.5: Sewer Pipe Length per Lot Regressed Against Average Lot Size

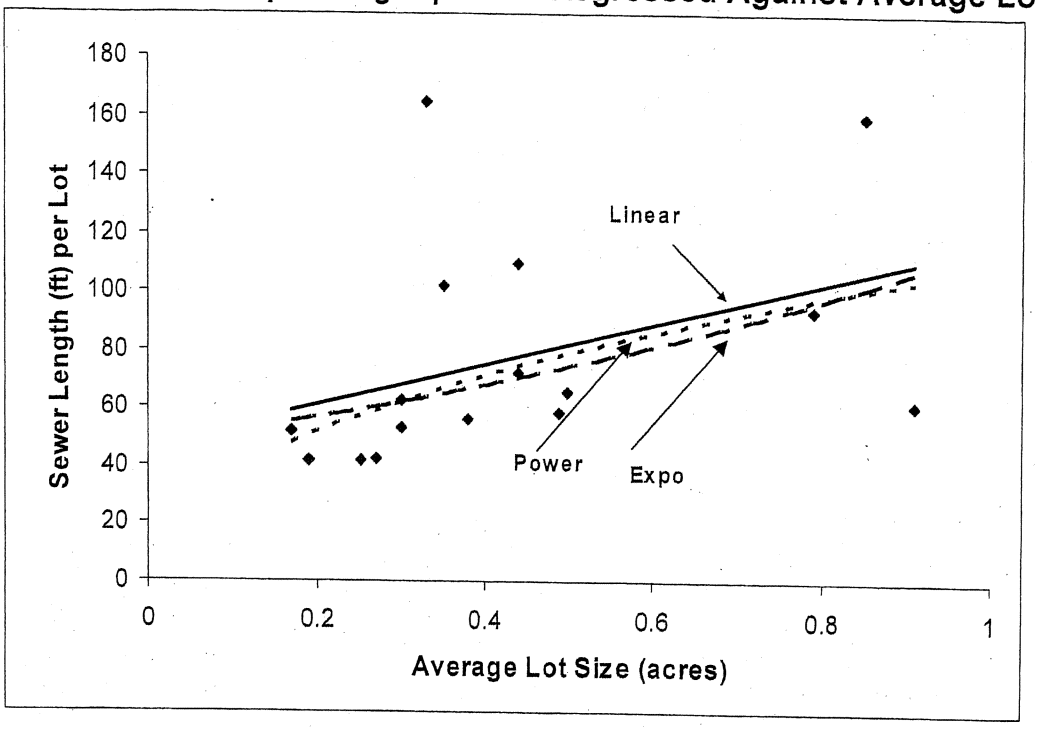


Figure 5.6: Unit Water Pipe Length Regression

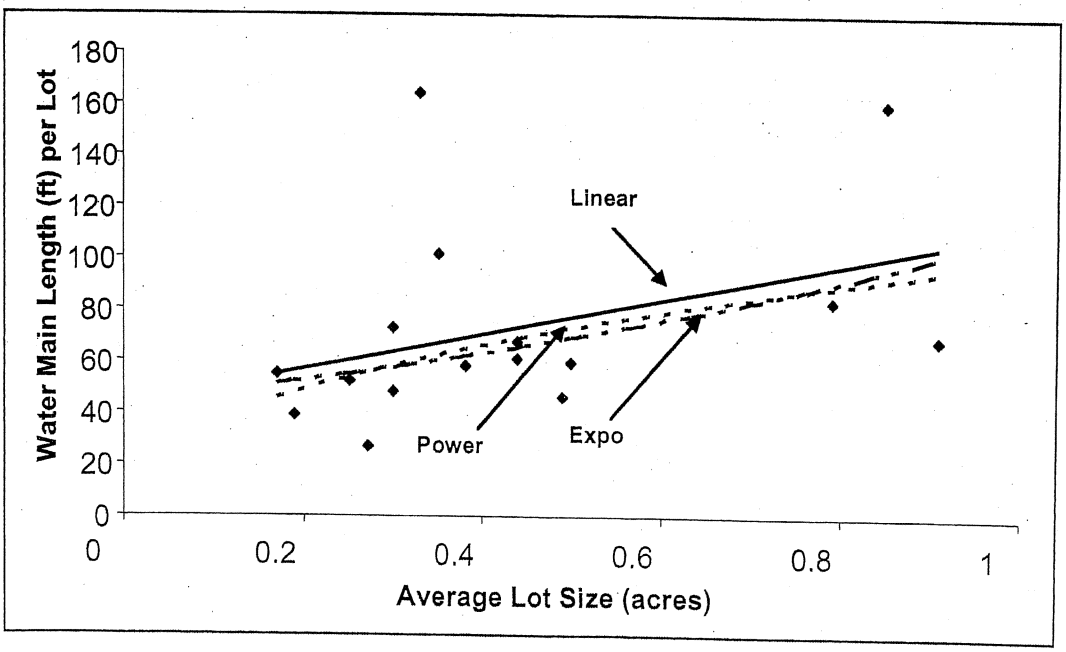


Table 5.4 reports intercepts and parameter estimates for linear regressions of average lot size (the independent variable) against length of infrastructure (the dependent variable) for each type of infrastructure investigated. The road length required for a one unit increase in average lot size is

39 feet. The sewer and water pipe lengths required for a one unit increase in average lot size are slightly larger at 47 and 43 feet, respectively.

Table 5.4: Results of Simple Linear Regressions for Infrastructure Length

Type of Infrastructure	Intercept	Parameter Estimate for Average Lot Size (Acres)
Roads length	45	39
Sewer pipe length	69	47
Water pipe length	67	43

The magnitude of the intercept term suggests that there is some fixed infrastructure required in subdivision development. Moreover, the fixed investments for sewer and water are greater than those required for roads. In the case of sewer and water, close to 70 feet of pipes per lot is required before each lot is serviced. The equivalent number for roads is somewhat less, with 45 feet of road per lot required before roads are built for each lot.

5.2 Costs of Infrastructure and Density

This section combines the cost multipliers discussed earlier with known lengths of infrastructure to ascertain how costs vary with lot size. The resulting costs for roads and sewer and water lines are shown in Table 5.5.

Table 5.5: Per Unit Infrastructure Cost

Subdivision	Average Lot Size (Acres)	Road Cost[1]	Sewer Cost[2]	Water Cost[3]	Total Cost	Density
Silver Lake Farms #2	0.50	1,639	1,840	2,493	5,972	Low
Stone Ridge #2	0.35	1,671	2,504	4,253	8,428	High
Wyndham Gardens	0.85	4,082	4,499	6,737	15,318	Low
Forest Hills	0.33	3,263	4,623	6,921	14,807	High
Ember Oaks	0.79	5,488	2,639	3,522	11,649	Low
Whispering Oaks	0.30	3,748	1,499	2,019	7,266	High
Hidden Pines	0.44	2,789	3,088	2,846	8,723	Low
Alabaster 2 and 3	0.30	2,167	1,770	3,068	7,005	High
Kimberly Meadows	0.49	2,288	1,640	1,951	5,879	Low
Lexington Square	0.19	1,951	1,179	1,630	4,759	High
Somerset North	0.38	2,814	1,569	2,434	6,817	Low
Long Lake Meadows #2	0.25	2,422	1,177	2,201	5,800	High
Princeton Estates #14	0.27	2,167	1,193	1,149	4,510	Low
Bailey's Grove #22	0.17	2,747	1,478	2,304	6,529	High
Granite Pointe	0.44	2,944	2,027	2,549	7,521	Low
Premeau's Peak	0.91	2,563	1,759	2,922	7,244	High

[1] Based on $47.36/ft; [2] Based on $27.97/ft plus $584/subdivision; [3] Based on $41.96/ft plus $584/subdivision

As was the case with the lengths of infrastructure, the average lot size is plotted against costs per lot, and simple regressions were estimated with the former as the independent variable and the latter as dependent variables. Because the previous analysis showed that nonlinear regression specifications did not consistently perform better than linear regressions, only linear regressions were performed at this stage of the analysis.

The best linear approximations of costs for roads and sewer and water lines per lot versus average lot size are shown in Figures 5.7 to 5.9. Although the resulting R^2 values are relatively low, there is a clear increasing relationship between the costs of infrastructure and lot size.

Figure 5.7: Road Cost per Lot

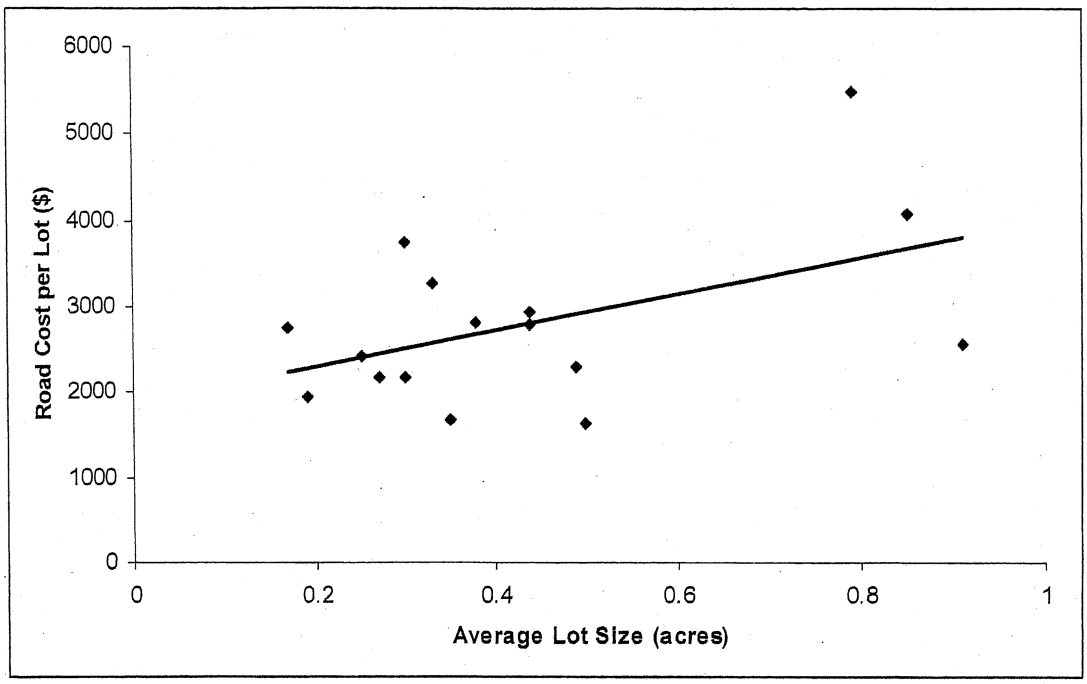


Figure 5.8: Sewer Pipe Cost per Lot

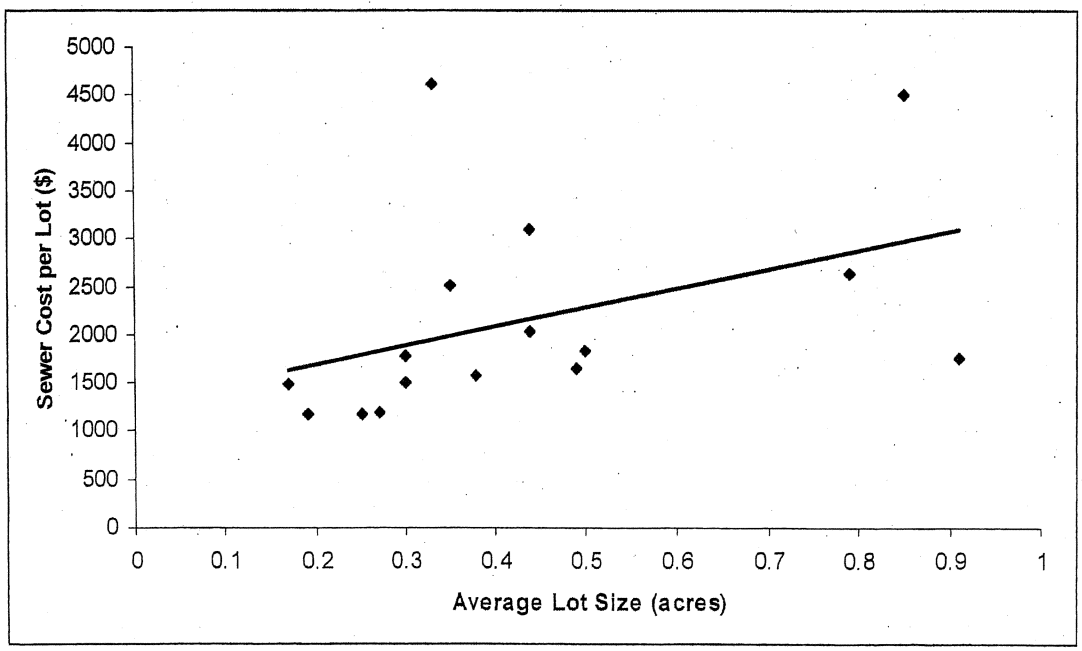


Figure 5.9: Water Pipe Cost per Lot

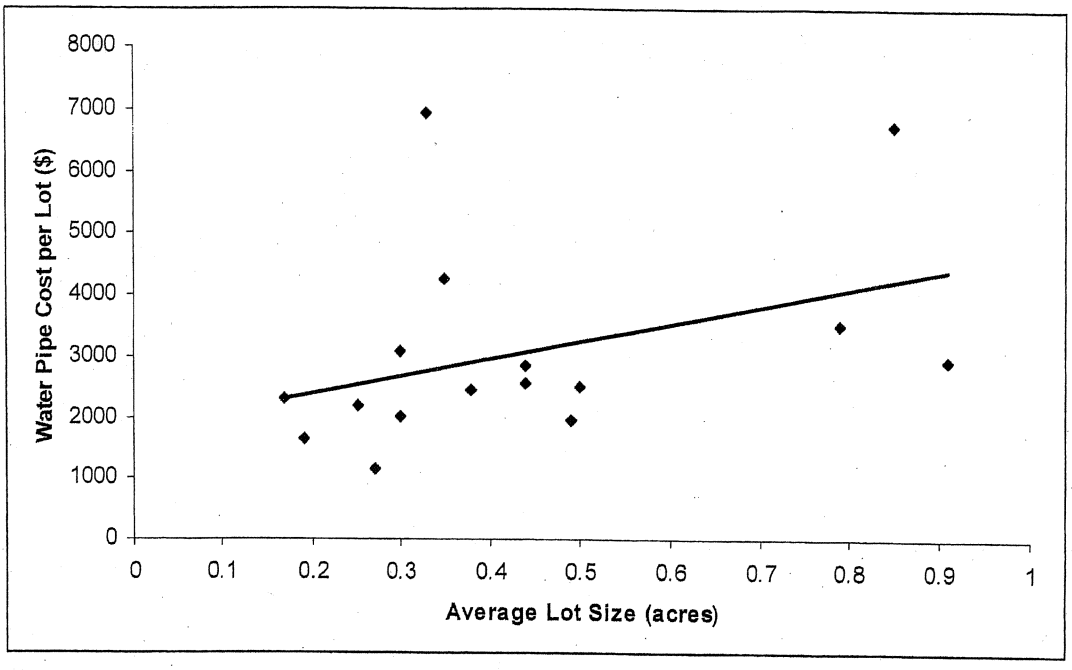


Table 5.6 summarizes the linear regression results. As in the case of lengths of infrastructure, the results for sewer and water in response to a unit increase in lot size were similar, and in this case the results for *roads* and water costs are similar. For roads and water pipes, a unit increase in average lot size results in cost increases of $1,865 and $1,828, respectively. The unit increase cost for sewer pipes is considerably less: $1,290.

The higher marginal cost of water lines as compared to sewer lines is a somewhat surprising result. Regulations that require water pipes to be looped for public health reasons require installation of additional pipes for water systems, and may therefore contribute to higher water line costs. The dependence of engineered sewer systems on gravity flow, as compared to water supply that requires less precision in installation, does not appear to compensate for the costs of additional pipes required for water lines in subdivision development.

The fixed costs for water are also considerably larger than the fixed costs of sewer. This again is surprising, but it could also be explained by the requirement to loop water lines.

Table 5.6: Results of Simple Linear Regressions for Costs of Infrastructure[1]

Variable	Intercept	Parameter Estimate for Average Lot Size
Roads Cost	$2,141	$1,865
Sewer Cost	$1,990	$1,290
Water Cost	$2,838	$1,828

[1] For example, the equation *$2,141 + $1,865 * Lot Size* yields road costs.

5.3 Life Cycle Costs

The results presented thus far represent the costs that developers can expect to bear for installing roads and sewer and water lines within subdivisions. However, although often developers bear the initial costs of installation, these infrastructures eventually become the property of local governments. For local governments, therefore, the fiscal management of infrastructure requires an understanding of the costs for maintenance and replacement of infrastructure, i.e. life cycle costs. This section turns toward examining this issue. For this report, the net present value of future maintenance and replacement costs was used to determine the life cycle costs of infrastructure. This study employed the following assumptions:

- Results obtained from linear regressions were used to predict capital replacement and maintenance costs for roads and sewer and water lines for each subdivision.
- The capital replacement and maintenance costs were inflated from current values at a rate of 2.1 percent per year to reflect current inflation trends for infrastructure.
- Since many infrastructure improvements are financed with government-backed municipal bonds, the going bond rate for local governments in Michigan was utilized as the discount rate. The rate is currently around 4 percent.
- Initial capital investment costs were ignored because these investments were assumed to have been made by developers.
- Roads have a life of 25 years and sewer and water pipes have a life of 50 years. The analyses of net present values were determined over a 50-year period, meaning that roads will be replaced twice (in year 25 and again in year 50), and that sewer and water pipes will be replaced once (in year 50).
- R.S. Means' cost data were used to come up with annual maintenance costs.

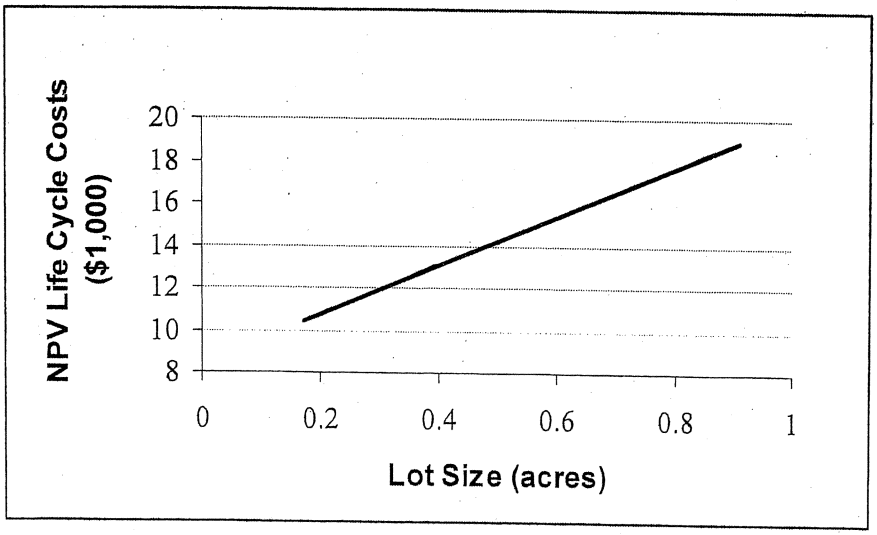
Table 5.7 reports life cycle costs (in terms of net present values) for maintenance and replacement of roads and sewer and water pipes over a 50-year period. Because the ultimate concern is how life cycle costs vary with density, these results are presented in order of increasing lot size. (Two subdivisions are 0.30 acres each and another two are 0.44 acres each. Thus, Table 5.7 contains data for 14 subdivisions, rather than 16.)

Table 5.7: Life Cycle Costs (Net Present Value for the Maintenance and Replacement) of Roads, Sewer and Water Infrastructure

Lot Size (acres)	Life Cycle Costs per Lot in Terms of Net Present Value ($1,000 per household)			
	Roads	Sewer Pipes	Water Pipes	Total
0.17	4.17	3.08	3.17	10.42
0.19	4.25	3.16	3.25	10.65
0.25	4.49	3.38	3.48	11.34
0.27	4.57	3.45	3.56	11.57
0.3	4.69	3.56	3.67	11.92
0.33	4.81	3.67	3.79	12.27
0.35	4.89	3.74	3.87	12.50
0.38	5.01	3.85	3.99	12.85
0.44	5.25	4.07	4.22	13.54
0.49	5.45	4.25	4.42	14.12
0.50	5.49	4.29	4.46	14.23
0.79	6.65	5.35	5.59	17.59
0.85	6.89	5.57	5.82	18.28
0.91	7.13	5.79	6.06	18.98

Figure 5.10 presents the information graphically. Together, Table 5.7 and Figure 5.10 show that life cycle costs for roads and sewer and water lines, when expressed in terms of the net present values, are almost as twice as high for a 1-acre lot as for a 0.2-acre lot.

Figure 5.10: Net Present Value Cycle Costs for Roads, Sewer & Water Lines



6.0 Revenue Considerations

Although local governments clearly face increasing life cycle infrastructure costs as lot sizes increase, one finding of interest to policy makers is whether larger lots result in higher user fees and taxes to cover these costs. This issue is addressed in the following section.

6.1 User Fees

Just as it is across much of the United States, there are no user fees specifically collected for local roads in Michigan. The maintenance and replacement of local roads are generally funded from general revenues in the budget. User fees are usually collected for sewer and water.

It is important to note that user fees vary widely between jurisdictions for several reasons, including the age of the system, water quality, soil composition, etc. An understanding of how capital costs are incorporated into user fees is also important; for instance, some sewer and water infrastructure in Michigan was built using federal subsidies, and some jurisdictions charge upfront connection fees to cover the cost of extending services. The reduction in public expenditures to cover construction costs can mean lower user fees for residents.

User fees may also vary due to economies of scale (i.e. providing these services to larger developments with more users may result in lower bills) and the provision of these services by private companies (as opposed to the local government). Finally, to achieve efficiency, rates should be set such that growth will "pay for itself" (i.e. users are charged connection fees and bills in line with maintenance and replacement costs); however, deliberate, well-informed rate-setting is not widely practiced (Beecher, 2006).

Understanding these caveats with respect to the variance in user fees for sewer and water provision, the next section provides an analysis of the user fees charged in the eight case study communities. The assumption used here is that user fees are set in an efficient manner to cover the costs of services associated with these two types of infrastructure. Further research is needed to isolate the effect of rate-setting inefficiencies and other factors from the effect of residential density.

6.1.2 User Fees for Sewer and Water

User fees for sewer and water were found to vary significantly in structure and magnitude from one community to another. Table 6.1 shows the rate structure for sewer and water for the different jurisdictions studied.

To employ these rates in determining user fees per household, an assumption about the daily consumption of water per household had to be made. The study used a rate of 183 gallons per day per capita, a figure estimated by the EPA (1995). This figure was adjusted to account for average household sizes in the jurisdictions that were studied. Table 6.2 contains average household sizes for each of these jurisdictions.

Table 6.1: Water and Sewer User Rates[1]

Jurisdiction	Water User Fee	Sewer User Fee
Garfield	$24.15/quarter up to 10,367 gallons; over that $1.65/748 gallons	$51.00/quarter/house
Alpena	$3.77/1,000 gallons	$3.77/1,000 gallons
Meridian	$2.47/7,480 gallons	$2.46/1,000gallons
Lincoln	$1.82/748 gallons	0-6732 gallons: flat fee of $35.10; over 6732 gallons: $1.08/ cubic feet
Canton[1]	$5.41/1,000 gallons	
City of Troy[1]	$27.90/7,480 gallons	
City of Kentwood	$1.45/748 gallons	$2.18/748 gallons
City of Marquette	$2.73/748 gallons	

[1] User fees for Canton, Troy and Marquette are for both sewer and water combined.

Table 6.2: Average Household Size

Jurisdiction	Average Household Size
Garfield Township	2.28
Alpena Township	2.39
Meridian Township	2.36
Lincoln Township	2.52
Canton Township	2.77
City of Troy	2.69
City of Kentwood	2.43
City of Marquette	2.13

The overall average household size in the jurisdictions studied is approximately 2.45 persons. This results in an average daily consumption of about 448 gallons of water per day, 40,316 gallons of water per quarter, and 161,406 gallons of water per year. Using these figures, Table 6.3 shows the corresponding sewer and water user fees per household.

There are two important caveats to these results. First, no data on how these user fees are spent was available. In particular, there is no data on whether these fees are used to fund the maintenance of sewer and water lines, or whether they are used to fund capital improvements. Second, this analysis assumes that sewer and water consumption do not vary with housing density. There is reason to believe that lower density housing uses more water because of the

[1] In terms of gallons or cubic feet as originally used in the jurisdiction.

need for more lawn maintenance. However, this study does not present data to confirm such a hypothesis. Thus, as can be seen in Table 6.3, water user fees do not vary with density between subdivisions within a community.

6.2 Property Tax Revenue

Another source of revenue that is used to maintain infrastructure is property tax. The project team collected tax rates from the offices of tax assessors for the different jurisdictions studied and applied these rates to each house in each subdivision to determine the total property taxes that are generated by each subdivision. The average property taxes for each house in each subdivision were extrapolated from this data. The resulting property tax per household is shown in Table 6.3. As in the case with user fees, there is no data on how property tax revenues are used for the maintenance and replacement of infrastructure.

Table 6.3: Annual User Fees for Sewer and Water and Annual Total Revenues per Household

Subdivision	User Fees for 2004 ($ per Household)	Property Taxes for 2004 ($ per Household)	Annual Revenues for 2004 ($ per Household)	Density
Silver Lake Farms #2	565	2,838	3,403	Low
Stone Ridge #2	565	3,199	3,764	High
Wyndham Gardens	609	3,115	3,724	Low
Forest Hills	609	1,898	2,507	High
Ember Oaks	796	14,725	15,521	Low
Whispering Oaks	796	6,382	7,178	High
Hidden Pines	651	4,165	4,816	Low
Alabaster 2 and 3	651	3,152	3,803	High
Kimberly Meadows	873	3,914	4,787	Low
Lexington Square	873	3,201	4,074	High
Somerset North	602	10,202	10,804	Low
Long Lake Meadows #2	602	5,576	6,178	High
Princeton Estates #14	783	3,528	4,311	Low
Bailey's Grove #22	783	2,703	3,486	High
Granite Pointe	589	3,985	4,574	Low
Premeau's Peak	589	4,490	5,079	High

7.0 Expenditures and Revenues

Revenues are used for a variety of purposes, and the maintenance and replacement of infrastructure is usually low on the list of priorities. Without data on how revenues are allocated to the maintenance and replacement of infrastructure, it cannot be determined with any degree of certainty that revenues cover the costs of infrastructure on larger lots.

However, this analysis can provide some preliminary findings about whether user fees cover the life cycle costs of infrastructure, and about the relationship between total revenues, life cycle costs of infrastructure, and density. This analysis was done in two stages. The first step was a comparison between user fees for sewer and water with life cycle costs for sewer and water. Roads are excluded from this comparison because user fees are applicable to sewer and water only. Further, since user fees are annual amounts (in 2004 dollars); life cycle costs are now expressed in terms of annual equivalents. The resulting figures are shown in Table 7.1. (The figures are presented in terms of increasing lot size to increase ease of interpretation.)

Table 7.1: Annual Life Cycle Costs, User Fees and Total Revenues

Lot Size (Acres)	Annual Life Cycle Costs for Sewer and Water ($ per household)	Annual Sewer and Water User Fees for 2004 ($ per Household)	Total Annual Life Cycle as a Percentage of Total Annual Revenue[1] (2004)
0.17	291	783	8.3
0.19	298	873	7.3
0.25	319	602	5.2
0.27	326	783	7.6
0.3	337	796	4.7
0.3	337	651	17.1
0.33	348	609	13.9
0.35	355	565	9.4
0.38	365	602	3.4
0.44	386	651	8.0
0.44	386	589	12.9
0.49	404	873	8.4
0.50	408	565	12.0
0.79	510	796	3.4
0.85	531	609	14.2
0.91	552	589	10.9

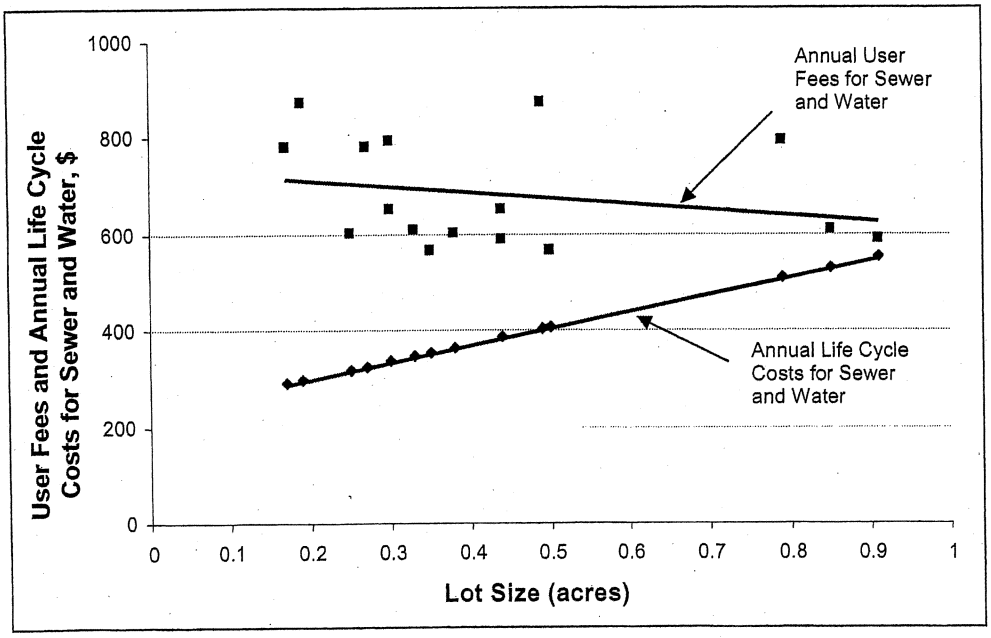
[1] Total Annual Revenue data is reported in the fourth column of Table 6.3.

Figure 7.1 shows how annual life cycle costs and user fees vary with density for sewer and water. It shows that, in general, annual user fees for sewer and water are greater than annual life cycle costs for sewer and water. However, this statement is only valid for the range of lot sizes examined in this report. It is clear that as lot size increases, the difference between user fees and annual life cycle costs becomes smaller. This statement is based more on the upward slope of the line that shows life cycle costs than on the downward slope of the line that shows annual user

fees. (See later discussion for why the slope of the line for annual user fees may not be applicable beyond the case studies.) At a lot size of approximately one acre, user fees will not be sufficient to cover the maintenance and replacement costs of sewer and water lines within subdivisions.

It must again be noted that annual life cycle costs for sewer and water lines do not include any allowances for capital, operating, and maintenance costs associated with sewer and water trunk lines and treatment facilities; the life cycle costs considered here are applicable only to the maintenance and replacement of pipes within a given subdivision. Given the generally close proximity between the two lines shown in Figure 7.1, if costs for trunk lines and treatment facilities are included in the calculated life cycle costs, then these costs will in all likelihood exceed user fees.

Figure 7.1: User Fees and Annual Life Cycle Costs for Sewer and Water vs. Lot Size



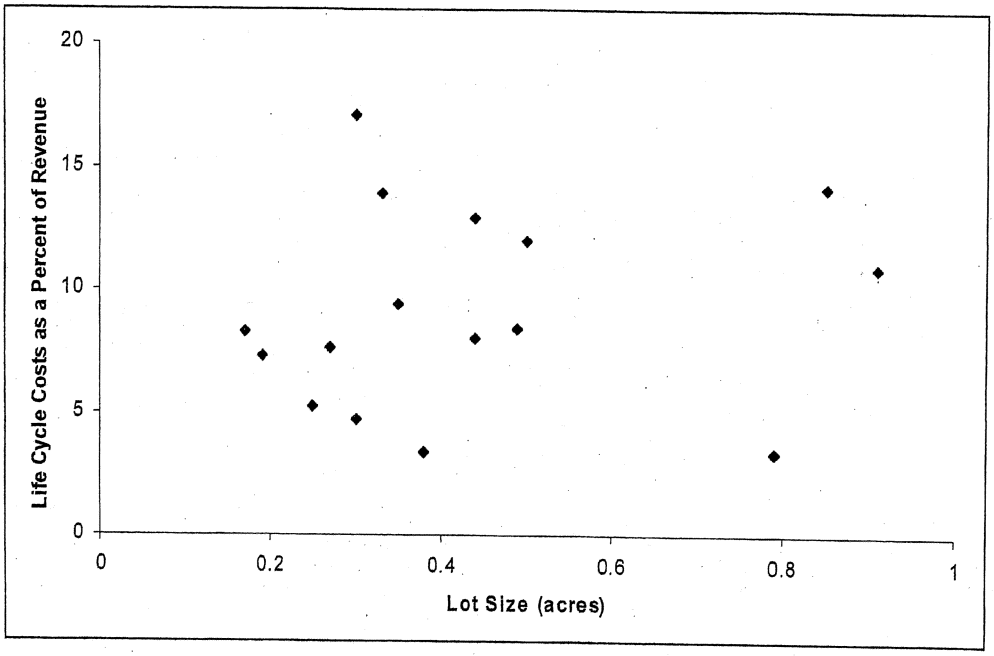
A further point is warranted about the slope of the line for annual user fees for sewer and water. The downward slope of the line could primarily be a unique result for the jurisdictions that were studied rather than a true, typical relationship. As can be seen in Table 6.1, user fees for sewer and water are not at all related to lot size, but rather are arbitrary figures determined at the local level.

As stated earlier, because there are no data on how total revenues (property taxes and user fees for sewer and water) are allocated to the maintenance and replacement of subdivision infrastructure, it is difficult to make direct comparisons between revenues and life cycle costs. One measure that provides some insights is a measure of how annual life cycle costs as a

percentage of revenues vary with density. This measure perhaps provides the most interesting insights into whether revenue is related to life cycle costs and density. Table 7.1 reports the appropriate data in the final column, and Figure 7.2 displays the data.

The data shows that there is no relationship between how life cycle costs for roads and sewer and water lines as a percent of revenues vary with lot size. (A simple regression between the two variables produced an R^2 of 0.06). At a lot size of 0.79 acres (Ember Oaks), life cycle costs as a percent of revenues are approximately 3.4 percent, but for a slightly larger lot, 0.85 acres (Wyndham Gardens), the same figure is approximately 14.2 percent. The same discrepancy is observed when the lot size is 0.38 acres (Somerset North – 3.4 percent) versus when it is 0.33 acres (Forest Hills – 13.9 percent).

Figure 7.2: Life Cycle Costs as Percent of Revenue versus Average Lot Size



It should be repeated that the fact that life cycle costs for roads and sewer and water lines are a fraction of revenues does not imply sound fiscal management of these infrastructures; it is not understood what fraction of revenues is actually spent on infrastructure management.

8.0 Beyond Infrastructure Costs

The sections above provide a comparative analysis of the relationship between the densities of residential development and infrastructure costs. By concentrating on the basic infrastructure aspects of the residential developments, namely roads, sewer and water pipes, this study addresses an important issue that is often raised about optimal housing density from the standpoint of communities. Conceivably, density also impacts non-infrastructure costs, such as those costs associated with municipal services (e.g. fire, police, schools, parks, libraries and recreational facilities). Without an assessment of the effects of housing density on these other aspects of public costs, this analysis is incomplete.

In an attempt to explore some of the non-infrastructure cost issues, this section of the report focuses on the relationship between housing density, property values and the total tax revenues of a pilot municipality, Meridian Township in Michigan. The optimal lot size range that maximizes revenue per house for the municipality is identified.

8.1 Approach

The approach followed in this portion of the report required the collection of data on recent real estate sales in Meridian Township, Ingham County. For the year 2005, the residential parcel count for the township was 12,308, commercial parcel count was 663, industrial parcel count was 47, and agricultural parcel count was 5. The total assessed value of residential property was $1,274,286,150, which is approximately 72.26% of the total real value of properties in the county. The analysis focused on all real estate transactions from October 2004 through March 2005 for which actual sales had occurred. Michigan law provides a cap on property tax increases as long as property ownership remains the same. Hence the sale of property triggers an adjustment of taxable value and therefore tax liability. By focusing on multiple listing data, one avoids the problem of discrepancies between assessed and actual revenue.

The data consisted of 137 observations (single family houses). For each house sold, information was available on the following housing characteristics (variable names in parentheses):

1. Sale price of the house and property (Sold_price).
2. List price of the house and property (Listprice).
3. Taxable value of the house and property (Taxval).
4. Age of the house (Age).
5. Presence of a basement (D_bsmt).
6. Number of car places in garage (No_of_garage).
7. Presence of garage (D_attch_gar).
8. The total square footage of the house above the ground (Sqft_above).
9. Availability of sewage facility (D_sewer).
10. The number of bedrooms in the house (Bedrooms).
11. The number of non-bedrooms in the house (Non_bedrooms).
12. The number of full bathrooms (Full_bath).
13. The number of half bathrooms (Half_bath).
14. The total lot size of the house (Tot_lot_size).
15. The number of stories of the house (Type).

16. The number of days the house has been on the market (DOM).

Two primary approaches were used in the analysis:

1. Analysis of correlation between lot size and property value per acre.
2. Hedonic regression analysis of impact of lot size on total property value.

The approaches and results are presented below.

8.2 Analysis of Correlation between Lot Size and Property Value

Figure 8.1 presents the lot size and the taxable value per acre of each house in order to evaluate the relationship between lot size and the taxable value of a house. An application of the tax rate to property value illustrates the tax revenue impact of each lot size. As shown in Figure 8.1, which plots lot size on the horizontal axis and taxable value per acre on the vertical axis, greater property valuation per acre seems to be correlated with smaller lots. Plotting the lot size classes (with increments of 0.1 acre) against property value per acre shows this relationship more distinctly (see Figure 8.2).

Figure 8.1: Taxable Value versus Lot sizes of Recently Sold Houses in Meridian Township, MI (October 2004 - March 2005)

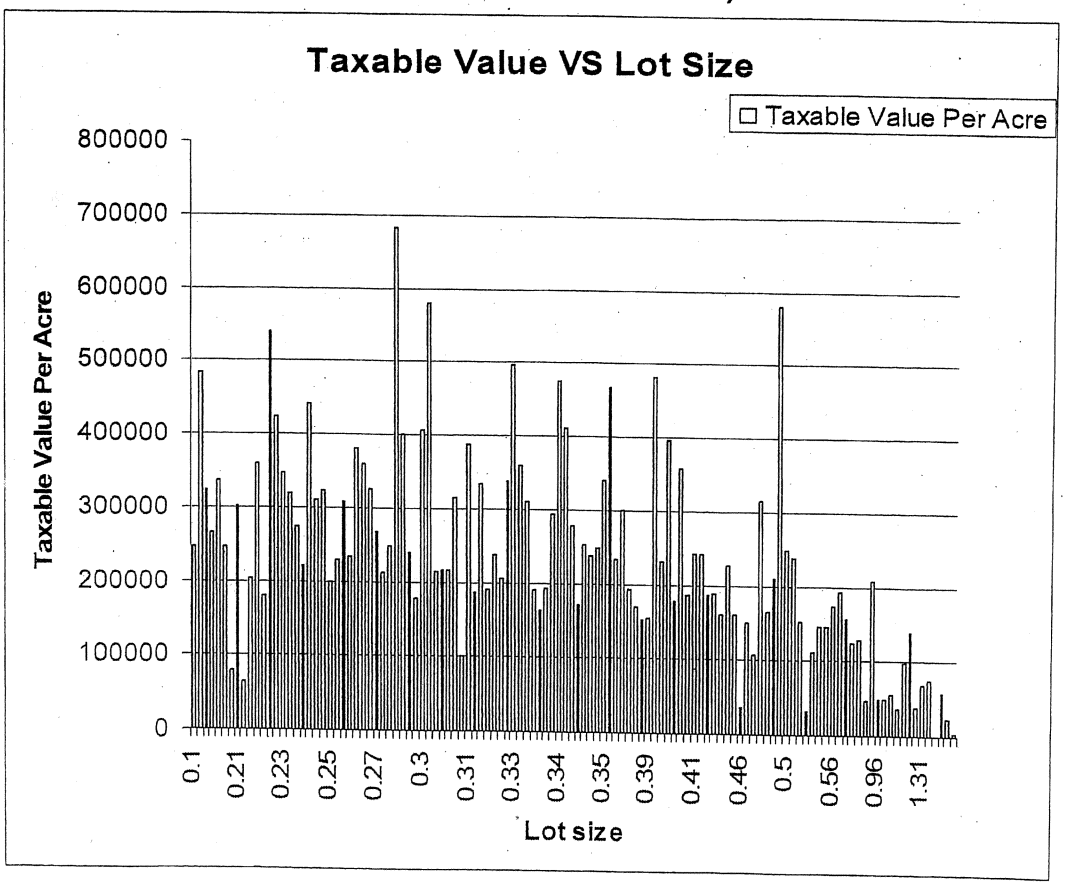


Figure 8.2: Taxable Value per Acre by Range of Lot Size

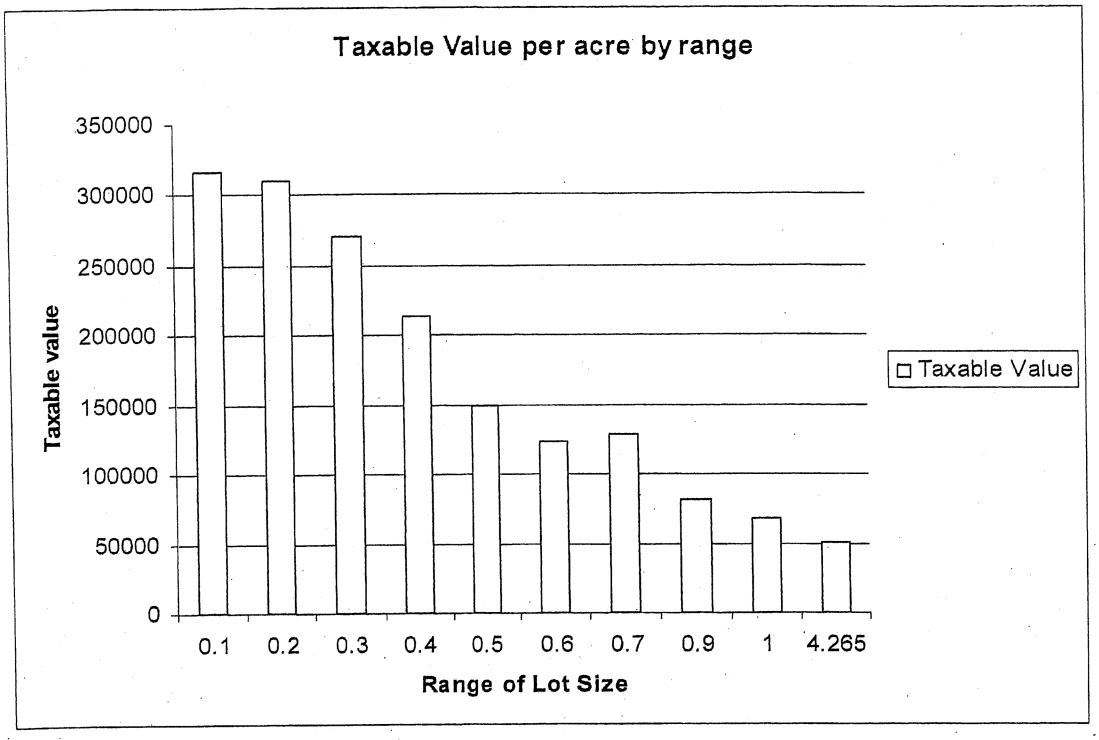


Figure 8.2 suggests that an inverse relationship exists between lot size and taxable value per acre. This implies that the yield to a community in terms of revenue per acre is higher for densely packed housing. This relation is consistent in the sense that taxable value progressively decreases, except for the lot size of 0.6 to 0.7 acres. In other words, there is a saddle point at 0.6 to 0.7 acres, but the most beneficial size class is 0.0 to 0.2 acres. It is important to note that this is a preliminary analysis focused on one township.

8.3 Regression Analysis

The plot shown above is merely analogous to correlation analysis. Therefore, it does not provide sufficient evidence for causality. Regression analysis is therefore used to decompose taxable value into its determinants. This method allows us to isolate the effect of each determinant on the property value and taxable value, using the hedonic pricing approach. The approach is in line with a similar analysis in Michael, Boyle and Bouchard (Land Economics, 2000).

The basic hedonic price approach is to regress property value (sale price of a house and its corresponding property) against housing attributes (housing, property and neighborhood characteristics). If a linear model is used, the coefficient of an attribute will represent the effect on the dependent variable (property value) of a one unit increase in the value of the attribute. In the case of a log-linear model, the coefficient would represent the percentage change in valuation for every 1-unit change in the attribute. For the purpose of this study, linear and log-linear models were used.

The structural hedonic valuation function approach used in this study involved the regression of sold-price against property attributes. Sold price translates directly into tax revenue through the application of appropriate tax rates to assessed value, or taxable value. Some of the variables needed to be transformed because they were not continuous variables or because of the need to test some group effects. The variables that were transformed are as follows:

Age: Broken down into dummy variables for the age of the house

i. *D_age_0to10* = 1 if property age is between 0 to 10 years
ii. *D_age_10to20* = 1 if property age is between 10 to 20 years
iii. *D_age_20to30* = 1 if property age is between 20 to 30 years
iv. *D_age_greater30* = 1 if property age is greater than 30 years

Basement: The dummy variable *D_bsmt* equals 1 if the house has a basement, and otherwise equals 0.

Garage: The dummy variable *D_attch_gar* equals 1 if the house has an attached garage, and otherwise equals 0.

Sewer: The dummy variable *D_sewer* equals 1 if the house has access to a municipal sewage treatment facility, and otherwise equals 0.

Type: The dummy variable *D_type* equals 1 if the house is a 'Ranch' (one story building), and otherwise equals 0.

After a detailed and careful analysis, a basic linear model was chosen, with some quadratic terms:

$$Sold_price_i = \beta_0 + \beta_1 controls + v_i$$

Where the control variables consist of the following variables:

Taxval_listprice, D_age_10to20, D_age_20to30, D_age_greater30, D_bsmt, no_of_garage, D_attch_gar, Sqft_above, Bedrooms, Full_bath, Half_bath, Tot_lot_size, Tot_lot_sizesqr, Tot_lot_sizecube, D_type, and *DOM*.

The variable v_i is the error term that is assumed to be independently and normally distributed. Note that *Tot_lot_sizesqr* and *Tot_lot_sizecube* represent squared and cubed terms of *Tot_lot_size*. Table 8.1 reports regression results for variations of the model.

Table 8.1: Effects of Attributes on Property Values, Meridian Twp, Michigan

Variable Name	$ Impact on Sold Price (Hedonic Model)			% Impact on Sold Price (Log dependent Variable)		
	Model 1	Model 2	Model 3	Model 4	Model 5	Model 6
Taxval listprice	-2,467.173***	-2,475.002***	-2,459.178***	-.0049655***	-.004947***	-.0042909***
D age 10to20	-69,818.13***	-69,317.23***	-69,441.54***	-.1682026***	-.1692877 ***	-.1750481***
D age 20to30	-104,886.8***	-105,135.6***	-105,557***	-.3182749***	-.3176896 ***	-.3358984***
D age greater30	-107,566.1***	-108,903.9***	-109,027.9***	-.3491419***	-.3461423 ***	-.3514195***
D bsmt	35,184.74	34,970.79	34,928.14	.3464804***	.3469487***	.3452923***
No of garage	38,091.2***	38,054.25***	37,907.31***	.1102928***	.1103334***	.1046777***
D attch gar	-23,387.33	-23,589.48	-23,615.42	.0006508	.0010789	-.0003132
Sqft above	61.34866***	59.22853***	59.41019***	.0002474***	.0002521***	.0002601***
Bedrooms	-7,740.034	-7,686.436	-7,803.537	.0108277	.0107389	.0053631
Full bath	36,719.13***	37,170.28***	37,066.38***	.0906232***	.0896539 ***	.0846998***
Half bath	12,595.03	13,660.36	13,728.28	.0206092	.0181949	.0214334
Tot lot size	6,557.253 *	12,403.29	14,930.06	.0219703**	.0088423	.1161865*
Tot lot sizesqr	-	-422.1631	-1,005.847	-	.0009482	-.0237903*
Tot lot sizecube	-	-	28.76551	-	-	.0012177**
Dummy type	-3,435.485	-3,317.755	-3,540.738	-.002648	-.0029494	-.0118854
DOM	51.40723	54.83476	54.25461	-.000452**	-.0004595**	-.0004861**
Cons	137,000.2***	138,010.9***	137,433.2***	11.45438***	11.45206***	11.42844***
R^2	0.8700	0.8702	0.8702	0.9021	0.9022	0.9062
Adjusted R^2	0.8532	0.8520	0.8506	0.8893	0.8884	0.8919

***, **, and *** represent significance at the 10, 5 and 1% levels, respectively.**

Models 1 through 3 represent the regression analysis of the linear model estimated using OLS. In Model 1, the statistical significance of *Tot_lot_size* at the 10% level, and the relatively high R^2 value of 0.87 suggest a good model fit.

The estimated hedonic average price of a house is about $137,000, as shown by the coefficient of the constant in the hedonic model. This coefficient is statistically significant at the 1% level. Before evaluating the relationship between lot size and the sold price of a house, it is important to state the relationship of the other independent variables to assess the validity of the model. The regression yielded results that were in line with expectations and results achieved in similar hedonic studies.

The estimated coefficient on *Taxval_listprice* indicates that for every one unit increase in the taxable value ratio, the sold price of the house decreases by approximately $2,467. Estimated coefficients for dummy variables representing home age indicate that the sold price of a 10 to 20 year old home, a 20 to 30 year old home, and an over 30 year old home is less than homes under 10 years old by amounts of $69,818; $104,887; and $107,566 respectively.

Other estimated coefficients yield the following interpretations. For each additional car space in the house's garage, the sold price of the house increases by about $38,091. For every one unit increase in the square footage of the house, its sold price increases by approximately $61. For each additional full bath, the sold price increases by around $36,719. These variables are statistically significant at the 1% level.

The effect of total lot size on home values is of particular interest in this analysis. The estimated coefficient on this variable suggests that, for every one unit (acre) increase in the total lot size of the house, its sold price *increases* by $6,557. This coefficient is statistically significant at the 10% level.

The effects of housing characteristics on sold price using a log-linear model were also estimated. The log-linear model is chosen for three reasons:

(1) Using natural log forms produces coefficients with easily understandable interpretations so that one can disregard the units of measurement of variables appearing in logarithmic form because the slope coefficients are invariant to rescaling.
(2) Taking logs usually narrows the range of the variable, in some cases by a considerable amount. This method makes estimates less sensitive to outlying observations on the dependent or independent variables.
(3) The coefficients become percentage changes in the dependent variable, which can be applied to determine actual changes, where desirable.

In Table 8.1, models 4, 5 and 6 represent the regression analysis of the log-linear model. Of these three models, Model 6 demonstrates the strongest explanatory power because of the high statistical significance of *Tot_lot_size, Tot_lot_sizesqr* and *Tot_lot_sizecube*, and because of the relatively high R^2 value of 0.91, which indicates that approximately 91% of the variation in the dependent variable *Sold_price* can be explained by the above mentioned independent variables.

The subsequent interpretation of estimated coefficients, therefore, uses reported results from Model 6.

For every one unit *increase* in the taxable value ratio, the sold price *decreases* by roughly 0.43 percent. Sold price of a home 10 to 20 years old, 20 to 30 years old, and over 30 years old is lower that that of a newer home by approximately 17.5, 33.6, and 35 percent, respectively. If the house has a basement, the sold price is generally 34.5 percent higher than a house without a basement. For each additional car space in the garage, the sold price of the house increases by 10.5 percent. For every one unit increase in the square foot of the house, its sold price increases by roughly 0.03 percent. For every additional full bath, the sold price of the house increases by about 8.5 percent. These variables are statistically significant at the 1% level.

For every additional day a house is on the market, the sold price decreases by 0.04861 percent. This variable is statistically significant at the 5% level.

For every one unit (acre) increase in the total lot size of the house, its sold price increases by roughly 11.6 percent. For every one unit increase in the square of total lot size of the house, the sold price decreases by 2.4 percent. These variables are statistically significant at 10% level. The For every one unit increase in the cube of total lot size of the house, the sold price increases by 0.12 percent. This coefficient is statistically significant at the 5% level. The quadratic form of the model suggests that the relationship between lot size and sold price is not exactly linear.

The results suggest a positive coefficient of lot size but a negative coefficient of the squared lot size indicating the presence of diminishing value as lot size increases. In order to obtain the optimal lot size, both sides of the log-linear model are differentiated with respect to total lot size and equated to zero.

1. $\delta \log (\text{Sold Price}_i) / \delta (\text{Total Lot Size}_i) = 0$
2. $(0.1161865 - 0.0475806 * \text{Total Lot Size}) + 0.0036531 (\text{Total Lot Size})^2 = 0$
3. $\text{Total Lot Size} = (0.0475806 +\text{-}.02379) / 0.232373$
4. $\text{Total Lot Size} = (0.0713706, 0.0237906) / 0.232373$
5. $\text{Total Lot Size} = 0.30714, 0.10238$

The second order condition reveals that the sold price is maximized for both values of optimal lot size, i.e. for 0.30714 and 0.10238 acres, resulting in a bimodal distribution. This result is in accordance with the result obtained in the dual approach.

8.4 Summary

The results from the regression analysis are consistent with the findings from the infrastructure analysis. The results suggest that, at a given point, increasing the size of a lot has negative implications for sale price, taxable value, and thus tax revenue accrued from a house, ceteris paribus. In other words, between approximately 0.3 and 1.5 acres, there are diminishing marginal returns to increasing lot size. The benefit of using real market data is that the gap between market value and taxable value is known. Thus with recent data, the effects of lot size on the taxable value of the houses can be isolated.

This analysis is based upon a comparatively small sample size, i.e. 137 sample points from a population of 12,308 points. Moreover, the analysis is restricted to Meridian Township data. It is only a preliminary analysis that opens up opportunities for analyzing other townships and counties. Further assessments of the impact of lot size on non-infrastructure costs and revenues are needed.

9.0 Conclusions

Two broad issues emerge from this study. The first is the relationship between life cycle costs of infrastructure and density. The second is related to systems that local governments should put in place to manage their investments.

With regard to the life cycle costs for roads and sewer and water lines, it is clear from Figure 5.10 that these costs increase as lot sizes increase (or as density decreases), within the local government service boundary (i.e. for single family homes on public roads, sewer and water infrastructure). However, whether revenues from user fees and property taxes are sufficient to cover these costs is unclear. While user fees for sewer and water appear to be sufficient to cover life cycle costs for these infrastructures, the cost calculations presented here center only on the infrastructure contained within subdivisions. If the costs for trunk lines and treatment facilities were included, there is little doubt that user fees for sewer and water would be insufficient. In addition, preliminary results from the Meridian Township study suggest that property tax revenues tend to decrease as lot size increases from 0.3 to 1.5 acres.

This report provides valuable insights to inform local government decisions about sewer, water and road construction, maintenance and replacement, and zoning regulations within public service boundaries. Information that is specific to particular subdivisions studied here can not be directly applied to the experiences of other areas. However, the trend that the data shows suggests that local governments should reconsider their zoning regulations associated with the density of single family subdivisions, perhaps during the process of updating the community Master Plan. Local assessment might encourage decision makers to allow for higher density (smaller lots) to keep public service costs low enough to be offset by public revenues. Another recommendation suggested by these findings is for local governments to revisit the setting of user fees for public infrastructure to ensure that they are efficient and appropriate.

The other main issue to emerge from this study is the degree to which local jurisdictions in Michigan, with the exception of the City of Troy, lack asset management systems. The degree to which data were not available on either the physical extent of infrastructure or the costs for maintaining and replacing these infrastructures makes fiscal impact analysis difficult to perform. With this in mind, future research is recommended to increase the capacity for local jurisdictions to perform detailed fiscal impact analysis.

Five areas of research are apparent. First, research on appropriate asset management systems for local governments in Michigan is recommended. Note that this research would not be intended to establish asset management systems for each jurisdiction across the state, but to create a methodology for local governments in Michigan to set up such a system. However, as part of such research, the implementation of pilot programs for asset management across a sample of local governments would be useful. The jurisdictions studied in this report, with the exception of Troy, could serve as test cases. Indeed, Troy's program could be used as a prototype upon which to base other programs. Pilot programs are important because they represent an education and Extension avenue for transferring knowledge from universities to communities, which is part of the mission of Michigan State University. Asset management systems would help local

governments to track infrastructure life cycle costs and charge appropriate user fees to cover those costs.

The second area of research relates to multipliers used for fiscal impact analysis. As is clear from this report, there are no standard multipliers for infrastructure costs established for Michigan. However, infrastructure multipliers comprise just one class of multipliers used for fiscal impact analysis. In addition to these, there are a host of fiscal impact multipliers that are required to analyze the effects of local land and economic development policy. Among these multipliers are the number of jobs created per investment dollar, new treatment plant requirements, school expenditures, etc. Across the nation, it is not uncommon for fiscal impact analysis of economic policy to rely on multipliers constructed since 1978 by Burchell et al. (1978; 1985; 2002). Updating these multipliers and making them specific to Michigan is of critical importance.

The third area of research is to use the multipliers established above and, like the asset management program of the first recommendation, to develop a methodology for jurisdictions to perform comprehensive fiscal impact analysis. As in the first recommendation, pilot programs are also recommended as an avenue toward implementing this recommendation.

The fourth area of recommended study deals with evaluating the costs and revenues associated with non-infrastructure services provided by the local government. As noted above, the preliminary analysis of Meridian Township, Michigan, does not provide results that are readily applicable to other communities in Michigan. This same analysis can be conducted on a statewide level to determine the relationship between lot size and taxable value at a broader scale. Also, in order to determine the impact of lot size on individual government services, such as police protection, fire safety, and parks and recreation, it would be necessary to develop a regression analysis for each service, including all other variables that influence the service cost. A fiscal impact analysis of the different impacts of residential property versus commercial, industrial, farmland, and open space on local government costs and revenues is needed to determine whether certain types of land use "subsidize" others.

Finally, this study focused on the infrastructure cost differentials between single family houses that rely on public service provision of water, sewer, and roads. It is important to note that the results are not applicable to houses that have septic tanks, wells, and private roads. It would be very difficult to compare the infrastructure life cycle costs between a house within the public service boundary and one outside of it because the latter are hard to quantify (i.e. the costs borne by the individual landowner to build and maintain his/her septic system, well, and roads). Other costs, such as police and fire protection, may be quantifiable if the information is collected in an accessible format. In addition, this study was limited to relatively small lot sizes (less than one acre); further analysis with larger lot sizes is needed. One other consideration that must be noted is the cost of transferring homes currently on personal infrastructure to public infrastructure and services, which would require the decommissioning of old systems and construction of new systems. A fifth area of research, including developments that are not on public services, would be valuable to local governments, particularly in the suburban and rural areas of Michigan.

10.0 References

Archer, N. P. 1973. "A Maintenance Inventory Control System for High Cost Items." Association for Operations Management (APICS). International Technology Conference Proceedings. p. 1–11.

American Society of Civil Engineers (ASCE). 1999. *Optimization of Collection System Maintenance Frequencies and System Performance.* U.S. Environmental Protection Agency Office of Wastewater Management. Black & Veatch, eds. Washington, DC. February 1999. Available at: http://www.asce.org/pdf/finalreport.pdf.

Beecher, J. A. 2006. Michigan State University Public Utilities Institute. Email Correspondence.

Burchell, R., G. Lowenstein, W. Dolphin, C. Galley, A. Downs, S. Seskin, K. Still, and T. Moore. 2002. *Costs of Sprawl-2000.*Washington, D.C.: National Academy Press.

Burchell, R.W., D. Listokin, and W.R. Dolphin. 1985. *The New Practitioner's Guide to Fiscal Impact Analysis.* New Brunswick, NJ: Center for Urban Policy Research.

Burchell, R.W. 1978. *The Fiscal Impact Handbook.* New Brunswick, NJ: The Center for Urban Policy Research.

Dougharty, L., S. Tapella, and G. Sumner. 1975. *Municipal Service Pricing Impacts on Fiscal Position.* Santa Monica, CA: RAND.

Downing, P. B. 1973. "User Charges and the Development of Urban Land." *National Tax Journal,* 26 (4): 631–637.

Downing, P.B. and R.D. Gustely. 1977. "The Public Service Costs of Alternative Development Patterns: A Review of the Evidence." *Local Service Pricing Policies and Their Effect on Urban Spatial Structure*, P.B. Downing, ed., Vancouver, Canada: University of British Columbia.

Environmental Protection Agency (EPA). 1995. "Cleaner Water through Conservation," EPA Number: 841B95002. April 1995. Available at: http://nepis.epa.gov/pubtitle.htm.

Ewing, R. H. 1994. "Characteristics, Causes, and Effects of Sprawl: A Literature Review." *Environmental and Urban Issues* (Winter): 1-15.

Ewing, R.H., P. Haliyur, G.W. Page. 1994. "Getting Around a Traditional City, a Suburban PUD, and Everything In-Between." *Transportation Research Record.* 1466: 53-62.

Frank, J.E. 1989. *The Costs of Alternative Development Patterns: A Review of the Literature.* Washington, D.C.: Urban Land Institute.

Isard, W. and E.R. Coughlin. 1957. *Municipal Costs and Revenues Resulting from Growth.* Wellesly, MA: Chandler-Davis.

Kelly, E.D. 1993. "Is Growth Management A Good Idea?" *Managing Growth: Policies, Techniques, and Impacts.* Westport: Praeger, p. 207-224.

Ladd, H. 1992. "Population Growth, Density, and the Cost of Providing Public Services." *Urban Studies* 29(2): 273-295.

Nelson, A.C., and J.B. Duncan. 1995. "State and Regional Growth Management Approaches." *Growth Management Principles and Practices.* Chicago, IL: Chicago Press, p.19-36.

Michael, Holly J., Kevin J. Boyle, and Roy Bouchard. 2000. "Does the Measurement of Environmental Quality Affect Implicit Prices Estimated from Hedonic Models?" Land Economics, 76 (2): 283-298. May 2000.

Michigan Center for Geographic Information (CGI). 2005. "*General Land Office Plats,*" Department of Informational Technologies Available at: http://www.michigan.gov/cgi/0,1607,7-158-12540_13083-31058--,00.html.

Michigan Department of Labor & Economic Growth (DLEG). 2005. "Statewide Search for Subdivision Plats," Bureau of Construction Codes and Fire Safety. Available at: http://www.cis.state.mi.us/platmaps/sr_subs.asp. Accessed May 2005.

Peiser, R.B. 1984. "Does it Pay to Plan Suburban Growth?" *Journal of the American Planning Association* 50: 419-433.

Real Estate Research Corporation (RERC). 1974. *The Costs of Sprawl: Environmental and Economic Costs of Alternative Residential Development Patterns at the Urban Fringe.* Washington D.C.: U.S. Government Printing Office.

Richardson, H. W. and P. Gordon. (1993). "Market Planning-Oxymoron or Common Sense." *Journal of the American Planning Association,* 59 (3): 347-352.

R. S. Means. 2005. "R. S. Means Building Construction Cost Data" *61st Annual Edition.* Available at: http://www.rsmeans.com. May 2005.

Southeast Michigan Council of Governments (SEMCOG). 2005. *2030 Regional Transportation Plan for Southeast Michigan.* Available at: http://www.semcog.org/TranPlan/index.htm.

Speir, C., and K. Stephenson. 2002. "Does Sprawl Cost Us All? Isolating the Effects of Housing Patterns on Public Water and Sewer Costs." *Journal of the American Planning Association,* 68: 56-70.

Windsor, D. 1979. "A Critique of the Costs of Sprawl." *Journal of the American Planning Association* 45 (3): 279-92.

End Notes

[1] Lateral extensions are usually the responsibility of the homeowner and not the municipality. For this reason, they are not included in this analysis.
[2] Specifically, the cost indices for 2004 and 2003 are 133 and 132, respectively, resulting in an inflation rate of 1.01 between the two years.

Glossary

Easement - A limited right to make use of a property owned by another, for example, a right-of-way across the property.

Land use - The way land is developed and used in terms of the kinds of anthropogenic activities that occur (e.g. agriculture, residential areas, and industrial areas).

Life Cycle Costs: The cost of an asset from its inception to demolition including cost of planning, design, construction, operation and maintenance, and disposal.

Road Maintenance: In general, the preservation (scheduled and corrective) of a highway or transit line. It includes the preservation of the surface, shoulders, roadsides, and structures, including right-of-way (ROW) maintenance; and such traffic-control devices as are necessary for safe, secure, and efficient use of a highway/transit line.

Open Space: An area of land that is valued for natural processes and wildlife, for agricultural and sylvan production, for active and passive recreation, and providing other public benefits.

Right-of-Way: The land used for maintenance of roads, streets or railroad tracks belonging to the appropriate authority (highway department, county, municipality, railroad, etc.).

Sanitary Sewers: Underground pipes that carry off only domestic or industrial waste, not storm water.

Septic System: An on-site system designed to treat and dispose of domestic sewage. A typical septic system consists of tank that receives waste from a residence or business and a system of tile lines or a pit for disposal of the liquid effluent (sludge) that remains after decomposition of the solids by bacteria in the tank and must be pumped out periodically.

Septic Tank: An underground storage tank for wastes from homes not connected to a sewer line. Waste goes directly from the home to the tank.

Sewage: The waste and wastewater produced by residential and commercial sources and discharged into sewers.

Sewer: A channel or conduit that carries wastewater and storm-water runoff from the source to a treatment plant or receiving stream. "Sanitary" sewers carry household, industrial, and

commercial waste. "Storm" sewers carry runoff from rain or snow. "Combined" sewers handle both.

Sewerage: The entire system of sewage collection, treatment, and disposal.

Spoil: Dirt or rock removed from its original location--destroying the composition of the soil in the process--as in strip-mining, dredging, or construction.

Sprawl: The spread of development across the landscape that far outpaces population growth" (Ewing et al., 1994).

Storm Sewer: A system of pipes (separate from sanitary sewers) that carries water runoff from buildings and land surfaces.

Trench Slope: Slope of trench excavation walls which is dependent on the soil type to prevent trench cave ins as required by OSHA.

About the Land Policy Institute Report Series:

The Land Policy Institute Report Series provides a conduit for scientists and Extension practitioners at Michigan universities to communicate their path breaking work to professional peer institutions, policy makers and other constituents at the local, state and national level. The science-based information that this series provides is intended to contribute to the knowledge and understanding of these audiences and the development of innovative and sustainable land use policies. The series presents findings from frontier research on issues ranging from Urban Revitalization to Farmland and Natural Resource Conservation. Reports published in this series are reviewed by appropriate peers from industry, government, academia, non-governmental organizations and combinations thereof. The review process is coordinated by the Land Policy Institute, with the John A. Hannah Distinguished Professor in Land Policy serving as the Series Editor

App. 8
#29761

29761

Jerry Harless
PO Box 8572
Port Orchard, WA 98366
October 27, 2006

Kitsap County Board of County Commissioners
614 Division Street
Port Orchard, WA 98366

RE: Comprehensive Plan 10-Year Update and EIS

Commissioners:

In response to decisions of the Central Puget Sound Growth Management Hearings Board[1] and the Thurston County Superior Court[2], Kitsap County has prepared a Draft amended Comprehensive Plan and Environmental Impact Statement to accomplish the RCW 36.70A.130(3) requirement for a decennial update to its Urban Growth Areas.

Because the County embarked on this process late and under a tight remand order, the timeline has been quite short for such a large and comprehensive endeavor. Laboring under such pressures, the County staff, consultants and Planning Commission have put forth a heroic effort, not only to create the necessary content, but to actively involve the community and hear from all affected parties. For this they should be heartily commended.

While I disagree with much of the substantive content of the Draft Plan/EIS, I do not want my discussions of its shortcomings to detract from the vast quantity and quality of work which has been done to date and which will be necessary to achieve the completion deadline which looms so near.

I do not believe that all of the GMA compliance issues for which the 2005 Kingston Subarea Plan were remanded last summer have been cured by the Plan as it is currently drafted. Furthermore, I believe that at least two new clear errors have been introduced, namely an across-the-board reduction in urban residential density and an expansion of the UGA to accommodate a racetrack without the required capital facilities planning.

In preparing my written testimony, I have endeavored to base my critique, not solely on my own opinions or interpretations of the GMA, but have conducted a good deal of research on the relationships between types and densities of urban development and urban infrastructure. I have included several of the source documents I uncovered as exhibits for the record and for your consideration. I believe they support the analysis and conclusions I offer here. I have also included a copy of this letter and all exhibits on a

[1] CPSGMHB Case No. 04-3-0031c
[2] Thurston County Superior Court cases 04-2-02138-1/05-2-01564-8/05-2-01678-4 "Decision of the Court following Trial held December 2, 2005"

CD-ROM in PDF format so that they can be distributed "paperlessly" to the extent possible.

Critique of the Draft Plan and EIS

While this Draft Plan/EIS was in its early stages, the County decided to go ahead and adopt a stand-alone subarea plan and UGA expansion for Kingston prior to completion of the 10-year countywide update. While this action did not comply with the GMA, it did offer the opportunity to test several of the contested policy issues which would also impact the countywide plan. The 2005 Kingston Subarea Plan was found non-compliant with the Growth Management Act in five specific areas[3]:

1) The isolated subarea plan UGA expansion was not supported by a County-wide planning analysis as part of the mandated (and overdue) ten-year UGA update.
2) The UGA subarea plan did not accommodate the full 2025 growth allocation.
3) The UGA was expanded without first adopting and implementing "reasonable measures"
4) The Land Capacity Analysis erroneously excluded from the calculated land supply lands without sanitary sewer systems in close proximity, resulting in an unreasonably oversized UGA.
5) The expanded UGA was not supported by a capital facilities plan to ensure that public services necessary for urban development would be adequate and available within the 20-year plan horizon.

The Ten-Year Update

This Draft Plan/EIS, once adopted, will satisfy the GMA requirement to review and update UGAs on a County-wide basis every ten years[4], albeit two years late.

Accommodate the Full 20-year (2025) Growth Allocation

The Draft Plan/EIS, unlike the isolated 2005 Kingston Subarea Paln) comes very close to accommodating the entire 20 year growth allocation (through 2025). However, the "population banking" provision to essentially postpone accommodation of a portion of that allocated growth does not fully comply with the GMA requirement[5] to do so. Clearly the County and the City of Bremerton should coordinate a mutually-acceptable solution to accommodate this growth and time is precious short to accomplish this. However, the GMA does not provide an exception such as "population banking" to sections 110 and 115.

Practically speaking, it should be possible for the County and City to put together a plan amendment that accomplishes this and adopt it early enough in 2007 to have it in place before an appeal to the Hearings Board could be mounted and decided. While a

[3] CPSGMHB # 06-3-0007 July 27, 2006 Final Decision and Order
[4] RCW 36.70A.130(3)
[5] RCW 36.70A.115

questionable strategy, commitment to early adoption of such an amendment firmly stated in the Plan, with a real timeline, could avoid such an appeal. Unfortunately, the County's track record with timely implementation of future action commitments in its plans inspires scant confidence.

Reasonable Measures

I am pleased to note that the Draft Plan includes for the first time "reasonable measures" to address the inconsistencies between actual and planned growth patterns that were documented in the 2002 Buildable Lands Report and subsequent County monitoring documents.

In particular, eliminating the failed "pre-planning" option, requiring urban sewer hookups and enforcing minimum densities have the potential to measurably increase the proportion and density of growth locating in UGAs. This first step has been a long time coming, but does not complete the County's obligation under RCW 36.70A.215(3).

Some of the proposed measures lack the implementing mechanisms to make them any more than good intentions. The urban sewer hookup policy, for example, does not have a counterpart in the proposed development regulations. Without an implementing regulation, the County and/or Health District will have no means of enforcing this policy at the plat or permit stage and the policy will be thwarted[6]. Likewise, the minimum density provision is powerless without a corresponding minimum density/maximum lot size requirement in the zoning code.

These omissions and/or oversights can be easily corrected in the final plan and development regulations by inserting the necessary language to implement these policies.

A more difficult error to correct is the lack of consistency between the "reasonable measures" policies and the decision to expand the UGA. The GMA mandates reasonable measures (to correct inconsistencies) as an alternative preferable to expanding the UGA. But the Draft Plan/EIS evaluate population demand and land supply, then conclude that the UGA must be expanded in complete isolation from any consideration of reasonable measures.

The determination that the UGA must be expanded and by how much does not take into account the impact of the proposed reasonable measures. If these measures are "reasonably likely" to increase urban densities, as the Draft Plan/EIS assert that they are, then surely that must mitigate to some extent the need to expand the UGA to accommodate the allocated population.

But nowhere do the Draft Plan/EIS predict or attempt to quantify the impact of these "measures" on future development patterns or their consequent impacts on urban land supply. Some of them are intuitively persuasive, but without further analysis, who is to

[6] It should also be noted that the failure to ensure the adequacy and availability of sanitary sewer collection, transmission and treatment systems in the Capital Facilities Element and Plan will also thwart this measure.

say what they are reasonably likely to accomplish? The bottom line can be found in the only relevant analysis that is provided in the Draft Plan/EIS: the Urban Land Capacity Analysis (ULCA).

The vast majority of residential capacity provided in the plan is in the "Urban Low" and "Urban Cluster" designations. The ULCA is based upon the assumption that residential densities will occur at the very minimum allowed in this plan designation (i.e. 4 du/acre). This in spite of the fact that, as CTED notes in their October 20, 2006 comment letter, recent plat activity has averaged 5.6 du/acre. So either the ULCA is in error because it does not take into account the effect of the "reasonable measures" (an internal inconsistency between plan elements) or the staff and consultants have concluded that these measures, when considered in the full context of the Draft Plan, will result in or at least fail to present a decrease in achieved densities. In order to meet the requirements of the GMA, these measures must be reasonably likely to make things better, not worse.

I am also still concerned that increasing the density and development potential of Rural Wooded lands will exacerbate problems of drawing growth to the UGAs. The revised Rural Wooded Incentive Program is certainly an improvement over its predecessor, but still should not be implemented without a TDR program to compensate rural land owners while directing actual growth to UGAs.

Land Capacity Analysis

The first prerequisite for accommodating urban growth in accordance with GMA Goals 1 and 2 is the provision of sufficient urban lands within Urban Growth Areas. The term "sufficient" in the context of planning under the Growth Management Act implies neither a shortage nor an unreasonable oversupply of urban land. The former will be inadequate to receive the planned growth and the latter will result in inefficient use of land and facilities (i.e. "sprawl").

It is for this reason that Goals 1 and 2 are implemented in the GMA with the requirement to support the location and sizing of UGAs with a rigorous and well-documented Land Capacity Analysis (LCA)[7].

The Central Puget Sound Growth Management Hearings Board found that the LCA used to size and locate the 2005 Kingston UGA (expanded) erroneously excluded so-called "sewer-constrained lands", those lands without existing sewer collection systems nearby or deemed likely to be built. This erroneous "sewer constrained lands deduction" resulted in an unreasonably oversized UGA[8].

The Draft Plan removes this reduction factor for its evaluation of Alternatives 2 and 3, but does not do so for Alternative 1 (an unexpanded UGA). This makes it nearly impossible from the plan/EIS materials for anyone to compare the real capacity of the

[7] RCW 36.70A.110(2)
[8] CPSGMHB # 06-3-0007 July 27, 2006 Final Decision and Order

alternatives with one another. Apparently, since the County staff early determined that the UGA would be expanded, revised analysis of Alternative 1 would be unnecessary.

More egregious, the Draft Plan reduces the minimum density for the principal Urban Residential designation ("Urban Low Residential" or "ULR") from 5 to 4 du/acre and the Land Capacity Analysis is altered (from the version used to support the 2005 Kingston UGA expansion) to use the 4 du/acre minimum as the assumed actual density for purposes of calculating land need.

This change is a clear error for several reasons:

1. The ULCA uses a minimum density of 4 du/acre in a 4-9 du/acre designation to calculate land need rather than an average density. *If even one ULR parcel* is developed at greater than the minimum density (assuming the plan is fully implemented and all others develop at the minimum density), the ULCA will have overstated land need. It is an inescapably mathematical principal that the average must exceed the minimum (again assuming that the minimum is actually implemented). By contrast, the City of Bremerton is utilizing an average density (7.5 du/acre) in its residential land capacity analysis[9], recognizing that average densities will occur above the minimum.

2. As CTED has noted in their October 20, 2006 comment letter, monitoring of recent platting activity shows average achieved densities of 5.6 du/acre. This figure, in addition to being an observation of actual as opposed to predicted results, fits neatly between the minimum and maximum densities of a 5-9 du/acre designation. So real world development activity does not support the 4 du/acre assumption of the ULCA.

3. There is no analysis presented in the Draft Plan/EIS for this change, which assumes lower urban densities spreading the same population over a larger area. The planning literature is clear that minimum densities of 7 du/acre are appropriate to adequately support transit service.

4. Lower single –family residential densities drive up land, housing and capital facilities costs for home-buyers, service providers, rate-payers and taxpayers, defeating GMA Goals 4 and 12 (affordable housing and capital facilities).

The Draft Plan/EIS expressly evaluates Alternative 1 using a different density assumption than Alternatives 2 and 3, but the does not include data at a sufficient level of detail to allow analysis of how much of the capacity difference between the existing and expanded UGA alternatives is due to the change in density vs. the change in UGA size. The detailed ULCA spreadsheets which were made available to the Citizen Advisory Committees advising the staff in developing early drafts, and which were expressly adopted as part of the 2005 Kingston Subarea Plan are entirely absent from the Draft Plan/EIS. This failure to "show your work" prevents an "apples to apples" comparison of the relative capacity of the alternatives.

[9] Exhibit A

One thing is obvious, however. The vast majority of urban land capacity is provided in the Urban Low and Urban Cluster designations, the capacity of which has been arbitrarily reduced by 20% (from 5du/acre to 4du/acre). This means that the proposed UGA in Alternative 2 is oversized by at least 20% of what is actually needed to accommodate planned growth.

Capital Facilities

The second prerequisite for accommodating urban growth in accordance with GMA Goals 1 and 2 is the availability of adequate urban services concurrently with urban development.

The capital facilities planning deficiency amply demonstrated with the remand of the 2005 Kingston Subarea Plan has not been remedied by the draft plan. The outdated plan element and 6-year CFP have been updated, but the result does not satisfy the planning and concurrency requirements of RCW 36.70A.020(12) and .070. A brief review of these requirements in contrast with the draft plan materials will clearly illustrate this deficiency.

Since sanitary sewers are the principal make-or-break infrastructure for urban densities and intensities of development[10], I will use sewers to illustrate the failure of the draft plan to comply with the GMA requirements. The failures are systematic, applying also to other urban facilities such as water supply, but to avoid repetition, I will use sewers as the example:

RCW 36.70A.070(3) requires that the inclusion of a capital facilities plan element with five specific parts:

1. An inventory showing the locations and capacities of existing facilities[11].

   Ironically, the 2005 Kingston Subarea Plan came far closer to compliance with this requirement than the draft Countywide plan update does, at least with regard to sanitary sewers. That plan included a map of the UGA which clearly depicted where sewer collection and transmission lines were located, in addition to pump stations and the treatment plant. From that map it was obvious to the most casual observer that a significant proportion of the Kingston UGA had no sanitary sewer facilities located in or near it. Capacity was only evaluated at the terminal treatment plant with no analysis of the adequacy of the collection system.

   The draft Countywide plan does not include this level of detail. It includes only a small-scale map of the entire county with large icons for pump stations and treatment plants. There is no inventory of existing collection systems, either their location or capacity.

---

[10] Urban densities and uses are all dependent on the availability of sanitary sewers. See plan element descriptions at (footnote)

[11] RCW 36.70A.070(3)(a)

The most basic purpose of the required inventory, to document where facilities exist to serve the existing and expanded UGA and where they are lacking, is defeated by the complete absence of this information. It matters little where existing treatment plants and pump stations are if the location and capacity of their collection systems is unknown.

2. A forecast of the future needs for such facilities[12]

   Without the required inventory, it is no surprise that the forecast of future need for sewer facilities is only detailed enough to evaluate future treatment plant demand and perhaps a few pump stations. There is no provision for needed expansions to the collection and transmission systems which make it possible for urban development to utilize the treatment plants.

   The draft plan includes several policy statements permitting and encouraging the use of decentralized sewage treatment systems in basins where topography makes connection to larger systems impractical or cost-prohibitive. The inclusion of these policies in the plan represents a significant improvement in the County's willingness to look beyond the traditional "pipe to the sea" technology. However, the plan does not include any analysis of where such systems will be needed, as opposed to where facilities already exist or where "pipe-to-sea" systems are more appropriate. Notwithstanding the enabling policy language, if the need for these systems is not identified, why would anyone assume they will ever be built?

3. The proposed locations and capacities of expanded or new facilities[13]

   The draft plan does not map, describe or indicate the location of any new or expanded sewer collection or transmission systems with the exception of one to rectify an existing health hazard which was documented over a decade ago[14]. There are no locations designated for decentralized sewer systems at all, rendering their policy enablement moot.

   Ironically, the first decentralized sewer system in the County is scheduled to be built outside of the UGA near Manchester, making possible the development of 70 homes at a density of approximately 5 du/acre on rural land that would not otherwise support urban densities. Surely if the Karcher Creek Sewer District can oversee design and provide maintenance of such a facility in the rural area where it is strictly prohibited by the UGA, the same can be done for unsewered lands within the urban areas. But the draft plan does not propose locating any such systems.

   These technologies represent an important opportunity for Kitsap County. Articles and advertisements in building trade magazines indicate that lower costs and higher

---

[12] RCW 36.70A.070(3)(b)
[13] RCW 36.70A.070(3)(c)
[14] Draft Plan Appendix A, Capital Facilities at page 68

achieved residential densities can be realized with the use of decentralized sewage systems[15]. Area-specific analysis of where these facilities can be used to advantage, together with funding mechanisms, could dramatically improve the success of the Plan.

4. At least a 6-year plan that will finance these facilities[16]

   Unlike the 2005 Kingston Subarea Plan, the draft plan does include an updated 6-year capital finance plan. However, study of the sewer projects included in that plan shows that it does not provide for any expansion of collection and transmission systems to serve new urban growth. It only repairs/replaces existing trunk facilities and adds a line to address a health hazard in Gorst[17].

   Thus the finance plan, while it no doubt accurately reflects the County's plans and intentions, does not finance needed facilities to support urban growth.

5. A requirement to reassess the land use element should anticipated funding fall short[18]

   The necessary policy language is included in the draft plan. However, given that the Land Capacity Element predicts steady growth through the 20-year planning period (as opposed to predicting little or no growth in the first 6 years), and the Capitital Facilities Element/Plan do not provide for the construction of the sewer collection/transmission systems needed to support that growth, the trigger for reassessment of the Land Use Element is tripped before the plan is even adopted.

In addition to deficiencies in the five specific content areas, the primary failure of the Capital Facilities Element/Plan is that it does not ensure adequate facilities will be available upon occupancy as RCW 36.70A.020(12) and 36.70A.070 require. The only concurrency mechanism is for roads. Like the failed Kingston Subarea Plan, the Draft still exempts facilities other than roads from any concurrency requirements.

Appropriate Urban Densities: The Analysis is Lacking

Part of the context in which this 10-year plan update occurs is significant judicial ambiguity about the practical meaning of the Growth Management Act requirement for "urban densities" in cities and Urban Growth Areas as opposed to "rural densities" in rural areas[19]. Over a decade ago, Kitsap County earned the dubious honor of inspiring the CPSGMHB to clarify the GMA distinctions among "urban", "rural" and "sprawl" with

---

[15] Exhibits B, C and D
[16] RCW 36.70A.070(d)
[17] Draft Plan Appendix A, Capital Facilities at page 68
[18] RCW 36.70A.070(3)(e)
[19] The Growth Management Act uses and defines the terms "urban growth" and "rural growth", requiring cities and counties to separate them into distinct areas, but does not specifically define them in numerical terms of residential or commercial density. Thus cities and counties planning under the GMA must determine which densities are appropriate.

the controversial "bright lines" (later referred to as "safe harbors" establishing a minimum appropriate urban density of four dwellings per acre[20].
Recently, the State Supreme Court, in the Viking decision indirectly stated that the Hearings Boards have no authority to set density bright lines. A King County Superior Court judge has reversed a CPSGMHB decision invalidating the City of Kent's Comprehensive Plan which permitted lower densities citing the Viking decision.

This judicial upheaval leaves Kitsap County in a precarious position. The courts will not clarify this issue in time for Kitsap County to complete its plan. As things stand, it appears to be up to the County to perform and document the analysis necessary to support its urban density policies. In exercising local discretion to determine what urban densities are appropriate for the Urban Growth Areas designated in its Comprehensive Plan, Kitsap County must be "guided by" the goals of the Growth Management Act and perform analysis of sufficient rigor to support its decisions.

The Draft Plan/EIS reduces the minimum urban residential density for the majority of UGA lands by 20% (from 5du/acre to 4du/acre) and offers no analysis to support this lower density as appropriate in light of the Goals of the GMA or related goals of the Draft Plan (e.g. efficient provision of services, encouraging transit, etc.). In response to direct questions on this topic at Open House forums, the only justification County DCD Staff could offer was that this change had been requested by builder/developers to make it easier to place large homes on single-family lots. In email messages sent to members of the Citizen Advisor Group that drafted the ULCA, County staff offered another purpose for the reduced density assumption in the ULCA: to offset the impact of the Hearings Board decision disallowing the "sewer constrained lands" deduction.[21]

There is significant analysis available in the planning literature to evaluate the appropriateness of urban density options in light of, not only the Goals of the GMA, but also in light of policy goals found in the Draft Plan. I have attached a number of these as exhibits to this letter and also referenced several books which discuss the topic in some depth.

Appropriate Urban Densities: The Nexus of Density and Urban Services

Density and Transit

The factor which appears to argue for the highest minimum urban density is that of public transit. Like most public services, there is logically a minimum residential density needed to provide a critical mass to make transit services cost-effective. This topic has been studied extensively across the nation and around the world and the literature is rich in this regard. In Kitsap County, we do not approach the densities needed to support high-capacity transit such as rail, light rail, express bus service, etc. so the high residential densities needed to support these are not relevant here, at least not for a few

[20] See Bremerton, et. al. v Kitsap County (Bremerton I), CPSGMHB Case No. See also Exhibit X (Tovar)
[21] See Exhibit E. This appears to be a clear intention to thwart the Hearings Board's Order and preserve the excessively oversized UGA boundary.

decades. However, the literature is consistent in recommending a minimum residential density of 7 du/acre to support intermediate local bus service and 15 du/acre for frequent bus service[22].

We are probably not ready for frequent bus service in this county within the 20-year period of this plan, but we have intermediate local bus service in place in most UGAs and the CPPs, existing and Draft Plan contain policies encouraging transit and transit-friendly development. The low density of 4 du/acre permitted in Alternative 2 and predicted in the ULCA is woefully inadequate to support even the occasional bus service Kitsap Transit provides. Perpetuation of this low density development will require the taxpayers to shoulder a disproportionate share of the cost of providing transit service.

Density and Infrastructure

The academic literature is filled with statements to the effect that lower densities of residential development, especially "sprawl", result in inefficient use of land as well as urban services and facilities[23]. While intuitively persuasive, these statements are rarely quantified. It is, of course incontrovertible that fewer lots on the same amount of land will use more land per dwelling at a higher land cost per dwelling. No one disputes this. Some would argue, however, that the increased value of these larger lots would generate increased tax revenues to offset any increased per-unit cost of urban services and facilities. Again, this assumption makes intuitive sense, but is almost never quantified. In fact, the only quantitative study I was able to locate finds quite the opposite to be true in practice.

A study published just this past May by the Michigan State University Land Policy Institute[24] has compared infrastructure (roads, sewer and water) costs for single-family residential subdivisions at various densities and found that increased tax revenues fall short of the increased costs when densities are lower. Please note that this study does not compare multifamily to single-family, but different densities of single-family residential plats. The study found that, not only are the initial construction costs of roads, water and sewer higher per-unit as density decreases (as one would expect), but *the on-going operations and maintenance costs are also higher.* In other words, the ratepayers and taxpayers living in higher density areas subsidize these low-density plats *in perpetuity.*

This effect has alarming implications for the fiscal future of Kitsap County. The failure of tax and fee revenues from low-density developments to keep pace also erodes the capital capacity of the road and utility districts (in our case often the County) to build new or expanded facilities for the next wave of development.

---

[22] e.g. Exhibit F. See also Dunphy, Robert T., et. al. *Developing Around Transit: Strategies and Solutions That Work.* Washington, D.C.: ULI-the Urban Land Institute. 2004

[23] See Exhibits G through K

[24] Attached hereto as Exhibit L

According to an article in The SUN earlier this month[25], Kitsap County is already looking at a $281 million shortfall in revenues to complete needed road projects over the next 20 years. Low density development will further erode these revenues by bleeding the road funds through higher maintenance costs. Similar funding issues face the County's (and presumably cities' and sewer districts') ability to ensure adequate and available sanitary sewer facilities to the unincorporated UGAs.

The decision to lower the density floor for single-family residential urban development from 5du/acre to 4du/acre, a 20% reduction, will have an immediate and ongoing negative impact on our ability to provide urban services and facilities to support new growth. We already have a well-documented shortfall in anticipated revenues to fund needed capital facility expansion to support growth. Lowering the density of single-family residential development will exacerbate this problem, drawing our County road and sewer systems into a self-inflicted spiral of decline. Given the dire budget projections the County has been given, we can ill afford to make imprudent decisions now.

Appropriate Urban Densities: Noncompliance will Cost More

It is clear that Alternative 2 with its implicit permitting and predicting of 4 du/acre as the predominant urban residential density will not comply with the Growth Management Act. The County has failed to provide any analysis to support this density as appropriate and it defies the theoretical and empirical analysis in the relevant planning literature. The reduction in density will thwart Goals 1, 2, 4 and 12 of the GMA, realizing the "eight major negative consequences of sprawl" which the Hearings Board articulated when it rejected Kitsap County's first GMA plan in 1995:

1) it needlessly destroys the economic, environmental and aesthetic value of resource lands;
2) it creates an inefficient land use pattern that is very expensive to serve with public funds;
3) it blurs local government roles, fueling competition, redundancy and conflict among those governments;
4) it threatens economic viability by diffusing rather than focusing needed public infrastructure investments;
5) it abandons established urban areas where substantial past investments, both public and private, have been made;
6) it encourages insular and parochial local policies that thwart the siting of needed regional facilities and the equitable accommodation of locally unpopular land uses;
7) it destroys the intrinsic visual character of the landscape;
8) it erodes a sense of community, which, in turn, has dire social consequences.

Furthermore, Kitsap County stands to forfeit millions of dollars in state grant revenues if this plan is found non-compliant by the Hearings Board. This applies not only to planning grants from CTED, but major (and sorely needed) infrastructure funding sources as well. For example, the Public Works Trust Board granted Kitsap County over $6

[25] Exhibit M, October 4, 2006 Article

million for sewer system improvements in 2005. Counties with Hearings Board findings are expressly ineligible from these grants. Kitsap County can ill afford to squander such revenue sources.

IMPRA: UGA Expansion to Accommodate ISC/NASCAR

Both CHECK and KCRP have amply documented the inappropriateness and futility of this proposed site-specific UGA expansion and you have my previous correspondence on the issue. What has changed since I last urged you not to do this is the issuance of the Central Puget Sound Growth Management Hearings Board's Final Decision and Order remanding the Kingston Subarea Plan.

In that decision, the Hearings Board, consistent with several past decisions of all three hearings boards that we cited extensively in our briefs, an Urban Growth Area expansion, like the initial designation of a UGA, must be supported by a Capital Facilities Plan element as required by RCW 36.70A.070(3). The principal here is the same which the Board clearly enunciated to Kitsap County a decade ago:

> A comprehensive plan's capital facility element is inextricably linked to the land use element. The two must be consistent. The linkage between the two elements is what makes planning under the GMA truly comprehensive (i.e., complete, inclusive, connected) as compared to pre-GMA planning.
>
> Jurisdictions cannot set land use policy without completing the necessary capital facilities analysis. **The Board holds that the lack of a fully completed capital facilities plan is more than a conceptual shortcoming - it is a fatal legal defect in the County's Plan.** It alone is sufficient cause for the Board to find that the land use element and every other component of a plan violates the requirements of the Act[26].

The County cannot add hundreds of acres to the UGA and promise to plan for the necessary roads, sewer, water, fire and police services later. Granting the Overton/ISC request to designate this property urban within an expanded UGA is a clear and obvious violation of the GMA which this County has had plans remanded for on at least three occasions in the past, most recently just last August.

George Santayana is credited with the axiom that "those who cannot learn from history are doomed to repeat it". This should not be our fate.

In Conclusion

The County has made a tremendous effort to complete a meaningful 10 year update to its Comprehensive Plan. In many ways, the Draft Plan is a considerable improvement over

[26] CPSGMHB # 95-3-0039c Final Decision and Order at 77.

aspects of the 1998 Plan. In particular, the County staff has done an outstanding job engaging the public, drawing many new faces into the process for the first time.

There are, however, serious errors of policy and shortcomings in the Draft Plan as it now exists. I hope that my comments and the attached materials will be useful in correcting these before the Final Plan is adopted. As always, I am happy to discuss these comments at any time.

Jerry Harless
South Kitsap County

Enclosures: Exhibits A-M

Schedule of Exhibits

Exhibit A

City of Bremerton Department of Community Development memorandum dated September 8, 2006 from Geoffrey Wendtlandt to Mark Personius Re: 2006 Urban Land Capacity Analysis (ULCA) Methodology

Exhibit B

Hallahan, Dennis F. P.E. *Meeting Environmental and Financial Concerns: Onsite sewage collection, treatment and management offer developers and design professionals with wastewater options*, Land Development Today, Volume 2, Issue 9, September 2006, pp 10-14.

Exhibit C

Gaze, Steve. *Acceptance and Utilization Growing for Decentralized Systems: As more challenging land areas are being developed, wastewater technology is improving the bottom line*, Land Development Today, Volume 2, Issue 9, September 2006, pp 50-52

Exhibit D

Paid Advertisement for Quanics Engineering Water Solutions, Land Development Today, Volume 2, Issue 9, September 2006, page 21

Exhibit E

Email message dated August 3, 2006 from Eric Baker to a list of individuals, subject: Updated Land Capacity Analysis and Buildable Lands Report -Status

Exhibit F

Dunphy, Robert T., et. al. *Ten Principals for Successful Development Around Transit.* Washington, D.C.: ULI-the Urban Land Institute. 2003

Exhibit G

Tovar, Joseph F. FAICP. *Appropriate Urban Densities in the Central Puget Sound Region: Local Plans, Regional Visions, and the Growth Management Act.* The Puget Sound Regional Council, November 2005

Exhibit H

Mazza, Patrick and Fodor, Eben. *Taking it's Toll: The Hidden Costs of Sprawl in Washington State.* Date and publisher unknown.

Exhibit I

Haughey, Richard M. Higher-Density Development: Myth and Fact. Washington, DC: ULI-the Urban Land Institute. 2005

Exhibit J

Local Government Commission (in cooperation with the Environmental Protection Agency and sponsored by the National Association of Realtors). *Creating Great Neighborhoods: Density in Your Community*. Washington, DC: National Association of Realtors. 2003.

Exhibit K

Mohamed, Rayman, Wayne State University. "The Economics of Conservation Subdivisions: Price Premiums, Improvement Costs, and Absorption Rates", *Urban Affairs Review*, Vol. 41, No. 3, January 2006

Exhibit L

Najafi, Mohammad, et. al., The Fiscal Impacts of Alternative Single Family Housing Densities: Infrastructure Costs. MSU Land Policy Institute Report #2006-2. Michigan State University. May 2006.

Exhibit M

Dunagan, Christopher. *Road Costs Come Under Scrutiny*. Bremerton Washington. Kitsap SUN, October 4, 2006

Additional References (not attached as exhibits)

Burchell, Robert W., et. al., Cost of Sprawl Revisited: The Evidence of Sprawl's Negative and Positive Impacts. Transportation Research Board and National Research Council (RCRP Report 39). Washington, DC: National Academy Press. 1998

Labor Management Group. *A Consensus on Rebuilding America's Vital Public Facilities*. 1983

Hopkins, Lewis D. *Urban Development: The Logic of Making Plans*, Washington, DC: Island Press. 2001

Fodor, Eben. *Better Not Bigger: How to Take Control of Urban Growth and Improve Your Community* (second edition). Vancouver, BC: New Society Publishers. 2001

Urban Land Institute. Project Infrastructure Development Handbook. Washington, DC: Urban Land Institute, 1989 ULI Catalog Number P43

Dunphy, Robert T., et. al. *Developing Around Transit: Strategies and Solutions That Work.* Washington, D.C.: ULI-the Urban Land Institute. 2004

Property Counselors. *Port Orchard Urban Growth Area Subarea Plan: Development and Population Allocation Report.* Kitsap County Department of Community Development. January 2005 (revised September 2005).

App. 8
Ex. M

To print this page, select **File** then **Print** from your browser

URL: http://www.kitsapsun.com/bsun/local/article/0,2403,BSUN_19088_5041506,00.html

Road Costs Come Under Scrutiny

- **Kitsap County must find new ways to pay for roads needed over the next 20 years.**

By Christopher Dunagan, cdunagan@kitsapsun.com
October 4, 2006

Port Orchard

Kitsap County faces a shortfall of about $281 million needed to expand county roads over the next 20 years, according to an analysis by county consultants.

Wider roads will be needed to serve a growing population, according to a report prepared in connection with the updated Kitsap County Comprehensive Plan. The shortfall is anticipated, despite an obvious effort to hold down road and utility costs by concentrating growth in urban areas.

Among the options considered are allowing roads to deteriorate or to become congested.

The total projected cost to improve the roads needed to carry out the proposed plan is $301 million. Without additional sources of local road funding, the county will generate $79 million through 2025. But $50 million of that is already committed to ongoing projects, leaving just $29 million for road projects related to new growth. About 100,000 more people are expected to live in Kitsap County 20 years from now.

Kitsap County Planning Commission Tuesday was asked to offer ideas on how to close the funding gap as part of the 10-year review of the comprehensive plan. A list of fees and spendingoptions were placed on the table by Eric Baker of the Kitsap County Department of Community Development.

One planning commissioner, John Ahl, insisted that the planning commission was not qualified to discuss budget issues and bowed out of the process. Others wanted the entire county budget to be considered for belt-tightening but finally agreed to discuss the narrower transportation funds.

Planning Commissioner Tom Nevins said, "I would counter that we're not qualified, but we're asked to weigh in on a lot of things we're not qualified to do."

Nevins summarized the options as three possibilities: raising taxes, redirecting spending and increasing efficiencies.

Among the planning commission's recommendations to the county commissioners:

Road projects

Do not reduce related projects such as bike lanes, sidewalks and bridges in order to widen more roads.

Do not reduce paving and other general maintenance projects.

Do not lower countywide road standards, which are designed to keep traffic flowing smoothly.

Consider lowering road standards for select areas only.

Do not neglect county roads within urban growth areas just because they destined for city annexation or Silverdale incorporation.

Revenues

Do not offer voters a choice to raise property taxes.

Consider increasing impact fees, but only for businesses located in specific areas, such as the Bethel Corridor, a commercial area along Bethel Avenue in South Kitsap.

Consider a local option gasoline tax.

Consider adding $15 to vehicle license fees (a split vote of the planning commissioners).

Consider a local transportation improvement district for parts of the county where residents or businesses agree to pay for the roads.

Administrative

Consider redirecting up to $47 million (over 20 years) for traffic-related work conducted by the sheriff's office.

Do not transfer county roads (such as Mile Hill Drive, Lake Flora Road and Glenwood Road) to state jurisdiction.

Do not reduce the size of the county's urban growth areas.

Copyright 2006, kitsapsun.com. All Rights Reserved.

Ads by Google Advertise on this site

New Homes from Mid $200s
Huge new homes in beautiful McCormick Woods. Register Now!
www.quadranthomes.com

Bremerton Homes for Sale
Homes-for-sale MLS search engine Bremerton Port Orchard Silverdale
www.dickblakslee.com

Thanks to UNICEF and You
No Children Died From Preventable Diseases After the Tsunami.
www.unicefusa.org

Appendices 9
CP 107,
AR 47

App. 9 Transcript Hearings on the Merits, June 28, 2007

RECEIVED
JUL 09 2007
CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

BEFORE THE
CENTRAL PUGET SOUND
GROWTH MANAGEMENT HEARINGS BOARD

SUQUAMISH TRIBE, KITSAP CITIZENS FOR RESPONSIBLE PLANNING and JERRY HARLESS, Petitioners, and PORT GAMBLE S'KLALLAM TRIBE Intervenor, vs. KITSAP COUNTY, Respondent.	No. 07-3-0019C (Suquamish II)

HEARING ON THE MERITS
June 28, 2007
Bremerton, Washington

Byers & Anderson, Inc.
Court Reporters/Video/Videoconferencing
One Union Square
600 University St.
Suite 2300
Seattle, WA 98101
(206) 340-1316
(800) 649-2034
2208 North 30th Street, Suite 202
Tacoma, WA 98403
(253) 627-6401
(253) 383-4884 Fax
scheduling@byersanderson.com
www.byersanderson.com
Serving Washington's Legal Community
Since 1980

APPEARANCES

Central Puget Sound Growth Management Hearings Board Members:

Edward G. McGuire,
Presiding Officer
Margaret A. Pageler
Dave Earling

For Petitioner Suquamish Tribe:

Melody Allen
Suquamish Tribe Legal Department
15838 Sandy Hook Road
P.O. Box 498
Suquamish, WA 98392
360.598.3311
360.598.4293 Fax
mallen@suquamish.nsn.us

For Petitioner KCRP:

David A. Bricklin
Bricklin Newman Dold
1001 Fourth Avenue
Suite 3303
Seattle, WA 98154
206.264.8600
206.264.9300 Fax
bricklin@bnd-law.com

For Petitioner Jerry Harless:
(Pro Se)

Jerry Harless
P.O. Box 8572
Port Orchard, WA 98366

APPEARANCES(Continued)

For the Intervenor:

Lauren P. Rasmussen
Gendler & Mann
1424 Fourth Avenue
Suite 1015
Seattle, WA 98101-2217
206.621.8868
206.621.0512 Fax
lpr@gendlermann.com

For the Respondent:

Lisa J. Nickel
Kitsap County Prosecuting
Attorney's Office
MS-35A
614 Division Street
Port Orchard, WA 98366-4681
360.337.4974
360.337.7083 Fax
lnickel@co.kitsap.wa.us

and

Andrew S. Lane
Cairncross & Hempelmann
524 Second Avenue
Suite 500
Seattle, WA 98104-2323
206.587.0700
206.587.2308 Fax
alane@cairncross.com

APPEARANCES (Continued)

Also present:

Linda Jenkins
Julie Taylor
Tom Donnelly
Alison O'Sullivan
Angie Silva
Tom Nevins
John M. Taylor
Patrick Moe
Charles M. Michel
Fred Depee
Beth Wilson
Michael McFadden
Eric Baker
Chris Dunagan
Dorothy Reinhardt

BE IT REMEMBERED that on Thursday, June 28, 2007, at Eagles Nest Fairgrounds Complex, 1200 NW Fairgrounds Road, Bremerton, Washington, at 1:26 p.m., before the CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD;

WHEREUPON, the following proceedings were had, to wit:

<<<<<< >>>>>>

MR. McGUIRE: Welcome. It's 1:30-ish on June 28, 2007. We're at the Eagles Nest at the Kitsap County Fairgrounds in Bremerton -- actually, Silverdale.

We're here for the Hearing on the Merits in Suquamish Tribe, Kitsap Citizens for Responsible Planning and Jerry Harless, Port Gamble S'Klallam Tribe, Intervenor v. Kitsap County, Central Puget Sound Growth Management Hearings Board Consolidated Case No. 07-3-0019C.

I'm Ed McGuire, presiding officer in this matter. With me today are Margaret Pageler, to my right, and Dave Earling, to my left, board members.

We also have Julie Taylor, our law clerk, with us; and Linda Jenkins, sitting next to her, who is an

extern from Seattle U. Court reporting services are provided by Barbara Brace from Byers & Anderson.

Now let's have the petitioners introduce themselves. Suquamish Tribe?

MS. ALLEN: My name is Melody Allen. I'm an attorney for the Suquamish Tribe.

MR. McGUIRE: And KCRP?

MR. BRICKLIN: David Bricklin.

MR. McGUIRE: And who's with Jerry Harless?

MR. HARLESS: I'm here for myself.

MR. McGUIRE: Let's do Intervenor, Port Gamble.

MS. RASMUSSEN: Lauren Rasmussen for the Port Gamble S'Klallam Tribe.

MR. McGUIRE: You did not file a brief for this?

MS. RASMUSSEN: I did file a brief.

MR. McGUIRE: Okay.

MS. RASMUSSEN: It wasn't as long as some of the others.

MR. McGUIRE: I apologize.

MS. RASMUSSEN: It might have been lost somewhere. If you don't have it, that's a problem. Did you guys get it?

MR. LANE: Did you file a reply?

MS. RASMUSSEN: No. I didn't file a reply.

MR. McGUIRE: We've got it.

MS. RASMUSSEN: Okay.

MR. McGUIRE: I didn't see it there. Respondent, Kitsap County?

MR. LANE: Andrew Lane with Cairncross & Hemplemann, co-counsel for Kitsap County.

MS. NICKEL: Lisa Nickel with Kitsap County.

MR. McGUIRE: Okay. Now I've got to take some time doing some preliminary matters here.

MS. PAGELER: Are we circulating a sign-up sheet?

MR. McGUIRE: Please sign up so we have your names for the court reporter, so that we can make sure everybody who's here, who wants to read their name in the decision, can do so.

The filings that we received, first of all, we have a series of core documents that were labeled A through G, and we carried them forward from the compliance hearing in a prior case. We received those on January 11th, and that includes the County's Ten-Year Plan Update, its Draft Environmental Impact

Statement, Final Environmental Impact Statement, amendments to the county code and four different matrixes.

On May 24th, we received Petitioners Suquamish Tribe, Kitsap Citizens for Responsible Planning and Jerry Harless' Opening Brief with the listed exhibits, 22 tabbed exhibits. 11 were noted as Exhibits A through K, and 11 exhibits cited to the record.

On June 4th, 2007, we received an errata sheet for Petitioners' Opening Brief, which we accepted, that changed one calculation that was made in the briefing.

On June 15th, we received Kitsap County's Prehearing Brief, with a list of exhibits, 14 tabbed exhibits. Six were noted as Exhibits A through F, and there were eight exhibits from the record.

On June 19th, 2007, we received a Motion Requesting Relief from Prehearing Order Deadline, a Motion to Supplement the Record and Reply to County's Motion to Dismiss Petitioners' Exhibit, asking basically to supplement the record with six exhibits that were previously submitted: A, B and H through K.

On June 22nd, we received Petitioners Suquamish Tribe, KCRP and Jerry Harless' Reply to Respondent Kitsap County's Prehearing Brief, no additional exhibits attached to that.

have next to each other. You can drive down the highway in a rural area and have one 500-acre project, and then another and another and another, and the only thing separating one from the other is 100 feet.

So you tell me, is that -- you know, in terms of the legislature talking about visual context of the rural area, talking about impacts to traffic or other environmental resources, wildlife, I mean, this is essentially no separation at all, if you're talking about a hundred feet in between these projects, and so, while there's a nominal limit of 500 acres, the reality is there's no limit at all.

Within any 500 acres, though, you now take your 500 acres. You get 1 unit per 5 acres, so in 500 acres you get 100 units. Now, you can then develop a cluster, and each cluster can be no more than 25 units.

So imagine you have 500 acres. You can create four subdivisions of up to 25 units each on a hundred acres, because you're going to set aside 375 acres. So you've got 125 acres to work with, and you've got a hundred homes. You're going to put four subdivisions on these hundred acres. What does that look like? Well, I have an illustrative -- give you an idea what this looks like. (Handing.)

The black and white one I handed to you first, there's actually four different examples there: A, B, C and D. Those are four different examples of how a landowner could utilize this ordinance.

Just, for instance, taking A -- you'll notice, by the way, at the bottom there's a legend, and the dash-dot dash-dot line represents a road. So if you imagine a road running east and west through area A, you could take this 120 acres and create your four clusters, and each cluster would have 24 units in it, and so you'd have a subdivision.

You'd be driving down the road, and you'd see a subdivision on your left, you'd see one on your right, you'd see one on your left, you'd see one on your right. You might as well be in Issaquah, North Bend. You might as well be anywhere other than the most rural parts of this four-county region, and the most rural part of Kitsap County.

Another example, take Parcel B. Here you don't have a road running through the middle of the parcel. Imagine that there's roads, you know, on the east and west, north and south boundary. You've got a quad, you know, road system, and in each corner the developer puts in a subdivision.

Or C, you've got crossing roads in the middle.

You can put four subdivisions on each of those four corners.

And in D, imagine you've got a road running diagonally through the area, and you can line your subdivisions up that way, hardly the idea -- hardly in keeping with maintaining a rural context or rural visual image.

The color illustration I handed you is an example of taking clusters and just lining them up. Now, there's a requirement that you separate each cluster by 150 feet, okay. That's -- most of those clusters are separated by well more than 150 feet.

Some of these clusters actually have more than 25 homes in them, so that way it's not technically correct, but all you have to do to make them correct is take one of those lots in the middle of that cluster and X them out and turn it in to open space, because those lots are 150 feet wide.

So now you've divided one cluster that was more than 25 into two, and that's all it takes, is 150 feet. So you knock out a lot, you've got two separate clusters instead of one big one.

The reason you use this is, if you're familiar with some of the history of -- in this county, you might recognize this subdivision is actually -- looks

similar to McCormick Woods, an urban growth area that's been in controversy here before.

The point being, you can take what is truly urban growth and plop it down in the middle of a rural area and meet the requirements of this clustering ordinance. The ordinance fails to meet the requirements of the Act in many ways because of these shortcomings.

050 of the Act requires that we control and contain rural development. This isn't going to control and contain rural development. It's going to create an oversupply of lots in the rural areas.

This Board has recognized before, as has the County's Buildable Land Report, that one of the things frustrating the County's efforts to get enough growth in the urban areas is we've got too many sub-sized, not rural-sized, not 5-acre and larger lots in the rural areas. Well, here, instead of dealing with those grandfathered lots, we're going to create more of them. What a wonderful idea -- not.

You know, the County has been directed, through the reasonable measures provisions, to try to stem this overdevelopment in the rural areas, and instead they adopt a program which creates more urban-sized lots in the rural areas.

The impermanence of the 40-year set-aside then just adds insult to injury because -- I mean, you know, if those set-asides were permanent, you could say, "Well, at least we've got three-quarters of this locked up," but you don't even have that. All you have is a convenient phasing, from the developer's perspective.

01 of the Act requires urban services in urban areas. This isn't going to be consistent with this. I'm well aware that the ordinance says that these facilities must not be approved if they require urban services, but there's a difference between what happens in the short term, when they're originally developed, versus what happens in the long term after you have a number of these develop, and what happens?

The roads end up being over taxed. You have to start expanding roads. You're putting in stoplights and red lights. The aquifer can't keep up, and you need to pipe in water. The community septic system fails, and you need to put in urban-style sewers, treatment plants, whatever.

Sure, the individual projects as they're approved don't require urban services, but the cumulative effect over time is to create a long-term need for those facilities in an area of the county which is

furthest from where they ought to be developed.

It doesn't protect the long-term maintenance of the rural wooded zone, which was -- the County said that one good thing about this is, in the long-term, we're going to protect the woods, but it doesn't do that. In the long-term, it just facilitates the piecemeal development of the rural wooded area, and it portends to the long-term disappearance of all the rural woodlots in the county. No long-term protection provided.

In defense, the County says -- they begin by saying: The Petitioners' complain that the County didn't adopt the precise proposal that we advanced.

That is not our complaint. The problem here isn't that this version isn't precisely what we adopted. The problem is that what they adopted runs contrary to the Act's goals and requirements.

The County also notes that the clusters will have some good features, and they will.

They must comply with the critical area ordinance. You know, I don't know if I'm supposed to get up and applaud them for that. I mean, what, they were going to exempt them from the critical area ordinance? Of course they're going to comply with the critical area ordinance. That doesn't mean that any of the issues

that I've just spoken to or those in our brief have been addressed.

They're not going to put curbs on the road, so -- to maintain a rural look to the roads. Well, that's nice, but I note even that isn't enshrined in stone because it's -- when you read the ordinance, it says "should" not "shall" with regard to that provision.

MR. McGUIRE: You've got about five minutes.

MS. RASMUSSEN: If you've got something you've got to say, I can do it in three, but I'm going to talk fast.

MR. BRICKLIN: They say that the logging -- you know, if there's logging out there, it must comply with the Forest Practices Act. How does that address these issues?

They made reference that -- there will be deep wells, not shallow wells. But again, if you look at the terms of the ordinance, this is encouraged, not required.

Buffers are encouraged to incorporate natural features, not required. Open spaces encouraged to protect significant natural features and fish and wildlife habitat, not required.

The open space set-aside can actually be logged.

Don't be confused with the nomenclature. There's rural wooded, which can be logged, but the open space also can be logged, so that's not even providing what you might think from the terminology used.

They talk about the hearing examiner will require -- will impose requirements to ensure that the rural wooded values are protected by clustering.

And they characterize the hearing examiner as independent, which I question that characterization. The hearing examiner is employed by the County, not independent.

These are vague requirements that the County is being -- that the hearing examiner is being asked to enforce. We've addressed that more in our brief.

The last point I want to talk about is the reference to monitoring. We'll just a take a few minutes out of the rebuttal.

MS. RASMUSSEN: Okay.

MR. BRICKLIN: They rely heavily on monitoring, and they say that's going to address this. First of all, if the program is flawed in the first place, why allow -- the way the monitoring program works, they're going to allow 5,000 acres out of the barn at a time. If we know the horse is feral, why let him have the first 5,000 acres out of the barn, to

Mr. Bricklin talks about that before something becomes a development or the predominant pattern, you know, you want to -- you want to do something about it. What we're worried about is -- the areas he calls the "boonies" is where the Tribes live. I mean, that's -- I mean, it's not exactly the boonies.

I know you didn't necessarily all look at my brief, but my Exhibit 6 to my brief talks about the rural wooded land use designation, and they talk about the potential -- there's a map that says: The potential parcels to include in the pilot project in northern cluster.

If I'm reading the map right, the potential cluster is this area above Port Gamble Bay. Port Gamble S'Klallam has been fighting for a long time about development above Port Gamble Bay. This land is largely owned by Pope Resources, and so they have a lot of rural land in the county.

We're concerned, you know, in a specific example of how this could impact us. That's why we intervened. You know, we're going to tell you about how this hurts us.

This pilot project -- you know, even before we've done the monitoring and figuring out this doesn't work will actually have the impact of encouraging people to

move to this new development or subdivision and -- and one of reasons for this is because not only is it beautiful there and has views of the bay, but it's really close to the ferry service.

We're concerned that this wasn't considered, and so -- just specifically, we think that this pilot program is essentially a model for creating sprawl. The County says the goal is to protect wooded land and forestry, but all that really is happening here with the 40-year cycle -- and most of our very short brief focuses on the lack of permanence in the cycle.

You know, a growth cycle for a tree is over 40 years, so all you're really asking Pope to do is to wait until the trees grow and then cut them again. I mean, that's all -- they get their little development. They create their little clustered development. They wait for the trees to grow, and then in 40 years they cut them again, and then develop.

I mean, as far as we can see, this 40-year provision isn't doing anything at all to protect the wooded and forestry -- the wooded land and the forestry of the area, and so we -- we don't see any justification in the record to use the 40-year cycle.

All we get is a response that we're only required to plan for 20 years. If you're going to use 40

years, we'd like to see some sort of reason that it's consistent with the goals in the Act, and this is inconsistent with the protection of the land for forestry. There's nothing in the record to justify the 40-year cycle.

In addition, Mr. Bricklin talked about what's allowed on the ground. If you look at the 40-year cycle, and you look at what the goals are -- and specifically, we talk about Goals 8, 9 and 10 -- talking about protection of the environment.

Well, fish need permanent habitat. They don't just need habitat for 40 years until it's time to develop again, and the Tribes are kind of well-placed to understand the need to plan a little bit longer when it comes to open -- when it comes to fish habitat, land, air and water. These are things that the fish hopefully will still be around to use in 40 years. I mean, if that's the goal, if that's what we're trying to move towards.

So anyway, just to conclude, you know, protection of forestry is supposed to be permanent. Habitat protection is permanent. Here Pope just has a carte blanche development right that doesn't appear to promote any goal in the Act, even though it says it's supposed to, and it fails to be guided by specifically

Goals 8, 9 and 10.

MR. McGUIRE: The Petitioners will have about 30 minutes in reply. Do you have any questions for Petitioners at this time, Ms. Pageler?

MS. PAGELER: Yes. In talking about reasonable measures, what is the impact of the Board's decision on the Kingston plan?

MS. ALLEN: The County did respond that that should be automatically -- should automatically give them compliance here as well, but, as we have stated in our reply brief, that there are differences here because we -- there are countervailing programs here, like the RWIP, that weren't at issue in the Kingston subarea plan. So even though those reasonable measures are similar, we have a different countywide context here.

MS. PAGELER: Okay. I wanted the County to address that, too.

MR. McGUIRE: Mr. Earling.

MR. EARLING: Maybe Mr. Harless can answer this, or someone in planning for Kitsap. Just so I've got some information to mull in my head over the next amount of time, what's the current population of Kitsap, what's projected by 2020, and what's the square mileage of Kitsap?

nodding behind you.

MR. EARLING: Up and down.

MR. LANE: I was trying to look in the reflection to see that. I'm trying to think of how to explain just the different character of the -- recognizing it in zoning and then a flat, across the board deduction for what's been calculated to be critical area.

MR. McGUIRE: The only importance that -- in my mind as to the zoning is that's going to give you the minimum density you're going to use in the land capacity analysis. You can take the zoning away after you say this is the rural density we're using, the one unit per acre.

Then you do your land capacity analysis. Again, you're trying to solve a different problem there then you were with the zoning.

MR. LANE: Right.

MR. McGUIRE: Now, if you're doing your deductions, you have -- again, in the early days it was gross generalization on all land -- 15, 20 percent, depending -- but we have seen that jurisdictions have become much more sophisticated, especially buildable lands counties where they have better data, so you get closer to parcel size data.

We're making those deductions, so it's not a general number.

Isn't there still a danger of double counting or taking out critical areas twice?

MR. LANE: You know, I think if you went through and looked at each and every parcel and each and every potential development, there's a possibility that there's some, but I don't -- I think the approach though --

MR. McGUIRE: How much urban restricted land is there in the county?

MR. LANE: It is coming.

MR. McGUIRE: Okay. Again, I'd like a specific number, but I -- I mean, is this half the urban land, is it ten percent of the urban land? Give me a sense for now.

MR. BRICKLIN: It's on Jerry's --

MR. BAKER: Roughly 21 percent of the residential -- residentially zoned land.

MR. HARLESS: I'd agree, within a percentage point.

MR. McGUIRE: Nice to see you guys agreeing. Okay, Mr. Lane. You can leave double dipping.

MR. LANE: Thank you. I think

Appendices 10
CP 106,
AR 33

App. 10
Ex. 6 #30967

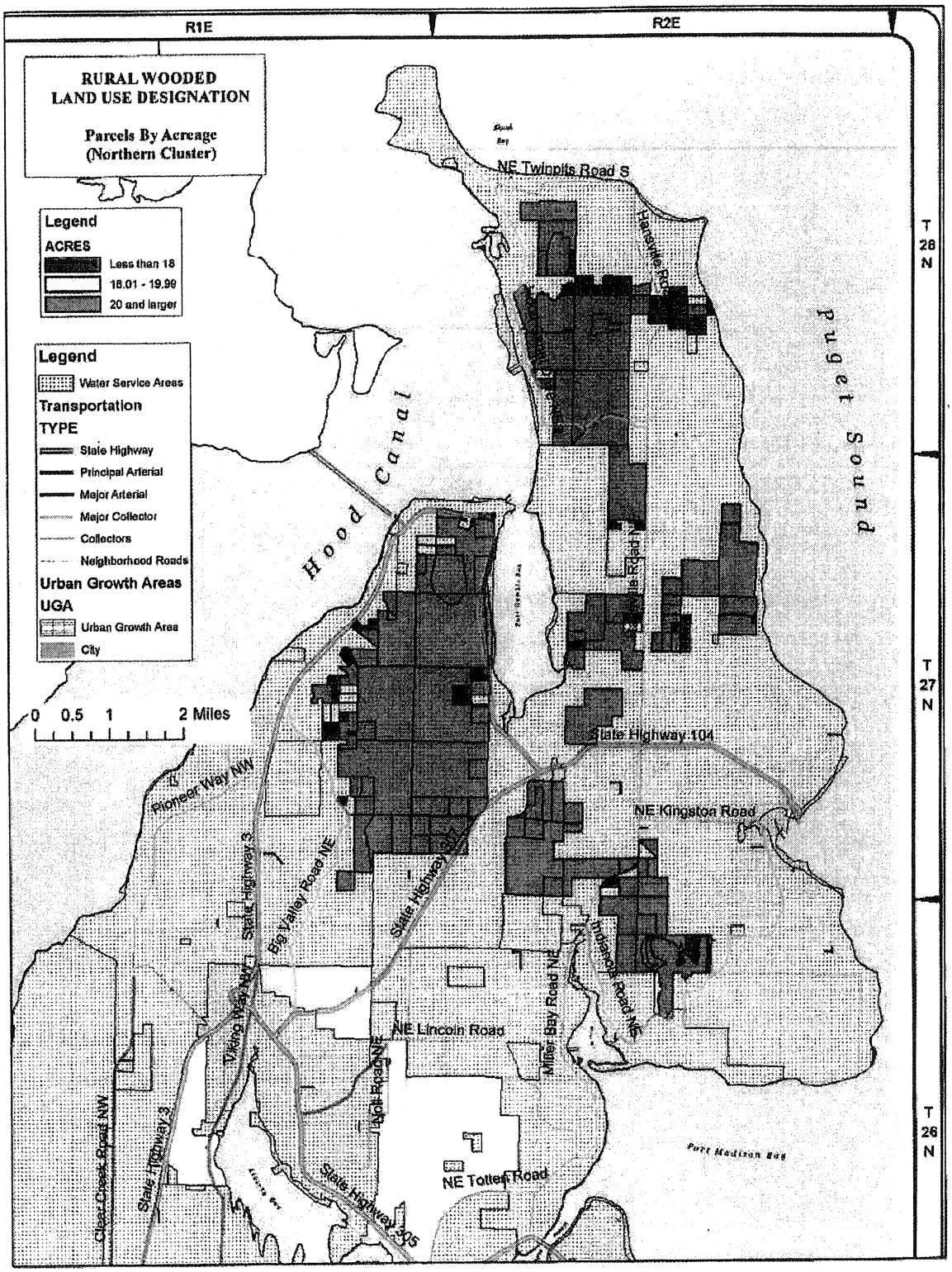


Figure 1: Rural Wooded Parcels by Acreage (Northern Cluster)

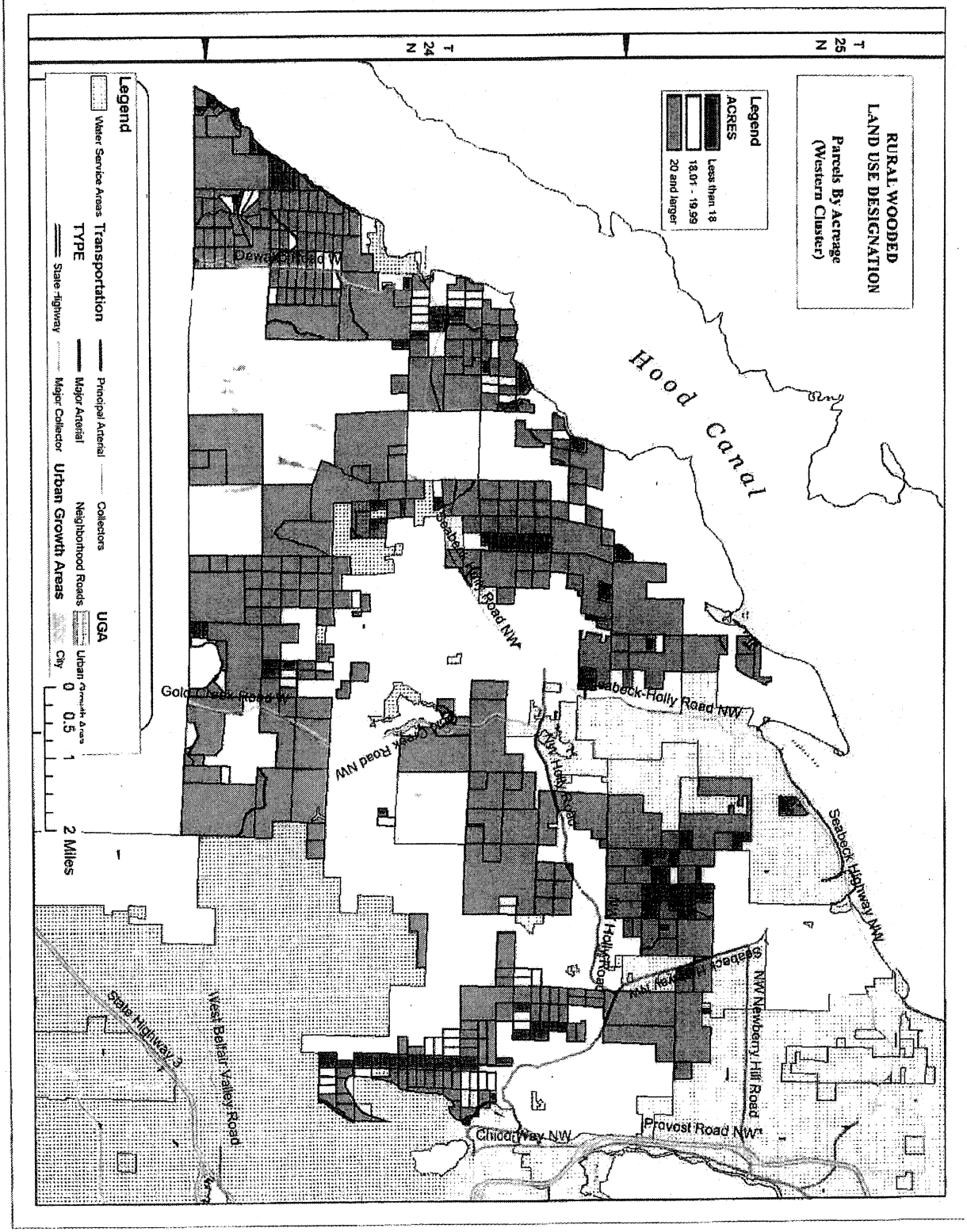


Figure 2: Rural Wooded Parcels by Acreage (Western Cluster)

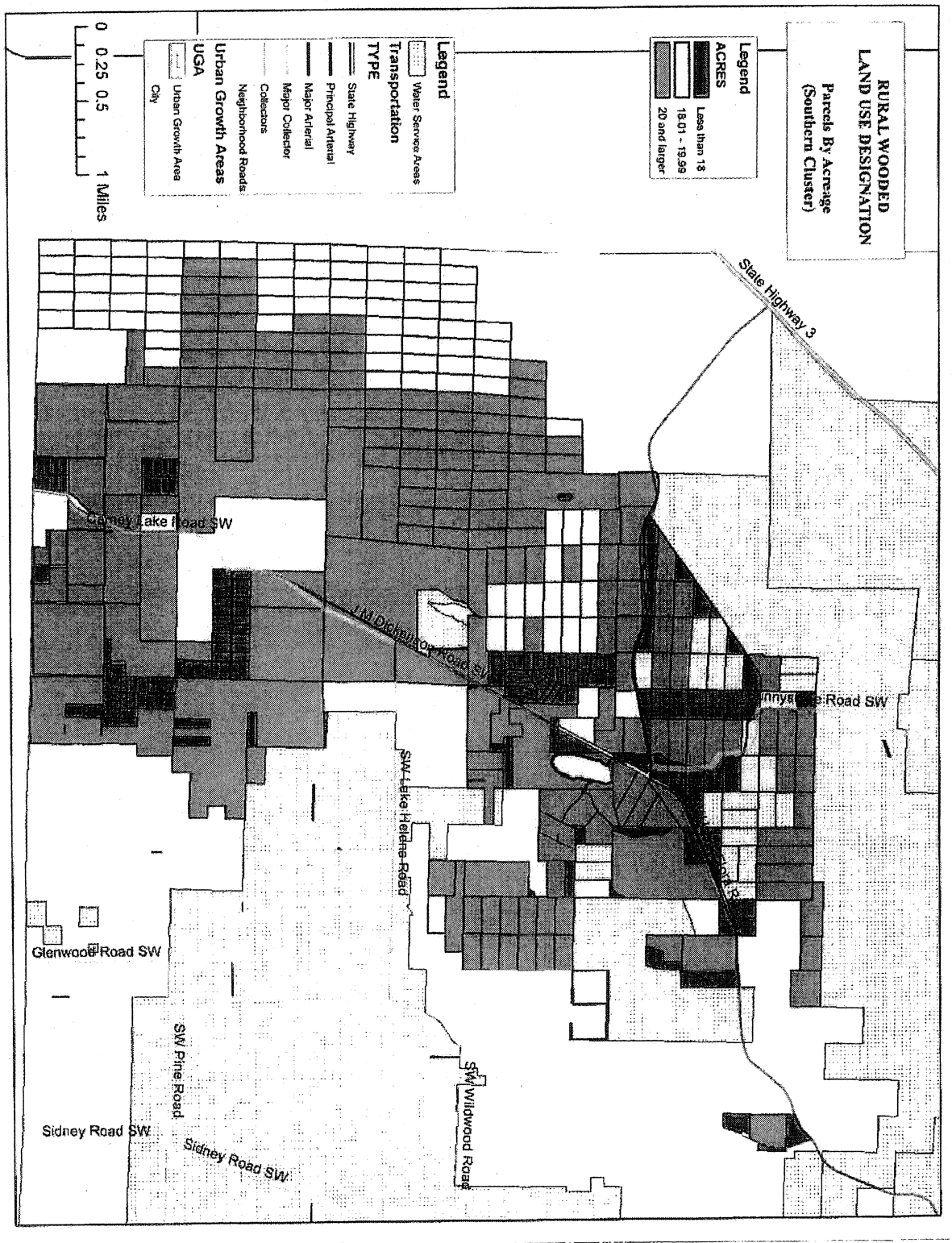
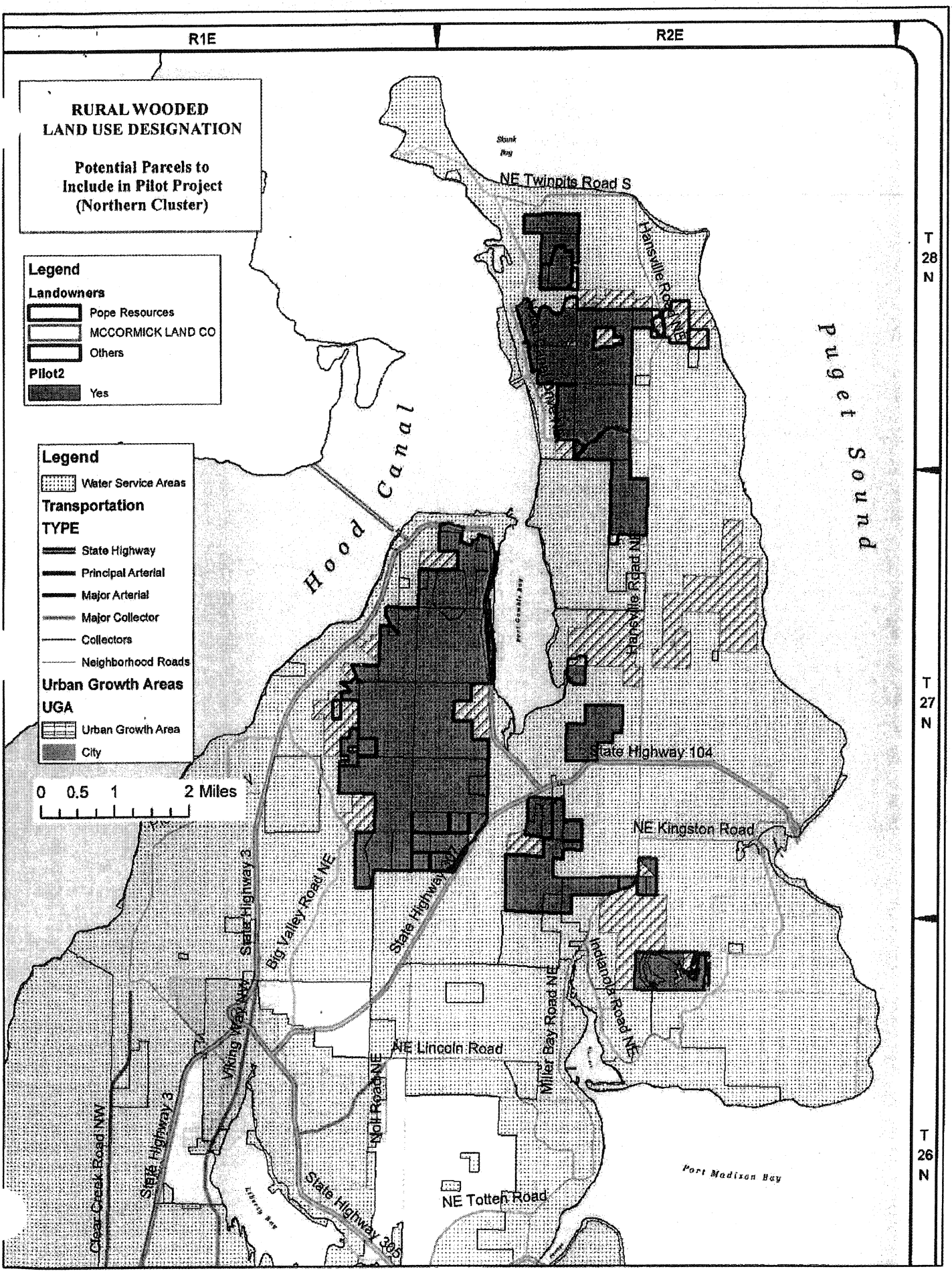
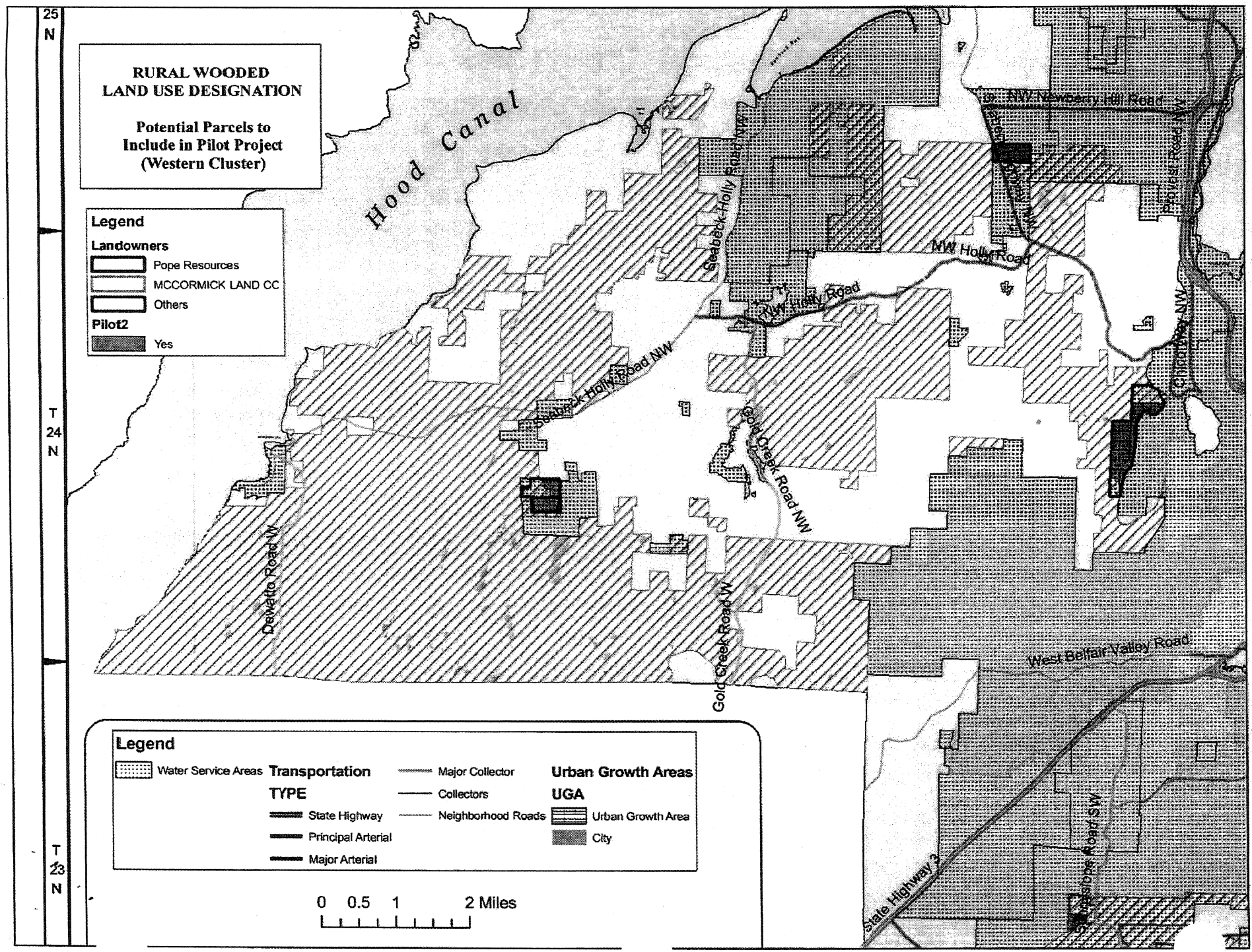
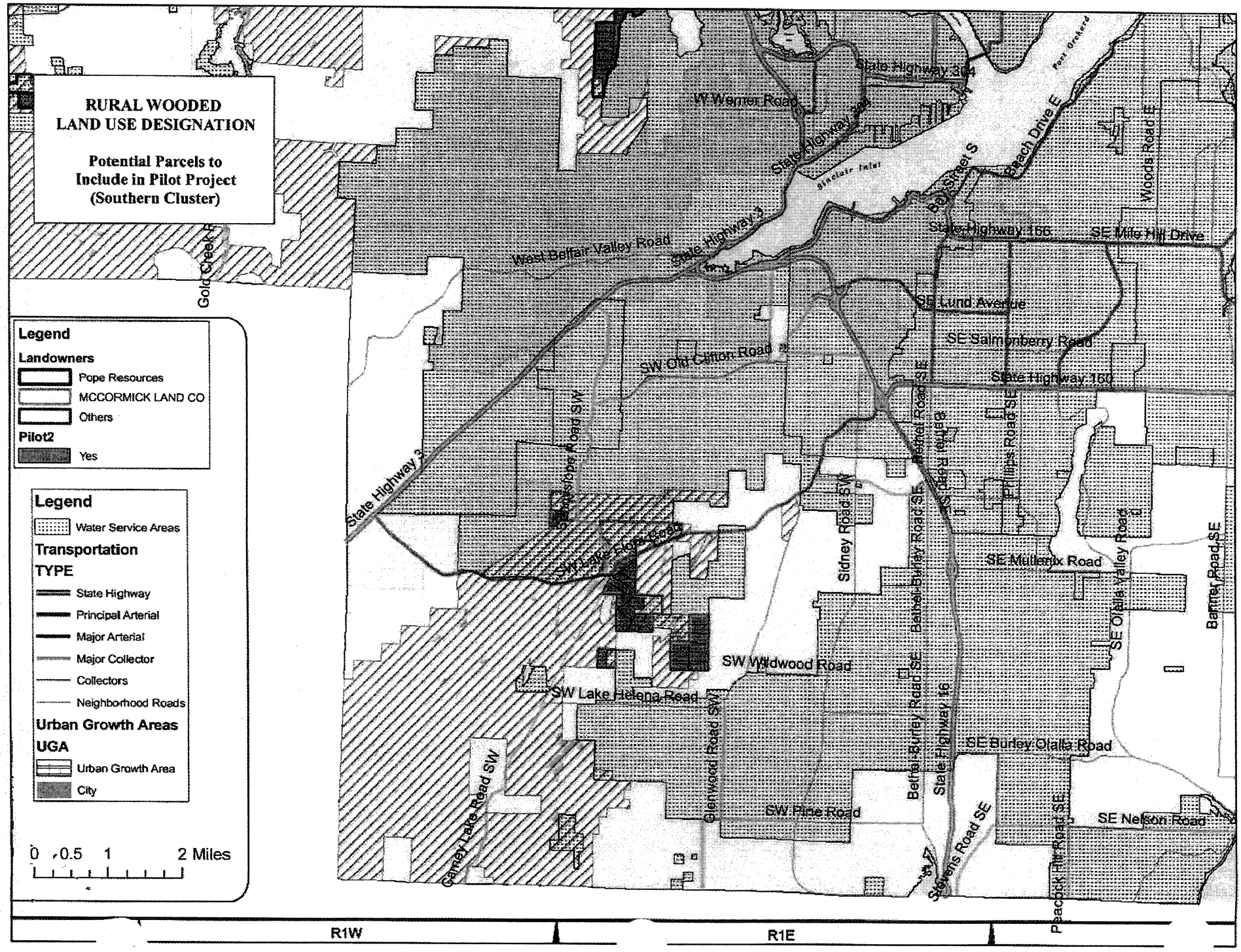


Figure 3: Rural Wooded Parcels by Acreage (Southern Cluster)


R1E
R2E
RURAL WOODED
LAND USE DESIGNATION
Potential Parcels to
Include in Pilot Project
(Northern Cluster)
Legend
Landowners
Pope Resources
MCCORMICK LAND CO
Others
Pilot2
Yes
Legend
Water Service Areas
Transportation
TYPE
State Highway
Principal Arterial
Major Arterial
Major Collector
Collectors
Neighborhood Roads
Urban Growth Areas
UGA
Urban Growth Area
City
0 0.5 1 2 Miles
Hood Canal
Puget Sound
NE Twinpits Road S
Hansville Road NE
Port Gamble Bay
Miller Bay Road NE
State Highway 104
NE Kingston Road
Big Valley Road NE
State Highway 3
Viking Way NW
NE Lincoln Road
Indianola Road NE
Clear Creek Road NW
Noll Road NE
State Highway 305
NE Totten Road
Port Madison Bay
T 28 N
T 27 N
T 26 N


RURAL WOODED
LAND USE DESIGNATION
Potential Parcels to
Include in Pilot Project
(Western Cluster)
Legend
Landowners
Pope Resources
MCCORMICK LAND CC
Others
Pilot2
Yes
25 N
T 24 N
T 23 N
Hood Canal
Seabeck-Holly Road NW
NW Holly Road
Seabeck Holly Road NW
Gold Creek Road NW
Dewatto Road W
Gold Creek Road W
NW Newberry Hill Road
Provost Road NW
Chico Way NW
West Belfair Valley Road
State Highway 3
Legend
Water Service Areas
Transportation
TYPE
State Highway
Principal Arterial
Major Arterial
Major Collector
Collectors
Neighborhood Roads
Urban Growth Areas
UGA
Urban Growth Area
City
0 0.5 1 2 Miles


RURAL WOODED
LAND USE DESIGNATION
Potential Parcels to
Include in Pilot Project
(Southern Cluster)
Legend
Landowners
Pope Resources
MCCORMICK LAND CO
Others
Pilot2
Yes
Legend
Water Service Areas
Transportation
TYPE
State Highway
Principal Arterial
Major Arterial
Major Collector
Collectors
Neighborhood Roads
Urban Growth Areas
UGA
Urban Growth Area
City
0 0.5 1 2 Miles
W Werner Road
State Highway 3
West Belfair Valley Road
Gold Creek R
State Highway 3
SW Old Clifton Road
SW Lake Helena Road
Sidney Road SW
Clarkwood Road SW
Carney Lake Road SW
SW Wildwood Road
SW Lake Helena Road
SW Pine Road
Clarkwood Road SW
Belfair Valley Road SE
State Highway 16
SE Burley Olalla Road
Stevens Road SE
Peaceful Hill Road SE
SE Nelson Road
State Highway 3
Sinclair Inlet
Port Orchard
State Highway 304
Beach Drive E
Bay Street S
State Highway 166
SE Mile Hill Drive
Woods Road E
SE Lund Avenue
SE Salmonberry Road
State Highway 160
Phillips Road SE
Belfair Road SE
SE Mullenix Road
SE Olalla Valley Road
Banner Road SE
R1W
R1E

Appendices 11
CP 104,
AR 14

App. 11
#305167

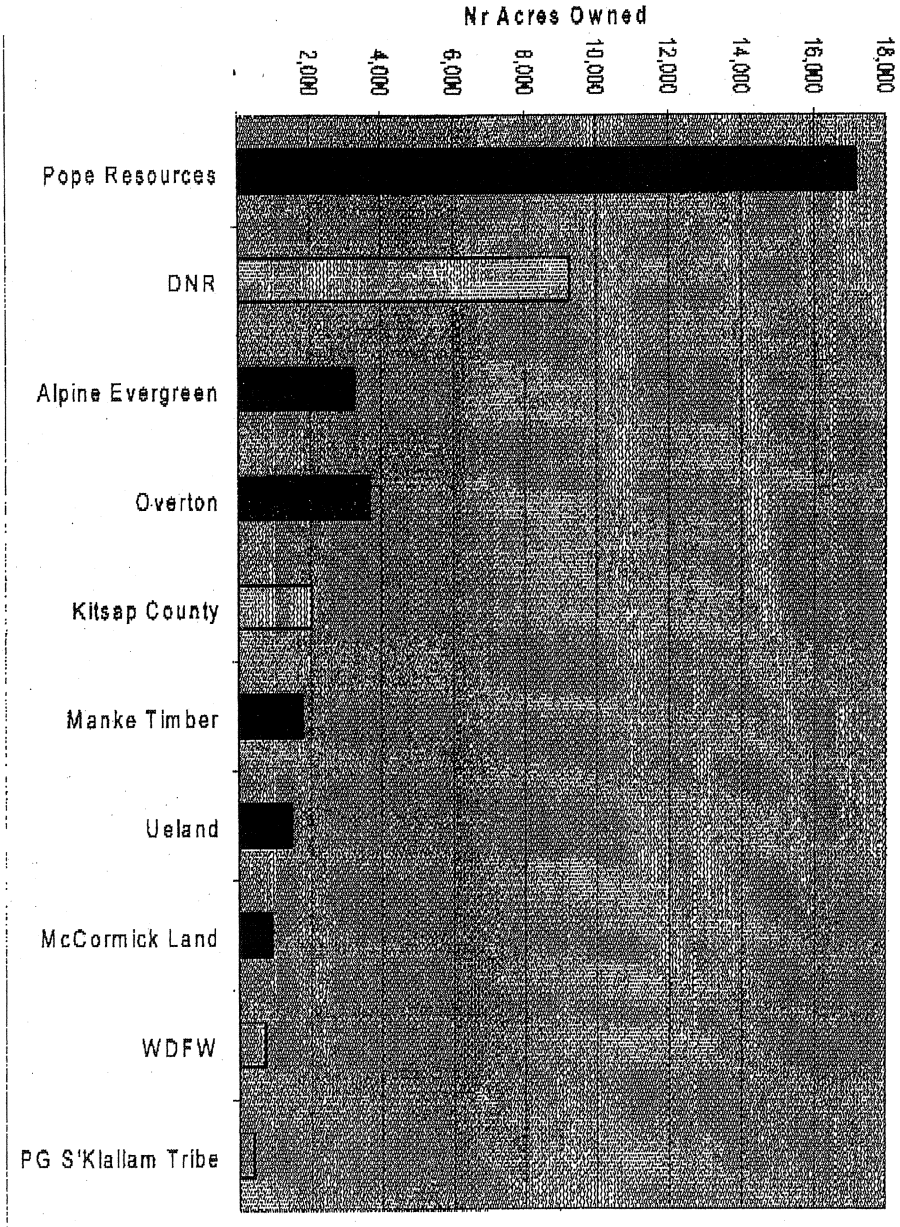


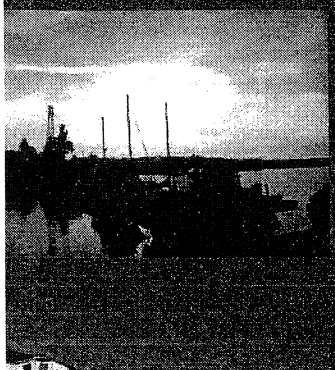
Figure : Ownership of Rural Wooded Land: Top 10 Landowners by Acreage

Appendices 12
CP 261,
AR 96

App. 12
Index 11

BUILDABLE LANDS REPORT 2000-2005

AUGUST 2007



Unincorporated Kitsap County
Platted Rural Densities
2000-2005

Zone	Final Plats	Lots	Gross Acres	Net Acres	Gross Density	Net Density	Plan Density
Interim Rural Forest	**1**	**75**	**448.7**	**176.4**	**0.2**	**0.4**	**0.05**
Rural Protection	**4**	**111**	**107.8**	**50.2**	**1.0**	**2.2**	**0.1**
Rural Residential	**7**	**112**	**117.6**	**63.3**	**1.0**	**1.8**	**0.2**
Totals	***12***	***298***	***674.1***	***289.9***	**0.4**	**1.0**	

Densities reported in lots per acre
Sources: Kitsap County DCD; Mark Personius, AICP, Growth Management Consultant

Permitted Rural Densities

Permitted density analysis for the unincorporated rural areas is shown in the following table. The data indicate that more than 10,000 gross acres were utilized to accommodate 4,030 new residential units in the rural areas over the past five years. The overall average gross densities in the applicable rural zones are higher than the target planned rural densities. These higher-than-currently-allowed densities are likely due to the large number of smaller legal non-conforming lots of record (the so-called "legacy lots") that were approved in the Rural Residential zone under the old pre-GMA density standards. These lots will continue to influence the achieved rural densities analysis until they have been developed, consolidated, or have sold, transferred or otherwise extinguished their development rights.

Unincorporated Kitsap County
Rural Permitted Densities
2000-2005

Rural Zone	Gross Acres	Units	Units/Gross Acre Density
Interim Rural Forest *(1 unit/20 acres)*	937.2	86	0.09
Rural Protection *(1 unit/10 acres)*	2183.8	736	0.34
Rural Residential *(1 unit/5 acres)*	6628.2	3,015	0.45
Urban Reserve *(1 unit/10 acres)*	339.5	193	0.57
Totals	***10,088.7***	***4,030***	***0.40***

Sources: Kitsap County DCD; Mark Personius, AICP, Growth Management Consultant

Permitted LAMIRD Densities

Multi-family permitted densities for unincorporated UGAs are the same as multi-family platted densities for 2000-2005. Overall, the multi-family permitted unit average gross density for all the UGAs is more than 14 units per acre.

Unincorporated Kitsap County
Multi-Family
Urban Permitted Densities
2000-2005

Zone	Units Permitted*	Gross Acres	Ave. Density (Units/Acre)
Urban Restricted	24	41.2	0.6
Urban Medium	66	10.4	6.4
Urban Village Center	3	0.2	13.6
Urban High	240	4.7	51.3
Neighborhood Commercial	542	4.1	133.8
Total	875	60.5	14.5

* Includes condominiums, apartments and townhouses
Sources: Kitsap County DCD; Mark Personius, AICP, Growth Management Consultant

Rural Areas

Platted Rural Densities

Platted rural density analysis for unincorporated Kitsap County is shown in the following table. The data indicate twelve final plats totaling almost 675 acres were recorded during the past five years creating a total of 298 new rural single family lots. The average achieved net platted densities in the applicable rural zones are higher than the target planned rural densities. This is attributed to pre-GMA vested preliminary plats that did not receive final plat approval until 2000-2005. In these instances, the plats were subject to pre-GMA regulations in effect at the time of their application which generally allowed higher rural densities than post-GMA regulations.

DRAFT

The relatively high rate of new rural housing units indicates a strong demand for housing in a rural setting. The majority of this growth appears to be occurring on pre-existing rural lots not on new platted rural parcels. The following table illustrates the share of permitted rural residential units allocated to pre-existing lots compared to new rural lots created from 2000-2005 subdivision activity. The data indicate that if *all* the new rural lots created from 2000-2005 in the county were built upon during the same time period, they could only have accommodated a maximum 16% of the new rural housing units permitted during the past five years. Conversely, this means that at least 84% of all the permitted rural housing units in the last five years were on pre-existing lots. The large pre-existing lot share of new growth is attributed to the supply of smaller legal non-conforming lots found in the unincorporated rural areas—mostly in the Rural Residential zone. These small so-called "legacy lots"—typically smaller than current zoning allows —were approved under old pre-GMA density standards. These non-conforming lots will continue to influence the urban/rural share of new housing unit growth until they have been developed, consolidated, or had their development rights purchased, transferred or otherwise extinguished.

Unincorporated Kitsap County
Rural Residential Lot Development
2000-2005

Type of Activity	2000-2005 Lots	2000-2005 Units
Rural Subdivisions		
Long Plat	298	
Short Plat	212	
Large Lot	175	
Total New Rural Lots Created	***685***	
Total Rural Residential Units Permitted		***4,320***
2000-2005 Rural Housing Unit Growth Share		
Share of Units Permitted on Pre-existing Lots		**0.84**
Share of Units Permitted on New Lots		**0.16**

Source: Kitsap County DCD; Mark Personius, AICP, Growth Management Consultant

DRAFT

Are Urban Densities Being Achieved within the Urban Growth Areas?

- In all jurisdictions, the average net platted densities of all final approved urban residential plats and condominiums met or exceeded four units per acre.

Is the Capacity of the Land Supply Adequate to Accommodate Forecast Growth?

- Countywide, the existing 2005 residential buildable land supply of all jurisdictions can accommodate a total of approximately 117,387 persons. The planned 2000-2025 countywide population growth forecast is 99,602 persons.

- Cities and UGAs have a combined residential buildable land capacity sufficient to accommodate approximately 79,884 persons. The planned 2000-2025 incorporated city and UGA share of the forecast population growth is 75,697 persons.

- Unincorporated rural lands, including Limited Areas of More Intensive Rural Development (LAMIRDs), have a combined residential buildable land capacity sufficient to accommodate approximately 37,503 persons. The planned 2000-2025 non-UGA share of the population growth forecast is 23,905 persons.

- Cities and UGAs have a combined commercial/industrial buildable land supply that exceeds the forecast demand from 2005-2025.

DRAFT

- Almost 90% of the approximately 2,800 new lots created countywide through the final long plat process were in cities and UGAs[3].

- Kitsap County and the cities cumulatively permitted almost 18 million square feet of new commercial/industrial building space. The majority of this new space was permitted in unincorporated UGAs.

Has Development Occurred at Densities Consistent with Planning Assumptions and Targets?

- In cities and UGAs achieved net platted densities from 2000-2005 met or exceeded the planned densities indicated in the various jurisdiction's comprehensive plan's and implementing regulations in almost all applicable urban zones. In some very limited exceptions, net platted densities fell short of the target plan density. However, these circumstances were characterized by a very small number of plats that did not represent a large enough sample size to effectively assess average achieved densities across the entire applicable zone.

- In unincorporated rural areas, average achieved net platted and permitted densities were generally higher than planned rural densities in the applicable zones. This is attributed to both to pre-GMA vested subdivisions that did not receive final plat approval until 2000-2005 and the fact that the majority of new permitted rural units were on pre-existing small non-conforming lots approved under old pre-GMA density standards.

- Appendix B of the Countywide Planning Policies (CPPs) allocated 2000-2025 forecast growth among the cities, UGAs and unincorporated rural areas based on a 76% urban/24% rural share *target* for new *population* growth. Official published OFM population estimates for the county unfortunately do not estimate population by GMA class of lands (i.e., urban and rural). So we cannot plainly compare OFM estimated population growth within the UGAs to their forecast CPP target share of new population growth[4]. However, new *housing unit* growth is a significant component of population growth and often serves as a proxy to population growth. Given that approximately 55% of all new *housing units* permitted countywide from 2000-2005 were in cities and UGAs, the data suggest that the urban share of new population growth during the first five years of the planning forecast period is still short of meeting its planned CPP target. Appendix B of the CPPs specifically indicates that should this goal not be met, *"the target may be reaffirmed or explicitly modified"* through the KRCC process during the next five year population distribution review. The next five year KRCC population review will occur prior to 2010.

[3] Long plats are a type of land subdivision, subject to RCW 58.17, where a parcel is subdivided into more than four lots for purposes of subsequent development.

[4] OFM calculates total incorporated and unincorporated county populations only in their published annual county and city population estimates. OFM calculates annual incorporated city population estimates, but not the unincorporated urban (i.e.,UGA) portion of the unincorporated population.

The rural and resource land zones and their stated residential densities included in the Rural Lands ULCA include:

- Rural Residential (1 DU/5 Acres)
- Rural Protection (1 DU/10 Acres)
- Rural Wooded (1 DU/20 Acres)
- Forest Resource Lands (1 DU/40 Acres)
- Mineral Resource Lands (1 DU/20 Acres)
- Urban Reserve (1 DU/10 Acres)

The four-step approach for the rural residential land capacity analysis is presented below.

Rural and Resource Land (ULCA) Approach

Step 1: Identify All Rural and Resource Land Zoned Parcels by Size

The first step is to identify all parcels in their respective zones. Parcels in each zone are then classified by size. Parcel size ranges are developed in order from smallest to largest to identify the range of non-conforming parcels (i.e., those parcels which are of insufficient size to further subdivide) and conforming parcels (i.e., those parcels which are large enough to further subdivide) in each respective zone.

Step 2: Identify the Use of Parcels in Each Zone

The second step identifies the range of parcels by type of existing use. All parcels are classified as either:

- Vacant (undeveloped),
- Developed,
- Underutilized (developed but large enough to further subdivide),
- Current use tax parcels,
- Miscellaneous non-residential uses, or
- Tax-exempt.

Vacant parcels are coded as vacant in the Assessors parcel database. *Developed* parcels are those with an existing dwelling unit that are of insufficient size to further subdivide (i.e., they are not able to accommodate any additional residential density). *Underutilized* parcels are those with an existing dwelling unit that are of sufficient size to further subdivide. *Miscellaneous non-residential use* parcels are those with an Assessors code indicating it is in public use or subject to an easement preventing further development. *Current Use/Exempt* parcels are those either enrolled in the current use tax program or in tax-exempt status.

Step 3: Calculate Residential Capacity in each Zone for Conforming and Non-conforming Parcels

The ULCA methodology calculates residential capacity in each rural zone by adding the sum of the total ***vacant*** parcels and ***underutilized*** parcels (including current use parcels due to their prevalence in the rural areas) for each parcel size class in each zone. These are the parcels considered "available for development". All other parcel types, including developed, miscellaneous non-residential use, tax-exempt and developed current use tax parcels within these zones are not considered available for development and are excluded from the residential capacity calculation. The result is the inventory of all undeveloped rural zoned parcels in each respective parcel size class by zone.

For *non-conforming* parcel size classes (and conforming parcels unable to further subdivide), housing unit capacity is assigned at the rate of one dwelling unit per undeveloped parcel. For *conforming* parcel size classes larger than 2X the minimum density zoned parcel size, the housing unit capacity is derived by dividing the total acres of undeveloped parcels by the minimum zone density (indicating the resulting capacity of the larger parcels to further subdivide and accommodate additional density).

Step 4: Report the Total Number, Gross Acres, and Housing Unit Capacity of Undeveloped Parcels Available for Development by Rural and Resource Land Zone

This is the final step in the Rural Lands ULCA methodology. It calculates the **total** residential capacity in each zone by summarizing the undeveloped parcel housing capacity derived by both the (non-conforming) parcel-count method and the (conforming) acreage method for each parcel size class range. Population capacity is then derived by multiplying the total dwelling unit capacity figure in each zone by the County's average household size.

The summary total of the 2005 rural residential land capacity analysis (excluding residential LAMIRDs) is shown in Table 1.3. Detailed rural and resource land housing capacity analysis results pertaining to the range of parcel sizes by rural zone and identification of conforming and non-conforming parcels are contained in Appendix A.

Rural Commercial/Industrial Zoned Land (ULCA) Approach

The rationale and assumptions used for determining the supply of rural commercial/industrial lands are the same as those used for the Urban Lands Commercial/Industrial ULCA. The summary total of the 2005 rural commercial/industrial land capacity analysis is shown in Table 1.3.

Limited Areas of More Intense Rural Development (LAMIRD) Land Capacity Analysis Approach

There are three residential LAMIRDs designated according to RCW 36.70A.070(5)(d) in Kitsap County: 1) Manchester; 2) Suquamish; and 3) Port Gamble. Georges Corner is the fourth LAMIRD in the County but it is comprised exclusively of commercial lands and is included in the Rural Commercial/Industrial land capacity analysis in Table 1.3.

LAMIRDS by their definition contain higher density zoned residential lands than their surrounding (non-LAMIRD) rural zones. Subarea Plans have been adopted by the County for each of the three LAMIRD communities which spell out the particular minimum density standards allowed in each zone. Many of these LAMIRDS constitute the legacy of small historic settlements from the late 19th or early 20th centuries. They almost always contain antiquated or very small lots that do not meet modern minimum lot size planning requirements. Lot consolidation is required in most instances for small non-conforming contiguous parcels in common ownership in order to meet the minimum lot sizes specified by the Subarea plans. However, for lots legally created prior to adoption of the particular Subarea Plan (and not in common ownership), residential density is assigned at the rate of one dwelling unit per lot.

For *conforming* vacant parcels in each LAMIRD residential zone, dwelling unit capacity is calculated by dividing the amount of vacant residentially zoned acres by the minimum developable lot size designated in the applicable Subarea Plan and/or Zone. For *non-conforming* parcels (those smaller than the minimum lot size established in the Subarea Plan), housing unit capacity is assigned at the rate of one dwelling unit per undeveloped parcel subject to particular development restrictions on non-conforming contiguous lots in common ownership as specified in each particular Subarea Plan. GIS analysis compared cadastral ownership with parcel size characteristics to determine non-conforming contiguous lots in common ownership for each LAMIRD. Lot consolidation estimates were made for the affected parcels as required by the particular LAMIRD Subarea Plan to determine the probable housing unit capacity.

Underutilized parcels are either: 1) developed *conforming* residential parcels at least 2X the minimum lot size; or 2) developed (*conforming or non-conforming*) parcels that have a Kitsap County Assessor property class which indicates potential for redevelopment or more intense rural development based on the applicable zoning designation. For example, parcels in residential zones with current uses such as sheds, garages, mobile homes, cabins, etc. are identified and analyzed for their ability to accommodate additional dwelling units based on the adopted minimum lot size in each LAMIRD zone.

The summary total of the 2005 LAMIRD residential land capacity analysis is shown in Table 1.4. Detailed housing capacity analysis results for each LAMIRD, including the particular minimum lot size requirements and non-conforming lot standards and development restrictions for each applicable zone are contained in Appendix A.

Appendix A

A-1 Unincorporated Urban Growth Area Residential Land Capacity Analysis (Detailed)

A-2 Unincorporated UGA Commercial/Industrial Land Capacity Analysis (Detailed)

A-3 Unincorporated Rural and Resource Land Residential Land Capacity Analysis (Detailed)

A-4 Residential LAMIRD Land Capacity Analysis (Detailed)

Appendix A-3

Unincorporated Rural and Resource Land Residential Land Capacity Analysis (Detailed)

Unincorporated Residential Rural Lands Capacity Analysis

VACANT Parcels

	Parcels of 1 acres or less	Parcels greater than 1 acre to 2.5 acres	Parcels greater than 2.5 acres to 4.99 acres	Parcels from 5.00 acres to 9.99 acres	Parcels from 10.00 acres to 19.99 acres	Parcels from 20.00 acres to 39.99 acres	Parcels from 40.00 acres to 79.99 acres	Parcels greater than and equal to 80.00 acres	Total by row	Vacant Dwelling Unit Capacity by row	Total Vacant Population Capacity
Rural Residential (1 DU/5 Ac)	*Non-Conforming*			*Conforming*		*Conforming - Subdividable*					2.5 pph
Parcels	3321	1547	1343	746	147	57	4	2	7167	6957	17393
Acreage	1359.10	2844.11	4834.26	4863.53	2030.56	1680.67	162.30	200.22	17974.75	815	2037
Rural Protection (1 DU/10 Ac)	*Non-Conforming*				*Conforming*	*Conforming - Subdividable*					2.5 pph
Parcels	336	452	486	319	108	37	9	0	1747	1701	4253
Acreage	171.26	8600.42	1824.82	2042.53	1511.69	1011.52	380.54	0.00	15542.78	139	348
Rural Wooded (1 DU/20 Ac)	*Non-Conforming*					*Conforming*	*Conforming - Subdividable*				2.5 pph
Parcels	50	31	73	45	19	19	5	4	246	237	593
Acreage	31.13	55.11	313.67	322.72	291.55	618.37	253.67	449.19	2335.41	35	88
Forest Resource Lands (1 DU/40 Ac)	*Non-Conforming*						*Conforming*	*Conforming - Subdividable*			2.5 pph
Parcels	0	0	0	0	0	0	0	0	0	0	0
Acreage	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0	0	0
Mineral Resource Lands (1 DU/20 Ac)	*Non-Conforming*					*Conforming*	*Conforming - Subdividable*				2.5 pph
Parcels	8	8	11	12	4	1	1	0	45	44	110
Acreage	4.53	11.60	36.63	95.04	59.61	29.72	40.95	0.00	278.08	2	5
Urban Reserve (1 DU/10 Ac)	*Non-Conforming*				*Conforming*	*Conforming - Subdividable*					2.5 pph
Parcels	431	162	68	50	20	8	1	0	740	731	1828
Acreage	152.13	262.80	258.12	335.81	263.52	228.78	79.67	0.00	1580.83	31	77
Vacant Parcels											2.5 pph
Parcels	**4146**	**2200**	**1981**	**1172**	**298**	**122**	**20**	**6**	9945	9670	24175
Acreage	**1718.15**	**11774.04**	**7267.50**	**7659.63**	**4156.93**	**3569.06**	**917.13**	**649.41**	37711.85	1022	2555

Developed/Underutilized Parcels

	Parcels of 1 acres or less	Parcels greater than 1 acre to 2.5 acres	Parcels greater than 2.5 acres to 4.99 acres	Parcels from 5.00 acres to 9.99 acres	Parcels from 10.00 acres to 19.99 acres	Parcels from 20.00 acres to 39.99 acres	Parcels from 40.00 acres to 79.99 acres	Parcels greater than and equal to 80.00 acres	Total by Row	Underutilized Dwelling Unit Capacity by row	Total Underutilized Population Capacity
Rural Residential (1 DU/5 Ac)	*Non-coforming*			*Conforming*		*Conforming - Subdividable*					2.5 pph
Parcels	13877	7314	4185	1374	177	32	1	0	26960	0	0
Acreage	6628.88	13334.99	14328.93	8868.39	2345.92	873.47	41.03	0.00	46421.61	407	1018
Rural Protection (1 DU/10 Ac)	*Non-coforming*				*Conforming*	*Conforming - Subdividable*					2.5 pph
Parcels	1613	1676	1230	635	148	22	2	0	5326	0	0
Acreage	902.94	3073.03	4295.70	4139.32	1967.32	554.11	124.91	0.00	15057.33	43	107
Rural Wooded (1 DU/20 Ac)	*Non-coforming*					*Conforming*	*Conforming - Subdividable*				2.5 pph
Parcels	27	50	96	40	13	9	2	1	238	0	0
Acreage	14.24	108.78	392.31	244.54	156.84	277.68	84.71	113.48	1392.58	5	12
Forest Resource Lands (1 DU/40 Ac)	*Non-coforming*						*Conforming*	*Conforming - Subdividable*			2.5 pph
Parcels	0	0	0	0	0	0	0	0	0	0	0
Acreage	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0	0	0
Mineral Resource Lands (1 DU/20 Ac)	*Non-coforming*					*Conforming*	*Conforming - Subdividable*				2.5 pph
Parcels	30	30	12	9	0	1	0	0	82	0	0
Acreage	12.69	41.51	41.49	55.05	0.00	29.69	0.00	0.00	180.43	0	0
Urban Reserve (1 DU/10 Ac)	*Non-coforming*				*Conforming*	*Conforming - Subdividable*					2.5 pph
Parcels	2462	386	123	62	9	3	0	0	3045	0	0
Acreage	953.62	572.08	450.18	389.81	114.93	92.39	0.00	0.00	2573.01	6	16
Underutilized Parcels											
Parcels	**18009**	**9456**	**5646**	**2120**	**347**	**67**	**5**	**1**	35651	0	0
Acreage	**8512.37**	**17130.39**	**19508.61**	**13697.11**	**4585.01**	**1827.34**	**250.65**	**113.48**	6776.48	461	1153

Non-conforming Parcels (1 unit per parcel)
Conforming Parcel (1 unit per parcel)
Subdividable Parcels (Acreage divided by allowed dwelling units per acre)
Dwelling unit capacity is based on the current adopted zoning

Appendices 13 Growth Management Hearings Board Cases Cited in Appellants Brief

Appendices 13

Growth Management Hearings Board Cases Cited in Appellants Brief

C:\DOCUMENTS AND SETTINGS\NBOURE\MY DOCUMENTS\DOCS\MELODY ALLEN 3-25-04\GMA\MARCH 2009 APPEAL 07-2-02054-1 & 08-2-01499-9\5-28-09 OPENING BRIEF - FILED\5-28-09 GM HRGS BRD CASES CITED - INDEX COV SHEET.DOC

NO.	Case Name	Citation	Decision (Date)
1	1000 Friends of Washington v. Snohomish County (1000 Friends IV)	2004 WL 3275236-7 (CPSGMHB No. 04-3-0018)	FDO (December 13, 2004)
2	City of Bremerton, et al., v. Kitsap County, et al. (Bremerton II)	2004 WL 3249863 (CPSGMHB No. 04-3-0009c)	FDO (August 9, 2004)
3	Screen v. Kitsap (Screen II)	1999 WL 1075115	November 22, 1999
4	Friends of Skagit County, et al., v. Skagit County *and* City of Anacortes and City of Mount Vernon, Intervenors	WWGMHB No. 95-2-0065	Compliance Hearing Order (September 16, 1998)
5	Bremerton, et al., v. Kitsap County Port Gamble, et al., v. Kitsap County	CPSGMHB Case No. 95-3-0039c	September 8, 1997
6	Vashon-Maury, et al., and Union Hill Water Association, Intervenor, v. King County *and* Port Blakely Tree Farms, et al., Intervenors	1995 WL 903209 (CPSGMHB Consolidated Case No. 95-3-0008)	FDO (October 23, 1995)
7	Bremerton, et al., v. Kitsap County (Bremerton I)	1995 WL 903165 (CPSGMHB Consolidated Case No. 95-3-0039)	FDO (October 6, 1995)
8	Friends of Skagit County, et al., v. Skagit County *and* City of Anacortes and City of Mount Vernon, Intevenors	1995 WL 903176 (WWGMHB No. 95-2-0065	FDO (August 30, 1995)
9	Kitsap Citizens for Rural Preservation, Beth Wilson, Charlie Burrow, Tom Donnelly and Charlotte Garrido *and* Kitsap Audobon Society, Intervenor v. Kitsap County *and* Port Blakely Tree Farms, Intervenor (KCRP I)	1994 WL 907904 (CPSGMHB No. 94-3-0005)	FDO (October 25, 1994)

1

1000 Friends of Washington
v.
Snohomish County (1000 Friends IV)

2004 WL 3275236 (Wash.Central.Puget.Sd.Growth.Mgmt.Hrgs.Bd.)

Central Puget Sound Growth Management Hearings Board
State of Washington

1000 FRIENDS OF WASHINGTON, PETITIONERS
v.
SNOHOMISH COUNTY, RESPONDENT

Case No.
04-3-0018
(1000 Friends IV)

December13, 2004

FINAL DECISION and ORDER

SYNOPSIS

On March 31, 2004, Snohomish County adopted Ordinance 04-021 amending its regulation concerning accessory dwelling units (ADUs). [FN1] The Snohomish County Uniform Development Code (UDC), adopted in December of 2002, allowed attached and detached "accessory apartments" in rural areas under certain conditions but excluded the use of mobile or manufactured homes as ADUs anywhere in the County. Ordinance 04-021 amended the regulations concerning ADUs on lots of 200,000 square feet (4.7 acres) or larger to allow the use of mobile or manufactured housing as detached new structures and to modify size and compatibility restrictions. Petitioner challenges the Ordinance as increasing rural density in violation of the GMA.

The Board finds that the amendments to the ADU standards as applied to lots smaller than 10 acres promote "dwelling unit density that fails to protect rural lands and rural character" (Legal Issue #1). The Board therefore grants the petition in part and remands to the Respondent for action consistent with this decision.

I. BACKGROUND [FN2]

A. GENERAL

On March 31, 2004, the Snohomish County Council adopted Ordinance 04-021 amending Snohomish County's development regulations concerning accessory dwelling apartments. On June 14, 2004, 1000 Friends of Washington (**1000 Friends** or **Petitioner**) filed a Petition for Review (**PFR**) challenging Snohomish County's (**County** or **Respondent**) action.

During June and July of 2004, the Board issued the Notice of Hearing, conducted the Prehearing Conference and issued the Prehearing Order (**PHO**). The PHO set the schedule and established the legal issues to be decided by the Board.

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

On August 3, 2004, the Board received Petitioner's Motion for Summary Judgment (**1000 Friends Motion**) and Snohomish County's Motion to Dismiss (**County Motion**). Following a hearing by telephone conference call, the Board dismissed both motions without prejudice subject to further briefing and argument at the Hearing on the Merits.

The prehearing briefing received is referenced in this Final Decision and Order (**FDO**) as: Prehearing Brief of 1000 Friends of Washington (**1000 Friends PHB**), Snohomish County's Motion to Dismiss and Prehearing Brief (**County Response**), and Reply Brief of 1000 Friends of Washington (**1000 Friends Reply**). In these briefs and in oral argument, 1000 Friends renewed its motion for summary judgment and the County renewed its motion to dismiss.

On November 1, 2004, the Board held a Hearing on the Merits (**HOM**) at the Board's offices in Suite 2470, 900 Fourth Avenue, Seattle, Washington. Board Members Margaret A. Pageler, Presiding Officer, Edward G. McGuire, and Bruce C. Laing were present for the Board. Petitioner was represented by Ken Lederman of Riddell Williams P.S. Respondent was represented by Snohomish County Deputy Prosecuting Attorney Jason Cummings. Board externs Julie Taylor and Jessica Clawson also attended. Court reporting services were provided by J. Gayle Hays, of Byers & Anderson, Inc. The hearing convened at 10:00 a.m. and adjourned at approximately 11:00 a.m. The Board did not order a transcript of the HOM.

II. PRESUMPTION OF VALIDITY, BURDEN OF PROOF AND STANDARD OF REVIEW

Petitioner challenges Snohomish County's amendment of development regulations for accessory dwelling apartments, as adopted by Ordinance No. 04-021. Pursuant to RCW 36.70A.320(1), Ordinance No. 04-021 is presumed valid upon adoption.

The burden is on Petitioner, 1000 Friends of Washington, to demonstrate that the actions taken by the County are not in compliance with the requirements of the GMA. RCW 36.70A.320(2).

Pursuant to RCW 36.70A.320(3), the Board "shall find compliance unless it determines that the action taken by [the County] is clearly erroneous in view of the entire record before the board and in light of the goals and requirements of [the GMA]." For the Board to find Snohomish County's actions clearly erroneous, the Board must be "left with the firm and definite conviction that a mistake has been made." *Dep't of Ecology v. PUD 1*, 121 Wn.2d 179, 201 (1993).

Pursuant to RCW 36.70A.320(1) the Board will grant deference to the County in how it plans for growth, consistent with the goals and requirements of the GMA. The State Supreme Court has stated, "Local discretion is bounded, however, by the goals and requirements of the GMA." *King County v. Central Puget Sound Growth Management Hearings Board*, 142 Wn.2d 543, 561, 14 P.3d 142 (2000). Division II of the Court of Appeals further clarified, "Consistent with *King County*, and notwithstanding the 'deference' language of RCW 36.70A.3201, the Board acts properly when it foregoes deference to a county's plan that is not "'consistent with the requirements and goals of the GMA." *Cooper Point Association v. Thurston County*, 108 Wn.App. 429, 444, 31 P.3d 28 (2001).

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

In affirming the *Cooper Point* court, the Supreme Court recently stated:

> Although we review questions of law *de novo*, we give substantial weight to the Board's interpretation of the statute it administers. *See Redmond*, 136 Wn.2d at 46. Indeed "[I]t is well settled that deference [to the Board] is appropriate where an agency's construction of statutes is within the agency's field of expertise ..."

Thurston County v. Western Washington Growth Management Hearings Board, 148 Wn.2d 1, 15, 57 P.3d 1156 (2002).

III. THE CHALLENGED ACTION AND PREFATORY NOTE

On March 31, 2004, Snohomish County adopted Ordinance 04-021 amending its regulation concerning accessory dwelling units. The Snohomish County Uniform Development Code (**UDC**), adopted in December, 2002, had allowed attached and detached "accessory apartments" in rural areas with certain floor area restrictions and compatibility requirements but had excluded the use of mobile or manufactured homes as ADUs anywhere in the County. [FN3] For lots of 200,000 square feet (4.7 acres) or larger, Ordinance 04-021 created an exception allowing the use of mobile or manufactured housing as detached ADUs and modifying floor area restrictions and compatibility requirements. [FN4]

Petitioner challenges the Ordinance as increasing the rural density in violation of the GMA. Petitioner relies largely on Board precedents which set standards for rural density to prevent sprawl and which establish that allowing freestanding ADUs in the rural area effectively doubles the allowable density.

Respondent contends that the petition is an untimely challenge over which the Board has no jurisdiction. Alternatively, respondent argues that the Board should dismiss because Petitioner's case is not properly articulated in its statement of legal issues. If the Board reaches the merits of the issue, Respondent urges the Board to deny the petition because the Ordinance complies with the GMA.

In this Final Decision and Order, the Board addresses first the Respondent's motion to dismiss for lack of jurisdiction. The Board concludes that the Petitioner's challenge is timely and that the Board has jurisdiction to decide the case on the merits.

The Board then addresses the substantive development regulation amendment at issue. The Board finds that the amendment to the ADU regulations that allows manufactured homes [FN5] as detached new structures on lots of less than 10 acres in the rural area promotes "dwelling unit density that fails to protect rural lands and rural character" (Legal Issue #1). However, the Board finds that Petitioner fails to meet its burden of proof with respect to invalidity (Legal Issue #2). The Board therefore grants the petition in part, denies it in part, and remands to the Respondent for action consistent with this decision.

IV. BOARD JURISDICTION

Position of the Parties

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

Snohomish County challenges the Board's jurisdiction on the grounds that the petition was not timely filed pursuant to RCW 36.70A.290. The County's core argument is that allowance of detached ADUs in the rural area was established in the codification of the County's UDC in 2002 and thus the time to challenge the provision has long passed. County Response, at 10. The County's theory is that because Ordinance 04-021 did not amend *where* detached ADUs are allowed but only *when* such units are permitted, the amendment cannot be challenged. *Id*, at 8.

1000 Friends responds that Ordinance 04-021 substantively amended the County's development regulations. Inasmuch as the petition challenges specific amendments, it is timely. 1000 Friends PHB, at 2.

Applicable Law

RCW 36.70A.290(1) and (2) provide as follows:

> (1) All requests for review to a growth management hearings board shall be initiated by filing a petition that includes a detailed statement of issues presented for resolution by the board ....
>
> (2) All petitions related to whether or not an adopted comprehensive plan, development regulation, *or permanent amendment thereto*, is in compliance with the goals and requirements of this chapter ... must be filed within sixty days after publication by the legislative bodies of the county or city. (*Emphasis supplied*)

Board Discussion

The Board's jurisdiction is limited; the Board has "no jurisdiction to review substantive issues of an ordinance previously adopted and not challenged within the timeframe of the Act, *when those issues remain unchanged and unamended.*" *Guy Parsons et al., v. Mason County*, WWGMHB Case No. 00-2-0030 (Order Granting Dispositive Motion, November 27, 2000) at 3, *emphasis supplied.* [FN6]

Here the County's development regulations allowing detached ADUs have been substantively amended to allow mobile or manufactured housing, previously prohibited everywhere, to be constructed on lots of 200,000 square feet or more. RCW 36.70A.290(2) is clear that "permanent amendments" to previously adopted development regulations are subject to Board review. In other words, when an ordinance amends or expands portions of an existing development code, the *amendment* is subject to appeal within sixty days of publication. 1000 Friends PHB, at 8. [FN7]

Petitioner here makes timely challenge to an ordinance "amending the development standards" for ADUs. At the Prehearing Conference, the Legal Issue was restated as follows:

> *Legal Issue #1: Does adoption of Ordinance 04-021, amending the development standards for Accessory Dwelling units (allowing for the construction of detached dwelling units on lots 200,000 square feet or larger), fail to comply with RCW 36.70A.020(2), RCW 36.70A.020(1), RCW 36.70A.020(9), RCW 36.70A.070(5), RCW 36.70A.110(1) when the ordinance allows for dwelling unit density that fails to protect rural lands and rural character*?

The Board reads this legal issue as a challenge to the County's substantive amendment of its development regulations for ADUs. The substance of the amendment applicable to detached

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

dwelling units on lots of 200,000 square feet or more is the exception for mobile or manufactured homes, which are allowed nowhere else in the ADU regulations.

The County's attempt to frame the petition as an untimely challenge to the preexisting regulation is not well founded. While the time for challenge of the original ADU rules is long past, that doesn't deprive the Board of jurisdiction to review new legislation to the extent that it may expand and increase a previously-unchallenged inconsistency with the GMA. The County's reliance on *Montlake Community Club v. Hearings Board*, 100 Wn.App. 731, 738-39, 43 P.3d 57 (2002) is misplaced. County Response, at 11. In *Montlake* the Board ruled, and the Court of Appeals agreed, that previously adopted and unchallenged development standards could not be challenged when those standards were applied to a new sub-area plan. Here, by contrast, the scope of the development standards are themselves substantively amended.

The Board finds that it has jurisdiction of a timely challenge to Snohomish County's development regulation amendments which change standards for ADU development on lots 200,000 square feet (4.7 acres) or larger.

Conclusion
The Board finds that the Petitioner's PFR was timely filed, pursuant to RCW 36.70A.290; Petitioner has standing to appear before the Board, pursuant to RCW 36.70A.280(2); [FN8] and the Board has subject matter jurisdiction over the challenged ordinance, which amends the County's development regulations, pursuant to RCW 36.70A.280(1)(a). Respondent's motion to dismiss is **denied**.

V. LEGAL ISSUES AND DISCUSSION

LEGAL ISSUE NO. 1

The Board's PHO set forth Legal Issue No. 1:

> *Legal Issue #1: Does adoption of Ordinance 04-021, amending the development standards for Accessory Dwelling units (allowing for the construction of detached dwelling units on lots 200,000 square feet or larger), fail to comply with RCW 36.70A.020(2), RCW 36.70A.020(1), RCW 36.70A.020(9), RCW 36.70A.070(5), RCW 36.70A.110(1) when the ordinance allows for dwelling unit density that fails to protect rural lands and rural character?*

Applicable Law and Discussion

Position of the parties
Petitioner argues that allowing mobile or manufactured homes as detached ADUs on rural lots increases density and alters the rural character. Petitioner relies on Growth Management Board precedents establishing that preservation of rural character requires a density of no more than one dwelling unit per five acres in the rural area, citing *Friends of the San Juans, et al. v. San Juan County* (**San Juan**), WWGMHB Case No. 03-2-003c (Final Decision and Order, April 17, 2003); *Peninsula Neighborhood Association v. Pierce County* (**PNA II**), CPSGMHB Case No. 95-3-0771 (Final Decision and Order, March 20, 1996); *Yanisch v. Lewis County* (**Yanisch**),

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

WWGMHB Case No. 02-2-0007c (Final Decision and Order, December 4, 2002). Petitioner notes that this Board and the Western Board have applied this standard to preclude detached ADUs on lots of less than 10 acres in the rural area, citing *PNA II and San Juan*. Petitioner invites this Board to rule as a matter of law that Snohomish County's amendments to its ADU regulations "double the allowable density" in the rural area. 1000 Friends PHB, at 21.

Snohomish County responds that its preexisting regulations allowed detached ADUs on large lots in rural zones and that therefore the amendments allowing manufactured homes do not increase allowable rural density. County Response, at 22-23. Alternatively, the County contends that the restrictions and conditions written into Ordinance 04-021 will ensure that rural character is protected as manufactured-home ADUs are developed. *Id*, at 20-22.

Applicable law

RCW 36.70A.020(2) and (4)

> Planning Goals. The following goals are adopted to guide the development and adoption of comprehensive plans and development regulations of those counties and cities that are required or choose to plan under RCW 36.70A.040 ...
> (2) Reduce sprawl. Reduce the inappropriate conversion of undeveloped land into sprawling, low density development ...
> (4) Housing. Encourage the availability of affordable housing to all economic segments of the population of this state, promote a variety of residential densities and housing types, and encourage preservation of existing housing stock.

RCW 36.70A.110(1)

> Each county that is required or chooses to plan under RCW shall designate an urban growth area or areas within which urban growth shall be encouraged and outside of which growth can occur only if it is not urban in nature ....

RCW 36 70A.400

> Accessory apartments. Any local government, as defined in RCW 43.63A.215, [FN9] that is planning under this chapter shall comply with RCW 43.63A.215(3).

RCW 43.63A.215(1) and (3)

> (1) The department [CTED] shall, in consultation with the affordable housing advisory board created in RCW 43.185B.020, report to the legislature on the development and placement of accessory apartments. The department shall produce a written report by December 15, 1993 [FN10] which ... (b) Makes recommendations to the legislature designed to encourage accessory apartments in areas zoned for single-family use ...
> (3) Unless provided otherwise by the Legislature, by December 31, 1994, local governments shall incorporate into their development regulations, zoning regulations, or official controls the recommendations contained in subsection (1) of this section. The accessory apartment provisions shall be part of the local government's development regulations, zoning regulation, and official control. To allow for local flexibility, the recommendation shall be subject to such regulations, conditions, procedures, and limitations as determined by the local legislative authority.

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

Board Discussion

1. Harmonizing the ADU requirement with the goal of preventing sprawl. RCW 43.63A.215(4)(b) requires that counties planning under the GMA make provision for ADUs. The apparent purpose of this legislation is to support the housing goals of the GMA - housing affordability, variety, and preservation. RCW 36.70A.020(4). The legislation offers no guidance on how to harmonize the ADU requirement with other goals and requirements of the GMA, particularly the goals of preventing sprawling, low-density development and protecting rural character. RCW 36.70A.020(2); RCW 36.70A.030(14).

The Petitioner correctly recognizes that the GMA emphasizes the importance of rural lands and rural character, demanding protection of rural lands through a comprehensive plan's "Rural Element." RCW 36.70A.011. To protect the rural element of a comprehensive plan, a county must control rural development, assure visual compatibility with the surrounding rural area, reduce inappropriate conversion of rural land into sprawl, protect critical areas, and prevent conflicts with the use of separately designated lands. RCW 36.70A.070(5)(c); *John Diehl v. Mason County*, 94 Wn.App. 645, 655, 972 P.2d 543 (1999); *Butler v. Lewis County*, WWGMHB 99-2-0027c (Final Decision and Order, June 30, 2000).

Precedents from both this Board and the Western Washington Growth Management Hearings Board, [FN11] focusing on rural parcels of less than 10 acres, have used the distinction between *attached* ADUs and *detached* (freestanding new structures) to harmonize the ADU requirement with the goals of preventing low-density sprawl and protecting rural character. [FN12]

This Board examined Pierce County's ADU regulations in *Pierce County Neighborhood Association v. Pierce County* (**PNA II**), Case No. 95-3-0071 (Final Decision and Order, March 11, 1996) and concluded:

> Construction of a detached new ADU on a parcel smaller than 10 acres is generally prohibited because it would effectively allow two freestanding dwelling units. The effect would necessarily be one freestanding dwelling on a lot smaller than 5 acres, which the Board has previously held to constitute urban growth. Regardless of the size of the rural lot, ADUs attached to the main residence or a conversion of a detached existing structure (e.g., a garage) in close association with the primary residence would not constitute new urban growth.

Id, at 22.

A similar issue was addressed more recently by the Western Board in Lewis County. In *Yanisch v. Lewis County* (**Yanisch**), WWGMHB Case No. 02-2-0007c, (Final Decision and Order, December 11, 2002), the Western Board said: "We have consistently found that densities greater than 1 unit per five acres are not rural densities." The Western Board found that ADUs could be allowed in Lewis County as internal or attached units on single family lots of five acres or less. However, the Board ordered Lewis County to remove from the Lewis County Code the provisions that permitted detached ADUs on lots that did not contain the basic underlying rural density.

The most thorough and recent review of this issue is in *Friends of the San Juans, et al. v. San*

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

Juan County (**San Juan**), WWGMHB Case No. 03-2-0003c (Final Decision and Order, April 17, 2003). While the *San Juan* decision involves some facts unique to the guesthouse industry in the San Juan Islands, this Board finds the underlying analysis of the impact of ADUs as detached new structures in the rural area is persuasive.

> At argument, we asked the County to explain how a freestanding ADU differs from a single-family residence. The County responded that an ADU is limited in size to no more than 1,000 square feet. So, we asked, how is a freestanding ADU different from a single family residence of 1,000 square feet? The County responded that there are certain site limitations that would apply to an ADU, although the County also conceded that the site limitations may be waived. Other than size and potential site restrictions, the County acknowledged that a freestanding ADU is not *structurally* distinguishable from a single-family residence, since single ownership of the ADU and the main residence is not a structural characteristic.
>
> We conclude that a freestanding ADU is a separate dwelling unit and has all the structural characteristics of a dwelling unit, whether it is owned by the owner of a principal residence or not. Also in areas where residential use is allowed in rural lands, allowing a freestanding ADU with a principal residence on lots of less than ten acres creates a density of greater than one dwelling unit to five acres. Densities of greater than one dwelling unit to five acres are not rural densities. Both this [Western] Board and the Central Board have consistently said that densities of more than one unit per five acres constitute urban growth [FN13] .... Therefore, allowing freestanding ADUs together with a principal residence on lots of less than ten acres in rural areas constitutes inappropriate urban growth in a rural area.
>
> Consistent with our previous decisions, we find that [San Juan County] Ordinance 21-2002 as it pertains to internal and attached ADUs in Rural Residential designations is consistent with the GMA and fulfills the County's obligations to provide for ADUs in rural single-family neighborhoods pursuant to RCW 43.63A.215. However, we continue to find that a freestanding ADU should be considered as one dwelling unit. The effect of not counting a freestanding ADU as a dwelling unit would be the equivalent of permitting one dwelling unit on a lot of less than 5 acres in a rural area.

Id, at 25-26.

2. Snohomish County's 2004 ADU amendments. The County's stated purpose in adopting the 2004 amendments to its ADU standards was to increase ease, flexibility and affordability of developing detached ADUs in the rural area by allowing mobile homes and exempting them from compatibility and floor area requirements. *See* 1000 Friends Motion, Ex. 2 [Index 5]. [FN14] However, by crafting its manufactured housing exception for lots of 4.7 acres (200,000 square feet) or larger, rather than for lots of 10 acres (430,000 square feet) and more, the County in effect allows more than one dwelling unit per five acres, thus increasing and expanding an inconsistency with the GMA. [FN15]

Snohomish County acknowledged the risk of increased rural density and negative impact on rural character in a November 12, 2003, letter from Chief Planning Officer Linda Kruller to the

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

Snohomish County Planning Commission. 1000 Friends Motion, Ex. 3 [Index 4]. Single-wide manufactured homes are typically larger than the 850 square foot floor area maximum allowed for detached ADUs, according to County staff. *Id*, at 2. With manufactured homes there is less flexibility to meet the requirements for exterior compatibility with existing structures on the property. *Id*, at 3. Affordability and faster construction timeframes will increase take-up of this housing type. *Id*, at 2.

According to the Planning Officer:

> · There is concern that the proposed amendments relaxing the size and compatibility standards for accessory apartments on 200,000 square foot or larger lots *may increase the potential for further development of rural lands*. The proposed amendments allow the use of a more affordable housing type that has a faster construction timeframe. These factors may make it easier and more appealing to develop accessory apartments on large lots. There is concern that without review for compatibility to the surrounding house type, *rural character would be modified.*
>
> · Another concern was raised regarding the potential of the amendments to *increase rural density*. One housing unit per five acres was considered a maximum rural density by the Eastern Washington Growth Hearings Board Case, City of Moses Lake v. Grant County. Other Hearings Board orders have indicated that freestanding accessory apartments must comply with the maximum allowed density projections of comprehensive plans .... [W]ithout size restrictions, the proposed amendments may promote greater interest in developing accessory apartments as large as some existing homes in the rural area. As noted earlier, the *affordability and fast construction timeframe associated with mobile homes may increase interest in this type of development beyond the use intended* by accessory apartments. Staff has suggested that this allowance *might counteract the Countywide Planning Policies* and General Policy Plan policies related to the reasonable measures that guide the majority of residential development to urban areas ....
>
> · It has also been suggested that the elimination of the compatibility provision in SCC 30.28.010(5) on 200,000 square foot or larger lots allowed by the proposed amendment in SCC 30.28.010(11) *might hinder the protection of rural character*. Protection of the visual landscapes and compatibility is important in rural areas and is required under the Growth Management Act and the comprehensive plan General Policy Plan Goals.

Id, at 2-3 (*emphasis supplied*).

In these three paragraphs the County planning staff succinctly posed the GMA concerns created by adding manufactured housing as an allowable new freestanding ADU on rural lots of less than 10 acres: the amendment increases development of rural lands, thereby modifying rural character through increased density, increased size of rural dwellings, faster and cheaper development, lack of visual and compatibility standards, and incompatibility with County Comprehensive plan policies directing growth to urban areas.

How did the County planners propose to solve these GMA concerns?

Staff proposed revisions to the draft ordinance (1) requiring that a manufactured-home ADU be "subordinate" to and smaller than the primary existing home and (2) requiring screening (i.e., landscaping) to address compatibility issues. Ex 3 [Index 4], at 3. Under the 2002 ADU

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

provisions, detached ADUs were strictly controlled for size and compatibility. An "Accessory Apartment - Detached" could not exceed "40 percent of the floor area of the single family dwelling unit to which it is accessory, or 850 square feet, whichever is less." Ex. 1, Table, SCC 30.28.010(1). In the amended version of SCC 30.28.010, a """"mobile home" constructed as an "Accessory Department - Detached" can exceed that size so long as its floor plan is less than the primary existing home. As the Petitioners note, under this ordinance two essentially equivalent freestanding structures could be built on a rural lot of less than five acres. 1000 Friends PHB, at 22.

County staff proposed that screening requirements and neighborhood compatibility would be addressed through administrative conditional review as set forth in SCC 30.43A.100. County Response, at 20-22, Ex. D. In the conditional review process a permit may only be issued if the application complies with the comprehensive plan and is compatible with the subject property and the immediate vicinity. *Id.* However, the conditional review provisions are broadly general, with no criteria specific to protection of rural character.

The final adopted Ordinance 04-021 incorporated the revisions proposed by the planning staff. 1000 Friends Motion, Ex. 7 [Index 28].

The Board finds that the staff proposals and the Ordinance as adopted fail to """"reduce the inappropriate conversion of rural land into low density development." [FN16] RCW 36.70A.020(2). Manufactured-home ADUs as freestanding new structures on lots of less than 10 acres create a density of more than one unit in five acres. The Board finds nothing in the subordination requirement or the conditional use process to persuade it to abandon its established precedents. As the Board stated in *PNA II*, "Regardless of the size of the rural lot, ADUs attached to the main residence or a conversion of a detached existing structure (e.g., a garage) in close association with the primary residence would not constitute new urban growth." *Id*, at 22. However, by adding manufactured homes on lots of less than 10 acres, the County permits a growth level in rural areas that the Growth Management Hearings Boards have consistently found to constitute sprawl.

Conclusion

The Board finds that Ordinance 04-21, amending the County's development standards for ADUs, **fails to comply** with the Growth Management Act's requirement to protect rural lands and rural character [RCW 36.70A.070(5)], so far as the amendments add manufactured homes as allowable freestanding ADUs on lots smaller than 10 acres. The Board therefore **remands** this matter to Snohomish County.

B. LEGAL ISSUE NO. 2

The Board's PHO set forth Legal Issue No. 2:

> *Legal Issue #2: Does adoption of Ordinance 04-021 substantially interfere with the goals of the Growth Management Act?*

Applicable Law and Discussion

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

RCW 36.70A.302(1)(b) does not authorize the Board to make a determination of invalidity unless it is convinced that the continued validity of a comprehensive plan or development regulation would substantially interfere with the fulfillment of the Act's goals.

The County's record contains no information concerning the number or extent of rural lots subject to the amended development standard; the number or estimate of existing ADUs in the rural area, attached or detached; or the anticipated increase in rural ADU development likely to result from the allowance for manufactured homes. The County points to a one-page checklist that characterizes the likely impact on overall housing capacity in the entire county as "insignificant," County Response, at 19, [FN17] in contrast to the staff report that discussed the possibility of increased rural development. 1000 Friends Motion, Ex. 3 [Index 4].

1000 Friends, for its part, argues that the case must be decided as a matter of law, based on controlling Board precedents. Petitioner therefore has supplied no numbers, either to this Board or in its submission to the County Council, [FN18] that demonstrate penetration rates of ADUs in rural areas, whether attached or detached, stick-built or manufactured. Petitioners have placed no facts in the record indicating that new manufactured-home ADUs are likely to be constructed on lots of less than 10 acres in significant numbers in the interim, degrading rural character, before the County can bring its regulations into compliance.

On this point, the present case is in sharp contrast to *San Juan, supra*, where the record included a detailed analysis of ADU utilization. On those facts, the Western Board found substantial interference with Goal 2 of the GMA and entered an order of invalidity.

Conclusion

Given the recode before the Board, the Board **declines** to enter a determination of invalidity.

VI. ORDER

Based upon review of Ordinance 04-021, the County's code provisions, the GMA, case law, prior Orders of this Board and the other Boards, the PFR, the briefs and exhibits submitted by the parties, having considered the arguments of the parties, and having deliberated on the matter, the Board ORDERS:

1. Snohomish County's adoption of Ordinance 04-021 was **clearly erroneous** in amending the County's development regulations to expand provisions for new freestanding ADUs on rural lots of less than 10 acres.

2. The Board **remands** Ordinance 04-021 to the County with direction to take appropriate legislative action to bring the challenged portion of the legislation into compliance with the goals and requirements of the Act. The remand period extends until the Board finds compliance.

3. The Board sets the following Compliance Schedule:
   · By no later than **March 14, 2005**, the County shall take appropriate legislative action to

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

bring the challenged portion of its ADU regulations into compliance with the goals and requirements of the GMA as interpreted and set forth in this Final Decision and Order (**FDO**).

· By no later than **March 21, 2005**, the County shall file with the Board an original and four copies of a Statement of Actions Taken to Comply (**SATC**) with the GMA, as interpreted and set forth in this FDO. The SATC shall attach copies of legislation enacted in order to comply and may indicate what portions of the legislation respond to the issues laid out in the FDO. The County shall simultaneously serve a copy of the SATC, with attachments, on Petitioner. By this same date, the County shall file a **Remand Index**, listing the procedures and materials considered in taking the remand action.

· By no later than **March 28, 2005**, the Petitioner may file with the Board an original and four copies of Comments on the County's SATC. Petitioner shall simultaneously serve a copy of its Comments on the County.

· By no later than **April 4, 2005**, the County may file with the Board an original and four copies of the County's Reply to Comments. The County shall simultaneously serve a copy of such Reply on Petitioner.

Pursuant to RCW 36.70A.330(1), the Board hereby schedules the **Compliance Hearing** in this matter for **2:00 p.m. April 18, 2005** at the Board's offices. If the parties so stipulate, the Board will consider conducting the compliance hearing telephonically. If the County takes legislative compliance actions prior to the March 14, 2005 deadline set forth in this Order, it may file a motion with the Board requesting an adjustment to this compliance schedule.

So Ordered this 13th day of December 2004.

Note: This order constitutes a final order as specified by RCW 36.70A.300 unless a party files a motion for reconsideration pursuant to WAC 242-02-832.

Central Puget Sound Growth Management Hearings Board

Edward G. McGuire, AICP
Board Member

Bruce C. Laing, FAICP
Board Member

Margaret A. Pageler
Board Member

FN1. Snohomish County's Code does not use the common term Accessory Dwelling Unit but rather uses the term "Accessory Apartments." County Response, at 3 (fn.3).

FN2. *See* Appendix A for more detail regarding the procedural history of this matter.

FN3. The 2004 amendments were in response to a citizen complaint about the prohibition against use of a mobile or manufactured home as a detached "mother-in-law" apartment on his 15-acre

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

lot in the rural area. County Response, Ex.18.

FN4. A mobile home is defined in the County Code as "a manufactured home that is a structure, transportable in one or more sections, which in the traveling mode, is eight body feet or more in width and forty body feet or more in length, or, when erected on site, is three hundred twenty or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained therein." SCC 30.91M.150, 1000 Friends Motion, Ex 1.

FN5. The Board notes that SB 6593 (Chapter 256, Laws of 2004) effective July 1, 2005, creates new requirements for city and county regulation of manufactured housing. Neither Petitioner nor Respondent cited this statute to the Board. We decline to speculate on its application when it becomes effective.

FN6. See also *Montlake Community Club v. Hearings Board*, 110 Wn. App. 731, 738-39, 43 P. 3d 57 (2002); *Torrance v. King County*, CPSGMHB Case No. 96-3-0038 (Order Granting Dispositive Motion, March 31, 1997) at 4.

FN7. Citing *Tupper v. City of Edmonds*, CPSGMHB 03-3-0018 (Order on Dispositive Motions, December 3, 2003) at 8; *1000 Friends v. Chelan County*, EWGMHB 04-1-0002 (Order on Dispositive Motions, June 10, 2004).

FN8. *See* 1000 Friends Motion, Ex. 6.

FN9. "Local governments" include counties required to plan under GMA. RCW 43.63A.215(4)(b).

FN10. The Department produced a Model Ordinance, Accessory Dwelling Unit Ordinance and Study (Washington State Department of Community Development, January 1994). Neither party to the present appeal has referenced the Department's standards or guidance.

FN11. To our knowledge, the Eastern Washington Growth Management Hearings Board has not considered this issue.

FN12. *Alpine Evergreen et al. v. Kitsap County* (*Bremerton/Alpine*), CPSGMHB Case No. 95-3-0039c (Order Rescinding Invalidity in *Bremerton* and Final Decision and Order in *Alpine*, February 8, 1999), at 40, cited in County Response, at 19, is not on point. The issue in *Bremerton/Alpine* was not rural density but whether allowance for ADUs must be factored into a County's land capacity allowance.

FN13. The Eastern Washington Growth Management Hearings Board has reached the same conclusion. "With one narrow exception, this Board has consistently found that anything under 5-acre lots is urban." *City of Moses Lake v. Grant County*, EWGMHB Case No. 99-1-0016 (Order on Remand, April 17, 2002), at 3. See also *John Diehl v. Mason County, supra*, at 656 (residential density of one dwelling unit per 2.5 acres is consistent with urban, not rural,

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

development and allows for urban growth outside of the UGA in violation of GMA).

FN14. The County Council made the following findings:

1. The development standards for detached accessory apartments in SCC 30.28.010 and SCC 30.91A.050 are overly restrictive as applied to residential parcels 200,000 square feet or larger

2. Allowing increased flexibility for the establishment of accessory apartments will further the Growth Management Act's affordable housing goal set forth in RCW 36.70A.020(4) ... 1000 Friends Motion, Ex. 7 [Index 28], at 4.

FN15. The concerned citizen whose letter apparently launched the County's action lives on a 15-acre lot. Ex. 18.

FN16. The record does not indicate whether the County considered solving GMA concerns by revising the draft ordinance to apply the manufactured home exception to lots of 10 acres or more.

FN17. Index 13, "Analysis of Building and Land Use Regulation Effects on Housing and Jobs," which concludes, "since accessory apartments account for a very insignificant portion of the county's housing starts, the proposal will not contribute significantly to overall housing capacity."

FN18. 1000 Friends Motion, Ex. 6.

APPENDIX A

PROCEDURAL BACKGROUND

A. GENERAL

On June 14, 2004, the Central Puget Sound Growth Management Hearings Board (the **Board**) received a Petition for Review (**PFR**) from 1000 Friends of Washington (**1000 Friends** or **Petitioners**). The matter was assigned Case No. **04- 3- 0018** and is hereafter referred to as *1000 Friends IV*. Board Member Margaret Pageler was the Presiding Officer (**PO**) for this matter. Petitioner challenges Snohomish County's (**Respondent** or **County**) adoption of Ordinance 04-021 amending Snohomish County's development regulations concerning accessory dwelling apartments (**ADUs**). The basis for the challenge is noncompliance with the Growth Management Act (**GMA** or the **Act**) in amendments concerning ADUs in the rural area.

On July 16, 2004, the Board received a Notice of Association of Counsel associating Kenneth L. Lederman and the law firm of Riddell Williams P.S. as co-counsel for Petitioner in this action.

On June 17, 2004, the Board issued a Notice of Hearing; on July 19, 2004, the Board held the Prehearing Conference; and on July 21, 2004, the Board issued a Prehearing Order (**PHO**) setting the schedule and legal issues for this case.

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

On July 19, 2004, the Board received Snohomish County's Index to the Record.

B. DISPOSITIVE MOTIONS

On August 3, 2004, the Board received Snohomish County's Motion to Dismiss (**County Motion**) with five attachments and Petitioner's Motion for Summary Judgment (**1000 Friends Motion**) with seven attachments. Later on August 3, 2004, the Board received Snohomish County's Expedited Motion to Strike Petitioner's Motion for Summary Judgment. On August 4, 2004, the Board received the Response Memorandum of 1000 Friends of Washington in Opposition to Expedited Motion to Strike.

On August 4, 2004, the Board held a telephone conference with the parties to hear argument on the motion to strike. On August 6, 2004, the Board issued its Order on Motions, suspending the motions calendar in this case and dismissing the dispositive motions of both parties without prejudice.

C. BRIEFING AND HEARING ON THE MERITS

On September 13, 2004, the Board received the Prehearing Brief of 1000 Friends of Washington (**1000 Friends PHB**). On October 5, 2004, the Board received Snohomish County's Motion to Dismiss and Prehearing Brief (**County Response**).

On October 7, 2004, the Board received a Stipulation to Continue Briefing Schedule, submitted jointly by Petitioner and Respondent, requesting the Board to excuse the tardy filing of the County Response as a legal messenger's error and to extend the briefing schedule by one day.

On October 11, 2004, the Board issued its Order Continuing Briefing Schedule.

On October 12, 2004, the Board received the Reply Brief of 1000 Friends of Washington (**1000 Friends Reply**).

On November 1, 2004, the Board held a Hearing on the Merits (**HOM**) at the Board's offices in Suite 2470, 900 Fourth Avenue, Seattle, Washington. Board Members Margaret A. Pageler, Presiding Officer, Edward G. McGuire, and Bruce C. Laing were present for the Board. Petitioner was represented by Ken Lederman of Riddell Williams, P.S. Respondent was represented by Snohomish County Deputy Prosecuting Attorney Jason Cummings. Board externs Julie Taylor and Jessica Clawson also attended. Court reporting services were provided by J. Gayle Hays, of Byers and Anderson, Inc. The hearing convened at 10:00 a.m. and adjourned at approximately 11:00 a.m. The Board did not order a transcript of the HOM.

2004 WL 3275236 (Wash.Central.Puget.Sd.Growth.Mgmt.Hrgs.Bd.)
END OF DOCUMENT

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

2

City of Bremerton, et al., v. Kitsap County, et al. (Bremerton II)

2004 WL 3249863 (Wash.Central.Puget.Sd.Growth.Mgmt.Hrgs.Bd.)

Central Puget Sound Growth Management Hearings Board
State of Washington

CITY OF BREMERTON, ET AL., PETITIONERS
v.
KITSAP COUNTY, RESPONDENT
MANKE LUMBER COMPANY; OVERTON FAMILY; MCCORMICK LAND COMPANY; OLYMPIC PROPERTY GROUP; AND PORT OF BREMERTON, INTERVENORS
AND
1000 FRIENDS OF WASHINGTON, AMICUS CURIAE

CPSGMHB Consolidated Case No.
04-3-0009c
(Bremerton II) [FN1]

August 9, 2004

FINAL DECISION AND ORDER

I. BACKGROUND [FN2]

On December 8, 2003 the Kitsap County Board of Commissioners adopted Ordinance No. 311-2003 amending the County Comprehensive Plan and Map for 2003 and amending the County Zoning Code and Map. The Board received Petitions for Review (**PFR**) from the City of Bremerton and from Suquamish Tribe, et al. The Board combined the two PFRs into CPSGMHB Consolidated Case No. **04- 3- 0009c**. The Board conducted a Prehearing Conference and issued a Prehearing Order (**PHO**) containing the schedule and statement of issues for this consolidated case. The Board granted Manke Lumber Company, Overton Family, McCormick Land Company, Olympic Property Group and the Port of Bremerton status to Intervene on behalf of Kitsap County. [FN3] The Board's Order on Motions of April 22, 2004 admitted Supplemental Exhibits No. 1 and No. 2, and dismissed six issues. The Board received written briefs [FN4] from the parties in accordance with the case schedule and conducted a Hearing on the Merits (**HOM**) on June 10, 2004.

The Ordinance at issue in this complex case amends the Kitsap County Comprehensive Plan by adopting a new set of policies concerning Rural Wooded Lands (formerly Interim Rural Forest lands). The Ordinance also adopts three subarea plans which alter the boundaries of designated Urban Growth Areas in three locations: McCormick Woods/ULID #6, South Kitsap Industrial Area (SKIA), and Kingston.

The Board's analysis deals first with the Rural Wooded lands, addressing Legal Issues 10, 7, 9 and 11, in that order. The Board then deals with Legal Issue No. 25, concerning critical areas, as that seems to relate primarily to the proposed wooded lands policies.

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

The second part of the decision focuses on the UGA expansions, starting with Legal Issues 13, 23 and 24, which pose questions about the population projections and allocations used in the County planning process for these expansions. The Board then assesses each of the three UGAs which were modified by the Ordinance - ULID #6, SKIA, and Kingston - in light of the questions raised by Legal Issues 12, 14, and 15. In essence, these are the size and locational criteria for designating or expanding UGAs. Legal Issue 24 is a follow-on question concerning development regulations for ULID #6 and SKIA.

The final section of the decision deals with the County's Buildable Lands Report (**BLR**) and the questions posed in Legal Issues 17, 18, 19, 20, and 21.

II. PRESUMPTION OF VALIDITY, BURDEN OF PROOF AND STANDARD OF REVIEW

Petitioners challenge Kitsap's adoption of Ordinance No. 311-200. Pursuant to RCW 36.70A.320(1), Kitsap's Ordinance No. 311-200 is presumed valid upon adoption.

The burden is on Petitioners to demonstrate that the actions taken by Kitsap County are not in compliance with the requirements of the GMA. RCW 36.70A.320(2).

Pursuant to RCW 36.70A.320(3), the Board "shall find compliance unless it determines that the action taken by [the County] is clearly erroneous in view of the entire record before the board and in light of the goals and requirements of [the GMA]." For the Board to find the County's actions clearly erroneous, the Board must be "left with the firm and definite conviction that a mistake has been made." *Dep't of Ecology v. PUD 1*, 121 Wn.2d 179, 201 (1993).

Pursuant to RCW 36.70A.320(1), the Board will grant deference to the County in how it plans for growth, provided that its policy choices are consistent with the goals and requirements of the GMA. As the State Supreme Court has stated, """"Local discretion is bounded ... by the goals and requirements of the GMA." *King County v. Central Puget Sound Growth Management Hearing Board* (***King County***), 142 Wn.2d 543, 561, 14 P.3d 133, 142 (2000). Division II of the Court of Appeals further clarified: "Consistent with *King County* and notwithstanding the 'deference' language of RCW 36.70A.320(1), the Board acts properly when it foregoes deference to a ... plan that is not 'consistent with the requirements and goals of the GMA." *Cooper Point Association v. Thurston County*, 108 Wn. App. 429, 31 P.3d 28 (2001).

In affirming the *Cooper Point* court, the Supreme Court stated:

> Although we review questions of law *de novo*, we give substantial weight to the Board's interpretation of the statute it administers. *See Redmond*, 136 Wn.2d at 46. Indeed "[I]t is well settled that deference [to the Board] is appropriate where an administrative agency's construction of statutes is within the agency's field of expertise ...

Thurston County v. Western Washington Growth Management Hearing Board, Docket No. 71746-0, November 21, 2002, at 7.

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

III. BOARD JURISDICTION, PRELIMINARY ITEMS, ABANDONED ISSUES.

A. BOARD JURISDICTION

The Board finds that the Petitioners' PFRs were timely filed, pursuant to RCW 36.70A.290(2); Petitioners have standing to appear before the Board, pursuant to RCW 36.70A.280(2); and the Board has subject matter jurisdiction over the challenged ordinance, which amends the County's Comprehensive Plan and Map for 2003 and amends the County's Zoning Code and Map, pursuant to RCW 36.70A.280(1)(a).

B. PRELIMINARY MATTERS

During the Hearing on the Merits, the Board made the following rulings:

1. On or before June 17, 2004, the appropriate parties will file with the Board lists of the exhibits submitted with the following briefs: City's Prehearing Brief; Errata to Suquamish Tribe's Opening Brief and Omitted Exhibits; Kitsap County's Prehearing Brief Regarding Issues 7-11, 24, 25 and 27; Kitsap County's Prehearing Brief on Issues 12 through 23, 26 and 27; Manke Lumber Company's Response to Petitioners' Prehearing Briefs.

2. Kitsap Motion to Strike Suquamish Exhibit 26510, except table 1, page 4 was **granted**.

3. On Kitsap Second Motion to Strike, regarding Suquamish Reply Brief attachments IR-A and IR-B, the parties agreed that the two attachments are both part of the record under Exhibit 24629.

4. The City questioned the adequacy of the record provided by the County, indicating that the index was more extensive than required and therefore it was difficult to find individual exhibits. HOM Transcript, at 10-15.

WAC 242-02-520 defines what should be included in the Index of the Record. The Index should include "all materials used in taking the action which is the subject of the petition for review. The index shall contain sufficient identifying information to enable unique documents to be distinguished." Therefore, when "amendments to Plans" are challenged the record only needs to include those materials used in making the "amendments," not all materials that were considered from the beginning of development of the Plan. The Board often requires the document that is being amended (*e.g.* the Plan) to be submitted as a "Core Document." Materials that were considered in the original adoption action can be admitted as supplemental exhibits to the present challenged action.

If any of the parties would like to suggest clarifying language for the Boards' Rules on this matter, it would be welcomed.

5. The Board took official notice of documents cited in footnotes to the briefs.

6. Kitsap was given until June 17, 2004 to review and, if necessary, submit a short response to a

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

Statement of Additional Authority offered by Suquamish. Kitsap, Suquamish and Overton submitted responses regarding Additional Authority.

7. The following exhibits were admitted during the hearing:

a. Kitsap County Comprehensive Plan, Land Use Map. (Two copies previously submitted with Core Documents).

b. **HOM Demonstration Item #1**. Untitled Map/Illustration submitted by Suquamish for illustrative purposes related to clustering provisions of Kitsap Ordinance No 311-2003. The objection by Overton Family to the admission of this item was noted by the Board.

c. **HOM Demonstration Item #2**. Map entitled "Kitsap County Forest Lands," with insets, submitted by Suquamish for illustrative purposes related to clustering provisions of Kitsap Ordinance No 311-2003. The Board noted an objection of Kitsap and a clarification by Suquamish that the base map for this item is a County map but two insets were added by Suquamish.

Exhibit #24629 (excerpt): Letter dated Nov. 26, 2002, submitted by Suquamish in relationship to preliminary Item # 3, *supra*.

C. ABANDONED ISSUES

The Board's Rules of Practice and Procedure provide:

> A petitioner ... shall submit a brief on each legal issue it expects a board to determine. *Failure by such a party to brief an issue shall constitute abandonment of the unbriefed issues*. Briefs shall enumerate and set forth the legal issue(s) as specified in the prehearing order if one has been entered.

WAC 242-02-570(1), (emphasis supplied).

Additionally, the Board's March 15, 2003 PHO in this matter states, "Legal issues, or portions of legal issues, *not briefed in the Prehearing Brief* will be deemed to have been abandoned and cannot be resurrected in Reply Briefs or in oral argument at the Hearing on the Merits." PHO, at 8 (emphasis supplied).

Also, the Board has stated, "Inadequately briefed issues would be considered in a manner similar to consideration of unbriefed issues and, therefore, should be deemed abandoned." *Sky Valley, et al., v. Snohomish County*, CPSGMHB Case No. 95-3-0068c, Order on Motions to Reconsider and Correct (Apr. 15, 1996), at 3.

In review of the City PHB, the Board did not find any argument related to Legal Issue No. 8. [FN5] Therefore, the Board deems Legal Issue No. 8 **abandoned**. *See* City PHB, at 1-28.

Legal Issue No. 16 [FN6] addresses the County's application of the GMA planning goals to the three UGA expansions. Respondent alleges that Petitioners have abandoned Legal Issue 16 due

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

to inadequate briefing. County Response II, at 17.

In review of the Tribe PHB, the Board found only a conclusory statement that the UGA expansions "contravene the GMA planning goals (RCW 36.70A.020)." Tribe PHB, at 45. [FN7] Therefore, the Board deems Legal Issue No. 16 **abandoned**.

In review of the Tribe PHB, the Board did not find any argument related to Legal Issue No. 22. In the "errata" sheet submitted to the Board, the Tribe conceded that it was abandoning Legal Issue No. 22. [FN8] Therefore, the Board deems Legal Issue No. 22 **abandoned**. *See* Tribe PHB, at 1-72.

IV. LEGAL ISSUES AND DISCUSSION

A. RURAL WOODED LANDS [FN9]

Prior to setting forth and discussing the Legal Issues, the Board summarizes the action taken by the County pertaining to Rural Wooded Lands that precipitated these issues.

The Rural Wooded Amendments:
Section 10, subsection 1, of Ordinance No. 311-2003 adopts the 2003 text and policy revisions in Attachment 1.

Section 10, subsection 7, of Ordinance No. 311-2003 provides:

> Approve the revised comprehensive plan language relating to the Rural Wooded lands included within attachment 1. Furthermore, DCD staff is directed to develop Development Regulations for the Rural Wooded policies, and present those regulations to the BCC no later than nine (9) months from the effective date of this ordinance.

Attachment 1 includes the General and Specific Text Amendments to the County's Comprehensive Plan. The County provided the Board with a color coded "Errata Sheet" of the Kitsap County Comprehensive Plan, dated December 8, 2003. The """"Errata Sheet" corrects typographical errors and fills in missing references on Attachment 1 to Ordinance No. 311-2003.

The first change made in the general text amendments is that the prior reference to "Interim Rural Forest" (**IRF**) is deleted and changed to "Rural Wooded" (**RW**).

Ordinance No. 311-2003, Attachment 1 - Errata Sheet, at 1. [Hereafter, the Board will identify Rural Wooded Lands (**RWL**) by the acronym RWL].

The second change precipitated by the RWL amendments is a change to a Land Use Table - LU-2, within the Plan's Land Use Element. This Table is updated to indicate that within the Rural Wooded land use designation there are **49,212 acres** in unincorporated Kitsap County now designated as RWL. *Id.*, at 4.

Ordinance No. 311-2003, Attachment 1, at 7-10, adds a new explanation of the RWL designation and adds new RWL Policies 10 and 11. These new text amendments are as follows:

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

Rural Wooded. This designation is applied to lands throughout Kitsap County that were formerly designated "Interim Rural Forest." The goals for this designation are to:
· Provide on-going opportunities for continued management of these lands for forestry, open space, or other compatible uses to promote a large-scale, connected landscape. These lands are important for their rural character, economic values, natural resource uses, ecological functions and values, and public benefits.
· Preserve rural character, and allow a variety of levels of rural residential densities and encourage innovative rural planning techniques while meeting the intentions and requirements of the Growth Management Act.
· Provide a high standard of environmental protection, facilitate the creation of open space corridors, minimize shoreline impacts, and promote residential development that is sensitive to the physical characteristics of the land.

Rural Wooded Lands [Policies]

RL-10a

Lands designated as Rural Wooded form a large-scale, connected landscape. These lands are important for their rural character, providing housing at rural densities, economic values, natural resource uses, ecological functions and values, and public benefits. To maintain and enhance these important functions and values for future generations, Rural Wooded lands should provide on-going opportunities for continued forestry, open space, and other compatible uses.

RL-10b

Prior to accepting any applications pursuant to this policy, the County shall adopt development regulations that specifically address the criteria and objectives of this RL-11a - RL-11g section including but not limited to how the rural character will be preserved and urban growth in the rural area will be prevented.

RL-11a

To encourage Rural Wooded landowners to realize economic benefits from their land, a variety of incentive-based land conservation programs should be developed and implemented for all Rural Wooded land. Such incentives would include a Transfer of Development Rights (TDR) program, tax incentives, coordinating and directing private, state and federal funding for land acquisition or conservation easements, and allowing clustering of residential development.

RL-11b

The base residential density of lands designated Rural Wooded is one dwelling unit per 20 acres. A density of one dwelling unit per 5 acres is allowed if residential units are clustered, subject to the following criteria:

1. Fifty percent (50%) of the site would be placed in a "Wooded Reserve" where forestry would be permitted and encouraged pursuant to the State Forest Practices Act [RCW 76.09.050, WAC 222-16-050(2) and WAC 222-20-040(3)]. Properties in "Wooded Reserve" may not be developed or subdivided earlier than 40 years. Any

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

residential development potential remaining in the Wooded Reserve after 40 years from the approval of a clustering proposal may be transferred to other areas offsite as provided by TDR programs or may be achieved through clustering on site.

2. The remaining fifty percent (50%) may be developed for residential uses, provided that either:

A. One-half of this portion of the site (or 25% of the total site area) shall be placed in a permanent open space tract where no development or forestry uses would be allowed, and the remaining area would be developed for residential uses; or;

B. The fifty percent (50%) of the property set aside as "Wooded Reserve" (see #1, above) is designated as permanently undevelopable and placed in a permanent tract where forestry may be practiced, and the remaining 50% of the site area would be developed for residential uses.

3. On the portion of the site that is developed, development shall be clustered and innovative rural planning techniques encouraged.

4. There shall be no more than 25 units per cluster. No new urban services shall be provided to individual lots or clusters. However, common drain fields, community wells and public water systems, and other techniques to minimize impacts on natural systems will be encouraged.

5. Clusters developed under this program shall provide a vegetated buffer or 100 feet from existing public roadways or equivalent visual separation from adjoining properties in order to preserve rural character and the aesthetic values of rural wooded lands.

6. A minimum parcel size of 20 acres is required to use this mechanism. Smaller lots which have been designated Rural Wooded may participate through aggregation to the minimum lot size.

7. No more than 1,000 contiguous acres may use this mechanism for a single project. Projects in this program may have single or multiple ownerships.

8. The developed portions of those properties seeking to utilize this mechanism shall comply with all existing Kitsap County development regulations including but not limited to the Critical Areas Ordinance in order to protect environmental features.

9. To ensure each proposal submitted for review pursuant to this policy and associated implementing regulations complies with these requirements, and preserves rural character and prevents urban growth in the rural area, a site plan review process with Hearing Examiner review is required. That site plan review process may be combined with a hearing on a preliminary plat or short plat application. In conducting the site plan review the Hearing Examiner may approve a proposed site plan if the examiner finds that the proposed site plan complies with policies RL-11a through RL-11g and associated implementing regulations.

RL-11c

Rural Wooded parcels larger than 40 acres in size that adjoin shorelines may utilize a density of one dwelling unit per 2.5 acres if residential units are clustered and the landowner commits to permanently continue forestry use on a portion of their land that includes the shoreline, subject to the criteria in RL-11b(3-9), above and the following:

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

1. The area established for forestry use shall be designated as a " " "Wooded Shoreline Preserve" tract encompassing the area from the ordinary high water mark to the top of the slope, i.e., the highest point of land where hillslopes (including intermediate benches) meet the upland plateau area.
2. The "Wooded Shoreline Preserve" area shall also include a setback area equal to 1 1/3 the height of the slope.
3. The total of 50% of the total parcel, including the Wooded Shoreline Preserve and the setbacks, shall be placed in permanent open space and managed for forestry. All residential development on the property shall be clustered on the remaining 50%.
4. Forestry within the "Wooded Shoreline Preserve" area shall be subject to the State Forest Practices Act [RCW 76.09.910, WAC 222-50-020(3)].

RL-11d

Conservation easements or other sufficient mechanisms specifying uses and restrictions shall be applied to forestry and or open space tracts created pursuant to policies RL-11a-c.

RL-11e

In cooperation with landowners, stakeholders and others the County will develop and implement a system to monitor the effectiveness of all Rural Wooded incentive programs, and the compatibility and impacts of land uses in Rural Wooded areas. Monitoring will be conducted on an annual basis and presented in a report by January 31 of the following year. In addition, a 10,000 acre or 5 year threshold for a 'stop and assess' report will be implemented, where all applications will be halted until a report has been generated and submitted.

RL-11f

The Washington State Department of Natural Resources should continue to act as lead agency for forestry practices on Rural Wooded lands [RCW 76.09.050].

RL-11g

Kitsap County should work with landowners, stakeholders, and state and federal agencies to assess the natural functions and values of Rural Wooded lands and should direct conservation programs and efforts towards areas with the most important values.

RL-11h

The Implementing Development Regulations will include language to inform future purchasers that urban level services will not be provided to these lands.

RL-11i

The implementation ordinance will be completed no later than July 31, 2004.
Ordinance No. 311-2003, Attachment 1, at 10, also adds new text to the Plan under "Implementation Strategies and Programs," as follows:

Develop the incentive programs described above in RL-10 and RL-11 using an open,

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

public process that involves interested landowners, tribes, and stakeholder groups.

The Legal Issues

There are five Legal Issues grouped under the Rural Wooded Lands topical heading. One of them has been abandoned (Legal Issue No. 8). The other four issues are Legal Issues 7, 9, 10 and 11. The Board will address these Legal Issues in the following order: first, Legal Issue 10; second, Legal Issue 7; third, Legal Issues 9 and 11, together.

Legal Issue No. 10

The Board's PHO sets forth Legal Issue No. 10 as follows:

> ***10. Whether the County failed to comply with the consistency requirements of RCW 36.70A.070(preamble), RCW 36.70A.080(2), and RCW 36.70A.210 when it amended the provisions of the Interim Rural Forest [IRF] designation to allow urban growth in rural areas in violation of RCW 36.70A.100, RCW 36.70A.011 and WAC 365-195-330, the County-wide Planning Policies and other policies of the Comprehensive Plan***?

Applicable Law and Discussion

Position of the Parties:
The City asserts that the County did nothing to coordinate its Plan amendments with the City of Bremerton and that in mid-October the City wrote to the County Commissioners objecting to the proposed rural wooded amendments impacts on growth outside urban areas and the ability of cities to meet their own development goals and growth projections. The City states, "The County ignored these comments and proceeded with adoption of the [rural wooded designations]." City PHB, at 21-22.

The County counters that the letter in question was submitted by the City to the County after the County had closed the record on the rural wooded lands amendments. Therefore, the County concludes, it could not consider it. More importantly, the County points out that RCW 36.70A.100 requires consistency among jurisdictional plans, and the City has provided no evidence or argument to show any inconsistencies between provisions of the City of Bremerton's Plan and Kitsap County's Plan. County Response I, at 27-28. The County also states, ""While the extra-record letter used by the City to support this argument expresses concerns about the rural areas, it makes no statements about problems with coordination or consistency between the City and the County Comprehensive Plans." *Id.*, at 28.

Intervenor Overton notes that the City 1) fails to point to any County-wide Planning Policy (**CPP**) that the RWL policies are inconsistent with; and 2) does not identify any provision in the City's Plan that conflicts with the County's RWL policies. Therefore, Overton concludes, there can be no violation of RCW 36.70A.100. Overton Response, at 14.

In reply, the City asserts:

> The 'inconsistency' [between the City and County Plans] is that the County is required to

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

> comply with GMA when it determines the density to be imposed on rural and urban property in the County. It is beyond belief that the County feels justified in its adoption of Ordinance No. 311, without performing any analysis of the impacts that this will have on affected fire districts, school districts or the City's transportation system (to name just a few), as if its land use decisions have no repercussions beyond the County line.

City Reply, at 13.

Board Discussion:
Notwithstanding the provisions of the Act cited in Legal Issue 10 by the City, the focus of the argument lies within provisions of RCW 36.70A.210 and .100. The significance of RCW 36.70A.210 in this discussion is that .210 establishes that the County-wide Planning Policies (**CPPs**) provide a *county-wide framework* for the development and adoption of city and county plans. "This framework shall ensure that city and county plans are consistent as required in RCW 36.70A.100." RCW 36.70A.210(1). *See also* RCW 36.70A.100. Thus, if a county Plan is consistent with the CPPs and a city Plan is consistent with the CPPs; there is a presumption that the city and county plans are consistent as required by .100.

The Board has stated that "consistency means that provisions [of Plans] are compatible with each other - that they fit together properly. In other words, one provision may not thwart another." *West Seattle Defense Fund v. City of Seattle* (***WSDF I***), CPSGMHB Case No. 94-3-0016, Final Decision and Order, (Apr. 4, 1995), at 27. Additionally, as the County noted, the Board explained that to demonstrate inconsistency between Plans of different jurisdictions, "[P]etitioners must identify the provision of the challenged plan and explain how it is uncoordinated with or inconsistent with a provision of another jurisdiction's comprehensive plan." *Corinne Hensley v. City of Woodinville* (***Hensley III***), CPSGMHB Case No. 96-3-0031, Final Decision and Order, (Feb. 25, 1997), at 13.

The City has not identified a CPP that the County's Rural Wooded Lands amendments are inconsistent with, nor has the City identified any provisions in its Plan that is made incompatible with, or is thwarted by, the County's Rural Wooded Lands amendments. The Board agrees with the County. The City's letter was too little, too late, to alert the County of any potential inconsistencies between the City Plan and the pending RWL amendments. Further, other than identifying potential impacts related to the RWL amendments, the City did not explain in its PHB how the RWL amendments were inconsistent with any provision in the City's Plan. The Board concludes that Petitioners **failed to carry the burden of proof** in demonstrating inconsistency between the City and County Plans contrary to the provisions of RCW 36.70A.100.

Conclusion - Legal Issue No. 10

The Board concludes that Petitioners **failed to carry the burden of proof** in demonstrating inconsistency between the City and County Plans contrary to the provisions of RCW 36.70A.100.

Legal Issue No. 7

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

The Board's PHO sets forth Legal Issue No. 7 as follows:

> ***7. Did the County violate RCW 36.70A.040 because it did not concurrently review the proposed comprehensive plan amendment to the IRF lands with the development regulations, to maintain consistency?***

Applicable Law and Discussion

Position of the Parties:
The City argues: 1) having SEPA review at the project development permit stage will not allow for mitigation of impacts, since projects will have acquired unstoppable administrative inertia [based upon the RWL Plan polices]; 2) if a change in a plan necessitates a change in development regulation, both changes must be done concurrently to maintain consistency; 3) had it been possible to draft development regulations to implement the RWL policies, it would have been done; and 4) it would be impossible to draft development regulations that maintain rural character while allowing [alleged] urban development in the rural area. City PHB, at 25-27.

The County acknowledges that its Plan and development regulations must be consistent, but argues there is nothing in the GMA barring the County from setting up a framework in its Plan to provide the basis for future development regulations (*citing* prior Board cases). County Response I, at 19-20. Additionally, the County contends, "The zoning regulations currently in effect allow a [residential] density of 1 du/20 acres; this will still be allowed even after the implementing regulations for the incentive program take effect." *Id.*, at 21. The County also asserts that the RWL amendments made no major changes in the uses allowed, but did change the [residential] development potential which will be effective when the new development regulations implementing the clustering incentive program are adopted. *Id.*, at 22.

Intervenor Manke concurs with the County's assessment that there is no inconsistency created by the RWL amendments. Manke Response, at 26-27.

In reply, the City argues that drafting development regulations based upon the RWL policies will yield regulations that allow suburban or urban densities in the rural area which is contrary to the Act. City Reply, at 10.

Board Discussion:
The GMA requires a jurisdiction's development regulations to be consistent with, and implement, its comprehensive Plan. *See* RCW 36.70A.040. The essence of the City's argument on this issue is: since the County did not adopt implementing regulations for the RWL policies at the same time as it adopted the new RWL Plan policies, then the Plan and [existing] development regulations must be inconsistent. While that may be true in some circumstances, the Board concludes that it is not the case here.

First, the Act does not specifically mandate that Plans and development regulations be adopted concurrently. However, as the Board has previously indicated, concurrent adoption of Plan amendments and implementing development regulations may be the wisest course of action to

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

avoid inconsistencies between the Plan and development regulations. *See: Jody L. McVittie v. Snohomish County* (***McVittie V***), CPSGMHB Case No. 00-3-0016, Final Decision and Order, (Apr. 12, 2000), footnote, at 7. However, concurrent adoption of development regulations may not be necessary if the existing development regulations continue to implement the Plan as amended. This is the situation posed here.

The base residential density for RW lands is one dwelling unit per twenty acres. *See* Ordinance No. 311-2003, Policy RL-11b. The existing implementing zone for lands previously designated IRF, [FN10] but now designated RW, is R-20, which permits one residential dwelling unit per 20 acres. County Response I, at 21. The City does not dispute that the existing R-20 zoning governs the new RWL designation. Therefore, the Board concludes that the new RWL Plan policies and the existing development regulations are not inconsistent related to the 1 du/20 acre residential density.

The Board acknowledges that the new RWL Plan policies describe a complex system for potentially increasing densities if various conditions are satisfied and development is limited to clusters. However, as Petitioners acknowledge, there are no development regulations to implement the incentive and clustering program advanced in the RWL Plan policies. Therefore, until such time as development regulations are adopted for the RWL Plan policies, they cannot be implemented.

The Board, as well as the Court, [FN11] has clearly indicated that Plans provide policy direction to land use decision-making by providing guidance and direction to development regulations, which must be consistent with and implement the Comprehensive Plan. In turn, the development regulations govern the review and approval process for development permits. *See Laurelhurst Community Club, Friends of Brooklyn, University District Community Council, Northeast District Council and University Park Community Club v. City of Seattle [University of Washington - Intervenor]* (***Laurelhurst I***), CPSGMHB Case No. 03-3-0008, Order on Motions, (Jun. 18, 2003), at 11; *see also Vashon-Maury, et al., v. King County (Bear Creek portion)*, CPSGMHB Case No. 95-3-0008c, Order Finding Partial Noncompliance and Partial Invalidity, (Nov. 3, 2000), at 9-10; and *The Tulalip Tribe of Washington v. City of Monroe* (***Tulalip II***), CPSGMHB Case No. 99-3-0013, (Jan. 28, 1999), at 4.

Conclusion - Legal Issue No. 7

The Board concludes that the City has **failed to carry the burden of proof** in demonstrating that implementing development regulations must be adopted concurrently with the RWL Plan amendments; or that the existing development regulations are inconsistent with, and do not implement, the RWL policy amendments in the Plan.

Legal Issue Nos. 9 and 11

The Board's PHO sets forth Legal Issue No. 9 as follows:

> ***9. Whether the County violated RCW 36.70A.070(5) and RCW 36.70A.110(1) (precluding urban growth in rural areas), RCW 36.70A.011 and WAC 365-195-330 when it used the***

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

Ordinance to increase the density and to allow urban growth in the IRF?

The Board's PHO sets forth Legal Issue No. 11 as follows:

11. Did the County fail to be guided by the Act's goals, including RCW 36.70A.020(1), (2), (3), (5), (8), (10), (11) and (12) when it increased the intensity and density of allowed uses and allowed urban growth in the IRF?

Applicable Law

The goals at issue here are: RCW 36.70A.020(1) [encouraging urban development in urban areas], (2) [reducing sprawl], (3) [encouraging efficient multimodal transportation], (8) [maintaining and enhancing natural resource industries and encouraging conservation of resource lands], (10) [protecting the environment], (11) [encouraging involvement of citizens in the planning process and interjurisdictional coordination], and (12) [ensuring public services and facilities needed to support development are adequate].

RCW 36.70A.110(1) requires Counties to designate urban growth areas (**UGAs**), """"within which urban growth shall be encouraged and outside of which growth can only occur if it is not urban in nature."

RCW 36.70A.070(5) establishes the components of a county's mandatory rural element. This section of the Act provides, in relevant part:

> Rural Element. Counties shall include a *rural element including lands that are not designated for urban growth*, agriculture, *forest* or mineral *resources*. The following provisions shall apply to the rural element:
>
> a. Growth management goals and local circumstances. Because circumstances vary from county to county, in establishing patterns of rural densities and uses, *a county may consider local circumstances, but shall develop a written record explaining how the rural element harmonizes the planning goals in RCW 36.70A.020 and meets the requirements of this chapter.*
>
> b. Rural development. *The rural element shall permit rural development*, [FN12] *forestry*, and agriculture *in rural areas. The rural element shall provide for a variety of rural densities*, uses, essential public facilities, and rural governmental services needed to serve the permitted densities and uses. *In order to achieve a variety of rural densities* and uses, *counties may provide for clustering*, density transfer, design guidelines, conservation easements, and other innovative techniques *that will accommodate appropriate rural densities and uses that are not characterized by urban growth and are consistent with rural character.* [FN13]
>
> c. Measures governing rural development. *The rural element shall include measures that apply to rural development and protect the rural character of the area*, as established by the county, by:
>
> i. Containing or otherwise *controlling rural development*;
>
> ii. *Assuring visual compatibility* of rural development with the surrounding rural area;
>
> *iii. Reducing the inappropriate conversion of undeveloped land into sprawling, low-density development in the rural area*;

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

iv. *Protecting critical areas*, as provided in RCW 36.70A.060, and surface water and ground water resources; and

v. *Protecting against conflicts with the use of* agricultural, *forest*, and mineral resource lands designated under RCW 36.70A.170.

(Emphasis supplied).

Discussion

Position of the Parties:

The City argues that the Kitsap County Planning Commission (**PC**) recommended that the County not consider any version of the RWL amendments until a viable Transfer of Development Rights Program (**TDR**) was developed. City PHB, at 5. The City cites the PC's findings, which include:

14. The proposed [RWL] policy revisions create the potential for additional housing sites in rural areas.

· Neither the number of sites nor their impact on rural character is defined.

· Encouraging growth in the rural area that is not urban in nature or that is inconsistent with the preservation of rural character is not supported by the Growth Management Act or by the Kitsap County Comprehensive Plan.

· Encouraging urban growth in the rural area could discourage development in the Kitsap County Urban Growth Areas.

15. The incentive based land conservation programs are not complete. The TDR program is not defined.

16. There is no consensus position on what the "density bonus program" should be ...

· The potential that the density bonus program will result in negative, unintended consequences to rural character is too great.

· There has been no analysis of the potential impact this level of development would have on levels of service for schools, roads, parks, public safety and environmental concerns.

· The density bonus program impairs the flexibility, attractiveness and motivation to define the TDR program.

Id., at 4-5, *citing* PC Report, Ex. 24626.

The City then contends that to respond to the PC recommendation, the County deferred adoption of implementing regulations with direction to staff to address the undetermined impacts and concerns raised by the PC. The City cites RWL Policy RL-10b to support this contention. *Id.*, at 5-6 and 17. Rural Wooded Policy RL-10b provides:

> Prior to accepting any applications pursuant to this policy, *the County shall adopt development regulations that specifically address* the criteria and objectives of this RL-11a - RL-11g section including but not limited to *how the rural character will be preserved and urban growth in the rural area will be prevented.*

See Ordinance No. 311-2003, RWL Policies, *supra*, (emphasis supplied). The City also notes several other changes the Board of County Commissioners (**BCC**) made to the RWL policies in response to the PC recommendation. One was to include an annual monitoring policy that includes a "stop and assess report" found in RWL policy RL-11e, cited *supra*. The "stop and

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

assess report" requires a report once a threshold of 10,000 acres or 5 years is reached; applications for clustering are halted until the report is generated. *See* Policy RL-11e. The City contends the delayed implementation and monitoring provisions do not comply with the provisions of RCW 36.70A.070(5). City PHB, at 7-14.

To illustrate the City's argument, it suggests that on a 40-acre parcel, clustering under the RWL policies, instead of two dwelling units being permitted, eight dwelling units would be permitted; and these eight would be confined to 10 acres, yielding 1 1/4 acre lots - not a rural density but an urban density. *Id.*, at 14-15. If the same property adjoined a shoreline, the clustered density would allow 16 dwelling units on 10 acres, yielding less than 1-acre lots, again allegedly not a rural density but an urban density. *Id.*

Citing Court and Board cases, the City contends that 5-acre lots are a minimum rural density, and the lots created through the operation of the RWL policies yield urban lots in violation of the Act. *Id.*, at 15-17. Additionally, the City asserts that the RWL policies apply to parcels as large as 1000 acres, which would allow 200 new residential units (more on shorelines), and which would have significant adverse impacts on schools, fire protection, and roads. None of these impacts, the City argues, were evaluated by the County. *Id.*, at 18-21.

Finally, the City argues that the RWL policies are not guided by the goals of the Act because they will: encourage growth in the rural areas where facilities and services will not be available; encourage low density sprawl; discourage coordinated multimodal transportation; not conserve forest lands; and not protect the environment along the shoreline or rural wooded areas especially since no environmental analysis has occurred. *Id.*, at 22-25.

The Tribe argues the present RWL policies are an outgrowth of prior efforts by the County to allow urban growth in the rural area. Tribe PHB, at 46-48. The Tribe refers to the County's prior "Conservation Easement Ordinance" (**CEO**) which allowed clustering and was struck down by this Board in *Kitsap Citizens for Rural Preservation, et al., v. Kitsap County* (***KCRP***), CPSGMHB Case No. 94-3-0005, Final Decision and Order (Oct. 25, 1994). While the Board did find the CEO noncompliant with the Act, the Board noted that it could "conceive of a well-designed compact rural development containing a small number of homes that would not look urban in character, not require urban governmental services, nor have undue growth-inducing or adverse environmental impact on surrounding properties ... [However, the CEO] does not have parameters to prevent development projects that constitute urban growth from occurring in rural areas." Tribe PHB, at 46-47, *citing KCRP*, at 11.

Petitioner also noted that in reviewing the County's Plan in 1997, the Board struck down 2.5-acre and 1-acre lot sizes in the rural area in *Bremerton, et al. and Port Gamble v. Kitsap County* (***Bremerton/Port Gamble***), CPSGMHB Case No. 95-3-0039c coordinated with Case No. 97-3-0024c, Finding of Noncompliance and Determination of Invalidity in *Bremerton* and Order Dismissing *Port Gamble*, (Sep. 8, 1997). [FN14] The Tribe then contends that the RWL policy amendments are another effort by the County to allow urban lots in the rural area. Tribe PHB, at 48.

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

Petitioner takes issue with the clustering densities, and argues even the limit of 25 units per cluster [RL-11b(4)] does not limit the number of clusters or proximity of clusters. *Id.*, at 49. Additionally, the Tribe contends that the portion of the parcel used for forestry for 40 years, the "Wooded Reserve," could precipitate additional development after the 40-year period had lapsed; therefore permitting even more density on the parcel. *Id.*, at 47-48. The Tribe agrees with the City that the development potential of RW lands on the shoreline yields even higher densities that are clearly urban. *Id.*, at 50-51. The Tribe also argues that cluster development undertaken pursuant to these policies would not constitute "limited areas of more intensive rural development" (**LAMIRDs**) as defined in the GMA - RCW 36.70A.070(5)(d). *Id.*, at 51-54.

Finally, the Tribe argues the RWL policies are not guided by the goals of the Act since they do not encourage compact urban growth within the UGAs, protect the environment or conserve resource lands; but instead undermine such urban development. *Id.*, at 54-58.

In response, the County contends it has been working on a rural/forest incentive program for six years, and the RWL policies, a product of that effort, provide a framework for preserving the rural area, protecting shorelines and fostering forestry uses in the rural area. County Response I, at 2. In addition to the historical backdrop noted by the Tribe, the County also refers to a Board case where one of the same Petitioners (*i.e.*, KCRP) challenged the Rural Element in the County's Plan, alleging it did not provide for a variety of rural densities, did not protect rural character and permitted urban growth in the rural area. In that case, the Board concluded that KCRP had failed to meet its burden of proof in demonstrating noncompliance with the GMA. However, the Plan was remanded with direction for the County to make a decision and designate forest resource lands of long-term commercial significance. [FN15] *Id.*, at 12, *citing Bremerton et al., v. Kitsap County*, CPSGMHB Case No. 98-3-0039c, coordinated with *Alpine v. Kitsap County*, CPSGMHB Case No. 98-3-0032c, Order Rescinding Invalidity in *Bremerton* and Final Decision and Order in *Alpine*, (Feb. 8, 1999). The County noted that policies in the 1998 Plan committed the County to "develop and consider a clustering program for residential development in designated resource areas." *Id.*, at 14, *citing* 1998 Plan Policy RL-35.

The County acknowledges that the RWL policies will allow between 50% and 75% of rural lands in the program to be preserved for forestry or open space for a minimum of 40 years, and due to clustering, densities will increase on 25% of the land in the program. However, the County contends that parameters such as the limitation on the number of units in a cluster, prohibition of urban services, buffer requirements, compliance with critical areas regulations, site-specific hearing examiner review and monitoring provide adequate protection to rural character. Additionally, the County notes that these policies are ineffective until the development regulations are adopted. *Id.*, at 2. The County asserts that Petitioners' case is based upon hypothetical and conclusory allegations which cannot support a finding of noncompliance. *Id.*, at 3.

The County contends that these framework policies are a "start;" the County is "still taking a hard look at what is needed to implement a viable [[[incentive] program that not only encourages forestry activities, but provides incentives to property owners to continue those activities, retain rural character, and realize on the value of their property." *Id.*, at 10.

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

In specific response to the City's arguments, the County asserts that the City's hypothetical parcels focus on the clustered areas and ignore the fact that 50%-75% of the same parcel would be preserved as Wooded Reserve and/or open space - which would become the predominant feature of the landscape. *Id.*, at 24-25. The County also claims that without the development regulations "it is impossible to predict what will happen on the ground." *Id.*, at 25, footnote 14. The County then suggests [without explaining] that the RWL policies address all the aspects of "rural character" as defined by the GMA. *Id.* The County also notes that if the "stop and assess report" is akin to a moratorium, the County has authority to take emergency actions, and adopt interim and moratorium ordinances if necessary. *Id.*, at 26.

The County asserts that *both* Petitioners have inadequately briefed Legal Issue 11, related to compliance with the goals of the Act, or just offered conclusory statements. *Id.*, at 33-37. Nonetheless, the County asserts that the clustering provisions, with their restrictions, do not allow urban growth in the rural area and therefore do not conflict with its goals. *Id.* Additionally, the County asserts, "[N]o provision of the GMA specifically requires that a county 'discuss, address, and weigh any of the 13 planning goals in developing [its] comprehensive plan." *Id.*, at 37, *citing Manke v. CPSGMHB*, 113 Wn. App. 615, 627, 53 P. 3d 1011 (2002).

In specific response to the Tribe's arguments, the County contends that, like the City, the Tribe relies upon hypothetical situations and conclusory remarks to make its case. *Id.*, at 29. The County asserts that although the Tribe believes the incentive program is lacking in parameters, the RWL policies are consistent with prior Board decisions and there are adequate parameters in the framework policies to guide the RWL clustering program. *Id.* The County asserts that the RWL policies are not LAMIRDs, as the Tribe seems to suggest, and need not comply with those provisions of the Act. *Id.*, at 31. Finally, the County contends that one of the Board's prior cases dealing with clustering [*Sky Valley v. Snohomish County* (***Sky Valley***), CPSGMHB Case No. 95-3-0068c, Order on Compliance, (Oct. 2, 1997)] upheld clustering provisions because of a monitoring program. Like Snohomish County, Kitsap County's clustering program has annual monitoring and a "stop and assess" report to evaluate its clustering program; therefore, the County's program should also be upheld. *Id.*, at 32-33.

Intervenor Manke joins the County and Intervenor Overton in their response to the RWL policies generally, and responds specifically to the arguments offered by Petitioners related to the RWL policies as they relate to the shoreline preserve program [RL-11c]. The first distinction Manke makes related to the shoreline program is that to obtain the cluster density of 1 dwelling unit per 2.5 acres, the parcel must be at least 40 acres and at least 50% of the parcel must be *permanently* dedicated to open space and managed for forestry; there is no time horizon set for these lands. Manke Response, at 2-6, *see also* RL-11c(3). Additionally, Manke contends that only 6 miles of Kitsap County's 228 miles of shoreline is eligible for this program; and of that, Intervenor owns most of it [approximately 2000 acres] which is primarily interconnected land located along Hood Canal. *Id.*, at 6.

Manke contends that the County's shoreline incentive program will likely yield more shoreline preserved than if the shorelines were developed as 20-acre parcels as exists today. *Id*, at 8.

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

Intervenor also hails back to policies in the 1998 Plan that indicated the County was going to pursue a program to preserve undeveloped rural shorelines in open space. *Id.*, at 9, *citing* Plan policy RL-11. Manke then argues that the strictly conditioned clustered development near shorelines at one dwelling unit per 2.5 acres along with permanent open space along the shoreline does preserve rural character, is not urban growth, and is an appropriate rural density. *Id.*, at 11-26. Finally, Manke contends that the RWL policies advance the goals of the Act challenged by Petitioners and also advance the housing, property rights and open space goals - RCW 36.70A.020(4), (6) and (9). *Id.*, at 27-30.

Intervenor Overton owns approximately 26,500 acres of the land that is now designated as RWL and potentially subject to the RWL policies. [FN16] Overton Response, at 1. Overton argues that the RWL policies "do nothing more than to finally implement the concepts that have been embedded in [the County's Planning process] for trying to keep as much forestry as possible for as long as possible in a county where forestry does not have long-term commercial viability, and for requiring smart, high quality rural development of those lands when and where development must occur." *Id.*, at 3. Overton asserts: 1) it is now finally established that the Rural Wooded lands are not GMA designated forest resource lands, and they do not have long-term commercial significance for forestry; and 2) when the Rural Wooded lands are developed it should be done with clustering. *Id.* Intervenor describes two schools of thought about the extent of development to allow on RW lands: one approach is "punitive" and limits development to very low densities (e.g., 1du/20 acres); the other is an incentive approach to allow continued forestry and higher density rural development. The County and Intervenor, in light of the local circumstances, are of the second school of thought, and the RWL policies reflect this. *Id.*, at 4-5.

Intervenor then argues that the RWL policies have the parameters that were lacking in the CEO that was invalidated by the Board in 1994, in the *KCRP* case. *Id.*, at 7. Further, Overton argues, the RWL policies are consistent with the Board's *Sky Valley* decision in 1997, since annual monitoring and a "stop and assess report" will be part of the program. *Id.*, at 8-9. Finally, Intervenor notes that in the shoreline incentive program forestry is limited to the shoreline area (governed by DNR and WAC 222-30-021) and residential development is confined to the upland portion of the slope, thereby protecting the shorelines. *Id.*, at 9-11.

In reply the City reiterates that lots smaller than 5 acres in the rural area constitute urban growth (*citing Sky Valley*, FDO, at 28.) and the RWL policies permit lots that are smaller than 5 acres in the rural area. City Reply, at 2-3. The City also urges the Board not to focus on the projected benefits the public would receive from preserving shorelines, but address the urban densities the RWL policies would permit on these same shorelines - It is not that "currently undeveloped shorelines will permanently remain undeveloped" but instead, "currently undeveloped shorelines will be developed now at densities above those allowed under GMA for rural areas." *Id.*, at 4-6. Petitioner questions why, after all the years of negotiation and discussion, has the County been unable to craft development regulations to implement the RWL policies; suggesting that the answer is that compliant development regulations cannot be drafted since the RWL policies permit urban growth in the rural area and violate the Act. *Id.*, at 9-11, and 17-18.

In reply the Tribe notes that the Board has stated, "[W]hile no clear break point is evident in the

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

information presently before the Board, it is only logical that, at some point along the continuum of potential project size and intensity, the *quantitative* dimension of cluster development in a rural area must have *qualitative* urban growth consequences." Petitioner suggests the RWL policies cross the line. Tribe Reply, at 39, *citing KCRP*, at 16. The Tribe then argues that the clustering provisions in the Snohomish County case (*Sky Valley*) are distinguishable from the RWL policies under review here because the parameters are different. *Id.*, at 49-50. Finally, Petitioner argues that the RWL policies do not encourage compact urban development or otherwise adhere to the guidance provided by the goals of the Act. *Id.*, at 52-56.

Board Discussion

Forestry activities are permissible on lands designated as "Rural" in the County's Plan. *See* RCW 36.70A.070(5)(b). However, forestry on these "wooded lands" is not entitled to the protections from encroachment of incompatible uses that attach to lands designated as forest resource lands of long-term commercial significance. *See* RCW 36.70A.170, .060, .030(8) and .020(8).

Likewise, the Act permits the County to include cluster development and density bonus incentive programs for "Rural" lands (*i.e.* in the Rural Element of the Plan), as mechanisms to provide for a variety of rural densities. *See* RCW 36.70A.070(5)(b) and .090. The County can rely on local circumstances to help shape its rural density provisions. *Id.* As articulated by the parties in briefing and at the HOM, [FN17] the relevant local circumstances in Kitsap County include, at a minimum: 1) a large number of nonconforming small lots in the rural area; 2) a significant number of large ownerships and large lots in the rural area; 3) ongoing forestry activities in the rural area that does not have long-term commercial significance (*i.e.*, not forest resource lands); and 4) the lack of aggregation of smaller nonconforming lots in the rural area.

As all the parties briefing this issue acknowledge, the County has been pursuing some form of incentive program in the forested portions of its rural area for some time. *See* City PHB, Tribe PHB, County Response I, Manke Response and Overton Response. There does not appear to be any dispute regarding the *need* for some type of an incentive program in light of the local circumstances found within these rural areas of Kitsap County. The RWL policies (primarily Plan policies RL-10(a) and (b) and RL-11(a through i) are the most recent product of the County's efforts to meet this need.

While the Act recognizes that the County may consider local circumstances in establishing rural densities in the Plan's Rural Element, the Act also *requires* [FN18] that the County "develop a written record explaining how the rural element [here how the RWL polices] harmonizes the planning goals in RCW 36.70A.020 and meets the requirements of this chapter." RCW 36.70A.070(5)(a). The Board construes and interprets this "written record explanation" requirement to be a discrete document produced by the County, which may compile record evidence to explain how the goals are harmonized. Although counsel for the County argued in briefing [FN19] and at the HOM [FN20] how the RWL policies complied with the goals of the Act, the Board finds no written record explaining how the RWL policies harmonize the goals of the Act.

Ordinance No. 311-2003, Section 5, at 12, is captioned "Additional Procedural and Substantive

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

Findings Relating to Interim Rural Forest [*i.e.* RWL policies]." There are 12 "procedural findings" that list the dates of various meetings and hearings held on this topic; and five "substantive findings" (**SF**) that summarize the changes the BCC made to the RWL policies in response to concerns of the Planning Commission and the public. *Id.*, at 12-15. These substantive findings do not explain how the County has harmonized the goals of the Act in light of the adopted RWL policies. This is especially important since the RWL policies are establishing a permissible land use pattern that is part of the "rural character" [FN21] of Kitsap County. This deficiency alone leads the Board to conclude that the County has clearly erred and has not complied with the requirements of RCW 36.70A.070(5)(a). However, there are additional reasons that persuade the Board that this conclusion is correct.

It is clear that density bonuses and cluster development are permitted under the Act, but they are limited to the extent they "will accommodate *appropriate rural densities* and uses that are *not characterized by urban growth and* that are *consistent with rural character.*" RCW 36.70A.070(5)(b), (emphasis supplied). The County's adoption of the RWL policies is presumed valid and the """"substantive findings" of Section 5 of the Ordinance, noted *supra*, do state that the changes made by the BCC in response to the PC and public concerns """"increase the level of protection of rural character and prevention of urban growth in the IRF clustering policy" [Ordinance 311-311-3003, Section 5, SF 2, at 14.] and "[amendments to the RWL policies] allow compact urban development in IRF clusters while protecting rural character and preventing urban growth in the rural area." *Id.*, SF 4, at 15.

However, Petitioners have made a *prima facia* case that the County has not overcome. The evidence supports a conclusion of error by the County. First, the City notes that the PC was concerned that no environmental review was performed on the RWL policies and that the extent of the environmental analysis in the threshold determination for Ordinance No. 311-2003 was "[T]he amendments will not result in impacts themselves. Subsequent land use proposals will be subject to project specific review." *See* City PHB, at 17, and City Reply, at 12 *citing* Ex. 26081. This suggests that environmental impact information was lacking in the County's decision, and apparently is not anticipated until project review occurs. This is too little, too late, for a major Plan policy decision related to rural land use patterns and densities potentially applicable to almost 50,000 acres.

Second, the County acknowledges that it is uncertain what effect the RWL policies will have upon the rural area, "[Without development regulations] it is impossible to predict what will happen on the ground." County Response I, at 25, footnote 14. This also suggests that the County has not tried to determine how the incentives prescribed in the RWL policies will be received or accepted, and ultimately implemented to affect rural character and development in the rural area. Without clearly defined parameters, the Board notes that scenarios envisioned by Petitioners - the City and the Tribe - are all too plausible.

Third, Plan Policy RL-10b itself undermines the SFs conclusions in the Ordinance that indicate rural character *is* protected and urban growth prevented. It appears that the County is not that confident of its conclusions. RL-10b states, "Prior to accepting any applications pursuant to this policy, the County shall adopt development regulations that *specifically address* the criteria and

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

objectives of the RL-11a - RL - 11-g section including but not limited to *how rural character will be preserved and urban growth in the rural area will be prevented.*" This policy is carried out in Section 10(7) of the Ordinance where County staff is directed to develop the development regulations for the RWL policies and present them to the BCC [within 9 months [FN22] of the effective date.] This policy supports the contention that the County is awaiting development regulations before it evaluates whether the RWL policies protect rural character and prevent urban growth in the rural area, thereby being noncompliant with the requirements of RCW 36.70A.070(5)(b).

Fourth, the County and Intervenors assert that the RWL policies provide a framework and provide policy guidance for drafting the development regulations. Yet it is not clear from the language of the policies themselves whether shorelines are limited to saltwater or marine shorelines or all shorelines including freshwater shorelines. [FN23] It is not clear whether the permitted 2.5 acre lots in the shoreline incentive policy is calculated based upon the entire lot or just the "shoreline preserve." [FN24] It is not clear whether, after 40 years, the "wooded reserve" could only accommodate the remainder of previously approved, but unused cluster development units, or whether it could provide a basis for a new cluster application. [FN25] Each of these ""ambiguities" can directly affect the amount of land open to the incentive program or how generous or stingy the incentives are. In order to adequately draft implementing development regulations these ambiguities in the ""guiding framework" policies should be revised or removed.

For the reasons articulated *supra*, the Board concludes that the County's action of adopting the RWL policies [RL - 10(a) and (b), and RL - 11a through i] in Ordinance No. 311-2003 and set forth in the Errata Sheet, Specific Text Amendments, at 7-10, to Ordinance No. 311-2003, was clearly erroneous and does not comply with the requirements of RCW 36.70A.070(5)(a), (b) and (c), including the requirement that the RWL policies be harmonized with the goals of the Act. Also, because the County has not complied with RCW 36.70A.070(5)(a), the Board concludes that the adoption of the RWL policies was not guided by, and does not comply with, the noted goals of the Act - RCW 36.70A.020(1), (2), (3), (5), (8), (10), (11) and (12). The Board will remand the RWL policies as adopted in Ordinance No. 311-2003 with direction to the County to take legislative action to comply with the GMA, as interpreted in this Order. The Board will also urge the County to concurrently amend the Plan policies and develop the necessary implementing development regulations to provide certainty to all those potentially affected.

Conclusion - Legal Issue Nos. 9 and 11

The Board concludes that the County's action of adopting the RWL policies [RL - 10(a) and (b), and RL - 11a through i] in Ordinance No. 311-2003 and set forth in the Errata Sheet, Specific Text Amendments, at 7-10, to Ordinance No. 311-2003, was **clearly erroneous** and **does not comply** with the requirements of RCW 36.70A.070(5)(a), (b) and (c), including the requirement that the RWL policies be harmonized with the goals of the Act. Also, because the County has not complied with RCW 36.70A.070(5)(a), the Board concludes that the adoption of the RWL policies was **not guided by**, and **does not comply** with, the noted goals of the Act - RCW 36.70A.020(1), (2), (3), (5), (8), (10), (11) and (12). The Board will **remand** the RWL policies

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

as adopted in Ordinance No. 311-2003 with direction to the County to take legislative action to comply with the GMA, as interpreted in this Order.

B. CRITICAL AREAS

The Board's PHO, as corrected, [FN26] set forth Legal Issue No. 25 as follows:

> ***25. Whether the County violated section 19.100.110 of its Critical Areas Ordinance, [FN27] and thereby failed to be guided by Goals 2, 8, 9 and 10, when it failed to consider the Ordinance's impacts on critical areas?***

Applicable Law and Discussion

Position of the parties

The Tribe argues that the County did not conduct a critical area review of the new densities permitted in the Rural Wooded designation, as required by: 1) the Kitsap County Comprehensive Plan (Plan Policies CP-4, NS-26 and NS-62); 2) GMA Goals 8 and 10; and 3) RCW 36.70A.172. Tribe PHB, at 63-71.

In response, the County asserts that the Tribe never briefed the issue as posed in the issue statement, but instead asserted new allegations and arguments that the Board should not address. The County goes on to note that it is studying certain watersheds. County Response I, at 39-41.

Intervenor Overton argues that the County's critical areas ordinance applies to any development that occurs in the County, including development that occurs through the RWL incentive program. Also, Overton contends that the provisions of the incentive program are designed to keep development away from critical areas through clustered development where it will have the least impact on critical areas. Overton Response, at 14-15.

In reply the Tribe notes that it argued noncompliance with specific Plan Policies and Goals of the Act. The Tribe then asserts that the County should have undertaken and completed the studies before it adopted the Ordinance. Tribe Reply, at 57-59.

Board Discussion

The Tribe never mentions or cites section 19.100.110 of the Kitsap County Code - the County's Critical Areas Ordinance - in its PHB. Tribe PHB, at 63-71. Therefore, this portion of Legal Issue No. 25 is **abandoned**.

The Tribe refers to noncompliance with Goals 8 [FN28] and 10 [FN29] in its PHB. *Id.* While both goals are to provide direction in the development of Plans and regulations, as are all the GMA's goals, these goals do not impose a requirement upon jurisdictions to conduct a critical areas analysis of potential impacts of the adoption, or amendment of, GMA Plans and development regulations.

The County's own Plan Policies, as argued by the Tribe, suggest that in amending its Plan the County must consider alternatives, explain the need for the proposed changes and consider

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

potential environmental impacts from those proposed changes. If the Tribe wanted to place the question of whether the County complied with its Plan Policies, as stated in its own Plan, the Tribe should have done so when it formulated the statement of Legal Issue No. 25. It did not do so. Likewise, the Tribe did not include compliance with RCW 36.70A.172, as an issue to be resolved by the Board. Therefore, the Board can not, and will not, resolve these questions. *See* RCW 36.70A.290(1).

However, the Board notes that none of the Plan Policies cited by the Tribe directs that Plan amendments be reviewed for impacts on critical areas. Additionally, this type of review (application of the CAO provisions) typically occurs during review of a project proposal. Finally, the Board notes that compliance with RCW 36.70A.172 would ordinarily be raised in the context of amendments to the County's critical areas regulations. These regulations were not altered by the County's adoption of Ordinance No. 311-2003.

Conclusions

The Board concludes that Petitioner has **abandoned** part of Legal Issue No. 25, and **failed to carry the burden of proof** in demonstrating noncompliance with the goals or requirements of the Act. Legal Issue No. 25 is **dismissed with prejudice**.

C. OFM POPULATION PROJECTIONS

The Board's PHO sets forth three Legal Issues related to OFM's population projections. They are Legal Issues Nos. 13, 23 and 24, which provide as follows:

> ***13. Did the County violate RCW 36.70A.110(2) when it used the Ordinance to expand UGAs which are not based upon OFM's population projections***?
> ***23. Did the County fail to comply with the consistency requirements of RCW 36.70A.100 and RCW 36.70A.210 when it adopted a population projection and allocation that contradicts County-wide Planning Policies (CPP) CPP A.2.i and A.3***?
> ***24. Did the County fail to comply with the requirements of RCW 36.70A.110(2), RCW 36.70A.130 and the consistency requirements of RCW 36.70A.100 and RCW 36.70A.210 and fail to be guided by RCW 36.70A.020(1) and (2) when it allocated 10,640 of 26,790 in forecast growth to Urban Growth Areas and when it failed to consider concurrently all of its comprehensive plan amendments***?

Applicable Law

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

> Based upon the growth population projections made for the county by the office of financial management [**OFM**], the county and each city within the county shall include areas and densities sufficient to permit the urban growth that is projected to occur in the county or city for the succeeding twenty-year period .... Cities and counties have discretion in their comprehensive plans to make many choices about accommodating growth.

RCW 36.70A.100 requires consistency among the plans of jurisdictions with common borders. It

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

is generally referenced as the external consistency provision; it is set forth in full *supra*, under the Rural Wooded Lands discussion.

RCW 36.70A.210(1) provides in relevant part:

> ... For the purpose of this section, a "county-wide planning policy" is a written policy statement or statements used solely for establishing a county-wide framework from which county and city comprehensive plans are developed and adopted pursuant to this chapter. This framework shall ensure that city and county comprehensive plans are consistent as required by RCW 36.70A.100 ....

Goals 1 and 2 relate to encouraging development within urban areas and reducing sprawl; these Goals are set forth in full *supra*, under the Rural Wooded Lands discussion.

The relevant provision of RCW 36.70A.130, as suggested by Legal Issue 24, provides:

> Except as provided in (a) of this subsection, *all proposals shall be considered by the governing body concurrently* so the cumulative effect of the various proposals can be ascertained ....

RCW 36.70A.130(2)(b); (emphasis supplied).

Kitsap County's County-wide Planning Policy - CPP A.2.i - provides in relevant part: "[S]ufficient area must be included in the Urban Growth Area to accommodate a minimum twenty-year population forecast."

Discussion

Position of the Parties:

The Tribe argues: 1) The County's new population forecast is not "based upon" OFM's most recent forecast; 2) The County ignored new or updated information; and 3) The population projection selected is inconsistent with CPP A.2.i because it is not the "minimum" projected by OFM. Tribe PHB, at 30-38. The Tribe also implies that the population target that was not allocated in the subarea planning process to UGA expansions was automatically allocated to the rural areas. Thus, the "net cumulative effect of the Ordinance is to accommodate and encourage over sixty percent of forecast growth in rural areas." *Id.*, at 60-62.

In response the County asserts that the population target selected by the County falls within the range projected by OFM which is all that is required. County Response II, at 14. The County further asserts that the word "minimum" in CPP A.2.i means the UGAs must accommodate at least the 20-year population forecast, not the low range projected by OFM. *Id.*, at 16. The County suggests that the Tribe erroneously concludes that the remainder of the population target not allocated to the UGA expansions was allocated to the rural area. The County contends it did not allocate the population remainder anywhere. Instead the County says it has deferred allocating it, which is not prohibited by the GMA. County Response I, at 38.

Intervenor McCormick concurs with and corroborates the response set forth by the County, noting that requiring constant analysis of new data can lead to paralysis in planning and decision-making. McCormick Response, at 33-34.

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

Intervenor Overton asserts that the property owners of RW lands cannot be held hostage to the City of Bremerton's inability to attract population. Overton Response, at 15-16.

In reply, the Tribe re-asserts arguments made in their PHB, adding that a discretionary choice must be reasoned and not arbitrary. Petitioners suggest that the County must conduct an analysis of the process it uses, including the most current data, to select its population target. Tribe Reply, at 23-28. Petitioners also cite to cases decided prior to the 1995 legislative amendments directing OFM to prepare population forecast ranges, to support its contention that CPP A.2.i means the County's UGA must be sized to accommodate the ""minimum" (low) OFM forecast. *Id.*, at 28-29.

Board Discussion:
The mandate of RCW 36.70A.110(2) is that the County designate its UGAs with enough area and density to accommodate the urban growth (*i.e.*, derived from population) that is projected to occur in the county or city for the succeeding twenty-year period. OFM is the state agency required to prepare the population projections. *See* RCW 43.62.035. In 1995, the legislature amended RCW 43.62.035 directing OFM to prepare a range of population forecasts rather than a single projection. *See* Laws of 1995, ch. 400.

Since the legislative change requiring a range of population projections, rather than a single point, the Board has determined that counties have discretion in selecting population targets for designing UGAs, so long as the population target is within the OFM population range and encourages urban development in urban areas. *See Bremerton, et al., v Kitsap County/Alpine Evergreen, et al., v. Kitsap County* (***Bremerton/Alpine***) CPSGMHB Case No. 95-3-0039c Coordinated with Case No. 98-3-0032c (**3539c/8332c**), Order Rescinding Invalidity in *Bremerton* and Final Decision and Order in *Alpine*, (Feb. 8, 1999), at 38.

In other words, the state, through OFM, sets the upper and lower limits of the population growth to be accommodated. Given these parameters, then the counties must: 1) select a population target that falls within the bounds of the OFM ranges; and 2) "based upon" the selected target population, designate UGAs to accommodate that urban growth. This approach appropriately balances state interests and local discretion.

There is nothing argued by Petitioners that persuades the Board that this approach is out of balance or in need of adjustment. The County is planning to accommodate 319,017 [FN30] people by the year 2017; the 2002 OFM forecasts for 2017 range from 250,305 (low), 291,949 (middle) and 354,601 (high). *See* Ordinance No. 311-2003, Finding No. 13 and 16, and Tribe PHB, at 37. The County's selected population target falls within the ranges projected by OFM. The County's process for selecting the target population was a rational process and was based upon the data available at the time. The selected population target is not an irrational choice and is within the County's discretion. Therefore, the Board concludes that the population target selected by the County [319,017 by 2017] is within the range of OFM projections and complies with the requirements of RCW 36.70A.110(2).

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

Likewise, the Board cannot read CPP A.2.i in the way the Tribe proposes. To do so is directly counter to the 1995 legislative amendments directing range forecasts by OFM. Prior to this amendment, there was only one OFM projection. That projection was both a floor and a ceiling; counties had no choice [FN31] but to accommodate the single point population projection of OFM in sizing their UGAs. This is what the Tribe is advocating; this is what the legislature has clearly rejected. The Board concludes that the County's selected target population for 2017 is consistent with CPP A.2.i, and therefore complies with RCW 36.70A.210 and .100.

Petitioners offer no discernable argument as to compliance with the concurrent review requirements of RCW 36.70A.130(2)(b). The Board notes, however, that the adoption of Ordinance No. 311-2003 is the product of the County's 2003 annual amendment review process. This Ordinance includes numerous amendments, many of which were challenged by Petitioners, and each of the amendments adopted in this single Ordinance were considered concurrently. Therefore, Petitioners have failed to carry their burden of proof in demonstrating noncompliance with the requirements of RCW 36.70A.130, as referenced in Legal Issue No. 24.

Finally, the Board is not persuaded by the implied argument of the Tribe that the County has assigned the unallocated portion of the target population used for the subarea planning process to the rural areas. The Tribe points to nothing in the GMA that requires the entire population projection of OFM to be directed only to urban areas. Petitioners have failed to carry their burden of proof on this issue.

Conclusions

The Board concludes that the population target selected by the County [319,017 by 2017] is within the range of OFM projections and **complies with** the requirements of RCW 36.70A.110(2). The Board also concludes that the County's selected target population for 2017 is consistent with CPP A.2.i, and therefore **complies with** RCW 36.70A.210 and .100. Petitioners **have failed to carry their burden of proof** in demonstrating noncompliance with RCW 36.70A.130(2)(b) or the implied rural allocation suggestion in Legal Issue No. 24.

D. URBAN GROWTH AREA EXPANSIONS AND SUBAREA PLANS

The Board's PHO sets forth Legal Issues 12, 14 and 15 as follows:

12. Did the County violate RCW 36.70A.110 in using the Ordinance to expand UGAs?
14. Did the County violate RCW 36.70A.110(1), 36.70A.070 ("internally consistent document"), RCW 36.70A.080 (2) (subarea plans to be consistent), and 36.70A.210 when it included within the expanded UGAs land located outside of a city which is not already characterized by urban growth or adjacent to such area contrary to CPP A.2.c. and Comprehensive Plan policy UGA-2?
15. Did the County violate RCW 36.70A.070 ("internally consistent document"), RCW 36.70A.080(2) (subarea plans to be consistent with comprehensive plan), and RCW 36.70A.210(1) by adopting the Ordinance which expanded UGAs contrary to the locational criteria of the Countywide Planning Policies and Comprehensive Plan?

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

Applicable Law

36.70A.070 provides in relevant part:

> The plan shall be an internally consistent document and all elements shall be consistent with the future land use map.

36.70A.080 provides in relevant part:

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

36.70A.110 provides in relevant part:

> (1) Each county that is required or chooses to plan under RCW 36.70A.040 shall designate an urban growth area or areas within which urban growth shall be encouraged and outside of which growth can occur only if it is not urban in nature. Each city that is located in such a county shall be included within an urban growth area. An urban growth area may include more than a single city. An urban growth area may include territory that is located outside of a city only if such territory already is characterized by urban growth whether or not the urban growth area includes a city, or is adjacent to territory already characterized by urban growth, or is a designated new fully contained community as defined by RCW 36.70A.350.
>
> (2) Based upon the growth management population projection made for the county by the office of financial management, the county and each city within the county shall include areas and densities sufficient to permit the urban growth that is projected to occur in the county or city for the succeeding twenty-year period, except for those urban growth areas contained totally within a national historical reserve.
>
> Each urban growth area shall permit urban densities and shall include greenbelt and open space areas. In the case of urban growth areas contained totally within a national historical reserve, the city may restrict densities, intensities, and forms of urban growth as determined to be necessary and appropriate to protect the physical, cultural, or historic integrity of the reserve. An urban growth area determination may include a reasonable land market supply factor and shall permit a range of urban densities and uses. In determining this market factor, cities and counties may consider local circumstances. Cities and counties have discretion in their comprehensive plans to make many choices about accommodating growth.
>
> ...
>
> (3) Urban growth should be located first in areas already characterized by urban growth that have adequate existing public facility and service capacities to serve such development, second in areas already characterized by urban growth that will be served adequately by a combination of both existing public facilities and services and any additional needed public facilities and services that are provided by either public or private sources, and third in the remaining portions of the urban growth areas. Urban growth may also be located in designated new fully contained communities as defined by RCW 36.70A.350.
>
> ...
>
> (6) Each county shall include designations of urban growth areas in its comprehensive

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

plan.

...

36.70A.210 provides in relevant part:

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

1. General Discussion

The sizing requirements and locational criteria in RCW 36.70A.110 apply to UGA expansion as well as to the initial UGA designation. RCW 36.70A.110(1) specifically contemplates that UGA boundaries may expand over time to allow for additional urban development, and it specifies the locational criteria that limit that expansion. A UGA may include an area not in a city only if that area already is characterized by urban growth, is adjacent to an area characterized by urban growth, or is a designated fully-contained community. *See Ass'n of Rural Residents v. Kitsap County*, CPSGMHB Case No. 93-3-0010, Final Decision and Order, (June 3, 1994), at 48.

A UGA must provide for sufficient area and densities to accommodate the urban growth that is projected for the succeeding 20-year period. RCW 36.70A.110(2). This subsection specifically contemplates that UGA boundaries may expand over time as necessary to meet population projections, imposing another limitation on their expansion. Counties must review, and if necessary, revise their UGAs at least every ten years to accommodate urban growth projected for the succeeding 20 years. RCW 36.70A.130(3). A *county-wide* land capacity analysis must accompany these statutorily mandated periodic revisions of UGAs. *Master Builders Ass'n v. Snohomish County*, CPSGMHB Case No. 01-3-0016, Final Decision and Order, (Dec. 13, 2001), at 9.

An expansion of a UGA is essentially a redesignation, which must be consistent with the requirements of RCW 36.70A.110. The Board has made clear that changes in the size of UGAs must be supported by land use capacity analysis and the County must "show its work:" "If UGAs are altered and challenged ... this Board requires an accounting to support the alteration." *Id, at 12*. "The Board has been clear that Counties must show their work when *altering* UGA boundaries." *Id.*, at 22 (emphasis in original). *See: Kitsap Citizens, et al. v. Kitsap County* ***(Kitsap Citizens)***, CPSGMHB Case No. 00-3-0019c, Final Decision and Order, (May 29, 2001), at 12-16; and *Hensley (IV) v. Snohomish County*, CPSGMHB Case No. 01-3-0004c, Final Decision and Order, (Aug. 15, 2001), at 29-34.

In *Kitsap Citizens*, the Board explained that when UGA expansions are challenged, the record must provide support for the actions the jurisdiction has taken; otherwise the actions may have

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

been determined to have been taken in error - i.e., clearly erroneous. Accordingly, counties must "show their work" when a UGA is expanded. *Kitsap Citizens*, FDO, at 12-16.

The land capacity analysis required in RCW 36.70A.110(1) and (2), now underscored by the buildable lands reports required by RCW 36.70A.215, is a vital component of the work that must be shown. *Director of the State Department of Community, Trade and Economic Development v. Snohomish County*, (***CTED I***), CPSGMHB Case No. 03-3-0017, Final Decision and Order, (Mar. 8, 2004), at 20-22.

2. ULID #6 UGA

The Action

Kitsap Ordinance No. 311-2003 adopted the South Kitsap UGA/ULID #6 Sub-Area Plan as Attachment 6 to the Ordinance. The document is a sub-area plan and Urban Growth Area (UGA) for a portion of South Kitsap County that encompasses the existing South Kitsap UGA (i.e., the McCormick Woods and McCormick North areas), as well as the McCormick West portion of the South Kitsap Urban Joint Planning Area (UJPA), a total area of 2,370 acres. Ordinance No 311-2003 and this sub-area plan expand the South Kitsap UGA to encompass the McCormick West portion of the South Kitsap UJPA, an expansion of approximately 619 acres. Sub-Area Plan at *ii* and 23.

The sub-area encompasses the entirety of Utility Local Improvement District (ULID) #6 in unincorporated Kitsap County, and involves land immediately adjacent and to the south of a portion of the Bremerton UGA, and in the proximity to the City of Port Orchard. The Sub-Area Plan designates areas for urban residential uses, as well as business-park, neighborhood commercial, Urban Village Center, public facility and recreational uses. Sub-Area Plan at *ii*.

a. Locational Issues

Positions of the Parties

The Tribe asserts that Kitsap did not use the criteria required by RCW. 36.70A.110 when developing the three UGA expansions adopted in Ordinance No. 311-2003. This failure resulted in the UGAs being expanded to include lands which were not already characterized by urban growth nor adjacent to such lands, while lands which were already characterized by urban growth were rejected. Tribe PHB, at 38-39. The Tribe asserts that the County applied the GMA criteria in the 1998 Comprehensive Plan under Policy UGA-2 and CPP A.2.c when they allocated population to Urban Growth Areas using a three tiered prioritization: first to currently urbanized areas with existing service capacity to accommodate future growth (Tier 1); second to currently urbanize areas where a combination of existing and planned services provide capacity to accommodate future growth (Tier 2); third to lands adjacent to such currently urbanized and serviced areas (Tier 3). *Id.*, at 40-41.

The Tribe asserts that in allocating post-2012 growth in South Kitsap County in 2003, the County did not use the tiered prioritization system required by the Act and by County Policy, but substituted a prioritization system established in a 2001 Memorandum of Agreement (MOA)

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

between the County and Port Orchard. The Tribe argues that the MOA prioritization system or "phasing" resulted in the inclusion of McCormick West, vacant Tier 3 lands, in the ULID #6 UGA, while consideration of an existing medium density neighborhood located near shopping and employment, Tier 1 or 2 lands, was postponed to the third phase of the UPJA planning process. Also, Kitsap has shown no work to document unusual circumstances that would justify including such lands in a UGA. *Id* at 42-44.

In response, Kitsap asserts that CP UGA-2 and CPP A.2.c do not establish locational criteria for UGAs. The location of UGAs is within the County's discretion under the provisions of RCW.36.70A.3201. County Response II, at 19. Comprehensive Plan Policies UGA-6 through UGA-13 are the basis for the ULID #6 planning process. *Id.*, at 20. Kitsap argues that RCW 36.70A.110(1) does not apply to expansion of existing UGAs. *Id.*, at 22-25. Kitsap argues in the alternative that the inclusion of ULID #6 in the South Kitsap UGA is consistent with RCW 36.70A.110(1) because it is served by public sewers, and is adjacent to McCormick Woods, an area characterized by urban growth. *Id.*, at 25.

In response to the Tribe, Intevenor McCormick asserts that McCormick West is not a lower tier area than other UJPA areas in South Kitsap County. McCormick West is the only UJPA area with existing sewer service, and there is no plan to extend sewer service to the other areas. McCormick Brief, at 37.

In reply, the Tribe argues that neither a Memorandum of Agreement nor a UJPA can override GMA locational criteria. Tribe Reply, at 34. And neither the MOA nor the UJPA presumed that UGA expansions would occur as a result of those planning processes. *Id.*

Board Discussion

RCW 36.70A.110(3) provides that local governments are to locate urban growth first in areas already characterized by urban growth that have adequate existing public facilities and services to serve new development, second in areas where urban services can be provided efficiently, and third in the remaining areas of UGAs. These priorities pertain to the sequence of development within UGAs rather than to the criteria for expanding UGAs. [FN32]

RCW 36.70A.110(1) provides that a UGA may include an area not in a city only if the area already is characterized by urban growth, is adjacent to an area characterized by urban growth, or is a designated fully-contained community. These are the criteria applicable to a UGA expansion.

The ULID # 6 UGA expansion area, McCormick West, is adjacent to McCormick Woods, an area which is developing at a residential density of 4.41 dwelling units per acre. BLR, at 54. McCormick Woods has existing urban services including water service, [FN33] sewer service, [FN34] and curbside solid waste and recycling service. [FN35] This UGA expansion area is adjacent to an area characterized by urban growth.

Countywide Planning Policy (CPP) A.2.c provides:

2. The following countywide policies are related to the process and criteria for

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

establishing and amending Urban Growth Areas in Kitsap County:

...

c. Areas designated for urban growth should be determined by the existing development pattern, residential densities, and the ability of the appropriate service provider to provide a full range of activities.

Kitsap Countywide Planning Policies, at 4 (2001).

Comprehensive Plan Policy (CP) UGA-2 provides:

The unincorporated Urban Growth Area has been defined by allocating population according to the factors and priorities identified in the Growth Management Act: 1) currently urbanized areas with existing service capacity to accommodate future growth; 2) currently urbanized areas where a combination of existing and planned services provide capacity to accommodate future growth; and 3) lands adjacent to such currently urbanized and serviced areas. The Urban Growth Area has also been defined so as to identify to the extent possible a contiguous urban area within which most growth will be encouraged to occur.

Kitsap County Comprehensive Plan, at 14-15 (2002).

These policies are consistent with the provisions of RCW 36.70A.110. However they do not require that the priorities of RCW 36.70A.110(3) be used as criteria for selecting UGA expansion areas. CPP A.2.c. is advisory. CP-UGA-2 indicates that the unincorporated Urban Growth Area of the county has been defined by using the factors and priorities identified in the GMA, which include the priorities in RCW 36.70A.110(3), and the additional consideration of identifying a contiguous urban area within which most growth will be encouraged to occur. This policy does not mandate criteria for identifying areas for expansion of UGAs.

The Kitsap County Comprehensive Plan established Urban Joint Planning Areas (UJPA) and a process for coordinated planning between the County and cities to resolve outstanding land use and capital facilities issues in areas designated Urban Reserve or Urban Industrial Reserve on the 1998 Land Use Plan Map. Comprehensive Plan (CP) at 16-18. The UJPA process addresses the location and amount of land outside of designated UGAs that may be needed to support future growth. The process provides that interlocal agreements between Kitsap County and a city will determine how these areas are planned and serviced. The UJPA process, including the MOA between the County and Port Orchard, was utilized in the preparation of the South Kitsap UGA/ULID #6 Subarea Plan adopted by Ordinance No. 311-2003. *Id.*, at 17.

Conclusion

The GMA, CPP A.2.c and CP UGA-2 do not require the three tiered prioritization process espoused by petitioner for the designation of UGA expansion areas. The ULID #6 UGA expansion is adjacent to an area characterized by urban growth as required by RCW 36.70A.110(1). Petitioner has not shown the location of ULID #6 UGA expansion area to be inconsistent with the Act, with Countywide Planning Policies or with Kitsap Comprehensive Plan policies.

b. Sizing Issues

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

Kitsap Ordinance No. 311-2003 adopts a population allocation of 6,400 to the ULID #6 Sub-Area. [Ordinance No 311-2003, Section 10 (5)]. The area of the UGA expansion is approximately 619 acres. Sub-Area Plan at *ii*.

Petitioners claim that the ULID #6 UGA expansion does not comply with the provision of GMA for three reasons: The UGA was expanded in lieu of reasonable measures to accommodate projected growth within existing UGA's. The expansion was not supported by a countywide land capacity analysis. The expansion was predicated on a population projection and allocation that were not based on OFM forecasts. OFM population forecast issues are addressed in Section C, *supra*. Reasonable measures issues are addressed in Section F, *infra*. Here we address the issue of a countywide land capacity analysis in relation to the ULID #6 UGA expansion.

Positions of the Parties

The Tribe argues that the expansion of an individual UGA must be based on a countywide land capacity analysis rather than an analysis focused on a subarea of the county. Tribe PHB at 20-22. The Tribe asserts that sizing of the ULID #6 UGA Expansion was not based on a countywide land capacity analysis. *Id* at 23-24.

In response Kitsap and McCormick assert that the sizing of the ULID #6 UGA was based on a countywide land capacity analysis included in the 1998 Comprehensive Plan; and the expansion of that UGA is based on a land capacity analysis using the same methodology used in the 1998 analysis. Kitsap and McCormick argue that the act does not require an update of the countywide land capacity analysis each time the county considers an individual UGA expansion. County Response I, at 28-30; McCormick Response, at 27-30.

In reply the Tribe asserts that applying the land capacity analysis methodology of the 1998 Comprehensive plan to this individual subarea does not meet the requirement of the Act for a countywide land capacity analysis. Tribe Reply at 17-20.

Discussion

The County applied the Comprehensive Plan Policies for Urban Growth Areas, including the Urban Joint Planning Area Policies, in developing the South Kitsap UGA/ULID #6 Sub-Area Plan. Comprehensive Plan at 14-22; Sub-Area Plan at 3. [FN36] The ULID #6 UGA Expansion area was identified in the Comprehensive Plan as an "Urban Reserve" area to be considered for potential addition to the UGA to reflect population updates for 2013 - 2017. Comprehensive Plan at 14, 17. The process and methodology which are the basis for the forecast of county population increase in 2013-2017 and the allocation of 6,400 of that increase to ULID #6 are set forth in Section 7 of Ordinance No. 311-2003. A "Population Holding Capacity Analysis for Kitsap UGA/ULID #6 Subarea Plan Alternatives" is included as Appendix E to the Sub-Area Plan. The application of the holding capacity analysis and the population allocation within the ULID #6 Subarea is described in the Subarea Plan at 68-70.

Conclusion

The County has shown the work it has done as a basis for the decision to expand the ULID #6 UGA. The work included a land capacity analysis applying the methodology used in the 1998

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

countywide land capacity analysis. The Comprehensive Plan itself directed the utilization of sub-area analysis in the UJPA process of evaluating potential expansion of individual UGAs to accommodate 2013-2017 population projections and allocations. Petitioner has not shown the size of the ULID # 6 UGA expansion area to be inconsistent with the Act.

Conclusion - ULID #6 UGA

The Board concludes that Petitioners have **failed to carry the burden of proof** in demonstrating noncompliance with the GMA. Petitioners challenge to the South Kitsap UGA/ULID #6 Sub-Area Plan, as implied in Legal Issue Nos. 12, 14, and 15, is **dismissed**.

3. SOUTH KITSAP INDUSTRIAL AREA (SKIA) UGA

The Action
Ordinance No, 311-2003, Section 10(4), at 39, adopts the SKIA Subarea Plan (**SKIA Plan**), Attachment 4. The SKIA Subarea Plan is accompanied by SKIA development regulations to implement the Subarea Plan. Ordinance, Attachment 5.

The County's 1998 Plan established a special land use overlay entitled "Urban Joint Planning Area" (**UJPA**) which was applied to the SKIA area. UJPA meant that the area was considered potentially suitable for inclusion within a UGA, but that further coordinated planning was needed to resolve outstanding land use and capital facility issues. The underlying Plan designation for the SKIA UJPA was Urban Industrial Reserve. *Id*, Section 6, Substantive and Procedural Findings Relating to the South Kitsap Industrial Area, A.1, at 16.

Prior to adoption of this Ordinance, the unincorporated SKIA UGA totaled 1690 acres and included "Airport" and "Industrial" land use designations. SKIA Plan, at 34. The SKIA UJPA included the 1,690 acres of the UGA and an additional 1,675 acres with land use designations of """"Industrial/Urban Reserve," or "Industrial/Urban Reserve with a Mineral Resource Overlay." The combined acreage within the SKIA UJPA is 3,365 acres. These areas are generally located southeast and northeast of the SKIA UGA. *Id.* The adjustments to the SKIA UGA boundary are as follows:

> · On the Southeast boundary of SKIA, approximately *130 acres are recommended for removal* from the SKIA UGA. These properties fall east of an existing Bonneville Power Administration Easement which creates a disconnect between the western and eastern portions of the subarea. The properties would be designated as Rural Wooded (RW).
>
> · Adjacent to SKIA's current northeast boundary, approximately *110 acres are being recommended for inclusion* in the final SKIA UGA. This recommendation is based upon parcel size, current uses and the suitability of these parcels for Business Center Uses.

Id., (emphasis supplied). Thus, the SKIA UGA, as modified by Ordinance No. 311-2003 goes from a total acreage of 1690 acres to 1670 acres, *a net reduction in size of 20 acres*. However, the boundaries of the SKIA UGA are shifted, deleting some area from the southeast portion and adding some area to the northeast portion, adjacent to the City of Bremerton's city limits.

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

Additionally, it is significant to note that there are no residential land use designations within the SKIA UGA or for that matter the SKIA UJPA. Therefore, a land capacity analysis to determine residential capacity is not material in evaluating this UGA. Given this "SKIA UGA *expansion*" action of the County, what is the basis of Petitioners' challenge?

Position of the Parties

Petitioner Suquamish Tribe argues under Legal Issue 12 that the expansion of the SKIA UGA does not comply with the Act's goals and requirements, because: 1) Kitsap County failed to first try reasonable measures to accommodate growth within existing UGAs; and 2) that expansion was not supported by a county-wide land capacity analysis as to their sizing. Tribe PHB, at 18-30. As they relate to the SKIA UGA, these arguments are further broken down, and address more specific elements of .110, under Issues 17 and 18 as discussed *supra. Id.*

In brief, Petitioner claims that 1) the County has neither identified nor implemented reasonable measures to accommodate urban growth forecasts; 2) the GMA requires consideration of a county-wide land capacity analysis for expansions of UGAs; 3) Kitsap County policies express a commitment to base UGA size and location on a county-wide land capacity analysis; 4) the UGA expansions in this case were based on site-specific land capacity analyses rather than a single county-wide land capacity analysis; 5) the County did not use the most recent and comprehensive data available, including the BLR; and 6) the County did not prepare a commercial/industrial land capacity analysis to support non-residential UGA expansions. *Id.*, at 18-30; and Tribe Reply, at 15-23. Petitioner argues that the Board should find the expansions inconsistent with the requirements of both RCW 36.70.215 and .110. Tribe's PHB, at 20. Petitioner points to previous Board decisions discussing the relationship between these two sections of the Act in defense of the assertion that a land capacity analysis is 1) required by .110, and 2) must be county-wide. *Id.*, at 20-21.

Under Issues 14 and 15, the Tribe contends that the land added to the SKIA UGA does not meet the requirement of being already characterized by urban growth or adjacent to such territory. *Id.*, at 45. Petitioner backs up this contention by quoting the Subarea Plan's description of the new SKIA UGA in general as "the largest undeveloped Industrial/Industrial Reserve property in Kitsap County." *Id.* Petitioner also argues that the County failed to undertake the locational analysis required by RCW 36.70A.110(1) and points to the lack of discussion of locational criteria within the SKIA Subarea Plan as evidence of the County's violation of .110. *Id.*, and Tribe Reply, at 37-38.

Respondent Kitsap County assumes that Legal Issue 12 is incorporated into discussion of RCW 36.70A.110(1) and .110(2), under Legal Issues 13 and 14, due to Petitioner's lack of specificity in briefing this Issue. County Response II, at 12. Respondent contends that Petitioners have abandoned Issues 14 and 15 as they relate to the SKIA Subarea due to inadequate briefing. Specifically, Respondent claims that because Petitioner has the burden of proof, and because the Board uses a "clearly erroneous" standard of review, Petitioners cannot simply argue a lack of evidence in the record on a particular issue. *Id.*, at 17-18.

Intervenor Port of Bremerton states that it relies "primarily" on Kitsap County to address the

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

legal issues concerning the SKIA Subarea Plan. Port Response, at 2. Intervenor also argues that the Tribe's brief on the SKIA Subarea Plan Issues contain no legal or factual basis, and notes that Petitioner City of Bremerton does not challenge the SKIA Subarea Plan. *Id.*

Intervenor McCormick Land Company argues that, contrary to Petitioner's assertion, a land capacity analysis was conducted for the SKIA Subarea Plan. McCormick Response, at 35. Intervenor quotes the SKIA Plan:

Industrial Land Capacity

> This subarea plan must conform to the Comprehensive Plan's additional intent to set aside sufficient Industrial zoned land to absorb projected growth and provide options for siting economic development within SKIA. The methods and standards used in this plan for calculating gross acres relative to anticipated jobs are the same as applied in the 1998 Comprehensive Plan. For a more complete discussion about Industrial Land Capacity in Kitsap County, please see Appendix C. [FN37]

Id., and SKIA Plan, at 27.

Intervenor requests that the Board rule that Petitioners have failed to meet their burden of proof for Legal Issues 12, 14, 15, and 16 and to dismiss these claims. *Id.*, at 40.

Board Discussion:

Based upon the Legal Issues framed by Petitioner, the Board's understanding of the basis for Petitioners' challenge to the SKIA Subarea Plan is that the SKIA UGA was expanded and that that UGA expansion did not comply with the GMA provisions noted in the Legal Issues quoted *supra*. Petitioners neglected to point out to the Board the magnitude of the expansion or the location of the expansion to the SKIA UGA. The Board's review of the Subarea Plan itself indicates a *net reduction in the size of the SKIA UGA*, thereby undermining any ""sizing of the UGA" argument Petitioner could have presented. Additionally, the change in the SKIA UGA is devoted to commercial and industrial land uses, not residential. Nonetheless, as Intervenor McCormick points out, the SKIA Subarea Plan is accompanied by an Industrial Land Capacity discussion and Appendix C. According to the Plan, this analysis is based upon the same methodology as the county-wide land capacity analysis [FN38] done for such lands in designating the 1998 UGAs. Petitioner never references or argues about the adequacy of the SKIA Subarea Plan land capacity analysis.

Further, even though the SKIA UGA was reduced in size, the location of the deletions and additions to the UGA were adjusted. However, where these additions and deletions occurred was not referenced or argued by Petitioners. Absent any reference to the specific locations of the additions, and any argument as to why expansions in these areas do not meet the locational criteria of RCW 36.70A.110(1) or (3), there is no basis for the Board to address this issue. The Board's own review of the Subarea Plan and the Ordinance findings suggests that the area added to the SKIA UGA was in close proximity to, if not adjoining, the Bremerton city limits. Petitioners would be hard pressed to persuade the Board that the location of this UGA addition did not comply with the locational requirements of RCW 36.70A.110.

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

Conclusion - SKIA UGA

The Board concludes that Petitioners have **failed to carry the burden of proof** in demonstrating noncompliance with the GMA. Petitioners' challenge to the SKIA Subarea Plan, as implied in Legal Issue Nos. 12, 14 and 15 is **dismissed**.

4. KINGSTON UGA

The Action:
Kitsap Ordinance No. 311-2003, Section 9, at 32-38, adopted the Kingston Subarea Plan (**Kingston Plan**) as Attachment 8 to the Ordinance. The Kingston Plan adds approximately 400 acres to the 744 acres of the Kingston UGA. The Kingston Plan erroneously states that the UGA is being expanded by 1,165 acres. Kingston Plan, at ii. This was corrected after the HOM by letter from counsel for the County in response to the Board's questions at the hearing, stating that the expansion is approximately 400 acres. [FN39]

In adopting its 1998 Comprehensive Plan and designating UGAs, Kitsap County had created a further planning process for the Kingston area, designed to refine and extend the Kingston UGA. A subarea planning process, building on the Kingston Community Design Study (KCDS) begun in 1992, was established to complete community consideration of goals and policies for Kingston's growth and development. Kingston Plan, at 4-1. The KCDS Steering Committee was charged with developing and analyzing alternative UGA configurations to accommodate an additional population of 0-3000 by 2017. *Id.*, at 4-5. The UGA was to be no smaller than the boundaries adopted in the 1998 County Comprehensive Plan. *Id.*, at 4-3.

Four UGA alternatives and a "no-action" alternative were considered by the Steering Committee. *Id.*, at 4-7 to 4-8. The preferred alternative expands the Urban Growth Area northwest of Kingston to include large school district properties - an existing middle school and a proposed high school site - which the Steering Committee foresaw as incorporating desired library, recreation facilities and community center. Also included are park lands and environmentally important waterways - lake and creek - identified as opportunities for preservation and open space. The school properties, parks and open space account for at least half of the 400 acres added to the Kingston UGA. *Id.*, Appendix B, Figures 3.11 and 4.2. The Kingston Plan references plans by the utilities, school district, and other responsible agencies for provision of water, sewer and other urban service in the expanded UGA. *Id.*, chapter 8. A small number of intervening residential properties between the school site and the current UGA boundary are to be up-zoned for higher density. *Id.*, at 6-10, 6-12.

The Kingston Subarea Plan was endorsed by the Kitsap County Planning Commission and adopted by the County in the Ordinance. Ordinance, Section 9, at 32-37. The Commissioners then assigned a population growth allocation of 640 for the expanded Kingston UGA. *Id.*, at 36.

Position of the Parties
With respect to Legal Issue 12, the Tribe contends that the County's adoption of the Kingston Subarea Plan and UGA expansion was contrary to RCW 36.70A.110 because the 1,165 acres

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

apparently added to the UGA to accommodate a population of 640 extends growth at a density far below requirements for urban development. Tribe PHB, at 25. In fact, the Tribe asserts, at minimum urban densities of 4du/acre, the existing UGAs already have excess capacity; thus no expansion is justified. *Id.*, at 28.

Addressing Legal Issues 14 and 15, the Tribe contends that the Kingston UGA expansion was adopted without regard to the locational criteria of RCW 36.70A.110(3) and CPP UGA-2 in that (1) the Kingston Plan lacks discussion indicating how the locational criteria apply to each of the plan alternatives; (2) there is no information in the record demonstrating that the added lands are "already characterized by urban growth" or adjacent to such lands; and (3) the parcel map indicates that the "area added to the UGA consists of very large parcels which are apparently vacant." *Id.*, at 44.

The County replies that the Tribe's briefing with respect to the Kingston UGA expansion is so cursory as to constitute abandonment of the issue. County Response II, at 17. Alternatively, the County states that the Tribes' citation to absence of evidence in the record concerning application of statutory size and locational criteria to the Kingston Plan amounts to an impermissible attempt to shift the burden of proof to the County. *Id.*, at 18. As to the UGA size, the County asserts that the Kingston Plan was "sized according to a land capacity analysis approved by this Board," citing *Bremerton/Alpine*. *Id.*, at 48. Further, the County points to an updated holding capacity analysis for each of the Kingston alternatives. Kingston Plan, Appendix E (dated 8/1/2003).

Furthermore, the County argues that the locational criteria of RCW 36.70A.110(1) only apply to the initial designation of UGAs, not to subsequent UGA expansions. The County invites the Board to reconsider its reasoning on this issue in *1000 Friends v. Snohomish*. County Response II, at 22-25.

Board Discussion

As to the issue of the size of the Kingston UGA, the Tribe's analysis was distorted by an error on the first page of the Kingston Subarea Plan. The Plan states an UGA expansion of 1,165 acres. Kingston Plan, at ii. After briefing and Hearing on the Merits, the County corrected this number to 400 acres. Letter to PO Laing, June 17, 2004. The KCDS Steering Committee planned and reviewed alternatives for an increased population of up to 3000; the Planning Commission recommended a population allocation of 2000; the County Commissioners adopted an allocation of 640. Ordinance, Section 9. A detailed Holding Capacity Analysis dated August 1, 2003 provided high and low build-out projections for each of the alternatives considered by the KCDS Steering Committee and Planning Commission. This formed the basis for the Kingston UGA population allocation. Kingston Plan, Appendix E.

The Board finds that the County "showed its work" sufficiently with respect to land capacity. The Tribe has not met its burden of challenging this work and putting the size of the UGA in issue.

As to the locational criteria, the Board rejects the County's argument that RCW 36.70A.110 only applies to initial UGA designations. *See* discussion, *supra*.

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

In fact, the Kingston Plan acknowledges the "specific guidelines" for UGA designation in RCW 36.70A.110 as restated in CPP UGA-2 and states: "This criteria and policy are included in the analysis for the alternatives associated with this plan." Kingston Plan, at 10-5, 6-1.

The Ordinance makes the following findings regarding the Kingston Subarea Plan:

> 2) The UGA and Sub-Area Plan attached hereto as Attachment 8 represents a logical extension of the existing UGA boundary based upon:
> a) The population allocation of 0-3000;
> b) Ability to extend urban services such as water and sewer;
> c) Protection of critical areas adjacent to and within the Kingston Sub-Area;
> d) Inclusion of public facilities such as schools and parks; and
> e) A balance of the input received from the overall community.
> ....
> 4) Based upon the foregoing findings, the Board finds that the proposed Kingston Sub-Area Plan is consistent with the 13 statewide planning goals contained within the Growth Management Act (RCW 36.70A.020). The Kingston Sub-Area Plan would encourage development in areas where adequate public facilities and services exist and can be provided in an efficient manner.

Is the Tribe's bare assertion that the County failed to apply the statutory locational criteria, together with the fact of undeveloped large parcels, sufficient to shift the burden of proof to the County? The Board's review of this subarea plan notes that the Kingston UGA expansion includes several large parks and three large school district properties, together comprising over half of the new acreage. *See* Kingston Plan, Appendix B, Figures 3.1 and 4.2. The GMA expressly allows inclusion of open space, RCW 36.70A.110(2), and the Board has allowed UGA policies to include accommodation of school sites. [FN40] Thus, large undeveloped parcels in the new UGA would not *per se* invalidate UGA designation. Without more, the Board declines to shift the burden to the County.

The Tribe has not met its burden of putting the UGA locational criteria in issue with respect to the Kingston expanded UGA. The County, however, is on notice that this Board will continue to require the locational criteria of RCW 36.70A110(1) to be applied whenever a UGA is created, modified, or expanded.

Conclusion - Kingston UGA

The Board concludes that Petitioners have **failed to carry the burden of proof** in demonstrating noncompliance with the GMA. Petitioner's challenge to the Kingston Subarea Plan, as implied in Legal Issues 12, 14, and 15 is **dismissed**.

E. IMPLEMENTATION

This Legal Issue only goes to the implementing development regulations adopted along with the ULID #6 and SKIA Subarea Plans.

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

The Board's PHO sets forth Legal Issue No. 26 as follows:

> ***26. Are the development regulations adopted pursuant to the Ordinance to implement the Ordinance's Comprehensive Plan amendments inconsistent with the Act's requirements to the extent that the Comprehensive Plan policies are found to violate the Act?***

Applicable Law

RCW 36.70.040 requires that a jurisdiction's development regulations be consistent with, and implement, the jurisdiction's Comprehensive Plan. As the Board understands the briefing of Petitioners, this Legal Issue only goes to the implementing development regulations adopted along with the ULID #6 and SKIA Subarea Plans. [FN41]

Discussion

SKIA and South Kitsap/ULID #6 Subarea Plans and Implementing Development Regulations: The premise underlying Petitioners' arguments on this Legal Issue is, that if the Board finds the provisions of the Subarea Plans noncompliant with any of the goals or requirements of the Act, the implementing regulations that implement those allegedly noncompliant provisions must also be noncompliant. Section 10(4), of Ordinance No. 311-2003 adopted the SKIA Subarea Plan (Attachment 4) and development regulations to implement that Subarea Plan (Attachment 5). Section 10(5) of the Ordinance adopted the South Kitsap/ULID #6 Subarea Plan (Attachment 6) and development regulations (Attachment 7). As discussed supra under both the SKIA UGA and ULID #6 UGA the Board concluded that Petitioner had failed to carry the burden of proof in demonstrating noncompliance with the requirements of the Act as stated in Legal Issue Nos. 12, 14, and 15; consequently, Petitioners claims were dismissed. The Board did not find noncompliance. Therefore, Petitioners claim as presented in Legal Issue No. 26 is also **dismissed**.

Conclusions

Regarding Petitioners challenge to whether the SKIA development regulations are consistent with, and implement, the SKIA Subarea Plan, the Board has concluded that Petitioner **failed to carry the burden of proof** in demonstrating noncompliance with the Act. Absent a finding of noncompliance the Board need not address this Legal Issue as it relates to SKIA, therefore, as to the SKIA Subarea Plan and development regulations, Legal Issue 26 is **dismissed**.

Regarding Petitioners challenge to whether South Kitsap/ULID #6 development regulations are consistent with, and implement, the South Kitsap/ULID #6 Subarea Plan, the Board has concluded that Petitioner **failed to carry the burden of proof** in demonstrating noncompliance with the Act. Absent a finding of noncompliance the Board need not address this Legal Issue as it relates to South Kitsap/ULID #6, therefore, as to the South Kitsap/ULID #6 Subarea Plan and development regulations, Legal Issue 26 is **dismissed**.

F. BUILDABLE LANDS AND REASONABLE MEASURES

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

The Board's PHO sets forth Legal Issue Nos. 17, 18, 19, 20 and 21 as follows:

17. Did Kitsap County fail to comply with RCW 36.70A.215 and RCW 36.70A.110 when it used the Ordinance to expand urban growth areas despite the finding in its Buildable Lands Report that sufficient capacity exists within existing UGAs to accommodate projected growth?

18. Did Kitsap County fail to comply with RCW 36.70A.215 and RCW 36.70A.110 when it used the Ordinance to expand urban growth areas without first implementing reasonable measures to accommodate projected growth within existing urban growth areas?

19. Does the continued location of a majority of population growth outside the designated Urban Growth Areas of Kitsap County since adoption of its Comprehensive Plan constitute an inconsistency with CPP A.3 and Plan Policy UGA-1, and thus create an affirmative duty to act under RCW 36.70A.215(4), UGA-4, Implementing Strategy 1, CP-3, CP-4, CP-5, LU-4 and RL-3 to implement measures that are reasonably likely to increase consistency with those policies and, if so, has the County failed to act consistent with that duty? [FN42]

20. Does the continued residential development at urban densities in the rural areas of Kitsap County since adoption of its Comprehensive Plan constitute an inconsistency with CPP A.3, Plan Policy RL-1, RL-2, RL-8 and RL-9, and thus create an affirmative duty to act under RCW 36.70A.215(4)), UGA-4, Implementing Strategy 1, CP-3, CP-4, CP-5, LU-4 and RL-3 to implement measures that are reasonably likely to increase consistency with those policies and, if so, has the County failed to act consistent with that duty?

21. Did Kitsap County fail to act with regard to the requirements of RCW 36.70A.215 (and Plan policies UGA-4, UGA Implementing Strategies, CP-3, CP-4, CP-5, LU-4 and RL-3) when it failed to identify, adopt and implement measures that are reasonably likely to increase consistency with CPP A.3, the goals and policies of the Comprehensive Plan, Land Use Element directing growth to UGAs, and RCW 36.70A.020(1) and (2)?

Applicable Law

RCW 36.70A.215 provides in relevant part:

> *(1)* Subject to the limitations in subsection (7) [FN43] of this section, a county shall adopt, in consultation with its cities, county-wide planning policies to establish a review and evaluation program. This program shall be in addition to the requirements of RCW 36.70A.110, 36.70A.130 and 36.70A.210. In developing and implementing the review and evaluation program required by this section, the county and its cities shall consider information from other appropriate jurisdictions and sources. *The purpose of the review and evaluation program shall be to*:
>
> > *a. Determine whether a county and its cities are achieving urban densities within urban growth areas by comparing growth and development assumptions, targets, and objectives contained in the county-wide planning policies and the county and city comprehensive plans with actual growth and development that has occurred in the county and its cities; and*
> >
> > *b. Identify reasonable measures, other than adjusting urban growth areas, that will be taken to comply with the requirements of this chapter.*
>
> (2) The review and evaluation program shall:

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

a. Encompass land uses and *activities both within and outside of urban growth areas and provide for annual collection of data on urban and rural land uses*, development, critical areas, and capital facilities to the extent necessary to determine the quantity and type of land suitable for development, both for residential and employment-based activities;

b. Provide for the evaluation of the data collected under (a) of this subsection every five years as provided in subsection (3) of this section. The first evaluation shall be completed not later than September 1, 2002. The county and its cities may establish in the county-wide planning policies indicators, benchmarks, and other similar criteria to use in conducting the evaluation;

c. ... [Develop methods to resolve data disputes] ...

d. Provide for the amendment of the county-side planning policies and county and city comprehensive plans as needed to remedy an inconsistency identified through the evaluation required by this section, or to bring these policies into compliance with the requirements of this chapter.

(3) At a minimum, the evaluation component of the program required by subsection (1) of this section shall:

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

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

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

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

(Emphasis supplied.)

Discussion

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

Position of the Parties

The Tribe asserts that the expansions of the UGAs at ULID #6, SKIA, and Kingston were contrary to the GMA and the County's own Comprehensive Plan and policies because the County's 2002 Buildable Lands Report demonstrated that sufficient capacity exists within current UGAs to accommodate projected population growth. At a minimum, the County was required to identify and implement reasonable measures to increase compliance with GMA's anti-sprawl goals, and the goals of the Comprehensive Plan, before considering UGA expansion. Tribe PHB, at 8-18.

The Tribe argues that the County's CPPs state a commitment to base the size and location of UGAs on a county-wide land capacity analysis. The Comprehensive Plan and policies direct that the Buildable Lands Report will be used to update that analysis for the purpose of designating or adjusting UGAs. CPP A.1.a, c, e, and f and Comp Plan UGA-4, LU-4, RL-3. The County intended that the BLR would provide information that will "be drawn upon in updating or revising the required .110 land capacity analyses used to size, locate and designate the County's UGA." *Id.*, at 24.

The County's use of separate holding capacity analyses for each of the three subarea plans was inappropriate, according to the Tribe, particularly in view of updated information on the availability of urban land in the City of Bremerton. *Id*, at 21. The Tribe argues that the BLR demonstrates surplus residential capacity in the UGA through 2012 and more than sufficient to absorb the County's growth forecast to 2017. The BLR identifies a supply of 10,386 acres within the UGAs and a demand, assuming minimum urban densities of 4/du per acre, of 7,272 acres through 2012. *Id.*, citing BLR, Summary Table 7, at 83.

The Tribe points to the Board's recent ruling in *1000 Friends v. Snohomish County*, CPSGMHB Case No. 03-3-0019c, Corrected Final Decision and Order, April 22, 2004, at 39, acknowledging the GMA's clear direction that "UGAs should not be expanded absent a documented unmet need for additional urban land." Tribe Reply, at 28.

The Tribe asserts that the County has an affirmative duty to identify, adopt, and implement measures reasonably likely to increase consistency between the development patterns in the County and the goals and policies of the GMA and the County Plan. The affirmative duty arises from three inconsistencies identified in the Buildable Lands Report: (1) continued location of a majority of population growth outside UGAs (Legal Issue 19); (2) continued residential development at urban densities in rural areas (Legal Issue 20); and (3) urban densities not being achieved in the UGAs (Legal Issue 21). Tribe PHB, at 12-15.

Kitsap County replies that the requirement to adopt reasonable measures to accommodate growth in the urban area before expanding the UGA only applies when a UGA expansion is proposed to remedy a deficiency identified by the BLR. In other words, only if the BLR shows that there's **too little** urban land to absorb projected growth must the County pursue other measures before expanding its UGA. Here the UGA expansions are subarea plans within the intention of the original Comprehensive Plan, as extended to 2017. Because the expansions are not a proposed response to BLR analysis, the reasonable measures clause is not triggered. County Response II,

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

at 34-35.

In any event, since the Kitsap County Comprehensive Plan was not adopted and approved until 1998, and its BLR analyzed development from 1995 to 1999, the BLR contains only one year of relevant data about trends under the Plan. Further, because six subarea plans have been adopted by the County since 1999, the BLR data "will decrease in relevance." *Id.*, at 41.

The County also asserts that the "failure to act" claims fail because (1) there is "nothing in the statute that requires a jurisdiction to adopt such measures at any specific time," *Id.*, at 39, and (2) the Buildable Lands Report does not reveal inconsistencies that trigger the reasonable measures requirement. *Id.*, at 39. The County argues that Section 215(4) should be narrowly construed to focus only on whether urban densities are being achieved within UGAs, not on rural development patterns or the urban-rural split. *Id.*, at 40.

In reply, the Tribe cites *FEARN v. City of Bothell*, CPSGMHB Case No. 04-3-0006c, Order on Motions (May 20, 2004), at 7-8, where the Board "definitively determined that Section 215 establishes not just a duty to conduct an evaluation, but also establishes a duty to adopt reasonably curative measures when the evaluation reveals inconsistencies, all by a deadline no later than December 1, 2004." Tribe Reply, at 3.

The Tribe points out that Section 215(2) requires review of development trends "both within and outside urban growth areas" and data collection on """"urban and rural land uses, development ..." *Id.*, at 5. The interplay of vested development on subsidized lots in the rural area and an oversized UGA will perpetuate patterns of sprawl that require countermeasures. *Id.*, at 4-14.

Board Discussion:
The GMA requires cities and counties to accommodate the population growth projected for them by OFM. *See* RCW 36.70A.110(2). The portion of the population that is allocated as urban growth is to be accommodated within the UGAs. *Id.* UGAs are sized, located and designated by counties in consultation with their respective cities, but the counties are the jurisdictions with the duty to designate UGAs. *See* RCW 36.70A.110(1). In order to properly size the UGA, *i.e.*, determine how much land was needed, land capacity analyses are used to calculate the urban land needed to accommodate the projected OFM population. After a very shaky start in its UGA designation process, Kitsap County finally designated compliant UGAs when it revised and adopted the 1998 Comprehensive Plan. *See Bremerton, et al., v. Kitsap County/Alpine Evergreen, et al., v. Kitsap County* (***Bremerton/Alpine***), CPSGMHB Case No. 95-2-0039c Coordinated with Case No. 98-3-0032c, Order Rescinding Invalidity in *Bremerton* and Final Decision and Order in *Alpine*, (Feb. 8, 1999).

In 1997, the legislature amended the Act to add RCW 36.70A.215, which required an additional [FN44] review and evaluation program for certain counties - including Kitsap County. The *first* "Buildable Lands" review and evaluation was to be completed no later than September 1, 2002. See RCW 36.70A.215(2)(b). As noted *supra*, the *purpose* of the buildable lands review and evaluation program is twofold: 1) to determine whether a county and its cities are achieving urban densities within urban growth areas by comparing growth and development assumptions,

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

targets, and objectives contained in the county-wide planning policies and the county and city comprehensive plans with actual growth and development that has occurred in the county and its cities; and 2) to identify reasonable measures, other than adjusting urban growth areas, that will be taken to comply with the requirements of this chapter. Thus, by September 1, 2002, Kitsap County was required to assess urban densities by comparing *its Plan with actual growth that occurred* and *identify reasonable measures to be taken* in lieu of adjusting UGAs.

In August of 2002 the County completed and adopted its "Buildable Lands Analysis 1995-1999" [FN45] (hereafter, **BLR**). The report looks back, assessing that which has occurred. In Kitsap County's case, it is a 5-year assessment, an early warning sign, which allows the County to consider reallocating population, implement reasonable measures, or take other actions to encourage urban development within the UGAs, thereby avoiding the need to expand them. The County's BLR was not challenged. [FN46] Whether the data, methodology and evaluation contained in the County's BLR complies with the requirements of .215, is not presently before the Board. Any such challenge of that document would be untimely, unless the County "failed to act."

Petitioners have attempted to frame this issue as a "failure to act." The fact that the County completed and adopted its BLR prior to the statutory deadline appears to defeat this argument. However, review of the County's BLR reveals that it did not "identify reasonable measures, other than adjusting urban growth areas, that will be taken to comply with the requirements of this chapter," as required by RCW 36.70A.215(1)(b). Chapter X of the BLR is entitled "Recommendations and Reasonable Measures," but there is no identification of any reasonable measures in this chapter. In short, this chapter indicates that more and better data collection and sharing is needed; it does not mention actions that could be taken to avoid the need for UGA expansion. A required component of the BLR is missing. It appears to the Board that the County "failed to act" by not identifying reasonable measures in its BLR, thereby not complying with the requirements of RCW 36.70A.215(1)(b).

However, the thrust of Petitioners' failure to act challenge is that the BLR reveals inconsistencies between the development that has occurred in the County and what the County envisioned in its Plan. Therefore, the Tribe argues, .215 requires the County to adopt and implement, not merely identify reasonable measures to avoid expanding the UGAs. The County on the other hand, argues there are no inconsistencies revealed by the BLR, so no reasonable measures are necessary.

The Tribe argues the BLR reveals the following inconsistencies: 1) failure to accommodate 5/6 (83%) of new growth within UGAs as directed by the CPPs and the Comprehensive Plan; 2) failure to achieve appropriate (non-sprawl) urban densities within UGAs; and 3) inappropriate (urban sprawl) development in the rural areas. Tribe PHB, at 12-13.

Kitsap County CPP A.3 provides:

> The Kitsap Regional Coordinating Council shall adopt a new process for allocating the forecasted population for the period 2002-2022 and forward by September 30, 2001, consistent with the requirements of the Growth Management Act. The allocation shall be

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

> based on the Buildable Lands Analysis and it shall promote a countywide development pattern *directing over five sixths of new population growth to the designated Urban Growth Areas*. The County and the Cities recognize that the success of this development pattern requires not only the rigorous support of Kitsap County in the rural areas, but also Cities' comprehensive plans being designed to attract substantial new population growth.

Kitsap Countywide Planning Policies (2001), at 5 (emphasis supplied).

The BLR states:

> Residential development has been active in Kitsap County between 1995 and 1999, with a *slight majority of all new residential permits issued in the rural unincorporated area.* [A chart indicates *55% of the residential units permitted are outside UGAs and cities.*] ... In terms of land area, the *vast majority of new residential land consumed is in the jurisdiction of rural unincorporated Kitsap County.* [A chart indicates *81.9% of the residential acres permitted are outside UGAs or cities.*] .. In rural unincorporated Kitsap County, development *densities average approximately 1 unit per acre*, which represents a midpoint between extremely rural and urban style densities. One development constraint is the large number of smaller, non conforming lots of record. Until these parcels are fully absorbed, the County may face obstacles in directing new growth toward urban areas.

BLR, Executive Summary, at 7-8, (emphasis supplied).

The BLR certainly supports the Tribes contention that the BLR reveals inconsistencies between what is occurring and what the County's Plan is designed to achieve. The BLR identifies development patterns inconsistent with the GMA, the County's CPPs and its Plan. For the County to contend that there are no inconsistencies revealed by the BLR and that reasonable measures are not necessary is in error. The BLR reveals inconsistencies, therefore the County must not only identify reasonable measures, but take action to implement them as required by RCW 36.70A.215(4). As to when the County must undertake this effort, the Board has set the outside deadline in the *FEARN* case.

The Board recently stated in the *FEARN* case, "if the buildable land review and evaluation ... demonstrates inconsistencies as noted in RCW 36.70.215(3), then jurisdictions must adopt and implement the identified measures [reasonable measures] to increase consistency." *FEARN*, at 7. The Board went on to say "the outside limit for a local government to adopt reasonable measures to avoid the need to adjust the UGA is the December 1, 2004 deadline established in .130(4)." *Id.*, at 8. Therefore, direct application of this *FEARN* holding would direct that the County would have to identify and implement reasonable measures as required by RCW 36.70A.215(4) by December 1, 2004. Consequently, the Tribe's challenge on this issue is untimely. The County has until December 1, 2004 to discharge this GMA obligation and duty.

Conclusion - Buildable Lands and Reasonable Measures

The Board concludes that the County's BLR demonstrates inconsistencies between the development that has occurred in the County and what is envisioned by the GMA and the County CPPs and Plan. The Act, as interpreted by this Board in *FEARN*, requires the County to

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

implement reasonable measures no later than December 1, 2004. Therefore, the Tribe's challenge in this issue is untimely.

G. INVALIDITY

RCW 36.70A.302 provides in relevant part:

> (1) A board may determine that part or all of a comprehensive plan or development regulations are invalid if the board:
>
> a. Makes a finding of noncompliance and issues an order of remand under RCW 36.70A.300;
>
> b. 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 ...

The Board has determined, *supra*, that Kitsap County's adoption of the Rural Wooded Policies in Ordinance No. 311-2003 was **clearly erroneous** and **does not comply** with the rural element requirements of RCW 36.70A.070(5) and was not guided by and does not comply with, Goals 1, 2, 3, 5, 8, 10, 11 and 12 - RCW 36.70A.020(1), (2), (3), (5), (8), (10), (11) and (12). The Board's Order, *infra*, **remands** these provisions of Ordinance No. 311-2003 to the County with direction to take legislative action to achieve compliance with the goals and requirements of the Act as interpreted and set forth in this Order.

The question now before the Board is whether these noncompliant provisions of Ordinance No. 311-2003 substantially interfere with the fulfillment of the Goals of the Act. The Board notes that the Suquamish Tribe, *et al.*, specifically requested [Legal Issue No. 27] invalidity if the Board found noncompliance with any of their issues.

The Board has stated that invalidity is a remedy available to the Board rather than a legal issue that must be posed or a remedy that must be requested in a PFR. "The Board has authority to consider invalidity *sua sponte* regardless of whether or not a party raises it during the proceeding. RCW 36.70A.302(1) and WAC 242-02-831(2)." *King County v. Snohomish County [Cities of Renton and Edmonds - Intervenors]*, CPSGMHB Case No. 03-3-0011, Final Decision and Order, (Oct. 23, 2003), at 18.

The Board has determined the RWL polices to be noncompliant with the Act. However, there are no development regulations in place to implement these noncompliant clustering and density incentive program provisions. Therefore there is no threat that vesting could occur based upon these noncompliant provisions. Consequently, the Board declines to enter a **determination of invalidity** for the noncompliant Rural Wooded Land provisions of Ordinance No. 311-2003.

V. ORDER

Based upon review of the GMA, the Board's Rules of Practice and Procedure, other relevant WACs, case law, prior Orders of this Board and the other Boards, the PFR, the briefs and exhibits submitted by the parties, having considered the arguments of the parties, and having

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

considered and deliberated on the matter, the Board ORDERS:

1. Kitsap County's adoption of the RWL policies [RL - 10(a) and (b), and RL - 11a through i] in Ordinance No. 311-2003 and set forth in the Errata Sheet, Specific Text Amendments, at 7-10, to Ordinance No. 311-2003, was **clearly erroneous** and **does not comply** with the requirements of RCW 36.70A.070(5)(a), (b) and (c), including the requirement that the RWL policies be harmonized with the goals of the Act. Also, because the County has not complied with RCW 36.70A.070(5)(a), the Board concludes that the adoption of the RWL policies were **not guided by**, and **do not comply** with, the noted goals of the Act - RCW 36.70A.020(1), (2), (3), (5), (8), (10), (11) and (12).
2. The Board **remands** the RWL polices to the County with direction to take appropriate legislative action in order to comply with the goals and requirements of the Act, as interpreted in this Order. In light of the ongoing efforts of the County to address Rural Wooded Lands and the necessity to develop and adopt implementing development regulations along with the necessary revisions to the RWL policies the Board has determined that resolving these matters is one of **unusual scope and continued complexity. Therefore, the Board will extend the statutory 180-day statutory deadline for compliance and allow the County a one year compliance period**. The compliance schedule is set forth below:

· By no later than **August 9, 2005**, the County shall take appropriate legislative action to bring its Plan into compliance with the goals and requirements of the GMA, as interpreted and set forth in this Final Decision and Order (**FDO**).

· By no later than **August 23, 2005**, the County shall file with the Board an original and four copies of a Statement of Action Taken to Comply (**SATC**) with the GMA, as interpreted and set forth in this FDO. The SATC shall attach copies of legislation enacted [Plan and development regulations] in order to comply. The County shall simultaneously serve a copy of the SATC, with attachments, on all Petitioners and Intervenors. By this same date, the County shall file a "**Remand Index**," listing the procedures (meetings, hearings *etc.*) occurring during the remand period and materials (documents, reports, analysis, testimony [FN47] *etc.*) considered during the remand period in taking the remand action.

· By no later than **September 6, 2005**, [FN48] the Petitioners and Intervenors may file with the Board an original and four copies of Comments on the County's SATC. Petitioners and Intervenors shall each simultaneously serve a copy of its Comments on the County's SATC on the County and each other.

· By no later than **September 13, 2005**, the County may file with the Board an original and four copies of the County's Reply to Comments. The County shall simultaneously serve a copy of such Reply on Petitioners and Intervenors.

Pursuant to RCW 36.70A.330(1), the Board hereby schedules the **Compliance Hearing** in this matter beginning at **10:00 a.m. September 27, 2005** at the Board's offices.

If the County takes legislative compliance actions prior to the August 9, 2005 deadline set forth in this Order, it may file a motion with the Board requesting an adjustment to this compliance schedule.

So Ordered this 9th day of August 2004.

Central Puget Sound Growth Management Hearings Board

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

Bruce C. Laing, FAICP
Board Member

Margaret A. Pageler
Board Member

Board Member McGuire Concurring Opinion

I concur with the conclusions reached by my colleagues in this Final Decision and Order. However, I write separately regarding the Rural Wooded Lands issue. I would have gone further in the analysis presented. I would have added the following discussion:

The parties are correct in their characterization of the Board's prior cases related to rural clustering - compact rural development is within the scope of the Act. Also, lot sizes yielded from cluster development in the rural area are not *per se* urban; however, they must be evaluated in the context of the overall rural land use pattern.

In prior decisions, the Board has also raised a caution that at some point compact rural development may cross the line and no longer have rural character but instead be, and induce, urban development. "[W]hile no clear break point is evident in the information presently before the Board, it is only logical that, at some point along the continuum of potential project size and intensity, the *quantitative* dimension of cluster development in a rural area must have *qualitative* urban growth consequences." *KCRP*, at 16. *See also* RCW 36.70A.070(5)(c) and .030(14) and (15).

In reviewing rural clustering programs, the Board has looked for clear parameters [FN49] designed to protect rural character and prevent urban growth (*See KCRP* and *Sky Valley, supra*); and the Board has looked at the geographic scope of where the proposed clustering program could be applied. (*See Sky Valley*, supra.). Here, the Board acknowledges that the present RWL policies do include "parameters" that could, with further refinement, clarification and supporting analyses provide a basis for protecting rural character and preventing urban growth in the rural area. However, the geographic scope of the RWL policies provides an additional reason supporting the Board's conclusion of clear error and noncompliance with RCW 36.70A.070(5)(a), (b) and (c).

Therefore a fifth reason for finding noncompliance would be the stated parameters and geographic scope of the RWL policies. U*nincorporated* Kitsap County is comprised of 237,934 acres. *See* Updated Table LU-2, page 25 Chapter 2: Land Use, Ordinance No. 311-2003, Errata Sheet, at 4. The Rural Wooded Lands designation accounts for 49,212 acres, or over 20% of the total unincorporated County. *Id.* Therefore 20% of the unincorporated County is potentially subject to the RWL policies. As described in briefing and at the HOM, approximately 2000 acres of the Rural Wooded Lands designation (less than 1%) would be subject to the "Wooded Shoreline Preserve" provisions of RL-11c. These """"shorelines" appear to be focused primarily along six-miles of Hood Canal. [FN50] The geographic scope of these provisions, if refined and clarified with supporting analysis, would appear to me to be appropriate.

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

However, application of the RWL policies to the remaining 47,212 acres (*i.e.* 49,212 minus 2,000 shoreline) designated Rural Wooded is of a geographic scale and scope of such a magnitude to cause the Board to question, lacking supporting analysis, whether rural character could be protected and urban growth prevented if the RWL policies were implemented. This is especially true where the policies could be applied to 1000 contiguous acres. Annual monitoring partially allays my concern if coupled with an established "sunset" provision (based upon a reasonable acreage limitation) that would terminate the program *unless* supporting analysis based upon the monitoring program indicated that it should be extended. Absent these additional parameters, cluster development at this scale, without supporting analysis, approaches, if not crosses the line from protecting rural character to encouraging urban growth.

Note: This order constitutes a final order as specified by RCW 36.70A.300 unless a party files a motion for reconsideration pursuant to WAC 242-02-832.

(Board Member files a separate Concurring Opinion)

Edward G. McGuire, AICP
Board Member

FN1. For convenience of reference this case is identified as "Bremerton II" to distinguish it from a previous case (95-03-0039c) involving the same petitioner and respondent.

FN2. See Attachment-A Procedural History for more complete details.

FN3. 1000 Friends of Washington was granted status as *Amicus Curiae* but later chose not to file a brief.

FN4. Hereafter, the briefing received is referred to as follows: 1) City PHB; 2) Tribe PHB; 3) County Response I; 4) County Response II; 5) Manke Response; 6) Overton Response; 7) McCormick Response; 8) Port Response; 9) City Reply; and 10) Tribe Reply.

FN5. Legal Issue 8: *Did the County violate RCW 36.70A.110 by adopting comprehensive plan policies for the IRF allowing for non-rural densities, thereby allocating growth to the IRF, not the UGA (even though the County has not identified how much growth will occur in the IRF as a result of these new amendments)*?

FN6. Legal Issue 16: *Did the County fail to be guided by the Act's goals, RCW 36.70A.020(1), (2), (5), (8), (9), (10), and (11) when it used the Ordinance to expand UGAs*?

FN7. The Board notes that at least one of the challenged UGAs, the Kingston Sub-Area Plan, includes a point-by-point review of the 13 GMA planning goals, stating how they are furthered by the Subarea Plan. Kingston Plan, at 10-2 to 10-4. The Tribe's briefs and arguments did not put these statements in issue.

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

FN8. Legal Issue 22: *Whether Kitsap County failed to be guided by RCW 36.70A.020(11) and violated RCW 36.70A.140 and RCW 36.70A.210 by failing to coordinate with the Suquamish Tribe the Comprehensive Plan and development regulation amendments adopted in the Ordinance? See, e.g., CP-8; CP-9; and UGA-4.*

FN9. Rural Wooded Lands (RW designation) were formerly known as Interim Rural Forest Lands (IRF designation). Ordinance No. 311-2003 changed all reference in the Plan and on the future land use map from IRF to RW.

FN10. One of the first changes the Ordinance made was to delete all reference to "Interim Rural Forest" and insert "Rural Wooded;" thus the existing zoning regulations for "IRF" designations, implement the "RW" designations.

FN11. *See Citizens of Mount Vernon v. City of Mount Vernon*, 133 Wn.2d 861; 947 P.2d 1208, (1997).

FN12. The Act defines "rural development" as:

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

RCW 36.70A.030(15), (emphasis supplied).

FN13. The Act defines "rural character" as:

> [Rural character] refers to the patterns of land use and development *established by a county* in the rural element of its comprehensive plan:
>
> a. In which open space, the natural landscape, and vegetation predominate over the built environment;
>
> b. That foster traditional rural lifestyles, rural-based economies, and opportunities to both live and work in the rural areas;
>
> c. That provide visual landscapes that are traditionally found in the rural areas and communities;
>
> d. That are compatible with the use of the land by wildlife and for fish and wildlife habitat;
>
> e. That reduce the inappropriate conversion of undeveloped land into sprawling, low-density development;
>
> f. That generally do not require the extension of urban governmental services; and
>
> g. That are consistent with the protection of natural surface water flows and ground water and surface water recharge and discharge areas.

RCW 36.70A.030(14), (emphasis supplied).

FN14. The County presents a historical background for the present effort that also acknowledges prior decisions of this Board. *See* County Response I, at 10-14.

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

FN15. The County notes that in 1999, it ultimately designated 2700 acres as forest resource land, which was upheld in *Screen, et al., v. Kitsap County*, CPSGMHB Case No. 99-3-0006c, coordinated with *Alpine v. Kitsap County*, Case No. 98-3-0032c, Order on Compliance Re: Forestry Issues in *Alpine* and Final Decision and Order in *Screen*, (Oct. 10, 1999).

FN16. The RWL designation accounts for 49,212 acres. Ordinance No. 311-2003, Errata Sheet, at 4.

FN17. *See* HOM Transcript, at 35, 46, 49, 55, 60-61, 65 and 75.

FN18. The Board notes that either this provision of the Act was not placed before the *Manke* Court or it was overlooked.

FN19. County Response I, at 33-37.

FN20. HOM Transcript, at 56-58.

FN21. *See* RCW 36.70A.030(14), quoted *supra*.

FN22. The Board understands this date has been delayed pending the outcome of this matter.

FN23. *See* RL-11c, and HOM Transcript, at 53, 77 and 80.

FN24. *See* RL - 11c, and HOM Transcript, at 82-83.

FN25. *See* RL - 11b, and HOM Transcript, at 51-53.

FN26. The statement of this Legal Issue was corrected in the March 23, 2004 PHO, at 2.

FN27. The Tribe never provided the Board with a copy of this provision of Kitsap County Code (**KCC**) - the County's critical areas ordinance (CAO), apparently codified in Chapter 19.100 KCC.

FN28. Goal 8 states, "Maintain and enhance natural-resource based industries, including productive timber, agricultural and fisheries industries. Encourage the conservation of productive forest lands and productive agricultural lands, and discourage incompatible uses." RCW 36.70A.020(8).

FN29. Goal 10 states, "Protect the environment and enhance the state's high quality of life, including air and water quality, and the availability of water." RCW 36.70A.020(10).

FN30. The 2000 Census established the total population for Kitsap County as 231,969. See Tribe PHB, at 36, *citing* Ex. 23598, at 8.

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

FN31. The Board recognizes that RCW 36.70A.280(1)(b) allows appeals to the Board of the OFM population projections.

FN32. See *Hensley et al., v. Snohomish County*, CPSGMHB Case No. 03-3-0009c, Final Decision and Order (FDO), (Sep. 22, 2003), at 26; And *Citizens for Responsible Growth, et al. v. Snohomish County*, CPSGMHB Case No. 03-3-0013, FDO, (Dec. 8, 2003), at 11.

FN33. South Kitsap UGA/ULID #6 Sub-Area Plan, Figure 7.1 at 44.

FN34. *Id* at 48 - 51.

FN35. *Id* at 51.

FN36. See Section 9.4 for description of the Sub-Area plan compliance with Comprehensive Plan.

FN37. Appendix C to the SKIA Subarea Plan was not included among the Core Documents provided to the Board.

FN38. The Board notes that even the August 2002 Buildable Lands Report indicates that the Commercial and Industrial land capacity analysis, assessing employment targets, is done on a county-wide basis, thereby undermining Petitioners' claim. *See* BLR, at 69.

FN39. Transcript, at 160 and 192; Letter from Samuel Plauche for Kitsap County to Bruce Laing (Letter to PO Laing), June 17, 2004.

FN40. *Director of the State Department of Community, Trade and Economic Development v. Snohomish County* (**CTED**), Final Decision and Order (Mar. 8, 2004), at 28, noting that such extensions should be "limited and rare."

FN41. There were no development regulations adopted to implement the Rural Wooded Land policies, nor were there any development regulations adopted to implement the designations for the Kingston UGA expansion.

FN42. As corrected in the Corrected PHO.

FN43. Snohomish County is not subject to the limitations noted in subsection (7).

FN44. RCW 36.70A.215(1) states, in part, "The [buildable lands] program shall be in addition to the requirements of RCW 36.70A.110, 36.70A.130 and 36.70A.210."

FN45. The County's BLR is a Core Document that was submitted to the Board by the County.

FN46. In commenting on its 2002 BLR, the County notes that its Plan was adopted in 1998, therefore the BLR contains only one year of relevant data about trends under the Plan.

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

Additionally, due to the subsequent adoption of subsequent subarea plans, the County asserts the BLR "will decrease in relevance." County Response II, at 41. The Board agrees, but for other reasons. A brief review of the BLR data and analysis suggests that the actual development densities (indicated by permits or platted lots) was assumed to continue through 2012 and this trend, rather than the "planned densities" was the basis of the evaluation.

FN47. If the County intends to rely upon documents or materials submitted in this proceeding, the County should specify which documents from this proceeding it wishes to introduce into the compliance proceeding. Any such documents should be included under a separate heading in the Remand Index. If another party intends to rely upon a prior document submitted in this proceeding, that party should first request that the County include such documents under the separate heading of the Remand Index. If the County declines, a motion to supplement the compliance record should accompany that party's "Comment" brief.

FN48. September 20, 2004 is also the deadline for a person to file a request to participate as a "participant" in the compliance proceeding. *See* RCW 36.70A.330(2).

FN49. Included among these parameters would be a rigorous monitoring and evaluation program.

FN50. Apparently some Rural Wooded Shoreline is also near the Port Gamble area.

ATTACHMENT - A

PROCEDURAL HISTORY

On February 5, 2004 the Central Puget Sound Growth Management Hearings Board (the **Board**) received a Petition for Review (**PFR**) from the City of Bremerton (**Petitioner** or **Bremerton**) with one exhibit attached. The matter was assigned Case No. 04-3-0008. Petitioner challenges Kitsap County's (**Respondent** or the **County**) adoption of Ordinance No. 311-2003 (the **Ordinance**) amending the Kitsap County Comprehensive Plan (the **Comprehensive Plan**), and Zoning Code. The basis for the challenge is noncompliance with the Growth Management Act (**GMA** or **Act**), and the State Environmental Policy Act (**SEPA**).

On February 11, 2004 the Board received a Petition for Review (**PFR**) from Suquamish Tribe, Kitsap Citizens for Rural Protection a/k/a Kitsap Citizens for Responsible Planning, Jerry Harless and Port Gamble S'Klallam Tribe (**Petitioners** or **Suquamish**). This matter was assigned Case No. 04-3-0009. Petitioners challenge Kitsap County's (**Respondent** or the **County**) adoption of Ordinance No. 311-2003. The basis for the challenge is noncompliance with various provisions of the Growth Management Act (**GMA** or **Act**). The Board notes that the same Ordinance is challenged in the matter of *Bremerton II v. Kitsap County*, CPSGMHB Case No. 04-3-0008.

On February 11, 2004 the Board received a "Notice of Appearance" from the County in response to the Bremerton PFR.

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

On February 12, 2004 the Board issued a Notice of Hearing and Order of Consolidation. The Order consolidated case CPSGMHB Case No. 04-3-0008 and CPSGMHB Case No. 04-3-0009 under the case number CPSGMHB Consolidated Case No. **04- 3- 0009c**. The matter was captioned as Bremerton II, et al. v. Kitsap County. The Notice set a date for a prehearing conference (**PHC**) and established a tentative schedule for the case. Board member Bruce C. Laing was designated Presiding Officer.

On February 18, 2004 the Board received a "Notice of Appearance" from legal council for the County in response to Suquamish PFR.

On February 19, 2004 the Board received a "Notice of Association of Counsel" from legal counsel for the County.

On March 4, 2004 the Board received the Overton Family and Alpine Evergreen Co. Motion to Intervene together with the declarations of Laura Overton Johannes and Rod Reid in support of the motion.

On March 4, 2004 the Board received Manke Lumber Co. Motion to Intervene; and on March 5, 2004 the Board received the declaration of Holly Manke White in support of the motion.

On March 5, 2004 the Board received McCormick Land Co. Motion to Intervene, together with the "Affidavit of Linda Niebanck".

On March 8, 2004, the Board received Olympic Property Group Motion to Intervene together with the "Declaration of Jon Rose in Support of Motion of Pope Resources to Intervene."

On March 8, 2004, the Board conducted the prehearing conference on this matter in the Video Conference Room, Attorney General's Office, 23rd Floor, Bank of California Center, 900 4th Avenue, Seattle. Present for the Board were Edward G. McGuire and Bruce C. Laing, Presiding Officer. Representing Petitioner Bremerton were Roger Lubovich, City Attorney and Carol A. Morris. Representing Petitioner Suquamish Tribe, *et al.* was David A. Bricklin. Representing Respondent Kitsap County were Shelley E. Kneip, Deputy Prosecuting Attorney and Samuel W. Plauche. Representing Intervenor Manke Lumber Co. was Margaret Archer. Representing Intervenor Overton Family et al. and Intervenor Olympic Property Group was Elaine Spencer. Representing Intervenor McCormick Land Co. was Robert D. Johns. Also present at the prehearing conference were: Ted Laubey, Port Gamble S'Kallam Tribe; Tom Donnely, Kitsap Citizens for Responsible Growth; Jerry Harless; Mark Bubenik, Attorney for Suquamish Tribe; Ken Attebery, Port of Bremerton; Laura Heisler and Ketil Freeman, externs for the Board.

On March 10, 2004 the Board received "Kitsap County's Submittal of Core Documents" with attachments.

On March 12, 2004 the Board received "City's Revised Legal Issues."

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

On March 15, 2004, the Board received "City's Final Revised Legal Issues" (**City's Final Revised Issues**) which proposes wording that consolidates Bremerton PFR Issues H, I, and J with Suquamish PFR Issues 3.11, 3.12 and 3.13, and revises the wording of Bremerton PFR Issue C for purposes of clarification. The submittal was accompanied be a cover letter indicating both Petitioners consent to the proposed consolidation of Issues.

On March 15, 2004, the Board issued a Prehearing Order (**PHO**) containing the final schedule and statement of issues for CPSGMHB Consolidated Case No. **04- 3- 0009c**.

On March 22, 2004 the Board received "Respondent's Motion to Dismiss SEPA Issues" (**Kitsap Dispositive Motion**) with six exhibits attached.

On March 22, 2004, the Board received "Motion of 1000 Friends of Washington for Leave to File *Amicus Curiae* Brief" (**1000 Friends *Amicus Curiae* Motion**).

On March 22, 2004, the Board received correspondence from counsel for Petitioners Suquamish on behalf of both counsel for Suquamish and counsel for Kitsap County, advising the Board of two citation errors in the Statement of Legal Issues in the PHO.

On March 23, 2004 the Board issued a Corrected Prehearing Order (**Corrected PHO**) amending the wording of Legal Issues 19 and Legal Issue 25 of the PHO to correct citations contained therein.

On March 23, 2004 the Board received "Manke Lumber Company's Motion Requesting Board to Take Judicial Notice of Prior Briefing, or Alternatively, to Supplement Record" (**Manke Motion to Supplement**) with two attached documents.

The Board received no response to the March 23, 2004 Manke Motion to Supplement.

On March 24, 2004 the Board received the original of the City's Final Revised Legal Issues, a fax copy of which was received by the Board on March 15, 2004.

On March 26, 2004 the Board received Port of Bremerton's "Petition to Intervene" (**Port's Motion to Intervene**), with an attached "Declaration of Ken Attebery."

On March 29, 2004 the Board received correspondence from Kitsap County stating the County has no objection to the Port's proposed intervention, and advising that an "Amended Index of the Record" (**Amended Index**) is expected to be submitted to the Board by April 2, 2004.

On March 30, 2004 the Board received correspondence from counsel for the Port of Bremerton advising the Board that the Port proposes to intervene in support of Kitsap County's position and expects to address Issues 12 through 27 as contained in the PHO.

On April 1, 2004 the Board received "Index of Exhibits to Be Used" from Overton Family, *et al.*, Intervenors.

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

On April 2, 2004 the Board received Kitsap County's Amended Index.

On April 5, 2004, the Board received "Petitioner City of Bremerton's Response to Motion to Dismiss SEPA Issues" (**City Response**), with six exhibits attached.

On April 5, 2004, the Board Issued an Order on Intervention and *Amicus Curiae*.

On April 12, 2004, the Board received "Respondent Kitsap County's Reply on Motion to Dismiss" (**County Reply**), with seven exhibits attached.

On April 15, 2004, the Board received Petitioner Suquamish Tribe Opening Brief (**Tribe PHB**).

On April 15, 2004, the Board received City's Prehearing Brief (**City PHB**).

On April 22, 2004, the Board issued an Order On Motions (**OoM**) which included the following decisions: Admitted Kitsap County's Responsive Brief, Part II dated November 18, 1998 and filed with the Central Puget Sound Growth Management

Hearings Board under consolidated cause number 98-3-0032c as **Supplemental Exhibit No. 1**; admitted State's Response Brief to Manke Lumber Company dated December 15, 1997 and filed under Kitsap County's consolidated cause number 97-2-02979-3 as **Supplemental Exhibit No 2; dismissed** with prejudice Legal Issues 1 through 6; and revised the Final Schedule to reflect the dismissal of SEPA issues.

On April 30, 2004, the Board received Errata to Squamish Tribe's Opening Brief and Omitted Exhibits.

On May 3, 2004 the Board issued an Order Correcting Case Schedule.

On May 10, 2004 the Board issued Order Setting Location for Hearing on the Merits with a proposed hearing agenda attached.

On May 12, 2004, the Board received Additional Core Documents from Kitsap County.

On May 12, 2004, the board received Port of Bremerton Prehearing Brief (**Port's Response**).

On May 13, 2004, the Board received Second Amended Index to the Record (**Second Amended Index**).

On May 13, 2004, the Board received Kitsap County's Motion to Strike Petitioners Suquamish Tribe et al. Prehearing Brief Exhibit No. 26150 (**Kitsap Motion to Strike**).

On May 13, 2004, the Board received McCormick Land Company Response Brief (**McCormick Response**).

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

On May 13, 2004, the Board received Overton Family, et al. Memorandum in Response to Petitioners' Prehearing Brief (**Overton Response**).

On May 13, 2004, the Board received Overton Index to Memorandum in Response to Petitioners' Prehearing Brief (**Index to Overton Response**).

On May 13, 2004, the Board received Kitsap County Prehearing Brief Regarding Issues 7 through 11, 24, 25 and 27 (**County Response I**).

On May 13, 2004, the Board received Declaration of Shelley E. Kneip.

On May 13, 2004, the Board received Manke Lumber Company Response to Petitioners' Prehearing Brief (**Manke Response**).

On May 13, 2004, the Board received Kitsap County Prehearing Brief Regarding Issues 12 through 23, 26 and 27 (**County Response II**).

On May 19, 2004, the Board received Kitsap County letter regarding Order Setting Location for Hearing on the Merits.

On May 24, 2004, the Board received from Kitsap County a Stipulation and Order in which the parties agree to a proposed schedule for the Hearing on the Merits.

On May 25, 2004, the Board received correspondence from Kitsap County objecting to filing of *amicus curiae* brief after the deadline for Petitioners Briefs.

On May 27, 2004, the Board received correspondence from 1000 Friends of Washington stating they will not be filing an *amicus curiae* brief.

On May 27, 2004, the Board received City's Reply to Respondent's Briefs (**City Reply**).

On May 28, 2004, the Board received Petitioner Suquamish Tribe, et al. Reply Brief (**Tribe Reply**).

On June 8, 2004, the Board received Kitsap County's Second Motion to Strike (**Kitsap Second Motion to Strike**).

On June 8, 2004, the Board received correspondence from Suquamish regarding Exhibits "IR-A" and IR-B, and an error on page 14 of Tribe Reply.

On June 10, 2004 the Board conducted a Hearing on the Merits (**HOM**) in the Poulsbo Fire Department Office, 911 Liberty Road, Poulsbo, Washington. Present for the Board were members Edward G. McGuire and Bruce C. Laing, Presiding Officer. Appearing for the parties were: Carol A. Morris for the City of Bremerton; David A. Bricklin for Suquamish Tribe, *et al.*;

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

Samuel W. Plauche and Shelley E. Kneip for Kitsap County; William T. Lynn for Manke Lumber Company; Elaine Spencer for Overton Family, *et al.* and Olympic Property Group; Robert D. Johns for McCormick Land Company. The Court Reporter was Patricia A. Walton, Byers & Anderson, Inc. The Hearing opened at 9:30 a.m. and adjourned at 4:45 p.m.

On June 17, 2004, the Board received Kitsap County letter regarding: Exhibit lists, Kingston Acreage, Shoreline Acreage in Rural Wooded Incentive Program, and response to Statement of Additional Authorities.

On June 18, 2004, the Board received a letter transmitting Manke Lumber Company Exhibit List.

On June 21, 2004, the Board received a letter transmitting City's Exhibit List.

On June 22, 2004, the Board received Suquamish Tribe letter regarding: Exhibit list, Shoreline Acreage, Kingston UGA Acreage, and Petitioner's Statement of Additional Authorities.

On June 23, 2004, the Board received Suquamish Tribe letter transmitting a second Statement of Additional Authorities.

On June 25, 2004, the Board received Manke Lumber Company letter regarding Shoreline Rural Wooded Lands, with enclosure (AR 15701).

On June 25, 2004, the Board received Shelley Kneip Notice of Unavailability.

On June 28, 2004, the Board received Overton Intervenor's letter regarding supplemental authority with enclosure.

2004 WL 3249863 (Wash.Central.Puget.Sd.Growth.Mgmt.Hrgs.Bd.)
END OF DOCUMENT

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

3

Screen
v.
Kitsap
(Screen II)

1999 WL 1075115 (Wash.Central.Puget.Sd.Growth.Mgmt.Hrgs.Bd.)

Central Puget Sound Growth Management Hearings Board
State of Washington

SCREEN, ET AL., PETITIONERS
v.
KITSAP COUNTY, RESPONDENT
AND
McCORMICK LAND COMPANY, ET AL., INTERVENORS
ALPINE, ET AL., PETITIONERS
v.
KITSAP COUNTY, RESPONDENT
AND
PORT BLAKELY TREE FARMS AND OLYMPIC RESOURCE MANAGEMENT/POPE RESOURCES, ET AL., PARTICIPANTS

Case No.
99-3-00012
coordinated with Consolidated Case No. 98-3-0032c

November 22, 1999

ORDER ON COMPLIANCE WITH REMAND PARAGRAPH 3.e in *ALPINE* and FINAL DECISION AND ORDER IN *SCREEN* (*SCREEN II*)

I. PROCEDURAL BACKGROUND

On February 8, 1999, the Central Puget Sound Growth Management Hearings Board (the **Board**) issued its "Order Rescinding Invalidity in *Bremerton* and Final Decision and Order in *Alpine*" (the ***Alpine* FDO**) in Coordinated Cases 95-3-0039c and 98-3-0032c. Among other matters, the *Alpine* FDO remanded to Kitsap County (the **County**) consideration of forestry issues.

On April 13, 1999, the Board received a Petition for Review (**PFR**) from Robert and Janet Screen (**Screens**). The Board assigned Case No. 99-3-0005.

On April 14, 1999, the Board received a PFR from Kitsap Citizens for Rural Preservation (**KCRP**). The Board assigned Case No. 99-3-0006.

On April 21, 1999, the Board issued an "Order of Consolidation and Notice of Hearing" which consolidated the Screen and KCRP cases into a single consolidated matter, assigning Case No. 99-3-0006c and the caption *Screen, et al. v. Kitsap County* (***Screen I***).

On April 30, 1999, the Board issued a "Notice of Change of Location and Time for Prehearing Conference in *Screen* and Order Coordinating Screen with Forestry Portion of *Alpine*."

© 2009 Thomson Reuters/West. No Claim to Orig. US Gov. Works.

al. v. Kitsap County (***Screen I***).

On April 30, 1999, the Board issued a "Notice of Change of Location and Time for Prehearing Conference in *Screen* and Order Coordinating Screen with Forestry Portion of *Alpine*."

On May 20, 1999, the Board received Kitsap County's "Notice of Actions Taken to Comply with Remand Order on Joint Planning, "Screen Property," Transportation Figure, "Lot Coverage" Definition and Public Participation for Zoning Ordinance Section."

On July 12, 1999, the Board received another PFR from the Screens. The Board assigned Case No. 99-3-0012 (***Screen II***).

On August 11, 1999, the Board held a prehearing conference. At the prehearing conference, the Board granted KCRP's oral motion to intervene.

On August 13, 1999, the Board issued its "Prehearing Order for *Screen II* and Notice of Coordinated Schedule for Briefing and Compliance Hearing for Portion of *Alpine*."

On September 30, 1999, the Board received "Screen's Prehearing Brief" (**Screen PHB**).

On October 11, 1999, the Board issued its "Order on Compliance re: Forestry Issues in *Alpine* and Final Decision and Order in *Screen* (*Screen I*)" (***Screen I* FDO**).

On October 14, 1999, the Board received "Kitsap County's Responsive Brief" (**County Response**), including a motion to supplement the record and "Intervenor KCRP's Response Brief on Remand Item 3e" (**KCRP Response**).

On October 20, 1999, the Board received "Screen's Response to Motion to Supplement the Record and Reply Brief" (**Screen Reply**).

The Board held a hearing on the merits on October 25, 1999, at the Bainbridge Island Fire Station. Present for the Board were Joseph W. Tovar, Presiding Officer, and Edward G. McGuire. The County was represented by Sue Tanner; Screen was represented by Courtney Kaylor; KCRP was represented by Charlie Burrow. Court reporting services were provided by Cynthia LaRose, RPR, of Robert H. Lewis and Associates, Tacoma.

On October 27, 1999, the Board received "Kitsap County's Annotated Hearing Transcript" of the Kitsap County Board of County Commissioners' April 19, 1999 public hearing. On October 29, 1999, the Board received "Screen's Annotated Hearing Transcript" of that same hearing.

II. MOTION TO SUPPLEMENT

In its response brief, and after the deadline for motions to supplement the record, the County moved to supplement the record with an aerial photograph of the Screen property and adjacent lands. At the hearing on the merits, the Presiding Officer **denied** the County's motion as untimely.

III. FINDINGS OF FACT

1. The Screens own approximately 450 acres of property in north Kitsap County. In 1996, the County approved a development of the property in a project known as "White Horse," comprising all or a large portion of this property.

© 2009 Thomson Reuters/West. No Claim to Orig. US Gov. Works.

2. In *Alpine*, the Screens challenged the appropriateness of the County's Interim Rural Forest (**IRF**) designation of the Screen property. On February 8, 1999, the Board issued the *Alpine* FDO, remanding the IRF designation of the Screen property to the County for redesignation.
3. On February 8, 1999, the same day the Board issued the *Alpine* FDO, the County Commissioners adopted Ordinances 229-1999 and 230-1999, incorporating the forest lands of long-term commercial significance (**GMA forest lands**) designation criteria of Ordinance 228-1998 into the Plan and designating GMA forest lands. Ordinances 229-1999 and 230-1999 were the subject of Board review in *Screen I*.
4. On May 10, 1999, the County adopted Ordinance 234-1999, reaffirming the IRF designation of the Screen property. To be designated IRF, the Screen property must (1) be larger parcels of land in contiguous blocks that are forested in character; (2) have been actively managed for forestry and harvested; or (3) be currently taxed as timber lands pursuant to state and county programs. The Screen property has not been actively managed for forestry and harvested, and is not currently taxed as timber lands. The County determined that the Screen property was forested in character.
5. IRF is a rural land use designation.
6. On March 12, 1999, a County staff report to the Planning Commission recommended re-designating the Screen property from IRF to Rural Residential (**RR**). Index No. 19222. The Planning Commission held a public hearing on this issue on March 24, 1999. On the day of the hearing, staff presented a revised report to the Planning Commission recommending retaining the IRF designation. Index 19186.
7. On April 19, 1999, the Board of County Commissioners held a public hearing on the possible re-designation of the Screen property. At the beginning of the hearing, the Commissioners informed the audience that the subject matter of the hearing was not "White Horse" project, but was the possible redesignation of the Screen property as described in the public notice.

IV. STANDARD OF REVIEW

This case does not involve an existing determination of invalidity. Therefore, the County's actions in adopting Ordinance 234-1999 are presumed valid. RCW 36.70A.320(1). The burden of proof is on Petitioner to demonstrate that the County's actions are not in compliance with the GMA. RCW 36.70A.320(2). The Board "shall find compliance unless it determines that [the County's] action[s are] clearly erroneous in view of the entire record before the board and in light of the goals and requirements of [the GMA]." RCW 36.70A.320(3). For the Board to find the County's actions clearly erroneous, the Board must be "left with the firm and definite conviction that a mistake has been made." *Dep't of Ecology v. PUD 1*, 121 Wn.2d 179, 201 (1993).

V. DISCUSSION AND CONCLUSIONS

The Screens own approximately 450 acres of property in north Kitsap County. In 1996, the County approved a development of the property in a project known as "White Horse," [FN1] comprising all or a large portion of this property. In *Alpine*, the Screens challenged the appropriateness of the County's IRF designation of the Screen property. [FN2] On the same date the Board issued its FDO in *Alpine* finding that the Screen property did not satisfy the criteria for IRF designation, the County adopted Ordinance 229-1999, amending the IRF designation criteria. Ordinance 229-1999 amended the comprehensive plan (**Plan**) description of the IRF designation as follows:

> This designation is applied to larger parcels of land in contiguous blocks that are forested in character, that have been actively managed for forestry and harvested, **or** that are currently taxed as timber lands pursuant to state and county programs. These lands have been considered for designation as long-term commercial forestry and are subject to ongoing litigation regarding their status. Lands not meeting the criteria for Forest Resource Lands designation will remain in the Interim Rural Forest designation until completion of Phase II of the forestry review process. This designation permits timber harvesting and management, along with resource-supporting commercial or industrial activities, and residential uses at a density of 1 dwelling unit per 20 acres.

Ordinance 229-1999, attached amendments to the Plan, at 64-65 (deleted language shown in bold strikethrough; added language in bold underlined). In *Screen I*, the County acknowledged that:

© 2009 Thomson Reuters/West. No Claim to Orig. US Gov. Works.

> [IRF lands were originally] mapped using the criteria in the alternative ("larger parcels of land in contiguous blocks that are forested in character, that have been actively managed for forestry and harvested, **or** that are currently taxed as timber lands pursuant to state and county programs"), but the language of the criteria in the Plan had mistakenly been left in the conjunctive ("larger parcels of land in contiguous blocks that are forested in character, that have been actively managed for forestry and harvested, **and** that are currently taxed as timber lands pursuant to state and county programs").

Screen I FDO, at 20 (quoting County Response, at 29-30). Because the County was correcting the Plan text to correspond to the actual mapping of the IRF lands, the County did not re-apply the amended IRF designation by another mapping effort. In *Screen I*, the Screens challenged the amendment of the IRF criteria from the conjunctive "and" to the alternative "or"; KCRP challenged the County's failure to re-apply the amended IRF criteria in another mapping effort. The Board upheld the County against these challenges. *See Screen I* FDO.

After amending the IRF designation criteria, the County adopted Ordinance 234-1999, reaffirming the IRF designation of the Screen property.

In the present case, *Screen II*, the Screens argue that their property does not satisfy any of the amended IRF criterion and that the County's public participation process in adopting Ordinance 234-1999 was flawed; KCRP aligns itself with the County and argues that IRF is the appropriate designation for the Screen property.

Compliance Issue: Did the County comply with remand paragraph 3.e of the Board's Final Decision and Order in Alpine v. Kitsap County, CPSGMHB Case No. 98-3-0032c?

> *Remand paragraph 3.e: The 1998 Plan, specifically text, maps and development regulations as they relate to the Screen property, is remanded. Regarding the designation of the Screen property as IRF, the County is directed to delete the IRF designation and redesignate the property with an appropriate "Rural" or other non-Urban land use designation. The Zoning Code map and any other development regulation affected by the redesignation shall also be amended to maintain consistency with the Plan. The County shall accomplish these corrections through a Plan amendment and amendments to the appropriate development regulations.*

In *Alpine*, the Board remanded a portion of the Plan because the Screen property did not meet each of the three IRF designation criterion as required by the Plan language before the Board in that case. Implicit in the remand was the assumption that the IRF designation criteria would remain unchanged. Consistency between the Plan text and map is what the GMA and the Board's FDO required. Nothing in the *Alpine* FDO restricts the County's ability to achieve compliance with the GMA through means other than those discussed in the Board's Order.

The circumstances have changed from the record before the Board in *Alpine*. On the same day the Board issued the *Alpine* FDO, the County amended the IRF designation criteria. Now, a property need only meet one, not all three of the IRF designation criteria to be designated IRF. In light of the record before the Board in this case, *Alpine* remand paragraph 3.e is moot.

Conclusion

The circumstances have changed from the record before the Board in *Alpine*. In *Alpine*, the Board remanded a portion of the Plan because the Screen property did not meet each of the three IRF designation criterion. Under the amended IRF criteria, a property need only meet one of the three IRF designation criteria to be designated IRF. In light of the record before the Board in this case, *Alpine* remand paragraph 3.e is moot.

Legal Issue 1: Did the County, in its adoption of Ordinance 229-1999, fail to comply with the requirements of RCW 36.70A.170(1)(b) in view of the definition of "forest land" at RCW 36.70A.030(8)?

© 2009 Thomson Reuters/West. No Claim to Orig. US Gov. Works.

This issue was addressed in the *Screen I* FDO.

Legal Issue 2: Did the County's failure to re-designate the Screen property when it adopted Ordinance 234-1999 create an internal inconsistency and thereby fail to comply with the requirements of RCW 36.70A.070[preamble]?

Legal Issue 3: Did the County's failure to rezone the Screen property when it adopted Ordinance 234-1999 create an inconsistency between the Zoning Code map and Comprehensive Plan and thereby fail to comply with the requirements of RCW 36.70A.040(3) and RCW 36.70A.120?

The Screens argue that the Screen property does not meet the amended definition of IRF lands creating an internal inconsistency in the Plan and an inconsistency between the Plan and the zoning map. The GMA requires comprehensive plans to be internally consistent. RCW 36.70A.070. The GMA also requires development regulations implementing comprehensive plans to be consistent with the comprehensive plan. RCW 36.70A.040(3)(d). In addition, the GMA requires local jurisdictions to "perform [their] activities and make capital budget decisions in conformity with [their] comprehensive plan[s]." RCW 36.70A.120.

In other words, if the Screen property does not satisfy any of the three criterion contained in the amended Plan description for IRF designation, then designating the property IRF on the Plan's future land use map would make the Plan internally inconsistent; and zoning the property for the IRF designation would make the implementing zoning code inconsistent with the Plan.

To be designated IRF, the Screen property must (1) be larger parcels of land in contiguous blocks that are forested in character; (2) have been actively managed for forestry and harvested; or (3) be currently taxed as timber lands pursuant to state and county programs. In *Alpine*, the Board determined that the Screen property had not been actively managed for forestry and harvested and was not currently taxed as timber lands pursuant to state and county programs. *Alpine* FDO, at 70. The County does not dispute these findings. KCRP concludes that the Screen property is actively managed for forestry because the property was harvested for timber in 1998. KCRP Response, at 3. The Screens purchased the property after it was logged and there is no evidence that the Screens took any actions that could be construed as managing the property for forestry. *See* Index No. 19190. Under the facts in this record, harvesting timber, without more, is not enough to conclude that the Screen property has been actively managed for forestry.

Therefore, the question is whether the Screen property is forested in character. [FN3] The Screens argue that the property is not identified as "Current Use Timberlands, Classified & Designated Forests" as shown on the County's Open Space and Timberlands Map and conclude that this omission evidences the County's recognition that the property is not forested. Screen PHB, at 7; *see* Index No. 17911. The County responds that the Open Space and Timberlands Map displays "property classified for tax purposes as in current use as open space or timber land [pursuant to chapter 84.34 RCW]." County Response, at 9. The Board agrees with the County. The Open Space and Timberlands Map does not purport to identify all forested parcels in the County. The Screen property is not identified on this map because it is not currently taxed as timber land as provided in chapter 84.34 RCW.

The Screens next argue that the Current Land Use Map identifies the property as "Open Land" rather than "Wooded." Screen PHB, at 7; *see* Index No. 1903. However, this map, like the Open Space and Timberlands Map, is based on the tax status of the property. The Screen property is not identified as "wooded" on this map because it is not currently taxed as timber land as provided in chapter 84.34 RCW.

Finally, the Screens argue that "information compiled as part of the environmental impact statement for the White Horse project . . . indicates that the property is primarily characterized by lowland shrub and lowland grass and forbs." Screen PHB, at 7 (citing Index No. 19193). However, review of this map shows that the Screen property is

© 2009 Thomson Reuters/West. No Claim to Orig. US Gov. Works.

forested in character, at least in part.

The record supports the County's determination that the Screen's property is forested in character. A December 7, 1993 letter from the Washington State Department of Natural Resources to the County Commissioners noted that, since a 1988 timber harvest, the Screen property "had naturally reseeded with Douglas-fir, Western red cedar, hemlock and red alder." Index No. 19165, attachment 952. The March 12, 1999 staff report to the Planning Commission state: "The [[[Screen property] is forested.:" Index No. 19186, at 5. This statement is repeated in the March 24, 1999 staff report to the Planning Commission. Index No. 19222, at 2. Also, as discussed above, information prepared for the White Horse project that was presented by the Screens to the Planning Commission on March 24, 1999, shows that the Screen property is forested in part. Index No. 19190 (Existing Site Conditions, Plant Communities map). The Screens have not shown that the County's portrayal of the property as forested in character was clearly erroneous; the Screens have not shown that the County failed to comply with RCW 36.70A.070, 36.70A.040(3), or 36.70A.120.

Conclusion

The Screen property has not been actively managed for forestry and harvested and is not currently taxed as timber lands pursuant to state and county programs. The question is whether the Screen property is forested in character.

The Screen property is not identified on the Open Space and Timberlands Map because it is not currently taxed as timber land as provided in chapter 84.34 RCW. This map does not purport to identify all forested parcels in the County. Likewise, the Current Land Use Map is based on the tax status of the property. The Screen property is not identified as "wooded" on this map because it is not currently taxed as timber land as provided in chapter 84.34 RCW. Therefore, the County has not previously determined that the Screen property is not forested in character.

The record supports the County's determination that the Screen's property is forested in character. The Screens have not shown that the County's portrayal of the property as "forested in character" was clearly erroneous; the Screens have not shown that the County failed to comply with RCW 36.70A.070, 36.70A.040(3), or 36.70A.120.

Legal Issue 4: Did the County's adoption of Ordinance 234-1999 fail to comply with the requirements of RCW 36.70A.070(5) and RCW 36.70A.070(1)?

The Screens argue that IRF is not an appropriate designation for their property and, by so designating the Screen property, the County has failed to comply with the requirement of RCW 36.70A.070(1), which provides:

> [Each comprehensive plan shall include a] land use element designating the proposed general distribution and general location and extent of the uses of land, where appropriate, for agriculture, timber production, housing, commerce, industry, recreation, open spaces, general aviation airports, public utilities, public facilities, and other land uses. . . .

The Screens assert that IRF is a "place holder" designation, to reserve potential GMA forest lands while the County developed criteria for designating GMA forest lands. Now that GMA forest lands have been designated, the Screens assert that the County must re-designate the Screen property from IRF to an appropriate designation, such as Rural Residential (**RR**). [FN4]

The County responds that "Screen has not demonstrated that the IRF designation is not a valid rural designation for the Screen property, but only that the County intends to reconsider the designation in the future." County Response, at 10. The Board agrees with the County.

IRF is not an invalid rural land use designation and the Screens have not shown that it is not an appropriate designation for their property. However, the continued application of the term "interim" can lead to confusion in the GMA

© 2009 Thomson Reuters/West. No Claim to Orig. US Gov. Works.

context. [FN5] As used here by the County, "interim" is meant to notify the public that the County intends to revisit this rural designation now that it has designated its GMA forest lands. The County may revisit any of its land use designations during its annual plan amendment cycle, regardless of whether the term "interim" is attached to any given designation. Nonetheless, regarding the IRF designation, the County has not failed to comply with any GMA requirement.

The Screens also argue that the County has failed to comply with a GMA requirement to create a written record explaining how the rural designations meet the goals and requirements of the GMA. RCW 36.70A.070(5)(a) provides:

> Growth management act goals and local circumstances. Because circumstances vary from county to county, in establishing patterns of rural densities and uses, a county may consider local circumstances, but shall develop a written record explaining how the rural element harmonizes the planning goals in RCW 36.70A.020 and meets the requirements of this chapter.

The Board reads this provision as requiring a written record in those instances where a county has considered local circumstances and has established patterns of densities and uses that would not be considered rural, absent the local circumstances. *See Alpine* FDO, at 71-72; *Sky Valley v. Snohomish County*, CPSGMHB Case No. 95-3-0068c, [Darrington Portion of Case] Second Order on Compliance (Sep. 8, 1998), at 10-12 (where county relied on local circumstances, the need for cottage industries, to justify 2.3-acre residential lots in rural area, Board reviewed county's written explanation).

The IRF designation of the Screen property, allowing 1 dwelling unit per 20 acres, is clearly a rural land use designation. The Screens argue that "the County's unique two-phase approach to the designation of forest lands and the consideration of appropriate uses and densities on IRF lands" comprise the local circumstances considered by the County. While the County certainly considered local circumstances in its approach to designating GMA forest lands and IRF lands, the County did not rely on local circumstances to justify an atypical rural density or use. The County did not propose to establish patterns of densities and uses that would not be considered rural, absent the local circumstances.

Conclusion

The IRF designation of the Screen property, allowing 1 dwelling unit per 20 acres, is a valid, rural land use designation. The County did not rely on local circumstances to justify an atypical rural density or use and the County did not propose to establish patterns of densities and uses that would not be considered rural, absent the local circumstances. The Screens have not shown that IRF is not an appropriate rural designation for their property.

Legal Issue 5: Did the County, prior to adoption of Ordinance 234-1999, improperly restrict public testimony regarding the designation and zoning of the Screen property and thereby fail to be guided by RCW 36.70A.020(11) and to comply with the requirements of RCW 36.70A.140?

The Screens allege that the County "improperly restricted public testimony regarding the designation and zoning of the Screen Property, in violation of RCW 36.70A.020(11) and 36.70A.140." Screen PHB, at 11. The GMA requires the County to "[e]ncourage the involvement of citizens in the planning process and ensure coordination between communities and jurisdictions to reconcile conflicts." RCW 36.70A.020(11). More specifically, RCW 36.70A.140 provides:

> Each county and city that is required . . . to plan under RCW 36.70A.040 shall establish and broadly disseminate to the public a public participation program identifying procedures providing for early and continuous public participation in the development and amendment of comprehensive land use plans and development regulations implementing such plans. The procedures shall provide for broad dissemination of proposals and alternatives, opportunity for written comments, public meetings after effective notice, provision for open discussion, communication programs, information services, and consideration of and response to public comments. . . . . Er-

© 2009 Thomson Reuters/West. No Claim to Orig. US Gov. Works.

> rors in exact compliance with the established program and procedures shall not render the comprehensive land use plan or development regulations invalid if the spirit of the program and procedures is observed.

The Screens identify two events to support their public participation challenge, a public hearing before the Planning Commission and a public hearing before the County Commissioners. On March 12, 1999, a County staff report to the Planning Commission recommended re-designating the Screen property from IRF to RR. Index No. 19222. The Planning Commission held a public hearing on this issue on March 24, 1999. On the day of the hearing, staff presented a revised report to the Planning Commission recommending retaining the IRF designation. Index 19186. The Screens argue that "[t]his eleventh-hour reversal prevented the Screens and other interested parties from commenting on the staff recommendation before the Planning Commission . . . ." Screen PHB, at 11.

There is no allegation that the County did not provide adequate notice of this public hearing. The subject matter of the Planning Commission's public hearing included the possible re-designation of the Screen property. Consideration of a revision to a land use designation includes the possibility of not revising the designation. The Screens and other County citizens had the opportunity to testify before the Planning Commission either in support of or in opposition to the staff recommendation. Additionally, notwithstanding the Planning Commission's recommendation, the Screens and others had until April 19, 1999 (over three weeks), to bring their concerns to the attention of the County Commissioners. The revised staff report to the Planning Commission does not constitute a failure to comply with the public participation requirements of the GMA.

On April 19, 1999, the Board of County Commissioners held a public hearing on the possible re-designation of the Screen property. At the beginning of the hearing, Chair Garrido informed the audience that "this is not a hearing about "White Horse". We will not be accepting testimony about the "White Horse" issue. The handout in the back that is prepared by the Planning Commission with their recommendations to the Board of County Commissioners is in its entirety what we will considering [sic] tonight . . . ." [FN6] Transcript of April 19, 1999 Board of County Commissioners hearing (**Transcript**), at 4. Commissioner Endresen added:

> "White Horse" is not the issue here tonight. "White Horse" was approved by the County Commissioners several years ago. It is in Superior Court, it will be in court in July and it will be heard by a judge. The judge will make the decision on whether "White Horse" is built or whether it is remanded back to the County or whether it is null and void but that's not why we are here tonight.

Id. The Screens argue that, since the Screen property is commonly known as "White Horse" the Commissioners admonitions against testimony stifled public comment on the Commissioners' consideration of re-designating the Screen property. Although several citizens may have chosen not to testify as a result of the Commissioners' statements, several citizens did testify on the subject matter of the hearing. *See* Transcript, at 6 (testimony of Sonny Woodward), 7-10 (testimony of Mike McLaughlin), 12-14 (testimony of Jack McCullough, on behalf of the Screens), 16-20 (testimony of Dan Baskins), 20-21 (testimony of Charlie Burrow), 21-22 (testimony of Jim Halstead), 23-24 (testimony of Don Lachata). Whatever citizen confusion may have existed regarding the distinction between the White Horse project and the re-designation of the Screen property did not result in a GMA public participation failure. The Screens have not shown that the County failed to comply with RCW 36.70A.020(11) or 36.70A.140.

Conclusion

Neither the revised staff report nor whatever citizen confusion may have existed regarding the distinction between the White Horse project and the re-designation of the Screen property result in a GMA public participation failure. The Screens have not shown that the County failed to comply with RCW 36.70A.020(11) or 36.70A.140.

VI. ORDER

© 2009 Thomson Reuters/West. No Claim to Orig. US Gov. Works.

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

The County's adoption of Ordinance 234-1999, reaffirming the designation of the Screen property as IRF, complied with RCW 36.70A.070, .040(3), .120, .070(5), .070(1), .020(11), and .140.

So ORDERED this 22nd day of November, 1999.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

Joseph W. Tovar, AICP
Board Member

Edward G. McGuire, AICP
Board Member

Note: This order constitutes a final order as specified by RCW 36.70A.300 unless a party files a motion for reconsideration pursuant to WAC 242-02-832.

FN1. This approval is the subject of pending litigation in Superior Court.

FN2. The following uses are permitted on IRF designated lands: timber harvesting and management, resource-supporting commercial or industrial activities, and residential uses at a density of 1 dwelling unit per 20 acres. Plan, at 64.

FN3. It was undisputed that the Screen property consisted of "larger parcels of land in contiguous blocks."

FN4. RR designation permits residential development at a maximum density of 1 dwelling unit per five acres. Plan, at 64.

FN5. Based on the briefing and argument in this case, the Board attaches no significance to the use of the term "interim" in the IRF rural designation, because the County's use of this term does not indicate that the IRF designation is intended to be the "interim" forestry designations typically used to satisfy the requirements of RCW 36.70A.060(3). As discussed above, the County has designated its GMA forest lands. Consequently, the "interim" phase of the process as suggested by .060(3) is no longer germane.

FN6. White Horse is a proposed development on the Screen property. *See* footnote 1, *supra*. A notice, of unknown origin, appeared in the local newspaper erroneously advising the public that the County Commissioners' public hearing would pertain to the White Horse project.

1999 WL 1075115 (Wash.Central.Puget.Sd.Growth.Mgmt.Hrgs.Bd.)
END OF DOCUMENT

© 2009 Thomson Reuters/West. No Claim to Orig. US Gov. Works.

4

Friends of Skagit County, et al.,

v.

Skagit County *and* City of Anacortes & City of Mount Vernon, Intervenors

BEFORE THE WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

FRIENDS OF SKAGIT COUNTY, et al.,	)	
	)	No. 96-2-0025
Petitioners,	)	
	)	COMPLIANCE
v.	)	HEARING ORDER
	)	
SKAGIT COUNTY,	)	
	)	
Respondent,	)	
	)	
and	)	
	)	
SKAGIT COUNTY DIKING DISTRICTS, et al.,	)	
	)	
Intervenors.	)	
	)	

On January 3, 1997, we issued a final decision and order (FDO) in this case generally approving the Skagit County (County) Critical Areas Ordinance (CAO) but remanding to the County eleven items requiring actions to achieve compliance with the Growth Management Act (GMA, Act):

(1) Review all exemptions in .090 and conduct reasoned analysis to ensure that exemptions meet the criteria cited by the County and are worded as tightly as possible to meet those criteria with least possible impact to critical areas (CAs), and that they direct restoration to maximum extent possible.
(2) Modify the Forest Practices Act exemption to make it clear that any use other than continuing forest use would not be exempt under .090 and would be subject to CA review.
(3) Develop additional Best Management Practices (BMPs) to reasonably regulate existing agricultural activities that are damaging CAs and/or their buffers.
(4) Include a clear statement that no alterations that adversely affect CAs or their standard buffers' functions and values can occur without County approval whether or not a development permit is required.
(5) Complete the work under SCC 14.06.500(4) and designate and protect the most significant habitats of local importance as determined under .500(3).
(6) Modify SCC 14.06.080(4) to make it clear that if the County has relied on misinformation provided by the applicant in the checklist and therefore no site visit was triggered, the contested protection of .080(4) does not apply.
(7) Correct wording in SCC 14.06.510(1)(b) to reflect the County's intent to protect anadromous fish

not yet endangered or threatened.

(8) Correct the definition and use of the term "primary association" in SCC 14.06.040(26)(h) and (50) to reflect the County's intent to protect anadromous fish not yet endangered or threatened.

(9) Clarify the wording in SCC 14.06.090(5) to reflect the County's intent of requiring county approval for removal of live trees from CAs and their buffers.

(10) Clarify SCC 14.06.530(2)(d) to disallow activity in a buffer that prevents or inhibits its natural recovery to pre-damaged condition and function.

(11) Include a CA review notice in SCC 14.01 "notice of application" or adopt a more effective notice mechanism.

On January 27, 1998, the County adopted amendments to the CAO through Ordinance 16857. The Petitioners, Skagit Audubon Society (Audubon), Friends of Skagit County (FOSC), and the Swinomish Tribal Community (Tribe) filed briefs challenging the County's actions on nine of the eleven issues. **The other two, (7) and (8), were not challenged and are found to be in compliance.**

The compliance hearing was held August 27, 1998, in Hearing Room C of the Skagit County Administration Building in Mount Vernon, Washington. All three board members were present. Representing the County was John Moffat; representing FOSC was Gerald Steel; representing Audubon was Doyle McClure; representing the Tribe was Allan Olson; representing Skagit County Diking Districts 3, 9, 12 and Drainage Districts 17 and 22 (Districts) was Gary Jones; representing Western Washington Farm Crop Association, Skagit County Farm Bureau, Skagitonians to Preserve Farmland, and Skagit County Dairy Association (Ag) was Charles Klinge.

On April 9, 1998, an order regarding the record was issued. Items 10, 11, and 12 of Exhibit 1419 were preliminarily admitted for the limited purpose of evidence concerning the requested invalidity. After the compliance hearing, we decided to admit these items to the record for invalidity consideration only.

STANDARD OF REVIEW

The standard of review in this case is the clearly erroneous test. The County's actions must be found in compliance unless the petitioners show that those actions were clearly erroneous in view of the entire record before us and in light of the goals and requirements of the Act. The relevant consideration is "Has petitioner demonstrated by competent evidence that the County is clearly erroneous in its adoption of the current ordinance as it relates to the issues properly under consideration in this compliance hearing?" *Whatcom Environmental Council v. Whatcom County*, #95-2-0071 (Compliance Order 7/15/98).

Furthermore, as we stated in *City of Port Townsend v. Jefferson County*, #94-2-0006:

"The issue to be decided at a compliance hearing is whether the local government has complied

with the Act, and not necessarily whether there has been strict adherence to the recommendations issued in the final order...
We remain committed to the fundamental concept of the Growth Management Act that local decision-makers are the proper persons to implement GMA as long as the parameters established by the Act are adhered to. The specific mechanism for achieving compliance rests solely with local government."

And we have often stated that our responsibility is to decide whether actions of a jurisdiction comply with the Act rather than whether a better solution could have been found than the one adopted.

Exhibit 1250, memo to staff from the new County Directors of the Planning and Permit Center, stated in part:

"You are all encouraged to take risks in making calls in favor of the property owner. When was the last time anyone in this department was threatened with unemployment for taking a risk and saying yes to someone? You will never be expected to say yes in violation of our regulations, HOWEVER, there is almost always interpretative flexibility in our codes. As a rule of thumb, if you think it is possible that your denial may be overturned when it is appealed to a higher authority, why not just say yes in the first place and avoid the stress and bad public relations? Let your supervisor, Roxanne or I know if you need help in justifying any decision....

The BCC [Board of County Commissioners] made it clear that their expectation is that we (departmental personnel) will make most of the interpretive legal calls, and those calls will be in favor of the property owner when possible."

Petitioners claimed this memo proved that the higher-ups expect planning staff to make political, rather than professional decisions, with little concern for the broader public interest. They further charged that since protection of CAs and enforcement of codes is not a priority, a very concrete and detailed ordinance is necessary in order to assure adequate protection of CAs in Skagit County.

The County responded that we have not and may not assume the County is unwilling or unable to administer and enforce its ordinances. It further stated that even if there were an inadequate effort at enforcement of the CAO (which the County denied), such an administrative issue was not properly before us. Poor enforcement would not demonstrate that the CAO was out of compliance with the GMA. Compliance, the County asserted, is the only matter that should be of our concern.

Whether or not it should be our concern, we make the following observations. Almost no one wants a public official to be a simple reading robot with code book in-hand, possessing zero flexibility and common sense. If ways can be found so that the intent of the code is met or surpassed by an alternative approach, petitioners' and CAs' interests have not been harmed. However, if the flexibility is used to circumvent the requirement to protect CAs, then much harm has been done. It is hard to say whether this memo was a poorly worded attempt to encourage the former or a sad pressure to encourage the latter. Regardless, we will look carefully at the amendment for clarity, which is part of our responsibility.

Given that background information we will now discuss the nine remanded issues which have been contested.

(1) Review all exemptions in .090 and conduct reasoned analysis to ensure that exemptions meet the criteria cited by the County and are worded as tightly as possible to meet those criteria with least possible impact to CAs, and that they direct restoration to maximum extent possible.

With respect to the FDO requirement of an analysis to ensure that the exemptions in .090 meet the County's criteria, the County adopted the following finding:

> "In reviewing the CAO exemptions under WWGMHB Decision and Order (p. 17, lines 8-11), the Planning Commission considered the 'criteria cited by the County' which was: 1) does not impact critical areas, 2) is necessary to address an emergency, or 3) is related to lawfully existing uses that may not be prohibited if not expanded by adoption of the CAO. See WWGMHB Order 96-2-0025, p. 9 at 24. In responding to this order, the Planning Commission has attempted to elaborate on these points by providing supporting evidence, including existing state laws which already address the activity such as for fish protection (RCW 75.20) and flood control (RCW 86). The Planning Commission has also tried to strike a balance among the goals of GMA, including protection o(f) critical areas, protection of property rights, and conservation of natural resource lands. The purpose statement of WAC 365-190-020 clearly indicates a need to consider multiple land use designations and to '.. develop appropriate regulatory and nonregulatory actions in response.'"

Exhibit 1424, RM, General Finding 8, p. 13.

The County also adopted six pages of findings to show that it had used a reasoned analysis on each of the exemptions.

The County responded to the latter part of the above remand issue by adding the following to the introductory section of SCC 14.06.090 General Exemptions:

> "All exempt activities shall be carried out in ways that cause the least impact on critical areas and their buffers. If any damage is caused to a critical area or buffer in connection with such activity the critical area and its buffer must be restored to the extent feasible."

Petitioners challenged the adequacy of this added pronouncement, claiming that the provision provided no practicable protection at all, because areas that are exempt undergo no review and there are no procedures to determine whether or not the "least impact" on critical areas was attained. They further complained that "extent feasible" was too vague and were words without meaning that served only to avoid real, quantifiable restoration if damage to CAs occurred.

Even though these added sentences may not be as protective as Petitioners would like, the County has made it clear to those reading the Ordinance that exempt activities must be carried out in a way that has

least impact on CAs, and if impacted, must be restored to the extent feasible. This meets the intent of that section of remand issue (1).

Petitioners claimed that the County had not conducted a reasoned analysis and that the extensive findings were just a sham to give the appearance that a reasoned analysis had taken place. The County countered that Petitioners have not explained what findings they disagree with or what portion of the County's analysis therein is not "reasoned." We will discuss the adequacy of the reasoned analysis in the context of the specific exemptions below.

[1] Emergencies

Petitioners failed to convince us that the emergency exemption is clearly erroneous. **We therefore find exemption [1] Emergencies to be in compliance with the Act.**

[2] Ongoing Agriculture Operations and (3) BMPs for Existing Agriculture

We will discuss the agricultural exemption and remand issue (3) together, since it is so difficult to separate the two. Remand issue (3) states: Develop additional BMPs to reasonable regulate existing agricultural activities that are damaging CAs and/or their buffers.

The County amended subsection (2) of .090 by adding the following language:

> "Existing and ongoing agricultural activities shall, however, comply with best management practices contained within any conservation plan between the property owner and the Department of Ecology pursuant to Title RCW 89 and shall also comply with the requirement in RCW 75.20.103 that written approval be obtained from the state Department of Fish and Wildlife for streambank stabilization including but not limited to log and debris removal, bank protection (including riprap, jetties and groins), gravel removal and erosion control as required by that section.
>
> The County has developed a set of voluntary performance guidelines for implementing best management practices. These guidelines are designed specifically to increase protection for anadromous fish and are located in this ordinance under Section 14.06.095. Farmers, dike and drainage districts, and sub-flood control districts should take these guidelines into consideration and should implement them in conjunction with ongoing activities. The County shall develop a strategic plan, under the provisions of 14.06.096, for the protection of wild salmonids. This plan shall evaluate the need for additional protection requirements when the activities noted in this subsection are occurring next to fish bearing waters."

The County also adopted definitions for "Agricultural land" and "Ongoing Agriculture":

> "'Agricultural land' means land primarily devoted to the commercial production of horticultural (including fiber production such as hybrid cottonwoods), viticultural, floricultural, dairy, apiary, vegetable or animal products or of berries, grain, hay, straw, turf, seed, Christmas trees not subject to the excise tax imposed by RCW 84.33.100 trough 84.33.140, finfish in upland hatcheries, or livestock (including livestock raised for personal use), and that has long-term commercial significance for agricultural production. The Revised Code of Washington, for 1997, has several definitions for agriculture. The State Hydraulics Code (RCW 75.20) is necessary to implement the riparian protection section of the CAO; it requires the use of the definitions of agriculture as given in RCW 84.34.020(e) and (f) and 36.70A.030(2). Emphasis added.
>
> 'Ongoing agriculture' means the continuation of any existing activity defined as agriculture in this ordinance including crop rotations and changes in activity (for example, from pasturing to crop farming). Activities undertaken after the adoption date of this ordinance (as amended by Ordinance #16851) which bring an area into agricultural use are not part of an ongoing operation."

Further, the County adopted twelve findings supporting the reasoned nature of its actions. The last two of these findings describe the intent of added sections 14.06.095 and .096 of the Ordinance:

"1.2.11 The County has developed a set of voluntary performance guidelines for implementing best management practices. These guidelines are designed specifically to increase protection for anadromous fish and are located in this ordinance under section 14.06.095. Farmers, dike and drainage districts, and sub-flood control districts should take these guidelines into consideration and should implement them in conjunction with ongoing activities.

1.2.12 The County has committed to developing a strategic plan, under the provisions of 14.06.096, for the protection of wild salmonids. This plan shall evaluate the need for additional protection requirements."

In its opening brief the Tribe asserted in part:

"Not surprisingly, the County did not provide any reasoned analysis based on BAS for the blanket exemption for existing and ongoing agricultural operations. The County instead relied upon 'guidelines' adopted by the Department of Community, Trade and Economic Development ('DCTED') WAC 365-190-020. Although admitting 'GMA...does require the use of best available science (to designate critical areas),' the County makes the blatantly erroneous finding that '[t]here is no requirement providing guidance as to the extent to which ongoing agricultural practices must be regulated, or as to what constitutes 'reasonable' regulation of them' (County's General Finding No. 6.g.) and that '[t]here is no requirement in GMA, beyond encouraging the use of BMP's, that the County must increase regulation of ongoing natural resource management operations...' (County's Specific Finding No. 1.2.1) In addition to ignoring GMA's (RCW 36.70A.172) direct application of BAS to designation of critical areas (regardless of where they are located), the County has evidently also chosen to ignore the Board's directive to use BAS within a 'reasoned process' and within the 'parameters of the Act directed by the provisions of RCW 36.70A.172(1). Final Decision at p. 7.

Rather than comply with the Board's requirement to develop additional BMP's that 'reasonably regulate existing agricultural activities,' SCC 14.06.090(2) continues to provide an overly broad blanket exemption for existing and ongoing agricultural practices....

The County's plan to exempt all existing and ongoing activities occurring on agricultural lands therefore violates the GMA requirement that counties use BAS to designate and protect critical areas. See RCW 36.70A.172(1). Notwithstanding this requirement, SCC 14.06.090(2) continues to explicitly exempt existing and ongoing activities that impact critical areas so long as they 'do not result in an increase in impact to a critical area beyond that which has been occurring prior to the effective date of this ordinance.' In other words, if animals have been allowed to enter and defecate in a stream or river before, they can continue that activity under the categorical exemption of SCC 14.06.090(2)....

Under the definition in SCC 14.06.040, exemptions for agricultural land encompasses approximately 95,000 acres throughout Skagit County. Exhibit 1292. In addition, the exemption equates the use of personal livestock with agriculture of longterm commercial significance. Individuals that allow livestock raised for personal use to graze and degrade riparian areas are provided the same exemptions as commercial agriculture throughout the county.

The Tribe further pointed out: (1) Exhibit 632, County's own staff report, stated that 73 percent of fish-bearing streams are in agricultural and rural areas; (2) Several exhibits in the record showed that ongoing agricultural activities are currently harming fish habitat; (3) Indians are totally dependent on fishing both economically and culturally; (4) The County has gone to great lengths to ensure the economic viability of agribusiness but at the expense of the fisheries economy; and (5) The County has relied on other factors to totally ignore Best Available Science (BAS), thereby violating 36.70A.172.

Audubon supplied many exhibits supporting the Tribe's claims, particularly in regards to failure to use BAS and failure to protect anadromous fish. Audubon further pointed out that .095 (Voluntary Performance Guidelines for riparian management areas (RMAs)) and .096 (Strategic Plan for Protecting Wild Salomids) totally fail to provide protection for CAs and anadromous fish at this time. The first is voluntary and the second is prospective.

The County defended its actions, stating that ongoing agriculture operations are an allowable exemption from CA regulations for several reasons: (1) WAC 365-190-020 recognizes the importance of ongoing agricultural operations; (2) ongoing agriculture operations within the ordinary high water mark of streams are already regulated by the Washington Department of Fish and Wildlife (WDFW) and the Department of Ecology (DOE); (3) the County has established voluntary performance guidelines to ensure the effectiveness of BMPs for RMAs designed specifically to increase protection of anadromous fish under .095; (4) the County is committed, under .096, to developing a strategic plan for the protection of wild salmonids consistent with the State Wild Salmonid Policy including any additional necessary controls on ongoing agriculture; (5) the County balanced needs of "the long-term survival of the agricultural resource industry and survival needs of anadromous fish;" (6) WAC 365-190-020 advises that counties "should allow existing and ongoing resource management operations that have long-term commercial significance to continue"; (7) 36.70A.170(2), instructing counties to use the WACs, was not changed when .172 was added by the legislature; and (8) there is evidence in the record from the Skagit Conservation District that voluntary performance guidelines for implementing BMPs have been successful.

The County further elaborated:

> "Combined with this, the County established, through .096, a strategic plan for protecting wild salmonids. This involves a committee of technically-qualified individuals developing 'implementation action plan to achieve the long-term goal of restoring and protecting habitat consistent with the State's adopted wild salmonid policy.' SCC 14.06.096(2)(a); Exhibit 1424, Attachment A, p. 18. This process would take a year and the plan would be consistent with the State's Wild Salmonid Policy (WSP).
>
> This is an important point and demonstrates the County's commitment to the protection of fish-bearing streams. GMA does not require counties to follow the WSP, yet the County has chosen to. The WSP recognizes the need to work cooperatively with farmers. See Exhibit 1364

at pp. 16-18. This is why the Washington Department of Fish and Wildlife's recommended alternative in the DEIS for the WSP was for a flexible policy which accepted some negative ecological impacts (Exhibit 1089 at p.8) and that alternative was formally adopted in the WSP. The WSP notes that the exact method of implementation shall be determined both locally and cooperatively:

> Maintenance of less intensive land uses, such as agriculture and forestry, when managed consistent with this policy, are integral to achieving the goals of the Wild Salmonid Policy. Providing technical assistance and other incentives to encourage landowners to continue in forestry and agriculture, consistent with the principals of this Policy, should be an integral part of watershed plans and/or collaborative rule-making processes.
>
> The exact methods and products that will be developed to implement the habitat components of the policy are beyond the scope of this Policy. It is anticipated that additional plans, actions, agreements, and/or regulations will be developed, in most cases in arenas outside the WDFW rule-making process. It is also expected that additional SEPA review will be done to address the specific environmental impacts of those implementation actions subject to SEPA. In any event, successful implementation of the policy will require close coordination and cooperation of agencies, tribes, and individual landowners.

Exhibit 1364 at p. 17. The County's plan may well include the adoption of regulations mandating certain actions in connection with ongoing agricultural operations, but that will await completion of the Plan. The County's strategic plan is consistent with the WSP. Exhibit 1330, pp. 6-7; Exhibit 1366, pp. 8, 78-79....

Audubon's concern about the inclusion of 'livestock raised for personal use' as part of the definition of 'agriculture' included in the ongoing agricultural exemption is misplaced. There are many existing agricultural activities in rural (non-NRL) areas already in existence. If they do not expand, there is no need to regulate them as long as they are 'carried out in ways that cause the least impact on critical areas and their buffers,' and if damage occurs, that the CAs and their buffers 'must be restored to the extent feasible.' SCC 14.06.090. Perhaps the most telling evidence in the record of Petitioners' misplaced concern of the CAO definition of 'agriculture land' is the fact that when DOE offered comments on an earlier draft of it, it did not object at all to the inclusion of the language 'including livestock raised for personal use' in the definition of 'Agriculture' (Exhibit 1309), although it had other comments on the definitions."

As to the charges of failure to use BAS, the County responded in part:

> "Although Petitioners criticize the County for not using best available science (BAS), the County has used it consistent with GMA. BAS cannot and should not be considered in the abstract; it must be based in the realities of other relevant factors. The science which the County is using is the science that considers all aspects of the CAs and the resource areas that need to be protected; the science that recognizes that BMPs must be tailored to site-specific circumstances and cannot be applied across the board; the science that recognizes that applying BMPs voluntarily through agricultural resource agencies is working; the science that recognizes that providing incentives to impose BMPs is more effective than imposing them as regulations; the science that recognizes that there are complex issues involved in the WSP process that involves the input form stakeholders before regulations are imposed; the science that recognizes the practical difficulty of repairing and maintaining dikes that have extensive trees and vegetation on them; and the science

that refuses to shut down barely economically profitable agricultural operations with excessive buffer requirements. What the County is not following is the science urged by Audubon and the Tribe that the County must impose the most severe regulations. Such an approach is faulty, because it is based on pure research and not on any analysis of whether such science works on a practical level through a set of land use controls, particularly in light of other factors GMA requires counties to consider. The Tribe and Audubon argued this same position last time and this Board rejected it. To impose the large buffer requirements urged by the Tribe and Audubon would be unreasonably detrimental to the farming industry by imposing stream buffers that would remove approximately 4,000 acres of land from agricultural productions. See Exhibit 1212, p. 31; Finding 1.2.7, Exhibit 1424, RM at p. 17. However, the County has used and considered BAS."

The County's use of BAS was outlined in General Finding 3:

"BAS was considered by the Planning Commission together with GMA's intent (WAC 365-190-020) to preserve ongoing resource management activities. There is a balance to be struck, and the Planning Commission has made a reasoned analysis of all the evidence contained in the record, including the role and responsibility the State plays in protecting fish under the authority of RCW 75.20 The protection of anadromous fish, in particular wild salmonids, is a statewide concern. The State has taken measures by attempting to establish a policy on protecting wild salmonids. In the DEIS and FEIS on the Wild Salmonid Policy (WSP) issued by the Department of Fish and Wildlife, which represents BAS at a level far beyond what a local government could be expected to attempt under GMA, the selected alternative (Alternative 3) relies on 'locally-based planning efforts for specific implementation plans' (FEIS, pp. 42-43). The FEIS sets the framework for a watershed based planning effort, and accepts the fact that a 'balance of local implementation processes and state level regulation is essential to habitat protection and restoration. The FEIS recognizes that much of the local ground work is yet to be done before the WSP can be successfully implemented. This includes a 'watershed assessment' identifying limiting factors, with an emphasis on locally developed proposals for habitat preservation, protection and restoration. There is also an expectation that technical support, incentives or funding to remedy habitat problems that have been identified through the assessments will be provided. The FEIS also acknowledges the need to maintain agricultural and forest lands:

> 'as a key component of protection and restoration of wild salmonids. Implementation of the action strategies [in the FEIS] necessary to meet the following performance measures will require recognition and consideration of the need to maintain strong and vibrant economic conditions for forestry and agriculture over the long term. Providing technical assistance and other incentives to encourage landowners to continue in forestry and agriculture, should be an integral part of watershed plans and/or collaborative rule-making processes' (FEIS p. 44).

What the County has proposed is a strategic planning process, one that is designed to implement the state WSP, to be developed at the local level with support from the state."

The County further stated:

"This Board has stated clearly that a county is not required to base its GMA choices solely on BAS, but must consider (1) the scientific evidence in the record, (2) whether the analysis by the local decisionmaker of the scientific evidence and other factors involved a reasoned process, and (3) whether the local decision was within the parameters of GMA. Clark County Natural

Resources Council, et al. v. Clark County, et al. No. 96-2-0017, Final Decision and Order (December 6, 1996) (CPC 2208-09). This Board has recognized not only in this case but others as well, the broad discretion GMA gives counties in choosing options where BAS is conflicting. (FDO, pp. 6-7; Storedahl & Sons, Inc. v. Clark County, No. 96-2-0016, Compliance Order (December, 1997); Diehl, et al. v. Mason County, No. 95-2-0073, Order Finding Continuing Non-Compliance, etc., (September 18, 1997) (CPC 2685 at 2688)."

The County concluded:

"Here, based on the evidence in the record, the County opted for a balanced approach towards ongoing agricultural use, establishing voluntary performance guidelines for compliance with existing and developing BMPs (an approach that has proven to be effective), and working towards the adoption of a strategic plan to protect wild salmonids. Based on the record, this choice was within the range allowed by GMA."

In their March 20, 1998, brief the Agricultural Intervenors responded to petitioners in part:

"The petitioners' papers rely on common themes—an assumption of bad faith on the part of the County, an assumption that nothing is being done to protect wetlands and wildlife, and a naïve belief that the County and the affected agriculture community have unlimited budgets. The Agricultural Intervenors are committed to making further progress in protecting critical areas. However, environmental issues are complex and take time to fully understand the most cost-effective solutions. They also believe that, rather than impose absolute, across the board requirements, a far more effective approach is to target the problem areas for repair first. For instance, rather than fence off every waterway in Skagit County, a focus should first be made to target for improvement the more concentrated problem areas associated with high intensity livestock use, such as dairies. Rather than paint everyone with the same brush, the County should focus on the identifiable point sources of pollution and work to solve the worst problems first.

In relation to the problems with fish, the Agricultural Intervenors contend that a comprehensive solution involving all the stakeholders is far more likely to be effective than a purely bureaucratic regulatory regime. Cooperation is more effective than enforcement; cooperative involvement by the affected parties in developing the best strategy is more likely to result in real progress, rather than a top down, command and control approach. More rules without support from the affected parties will produce nothing but a contempt for laws that cannot be enforced.

Over the last 100 years, a large amount of land in Skagit County has been used continuously for agricultural purposes. This stability of land use is far more conducive to finding the solution for environmental issues because the effect of practices can be evaluated and remedied over time. If regulatory controls make commercial agriculture no longer viable, that land will be used for some other purpose, resulting in an instability of use and making solutions to environmental problems even more difficult to address. Farming is more fish-friendly than many other economic uses of land. In order to assure continuation of commercial agriculture, the County has struck a balance, consistent within its discretion in dealing with the conflicting goals of the GMA, which over the long term will protect and enhance fish and wildlife and also allow commercial agriculture to continue."

The Ag group's brief further supported the County's response with evidence from the record and

extensive argument. Just a few of the key points made were: (1) Re: Local Discretion – the 1997 Legislature amended the GMA to require Growth Boards to give more deference to local decision-makers required to "balance priorities and options for action in full consideration of local circumstances." (2) Re: BAS – quoted T.H. Huxley "Science is nothing but trained and organized common sense." (3) Re: BAS – if the BAS were to totally dictate the County's policies, there would be no reason for public participation. (4) Re: Cost/Benefit – Petitioners' theory may sound good but practical application of their demands may cost a whole lot more than the value added to streams and fish.

In regards to the inclusion of "livestock for personal use" in the definition of "agricultural land," the Ag Intervenors stated at p. 18 of their brief:

> "Petitioners suggest that the County's inclusion of the phrase 'livestock raised for personal use' within the definition of 'agricultural land' in SCC 14.06.040 somehow turns every property on which a cow is pastured for personal use into agricultural land exempt from the CAO. This is not true. If it were true, the Agricultural Intervenors would severely object to opening up relief based on the GMA goal to assure the continued viability of commercial agriculture to those with non commercial agricultural operations.
>
> Instead of petitioners' reading, the Board should read the entire definition of agricultural land which includes the GMA requirements that it be 'land primarily devoted to the commercial production of agricultural products. SCC 14.06.040. The Agricultural Intervenors read inclusion of 'livestock raised for personal use' not to eliminate the requirement for commercial production. Instead, these provisions should be read together. Clearly, it means that land used for commercial production of agricultural products does not lose its designation merely because part of the land may be used by livestock for personal use.
>
> Personal use of livestock includes 4H and FFA livestock projects. Commercially viable farmers often have portions of their farm acreage used for 'personal use,' a longstanding tradition, necessary to make the entire operation profitable. The County did not violate the GMA by assuring those in commercial agricultural operations that they did not lose their designation simply because part of their land was used for personal use."
> (Emphasis added)

Ag Intervenors' brief concluded:

> All of the parties before the Board are committed to the survival of fish-bearing streams. The County, through a reasoned process, which relied on the state's Wild Salmonid Policy, concluded that voluntary performance guidelines were more effective than pure regulation. Moreover, there is no mandate in the GMA the BMPs be established by regulation. *Cf.* WA 365-190-020 which only encourages BMPs. The State's WSP recommends a flexible policy and the County followed that recommendation. Its decision to do so is eminently reasonable in light of the commitment by all interested stakeholders. The evidence showed that BMPs established through the Skagit County Conservation District have been successful. Exhibit 1179, Exhibit 1282, Exhibit 1152.
>
> In light of the new clearly erroneous standard, petitioners have an uphill battle to prove the County's new CAO is out of compliance with the GMA. After a year of public input and

collection of scientific, economic, and public policy advice, the County made choices well within the GMA's mandate. The County has the obligation to balance the goals of the GMA and the duty to protect agriculture is no less than the duty to protect critical areas. As President Eisenhower observed, 'farming looks mighty easy when your plow is a pencil and you're a thousand miles from the cornfield.' Skagit County properly considered the realistic difficulties in making a critical areas ordinance work with the practical constraints of the agricultural industry.

With the commitment of all stakeholders to make the Wild Salmonid Policy work in Skagit County, the County's decisions to base its ordinance on that policy should be respected and given the opportunity to work."

Some of the key points of Audubon's reply included: (1) Neither .095 nor .096 specify any requirements for CAO protection nor a reliable process for implementation. (2) The County's discussion of existing regulations is illusory because the referenced legislation provides no protection for essential vegetated buffers beyond the stream banks. (3) .095 completely fails to meet the requirements of the WSP and the County has refused to adopt even the lesser prescriptions of .095 as regulatory measures. (4) The County's intent of applying the agriculture exemption to lands not designated as long-term agriculture clearly allows avoidance of CA protection throughout rural Skagit County.

Audubon concluded:

"Without doubt, this proposal provides the strongest possible evidence that the County is knowingly attempting to subvert both the letter and the intent of the GMA to protect CAs, especially as related to anadromous fish habitat. We request that the Board find that this definition of agriculture, along with the exemption .090(2), does not comply with the GMA, and interferes with its goals."

In its March 30, 1998, reply brief the Tribe responded in part:

"Other than minor technical corrections, the County's revised CAO does not provide any more protection to critical areas than the previous CAO the Board previously found not to be in compliance with the Act. The County has adopted instead voluntary programs and prospective processes that fail to protect Critical Areas.

The County argues that Petitioners' objections to these voluntary and prospective provisions are unsupported. However, Petitioners' made their case based and carried their burden of proof based upon BAS before the Board at the hearing on the merits. It goes without saying that the Board granted Petitioner's motion for a finding of noncompliance based upon well supported claims and arguments. For purposes of this compliance hearing, the Tribe hereby incorporates that record by reference, specifically the Tribe's Opening and Reply Briefs. Where a county merely adopts a 'process' to start implementation of its CAO in the future, but fails to refute previously submitted scientific evidence in a compliance hearing, the Board has found continued noncompliance under the new clearly erroneous standard of review:

> When previously submitted evidence was unchanged and only a process for future designations was established, compliance cannot be achieved.

Clark County Natural Resources Council v. Clark County, No. 96-2-0017 (p. 10 of Compliance

Order, November 2, 1997)....

Contrary to the County's allegations, it is the Petitioners that have presented factual evidence and argued Best Available Science ('BAS') and the County that has made unsupported allegations and generally disparaged BAS as 'pure research.' Rather than provide reasoned analysis of a range of alternatives, the County begins with the unsupported dogmatic assumption that any additional limitations on agricultural activities will threaten the economic viability of agricultural activities and then fashions an administrative record to protect and defend that assumption. The County's general approach has been to prioritize the 'economic needs' of the agri-business stakeholders over the 'costs' of designating and protecting Critical Areas. This approach does not meet the requirement of 'reasoned analysis' mandated by the GMA and this Board's FDO....

The County's conflict model assumes an 'either or' situation where there is no overlap between the circles of interests. The County protects and defends its assumptions by providing categorical exemptions for activities that can and should be regulated. This is not the case in Skagit County and this is not BAS. Many of the County's exempted 'activities' within Critical Areas can be regulated in a manner that provides necessary protection to Critical Areas without jeopardizing the viability of other goals and objectives of the GMA.

The County cites Clark County, supra, for the proposition that it can rely on 'other factors' and select alternatives that are not within the range of BAS, but the County reads too much into this case. BAS provides a range of alternatives available that a county may consider. 'Local (County) discretion' is permitted to consider 'local diversity' on a case-by-case basis. 'Local diversity has an impact in determining what is 'best science,' not whether or not BAS should be applied.

> 'Best' means that within the evidence contained in the record a local government must make choices based upon the scientific information presented to it. The wider the dispute of the scientific evidence, the broader the range of discretion allowed to local governments. Ultimately, a local government must take into account the practical and economic application of the science to determine if it is 'best available.' (Emphasis added)

Clark County, pp. 9-10 of the FDO.....

This Board has held that the level of County discretion is more limited with regard to the protection of anadromous fish. Clark County, supra at p. 10 of FDO. RCW 36.70A.172(1) requires counties to give 'special consideration to conservation or protection measures necessary to preserve or enhance anadromous fisheries."

> This part of the statute directs measures for both preservation and enhancement. It therefore limits the discretion available to local governments when dealing with anadromous fish. In balancing the scientific evidence against issues of practicality and economics the result must be more heavily weighed towards science when dealing with anadromous fish. The 'special consideration' language directs that local governments must go beyond what might otherwise be done in designating and protecting other kinds of critical areas."

Further, regarding the expansion of the exemption to include agricultural activities outside designated agriculture land, the Tribe stated in its November 14, 1996, reply brief:

> "The County disputes the Tribe's assertion that only agricultural lands with long-term commercial significance should receive special treatment, either through an exemption (which the Tribe strongly opposes) or relaxed regulation (which the Tribe could support if the wording is clear and not overbroad). If the County intends to give special treatment to the agricultural industry by relaxing critical areas regulation, then the land should truly be agricultural. The best way to insure that is to extend relaxed standards only to designated agricultural lands, which the GMA requires have long-term commercial significance. Anything less would allow property owners with minimal agricultural activity, such a few berry bushes, to avoid regulation. The absence of an agricultural land designation undercuts the County's ability to provide 'a detailed and reasoned justification' for providing less (or no) critical areas protection for such lands. See Whatcom Environmental Council (WEC) v. Whatcom County, WWGMHB No. 94-2-0071 (Final Decision and Order, 12/20/95)."

FOSC's reply included these key points:

(1) Although the County and Ag Intervenors touted a proposed "Riparian Summit," nothing has been done to proceed with it during the past year while CAs have continued to be damaged.
(2) FOSC would support the Board's encouragement of such an approach as proposed by Audubon and Ag Intervenors.
(3) Even the Ag Intervenors recognized that there is a need for "a set of minimum acceptable performance standards." But the County has failed to adopt even a minimum set of rules.
(4) FOSC does not object to voluntary guidelines for improving CA habitat as long as these are not substituted for required minimum regulation.
(5) There is not even a basic requirement for any "conservation plans" alluded to in .090(2).

Board Decision and Conclusions

Definitions of "Agriculture Land" and "Ongoing Agriculture"

GMA gives protection to designated agriculture resource lands from incompatible adjacent uses and brings into play the balancing act between GMA's goals for the conservation of agricultural industries and protection of critical areas. The price paid for that deference is removal of development potential. The County is providing relief from GMA's CA protection requirements while still providing higher development potential. This is in violation of the Act.

Exhibit 1309, DOE 10/20/97, letter to Skagit County Planning states in part:

> "If the agriculture definition is not tied to 'commercial agriculture' then every owner of property greater than 0.5 acre will be claiming that they have been part of an ongoing agricultural operation even if the activity involved occasional disking for weed control or vegetable gardens. A number of wetland consultants now regularly advise clients to initiate disking of fields in order to escape regulation of wetlands that are on-site. Many of these areas have not been farmed for 10 years or more and some were just cleared initially for development prior to wetland regulation and were never farmed. The present definition of agriculture will result in continued headaches for both Skagit County and Ecology in trying to sort out those that are legitimate agricultural

operations and those that are not."

WAC 365-190-020 concludes:

> "....Regarding natural resource lands, counties and cities should allow existing and ongoing resource management operations that have long-term commercial significance to continue. Counties and cities should encourage utilization of best management practices where existing and ongoing resource management operations that have long-term commercial significance include designated critical areas. Future operations or expansion of existing operations should be done in consideration of protecting critical areas." (Emphasis added)

Even Ag Intervenors stated that they would severely object to opening up relief based on the GMA goal to assure continued viability of commercial agriculture to those with no commercial agriculture operations.

One Board member agreed with the interpretation of Ag Intervenors, that the definition of "agriculture land" clearly requires both primarily devoted to and having long-term commercial significance. Therefore, the addition of "including livestock raised for personal use" would not extend the exemption to hobby farmers in the rural area. However, another Board member agreed just as strongly with the interpretation of the County and the Petitioners, that that addition to the definition of agricultural land plus the definition of ongoing agriculture would certainly open the door for such an expansion of the exemption. Thus, we conclude that this regulation is unclear.

CPP 7.4 incorporated into the CP mandates that there be "clear regulations" to avoid multiple interpretations by staff and applicants. Clear regulations are also essential for GMA compliance. As we stated above, these definitions have been the subject of multiple interpretations. The County's interpretation would extend this exemption well beyond designated agricultural lands. Such an application would not only be clearly erroneous but would substantially interfere with Goals 9 and 10 of the Act.

14.06.095/Best Management Practices

The County's attempts to work cooperatively with the farming community to develop BMPs which protect CAs is commendable. The performance guidelines of .095 are a good step forward.

Exhibit 1041, letter from Skagit County Farm Bureau to the Board of County Commissioners seems to sum up the CA/Agriculture dilemma quite well:

> "The operative issue, then, appears to be how to create incentives to improve (in favor of habitat-related issues) existing agricultural practices. As used by the Hearings Board, "BMPs" are shorthand for a much broader concept – how to get farmland mangers to change/evolve today's practices to reflect a changing set of values while providing the necessary discretion to mange their lands in an economically efficient manner so that they remain as active stewards."

Exhibit 1408, 1/14/98 letter from Martin Environmental to County Planning, and many other exhibits point out that effective RMAs and other BMPs to restore and protect anadromous fish habitat must be individualized to specific locations and conditions. Also dollars spent must be on those projects which are most likely to make a real improvement. Flexibility is essential.

Exhibit 1179, August 1997, Planning Commission Meeting, Ms. Kelly, Director of Soil Conservation District, testified that the voluntary plans and projects worked out with farmers has worked "really well" in Skagit County.

WAC 365-190-020 says that counties and cities should encourage utilization of BMPs where existing and ongoing resource operations of long-term commercial significance include CAs.

Even given all of the above, more work must be done before we are able to find compliance for 14.06.095 and its adopted voluntary approach. There must be some assurance that CAs and anadromous fish are actually protected. As we said in our recent Shelton decision:

> "If BMPs are to be relied upon for protection, some form of monitoring and enforcement must be included to ensure that the BMP plans are actually implemented and followed." *Advocates for Responsible Development v. City of Shelton*, Case #98-2-0005.

BMPs may be voluntary and individually developed, but benchmarks, timeframes and monitoring must be established to ensure that these voluntary BMPs are working to achieve needed protection. There also must be a non-voluntary, fallback approach established to be implemented if the voluntary BMP approach is not working or is too slow in producing required results to protect CAs. All this must be done using BAS. **14.06.095 cannot comply with the Act until such safeguards are adopted.**

14.06.096/Strategic Plan for Protecting Wild Salmonids

Once again the approach outlined in .096 is a good one. However, as we have previously stated, the County cannot rely on a plan not yet developed to claim compliance with the Act's requirement to give special protection to anadromous fish. *Clark County Natural Recources Council v. Clark County*, #96-2-0017.

The County has stated that the strategic plan that will be developed by committee and adopted by the County will be consistent with the State Wild Salmonid Policy including any necessary additional controls on ongoing agriculture. The County has also stated that the Strategic Plan will use BAS to protect anadromous fish.

We are unable to find compliance until the County fulfills these pledges and adopts a plan which provides adequate protection for CAs and anadromous fish.

[3] and [4] Normal and Routine Repair

Petitioners failed to convince us that the Routine Repair exemptions are clearly erroneous. **We therefore find exemptions [3] and [4] Normal and Routine Repair to be in compliance with the Act.**

[5] and [6] Modification of Single Family Residence and Non-Single Family Use; [7] Outdoor Recreation; [8] Harvesting of Wild Crops; [10] Education and Scientific Research; and [12] Site Investigation

The County added a clause to exemptions [5] through [8], [10] and [12], requiring that the exempted activities do not adversely impact critical areas and their buffers.

Petitioners have presented no convincing arguments that these exemptions are clearly erroneous. **Exemptions [5], [6], [7], [8], [10] and [12] are in compliance with the Act.**

[9] Ongoing Operation of Diking and Drainage Systems

This exemption reads:

> "Ongoing operation and maintenance of diking and drainage systems and sub-flood control zones, which are part of a system of existing dikes, levees, ditches, drains, or other facilities which were created, developed or utilized primarily as a part of a drainage or diking system as defined by this ordinance. The area exempt from CAO review for maintenance and operation is the land occupied by an existing system of dikes and levees, extending from the ordinary high water mark to the toe of the slope on the landward side of the dike or levee which must be maintained in a manner that meets the federal standards for funding assistance for dike and levee repairs; provided, further that restoration of the ongoing maintenance and protection of the dike system occurs to the extent feasible. Operation and maintenance does not include the expansion or creation of new dikes, levees or drainage ditches and related facilities. (Refer to 14.06.095(4) for voluntary protection guidelines)."

Audubon contended that the "blanket" exemption of all diking and drainage operations was erroneous for three major reasons:

(a) Dike set-backs along much of the Skagit River are sufficiently large to permit important protection for anadromous fish that does not interfere with maintenance or integrity of the dike prism.

(b) Essential protection of vegetative buffers along major fish-bearing streams is consistent with diking/drainage operations.

(c) The County and Districts assertions that other laws and regulations are adequate to protect

CAs is false.

The Tribe was particularly concerned about the expansion of this exemption to include sub-flood control zones. It claimed that the establishment of new sub-flood control zones would damage CAs and destroy salmon habitat. Further, no provisions were provided for the protection of fish habitat when these new zones were established. The Tribe claimed that the record contains no reasoned analysis of BAS or of the impact of this exemption on fisheries habitat.

The Tribe also supported Audubon's assertion (c) by pointing out that: the record clearly shows that the Corps of Engineers (Corps) has no regulatory authority on lands riverward to the toe of levee slopes; these activities are also not regulated to protect fish habitat by DOE, by the Corps, or by WDFW for those activities conducted above the ordinary high water mark.

The County countered that:

(a) General Findings 4 and 6 demonstrate that there are numerous regulations already in existence which control diking and drainage district operations. There is no need for another burdensome layer of regulations.

(b) The Corps regulations do not permit funding for repair of dikes where "Tree, weed and brush cover exists in the levee requiring removal to re-establish or ascertain levee integrity." If buffers were imposed which resulted in tree or brush cover along dikes, it could prevent diking districts from obtaining federal money to perform repairs.

(c) The record contains more than fifteen exhibits which demonstrate that the County looked at these factors, reasonably considered them, and determined that this exemption was drawn tightly enough.

The Districts' brief supported the County's assertions with greater detail. At the compliance hearing the districts further stated that: (a) the Districts' exemption only extends from toe to toe of the dike and that surplus land is rarely in the Districts' ownership; (b) this ordinance as written is already an added financial burden on the Districts because they will need to develop a ten-year plan and maintenance procedures; (c) Petitioners have provided no proof that their demanded approach would actually produce a benefit and without such proof these added requirements make no sense; (d) the record showed that work needs to be targeted where you can make a real difference, not shotgun regulations for everyone; (e) do not alienate citizens to the extent that they disregard the ordinance altogether.

The Tribe stated that if the Districts were correct, that this exemption was only for District property, (generally toe-to-toe), that the Tribe would not be as concerned about that exemption. We are confused by the exemption language in this regard. The first sentence appears to say that only district activities are exempt. However, the second sentence states "The area exempt from CAO review for maintenance

and operation is the land occupied by an existing system of dikes and levees, extending from the ordinary high water mark to the toe of the slope on the landward side..."

The record showed that dike set-backs along much of the Skagit River are sufficiently large to permit important protection for anadromous fish that does not interfere with maintenance of integrity of the dike prism. We have found no evidence in the record to support the exemption applying to those areas. There seemed to be considerable confusion about whether those areas were covered by the exemption as written. The wording of exemption [9] is confusing and could be interpreted several ways as to who, what, and where is exempt. **Therefore, we cannot determine compliance until the applicability of exemption [9] is clarified in the Ordinance by the County.**

[11] Construction or modification of navigational aids and channels markers.
We received no challenge to this exemption and find it in compliance.

[13] Activity adjacent to artificial watercourses which are constructed and actively maintained for irrigation and drainage
The County included in this exemption the requirements that:

(a) any activity shall comply with RCW 75.20.100 and .103 by securing written approval from the WDFW.
(b) The activity must comply with all applicable state and local drainage erosion and sedimentation control requirements for water quality.

Petitioners have failed to convince us that exempting these activities is clearly erroneous. **Exemption [13] Artificial Watercourses complies with the Act.**

(2) **Modify the Forest Practices Act Exemption to make clear that any use other than continuing forest use would not be exempt under SCC 14.06.090 and would be subject to CA Review.**

The County in response to the FDO, removed the Forest Practices Exemption from former SCC 14.06.090(6) and established it as a new section, SCC 14.06.094, in Ordinance 16851. The Ordinance clarifies that the County has CA review over Class IV conversions, Conversion Option Harvest Plans, forest practice applications within urban growth areas, as well as other forest practices not regulated by the Department of Natural Resources. The County also adopted Specific Findings 2.1-2.10 to further clarify when it does and does not have jurisdiction and what the County requires when it does have jurisdiction.

Audubon raised many concerns about the inadequacy of the protection provided and presented many good ideas of how the level of protection could be improved. However, the FDO's requirement of the

County was very narrow: a clarification of activities covered by CA review. The FDO's finding of non-compliance did not require the County to provide additional protection for CAs over which it had jurisdiction. We have not been convinced by Petitioners that the County was clearly erroneous in adopting section SCC 14.06.094 in response to the FDO. **We therefore find the County in compliance on this issue.**

(3) Develop additional best management practices to reasonably regulate existing agricultural activities that are damaging CAs and/or their buffers.

This issue was discussed and decided under Exemption [2] pp. 8 to 27.

(4) Include a clear statement that no alterations that adversely affect CAs or their standard buffers' functions and values can occur without County approval whether or not a development permit is required.

In response to the FDO, the County amended the first paragraph of Section 14.06.060 to read in part:

> "With the exception of activities that are exempt under SCC 14.06.090, any proposed alteration that adversely affects a CA or its standard buffers' functions must comply with the substantive and procedural requirements of this chapter regardless of whether such alteration requires a County development permit or approval."

Audubon claimed on page 19 of its March 6, 1998, brief that this action by the County was erroneous and substantially interfered with the goals of the Act for two reasons:

> "First, it clearly states that alterations causing adverse impacts on CAs or their buffers for the wide rage of exempted activities are not prohibited or even regulated. Second, the statement that substantive/procedural compliance with the CAO is required when no other permit/approval is required cannot be met in practice.... The remedy for both errors is the same: a process for CA discovery, review and conditioning is necessary to ensure that all activities, which have significant potential to damage CAs and which can be conducted to alleviate such damage, actually comply with the GMA requirement to protect CAs."

On page 29 of its brief, the County responded:

> "Audubon's objections to this amendment (Brief at pp. 18-19) are without merit. First, Audubon complains that SCC 14.06.060 precludes from CA review all exempt activities (under .090) even if they adversely affect CAs or their standard buffers' functions. This contention ignores the first paragraph of .090 which requires exempt activities to be carried out in a way to 'cause the least impact on critical areas and their buffers' and further requires that CAs and their buffers be restored to the extent feasible if damage occurs. It is not true that just because an activity is exempt from CA regulation that it is open season on the CAs and their buffers. Audubon's second complaint regarding the County's alleged inability to enforce administratively this provision, has not been proven. Section .700 gives the County powers to enforce the provisions of the CAO. This is yet another example of Audubon simply not liking the language of the County's ordinance. That does not mean it is out of compliance with GMA. Audubon is really

arguing that a property owner needs a separate permit for every activity that may impact a critical area. This Board already rejected that contention in the FDO in this case. The County made the changes to its Ordinance per the FDO."

The Petitioners have not met their burden of proof in this matter. **We therefore find the County in compliance on this issue.**

(5) Complete the work under SCC 14.06.500(4) and designate and protect the most significant habitats of local importance as determined under SCC 14.06.500(3).

The County amended SCC 14.06.500(4) to identify nine species of local importance following the procedure in SCC 14.06.500(3). Further, the County adopted the Planning Commission's finding 5.1 to address the matter:

> "The map proposed with the original staff draft is now supported and nominated as a starting point for species and habitats of local importance. The record also contains a substantial number of additional nominated sites and species for consideration. There is a great deal of work to be done and not enough time under the WWGMHB order to thoroughly consider all the nominations. The recommendations by one of the commentators to move forward with the original proposal and appoint a technical committee with the task of reviewing all the material and come up with a set of nominations and associated management recommendations makes sense...Protection of these designated species and habitats shall be on a case-by-case basis, using Department of Fish and Wildlife Priority Habitats and Species Division Habitat Program and recommendations from those agencies referenced in SCC 14.06.530. This provision should be in place for 6 months or until such time that the County adopts new protection standards after it considers the efforts of the technical advisory committee."

Audubon stated that it supports the initial designations of the nine species now included in the CAO along with the adopted species/habitat maps. However, Audubon is concerned that the County has not completed the task of designating species/habitats of local importance. Petitioners stated that the most grievous shortcoming of the amendment is that it fails to provide mandated protection for designated species/habitats, including use of BAS.

We agree with the County and Petitioners that the proposed process is a good one. **However, we will be unable to find compliance with GMA and FDO's protection requirements until the technical advisory committee's work is completed and permanent protections are adopted by the County. The new protection standards developed and adopted must be based on BAS.**

(6) Modify SCC 14.06.080(4) to make clear that if the County has relied on misinformation provided by the applicant in the checklist and therefore no site visit was triggered, the contested protection of that subsection does not apply.

The County addressed this issue by amending SCC 14.06.080(4) to add the following language at the end of that paragraph:

> "[P]rovided, however, that the County shall not be prevented from reopening the critical areas review process if it relied on misinformation provided by the applicant in the checklist and therefore no site visit was conducted. For the proposes of this subsection, 'misinformation' means information regarding the presence of a critical area on the subject property which the applicant knew or should have known was relevant at the time of the submittal of the checklist. Prior to reopening a critical areas review under this subsection, the County shall make a site visit. No critical areas review shall be reopened under this section unless the County determines, after the site visit, that the applicant provided misinformation.
>
> If a critical areas review is reopened under this subsection after a permit or approval is granted, the burden of proof on whether the applicant submitted 'misinformation' at the time of submittal of the checklist shall be on the County. The fact that the applicant no longer owns the subject property at the time the County discovers the misinformation shall not be a bar to reopening critical areas review. The applicant or landowner who submitted the critical areas checklist upon which the misinformation was discovered shall be the responsible party for compliance with this ordinance, including any necessary mitigation."

Exhibit 1424, Attachment A, p.6.

Audubon contended:

> "The amended CAO language is erroneous because it places complete responsibility for misinformation in a checklist on the 'applicant or landowner' who submits it, resulting in ambiguity as to who is accountable at the outset. Furthermore, this amendment clearly fails to establish accountability for CAO restoration should the applicant and/or the original landowner leave County jurisdiction. Title constraints need to be established on the property to ensure accountability where CAO review is terminated without a site visit due to an erroneous checklist, with appropriate disclosure requirements to ensure that any new owner is duly informed of potential liability."

The County responded that rather than failing to establish accountability, this wording gives the County additional enforcement power by allowing it to seek mitigation for CA violations under .080(4) against either the permit applicant or the original landowner. The County further contended that Audubon had failed to indicate what portion of the FDO, remand (6), the County did not comply with or what portion of GMA is inconsistent with the County's language.

We agree with the County. Petitioners have failed to meet their burden. **The County is in compliance on remand issue (6).**

(7) and (8) were not contested. We find the County in compliance regarding these remand issues.

(9) Clarify the wording in SCC 14.06.090(5) to reflect the County's intent of requiring County

approval for removal of live trees from CAs and their buffers.

The County addressed this remand issue by adding new paragraph (e) to SCC 14.06.530(2):

> "In the riparian buffer, removal of hazardous, diseased or dead trees and vegetation when necessary to control fire, or to halt the spread of disease or damaging insects consistent with the State Forest Practices Act, Chapter 76.09 RCW or when the removal is necessary to avoid a hazard such as landslides, or pose a threat to existing structures may be permitted with prior written approval. Any removed tree or vegetation shall be replaced with appropriate species. Replacement shall be performed consistent with accepted restoration standards for riparian areas within 1 calendar year. The County may approve alternative tree species to promote fish and wildlife habitat. Prior to commencement of tree or vegetation removal and/or replacement, the landowner must obtain written approval from the Planning and Permit Center, unless it qualifies as an emergency under 14.06.090(1)."

Petitioners provided no convincing arguments that this addition to .530(2) did not comply with our order or the GMA. **We therefore find the County in compliance on remand issue (9).**

(10) Clarify SCC 14.06.530(2)(d) to disallow activity in a buffer that prevents or inhibits its natural recovery to pre-damaged condition and function.

The County addressed this remand issue by amending paragraph (d) of SCC 14.06.530(2) to read:

> "Allowed uses in buffers. Low impact uses and activities which are consistent with the purpose and function of the habitat buffer and do not detract from its integrity may be permitted within the buffer depending on the sensitivity of the habitat involved provided that such activity shall not prevent or inhibit the buffer's recovery to at least pre-altered condition or function. Examples of uses and activities which may be permitted in appropriate cases, as long as the activity does not retard the overall recovery of the buffer, include removal of noxious vegetation, pedestrian trails, viewing platforms, stormwater management facilities such as grass-lined swales, and utility easements."

The Tribe contested this action on pages 12 and 13 of its March 6, 1998, brief:

> "SCC 14.06.530(1) describes five riparian forest functions that influence the quality of fish habitat and SCC 14.06.530(2) requires that established buffers not be altered and that minimum standards for these forest functions be restored. However, SCC 14.06.530(2)(d) provides for repeated low impact uses to already degraded riparian areas by requiring restoration only to 'pre-altered' conditions. SCC 14.06.040(3) defines alteration as 'any human induced action which changes the **existing** condition of the critical area.' In many of the riparian areas along streams, the existing condition is already severely compromised. See Tribe's Opening Brief at 20. By requiring restoration only to prealtered conditions, subsequent impacts are permitted when the prealtered 'existing' condition is attained but before the riparian area is allowed to fully recover to its natural condition. The evidentiary record clearly indicates that planning commissioners felt the level of protection was for a pre-altered state that does not allow the recovery of function and values of riparian buffers, but rather perpetuates a degraded condition."

Although the Tribe brings up some valid concerns, we find that the amendments to SCC 14.06.530(2)(d) comply with the intent of our remand. **The County is in compliance on remand issue (10).**

(11) Include a CA review notice in SCC Chapter 14.01 in the "Notice of Application" or adopt a more effective notice mechanism.

In response to this FDO remand the County amended SCC 14.01.040(1)(f) to include in the notice a provision "that the County will perform a critical areas review under Chapter 14.06 SCC." Finding 11.1 and 11.2 relating to this remand issue provides:

> "11.1 Skagit County's public notification requirement, under SCC 14.01.040, includes CAO review notification. This notification procedure is limited to those permits which are not exempt from SCC 14.01 notification procedures, including building permits, fill and grade permits, short plats, etc. For all projects requiring a notice of a application (NOA) under SCC 14.01.040 notification that CAO review for critical areas is occurring concurrent with other reviews of the project. The public has 15 days to comment on an NOA.
>
> 11.2 The basis of this order deals with additional notice to the tribe. The Country has complied with the WWGMHB order by incorporating CAO review into the NOA provisions of SCC 14.01 to provide notice not only to theTribe, but to the broader general public. The basis of the order from the WWGMHB was to 'encourage the Tribe and County to seek a joint planning agreement.' The County and the Tribe will continue to work toward better communication and cooperation."

Audubon asserted that the amendment to SCC 14.01.040(1)(f) was inadequate because it: (a) fails to inform the public of mandated CAO review/conditioning for a large number of development activities that have the potential to damage CAs; and (b) fails to provide timely opportunity for the public to review and comment on proposed and final County conditioning of projects as required to protect CAs.

The County asserted:

> "What Audubon really wants is a change to the list of the types of applications which require a notice. In fact, RCW 36.70B.110(2) already provides that information, and the County is following that statute. Audubon should be required to go to Olympia if it wants to change the requirements of a notice of application."

Here again, the notice provisions may not be as complete and/or effective as petitioners would like, but the County has complied with the Act as set forth in FDO remand issue (11). **We therefore find the County in compliance on remand issue (11).**

ORDER

The Planning Commission put an incredible amount of work into Ordinance 16857. We have found compliance in the great majority of the remanded issues. However, in order to achieve total compliance, the County must:

(1) By December 1, 1998, amend the definition of agricultural land and ongoing agriculture to make it perfectly clear that the agricultural exemption only applies to ongoing activities on designated agricultural lands. If the County does not take such action by that date, an order of invalidity on the agricultural land exemption will be issued without further hearings.

(2) Within 180 days, adopt required benchmarks, timelines and monitoring to ensure that the County's voluntary BMPs are actually protecting CAs. Also adopt a regulatory approach that will be implemented if the voluntary approach does not achieve required results. The County must use BAs in formulating these added safeguards.

(3) Within 360 days, implement .096 adopting a strategic plan consistent with the State Wild Salmonid Policy including any necessary additional controls on ongoing agriculture. This strategic plan must use BAS to protect anadromous fish.

(4) Within 60 days, clarify exemption [9] ongoing operation of Diking and Drainage systems so it is clear to whom, what, and where the exemption applies.

(5) Within 180 days, adopt permanent protection for designated species/habitats of local importance including use of BAS.

This is a Final Order under RCW 36.70A.300(5) for purposes of appeal.

Pursuant to WAC 242-02-832(1), a motion for reconsideration may be filed within ten days of issuance of this final decision.

So ORDERED this 16th day of September, 1998.

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

_____

Nan A. Henriksen
Board Member

Les Eldridge
Board Member

William H. Nielsen
Board Member

5

Bremerton, et al.

v.

Kitsap County

Port Gamble, et al.,

v.

Kitsap County

CENTRAL PUGET SOUND
GROWTH MANAGEMENT HEARINGS BOARD
STATE OF WASHINGTON

BREMERTON, et al.,	)	**Case No. 95-3-0039c**
Petitioners,	)	**coordinated with**
v.	)	**Case No. 97-3-0024c**
KITSAP COUNTY,	)	**FINDING OF NONCOMPLIANCE**
Respondent.	)	**AND DETERMINATION OF**
	)	**INVALIDITY IN *BREMERTON* AND**
PORT GAMBLE, et al.,	)	**ORDER DISMISSING *PORT GAMBLE***
Petitioners,	)	
v.	)	
KITSAP COUNTY,	)	
Respondent.	)	

I. PROCEDURAL HISTORY

On October 9, 1995, the Central Puget Sound Growth Management Hearings Board (the **Board**) entered a Final Decision and Order (the **FDO**) in *Bremerton, et al. v. Kitsap County [**Bremerton**]*, CPSGMHB Case No. 95-3-0039c, finding that the comprehensive plan adopted by Kitsap County (the **County**) by Ordinance No. 169-1994 on December 29, 1994, (the **1994 Plan**) was not in compliance with the Growth Management Act (the **GMA** or the **Act**) and invalidating the Plan and all its implementing development regulations.The Board remanded the Plan to the County and gave the County the maximum period to bring its Plan and implementing regulations into compliance with the Act.

On May 9, 1996, the Board conducted the first *Bremerton* compliance hearing (the **First Compliance Hearing**).

On May 28, 1996, the Board entered a Finding of Noncompliance (the **Finding of Noncompliance**) with a contingent recommendation of sanctions.

On December 23, 1996, the Kitsap County Board of County Commissioners adopted Ordinance 203-1996 (the **Plan**), which adopted a countywide comprehensive plan including a Capital Facilities plan and a land use map.

On January 14, 1997, the Board issued an "Order Granting County's Motion for Continuance of Second Compliance Hearing and Notice of Pre-Compliance Hearing Conference."

Between February 28 and March 10, 1997, the Board received ten Petitions for Review (**PFR**), each of which alleged that the County's Plan, adopted by Ordinance 203-1996, did not comply with the requirements of the GMA.These Petitioners were the Port Gamble S'Klallam Tribe (**Port Gamble**); the Banner Forest Committee of Olalla Community Council (**Banner Forest**); the Association to Protect Anderson Creek (**APAC**), Helen E. Havens-Saunders, the Union River Basin Protection Association (**URBPA**), and Elaine Manheimer; CarolAnn Stockton, Ed Brown, Gene Monroe and Grow Smart! (**Grow Smart**); Ron Ross (**Ross**); the Homebuilders Association of Kitsap County and the Kitsap County Association of Realtors (**Homebuilders**); Kitsap Citizens for Rural Preservation and Association of Rural Residents (**KCRP**); Illahee Trust Land Task Force Of Illahee Community (**Illahee Trust**); the Suquamish Tribe (**Suquamish**); and Martin P. Hayes (**Hayes**).

On March 3, 1997, the Board issued a "Pre-Compliance Hearing Order" recognizing as participants pursuant to RCW 36.70A.330(2) Homebuilders, Hayes, Apple Tree Point, the Port of Bremerton and URBPA.

On March 12, 1997, the Board entered an "Order of Consolidation and Notice of Hearing" (the **First Order of Consolidation**).The First Order of Consolidation consolidated the ten PFRs listed above into a single, consolidated case with the caption *Port Gamble, et al., v. Kitsap County* ***[Port Gamble]*** and assigned CPSGMHB Case No. 97-3-0024c.
On March 20, 1997, the Board held a prehearing conference for *Port Gamble* in Poulsbo, Washington.
On March 28, 1997, the Board issued the "Second Order of Consolidation, Order on Motion to Intervene and Prehearing Order" (the **Second Order of Consolidation).**The Second Order of Consolidation added to *Port Gamble* the petition of Gloria Agas, Pepito Soriano and Rosalinda Soriano (**Agas**).
On March 27, 1997, the Board issued a "Notice of Legal Issues and Amendment of Schedule."
On April 7, 1997, the Board issued an "Order Amending Schedule and Notice of Clarification."
On April 22, 1997, the Board entered an "Order on Motions" that granted Motions to Intervene from Manke Lumber Co. (**Manke**) and the Washington State Department of Natural Resources (**DNR**); granted Motions to Supplement from Pope Resources and Port Blakely Tree Farms (**Port Blakely**); and denied the County's Motions to dismiss URBPA,Suquamish, APAC in part, and Apple Tree Point in part.This Order also denied the County's Motion to Bifurcate or Extend Time; granted the County's motion to Dismiss Banner Forest, Illahee Trust and Agas; and granted Hayes' Motion for Expanded Participation.
On April 30, 1997, the Board entered a "Second Order Amending Schedule."
On May 22, 1997, the Board issued an "Order Regarding County's Record" that directed the County to file and provide to all parties a County Record Status Report indicating items missing from file folders 25, 26 and 27.The length, author and nature of the items were also to be noted.
On May 28, 1997, the Board received the following briefs and notices:Adams' Second Prehearing Brief, with attachments; Bremerton's Prehearing Brief; Council I's Prehearing Brief; Prehearing Brief of Grow Smart (Stockton, Brown, Monroe) with attachment; Notice of Availability of Prehearing Brief, Martin Hayes; Prehearing Brief, Martin Hayes; Opening Brief of KCRP, ARR, Banigan, Hartley, Burrow, Thomas, Donnelly; Ollalla Community Council, NKCC, Kane, Wilson, and CKCC, with attachments; Notice of Availability of Opening Brief of KCRP et al.; Notice of Availability of Opening Brief of Port Gamble; Opening Brief of Port Gamble S'Klallam Tribe, with attachments; Petitioner Suquamish Tribe's Brief in Support of Finding of Invalidity of Kitsap Co. Comp. Plan; Brief on the Merits with attachments, URBPA, APAC; Notice of Availability of Brief on the Merits, URBPA, APAC; and the State's Brief in Partial Opposition to Comp. Plan, with attachments.
On May 30, 1997, the Board received Exhibits to Petitioner Suquamish's "Opening Brief."
On June 2, 1997, the Board received Bremerton's "Corrected Compliance Hearing Memo."
On June 9, 1997, the Board issued an "Order Amending Schedule, Order on Motions and Order Establishing Location" that granted the State's Motion to Supplement, such that the Board took official notice of Kitsap County's Shoreline Master Program.This Order also granted Suquamish's Motion to Correct the Index, and dismissed, with prejudice, Homebuilder's Association of Kitsap County, Kitsap County Association of Realtors, and the City of Poulsbo.
On June 16, 1997, the Board received Adams' "Supplemental Prehearing Brief," and Hayes' "Notice of Availability of Supplemental Prehearing Brief" and "Supplemental Prehearing Brief, in Opposition to County Compliance."
Also on June 16, 1997, the Board received "Dispositive Motions on a Limited Record, Motion to Dismiss, K.C. Ordinance 203-1996" (**Hayes' Dispositive Motion**).
On June 24, 1997, the Board received the Brief of Participants Bosanko, Anderson, Fortune, Tarbill, and Apple Tree Point Partners, with attachments.
On June 25, 1997, the Board received the Notice of Availability of Brief of Participants Bosanko, Anderson, Fortune, Tarbill, and Apple Tree Partners; Manke Lumber Co., Inc.'s, Prehearing Brief, with attachments; Prehearing Brief of Intervenor McCormick Land Co.; Exhibit List to Brief of Overton &

Assoc., Alpine Evergreen, Inc., and Peter Overton; Brief of Overton & Assoc., Alpine Evergreen Inc., and Peter Overton; Notice of Availability of Brief of Overton & Assoc., Alpine Evergreen, Inc., and Peter Overton; Intervenor Pope Resources' Opening Brief in Support of Comp. Plan; Intervenor Port Blakely Tree Farms' Opening Brief in Support of Comp. Plan, with exhibits; and the Port of Bremerton's Prehearing Brief in Response

On June 27, 1997, the Board received the Port of Bremerton's "Notice of Availability."

On July 8, 1997 the Board received "Adams' Dispositive Motion" (**Adams' Dispositive Motion**), which objected to, but did not formally move to strike, County Exhibits 2, 7-14, 16, 18, 20, and 21.

On July 10, 1997, the Board entered an "Order on Motions to Supplement, Motions to Dismiss and Establishing Schedule for Oral Argument" that granted the Motion to Supplement of Overton & Assoc.,Alpine Evergreen, Inc., and Peter Overton (**Overton**), and denied Adams' Motion to extend the reply deadline.The Order deferred the Dispositive Motions of Hayes and Adams.

On July 14, 1997 the Board received "Port Gamble's Reply Brief."Port Gamble moved to strike McCormick and County Exhibits 2, 3, 7 and 19, and those portions of the briefs relying on the Exhibits (**Port Gamble's Motion to Strike**.)

On July 15, 1997 the Board received "Kitsap County's Response to Adams' Dispositive Motion (RE: County's Brief) and Port Gamble's Motion to Strike, and Alternative Motions to Supplement and to Strike" (the **County's Motion to Strike**). The County moved to supplement the record with the Exhibits, or, in the event the Board granted a motion to strike any of the County's Exhibits, to strike the following:

- Exhibits 4-9 and 11 of Adams' Opening Brief
- Exhibit 3 of Adams' Supplemental Brief
- Exhibit 8 of Adams' Reply Brief
- Un-numbered exhibits to GrowSmart's Prehearing Brief, consisting of a February 24, 1993 letter from Poulsbo Growth Management Advisory Committee to Kitsap County Board of Commissioners, a 9/13/93 "Notice to Editor", and a 7/18/93 letter from Poulsbo Growth Management Advisory Committee.

On July 16, 1997, the Board simultaneously held the third compliance hearing in *Bremerton* and the hearing on the merits in *Port Gamble* in Poulsbo, Washington.Present for the Board were Edward G. McGuire, Chris Smith Towne and Joseph Tovar, presiding officer.Present representing the County was Sue Tanner.Appearing on behalf of the parties and participants in *Bremerton* and *Port Gamble* were:Tracy Burrows for 1000 Friends of Washington (**1000 Friends**); Tommy Prud'homme for the State of Washington (**State**); Ray Bock for Council I (**Council I**); John Sledd for Suquamish; Nobi Kawasaki for Sandra Adams (**Adams**); Martin P. Hayes *pro se*; David Bricklin for Port Gamble and KCRP; CarolAnn Stockton for Grow Smart; Elaine Manheimer for URBPA and Helen Havens-Saunders for APAC; Jane Koler for the City of Bremerton; James Tracy for Ross; Richard Hill for Bosanko, et al.; William T. Lynn for Manke; Katherine Kramer Laird for Pope Resources and Port Blakely; Elaine Spencer for Overton; Bob Johns for McCormick; and David Weibel for the Port of Bremerton.Also present were Roger Wynne for Rainier Evergreen; Beth Wilson for Olalla Community Council; and Tom Donnelly for Thomas II.Court reporting services were provided by Cynthia J. LaRose, Robert H. Lewis and Associates, Tacoma.No witnesses testified.At the beginning of the hearing, the Board heard oral arguments regarding Hayes' Dispositive Motion, Adams' Dispositive Motion, Port Gamble's Motion to Strike, the County's Motion to Strike and McCormick's Motion to Strike.The presiding officer announced that the Board would not rule on these motions orally, but would rule in the subsequent order.During the course of the hearing, the presiding officer made a number of procedural rulings.One of these was direction to the County to submit to the Board, with a copy to Bremerton, a copy of record evidence regarding UGA consultation between the County and Bremerton.The presiding officer also directed Bremerton to submit a post-hearing brief narrowly focused on the record information

concerning the County's UGA consultation with the City of Bremerton.
On July 16, 1997, at the Hearing on the Merits, McCormick moved to strike the Donnelly brief and any new arguments in "recent responses" (**McCormick's Motion to Strike.**)
On July 17, 1997, the Board received from the County a "Submittal of Record Documents Regarding Bremerton-Kitsap County UGA Consultations," with attachments.On this same date, the Board received "Kitsap County's Response to Adams' Dispositive Motion (RE: County's Brief) and Port Gamble's Motion to Strike, and Alternative Motions to Supplement and Strike."
On July 23, 1997, the Board received the "City of Bremerton's Supplemental Reply Brief."

II. FINDINGS OF FACT

1.The Board adopts by reference the Findings of Facts listed at pages 6-20 of the *Bremerton* Final Decision and Order entered on October 6, 1995.

2.Ordinance 203-1996, which adopted the Kitsap County Plan including a Capital Facilities plan and a land use map, was adopted by the Kitsap County Board of County Commissioners on December 23, 1996.The Plan consists of three volumes:Part I, Land Use Plan; Part II, Capital Facilities Plan, Part III; Figure Book.

3.Ordinance 208-1997 entitled "Relating to Growth Management and Renewing for a Period of Six Months Ordinances Adopting Interim Zoning, Interim Development Regulations to Protect Critical Areas, and Interim Urban Growth Areas" (the **Interim Regulations**) was adopted by the Kitsap County Board of County Commissioners on June 30, 1997.

4.Designated Urban Growth Areas (**UGAs**) will need to accommodate an additional 67,551 people by the year 2012.Land Use Plan, at 16.

5.The Plan contains UGA selection criteria, including:(a) cities were included within UGAs; (b)the location of existing urban services (both public water and sanitary sewer service) was considered; and (c)the existing development pattern was analyzed to identify areas already characterized by urban growth (unincorporated Silverdale, East Bremerton, and industrially zoned area in the vicinity of the Port of Bremerton were identified).Preliminary boundaries were drawn and a capacity analysis was completed for each UGA.Land Use Plan, at 17.

6.The following UGAs were designated:Bainbridge Island UGA – consists of the City of Bainbridge Island; Poulsbo UGA – consists of the City of Poulsbo and unincorporated areas immediately adjacent to the incorporated city; Port Orchard UGA – consists of the City of Port Orchard, unincorporated areas immediately adjacent to the incorporated city, and "the boundary of Sewer ULID #6 which is characterized by urban growth according to the definition of one unit per acre being urban from the Growth Management Hearings Board"; Central Kitsap UGA – consists of the City of Bremerton and the unincorporated areas of Silverdale, Tracyton, Illahee and East Bremerton, and industrially designated land west and north of Bremerton's city limits; Anderson Hill UGA (South Kitsap) – consists of part of the incorporated area of the City of Bremerton; Port of Bremerton UGA – consists of a 587-acre industrial park owned by the Port, a 1,200-acre transport-class airport owned by the Port, and numerous, privately owned industrial properties; Port Gamble UGA – consists of a historic townsite; Kingston UGA; Keyport UGA; Suquamish UGA; and Manchester UGA. Land Use Plan, at 18-19.

7.To calculate the number of acres needed to accommodate the population growth assigned to its unincorporatedUGAs, the County assumed new residential development would occur at 4 du/acre.Land Use Plan, at A-30.

8.The County calculated its amount of land available for UGAs using the following steps: Tabulate vacant and underutilized land within each UGA (vested projects are tabulated at their approved densities); apply a development "efficiency factor" (varies according to parcel size); and apply reduction factors to account for public facilities (15 percent), unavailable land (15 percent), critical areas (15 percent), and street rights-of-way (17 percent).The remaining acreage is the net developable residential acreage.Land Use Plan, at A-31-33.

9.The County utilized a market factor of 25 percent.Land Use Plan, at A-31.

10.The Plan contains a "Grandfathering Clause."This clause is intended "to address the issue of long-time property owners who purchased property in Kitsap County with the perception that they would always be allowed to subdivide their property."The Grandfathering Clause allows subdivision of properties of 20 acres or less "in the same manner as those properties that surround [them]."This provision applies to all properties "purchased, transferred or somehow otherwise obtained before December 29, 1994."The Grandfathering Clause is to be in effect for one year after the Plan is validated by the Board.Land Use Plan, at 21-22.

11.The County has several rural residential designations and policies to increase residential densities within these rural residential designations.

a)The Rural Wooded designation has a nominal minimum lot size of 1 dwelling unit (**du**)/10 acres.This density can be increased if a clustering incentive program is used.Parcels with shoreline frontage may be subdivided to 2½-acre lots, under certain conditions.

b)The Plan also creates a Rural Wooded Incentive Program which allows densities of 1 du/5 acres.The Rural Wooded Incentive Program may be utilized on no more than 25 percent of the land designated Rural Wooded.

Fifty percent of a site utilizing the incentive program must be placed in "Wooded Reserve Status," encouraging forestry and prohibiting development or subdivision until 2012.Permanent open space must be created either from one-half of the land placed in Wooded Reserve Status or from one-half of the remaining 50 percent of the site.The remainder of the site must be clustered.Each cluster must not contain more than 25 units; clusters may be as close as 100 feet.Urban services shall not be provided to clusters.A single project may be no more than 1,000 contiguous acres.

c)The Rural Low-Density Residential designation has a nominal minimum lot size of 1 du/10 acres.This density may be doubled to 1 du/5 acres if the parcel is not constrained by critical areas.Additional increased density may be achieved through the Plan's Rural Infill provisions.The Rural Infill provisions allow up to 2½ du/10 acres.In addition, parcels with shoreline frontage may be subdivided into 2½-acre lots.

d)The Rural Medium-Density Residential designation has a nominal minimum density of 1 du/5 acres.This density may be doubled to 2 du/5 acres through the Plan's Rural Infill provisions.In addition, parcels with shoreline frontage may be subdivided into 1-acre lots.

e)The Urban Reserve designation has a minimum density of 1 du/10 acres.

f)The Plan states:"The Rural Infill Area is that area which, due to past development trends, has an existing platting pattern which primarily consists of small, divided parcels less than 10 acres in size."

Land Use Plan, at 48-52.

12. Kitsap County presently has 76,818 acres of forest land: 49,014 acres in private ownership, (with 37,613 acres, or 85 percent, owned by six companies) and the remainder held by the State (16,000 acres), two Tribes (3,204 acres) and a city (8,600 acres).Land Use Plan, Table A-LU-10, at A-76.

13. Approximately 49,014 acres of land in Kitsap County are taxed as forest land or open space timber by the County Assessor's Office.These lands have been used for commercial production, reforestation or forest habitat, although they may at some point be taken out of that tax classification.Land Use Plan, at A-75.

14. The County's designation criteria, originally set forth in Strategies for Resource Lands Designations and Interim Development Regulations (April 20, 1992), are:1.A Douglas Fir 50-year site index of 110 or greater for a predominant portion of the parcel;2.A nominal 80 acres or more of single ownership;3.Property tax classification: Property is enrolled, as of January 1, 1991, in the Open Space Timber; is Designated Forest or Classified Forest property tax classification program pursuant to Chapter 84.33 or 84.34 RCA; or is owned by a state or local governmental body with long-term forest management as its primary use; and4.In designating forest lands, the effects of proximity to population areas and the possibly [sic] of more intense uses of the land as indicated by the following shall also be considered (WAC 365-190-060 Forest Resource Lands):a.The availability of public services and facilities conducive to the conversion of forest land: Not within a special purpose sewer or local (not countywide) water district;b.The proximity of forest land to urban and suburban areas and rural settlements: Forest lands of long-term significance are located outside the urban and suburban areas of rural settlements;c.The size of the parcels: Forest lands consist of predominately large parcels;d.The compatibility and intensity of adjacent and nearby land use settlement patterns with forest lands of long-term commercial significance; Greater than 50% of the linear frontage of the perimeter of any parcel meeting the above criteria shall abut parcels that are greater than five acres in size;e.Property tax classification: Property is assessed as open space or forest land pursuant to chapter 84.33 or 84.34 RCW;f.Local economic conditions which affect the ability to manage timberlands for long-term commercial production: Economic conditions should be conducive to long-term commercial forestry management; and g.History of land development permits issued nearby: Would allow for compatibility with forestry activities.Land Use Plan, at A-77-78.

15. Table A-LU-11, 1994 Employment and Wages for Industry in Kitsap County, states that the industrial category of Forestry employs 88 persons, of a countywide total of 67,961 workers.Lumber/Wood Products, with 200 workers in 1994, was zero in 1995, reflecting the closure of the Port Gamble Mill.Land Use Plan, at A-81.

16. The County has determined that no "forest lands," within the meaning of the GMA, exist within Kitsap County.Land Use Plan, at 34.

17. The County estimates the costs of County-owned and managed capital improvements for 1995-2000 to be $187,736,700.The County estimates funding available for 1995-2000 to be $187,736,770, including $96,043,800 from existing revenues and $91,692,900 from new revenues.Capital Facilities Plan, at ES-2-ES-3.

18. On June 16, 1997, the Kitsap County Board of Commissioners decided, by motion, to provide the Kitsap Prosecuting Attorneys with the following direction concerning the County's defense of the Plan in the current proceeding:

    1. The County will not provide briefing or argument in support of the following changes to the Planning Commission's recommendation on the Plan which were made by the former Board

of County Commissioners on October 7, and December 23, 1996:

A. Expanding the northern Kingston Urban Growth Area boundary;

B. Increasing the shoreline density in the Rural Wooded (RW), Rural Low (RL) and Rural Medium (RM) designations; and

C. Reducing the density in the Rural Wooded designation from one unit per twenty acres to one unit per ten acres.

2. The County will not provide briefing or argument in support of the "Rural Infill Area" in the Rural Lands element of the Plan;

3. The County will not provide briefing or argument in support of retaining Gorst as part of an urban growth area rather than designating it as Urban Reserve Residential and reviewing the designation at the next annual review of the comprehensive plan following completion of the sewer feasibility study;

4. The County will not provide briefing or argument on the issue of whether or not the changes made on December 23, 1996 to the proposed comprehensive plan by the previous Board of County Commissioners meet the legal requirements for public notice;

5. The County will stipulate that the following statement regarding affordable housing allocations should be included in the housing element of the comprehensive plan:"Affordable housing allocations will be put on the Kitsap Regional Coordinating Council (KRCC) agenda, and the comprehensive plan will be amended accordingly at the next annual review; and

6. The County will request that the Hearings Board issue a decision in these cases at the earliest possible date, as it did when it issued its Final Decision and Order in Bremerton v. Kitsap County in October of 1995.

June 19, 1997 letter from Kitsap County Board of Commissioners to Russell Hauge and Sue Tanner.

III. DISPOSITIVE MOTIONS AND MOTIONS TO STRIKE

Hayes' Dispositive Motion is **denied**.
Adams' Dispositive Motion is **denied**.
Port Gamble's Motion to Strike is **denied**.
The County's Motion to Strike is **denied.**
McCormick's Motion to Strike is **denied**.

IV. STANDARD OF REVIEW

The County urged the Board to apply Engrossed Senate Bill (**ESB**) 6094, specifically Section 20. County PHB, at 2; *see* ESB 6094, Chapter 429, Laws of 1997..Section 20 changes the standard of review to be used by the Boards.The Board takes official notice of ESB 6094, which became effective on July 27, 1997.Section 53 expressly provides that this new law is prospective in effect, except for Section 22, which is explicitly retroactive.[1]In other words, the 1997 amendments to the GMA became effective on July 27, 1997.

The Board obtained jurisdiction to review the *Bremerton* portion of this coordinated matter when the PFRs were filed between January 27, 1995 and March 8, 1995.*Bremerton*, at 3.The Board obtained jurisdiction to review the *Port Gamble* portion when PFRs were filed between February 28, 1997 and March 10, 1997.*Port Gamble*, Second Order of Consolidation, Order on Motion to Intervene and Prehearing Order, at 2.Briefing, pursuant to the Board's Rules of Practice and Procedure, was received

from May 28, 1997, through July 14, 1997.The simultaneous third compliance hearing on the *Bremerton* case and the hearing on the merits in the *Port Gamble* case were held on July 16, 1997.But for the issuance of this Order, all events in this proceeding occurred prior to July 27, 1997 -- the effective date of ESB 6094.

If, as the County suggests, the date of issuance of the Board's decision is determinative as to the law to be applied, the Board could select the law to apply based upon its desire and ability to accelerate or delay the issuance of its decision.This is an outcome the Board cannot reach, nor can the Board conclude that it is a result the legislature intended.[2]Consequently, to give effect to the legislature's clear direction, as contained in Section 53, the Board has a duty to apply the provisions of the GMA as they existed at the time the actions were taken and the PFRs filed.[3]

RCW 36.70A.320(1) provides that:

> Except as provided in subsection (2) of this section, comprehensive plans and development regulations, and amendments thereto, adopted under this chapter are presumed valid upon adoption.In any petition under this chapter, the board, after full consideration of the petition, shall determine whether there is compliance with the requirements of this chapter.In making its determination, the board shall consider the criteria adopted by the department under RCW 36.70A.190(4).The board shall find compliance unless it finds by a preponderance of the evidence that the state agency, county, or city erroneously interpreted or applied this chapter.

V. OVERVIEW

This decision and Order covers twenty-one issues.The Legal Issues are addressed in the following Order:1; 3 and 5; 4; 6 and 8; 7; 9; 10 and 2; 11; 12; 13 and 16; 14 and 16; 15; and 17 through 21.

VI. SPECIFIC LEGAL ISSUES

LEGAL ISSUE NO. 1

Did the County violate RCW 36.70A.110 and RCW 36.70A.020 when it designated Urban Growth Areas inOrdinance No. 203-1996?

Discussion

In *Bremerton*, the Board concluded, among other things, that "[t]he County's designated UGAs do not comply with the requirements of RCW 36.70A.110.They are far too large to accommodate the urban portion of the necessary growth projected to occur in the next twenty years and also meet the Act's other requirements."*Bremerton*, at 66.Petitioners and Participants argue that the Plan's UGA designations continue to fail to comply with RCW 36.70A.110.Specifically, they allege that the UGAs are too large and are inappropriately located.

RCW 36.70A.110 provides:

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

designated a new fully contained community as defined by RCW 36.70A.350.

(2)Based upon the growth management population projection made for the county by the office of financial management, the urban growth areas in the county shall include areas and densities sufficient to permit the urban growth that is projected to occur in the county for the succeeding twenty-year period.Each urban growth area shall permit urban densities and shall include greenbelt and open space areas.An urban growth area determination may include a reasonable land market supply factor and shall permit a range of urban densities and uses.In determining this market factor, cities and counties may consider local circumstances.Cities and counties have discretion in their comprehensive plans to make many choices about accommodating growth. . . .

(3)Urban growth should be located first in areas already characterized by urban growth that have adequate existing public facility and service capacities to serve such development, second in areas already characterized by urban growth that will be served adequately by a combination of both existing public facilities and services and any additional needed public facilities and services that are provided by either public or private sources, and third in the remaining portions of the urban growth areas.Urban growth may also be located in designated new fully contained communities as defined by RCW 36.70A.350.

(Emphasis added.)

Population Density Assumption

To determine the amount of land necessary to accommodate OFM's projected population growth, the County assumed an average of 2.5 persons per dwelling unit[4] and an average urban density of 4 dwelling units per acre (du/acre) to calculate the average urban population density of 10 persons per acre.To accommodate the anticipated urban growth[5] in the unincorporated UGAs of 30,598 persons at 10 persons per acre, the County calculated a need for 3,060 acres of unincorporated UGAs in Kitsap County.In addition, the County applied a 25 percent market factor "to keep urban land prices from rising dramatically due to speculation."Thus, the County concluded that it required 3,825 acres in unincorporated UGAs to accommodate OFM's twenty-year population growth estimate.Land Use Plan, at A-30-31.

UGA Delineation

The Plan contains three criteria for delineating UGAs.*See* Finding of Fact 5.First, all cities must be within UGAs.*See* RCW 36.70A.110(1).Second, the location of existing urban services, such as public water and sanitary sewer service, must be considered.Third, areas already characterized by urban growth must be considered.The County delineated eleven UGAs.*See* Finding of Fact 6 for a complete listing of the County's UGAs.The County's unincorporated UGAs account for a total of 13,101 acres.[6]

Land Capacity Analysis

The County performed a land capacity analysis to determine whether the lands delineated as UGAs included 3,825 acres available for residential development.First, the County tabulated all vacant and underutilized land within each UGA.[7]Second, the County applied an "efficiency factor," according to parcel size, to reflect the difficulty of developing smaller parcels (up to 50 percent per parcel).Third, the County subtracted "reduction factors" to account for non-residential development such as public facilities (15 percent); land unavailable due to property owners with no intent to sell or develop their

land during the twenty-year planning period (15 percent); critical areas (15 percent); and street rights-of-way (17 percent).The remaining acreage is considered to be net developable residential acreage.Land Use Plan, at A-31-33.The County's land capacity analysis determined that there are 3,827 acres in unincorporated UGAs available for residential development.Thus, the County concluded that the UGAs delineated contain sufficient lands to accommodate the anticipated 20-year population growth.Land Use Plan, at 20.

Discussion

Petitioners and Participants argue that the County's UGAs are too large because the population density assumptions are flawed, the deductions applied in the land capacity analysis are too great, and the market factor is unnecessarily large.

The County assumed that the average urban density in its unincorporated UGAs would be 4 du/acre.The Plan states that this density "is based on the average urban densities of the incorporated cities in Kitsap County."Land Use Plan, at A-30.However, if the pattern and distribution of residential densities and commercial development in the County's cities is not in the same proportion as that planned for the County's unincorporated areas, the County's historical urban residential density assumption is suspect.The Plan does not reveal what lands were included to reach this average; there is no indication in the Plan whether commercial and industrial lands and other non-residential lands were excluded.

Petitioners assert that the County should use the densities reflected in the plan for sizing its UGAThe County counters that a population density of 4 du/acre for calculating land capacity was approved by the Board in *Gig Harbor v. Pierce County [**Gig Harbor**]*, CPSGMHB Case No. 95-3-0016, Final Decision and Order (October 31, 1995), and that a density of 4 du/acre is "urban."The County's characterization of *Gig Harbor* is not accurate.In *Gig Harbor*, the Board did not approve or disapprove the use of 4 du/acre for calculating land capacity; the Board determined that the Petitioner failed to meet its burden of proof to show that Pierce County's land capacity analysis violated the GMA.Absent such a showing by Petitioner, the Board must find compliance with the Act.RCW 36.70A.320(1).

The County also seems to be arguing that a land capacity analysis that relies on any urban density complies with the Act.Although 4 du/acre may be an urban density, the appropriateness of using this density for calculating land capacity depends on the facts of a particular case.In the present case, 4 du/acre is not appropriate because the County's urban land use designations throughout the unincorporated UGAs, indicate a range of densities with maximum densities far above 4 du/acre.

By using 4 du/acre, the County seems to assume that its future urban growth will occur at "historic" urban densities.This "historic" density is well below the densities allowed by the County's urban residential designations.Excluding the Urban Restricted designation,[8] the maximum densities allowed by the County's urban residential designations range from a low of 6-9 du/acre to a high of 20-43 du/acre.Given this range of densities, it is unreasonable to assume that the average density achieved by the year 2012 would be so far below the allowable densities.The record certainly does not support such an assumption.

What the record does show is that 4 du/acre is far below the County's planned-for densities, resulting in exaggerated UGAs.As Port Gamble observes, the majority of the areas of the unincorporated UGAs are designated at maximum densities that are:

> 50 to 125 percent **higher** than the 4 [du/ac] density utilized in the County's land capacity analysis. . . .[B]y using 4 units per acre instead of the lowest maximum density in any UGA (6

units per acre), the County increased the UGA size by 50 percent.By using four instead of nine units per acre, the County more than doubled the size of the UGA.Port Gamble PHB, at 6 (footnote omitted; emphasis in original).

The County states:"[F]or purposes of analysis at this time, the County found nothing to indicate that it would be likely to achieve a density that was greater than the average density of the incorporated cities within the county."County PHB, at 6.In light of the present incarnation of the County's Plan, the Board agrees with the County -- with such a low urban residential density assumption, the County's unincorporated UGAs will be so oversized that there is no reason to expect the County's future urban growth to develop at densities greater than 4 du/ac.The Plan's UGA population density assumption (4 du/ac) perpetuates low density development.

The Plan states that its land capacity analysis is consistent with CTED's recommendations.Land Use Plan, at A-28.CTED recommends that total land capacity is calculated by multiplying the number of acres in the parcels remaining after applying various reduction factors by the number of units per acre allowed by the zoning in the area where the parcel is located.Issues in Designating Urban Growth Areas, Part I, Department of Community Development [now, Department of Community, Trade, and Economic Development (**CTED**)] (March 1992), at 3.This is not what the County did in determining the size of its UGAs.

The County first calculated the amount of land needed in UGAs to accommodate the population allocated to UGAs (3,060 acres, plus the 25 percent market factor, equals 3,825 residential acres needed) based on an assumed density (4 du/acre) that in no way reflected the County's planned-for densities.The County also delineated unincorporated UGAs for 11 areas that encompass 13,101 acres.[9]The County next calculated the net available land in its delineated UGAs by applying a series of discount and reduction factors, to the total gross acreage included in the UGAs.Through these discount and reduction factors the County eliminated approximately 9,275 acres from the designated UGAs that would not be available to accommodate the population growth by the year 2012.[10]Nowhere in the calculation of land necessary to accommodate population growth or the calculation of available land did the County consider the densities it planned for.

To exacerbate the understated density assumptions, the County actually applied an average urban density of 4 du/acre to only 56 percent of its UGA lands.For the 24 percent of lands designated as Urban Restricted, the County assumed 2 du/acre; and for the 20 percent of lands within sewer ULID #6, the County assumed a density of 1 du/acre.The County argued in its brief that most of the land within ULID #6 is vested at 1 du/acre.However, the Plan itself is silent on why this lower density was assumed and the tables in the Plan's land use capacity analysis separate ULID #6 from vested lands.Land Use Plan, at A-37 ("Total - Potential Developable Land (Encumbered Land, Unencumbered Land, ULID #6, and Vested Projects)").

The size of the County's UGAs was determined without regard to the County's Plan for future growth.In contrast to the methodology utilized in sizing the County's UGAs, the County applied the Plan's density designations when it allocated population to its subareas.

In allocating population to its subareas, the County began at the parcel level.The County then determined the **planned** capacity for each parcel "by multiplying the parcel size by the plan density for the given designation.(For example:A three-acre parcel designated 'Urban Residential 6' or 'UR6' has a planned capacity of 18 dwelling units.)"Land Use Plan, at 15.However, the County never reconciled these figures with its density assumptions used in its land capacity analysis.In essence, the County determined how

many acres were needed in its unincorporated UGAs by looking at historical development patterns -- not by looking at its stated plan for future development patterns.For the County to calculate the amount of unincorporated UGA land necessary to accommodate its allocated population growth, the County must utilize a population density assumption that reflects development densities anticipated by the County's Plan.

The Board agrees with Petitioners.The Board finds that for sizing UGAs, the density assumption used cannot be based upon historic patterns that perpetuated low density sprawl, and must reflect the planned-for urban densities.The Board further finds that the County's density assumption of 4 du/acre is too low, resulting in UGAs sized excessively larger than what is necessary to accommodate the County's projected population for the year 2012.

Petitioners and Participants also argue that the County's 25 percent market factor is unreasonable because of assumptions made in the land capacity analysis.Petitioners and Participants have presented no evidence to persuade the Board that using a 25 percent market factor to determine residential acreage needs is inappropriate for the County's Plan.

Finally, Petitioners and Participantschallenge the County's land capacity analysis, arguing that the County's discount factors for critical areas, redevelopment constraints, and public facilities are exaggerated.The County admitted to inadvertently discounting for critical areas on unavailable land.Since unavailable lands have already been excluded from the developable UGA lands, deducting another 15 percent of these unavailable lands for critical areas amounts to "double counting."On remand, the County will be instructed to correct its analysis to avoid double counting.

The County claims that its land capacity analysis is based upon CTED methodology and methodology the Board approved in *Sky Valley*.Yet as Petitioner Port Gamble points out, the County's County-wide Planning Policies set forth a methodology for conducting the County's land capacity analysis.Port Gamble PHB, at 19 (citing KCPP App. B, Tasks 2.04 and 2.05).The analysis used by the County does not follow (or even mention) the KCCP methodology, nor can it easily be related to the *Sky Valley* or CTED models.The Board questions an analysis that allows approximately 13,100 acres of UGAs to accommodate 3,825 acres needed for new urban residential development.The Board finds that the land capacity analysis has double counted some lands and has not been related to the KCCP methodology or other accepted models.Therefore, as part of the remand Order, the Board will direct the County, in its Land Use Plan, Population Appendix to eliminate, modify or more fully explain the rationale supporting itsdiscount and reduction factors , and relate its land capacity analysis to the methodology set forth in its or other accepted land capacity analysis models.

The Board holds that the deficiencies in the density assumptions and land capacity analysis yield UGAs that are excessively oversized and, therefore, do not comply with the requirements of RCW 36.70A.110.

Because the Board finds that collectively, the land in the unincorporated UGAs is excessively large, the County will be directed to recalculate and redesignate its UGAs.The revised UGAs must more closely reflect the land needed to accommodate anticipated future growth and urban development based on OFM's projections.By necessity, the size of the UGA must shrink, and consequently, some, if not all, of the unincorporated UGAs will have to be changed by the County.Therefore, the Board need not, and will not, examine nor evaluate specific UGAs in this Order.

While the Plan and Appendix discuss the UGA acreages, the only place the UGAs are depicted is on the

land use map (Comprehensive Plan Map).[11] Therefore, **the Board holds that the land use map does not comply with the GMA (RCW 36.70A.110(6) and the County will be directed to depict the revised UGAs on a new land use map and, on that map, reference the location of maps of appropriate scale to discern the actual location of the UGA boundaries.**

Conclusion No. 1

Because of the deficiencies in the density assumptions and land capacity analysis used by the County, the UGAs have been excessively oversized, and do not comply with the requirements of RCW 36.70A.110.Since the UGAs are oversized, the land use map, which depicts the UGAs, does not comply with the requirements of RCW 36.70A.110.

LEGAL ISSUES NO. 3 AND 5

[Issue 3]Does the County Comprehensive Plan (the Plan) fail to preclude urban growth outside of designated urban growth areas contrary to the requirements of RCW 36.70A.020(1), (2), (3), (4), (5), (7), (8), (9), (10), (12); RCW 36.70A.070[12]; and RCW 36.70A.110(1)?
[Issue 5]Are the densities and uses prescribed in the Land Use/Rural Element of the Plan for rural areas compatible with the rural character of such lands and appropriate as required by RCW 36.70A.070(5)?

Statutory Provisions

RCW 36.70A.110(1) provides in pertinent part:

> Each county that is required or chooses to plan under RCW 36.70A.040 shall designate an urban growth area or areas within which urban growth shall be encouraged and outside of which growth can occur only if it is not urban in nature . . . .(Emphasis added.)

RCW 36.70A070(5)[13] provides:

> Counties shall include a rural element including lands that are not designated for urban growth, agriculture, forest, or mineral resources.The rural element shall permit appropriate land uses that are compatible with the rural character of such lands and provide for a variety of rural densities and uses and may also provide for clustering, density transfer, design guidelines, conservation easements, and other innovative techniques that will accommodate appropriate rural uses not characterized by urban growth.

RCW 36.70A.020 includes the following planning goals that were cited in this legal issue:(1), (2), (3), (4), (5), (7), (8), (9), (10), and (12).[14]

Plan Provisions being challenged

The provision of the Plan that are alleged not to comply with the above cited statutory provisions are the "Grandfathering Clause" and the Comprehensive Plan Land Use Map, which are contained in or referenced by the Land Use Element, and the "Rural Infill Area" and the "Rural Residential" land use designations (Rural Wooded, Rural Low-Density, Rural Medium-Density and Urban Reserve), which are contained in the Rural Element.Also challenged is a development option for the Rural Wooded designated land, the "Rural Wooded Incentive Program" (**RWIP**).

Discussion

a. Grandfathering Clause

The "Grandfathering Clause" allows the subdivision of properties of 20 acres or less "in the same

manner as those properties that surround [them]"; applies to all properties "purchased, transferred or somehow otherwise obtained before December 29, 1994"; and is to be in effect for one year after the Plan is validated by the Board.Finding of Fact 10.

b. Rural Infill

The Rural Infill area is that area which, due to past development trends, has an existing platting pattern which primarily consists of small, divided parcels less than 10 acres in size.Finding of Fact 11.

c. Map Designations

Rural Wooded

The Rural Wooded land use designation has a nominal minimum lot size of 1 dwelling per 10 acres.Parcels with shoreline frontage may be subdivided into 2.5-acre lots, subject to certain conditions. Rural Wooded-designated lands may allow densities of 1 unit per five acres through utilization of the RWIP.Properties developed under the RWIP may utilize no more than 25 percent of the land.Fifty percent of the sites utilizing the RWIP must be placed in "Wooded Reserve Status," encouraging forestry and prohibiting development or subdivision until 2012.Permanent open space must be created either from one-half of the land placed in Wooded Reserve Status or from one-half of the remaining 50 percent of the site.The remainder of the site must be clustered.No cluster may exceed 25 units; clusters may be as close as 100 feet.Urban services shall not be provided to clusters.A single project may be no more than 1,000 contiguous acres.Finding of Fact 11.

Rural Low-Density

Rural Low-Density has a nominal minimum lot size of 1 unit per ten acres.This density may be doubled to 1 unit per five acres if the parcel is not constrained by critical areas.Additional increased density may be achieved through the Plan's Rural Infill provisions, which allow for up to 2-1/2 units per 10 acres.In addition, parcels with shoreline frontage may be subdivided into 2.5-acre lots.Finding of Fact 11.

Rural Medium-Density

Rural Medium-Density has a nominal minimum density of 1 unit per five acres, which may be doubled to 2 units per five acres through the Rural Infill provisions.In addition, parcels with shoreline frontage may be subdivided into 1 acre lots.Finding of Fact 11.

Urban Reserve

The minimum density in the Urban Reserve land use designation is one unit per 10 acres.Finding of Fact 11.

The Board has previously addressed the GMA's requirements and the range of discretion afforded counties regarding "Rural" in county cases from each of the four counties in the Central Puget Sound Region.[15]These include *Rural Residents, Kitsap Citizens,* and *Bremerton* in Kitsap County; *Vashon-Maury* in King County; *Sky Valley* in Snohomish County, and *Gig Harbor* and *Peninsula Neighborhood Association II* in Pierce County.[16]From these decisions has emerged a body of law regarding the GMA's requirements regarding the rural area and the range of discretion that the Act grants to counties in permitting uses of varying densities and intensities.

The Board first focused on the rural issue in three Kitsap County cases.In a 1994 decision, the Board held that the use of the word "only" in RCW 36.70A.110 clearly meant that new development that meets the Act's definition of urban growth[17] is prohibited in the rural area and on resource lands.*Rural Residents*, at 20.In a subsequent case, the Board clarified that, if subject to certain limits and parameters, rural development proposals could constitute "compact rural development" permissible in a rural

area.*Kitsap Citizens*, at 15.In the FDO of the case under review, the Board stated that a residential land use **pattern** of 1 and 2.5 acre lots is an urban land use **pattern** and that intensity of physical improvements on rural land can, alone, determine whether a proposal crosses the line between permissible rural growth and impermissible urban growth.*Bremerton*, at 49-51.

In a King County case, the Board clarified the meaning of the word "pattern" in the context of residential development to mean the *number, location* and *configuration* of lots.*Vashon-Maury*, at 79.In that case, the Board also articulated two exceptions to the prohibition against new urban growth in the rural area: (1) essential public facilities (such as schools) and (2) uses dependent upon being in the rural area which are compatible with the functional and visual character of the rural area (such as sawmills).*Vashon-Maury*, at 68.In a Pierce County case, the Board approved a five acre rural lot size as a future urban reserve, provided that steps are taken to preclude division or development of such lots so as to preclude future growth at urban densities.*Gig Harbor*, at 58.In a Snohomish County case, the Board upheld a county's authority to allow rural clustering on lots as small as 5 acres, provided that provisions were made to assure that the number, location and configuration (i.e., the **land use pattern**) of such lots do not constitute urban growth (i.e., an ***urban*land use pattern**).*Sky Valley*, at 48.

Most recently, the Board rejected Pierce County's argument that 2.4 to 3.5 du/acre lots on rural shorelines are justifiable exceptions and clarified that, while counties have authority to allow pre-existing urban-intensity uses to continue in the rural area, the expansion or enlargement of such uses would constitute prohibited new urban growth.*Peninsula Neighborhood Association II*, at 17 and 27.

In the above-cited county cases, the Board affirmed one of the GMA's most fundamental principles - that urban areas are to be characterized by urban growth and rural areas are not.Even so, from the facts, circumstances and arguments presented in these cases, the Board has recognized reasonable and necessary exceptions to the prohibition of urban growth in the rural area.The Board has even construed the Act to permit **compact** rural development, under certain circumstances and if sufficiently limited in scope and character.

The essence of these Board decisions - that rural areas are to be very different from urban areas, while recognizing reasonable and necessary exceptions and flexibility for compact rural development - presaged legislative action in 1997.ESB 6094, Section 7, amended RCW 36.70A.070(5) by adding a new subsection, which provides:

> (d)Limited areas of more intensive rural development.Subject to the requirements of this subsection and except as otherwise specifically provided in this subsection (5)(d), the Rural Element may allow for limited areas of more intensive rural development, including necessary public facilities and public services to serve the limited area. . . .
>
> . . .
>
> (iv)A county shall adopt measures to minimize and contain the existing areas or uses of more intensive rural development, as appropriate, authorized under this subsection.Lands included in such existing areas or uses shall not extend beyond the logical outer boundary of the existing area or use, thereby allowing a new ***pattern*** of low-density sprawl.Existing areas are those that are clearly identifiable and contained and where there is a logical outer boundary delineated predominately by the built environment, but that may also include undeveloped lands if limited as provided in this subsection.The county shall establish the logical outer boundary of an area of more intensive rural development.In establishing the logical outer boundary the county shall address (A) the need to preserve the character of existing natural neighborhoods and communities, (B) physical boundaries such as bodies of water, streets and highways, and land forms and contours, (C) the prevention of abnormally irregular boundaries, and (D) the ability to provide public facilities and public services in a manner that does not permit low-density sprawl.(Emphasis added.)

Although these provisions of ESB 6094 were not available to the County when it acted, these new

statutory provisions are consistent with the essence of the above cited-Board decisions.What those decisions alludedto the statute now explicitly clarifies: the legislature's continuing intent to protect rural areas from low-density sprawl; and that, while some accommodation may be made for infill of certain "existing areas" of more intense development in the rural area, that infill is to be "minimized" and "contained" within a "logical outer boundary."*With* such limitations and conditions, more intense rural development in areas where more intense development already exists could constitute permissible **compact rural development;** *without* such limitations and conditions more intense rural development would constitute an impermissible **pattern** of urban growth in the rural area.It is within the context of the GMA prior to July 27, 1997, and the Board's prior cases, that the Board must analyze the challenges asserted by Petitioners.Nonetheless, the Board finds the legislature's intent useful and instructive.

Kitsap's rural land use patterns are, in large measure, the result its past land-use planningWhile the County used 2.5 and 1-acre rural lot sizes beginning in 1977, prior to that time, landowners could create lots as small as 7,500 square feet.Plan, at 21.This legacy of 2.5-acre, 1-acre, 7,500-square-foot, and even smaller rural parcels, and the problems and limitations that such a land use pattern presents, is acknowledged in the Plan.

> There is a variety of parcel sizes occurring in the rural areas.These range from small, urban-sized lots . . . to square miles of undivided land in forested areas. . . . Within this range of lots are parcels of every imaginable size and shape.Subdivisions have occurred in both organized and disorganized fashion over the years. . . .This has resulted in a platting pattern in the rural area of the county that is hard to serve with utilities and public services and also creates problems for future planning.
>
> Public services in the rural areas are less than what one would expect in the more urban areas of the county.Rural areas generally are less accessible, with narrow two-lane roadside.Fire flow is limited or non-existent.Septic systems and private wells prevail, and emergency response times are longer than in more urban areas.Land Use Plan, at 46- 47 (emphasis added).

Thus, rural property owners can recall a time when Kitsap's policy for the rural area was effectively an urban land use policy.[18]However, the advent of the GMA changed land use law in this state in a profound way, changing the **land use patterns** that counties may permit in rural areas.Kitsap County has attempted in its Plan to meet the Act's requirements while including mechanisms to meet the history-based desires of some of its landowners.Pre-existing parcelization cannot be undone, however there is no reason to perpetuate the past (i.e., creation of an urban **land use pattern** in the rural area) in light of the GMA's call for change.This axiom, recognized by the Board in the *Bremerton* FDO, remains true today:

> The County cannot base its future planning for new growth on its past development practice if those practices, as here, do not comply with the GMA.What was once permissible is no longer so.The GMA was passed to stop repeating past mistakes in the future.*Bremerton*, at 71.

Evaluating Kitsap's 1996 Plan against the GMA's requirements, as construed in Board decisions and clarified by ESB 6094, reveals that the County is still far wide of the mark.Port Gamble presented persuasive argument that, given the proliferation of lots smaller than five acres throughout the county, "the Grandfathering Clause has the potential to create many more of these classic, urban sprawl lot sizes.*See*, e.g., Plan at 53 (Table RL-1) (17,966 (88 percent) of 20,342 lots in non-UGA Rural Infill Area are five acres or less.Port Gamble PHB, at 32.On reply, the County estimated the potential for new parcels to be created by the Grandfathering Clause as 4,580 new 2.5-acre lots.County PHB, Ex. 7.1000 Friends correctly characterized the Grandfathering Clause as a one-year suspension of the rural density provisions of the Plan, a "gaping loophole" that would promote the inappropriate and premature conversion of undeveloped rural land at urban densities three years after the County's statutory deadline for Plan adoption.It also argued that the Rural Infill Provisions would provide excess rural capacity, providing for enough lots to accommodate a third of the total population growth projected for the entire

county by the year 2012.1000 Friends PHB, at 4-5.The City of Bremerton observed that the Rural Infill Areas, comprising about two-thirds of the entire County, would have broad impact county-wide and argues that the GMA does not allow rural parcels to be divided into urban density lots simply because such land division occurred n the past.Bremerton PHB, at 6.Finally, the State provided sound argument that the Rural Infill provisions, particularly with regard to 1 and 2.5 acre lots on shorelines, would fail to protect the environment in an area that is largely unsewered and unlikely to receive such facilities, even with a pattern of lots of such sizes.State PHB, at 27.

The Board agrees with these and other arguments put forward by Petitioners and Participants[19] that the "Grandfathering Clause" and "Rural Infill" provisions of the Plan, together with the Plan's Rural Land Use densities that effectively permit a **pattern of urban growth** on the rural shoreline and throughout the rural area, do not meet the goals and requirements of the GMA.The cumulative effect of these Plan provisions is to perpetuate a **land use pattern** that converts a significant portion of the County's rural land to low density sprawl, in violation of RCW 36.70A.020, RCW 36.70A.070(5) and RCW 36.70A.110. Such an outcome would substantially interfere with the fulfillment of the Act's planning goals and therefore warrants a determination of invalidity, as discussed in Section VII of this Order.
The Board holds that certain provisions of the County's Rural Element, specifically the Rural Infill Provisions, and the provisions in the Wooded Rural, Rural Low-Density and Rural Medium Density that permit 2.5 acre and 1 acre lots,and the Grandfathering Clause provisions of the Land Use Element, and the Comprehensive Plan Map do not comply with requirements of the Act and fail to be guided by its goals, as construed by the Board in the above cited cases and as clarified by recent legislative amendments.

Conclusion Nos. 3 and 5

The Board answers both Issues 3 and 5 in the affirmative.The Rural Element provisions, specifically the Rural Infill, Wooded Rural, Rural Low-Density and Rural Medium-Density provisions that permit 2.5-acre and 1-acre lots, together with the Grandfathering Clause provision in the Land Use Element, and the Comprehensive Plan map, perpetuates a **pattern** of urban growth outside of designated UGAs, and permits densities and uses that are incompatible with the rural character of such lands, contrary to the requirements of RCW 36.70A.070(5) and RCW 36.70A.110(1).In addition, these Plan provisions fail to be guided by the goals of RCW 36.70A.020 set forth in Section VII of this Order.

LEGAL ISSUE NO. 4

Does the Plan include an appropriate distribution, location, and extent of land uses for agriculture, timber production, housing, commerce, industry, recreation, public utilities, and other land uses as required by RCW 36.70A.070(1)?

Discussion and Conclusion No. 4

RCW 36.70A.070(1) provides the requirements for the Land Use Element of comprehensive plans.Legal Issue 4 asks whether the Plan's Land Use Element has satisfied certain of these requirements.Because the Board is remanding the Land Use Element the County must significantly modify this part of its Plan.Therefore, the Board will not, address Legal Issue 4.

LEGAL ISSUE NOS. 6 AND 8

[Issue 6]Does the Land Use Element of the Plan fail to adequately review drainage, flooding and stormwater run-off and provide guidance for corrective actions to mitigate or cleanse those discharges that pollute waters of the State as required by RCW 36.70A.070(1)?
[Issue 8]Does the Land Use Element of the Plan fail to provide for the protection of the quality and quantity of groundwater uses for public water supplies including the protection of aquifer recharge

areas as required byRCW 36.70A.020(10), (11), (12); RCW 36.70A.070(1); and RCW 36.70A.110 (4)?

Discussion

RCW 36.70A.070(1) provides, in part:

> The land use element shall provide for protection of the quality and quantity of ground water used for public water supplies.Where applicable, the land use element shall review drainage, flooding, and storm water run-off in the area and nearby jurisdictions and provide guidance for corrective actions to mitigate or cleanse those discharges that pollute waters of the state, including Puget Sound or waters entering Puget Sound.

The cited planning goals, RCW 36.70A.020, guiding the development and adoption of comprehensive plans, provide:

> (10) Environment.Protect the environment and enhance the state's high quality of life, including air and water quality, and the availability of water.
>
> (11) Citizen participation and coordination.Encourage the involvement of citizens in the planning process and ensure coordination between communities and jurisdictions to reconcile conflicts.[20]
>
> (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.

RCW 36.70A.110(4) provides:

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

Drainage, Flooding and Stormwater Run-off

Petitioners assert that the Plan's land uses, particularly development on the shoreline and near rivers and streams and other critical areas, threaten receiving water quality and fail to include actions to mitigate and correct the problem.

The County responds by pointing to Plan policies to minimize impervious surfaces, limit grading activities and protect vegetation to decrease stormwater runoff, to direct growth to reduce sprawl and allow for better stormwater runoff control, and to limit densities where there are critical areas constraints.

The Plan's Surface Water map shows a number of fresh water discharges to the waters of the state, including Puget Sound.Figure Book, Figure A-NS-8, at M-10.Therefore, the portion of the challenged provision relating to review of drainage, flooding, and storm water run-off is applicable to the County; the Land Use Element of the Plan must contain such a review.

The Plan Introduction sets forth four framework principles; No. 3. B. and C. address prospective actions to manage storm water and conservation of surface and ground water quantity and quality.The Plan's Natural Systems section contains a number of goals and policies addressing protection of critical areas, aquifer recharge areas, surface water, and habitat areas; again, these are prospective actions.

However, the Plan's Land Use Element does not contain the required review of drainage, flooding, and storm water run-off, or make reference to such a review in other documents.

Because the Land Use Element does not contain the required review, there is no information provided as to existing polluting discharges; such a finding is necessary to trigger the requirement for guidance for corrective actions if such discharges exist.When the County has completed its review of discharges, if it

finds that there are polluting discharges, it will be required to provide guidance for corrective actions in its Land Use Element.

Groundwater Used for Public Water Supplies

Petitioners charge that the Plan fails to distinguish deep and shallow aquifers; fails to identify aquifers needing recharge protection; extends UGA boundaries over aquifer recharge areas and shallow aquifers, threatening the future water supplies of cities; fails to protect forested areas, and increases impervious surfaces; and fails to control land clearing.[21]

The County points to the Natural Systems Element and Natural Systems Appendix of the Plan addressing aquifer recharge areas, well head protection, and storm water management.In addition, it cites to land use designations of Rural Medium, Rural Low and Rural Wooded as environmentally protective.In addition, the County relies on the Interim Critical Areas Ordinance, which includes a chapter on critical aquifer recharge areas, including regulation of land use activities and required buffers, and the draft Kitsap County Groundwater Management Plan and Coordinated Water System Plan.County Brief, at 21-22.

Petitioners' challenges are primarily focused on the nature and intensity of land uses, as those uses affect the quality and quantity of groundwater.Because the Land Use Element is being remanded to the County, the Board will defer consideration of whether that element, as revised, meets the Act's requirement to protect groundwater.The county is reminded that the protective provisions required by RCW. 36.70A.070(1) must be a part of the Land Use Element of the revised Plan.

Conclusion No. 6

Regarding the Act's requirement to include in the Land Use Element of the Plan a review of drainage, flooding, and storm water runoff, the County's Plan **does not comply** with RCW 36.70A.070(1).Regarding the Act's requirement to include in the Land Use Element guidance for corrective actions for polluting discharges, once the County has provided the required review, it must determine whether there are polluting discharges, and if so, provide guidance for corrective actions in the Land Use Element.

The Land Use Element will be **remanded** with direction to bring it into compliance with the provision of RCW 36.70A.070(1) relating to review of drainage, flooding, and storm water runoff, and provision of guidance for corrective action, if required.

Conclusion No. 8

Regarding the Act's requirement that the Land Use Element of the Plan provide for the protection of ground water used for public water supplies, because the Board is remanding that element, it will not rule on Issue No. 8 in this Order.When the County undertakes revision of the Land Use Element it shall include in its consideration a review of whether the Plan provides for protection of the quality and quantity of groundwater, as required by the Act, and include protective provisions in the Land Use Element, if required.

LEGAL ISSUE NO. 7

Does the Plan encourage corridors of forest and canyon areas, including the Illahee Trust lands, which protect the quality of water in the area, and which preserve habitat for wildlife and salmon production in the adjacent streams in violation of RCW 36.70A.020(8), (9), and (10)?

Discussion and Conclusion No. 7

The Petitioners allege that the Plan does not comply with GMA planning goals regarding natural resource industries, open space and recreation, and environment.*See* RCW 36.70A.020(8), (9), and

(10).To prove noncompliance with these provisions, Petitioners must show that the Plan is inconsistent with these GMA goals.*See Tulalip Tribes of Washington v. Snohomish County*, CPSGMHB Case No. 96-3-0029, Final Decision and Order (January 8, 1997), at 15 (determining compliance with GMA goals that are not implemented by specific statutes can be achieved by evaluating consistency between a critical areas ordinance and the GMA goals).

The Board is remanding the County's Plan and the County will be required to significantly modify its land use and Rural Elements.Since the current Plan is being remanded and the Board cannot know the provisions in its new Plan, the Board will not, further address Legal Issue 7.

LEGAL ISSUE NO. 9

Does the Plan fail to designate forest lands and agricultural lands pursuant to RCW 36.70A.170 and RCW 36.70A.020(8)?[22]

The *Bremerton* Order directed that the County:

> Review its determination as to whether Kitsap County has any forest lands of long-term commercial significance; and to designate such forest lands if it concludes that such lands do exist, and amend the Plan and implementing development regulations accordingly. FDO, at 90.

Petitioners in *Port Gamble*, as well as several of the *Bremerton* parties challenged compliance with forest land requirements:conservation of productive forest lands, discouragement of incompatible uses, as required by RCW 36.70A.020(8); and failure to designate and protect natural resource lands.

The County asserts that it has complied with the FDO's direction to review the question of forest land designation, citing to the Plan, at 32-33 and A-71 through A-84 (Land Use Appendix.)After that review, it concluded that "no such lands exist within Kitsap County, [and] the county did not designate long term forest lands."County's PHB, at 13.

Discussion

RCW 36.70A.020(8), Natural resource industries, directs the County to:

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

RCW 36.70A.170, Natural resource lands and critical areas - Designations, directs the County to:

> designate, where appropriate:
>
> . . .
>
> (b) forest lands that are long-term significance for the commercial production of timber;

RCW 36.70A.030(8) defines "forest land" as:

> land primarily devoted to growing trees for long-term commercial timber production on land that can be economically and practically managed for such production, including Christmas trees subject to the excise tax imposed under RCW 84.33.100 through 84.33.140, and that has long-term commercial significance.In determining whether forest land is primarily devoted to growing trees for long-term commercial timber production on land that can be economically and practically managed for such production, the following factors shall be considered: (a) The proximity of the land to urban, suburban, and rural settlements; (b) surrounding parcel size and the compatibility and intensity of adjacent and nearby land uses; (c) long-term local economic conditions that affect the ability to manage for timber production; and (d) the availability of public facilities and services conducive to conversion of forest land to other uses.

The County's 1996 Plan does not include "forest land" designations.*See* Table LU-2, Land Designation Acreages for Unincorporated Kitsap County Land Use.Plan, at 23.However, the Table does include a "Rural Wooded" designation, with 54,788 acres so designated.

The County's initial review process, commencing in 1992, is described in the Plan at A-71, Land Use Appendix.It culminated in the April 20, 1992 adoption of Strategies For Resource Lands Designations and Interim Development Regulations (the **Strategies Document**).The Board also noted in the *Bremerton* decision that "although no document in the record presently before the Board indicates precisely how many acres were designated forest land pursuant to the GMA's requirements, it appears that at least 27,100 acres were designated as forest lands." *Bremerton*, at 79.

When the County adopted its 1994 Plan, it found that there were 76,818 acres of forest land in the County, just as it subsequently found in its 1996 Plan.However, in the 1994 Plan, the County repealed the Strategies Document, and elected not to designate any forest lands. Because of other flaws in the 1994 Plan, the Board did not make a final determination on legal issues related to forest land designations; rather, it remanded the matter to the county, with directions to re-examine the question of whether any forest lands should be designated. *Bremerton*, at 74-78.

In the 1996 Plan, the County again has declined to designated forest lands:

> After considering that definition created by the statute and the criteria contained in the April 20, 1992 [Strategies Document], the County has concluded that it does not presently have "forest land" within the meaning of the Growth Management Act. Land Use Plan, at A-78.Emphasis added.

The Land Use section of the Plan discusses the application of the GMA definition of "forest lands," and notes that:

> only a few major timber owners actively harvest, log or cultivate their lands for commercial forest production... very little of the remaining commercial forest lands are more than 1-1/2 miles from urban-density residential uses.The overwhelming percentage of [the County's] employment comes from urban, non-forest related jobs.The long-term commercial significance of Kitsap County's forest lands is also impacted by the reduction over time of the infrastructure necessary to support commercial forestry.This includes the loss of mills, contractors, and equipment dealers which has occurred as the county's forest land base has shrunk over time.Land Use Plan, at 33-34.

The Plan then "recognizes the ongoing forest practices on lands beyond county jurisdiction.These lands include the forestry management activities being carried out on tribal, federal and incorporated lands."According to Table A-LU-10, that is a total of 11,804 acres.Land Use Plan, at 34 and A-76.

In the Land Use Appendix, the Plan further discusses the basis for the County's decision not to designate.The following is a summary of the Plan's discussion:

> **Existing land use**:a significant portion of the area managed for timber production is within one-half mile of existing urban-density development, and only a small portion is more than 1-1/2 miles from such development.
>
> **Soils**:Significant portions of the currently forested lands do not average site index 110 or higher.
>
> **Availability of public facilities and services**:Most of the currently forested land within the county has reasonable available public facilities and services which would be necessary for rural levels of development, or are situated so that those facilities and services could be brought to the site for a reasonable cost.
>
> **Block size:**Most of the parcels in the County are smaller than those found in other jurisdictions; there is encroachment by residential development on large private ownerships.
>
> **Compatibility with surrounding Plans**:Adjacent counties have not designated lands abutting Kitsap's forested lands; land use patterns surrounding the lands in question are largely suburban; the influence of nearby urban uses restricts necessary commercial forest practices activities. Land Use Plan, at A-78 - 80.

The record of the County's consideration and application of the requirements of the Act, the definition of "forest lands" and the criteria in the Strategies Document makes it clear that there is currently active

harvesting, logging or cultivation by major timber owners.Land Use Plan, at 33.At least some commercial forest lands are more than 1-1/2 miles from urban-density residential uses (and there is no explanation in the Plan as to why the 1-1/2 mile distance was selected).Id.Some portion of currently forested lands has a site index of 110 or higher.Some of the currently forested land does not have reasonably available public facilities and services (for urban development.)Some of the forest land parcels are as large as those found in other jurisdictions.Land use patterns surrounding some of the forest lands parcels are not suburban in nature.Land Use Plan, at A-79.

The Board is,. however, concerned with the unrefuted evidence that there has been a significant reduction, or even elimination, of parts of the infrastructure necessary to support a forest industry.It notes that RCW 36.70A.020(8) directs the County to maintain and enhance that industry, and that generally, the goals of the Act are the foundation for specific statutory provisions such as the duty to designate forest lands.RCW 36.70A.170.The question, then, is whether a county which has only 22 people employed in forestry, and has no receiving facility for its timber, can be deemed to in fact have a forest industry requiring protection.None of the Boards has addressed this issue; there is no evidence in the record indicating the current or prospective disposition of timber harvested from the forested areas of the County; there was no briefing or oral argument on the subject.

Therefore, the Board will direct the County to evaluate whether the Act requires that all necessary components of a forest industry be contained within the jurisdictional boundaries of the County.It will further direct the County to reconsider the application of its criteria for designation of forest lands

Finally, to the extent that the County's failure to designate forest lands is attributable to the land uses expected to occur on lands adjacent to forested parcels under the land use provisions of the 1996 Plan remanded by this Order, the County is directed to reconsider the appropriateness of forest land designation as it modifies its land use designations.

Conclusion No. 9

The Board makes no finding that the Plan failed to comply with the duty to designate forest lands and agricultural lands pursuant to RCW 36.70A.170 and RCW 36.70A.020(8).The forest lands designation criteria contained in the Plan are within the range that the Act permits the County and the Board renders no judgment now about the application of those criteria to the circumstances in Kitsap County.However, because the Plan has been remanded for further work by the County, many of the premises upon which the County may have based its judgments regarding forest lands are now called into question.At the very least, the County is required by RCW 36.70A.070 to evaluate whether its forest land decisions will be consistent with the Plan it brings back on remand.

LEGAL ISSUE NOS. 10 AND 2

[Issue 10] Has the County adequately identified and protected its critical areas, including wetlands, as required by RCW 36.70A.020(10); .030(5), (17); .040(3)(b); .060(2); .070(1); .170(1)(d); and .172.
[Issue 2] If the answer to legal issue No. 10 is no, are the UGAs inconsistent with the GMA because there is not a valid designation and protection of natural resource lands and critical areas as provided by RCW 36.70A.060, .170, and .180(1)(a) and (b)?

Discussion

The Board will first address Legal Issue No. 10.Counties and cities planning under GMA must designate critical areas and must adopt development regulations that protect critical areas.RCW 36.70A.170(1)(d) and RCW 36.70A.060(2).The GMA deadline for designating and protecting critical areas occurred prior to the deadline for completing comprehensive plans.*See* RCW 36.70A.170, RCW 36.70A.060, and RCW 36.70A.040.The GMA also requires counties and cities planning under GMA to "review [critical areas] designations and development regulations when adopting their comprehensive plans . . . and development regulations . . . to insure consistency."RCW 36.70A.060(3).

The Board recognizes that the County is operating on a cycle substantially beyond the statutorily imposed deadlines.Nonetheless, the County has readopted an interim critical areas ordinance.*See* Finding of Fact 3.The County's 1994 Plan was invalidated and now the County is pursuing compliance with the present effort.It is not clear from the record whether the County reviewed its interim critical areas ordinance in adopting the 1996 Plan, but it appears that the County still has interim regulations protecting critical areas.These regulations, or some variation of them will, ultimately, have to become permanent.

Because the Board is remanding the County's Plan for revisions, the County will, by necessity, have to review, possibly modify, and adopt a permanent critical areas ordinance as the County adopts its revised Plan to comply with the GMA.However, since the County has an interim critical areas ordinance that will continue to be in effect until the County adopts the permanent critical areas ordinance, the Board will answer Legal Issue 10 in the affirmative.Nonetheless, the County will be directed on remand to comply with RCW 36.70A.060 by adopting permanent regulations to protect its critical areas when it adopts its revised Plan.

Resolution of Legal Issue 2 is necessary only if the Board answers "no" to Legal Issue 10.Because the Board answered "yes" to Legal Issue 10, the Board need not, and will not, address Legal Issue 2.

Conclusion Nos. 10 and 2

Presently, the County is protecting critical areas through its interim critical areas regulations.Therefore, on remand, the County is directed to adopt permanent critical area protections as it adopts its revised Plan.

LEGAL ISSUE NO. 11

Can the Plan be in compliance with the GMA if its implementing regulations and CAO are not yet in place, and, if not, is the County in violation of RCW 36.70A.020, .040, .060, .070, .130(1), (2)(b) and.170?

Discussion

The County has a duty to adopt a comprehensive plan and implementing regulations (RCW 36.70A.040(3)), to designate critical areas (RCW 36.70A.170) and to adopt regulations to protect critical areas (RCW 36.70A.060).The premise of this legal issue is that there is also a duty to have implementing regulations and a critical areas ordinance in place in order to have a GMA-compliant plan.The County readopted its interim development regulations in June 1997 (Ordinance 208-1997).Interim, not permanent, regulations are in place.

As a practical matter, permanent implementing development regulations (such as zoning regulations) cannot precede, i.e., already be "in place," the comprehensive plan that they are ostensibly to implement.The Board is persuaded by the County's argument, and particularly in view of the history and circumstances in Kitsap County, that the adoption of implementing regulations could not precede adoption of a GMA-compliant plan.However, the County does have interim development regulations.As to critical areas regulations, the Board addressed them separately in Legal Issue No. 10.

However, pursuant to RCW 36.70A.040, the County will be required to have permahent development regulations that implement its Plan when the Plan is revised to comply with the Act and this Order, and adopted during the remand period.Plan and implementing regulation adoption must occur simultaneously.

Conclusion No. 11

The Board concludes that the Petitioners have failed to meet their burden to demonstrate that the GMA creates a duty for a county to have permanent implementing regulations "in place" prior to adoption of a comprehensive plan.

LEGAL ISSUE NO. 12

Did the County fail to meet the requirements of Chapter 43.21C RCW and WAC 197-11-600(4)(d); 400(4); 402(10); 406; 448(1); 655(2) and (3); and 660 because the FSEIS failed to address substantial changes made to the proposal and the County Commission did not use the FSEIS in its decision process?

Discussion

The crux of the argument on this issue, offered by URBPA and APAC,[23] is that since the FSEIS was issued in October 1996, and adopted on December 2, 1996, "[t]his late blooming FSEIS could not have been used to guide the development of the Plan, which itself was adopted only three weeks later [December 23, 1996]."URBPA PHB, at 23.The WACs cited by Petitioners do not go to the real question of when a decision-maker can act after receiving the required environmental information.These sections are cited below:

WAC 197-11-055(2)(c) [Timing of the SEPA process] provides:

> Appropriate consideration of environmental information shall be completed before an agency commits to a particular course of action (WAC 197-11-070).(Emphasis supplied.)

WAC 197-11-070 [Limitations on actions during SEPA process] provides in pertinent part:

> (1) Until the responsible official issues a final determination of nonsignificance or final environmental impact statement, no action concerning the proposal shall be taken by a governmental agency that would:
>
> (a) Have an adverse environmental impact; or
>
> (b) Limit the choice of reasonable alternatives.
>
> (2) In addition, certain DNSs require a fifteen-day period prior to agency action (WAC 197-11-340(2)),and FEISs require a seven-day period prior to agency action (WAC 197-11-460(4)).(Emphasis supplied.)

WAC 197-11-460(5) provides:

> Agencies shall not act on a proposal for which an EIS has been required prior to seven days after issuance of the FEIS.(Emphasis supplied.)

In short, under SEPA,[24] the County had to give appropriate consideration to the environmental information presented in the FSEIS, and the County was precluded from acting on the Plan for seven days after issuance and adoption of the FSEIS, which occurred on December 2, 1996.The Plan was adopted on December 23, 1996.Other than the timing of the adoption of the Plan, the Petitioners have offered no evidence to show that the County did not give appropriate consideration to the information in the FSEIS.The timing of the County's action was within the time frames set forth for considering environmental information.Therefore, the Board concludes that the Petitioners have failed to meet their burden of proof on Legal Issue No. 12; and, pursuant to SEPA, the County acted in a timely manner.

Conclusion No. 12

Petitioners have failed to meet their burden of proof on Legal Issue No. 12; and, pursuant to SEPA, the

County acted in a timely manner.

LEGAL ISSUES NO. 13 AND 16

[Issue 13]Does the Capital Facilities Elementies element of the Plan fail to comply with the requirements of RCW 36.70A.070(3)?
[Issue 16]Is the Plan internally inconsistent (between and among the various Plan elements) and therefore in violation of RCW 36.70A.070?

Discussion

Components of Capital Facilities Element:

Every comprehensive plan of a county or a city required to plan under RCW 36.70A.040 must contain the six "mandatory" elements listed in RCW 36.70A.070.The capital facilities plan element at RCW 36.70A.070(3) requires:

> (3)A capital facilities plan element consisting of:
> (a)An inventory of existing capital facilities owned by public entities, showing the locations and capacities of the capital facilities;
> (b)a forecast of the future needs for such capital facilities;
> (c)the proposed locations and capacities of expanded or new capital facilities;
> (d)at least a six-year plan that will finance such capital facilities within projected funding capacities and clearly identifies sources of public money for such purposes; and
> (e)a requirement to reassess the land use element if probable funding falls short of meeting existing needs and to ensure that the land use element, capital faculties element, and financing plan within the capital facilities plan element are coordinated and consistent.

The Board has held that, for purposes of conducting the inventory required by RCW 36.70A.070(3)(a), "public facilities" as defined at RCW 36.70A.030(12) are synonymous with "capital facilities owned by public entities."*See West Seattle Defense Fund v. City of Seattle*, CPSGMHB Case No. 94-3-0016, Final Decision and Order (April 4, 1995), at 43.

RCW 36.70A.030(12) defines public facilities as "streets, roads, highways, sidewalks, street and road lighting systems, traffic signals, domestic water supply systems, storm and sanitary sewer systems, parks and recreation facilities and schools."

Regarding RCW 36.70A.070(3)(a) and (b), the Board has held that counties and cities must include an inventory and needs analysis of existing publicly-owned capital facilities, regardless of ownership, in their Capital Facilities Elements.*See Sky Valley*, at 67.

Regarding RCW 36.70A.070(3)(c) and (d), the Board has recognized that if a county does not own or operate a facility, it should not be required to include the locational or financing information in its Capital Facilities Element, since these decisions are beyond its authority.[25]*Sky Valley*, at 67.

However, when the jurisdiction that owns and/or operates a specified capital facility cooperates with the county and discloses information pertaining to location and financing, the county may include such information in its Capital Facilities Element (per RCW 36.70A.070(3)(c) and (d)).Indeed, aside from being sound growth management and public policy, it may be a necessary prerequisite to access a new funding source - e.g., impact fees.[26]

RCW 36.70A.070(3)(e) requires the planning entity's commitment to reassess the Land Use Element in certain situations and bolsters the internal consistency requirements discussed separately below.

It is within this context that we review Kitsap County's Comprehensive Plan - Part II: Capital Facilities Plan (**CFP**);Part III: Figure Book; and if appropriate, Part I: Land Use Plan and Appendices.

The Capital Facilities Plan addresses the following categories of public facilities: County Public Buildings at 3-5; Fire Protection Facilities at 3-13; Law Enforcement at 3-36; Parks and Recreation at 3-44; Sanitary Sewers at 3-57; Schools at 3-91; Solid Waste Management System at 3-110; Stormwater Facilities at 3-118; Transportation at 3-138,[27];and Water Systems at 3-168.On its face, the Plan's CFP includes the required categories of public facilities defined by RCW 36.70A.030(12).

Upon review of these portions of the CFP, the Board finds that, **except** for Water Supply, Treatment and Distribution (CFP, at 3-168 to 3-192), the requisite inventories and needs assessments for existing publicly owned capital facilities are included as is required by RCW 36. 70A.070(3)(a) and (b).

The section on Water Systems indicates that there are 1145 public water systems within the County.Of these, 256 systems are Group A, which serve 80 percent of the population; of these Group A systems, 37 are Class 1 serving 100 connections or more.There are 729 Group B, Class 4 systems, serving between 2 and 9 connections.[28]The inventory descriptions and tables only address 18 water systems which would serve about 183,500 (63 percent) of the 2012 population[29].Separately, the Utilities Appendix of the Land Use Plan (at A-204 to A-207) inventories 9 privately owned water systems with 100 connections or more, which will serve about 12,000 (4%) of the 2012 population.[30]The Utilities element itself indicates "Larger municipal water districts are discussed in the Capital Facilities Element of this Plan.Smaller purveyors, those serving between five and 99 connections, and private wells, those serving less than five connections, are not discussed in any detail in this plan."Land Use Plan, at A-207, Table A-UT-5.

The County did not inventory and provide a needs assessment of the County's public water systems, regardless of ownership.Also, separating the inventories and needs assessments for water systems in different parts of the Plan and conducting the required analysis only for systems intended to serve less than 70% of the 2012 population fails to comply with the Capital Facilities Element requirements.The County should inventory and assess its Group A systems.At a minimum, the County should include Class I and Class III of Group A in its inventory and needs analysis**The Board holds that the separate and limited domestic water supply system inventories and needs assessments prepared by the County, do not comply with the requirements of RCW 36.70A.070(3)(a) and (b), and the Capital Facilities Element will be remanded with directions to bring the domestic water system inventories and needs assessments into compliance.**

The Board's review of the CFP in light of the requirements of RCW 36.70A.070(3)(c) and (d) indicated that generally, the County has noted the location of, though not mapped[31] in Part III:Figure Book, the needed new or expanded facilities and included a six-year financing plan for County-owned or operated:parks and recreation facilities; sanitary sewers; stormwater facilities; schools,[32] certain domestic water systems,[33] and transportation facilities.[34]Thus, the County has included, for facilities owned and operated by the County, the necessary locational and financing information.

However, the Board notes a concern with sanitary sewers.The County manages only five of the twelve

wastewater treatment facilities operating within the County.The County indicates that "[c]urrently, the county does not have any planned sewage treatment works in the south area that could provide service to the Port [of Bremerton industrial area] or to Gorst.The closest sewage treatment works are in Port Orchard, managed jointly by the City of Port Orchard and Sewer District #5; and in Bremerton, owned and operated by the City of Bremerton."CFP at 3-58.

Additionally, for facilities not owned or operated by Kitsap County the County indicates that the financing and locational information is described elsewhere.CFP 3-65.However, there is no indication of where "elsewhere" might be.Obviously, for cities within the County, the information would be available in the CFP of each city's comprehensive plan.But for tribes or private sewer districts, there is no GMA capital facility planning requirement.If the County designates a UGA that is to be served by such a provider, the County should at least cite, reference or otherwise indicate where any such locational or financing information may be found that supports the County's UGA designations and GMA duty to ensure that adequate public facilities will be available within the area during the twenty-year planning period.

The final component required in a Capital Facilities Element is "a requirement to reassess the Land Use Element if probable funding falls short of meeting existing needs and to ensure that the Land Use Element, capital faculties element, and financing plan within the capital facilities plan element are coordinated and consistent."RCW 36.70A.070(3)(e).Several parties[35] raised non-compliance with this provision as a shortcoming of the County's CFP.The Board has been unable to find, nor did the County indicate, where this requirement has been addressed.**Therefore, the Board holds that the County's CFP does not comply with RCW 36.70A.070(3)(e), since it has not included a commitment or implementation strategy to address this requirement.**

Internal Consistency:

The preamble to RCW 36.70A.070, which outlines the requirements for the mandatory elements of a comprehensive plan, provides in relevant part:"The plan shall be an internally consistent document and all elements shall be consistent with the future land use map."

As was discussed in Legal Issue No. 1, one of the fundamental premises of the Act is that UGAs are to be designated with sufficient land and densities to accommodate the urban area portion of the projected twenty years of countywide population growth.RCW 36.70A.110(2).In making these UGA determinations, counties must include all cities in a UGA and may include unincorporated areas within the UGA.As this Board has previously noted, "the county, as to the unincorporated portions of the UGA, and the cities, as to their respective portions of the UGA, have a duty to adopt comprehensive plans that accommodate growth over the twenty-year life of their plans, including the provisions of public facilities and services."*Hensley v. Woodinville*, CPSGMHB Case No. 96-3-0031, Final Decision and Order (February 25, 1997), at 8 (emphasis added).

This Board has also stated:"Designation of a . . . UGA means several things of relative certainty to citizens:the development of the land within it will be urban in nature; this urban land will ultimately be provided with adequate urban facilities and services within the planning horizon; the land will eventually be developed at urban densities and intensities. . ."*Johnson v. King County*, CPSGMHB Case No. 97-3-0002, Final Decision and Order (July 23, 1997), at 10 (emphasis added).

As is noted above, if a county has limited authority to locate and finance needed infrastructure because those aspects of capital facility decision-making rest with special districts, other jurisdictions (city, state

or federal governments) or private interests, then a county should be cautious and judicious in designating UGAs until assurances are obtained that ensure public facilities and services will be adequate and available.This is one of the rationales supporting the need for RCW 36.70A.070(3)(e).

In light of the inextricable linkage between the Land Use Element, including the UGA designation, and the Capital Facilities Element, it is imperative that theCapital Facilties Plan paints a clear picture of the infrastructure needed to support future growth and contain a firm commitment and strategy to meet those needs.This is essential to providing the certainty the UGA is designed to achieve.This certainty is tempered, however, by the requirement to reassess the Land Use Element, including the UGAs, if funding falls short of meeting existing needs or public facilities will be inadequate or unavailable during the planning period.

Since the Board has found that the Urban Growth Areas (Legal Issue 1), Land Use Element, Rural Element and land use map (Legal Issues 3-5), and portions of the Capital Facilities Element, noted above, do not comply with the requirements of the Act and they will consequently be remanded with direction to bring them into compliance,the Board need not specifically evaluate the Capital Facilities Element for internal consistency with other noncomplying elements of the Plan.However, to the extent that the Capital Facilities Element is consistent with noncomplying Plan elements or the land use map **the Board holds that the Capital Facilities Element is deemed to be internally inconsistent with other Plan elements and therefore not in compliance with the requirements of RCW 36.70A.070 preamble.**The Board will **remand** the Capital Facilities Element with direction to bring it into compliance with the internal consistency requirements of RCW 36.70A.070 and this Order.

Conclusion Nos. 13 and 16

Regarding the specific components required for a Capital Facilities Element, the Kitsap County's capital facility plan **complies** with the requirements of RCW 36.70A.070(3) except that:

- the water supply system inventories and needs assessments **do not comply** with RCW 36.70A.(3)(a) and (b)
- the capital facility plan element **does not comply** with RCW 36.70A.070(3)(e).

Regarding internal consistency of the capital facility plan with the other elements and the land use map, Kitsap County's capital facility plan is deemed to **not comply** with RCW 36.70A.070.

The Capital Facilities Element will therefore be **remanded** with direction to bring it into compliance with RCW 36.70A.070(3)(a)(b) and (e), as noted above; and to bring it into compliance with RCW 36.70A.070's direction to achieve internal consistency with the other Plan elements and the land use map as required by the act and this Order.

LEGAL ISSUE NOS. 14 AND 16

[Issue 14]Does the TransportationElement of the Plan fail to comply with the requirements of RCW 36. 70A.070(6)?
[Issue 16]Is the Plan internally consistent (between and among the various Plan elements) and therefore in violation of RCW 36.70A.070? (Preamble)

Discussion

The County's TransportationElement is found in: Part I: Land Use Plan, Chapter 8; Part I: Land Use Plan, Transportation Appendix; Part II: Capital Facilities Plan, at 3-138, and Part III: Figure

Book.Chapter 8 addresses Transportation Goals and Policies.The Transportation Appendix includes sections on: I. Transportation Inventory (A-1);II. Land Use and Transportation (A-12);Transportation Needs and Deficiencies (A-36);IV. Transportation System Improvements (A-64); and V. Financing and Implementation of the Transportation Element (A-79).The Capital Facilities Element includes an County Road Inventory, LOS standards, a listing of road projects and a six-year financing scheme.The Figure Book includes several maps depicting congested roadway links and location of transportation projects.In brief review, it appears that the County has done extensive work on its TransportationElement.However, several Petitioners[36] challenged the Plan's TransportationElement as failing to comply with the Act.

Every comprehensive plan of a county or a city required to plan under RCW 36.70A.040 must contain the six "mandatory" elements listed in RCW 36.70A.070.RCW 36.70A.070(6) details the requirements for the TransportationElement, many of the components were noted in the narrative listing above.
The Board's analysis of the TransportationElement begins with the first sentence of RCW 36.70A.070(6) which requires: "A TransportationElement that implements, and is consistent with, the Land Use Element."This internal consistency requirement is repeated in the preamble of RCW 36.70A.070, which outlines the requirements for the mandatory elements of a comprehensive plan.The preamble of .070 provides in relevant part: "The plan shall be an internally consistent document and all elements shall be consistent with the future land use map."
We have already discussed the inextricable linkage between the Land Use Element, including the UGA designation, and the Capital Facilities Element, in Legal Issue No. 13.RCW 36.70A.070 (6) emphasizes an additional critical link in this chain - the TransportationElement.
Since the Board has found that the Urban Growth Areas (Legal Issue No. 1), Land Use Element, Rural Element and land use map (Legal Issue No. 3-5), and portions of the Capital Facilities Element (Legal Issue 13), do not comply with the requirements of the Act, and they will consequently be remanded with direction to bring them into compliance, the Board will not specifically evaluate the TransportationElement for compliance or internal consistency with other noncomplying elements of the Plan.However, to the extent that the TransportationElement is consistent with noncomplying Plan elements or the land use map **the Board holds that the TransportationElement is deemed to be interrnally inconsistent with other Plan elements and therefore not in compliance with the requirements of RCW 36.70A.070 preamble and (6).**The board will **remand** the TransportationElement with direction to bring it into compliance with the internal consistency requirements of RCW 36.70A.070 and this Order.

Conclusions Nos. 14 and 16

Regarding the internal consistency of the TransportationElement with the other Plan elements and the land use map, Kitsap County's TransportationElement is deemed to **not comply** with RCW 36.70A.070 (preamble) and (6).The TransportationElement will therefore be **remanded** with direction to bring it into compliance with RCW 36.70A.070's direction to achieve internal consistency with the other Plan elements and the land use map as required by the Act and this Order.

LEGAL ISSUE NO. 15

Is the Plan inconsistent with the Kitsap County-wide Planning Policies (KCCPs), and therefore in violation of RCW 36.70A.210?

Discussion

Port Gamble generally alleges that the land capacity analysis is not consistent with the methodology set forth in the CPPs.Port Gamble PHB, at 19.Since the Board found the UGAs not in compliance with the Act in Legal Issue No. 1, the Board need not address Port Gamble's issue here.

Petitioner Ross asserts that "the Plan does not contain a forecast of population for the succeeding twenty-year period.Therefore, the Plan is not consistent with County-wide Planning Policy (KCCP) 1(j) . . . which states:Sufficient areas must be included in the urban growth areas to accommodate a minimum 20-year population forecast."Ross PHB, at 5.

The Plan uses an increase in population of 86,624, yielding a total population for Kitsap County of 292,224 in the year 2012.This population forecast is well within the *range* forecast (low = 271,982 -- high = 317,654) prepared by the OFM in 1995.[37]However, Petitioner Ross' concern seems to be that the planning period ends in 2012, which is not a *minimum* twenty-year period for a 1996 Plan.Petitioner misunderstands the provisions of the Act.

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

> Based upon the growth management population projection made for the county by the office of financial management, the urban growth areas in the county shall include areas and densities sufficient to permit the urban growth that is projected [by OFM] to occur in the county for the succeeding twenty- year period.(Emphasis added.)

The County is required to use the twenty-year population projections made by OFM.The OFM population forecasts used by the County end in year 2012; the projection period was 1992 -- 2012.[38]The statutory direction to OFM for doing GMA population projections is found at RCW 43.62.035, which provides in relevant part:

> **At least once every ten years** the office of financial management shall prepare twenty-year growth management planning population projections required by RCW 36.70A.110 for each county that adopts a comprehensive plan under RCW 36.70A.040 and shall review these projections with such counties and the cities in those counties before final adoption.The county and its cities may provide to the office such information as they deem relevant to the office's projection, and the office shall consider and comment on such information before adoption.Each projection shall be expressed as a reasonable range developed within the standard state high and low projection.The middle range shall represent the office's estimate of the most likely population projection for the county.If any city or county believes that a projection will not accurately reflect actual population growth in a county, it may petition the office to revise the projection accordingly.The office shall complete the first set of ranges for every county by December 31, 1995.
>
> A comprehensive plan adopted or amended before December 31, 1995, shall not be considered to be in noncompliance with the twenty-year growth management planning population projection if the projection used in the comprehensive plan is in compliance with the range later adopted under this section.(Emphasis supplied.)

As noted above, the population projection used by the County falls within the range projection done by OFM for Kitsap County.More importantly, RCW 43.62.035 clarifies that OFM is only required to prepare the twenty-year projections required by RCW 36.70A.110(2) "[a]t least once every ten years."Therefore, the "minimum 20-year population forecast" referred to in KCCP 1(j)[39] refers to the required (and only) OFM population projection available which only extends to the year 2012.**The Board holds that the twenty-year OFM population projection used by Kitsap County in its Plan (292,224 in 2012) is consistent with KCCP 1(j) and RCW 36.70A.110(2) and does not violate RCW 36.70A.210.**

Conclusion No. 15

The twenty-year OFM population projection used by the County in its Plan is consistent with KCCP 1(j) and complies with RCW 36.70A.110(2) and .210.

LEGAL ISSUE NO. 16

Is the Plan internally consistent (between and among the various Plan elements) and therefore in violation of RCW 36.70A.070?

Discussion and Conclusion No. 16

The Board has addressed the question of internal consistency in its discussion of the challenges to the various Plan elements.*See* Legal Issues No. 13 and 14.Therefore this issue will not be addressed separately here.

LEGAL ISSUE NO. 17

Is the Plan internally consistent and has it failed to be guided by the goals of RCW 36.70A.020?

Discussion

Those parties[40] that specifically addressed Legal Issue No. 17 in their briefs referenced their arguments made on other legal issues where specific goals were discussed or argued.Likewise, where necessary, the Board addressed the consistency of various goals in its discussion of other legal issues.Therefore the Board will not further address them here.

Conclusion No. 17

The parties offered no specific argument under this Legal Issue, but merely referenced arguments made on other legal issues.The Board has addressed internal consistency and consistency with various goals in other parts of this decision and will not address them here.

LEGAL ISSUE NO. 18

Did the County fail to provide enhanced public participation as required by RCW 36.70A.140, .280(2)(b) and WAC 365-190-040(2)?

Discussion

Several parties[41] argued that the County failed to provide for enhanced public participation during the adoption of the December 23, 1997 Comprehensive Plan or otherwise ignored recommendations of the County's Growth Management Advisory Committee.The Board notes that the County Commissioner's letter to the County Prosecutor provided the following direction:"4. The County will not provide briefing or argument on the issue of whether or not the changes made on December 23, 1996 to the proposed comprehensive plan by the previous Board of County Commissioners meet the legal requirements for public notice."Finding of Fact 18.

In addressing other legal issues, the Board has found portions of the Plan not in compliance with the GMA.Consequently, it will be necessary to remand the Plan and direct the County to take the necessary actions to achieve compliance.The remand process will involve additional enhanced public participation as required by RCW 36.70A.140.Additionally, the Board acknowledges that the legislature's recent amendments to Chapter 36.70A RCW added a new section[42] clarifying the notice requirements for Plan amendments and revisions.These new provisions will apply to the County's actions on remand.The

County will have another opportunity to provide enhanced public participation for its citizens.Therefore, the Board need not address Legal Issue 18.

Conclusion

Having found the County's Plan not in compliance with the Act on other legal issues, which will lead to a remand, the Board need not address Legal Issue No. 18.

LEGAL ISSUE NO. 19

Has the County failed to protect the environment, as directed in RCW 36.70A.140, RCW 36.70A.020(11), and WAC 365-190-040(2)?

Discussion

This issue was briefed by two Petitioners.[43] In essence, the noted Petitioners argue that since the UGA is too big, the County has failed to protect the environment (*See* Legal Issue No. 1) and that the County has not adopted development regulations as directed by the Board's 1995 FDO (*see* Legal Issue No. 21).Since these issues are addressed elsewhere, the Board will not and need not address Legal Issue 19.

Conclusion No. 19

Having addressed this Legal Issue elsewhere, the Board will not address it here.

LEGAL ISSUE NO. 20

Should the Plan be held invalid and/or should the existing order of invalidity remain in effect?

Discussion and Conclusion No. 20

The question of invalidity is addressed in Section VII - Determination of Invalidity, of this Final Decision and Order.

LEGAL ISSUE NO. 21

Has the County failed to comply with the direction in the FDO to adopt implementing development regulations?

Discussion and Conclusion No. 21

The question of adopting development regulations is squarely addressed in Legal Issue No. 10 (critical areas) and Legal Issue No. 11 (development regulations).Therefore it is not repeated here.

VII. DETERMINATION OF INVALIDITY

The Board may impose invalidity on a comprehensive plan and its development regulations if the final order 1) includes a determination supported by findings of fact and conclusions of law that the continued validity of the Plan or regulation would substantially interfere with the fulfillment of the goals of the GMA, and 2) specifies the particular part or parts of the Plan or regulation that are determined to be invalid and the reasons for their invalidity. RCW 36.70A.300(2)(a) and (b).[44]

The Board **rescinds** the previous determination of invalidity of the County's entire 1994 Comprehensive Plan.However, having reviewed the 1996 Plan, exhibits, and record in this case, and considered the arguments of the parties and participants, the Board entersa more limited **Determination of Invalidity** regarding the Land Use Element, including the UGAs and land use map, and the Rural Element, including rural residential densities, the "Grandfathering Clause" and the "Rural Infill" provisions, as adopted by Ordinance 203-1996.

REASONS FOR INVALIDITY

As revealed by the Board's general discussion in Part V and its discussion of specific legal issues in Part VI of this Order,significant elements of the County's 1996 Plan do not comply with the requirements of the Act and fail to be guided by its goals.The cumulative impact of the noncomplying provisions of the Land Use Element and the Rural Element is substantial interference with the fulfillment of the GMA's goals.In particular, interfere with Planning Goals 1 and 2, which are discussed below.

Planning Goals 1 and 2

RCW 36.70A.020(1) encourages development in urban areas where adequate public facilities and services exist or can be provided in an efficient manner.RCW 36.70A.020(2) seeks a reduction in the inappropriate conversion of undeveloped land into sprawling, low-density development.

As the Board's discussion regarding the sizing of the UGAs indicates, the Land Use Element and map are defective since the UGA analysis and designations artificially inflate the amount of land needed to serve the projected population.

In the Rural Element, outside the designated UGAs, the Plan permits 2.5-acre zoning and 1 acre zoning in the rural low-density and rural medium-density areas.In addition, the Rural Infill and Grandfathering Clause add additional excess capacity to the rural area.These Land Use and Rural Element provisions perpetuate a pattern of urban growth in the area and cumulatively direct a disproportionate share of the County's projected growth away from UGAs.

These flaws increase the inappropriate conversion of undeveloped land into sprawling, low-density development, and rather than reducing it, fail to encourage development in urban areas.

Therefore, the Land Use Element, including the UGAs, land use map, and the Grandfathering Clause, and the Rural Element substantially interfere with Goal 1 and 2 of the GMA.

Conclusions of Law

During the period of remand (*see* below), the continued validity of the Land Use Element, including the UGAs, the land use map, and Rural Element of the Kitsap County Comprehensive Plan adopted by Ordinance 203-1996 on December 23, 1996 will substantially interfere with the fulfillment of Planning Goals 1 and 2 found at RCW 36.70A.020.Therefore, having found that the Land Use Element, including UGAs and land use map, the Grandfathering clause, and the Rural Element, including rural residential densities, the "Grandfathering Clause" and "Rural Infill" provisions, do not comply with the requirements of RCW 36.70A.020, .070 (preamble), 070(1), .070(5) and .110; **the Board concludes and determines that the 1996 Kitsap County Plan's Land Use Element -- including UGAs, the land use map and the "Grandfathering Clause"-- and Rural Element -- including rural residential designations and the "Rural Infill" provisions -- are Invalid.**

VIII. *PORT GAMBLE*

The Board has found that significant elements of the County's Plan substantially interfere with the fulfillment of the goals of the Act, and above entered a determination of invalidity as to the Land Use and Rural Elements.Further, the Capital Facilities Element and TransportationElement of the Plan have been found in noncompliance with the GMA and have been remanded, together with the balance of the Plan.Because several key elements of the Plan have been found in noncompliance; two significant elements have been determined invalid; and the entire Plan remanded; the issues raised in the petitions for review filed in *Port Gamble* are now moot.Those petitions for review, and *Port Gamble* case, will be **dismissed with prejudice**.

IX. ORDER

The Board, having reviewed its Final Decision and Order in the *Bremerton* case, and the files in the coordinated *Bremerton* and *Port Gamble* cases, having reviewed the above-referenced documents and attached exhibits, and having considered the arguments of the parties and participants, concludes that, as

described below, the County **has not complied** with the Board's Final Decision and Order in the *Bremerton* case and the requirements of the GMA.The Board remands the entire Plan adopted by Ordinance 203-1996 to the County.Therefore, the Board takes the following actions:

·The Board **rescinds** the determination of invalidity on Kitsap County's entire Plan;

·The Board **withdraws** its recommendation of **contingent sanctions** earlier forwarded to the Governor;

·The Board issues the following Order:

1.The Board issues a **Determination of Invalidity** as to the Rural and Land Use Elements, including the UGAs and land use map of the Plan, rural residential densities, the "Grandfathering Clause" and "Rural Infill" provisions.As a condition precedent to being **determined invalid** these elements have been determined to be **not in compliance** with the requirements of RCW 36.70A.020, RCW 36.70A.070(1) and (5), and RCW 36.70A.110.These elements are **remanded** with instructions to the County to adopt new Rural and Land Use Elements, including UGAs, land use map, and drainage, flooding, and stormwarter runoff provisions, that comply with the goals and requirements of the Act, as set forth and decided in this Order.

2.The Board finds the Capital Facilities Element of the Plan **does not comply** with the internal consistency requirements of RCW 36.70A.070 (preamble).Further, the Capital Facilities Element **does not comply** with the requirements of RCW 36.70A.070(3)(e); and the water systems portion of the Element **does not comply** with the requirements of 36.70A.070(3)(a) and (b).The Board further finds that the TransportationElement does not comply with the internal consistency requirements of RCW 36.70A.070(preamble) and (6).These elements are **remanded** with instructions to the County to bring the Capital Facilities Elements and Transportation Element into compliance with the requirements of the GMA, as set forth and decided in this Order.

3.The entire Plan is **remanded** with instructions to the County to review and revise all Plan elements, as is necessary to achieve compliance with RCW 36.70A.070 (preamble).This action is necessary to assure that, once the invalid and noncomplying portions of the Plan (Items 1 and 2 above) are brought into compliance, the balance of the Plan is internally consistent with the revised elements and consistent with the revised future land use map.

4.The County is instructed to fully comply with RCW 36.70A.060 by adopting permanent regulations to protect its critical areas when it adopts its revised Plan.

5.The County is instructed to re-adopt its interim development regulations as is necessary until the ultimate adoption of a GMA-compliant Plan and simultaneous adoption of implementing development regulations.

6.By **Friday, January 9, 1998**, the County is instructed to submit to the Board, with a copy to all parties and participants in the *Bremerton* and *Port Gamble* cases, a Compliance Status Report describing actions that the County has taken to comply with the requirements of the GMA, as set forth and decided in this Final Decision and Order.

7.The County is **Ordered** to bring its comprehensive plan into compliance with the GMA, as set forth and decided in this Order, by no later than **4:00 p.m.** on **Friday, April 3, 1998.**[45]By no later than **4:00 p.m.** on **Friday, April 17, 1998**, the County shall submit four copies to the Board, with a copy to all parties and participants in the *Bremerton* case and to all parties in the *Port Gamble* case, a "Statement of Actions Taken to Comply with the Board's September 8, 1997 Order."Attached to each of the Board copies shall be a copy of the Plan and implementing development regulations adopted in response to this Order.

8.The PFRs filed in the *Port Gamble* case, as well as the case itself, are now moot and are **dismissed with prejudice.**

The Board will report its Finding of Noncompliance and Determination of Invalidity to the Governor; however, it will recommend that the contingent sanctions that were previously recommended by the Board **not** be imposed at this time.The Board will forward periodic reports to the Governor's office, beginning with the receipt in January of the County's Compliance Status Report.
So ORDERED this 8th day of September, 1997
CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

_____
Edward G. McGuire, AICP
Board Member

_____
Joseph W. Tovar, AICP
Board Member

_____
Chris Smith Towne
Board Member

[1] Section 22 enables a county or city subject to an order of invalidity [such as Kitsap County] to request, by motion, that the board review the order of invalidity in light of changes in the law made by ESB 6094.However, Kitsap County did not avail itself of this opportunity.

[2] The Board takes notice of the legislature's clear intent that the Boards defer to city and county decisionmakers in how they plan for growth and how they implement those plans, so long as the adopted plans and implementing regulations comply with, and are consistent with, the goals and requirements of Chapter 36.70A RCW.

[3] The Board notes that any actions taken by a local government after July 27, 1997, including actions taken to comply with a Board remand order, will be subject to the provisions of ESB 6094.Likewise, the Board's compliance review of the remand action will be subject to ESB 6094.

[4] Land Use Plan, at A-30 (citing a publication by the Puget Sound Regional Council, *Population and Employment Forecast for the Puget Sound Region, August 1995*).

[5] OFM's range forecast was 271,982 (low) to 317,654 (high).The County used 292,224, well within the OFM ranges, for an increase of 86,624 people by 2012.Land Use Plan, at 14.Per the County's County-wide Planning Policies, two-thirds if the increase (67,551) was slated for urban areas; of this amount, 36,953 was allocated to cities, including the unincorporated Poulsbo UGA.Therefore, the remainder (30,598 people) is intended to be accommodated in unincorporated UGAs.Land Use Plan, at A-28-30 and Table A-PE-9.

[6] See footnote 11.

[7] Vested projects and lands designated Urban Restricted were tabulated separately from vacant and underutilized land.Vested projects were tabulated at their approved densities before adding their land areato the available lands totals; Urban Restricted lands were tabulated with a 50 percent discount before adding to the available lands totals.Land Use Plan, at A-32.

[8] The Urban Restricted designation includes lands that the County has determined are characterized by environmentally critical areas.Maximum densities allowed in this designation range from 1-5 du/acre.

[9] This figure is derived by adding the gross acres in Table A-PE-12 on page A-36 of the Land Use Plan.

[10] 13,101 gross acres are in the UGAs, while 3,825 residential acres are needed to accommodate the 2012 growth.

[11] Figure Book, at M-19 and M-20, includes UGA maps but they do not illustrate discrete UGA boundaries.

[12] Although no specific subsection of RCW 36.70A.070 is cited in this legal issue, the context of the issue and the briefing make clear that the focus is subsection (5).

[13] The Board takes official notice of ESB 6094, adopted by the legislature in 1997.While ESB 6094 does not control the outcome of the cases presently before the Board, subsequent revisions to a plan after July 27, 1997, will be subject to itsprocedural and substantive requirements.Nevertheless, to the extent that portions of ESB 6094, such as Sec. 7 dealing with the rural element, can provide clarification of legislative intent, it is useful and instructive to so note.

[14] The planning goals cited in Legal Issue No. 3 are set forth at RCW 36.70A.020:

> (1) Urban growth.Encourage development in urban areas where adequate public facilities and services exist or can be provided in an efficient manner.
> (2) Reduce sprawl.Reduce the inappropriate conversion of undeveloped land into sprawling, low-density development.
> (3) Transportation.Encourage efficient multimodal transportation systems that are based on regional priorities and coordinated with county and city comprehensive plans.
> (4) Housing.Encourage the availability of affordable housing to all economic segments of the population of this state, promote a variety of residential densities and housing types, and encourage preservation of existing housing stock.
> (5) Economic development.Encourage economic development throughout the state that is consistent with adopted comprehensive plans, promote economic opportunity for all citizens of this state, especially for unemployed and for disadvantaged persons, and encourage growth in areas experiencing insufficient economic growth, all within the capacities of the state's natural resources, public services, and public facilities.
> (7) Permits.Applications for both state and local government permits should be processed in a timely and fair manner to ensure predictability.
> (8) Natural resource industries.Maintain and enhance natural resource-based industries, including productive timber, agricultural, and fisheries industries.Encourage the conservation of productive forest lands and productive agricultural lands, and discourage incompatible uses.
> (9) Open space and recreation.Encourage the retention of open space and development of recreational opportunities, conserve fish and wildlife habitat, increase access to natural resource lands and water, and develop parks.
> (10) Environment.Protect the environment and enhance the state's high quality of life, including air and water quality, and the availability of water.
> (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.

[15] The Central Puget Sound Region consists of King, Pierce, Snohomish and Kitsap Counties.RCW 36.70A.250(1)(b).

[16] A chronological summary of major conclusions and holdings from these county cases follows:

In *Association of Rural Residents v. Kitsap County [**Rural Residents**]*, CPSGMHB Case No. 93-3-0010 , Final Decision and Order (June 3, 1994), the Board stated:

> RCW 36.70A.110(1) uses the somewhat equivocal word "encouraged" with respect to what is to happen inside the designated urban growth area.Significantly, however, it says something very different with regard to the land outside the urban growth area.The phrase "outside of which growth can occur only if it is not urban in nature" (emphasis added) is not equivocal.It does not say "reduce" or "discourage" urban growth outside the UGA.The use of the word "only" clearly means that urban growth is **prohibited** outside of the UGA.*Rural Residents*, at 20.Bold emphasis in original. Underlined and Bold emphasis in original

In *Kitsap Citizens for Rural Preservation, et al., v. Kitsap County [**Kitsap Citizens**]*, CPSGMHB Case No. 94-3-0005 , Final Decision and Order (October 25, 1994), the Board stated:

> The Board can conceive of a well designed **compact rural development** containing a small number of homes that would not look urban in character, not require urban governmental services, nor have undue growth-inducing or adverse environmental impacts on surrounding properties.Such a rural development proposal could constitute "compact rural development" rather than urban growth.However, the CEO [Conservation Easement Ordinance] does not have parameters to prevent development projects that constitute urban growth from occurring.For example, there is no upper limit on the acreage or unit count that theCEO would permit in rural areas, nor are there any parameters regarding the configuration, servicing or location of such development. . . .While no clear breakpoint is evident from the information presently before the Board, it is only logical that, at some point along the continuum of potential project size and intensity, the *quantitative* dimension of clustered development in a rural area must have *qualitative* urban growth consequences.*Kitsap Citizens*, at 15 (italicized emphasis in original, bold emphasis added).

In *City of Bremerton, at al., v. Kitsap County [**Bremerton**]*, CPSGMHB Case No. 95-3-0039 , Final Decision and Order (October 9, 1995), the Board stated:

> The regional physical form [in the Central Puget Sound Region] required by the Act is a compact urban landscape, well designed and well furnished with amenities, encompassed by natural resource lands and a rural landscape.*Bremerton*, at 29 (footnote omitted).
>
> A **pattern** of 1 and 2.5-acre lots is an **urban land use pattern** that constitutes sprawl, both inside and outside a UGA.*Bremerton*, at 49.
>
> Permitting new residences on designated mineral resource lands at densities of 1 dwelling unit per 2.5 acres or less is fundamentally incompatible with the use of that land for mineral resource purposes.*Bremerton*, at 73.
>
> [T]he net intensity of physical improvements placed on rural land can, alone, be conclusive in determining if growth proposed for a rural area can be permitted or if it crosses the threshold into impermissible urban growth.Dimensions of development intensity traditionally include building height, setbacks, parking requirements, impervious surface coverage, the degree of grading and its consequent removal of existing vegetation.*Bremerton*, at 50-51 (bold emphasis added).

In *Vashon-Maury, et al., v. King County [**Vashon-Maury**]*, CPSGMHB Case No. 95-3-0008 , Final Decision and Order (October 23, 1995), the Board stated:

> In determining if a proposed use is permitted in a rural area, the words "such lands" in RCW 36.70A.070(5) refers not to the individual parcel, but to the ***land use pattern*** in the immediate vicinity.*Vashon-Maury*, at 68 (italicized emphasis in original, bold emphasis added).
>
> "Rural character" has both a functional and a visual component.As a general rule, uses that meet the definition of urban growth will be prohibited in the rural area unless: (1) the use is dependent upon being in a rural area and is compatible with the functional and visual character of rural uses in the immediate vicinity; OR (2) the use is an essential public facility.*Vashon-Maury*, at 68.
>
> Smaller [than 10 acres] lots in the rural area will be scrutinized to assure that, **as a pattern**, they do not constitute urban growth; do not unduly threaten large scale natural resource lands or critical areas; will not thwart the long term flexibility to expand the UGA; and are not otherwise inconsistent with the goals and requirements of the Act.*Vashon-Maury*, at 79 (bold emphasis added).

In *City of Gig Harbor, et al., v. Pierce County [**Gig Harbor**]*, CPSGMHB Case No. 95-3-0016 , Final Decision and Order (October 31, 1995), the Board stated:

> If a County wishes to use a 5-acre lot size abutting the UGA line as, in effect, an urban reserve, it must include provisions to assure that such lots will not be divided or developed to impermissibly constitute urban growth in the rural area, and include provisions to assure that, if and when included in the UGA, such parcels could be developed at a truly urban density.*Gig Harbor*, at 58.

In *Concerned Citizens for Sky Valley, et al., v. Snohomish County [**Sky Valley**]*, CPSGMHB Case No. 95-3-0068c , Final Decision and Order (March 12, 1996), the Board stated:

> A rural residential **land use pattern** of lots smaller than 5 acres must be eliminated or, in the alternative, provisions of the Plan modified, so that the number, configuration and location of such lots do not constitute urban growth.Future clustered development in the rural area must be configured and served to constitute compact rural development rather than urban growth.*Sky Valley*, at 48 (bold emphasis added).

In *Peninsula Neighborhood Association v. Pierce County [**Peninsula Neighborhood Association II**]*, CPSGMHB Case No. 95-3-0071 , Final Decision and Order (March 20, 1996), the Board stated that:

> Pierce County failed to demonstrate how rural shoreline densities of 2.4 to 3.5 dwelling units per acre constitute permissible exceptions to the general rule that urban growth is prohibited in rural areas, or how such a **pattern** of land use constitutes permissible compact rural development.*Peninsula Neighborhood Association II*, at 17.
>
> The historical discretion of counties to craft nonconforming use provisions has been limited by the GMA, particularly with regard to areas outside of the UGA.In a rural area, the expansion or enlargement of uses that constitute urban growth would itself constitute new urban growth outside the UGA, and is therefore prohibited.*Peninsula Neighborhood Association II*, at 27 (emphasis added).

[17] In 1994, the definition provided by RCW 36.70A.030(14) was:

> "Urban growth" refers to growth that makes intensive use of land for the location of buildings, structures, and impermeable surfaces to such a degree as to be incompatible with the primary use of such land for the production of

food, other agricultural products, or fiber, or the extraction of mineral resources.When allowed to spread over wide areas, urban growth typically requires urban governmental services."Characterized by urban growth" refers to land having urban growth located on it, or to land located in relationship to an area with urban growth on it as to be appropriate for urban growth.

[18] The Board previously held that Kitsap's land use pattern of 1 and 2.5-acre lots are urban.*Bremerton*, at 49.The 7,500 square foot lot size (about 5.8 units per acre) is even more clearly an urban density.Significantly, the County's pre-1977 rural lot size policy of 5.8 units per acre exceeded that of its most dense city, Bremerton, which currently has an average density of 5.19 units per acre.Land Use Plan, at A-30.

[19] State, 1000 Friends, Council I, Suquamish, Adams, Hayes, URBPA, Bremerton and Port Gamble.

[20] Goal 11 was not argued, and will not be considered further in this Order.

[21] Union River charges that the County is "putting the cart of land use before the horse of capital facilities planning, and both cart and horse before the preparation of the path of resource delineation and critical areas designation and protection."

[22] None of the parties or participants briefed the "and agricultural lands" portion of these legal issues.Therefore, the Board deems this portion of the legal issues to be **abandoned** and the portions that addresses agricultural lands are **dismissed with prejudice.**

[23] These were the only parties to prepare any briefing specifically on this issue.

[24] State Environmental Policy Act , Chapter 43.21C RCW, and the SEPA Rules, Chapter 197-11 WAC.

[25] The Board has interpreted RCW 36.70A.070(3)(c) as if the phrase "owned or operated by the city or county" existed at the end. This interpretation is required by necessary implication.To hold otherwise would require a county government, as the regional planning entity within a county, to conduct capital planning for all public facilities regardless of ownership.Thus, all capital facilities within a county's boundaries would be integrated into a single capital facility plan.Unlike a major city which is likely the sole provider of public services within its boundaries, counties often do not own or operate all the facilities which provide the public services within its boundaries.To require a county to assume this capital facilities planning responsibility is impractical.The county may be unable to incur the expense of additional administration, it may lack expertise to conduct effective administration, special districts may either not cooperate, or they may not share the necessary relevant information because they deem it to be proprietary.
A more appropriate reading of the current requirements of section .070(3) is that after the initial inventory and forecast requirements of section .070(3)(a) and (b) are completed, the Act permits a county to choose to shift some of the facility components that it has inventoried to other categories within the overall mandatory elements of section .070 if there is adequate supporting rational.Clear identification of components within another section, as in the case of the transportation elements, is adequate rationale.Compare "streets" and "roads" in .030(12) with the transportation element .070(6).And, under the current version of the Act, lack of ownership is also adequate rationale. *See Sky Valley*, at 67.

[26] Generally, if impact fees are authorized by a jurisdiction for roads, parks, schools or fire facilities, revenues can be expended only on capital projects identified within an adopted county or city GMA capital facility plan element. *See* Chapter 83.02 RCW:

[27] The GMA requirements for the Transportationelement are the issue in Legal Issue No. 14.

[28] CFP at 3-168 and 3-169.

[29] To reach these figures the 2012 population allocations for each of the 18 systems (Tables WF-3 to WF-20, page 3-179 to 3-183, CFP) were added.

[30] To reach these figures the 2012 population allocation for the 9 systems (Table A-UT-5, page A-207, Utilities Appendix) were added.

[31] The maps in the Figure Book assist in understanding some of the descriptive text in the Plan.Additional maps could illustrate text analysis.

[32] Each of the four school districts (North, Central and South Kitsap and Bremerton) that have facilities in the unincorporated County have apparently provided their six-year financing plan to the County for incorporation into the County's CFP.CFP, 3-91.

[33] The Board has held that the water system inventory and needs assessment provisions of thePlan do not comply with the Act.However, the County did include a capital projects summary for 16 water systems (3 had no projects planned) and a financing summary for six of the systems with project planned.CFP, 3-184 to 3-192.

[34] The transportation plan is the focus of Legal Issue 14 *infra*.

[35] Council I, Suquamish Tribe and Martin P. Hayes.

[36] Council I, Adams, Union River Basin Protection Association /Association to Protect Anderson Creek, and Ross.

[37]: Land Use Plan, at 14.

[38] The range forecast prepared by OFM in 1995 was also for the year 2012.

[39] The Kitsap County-wide Planning Policies were originally adopted in 1992.

[40] Suquamish Tribe, Adams, Martin P. Hayes and URBPA/APAC.

[41] Council I, Grow Smart and URBPA/APAC.

[42] Section 9 of ESB 6094, Chapter 429, Laws of 1997.

[43] Suquamish Tribe and URBPA/APAC.

[44]Although ESB 6094 amended RCW 36.70A.300, it did not alter the requirements and provisions for determining invalidity.

[45] If the County chooses, it may prepare and submit, for the Board's consideration, a proposed Compliance Schedule to outline actions to be taken by the County between the date of this Order and the **April 3, 1998** compliance date.

6

Vashon-Maury, et al., and Union Hill Water Association, Intervenor,

v.

King County *and* Port Blakely Tree Farms, et al.,

Intervenors

1995 WL 903209 (Wash.Central.Puget.Sd.Growth.Mgmt.Hrgs.Bd.)

Central Puget Sound Growth Management Hearings Board
State of Washington

VASHON-MAURY, ET AL., PETITIONERS
AND UNION HILL WATER ASSOCIATION, INTERVENOR
v.
KING COUNTY, RESPONDENT
AND PORT BLAKELY TREE FARMS, ET AL., INTERVENORS

Consolidated Case No. **95-3-0008**

October 23, 1995

Additions are indicated by <<+ Text +>>; deletions by <<- Text ->>.

FINAL DECISION AND ORDER

TABLE OF CONTENTS

I. PROCEDURAL HISTORY
II. RULINGS ON MOTIONS AND OBJECTIONS
III. FINDINGS OF FACT
A. GENERAL FINDINGS OF FACT
1. 1995 LEGISLATIVE ACTION
2. PLAN ORDINANCES
3. IMPLEMENTING REGULATIONS ORDINANCES
a)Specific Implementing Regulations Ordinance Provisions
b)Public Involvement
B. SPECIFIC FINDINGS OF FACT
IV. DISCUSSION OF SPECIFIC LEGAL ISSUES AND CONCLUSIONS
A. URBAN GROWTH AREA ISSUES
1. OFM POPULATION PROJECTIONS
UGA Conclusion No. 1
2. USE OF TECHNICAL APPENDIX D
UGA Conclusion No. 2
3. CONVERSION TO NET NEW HOUSEHOLDS
UGA Conclusion No. 3
4. MARKET FACTOR
UGA Conclusion No. 4
POLICY U-210 AND UGA DESIGNATIONS GENERALLY
5. EAST SAMMAMISH PLATEAU
UGA Conclusion No. 5
6. RURAL CITIES
UGA Conclusion No. 6
7. BEAR CREEK PLANNED DEVELOPMENTS

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

5. VASHON-MAURY LEGAL ISSUE NO. 5
Vashon-Maury Discussion and Conclusion No. 5
G. O'FARRELL I LEGAL ISSUES
1. O'FARRELL I LEGAL ISSUE NO. 1
2. O'FARRELL I LEGAL ISSUE NO. 2
Discussion
O'Farrell I Conclusion No. 1 and 2
3. FOTL IV LEGAL ISSUE NO. 5
FOTL IV Discussion and Conclusion No. 5
H. OTHER KEESLING LEGAL ISSUES
1. KEESLING LEGAL ISSUE NO. 1
Discussion
Keesling Conclusion No. 1
2. KEESLING LEGAL ISSUE NO. 2
Discussion
Keesling Conclusion No. 2
3. KEESLING LEGAL ISSUE NO. 3
Discussion
Keesling Conclusion No. 3
4. KEESLING LEGAL ISSUE NO. 4
Discussion
Keesling Conclusion No. 4
5. KEESLING LEGAL ISSUE NO. 5
Discussion
Keesling Conclusion No. 5
6. KEESLING LEGAL ISSUE NO. 6
Discussion
Keesling Conclusion No. 6
7. KEESLING LEGAL ISSUE NO. 7
Discussion
Keesling Conclusion No. 7
8. KEESLING LEGAL ISSUE NO. 8
Discussion
Keesling Conclusion No. 8
9. KEESLING LEGAL ISSUE NO. 9
Discussion
Keesling Conclusion No. 9
10. KEESLING LEGAL ISSUE NO. 11
Discussion
Keesling Conclusion No. 11
11. KEESLING LEGAL ISSUE NO. 12
Discussion
Keesling Conclusion No. 12
12. KEESLING LEGAL ISSUE NO. 15
Discussion
Keesling Conclusion No. 15

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

Regional Library, at which time a hearing was held on the motions to intervene. All motions to intervene were orally granted by the presiding officer, while Snoqualmie's motion for amicus was denied. Subsequently, Snoqualmie presented a motion for intervention, which was orally granted. The legal issues in the case were reviewed and a schedule for briefing and the filing of exhibits and motions was discussed.

On March 1, 1995, the Board entered a "Continuation of Prehearing Conference" attached to which was a "Notice of Withdrawal" of Board member Chris Smith Towne from the Keesling Case. On this same date, the Board received a letter from the County which identified the final ordinance numbers for amendments to the County's zoning map and comprehensive plan. The prehearing conference continued telephonically on March 3, 1995 and was concluded on that date.

On March 6, 1995, the Board entered a "Prehearing Order and Order Granting Enlarged Intervention to Port Blakely Tree Farms and Quadrant Corporation, and Granting Intervention to King County Schools Coalition, Preston Industrial Associates, City of Snoqualmie and Union Hill Water Association" (the **Prehearing Order**). The Prehearing Order set forth the legal issues in this consolidated case, identified which intervenors would be permitted to address which legal issues and established a schedule for the submittal of additional motions to intervene, preliminary and optional stipulated exhibit lists, motions to supplement the record, exhibits and briefs. The Prehearing Order also clarified the mechanics and conditions under which Board Member Towne's withdrawal could be remitted.

On March 29, 1995, the Board entered an "Order Granting Enlarged Intervention to King County School Coalition and Limited Intervention to FOTL in Keesling Issue 5 and Denying Keesling's Motion to Add New Issue."

On April 21, 1995, the Board entered an "Order on Motions to: Supplement the Record: Remit Withdrawal of Board Member from the Keesling Case; Amend Carkeek Legal Issue No. 2 and Extend the Due Date for Prehearing Briefs by Tolt and Carkeek."

On May 25, 1995, the Board entered an "Order Granting Motion for Amicus Status by the Washington State School Directors' Association and Amending Due Date for Amicus Brief (the **WSSDA Amicus Order**)." The WSSDA Amicus Order granted amicus status to the Washington State School Directors Association (**WSSDA**) and limited its participation to the submittal of a prehearing brief on FOTL IV legal issue #2 by June 23, 1995.

On June 16, 1995, the Board entered an "Order Granting Motion for Amicus Status for the K-2 Corporation."

On June 26, 1995, the Board received "FOTL's and BCCGM's Motion Requesting a Two-Part Order from the Board following the Hearing on the Merits" (the **Motion for a Two-Part Order**).

On July 12, 1995, the Board received "Stipulated Partial Exhibit List"; "Addendum 1 to Stipulated Partial Exhibit List" and "Addendum 2 to Stipulated Partial Exhibit List." On this

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

photograph labeled "Photo taken approximately 1993" and which depicts the Preston Industrial Park, the Preston townsite and Interstate 90. During his argument, Mr. Wallace submitted to the Board two perspective sketches entitled "Conceptual Sketch 2--Parcel B" and "Conceptual Sketch 3-- Parcel C" and a building elevation sketch entitled "Preston Industrial Park CC & Rs Exhibit "D". The next matter was the Duwamish case. Appearing were Tim O'Brian for Duwamish and David Allnut for the County. During his argument, Mr. O'Brian handed in a document entitled "A Chronology of the Significant Events Leading to King County's Adoption of Amendment 89 to the 1994 Comprehensive Plan." At the close of the hearing, the presiding officer thanked the parties for their patience and courtesy, and indicated that the Board would subsequently rule on the Motion for a Two-Part Order.

On July 21, 1995, the Board received "King County's Response to FOTL and BCCGM's Motion Requesting a Two-Part Order"; on July 24, 1995, the Board received from Port Blakely "The Transportation Concurrency Certificates for the Blakely Ridge and Northridge Projects" and color maps captioned "Service and Finance Strategy"; and "Tolt Community Club Response to FOTL's Motion Requesting Two-Part Order." On July 27, 1995, the Board received "King County's Objections to Petitioner Duwamish Valley Neighborhood Coalition's Reliance on Evidence Outside the Record" (the **County Objection**). The County Objection cited three exhibits attached to the Duwamish Prehearing Brief and 22 exhibits attached to the Duwamish Reply Brief, and argued that these items are not properly before the Board. The County Objection also stated an objection to a document handed in by Duwamish at the hearing on the merits entitled "Chronology of Significant Events Leading to King County's Adoption of Amendment 89." (**Duwamish's Chronology Document**). On August 1, 1995, the Board received "Petitioner Duwamish Valley Neighborhood Preservation Coalition's Rebuttal to King County's Objections to Evidence Offered."

On September 15, 1995, the Board received from Duwamish a letter transmitting the map that was used by Mr. O'Brian as an illustrative exhibit at the hearing on the merits. The map is a spliced set of assessor's maps of the South Park area with the notations "Orange = residential" and an area colored pink with the notation "triangle of proposed industrial rezone from residential--.9 acres."

II. RULINGS ON MOTIONS AND OBJECTIONS

WSSDA's Motion to Amend is **granted**. FOTL's Motion to Strike and Motion for a Two Part Order are **denied**. The County Objection is noted and the Board will exclude from its consideration the Duwamish exhibits to which the County has objected. As to Duwamish's Chronology Document, the Board will exclude from its consideration any editorial comments.

III. FINDINGS OF FACT

A. GENERAL FINDINGS OF FACT

1. 1995 LEGISLATIVE ACTION

1. The Washington State Senate and House of Representatives passed Engrossed Substitute

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

Ordinance No. 11617, Title 14, Transportation.
Ordinance No. 11618, Title 16, Clearing and Grading.
Ordinance No. 11619, Title 19, Subdivision of Land.
Ordinance No. 11620, Title 20, Comprehensive Planning and Zoning.
Ordinance No. 11621, Title 21A, Zoning.
Ordinance No. 11622, Titles 7, 16, 19, 21A, 23 and 25;
Ordinance No. 11623, Titles 14 and 27, Development Permit Fees,
Ordinance No. 11624, Titles 8 and 9, Water Quality,
Ordinance No. 11625, Title 17, Fire Code,

Of particular importance to this case is Ordinance 11653, adopted on January 9, 1995. It adopted zoning, zoning maps and development conditions to implement the Plan (**Ordinance 11653**). Ordinance 11653 was based on the County Executive's proposed Ordinance No. 94-737. St. Ex. 20.

The legislative finding for Ordinance 11653 states that:

> The changes to the area zoning maps and text are required to bring this Title into compliance with the 1994 Comprehensive Plan and to fully implement Title 21A. KCC. St. Ex. 20, at 2.

Ordinance 11653, at section 1, states that it was adopted "as a development regulation to be consistent with and implement the comprehensive plan in accordance with RCW 36.70A.120." St. Ex. 20, at 2.

a) Specific Implementing Regulations Ordinance Provisions

Ordinance 11621, one of the series of Implementing Regulations Ordinances discussed above, modified Title 21A, the County Zoning Code. Among the sections amended was 21A.38.030, which sets forth the nature, purpose of, and limitations on, P-Suffix development standards. St. Ex. 15.

KCC Chapter 21A.04, Zones, Maps and Designations, establishes map symbols for each of 16 zoning designations at KCC 21.A.04.010. St. Ex. 15.

KCC 21A.12.030(B) establishes development conditions for residential zones, including a requirement that residences have a setback of at least 100 feet from any property line adjoining A, M or F zones or existing extractive operations. St. Ex. 15.

b) Public Involvement

The public involvement process for adoption of the Implementing Regulations was a continuation of the process used for adoption of the Phase I and Phase II County-wide Planning Policies (**CPPs**), including the SEPA process and each proposal. The process utilized a 500-member stakeholders' group; media relations campaign; use of libraries; a telephone hotline; mailing to resident; forums, meetings, and hearings; open houses; interpretive displays; speakers' bureaus; and provision of informational material. *See* Keesling County Brief, citing Ex. 5, 2, 15, 35, 34, 2, 20, 19, 18, 12, 28, 27, St. Ex. 2 at App. L., 62, 65, 67, 68. 44. 31. 66. 91. 90, 61, 75, 72, 83, 74, 80, 78, 76, 79.

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

based upon 1994 OFM projections or a 293,100 person increase (i.e., 600 more persons than indicated at page 25). Plan, at 3. The May 1994 Final Supplemental EIS for the King County CPPs uses exactly OFM's year 2012 population projection Stip. Ex. 5, Appendix, Table 4A. The June 1994 Supplemental EIS for the Plan uses OFM's projection for the year 2012 rounded off to 1,857,600 people, or an expected 293,114 additional people by the year 2012. Stip. Ex. 30.
FN2. The Board takes official notice of the "Washington State County Population Projections for 1990-2010, 2012" issued in January of 1992 by the OFM Forecasting Division "County Population Forecasts--1990 to 2012," at page 11.
FN3. The Board takes official notice of an OFM document entitled "April 1 Populations of Cities, Towns and Counties--used for the Allocation of State Revenues--State of Washington--July 6, 1995, Correction Release" (**1995 OFM Correction**).

Policy U-201 provides in part that:

> The Urban Growth Area designations shown on the official Land Use Map include enough land to provide the capacity to accommodate growth expected over the period 1992-2012.... Plan, at 27. [FN4]

Consequently, the Plan was based upon OFM's population projections for the year 2012. **The Board holds that the UGAs included in the comprehensive plan adopted by King County were based upon OFM's projections for the year 2012. Therefore, the County has not violated the requirement of RCW 36.70A.110(2) to base UGAs upon OFM's projections.**

GA Conclusion No. 1

The Board concludes that the urban growth areas designated in the King County Comprehensive Plan were based upon OFM's population projections for the year 2012. Accordingly, the Plan complies with the Act's requirement at RCW 36.70A.110(2) that UGAs must be sized based exclusively upon OFM's projections.

2. USE OF TECHNICAL APPENDIX D [FN5]

FOTL contends that the County Council not only failed to incorporate by reference Technical Appendix D into the Plan, but also failed to consider the information in it.

On November 18, 1994, the King County Council passed King County Ordinance No. 11575 which adopts the King County Comprehensive Plan in accordance with the GMA. The Plan itself is contained in one bound volume. Two additional volumes of "Technical Appendices" complete the Plan package. All three documents are bound with the same cover page. Technical Appendices Volume 1 was "attached" to Ordinance No. 11575. Stip. Ex. 51, at 4.

The Plan, at 15, states the following about the Technical Appendices (emphasis added):

> Integral to the vision and goals of the Comprehensive Plan are the detailed inventories, forecasts, finance plans and Urban Growth Area analysis required by the Growth Management Act. Three technical appendices (Volume I) are adopted by reference as part of the plan to implement these Growth Management Act requirements (RCW 36.70A.070, 36.70A.110):

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

> requirement. The Board only demands that counties "show their work" so that both the general public and the Board (if a UGA is appealed) know how the county derived its UGAs and established the appropriate densities. *Rural Residents*, at 35. (Emphasis added.)

In another IUGA case, the Board held:

> Finally, when counties formally adopt their UGAs, they must document that final action to show how it complies with the requirements and goals of the Act. Counties cannot rely on prior documentation for proposed UGAs if the adopted UGAs substantially vary from the earlier proposal. *Tacoma,* at 12. See also *Tacoma*, at 13, [FN7] and at 19. [FN8]

Clearly, Technical Appendix D was not incorporated by reference into the Plan even though Technical Appendices A through C were. However, the introductory paragraph in the Plan (at 15) that discusses the technical appendices states that " ... Urban Growth Area analysis required by the Growth Management Act" is "integral" to the Plan. This statement not only acknowledges a legal reality but leads one to expect that Technical Appendix D (dealing with UGAs) will be listed within those appendices found in Volume 1. [FN9]

Given the fact that Technical Appendix D was not incorporated by reference into the Plan, the question that remains is whether the County was required to so act. ***The Board holds that cities and counties are not required to incorporate by reference in their adopted comprehensive plans documents prepared pursuant to SEPA*** *[the State Environmental Policy Act]* ***nor must documentation supporting adopted county-wide planning policies be so incorporated into comprehensive plans****. The Board's admonition to jurisdictions to "show their work" can be accomplished in many ways. The key is that it is done somewhere in the record. Technical Appendix D accomplished this, coupled with the CPPs and SEPA analysis for the CPPs and the Plan. Ideally, the Board would prefer to see the land use capacity analysis for designated UGAs in the comprehensive plan itself in order to provide "one-stop reading" to all readers. However, this is not mandatory. How a jurisdiction elects to show its work remains in its discretion. Importantly, if a jurisdiction fails to show its work, its UGAs will be remanded. Likewise, even if a jurisdiction "hides" its work in a myriad of documents, potential petitioners remain protected since they can bring an appeal to this Board if they were unable to ascertain a jurisdiction's analysis.*

The Board holds that the record need not prove that a legislative body has considered the land use capacity analysis performed by staff regarding designated UGAs*. This holding is consistent with prior decisions where the Board has held that it will not attempt to determine what individual elected officials have or have not considered. Under the GMA, legislative actions are presumed valid. RCW 36.70A.320. Because this presumption can be overturned, a heavy responsibility rests with staff to ensure that the analysis conducted supports the legislative policy decisions made by elected officials. Moreover, if a policy decision is made that cannot be substantiated by sound land use capacity analysis, staff has the duty to so notify the legislative body that created the policy.*

GA Conclusion No. 2

The County was not required to incorporate Technical Appendix D into its Plan nor must the

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

was in 1994. The Board has divided the .08 average household size difference between 2000 and 1990 by 10 years which equals an average household size reduction of .008 persons per household per year in the 1990s. Accordingly, the average household size for 1994 would be 2.368 (2.400--.032)

FN17. Using the same formula as above, the average household size for 1992 would be 2.384 (2.400--.016).

FN18. Plan, at 5.

The total "new households" is 573,329. That amount, divided into three incremental periods, equals an average of 191,110 households. If one adds just the "new households" for the year 1990 and 1992 (216,300 ⇐ 188,122), the result is 404,422. That total, divided by two incremental periods, equals an average of 202,211 new households. The Plan, adopted in 1994, relies on 195,000 new households, which falls within this range.

Technical Appendix D points out that, with projected population for the year 2012 remaining constant, if average household size is different, the number of new households will change. Therefore:

> King County has analyzed a range of possible household projections based on different estimates of potential household size, as part of its analysis of the UGA. King County has looked at three possible scenarios for household sizes: 2.4, 2.2 and 2.0 people per household. The growth target in the Countywide Planning Policies is based on an average of 2.2 people per household. This is consistent with the forecast made by the Puget Sound Regional Council. Average household size in King County is forecast by the Puget Sound Regional Council to decline over the next 20 years, although at a slowed rate, from 2.4 persons per household in 1990 to slightly more than 2.2 persons per household in 2010. Plan, Technical Appendix D, at D-2 and D-3 (footnotes omitted).

Using the three different possible average household sizes in the year 2012, the County expects between 126,500 (low range at 2.4 persons/household), 195,700 (mid range at 2.2 persons/household) and 278,000 new households (high range at 2.0 persons/household). Plan, Technical Appendix D, at D-3 and Table 4, at D-20.

The County then compiled targets, i.e., estimates of the number of new households that individual jurisdictions expect to receive by the year 2012. "The targets for each of the cities and the unincorporated area are expressed as ranges to reflect the uncertainties of each jurisdiction's ability to accommodate its growth targets." Plan, Technical Appendix D, at D-3. By 2012, the County projects the following growth to occur:

Countywide New Net Household Target Range

	Low	Medium	High
Cities	131,768	150,803	172,558
Unincorporated[FN19]	40,048	44,897	50,000
TOTAL[FN20]	171,816	195,700	222,558

FN19. The narrative in Technical Appendix D rounds off the relevant figures. It indicates that the household range for the unincorporated areas in King County is 40,000 (low), 45,000 (mid),

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

Appendix D, at D-4, D-5 which shows a five to 25 percent market factor.

FOTL contends that the County's actual market factor is 81.93%. FOTL's Prehearing Brief, at 37-40. The Board has reviewed FOTL's calculations and concludes that FOTL is incorrect that the market factor is this large. FOTL bases its claim on Tables 1 and 2 as shown in Technical Appendix D. Table 1 is entitled "Proposed Growth Target Ranges for Households and Employment." It lists all the cities within King County and the unincorporated portion of King County. The table does not distinguish between unincorporated areas inside and outside UGAs. New low and high ranges for the number of new households--and a mid-range, entitled "Net New Households"--are shown for each city.

Table 2 is captioned "Countywide Capacity--Twenty Year Dwelling Unit Capacity on Land Zoned for Residential Use in King County." It shows the amount of dwelling unit capacity on vacant and redevelopable lands per city and for the unincorporated portions of the county (both inside and outside the UGAs). In essence, Table 2 illustrates the total theoretical dwelling unit capacity of King County. In contrast, Table 1 shows the new households and employment that the County and its cities will plan for in the next 20 years, based upon policy decisions.

Although FOTL is correct that Table 1 indicates that the total theoretical dwelling unit capacity shown on Table 2 is 81.93 percent higher than needed to accommodate new households shown on Table 1, this does not mean that the County is using an 81.93 percent market factor.

Contrary to FOTL's allegation that the UGAs excess household capacity (81.93 percent) is a violation of the Act, the Board concludes that this excess capacity furthers the Goals of the Act. A comparison of Tables 1 and 2 shows that cities have a far greater household capacity (282,250) than their policy targets (150,803). Thus, the cities alone have approximately 87 percent more household capacity than is allocated to them by the Plan. However, this circumstance is consistent with the Board's holding in *Aagaard v. Bothell*, CPSGMHB Case No. 94-3-0011 (1995), at 14, that cities may have such excess capacity, absent a CPP to the contrary. Furthermore, the Board also held that such excess city capacity serves the goals of the Act by reducing sprawl and lessening the near term need to increase the land supply in the UGA. To the extent that this excess capacity exists in the unincorporated rural areas, it reflects existing parcelization. In any event, the CPPs have established the allocations of growth among jurisdictions as well as the locations of the FUGAs.

Nonetheless, the Plan contains no more than a 25 percent land supply market factor, which the Board holds complies with RCW 36.70A.110.

GA Conclusion No. 4

The Plan utilizes a 25 percent land supply market factor which complies with RCW 36.70A.110.

POLICY U-210 AND UGA DESIGNATIONS GENERALLY

Policy U-210 sets forth the criteria for designating UGAs.

The Urban Growth Area designations shown on the official Land Use Map includes enough

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

The area contains urban residential densities. Most of the area is in the 4-12 du/acre range while some of it is in the one du/acre range. Plan, Land Use Map, following 24.

The entire area is a "Service Planning Area" as denoted on the Land Use Map. The Plan describes the types of service planning areas in part [FN23]as follows:

> These priorities are accomplished through the Service and Finance Strategy which designates Full Serve Areas with transit (dark green), Full Service Areas without transit (light green) and Service Planning Areas (yellow). The Service and Finance Strategy Map at the end of Chapter One, Plan Vision, shows the locations of these designations. The Transportation Service Areas outlined in Chapter Nine, Transportation, are consistent with this Service and Finance Strategy.
>
> The Service and Finance Strategy concentrates on water, sewer and transportation services, which are most linked to land use, and the requirements of GMA. King County recognizes that there are many other essential services needed, such as health, human and public safety services. New growth will bring about an increased demand for these services throughout the Urban Growth Area. Therefore, health, human services and public safety needs for new growth should be a priority within the Full Service Areas. (Refer to Chapter Eight, Facilities and Services, policies F-101 through F-204 for further discussion and policy direction for health, human services and public safety.) [FN24]
>
> ...
>
> **Development can occur within both Full Service Areas and Service Planning Areas. The significant difference between the Service Planning Areas and the Full Service Areas is that the latter has water supply to serve development uses and densities consistent with the plan, public sewers now or within six years to serve development uses and densities consistent with this plan, and transportation funding for new growth. Plan, at 34-36.**

The entire area is served by Metro utilities. Plan, Technical Appendix A, "Major Interceptor System and Treatment Facilities." Plan, map following A-14.

The entire area is a groundwater service area. Plan, Technical Appendix A, "Ground Water Service Areas and Well Sites" map, following A-30. The northern portion of the area has water supply sufficient to meet projected demand through the year 2000 while the southern portion has water supply sufficient to meet projected demand through the year 1995. Plan, Technical Appendix A, "Water Utilities Water Supply Needs." Plan, map following A-36.

A portion of the area has existing sewers. Plan, Technical Appendix A, "Sewer Facilities" map following A-38.

In addition, the area falls completely within the potential annexation areas of either the cities of Redmond or Issaquah. Plan, Technical Appendix J, "Proposed Potential Annexation Areas" map following J-1. *See also* disclaimer, at J-2, notes 6 through 9.

As a general rule, RCW 36.70A.110 requires that all cities be included within UGAs. Six exceptions to this general rule exist for permitting counties to designate UGAs beyond

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

long term. This meant that the County continued to serve as a local, as well as countywide government. However, the Countywide Planning Policies, adopted in 1992, envision that all urban unincorporated portions of the County will be annexed by or incorporated as cities within twenty years. Following this vision, the County will move over time to become a regional and rural government, without responsibility for service, infrastructure, and land use planning on a local level within the Urban Growth Area. This transition will be gradual, depending on the desires of local communities and the ability of cities to provide services to newly annexed areas. Plan, at 214-215.

The Board holds that the County did not violate RCW 36.70A.110 by designating the Sammamish Plateau portion of unincorporated King County within the contiguous UGA, an area already characterized by urban growth. The UGA designation is consistent with the *transformation of local governance* within the UGA such that cities are, in general, the primary providers of urban governmental services and it achieves *compact urban development.*

This case gives the Board the opportunity to examine objective ways for counties to show they are planning for the transformation of local governance and compact urban development.

The Plan indicates as follows:

> U-203 King County should encourage most population and employment growth to locate in the contiguous Urban Growth Area in western King County, especially in cities and their Potential Annexation Areas.
>
> Planning between the County and cities is underway to designate Potential Annexation Areas. A Potential Annexation Area is an area in unincorporated King County adjacent to a city that is expected to annex to the city and to which that city will be expected to provide services and utilities within the next two decades. Cities must propose Potential Annexation Area boundaries and the County officially designates them. Under the GMA, newly incorporated cities have three years to complete adoption of their comprehensive plans. As part of their comprehensive plan development process, they may designate future annexation areas. These areas may include areas outside the Urban Growth Area. Unofficial Potential Annexation Areas are shown on the Potential Annexation Area Map contained in Technical Appendix J. The Potential Annexation Area planning process is described in Chapter Thirteen, Planning and Implementation, Section II(C).

According to Technical Appendix J, the East Sammamish area is planned as a Potential Annexation Area by either the cities of Redmond or Issaquah. Plan policies V-306, V-307, U-304, and I-210 are therefore directly applicable. Further, the Plan states (Plan, at 223):

> Potential Annexation Area plans will become the most prominent examples of subarea planning....

By designating the Sammamish Plateau as a Potential Annexation Area, the County has explicitly acknowledged the transformation of governance the Act mandates. Being prepared for annexation is the appropriate county response required by the GMA for unincorporated areas that already contain urban growth. Designating the East Sammamish Plateau within a UGA also promotes compact urban development since the area is contiguous to existing incorporated areas

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

accommodate growth. These areas are shown as part of the Urban Growth Area on the Comprehensive Plan Land Use Map. In accordance with the Countywide Planning Policies, King County, the cities and other interested parties are committed to completing a joint planning process by December 31, 1995, to finalize the Urban Growth Area (see Chapter 13, Planning and Implementation).
R-301 Rural cities and their agreed-upon Urban Growth Areas shall be considered part of the Urban Growth Area for purposes of planning land uses and facility needs. King County should work with rural cities to plan for growth consistent with long-term protection of significant historic resources, the surrounding Rural Area and Natural Resource Lands

Policy R-111 provides in part:
... New public roads and capacity increases for existing roads should be built only within the Urban Growth Area and the Urban Growth Areas for rural cities.... Plan, at 63.

Policy R-112 provides in part:
... Sewers needed to serve ... rural cities ... shall be tightlined and have access restrictions precluding service to the Rural Area. Plan, at 64. [FN30]

The Plan also provides that:
... Neighborhood shopping, gas stations, libraries, high schools and feed and grain stores are examples of activities that also provide services to nearby residents, but are encouraged to locate within rural cities ... Plan, at 67.

Consequently, Policy R-211 states in part that:
Churches and high schools in the Rural Area are encouraged to locate in rural cities or unincorporated Rural Towns.... Plan, at 67.

The Plan explains that "[P]lacing churches and schools in rural cities or Rural Towns allows them to be served with urban-level utilities and fire protection and to be used efficiently for other community activities." Plan, at 67.

Although the Plan contains the above-referenced policies regarding Rural Cities, it does not contain specific information regarding the size of the Rural Cities' UGAs except for the City of Black Diamond which was designated a "Joint Planning Area" since the County could not reach agreement with Black Diamond on the size of its UGA. [FN31]*See* Plan, at 220-221. For more specific information on each city within a rural area, one must turn to the Plan's Technical Appendix D.

Table 2 of Technical Appendix D shows the theoretical dwelling unit capacity of each city within King County. Footnote 4 of the table indicates:
The estimates in the tables are for current boundaries, except for the five Rural Cities with which King County has concluded Urban Growth Area negotiations (Carnation, Duvall, Enumclaw, North Bend and Snoqualmie--marked with a diamond •. Estimates for these cities include a factor for unincorporated expansion areas as estimated by County staff. Plan, Technical Appendix D, Table 2, footnote 4, at D-18.

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

> Community Plans for the rural cities of Snoqualmie, North Bend, Enumclaw, Carnation and Duvall, there is capacity for another 6,500 dwelling units according to calculations by King County planning staff. Within the rural cities and their expansion areas, the total capacity is 13,000 dwelling units. The entire expansion areas of all rural cities except North Bend are included within the recommended Urban Growth Areas discussed in this report. North Bend's recommended UGA does not include all of the expansion area in the Community Plan. Stip. Ex. 27, at 7. (Emphasis added.)

Tolt also contends that the County allowed resource and rural lands to be included with the UGAs for Rural Cities that are not already characterized by urban growth or do not contain existing urban governmental services. Tolt claims that CPP LU-26 is internally inconsistent. RCW 36.70A.320 provides in part that comprehensive plans and development regulations, and any amendments to them, are presumed valid upon adoption. When comprehensive plans or development regulations are not appealed within the statutory period, this presumption becomes irrefutably valid unless the enactment is challenged on constitutional grounds. *Twin Falls*, at 55. Unlike comprehensive plans and development regulations, RCW 36.70A.320 does not explicitly grant a presumption of validity to county-wide planning policies adopted pursuant to RCW 36.70A.210. However, RCW 36.70A.210(6) provides that:

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

This is the same length of time petitioners have for appealing comprehensive plans or development regulations. RCW 36.70A.290(2). **The Board holds that when an adopted county-wide planning policy is not appealed within sixty days of adoption, it is presumed valid.**

Although the Act limits appeals of a county-wide planning policy to cities or the governor only, an individual, association or corporation, for instance, could persuade the governor that an appeal was appropriate. An alternative remedy would have been to have sought a writ of certiorari or review from a superior court. [FN36] In any case, phase two of the CPPs was not appealed to the Board. Therefore, Policy LU-26 is now presumed valid. The Board has previously held that comprehensive plans must be consistent with county-wide planning policies. *Snoqualmie v. King County.* **Accordingly, the Board holds that the designation of the Rural Cities' expansion areas as within a UGA is consistent with the CPPs and therefore complies with the Act.** Had the King County CPPs been appealed, the Board very likely would not have found LU-26 in compliance with the Act. The policy was based upon pre-GMA agreements and planning decisions, i.e., before the Act's definition of "urban growth" was enacted. Thus, given the dubious nature of Policy LU-26, the Board will give close scrutiny to any future extensions of the Rural Cities' UGAs.

Tolt also claims that the household allocation to the Rural Cities is disproportionate to the allocation for King County's other cities. The Board rejects Tolt's arguments that a County must allocate projected population growth proportionately to its cities. The Act requires that all cities be included within UGAs (RCW 36.70A.110); although it might make sense to distinguish by the size, density or location of a city for it to be included within a UGA, the GMA does not do

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

The Board holds that including this additional 184 acres within Duvall's UGA is inconsistent with CPPs' Policy LU-26(c). Therefore, it does not comply with the Act.

The City of Enumclaw's UGA also extends an additional 78 acres beyond its expansion area. "However, the Rural Cities Urban Growth Area report states that:

> The additional 78 acres does include rural land designated through the Countywide Planning Policies. Stip. Ex. 27, at 22. (Emphasis added.)

The Board holds that including this additional 78 acres within Enumclaw's UGA is inconsistent with CPPs' Policy LU-26(c). Therefore, it does not comply with the Act.

The North Bend UGA apparently includes 200 acres beyond the city's expansion area. However, the Rural Cities Urban Growth Area report states that:

> The additional areas include rural land designated through the Countywide Planning Policies. Stip. Ex. 27, at 26 (Emphasis added.)

The Board holds that including designated rural land within this additional 200 acres within North Bend's UGA is inconsistent with CPPs' Policy LU-26(c). Therefore, it does not comply with the Act.

The City of Snoqualmie expansion area is approximately 1,455 acres. Stip. Ex. 27, at 30. In addition, 1,950 acres beyond this expansion area were included within the city's UGA. Stip. Ex. 27, at 29 (total of all acreages listed) and 30. However, the Rural Cities Urban Growth Area report states that:

> The additional 1,950 acres does include rural land designated through the Countywide Planning Policies. Stip. Ex. 27, at 30 (Emphasis added.)

The report also indicates that "[M]ost of the 1,950 acres do not extend beyond natural boundaries so the UGA would respect topographical features which form a natural edge." In addition, a portion of this property is within the floodplain. Stip. Ex. 27, at 30.

King County CPPs Policy LU-26 provides that UGAs:

> e. Do not extend beyond natural boundaries, such as watersheds, which impede provision of urban services;
>
> f. Respect topographical features which form a natural edge such as rivers and ridge lines; and
>
> g. Include only areas which are sufficiently free of environmental constraints to be able to support urban growth without major environmental impacts unless such areas are designated as an urban separator by interlocal agreement between jurisdictions. Stip. Ex. 8, at 30.

The Board holds that including this additional 1,950 acres within Snoqualmie's UGA is inconsistent with CPPs' Policy LU-26(c), (e) and (f). Therefore, it does not comply with the Act.

UGA Conclusion No. 6

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

to an ongoing review process under the adopted Bear Creek Community Plan and recognizes these properties as urban under these Countywide Planning Policies. If the applications necessary to implement the MPDs are denied by King County or not pursued by the applicant(s), then the property subject to the MPD shall be redesignated rural pursuant to the Bear Creek Community Plan. Nothing in these Planning Policies shall limit the continued review and implementation through existing applications, capital improvements appropriations or other approvals of these two MPDs as new communities under the Growth Management Act. Stip. Ex. 7, at 16 and Stip. Ex. 8, at 29-30.

Accordingly, the Board holds that the Plan's designation of the Bear Creek UPDs as within a UGA is consistent with King County CPPs' Policy LU-26.

However, but for the fact that the CPPs "made the County do it" and those CPPs were not challenged, the Board would have serious problems with the Bear Creek UPDs being designated within a UGA. In 1992, the Bear Creek subarea contained 100 households, while by the year 2012, the County projects the area to have 2,900--3,900 households. Plan, at 30. The property is adjacent to incorporated albeit undeveloped land, the City of Redmond's watershed. Plan, Land Use map, following page 24; and Plan, Technical Appendix A, Water Utilities Sources and Facilities map, following page A-30.

Other than the reference in Policy U-201 quoted above, the Plan does not contain a rationale explaining why the Bear Creek UPDs are within a UGA. However, Technical Appendix D indicates:

> The Novelty Hill area, located east of Redmond, is also included in the UGA because it is located in relationship to Redmond so as to be appropriate for urban growth. In 1989, Novelty Hill was determined to be the appropriate size and location for concentrated urban growth necessary to accommodate population projections for the Bear Creek community planning area. These properties are located within the framework UGA contained in the Countywide Planning Policies. Novelty Hill is also located in close relationship to the City of Redmond as Novelty Hill Road, a minor arterial planned for an urban level of service, functions as a transportation and utility corridor connecting Redmond and Novelty Hill. Urban governmental services can be provided to Novelty Hill efficiently and cost-effectively. Further, the Novelty Hill property owners have incurred substantial costs in pursuing urban development there based on the existing Bear Creek Community Plan land use and zoning designations. Vested subdivision applications for these properties have been filed with King County under which these properties could be platted at a density of one unit per 35,000 square feet. It is far preferable from a planning perspective to develop these properties as urban planned developments than to allow them to develop as sprawling, low-density suburban subdivisions.
>
> Land between Redmond and Novelty Hill is excluded from the UGA because it is too environmentally constrained to support urban growth and too valuable as an environmental resource to lose to intensive urban development. This intervening land is traversed by Bear Creek, a significant salmonid habitat, and the creek valley walls are highly erosive. Plan, Technical Appendix D, at D-14 (footnote omitted).

The above-quoted narrative indicates that the subdivision applications within the Bear Creek

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

seemingly contemplates such a possibility as it refers to "new communities under the Growth Management Act." Plan, at 27. On the other hand, the County has elected not to designate any new FCCs according to Policy R-104 which provides:

> King County finds no need to establish new "fully contained communities" within the Rural Area, as provided for by the GMA. Plan, at 61.

The Act's only "new community" provisions are those for "new fully contained communities" at RCW 36.70A.350. The only portions of the Act that clearly contemplate island UGAs are these FCC provisions, Master Planned Resorts pursuant to RCW 36.70A.360, or industrial developments sited pursuant to the provisions of ESB 5019 (Chapter 190, Laws of 1995). In the case of the FCCs, the Act contains detailed mandatory safeguards in order to assure that an "island" of urban development in the rural area is a "fully-contained" entity that does not stimulate other urban growth in a rural area. This strongly infers that the anti-sprawl objectives of Planning Goals 1 and 2 require islands of urban growth in the rural area to be handled with great caution. Without sufficient safeguards, such as the FCC requirements, the Board seriously questions whether a non-FCC island UGA can meet the goals and requirements of the Act.

If it were not for the fact that the unchallenged CPPs, which are now presumed valid, required the County to designate the Bear Creek UPDs as within a UGA, the Board would conclude that this "island" UGA does not meet the goals and requirements of the Act. The Board would remand the UGA containing the Bear Creek UPDs with instructions to justify, either in the Plan itself or by incorporating by reference documents that do so, why this area qualifies as a designated UGA

UGA Conclusion No. 7

The Plan is consistent with the King County CPPs which are presumed valid and which required the County to designate the Bear Creek UGAs within a UGA. Therefore, the Plan's designation of the Bear Creek UPDs complies with the Act but would not so comply had the CPPs been challenged.

Board Member Tovar's Dissent

The County argues that its FUGA decisions are bound by the CPPs because the Board has held that CPPs have substantive and directive effect on city and county comprehensive plans. *Snoqualmie*, at 14. However, in that same case, the Board held that there are limits on the substantive effects of CPPs. The third prong of the Board's test on the limits on the substantive effect of CPPs provides:

> (3) A specific policy within the CPPs must be consistent with other relevant provisions in the GMA. Snoqualmie, at 18.

In *Edmonds,* the Board examined the population allocation to a city by a county via the CPPs:

> With responsibility for regional coordination of comprehensive plans in conformance with the planning goals, a county must be capable of directing urban growth to areas that are already urban in character, including cities. Because urban growth consists of people and jobs, the county is therefore charged with authority to undertake a task that is essentially an

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

by the narrow standing at RCW 36.70A.210(6) which excludes appeals of CPPs from individual citizens.

In conclusion, just as the Board held in *Edmonds* that CPPs cannot "short-cut" past the comprehensive plans of cities, I conclude that CPPs cannot "short-cut" past the comprehensive plans of counties, particularly with regard to designation of the FUGAs. To allow a CPP to do so pre-empts the County's exercise of its discretion pursuant to RCW 36.70A.040, exempts it from the analytical rigor required by RCW 36.70A.110, and shields it from the requirements for early and continuous public participation pursuant to RCW 36.70A.140 and citizen appeals pursuant to RCW 36.70A.280. Therefore, I would find that the County has violated RCW 36.70A.040 and RCW 36.70A.110 by, in effect, prematurely adopting the policy content of its comprehensive plan, including the FUGAs, in advance of and therefore outside the scope of its authority and responsibility to adopt a FUGA and comprehensive plan.

8. FOUR-TO-ONE PROGRAM

The Plan contains a Four-to-One Program regarding provision of open space, which is described as follows:

> The Countywide Planning Policies (Policy FW-1, step 7) establish a program to actively pursue dedication of open space along the Urban Growth Area line to create a contiguous band of open space north and south along the UGA. Changes to the Urban Growth Area through this program will need to be processed as Land Use Map Amendments. This program implements Growth Management Act goals to reduce sprawl and to encourage retention of open space.
>
> I-204 King County shall actively pursue dedication of open space north and south along the Urban Growth Area line.
>
> a. Rural Area land, excluding agriculturally zoned land, may be added to the Urban Growth Area only in exchange for a dedication of permanent open space to the King County Open Space System. The dedication shall consist of a minimum of four acres of open space for every one acre of land added to the Urban Growth Area, calculated in gross acres. The open space shall be dedicated at the time the application is approved;
>
> b. Land added under this policy to the Urban Growth Area adopted in the Countywide Planning Policies and the King County Comprehensive Plan shall be physically contiguous to the existing Urban Growth Area and must be able to be served by sewers and other urban services;
>
> c. The total area added to the Urban Growth Area as a result of this policy shall not exceed 4,000 acres;
>
> d. Development of the land added to the Urban Growth Area under this policy shall be limited to residential development and shall be at a minimum density of four dwelling units per acre. Proposals shall meet the urban density and affordable housing policies of this Comprehensive Plan; ... Plan, at 218-19. (Emphasis added.) [FN38] *See also* Plan, at 219-20. [FN39]

The Plan refers to the Four-to-One Program in relationship to one specific property. Policy U-201 provides in part:

> Further, this policy recognizes that 100 acres of the Glacier Ridge Partnership lands near

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

FOTL points out that the County relies heavily on the 1993 Seattle Water Supply Plan. The County must rely on this plan given the fact that it does not own or operate water systems and that the Seattle Water Department is the major supplier of water in the region, serving 1.2 million people. Plan, Technical Appendix A, at A-30-31.

The Board notes that "water law" covers a myriad of federal, state and local statutes and regulations [FN43] the vast majority over which the Board lacks jurisdiction. Instead, the Board's jurisdiction is limited to Chapter 36.70A RCW, SEPA as it relates to that chapter, and shoreline master programs. RCW 36.70A.280.

RCW 36.70A.020(12) provides that comprehensive plans and development regulations shall:

> (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.

FOTL has not met its burden of proof of showing how that portion of the County's capital facilities plan element dealing with water supply has failed to comply with the Act. *See,* for instance, Policy F-301 [FN44] and F-302. [FN45]

RCW 36.70A.070(3) requires city and county comprehensive plans to contain a capital facilities plan element. It must be comprised of the following:

> (a) An inventory of existing capital facilities owned by public entities, showing the locations and capacities of the capital facilities; (b) a forecast of the future needs for such capital facilities; (c) the proposed locations and capacities of expanded or new capital facilities; (d) at least a six-year plan that will finance such capital facilities within projected funding capacities and clearly identifies sources of public money for such purposes; and (e) a requirement to reassess the land use element if probable funding falls short of meeting existing needs and to ensure that the land use element, capital facilities plan element, and financing plan within the capital facilities plan element are coordinated and consistent.

Although the County may not own or operate water systems, it is nonetheless required by RCW 36.70A.070(3) to list an inventory of existing capital facilities owned by public entities within its jurisdiction. The County has complied with this requirement. *See* Plan, Technical Appendix A, at A-30 through A-35. The Plan also contains a forecast of future needs and a discussion of proposed locations and capacities of expanded or new capital facilities. *See* Technical Appendix A, at A-30 through A-36. The Plan contains a brief discussion of a financing plan for the Seattle Water Department, and contains a statement regarding the financing plan for purveyors other than Seattle.

The Board rejects FOTL's argument that the County was bound to tabulate "certificates of water availability" in order to measure water supply. Although the use of such certificates might be useful under certain circumstances, it remains within the County's discretion whether it utilizes these certificates or relies upon other methods such as sophisticated computer modeling programs.

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

Natural Resource Lands: The designated Natural Resource Lands contain regionally or nationally significant commercial forests, King County's best remaining farmlands and deposits of coal, gravel and other mineral resources, some small towns and regionally important recreational areas. Lakes and rivers within these areas support nationally important salmon fisheries. Plan, at 12.

I. Resource Conservation Strategy

In 1985, the King County Comprehensive Plan designated Agriculture and Forest Production Districts. Subsequent planning efforts established densities and uses for these districts and their surrounding areas. These land use regulations are consistent with the requirements of the GMA to designate productive lands and to plan for adjacent and nearby land uses compatible with long-term commercial farming and forestry....

> The GMA requires designation of agricultural and forest lands of long-term commercial significance.... Forest lands of long-term commercial significance are designated as Forest Production District on the Forestry Lands Map in this chapter. (The Forest Production Districts are shown as Forestry on the Land Use Map of Chapter One.)
>
> ...
>
> RL-102 King County shall conserve farm lands, forest lands and mineral resources for productive use through the use of Designated Agriculture and Forest Production Districts and Designated Mineral Resource Sites where the principal and preferred land uses will be commercial resource management activities. Plan, at 96.

More specifically, the Plan states the following regarding forest lands:

> King County forest lands provide local, regional and national benefits that are basic to the quality of life. In addition to supplying a variety of wood and other products, forests emit oxygen and supply pure water, control flooding and soil erosion, enhance ground water recharge, provide habitat for innumerable plant and animal species and offer scenic vistas and recreational opportunities. King County's forests provide employment in wood, paper, recreation, tourism and fishing industries. In sum, properly managed forests are fundamental to a healthy, diverse economy and environment.
>
> The growth in human population, however, has resulted in the loss of forest lands through conversion to non-forest uses. Increasing demands are being placed upon the remaining forest land base to provide goods, recreational opportunities and ecological functions. To address these challenges, forest managers are embracing more broad-based management methods and strategies that encompass ecosystems, landscapes and watersheds, while continually incorporating new scientific information to improve these approaches. Their efforts, together with the collective foresight and dedication of landowners, interest groups, tribes, citizens and agencies, are needed to ensure that King County's forests continue to contribute to a sustainable way of life for present and future generations.
>
> The first step to maintain and enhance the commercial forest industry is to protect the forest land base. Second, an ecosystem approach to forest management that provides for long-term ecosystem health and productivity and addresses cumulative impacts on non-timber resources should be explored. Third, commercial forestry must be supported and encouraged by minimizing land use conflicts and offering incentives. Finally, forest land conversions that do occur must be managed to minimize environmental degradation. See Technical Appendix H for a further discussion of forestry issues in King County.
>
> A. The Forest Production District

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

(large-scale farms and forest lands are designated as Natural Resource Lands); Plan, at 60.

Although most of King County's best farming and timber lands are within designated Resource Production Districts (see Chapter Six, Natural Resource Lands), there is a significant land base for agriculture and forestry in the Rural Area. The policy below establishes King County's commitment to study this land base and designate Rural Farm and Forest Districts where farming and forestry will be enhanced and protected.

R-108 King County shall identify, in partnership with citizens and property owners, appropriate districts within the Rural Area where farming and forestry are to be encouraged and expanded through incentives and additional zoning protection. These districts shall be designated and zoned by December 31, 1995. All incentive programs created by the county and related to zoning will be available to benefit landowners in the districts based on the zoning of their properties as of the effective date of this Plan. Areas to be considered should include lands meeting the criteria set forth in the Countywide Planning Policies. Permitted uses in Rural Farm or Forest Districts should be limited to residences at very low densities (one home per 20 acres for forest areas, one home per 10 acres for farming areas), and farming or forestry. Institutional uses or public facilities should not be permitted except as provided by Countywide Planning Policy LU-9. Plan, at 62-63.

Tolt argues that the County violated the Act in three ways by adopting the above-referenced forest land policies in the Plan. First, Tolt contends that the County failed to conduct adequate public participation as required by RCW 36.70A.140. Second, Tolt contends that the County failed to review its prior forest land designations when it adopted the Plan, in violation of RCW 36.70A.060(3). Third, Tolt contends that the County failed to include forested lands that have long-term commercial significance when it created its forest production districts.

The Board has reviewed the record of the County's recent public participation process regarding forest land designations under the Act and holds that the County has not violated the public participation requirements of RCW 36.70A.140.

In reviewing this same record, the Board has looked for documents indicating that the County reviewed its "interim" forest land designation before adopting its comprehensive plan. Although the Board was unable to find a document that specifically referred to RCW 36.70A.060(3), it nonetheless concludes that the entire laborious process of developing the Plan's forest land designations and policies quoted above constituted such a review. Tolt has not persuaded the Board differently. **Therefore, the Board holds that the County complied with RCW 36.70A.060(3).**

Finally, the Board holds that Tolt failed to meet its burden of proof for showing that the County failed to designate all forest lands of long-term commercial significance. The Board agrees with the County that it is required by the Act to designate only forest lands of long-term commercial significance that are not already characterized by urban growth. RCW 36.70A.170. The County is not required to designate lands that may be forested today but that do not meet the requirements for lands of long-term commercial significance.

D. PLAN OR ZONING CODE AMENDMENTS ISSUES

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

"substantial." Then the Board issues a conclusion for each of the amendment issues.

1. DUWAMISH LEGAL ISSUE NO. 3

Did the County's action in adopting Amendment #89 violate the citizen participation requirements of the GMA, including RCW 36.70A.140, by failing to conduct a public meeting with effective notice of the proposed action?

Discussion

On January 28, 1994, the County Council passed Motion No. 9226, requesting the Department of Parks, Planning and Resources to consider a community plan revision study in the South Park portion of the Highline Planning Area, specifically the .9 acre Spencer property, which has eight rental houses. The Highline Community Plan was adopted in 1977. Land uses in the vicinity include residential, commercial and industrial. The site is surrounded by the Cities of Seattle and Tukwila, and the Duwamish River. The action to authorize a study was in response to Spencer's request for Industrial use of the property. County Brief, Exhibit 1.

On November 2, 1994, the County Planning and Community Development Division conducted a community meeting on a proposed zoning change on the Spencer property. The notice of the meeting, titled "Important Community Meeting," stated that the County was:

> ... conducting a study to consider revising a portion of the Highline Community Plan and Area Zoning from Suburban Residential to Industrial ... to provide additional industrial land for future expansion of Spencer Industries. ...Area property owners and residents are invited to attend this meeting to discuss the study and to obtain a schedule for the Hearing Examiner and Council public hearings.... County Brief, Exhibit 13.

In its Brief, the County notes that the proposed change in land use designation, if any:

> ... would take the form of an amendment to the Highline Community Plan. ... by November, 1994, however, officials at the County ... had recognized that the Comprehensive Plan was the appropriate vehicle for changes in land use designation. County Brief, at 4, footnote 2; Exhibit 4.

The Plan Amendment Study report noted that:

> Property owners and tenants were notified of a public meeting planned for November 2, 1994 to be held in the Spencer Industries, Inc. training room. Flyers were sent to property owners within 500 feet of the study area and tenants were notified by word of mouth and with a sign posted on the study area. County Brief, Exhibit 1, at 6.

One nearby resident attended the community meeting. On November 4, 1994, a tenant (within the study area) "expressed concern that the [proposed] change in zoning would precipitate a change in land use." County Brief, Exhibit 1, at 6.

Amendment 89 to (proposed) Ordinance 11575 was introduced in the County Council on November 14, 1994, and was passed on November 18, 1994. It amended the land use designation on the Spencer property from Urban Residential, 4 to 12 dwelling units per acre, to Industrial.

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

> is consistent with King County Comprehensive (sic) policy R-206 which allows a residential density of one home per five acres in rural areas where land is physically suitable for development and can be supported by rural services. FOTL Ex. 54, Exhibit 2.

Amendment 81A, an "Amendment to the Amendment 81," bears a date of January 9, 1994 (sic: 1995). It adds four P-suffix conditions to the properties described in Amendment 81. The conditions require a set-aside of four acres of open space for every one acre of developed property; the remaining conditions deal with specific site conditions. FOTL Ex. 54, Exhibit 3.

The County did not dispute the facts regarding when the public hearing was closed, nor the timing of the introduction of Amendments 81 and 81A and Council action on them. The County's defense against FOTL's allegation was that the amendments did not represent a "substantial" change, either relative to the prior designation or when placed in the context of the larger area. The County also argued that, although the hearing had been closed, the amendments were introduced and reviewed in public sessions of the County Council, and citizens had the opportunity to write to their elected officials even after the close of the hearing.

The Board rejects the County's argument that the effect of Amendments 81 and 81A was not "substantial." Reducing the minimum lot size from 10 acres to 5 acres has the result of doubling the density. While such a change, when viewed in a county-wide or even community plan context, may seem relatively "insubstantial", it is a very different matter in the vicinity of Ring Hill Estates. As noted in Section C below, "rural character" is perceived and experienced in a very localized way. So is the land use pattern and the functional relationships and impacts between and among adjacent land uses. Therefore, **the Board holds that, when evaluating the "substantially different" portion of the *West Seattle* test, the context may be as small as the immediate vicinity of the affected parcel(s)**. *See West Seattle Defense Fund v. City of Seattle (WSDF I),* CPSGMHB Consolidated Case No. 94-3-0016, Final Decision and Order (1995). In the present instance, the properties adjacent to and in the vicinity of the Ring Hill site would be subject to twice the dwelling unit count and its associated effects on the functional and visual character of the area. The Board notes further that, while Amendment 81 was introduced twelve days before adoption, Amendment 81A was not introduced until the day the ordinance was adopted.

The Board holds that the change is substantially different from the prior designation. Therefore, the public needed a reasonable opportunity to comment, which it was not provided. Consequently, the Board concludes that adoption of Amendment 81, as amended by Amendment 81A, does not comply with RCW 36.70A.140 and will be remanded to the County.

3. O'FARRELL II LEGAL ISSUE NO. 1

Did the Plan violate GMA planning goals as outlined in RCW 36.70A.020(11) and .140 when a last-minute Map Amendment #90 was passed on November 18, 1994, granting "potential zoning" without citizen participation?

Discussion

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

problem as "five pending plan amendments that require changing the proposed KCCP land use map." Since the studies were not expected to be completed before Plan adoption, the recommended solution was to "amend the [Plan] land use map to accommodate the five pending studies. This can be done through the 'technical correction' process." O'Farrell II Brief, Ex. 5, attachment.

The proposed Land Use Atlas before the Council showed a land use for the site (Urban Residential 4-12 units) that was less intense than that proposed in the plan amendment study (Urban Residential up to 24 units.) St. Ex. 21, Map 13.

Amendment 90 was submitted to the Council on November 14, 1994, with the caption "Amendment to Executive Proposed Comprehensive Plan--Land Use Map as presented in Legislative Format." The text provided:

> Amend Land Use Map as follows:
> Amend the Executive's Proposed Land Use Map from Urban Residential, 4-12 homes per acre to Urban Residential, greater than 12 homes per acre for property in the Newcastle area. See attached map.
> Rationale: This amendment will accommodate senior affordable housing. It is consistent with Proposed Comprehensive Plan Policies HO-102 and HO-103, which support providing a range of housing types for all economic segments in the County and sufficient land with necessary infrastructure for affordable housing. Please see the attached map and issue paper for more detailed information. O'Farrell II Brief, Ex. 2.

In the attached staff report, the Recommendation provides that, subsequent to the proposed land use map change, the proposed zoning atlas should be amended to R-6, potential R-24, and the hearing examiner process should be continued to determine whether to activate the potential zoning and if development conditions are necessary. O'Farrell II Brief, Ex. 2, attachment.

4. TOLT LEGAL ISSUE NO. 7

Did Map Amendment #101, which changed the land use designation from residential to neighborhood center at Hwy. 202 and 228th Ave. NE., fail to comply with RCW 36.70A.020(11) and .140 by failing to include the general public in early and continuous participation in the development and amendment of the plan?

Discussion

Petitioner Tolt alleges that public involvement was not encouraged as to Plan Amendment 101, as required by RCW 36.70A.020(11), stating that its first knowledge of the Amendment was on November 18, 1994, after the public hearing on the Plan had been closed. Tolt also asserts that the map attached to the Amendment incorrectly identifies land uses on surrounding properties. Tolt Brief, at 48-51.

The County responded that "more than half of the area designated Rural Neighborhood in the final 1994 Plan was designated as such in the Revised Executive Proposed Land Use Atlas published in August, 1994." It noted that an original amendment which would have amended the

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

Board affirms the *Alberg* holding that the indispensable party doctrine does not apply to cases before the Board.

After a review of the facts in each of the above-referenced Amendments, the Board concludes that the changes wrought were "substantially different" from the prior proposals. The difference between RA-10 and RA-5 at Ring Hill Estates is substantial. The difference between light industrial and residential in Duwamish is substantial. The difference between 4-12 dwelling units per acre and up to 24 dwelling units per acre at the Vasa Creek site is substantial. The difference between rural residential and rural neighborhood commercial near the intersection of Hwy 202 and 228th Ave NE is substantial.

Generally speaking, doubling a residential density or changing a use from residential to commercial or industrial use is a change that is substantially different. This does not imply that such changes are not within the discretion of the legislative body to make, and the Board is not rendering a judgment about the policy merits or substantive GMA compliance of the Amendments. [FN47] Rather, the conclusion here focuses on the procedural requirements that must be met when a proposed change crosses the threshold of "substantially different."

The Board further concludes that the public did not have a "reasonable opportunity to review and comment upon" the Amendments prior to the County Council's actions. Therefore, upon application of the test set forth in *WSDF I* to the facts in the present case, the Board concludes that the County has violated RCW 36.70A.140 with regard to Plan Amendments 89, 90, and 101 and zoning amendments 81 and 81A. These Amendments will be remanded to the County with directions to provide a reasonable opportunity for public comment prior to consideration by the Council of any subsequent re-adoption of such amendments. [FN48]

Section 110 of ESHB 1724 (Chapter 347, Laws of 1995) creates new statutory authority for the Board to find certain enactments adopted pursuant to the GMA invalid. It amends RCW 36.70A.300 by adding new subsections (2), (3) and (4) as follows:

> (2) A finding of noncompliance and an order of remand shall not affect the validity of comprehensive plans and development regulations during the period of remand, unless the board's final order also:
>
> a) Includes a determination, supported by findings of fact and conclusions of law, that the continued validity of the plan or regulation would substantially interfere with the fulfillment of the goals of this chapter; and
>
> (b) Specifies the particular part or parts of the plan or regulation that are determined to be invalid, and the reasons for their invalidity.
>
> (3) A determination of invalidity shall:
>
> (a) Be prospective in effect and shall not extinguish rights that vested under state or local law before the date of the board's order; and
>
> (b) Subject any development application that would otherwise vest after the date of the board's order to the local ordinance or resolution that both is enacted in response to the order of remand and determined by the board pursuant to RCW 36.70A.330 to comply with the requirements of this chapter.
>
> (4) If the ordinance that adopts a plan or development regulation under this chapter includes a savings clause intended to revive prior policies or regulations in the event the

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

jurisdictions. This conveys that communities, which consist of citizens, must be involved in the planning process that leads to adoption of plans and implementing regulations. Further, the importance of this goal is amplified and underscored by RCW 36.70A.140 which provides:

> Each county and city that is required or chooses to plan under RCW 36.70A.040 shall establish procedures providing for early and continuous public participation in the development and amendment of comprehensive land use plans and development regulations implementing such plans. The procedures shall provide for broad dissemination of proposals and alternatives, opportunity for written comments, public meetings after effective notice, provision for open discussion, communication programs, information services, and consideration of and response to public comments. Errors in exact compliance with the established procedures shall not render the comprehensive land use plan or development regulations invalid if the spirit of the procedures is observed.

c. Conclusions of Law

During the period of remand (*see* below), the continued validity of Zoning Amendments 81 and 81A, and Plan Amendments 89, 90, and 101 and any and all development regulations adopted to implement said Amendments to the Plan-- whether specifically appealed to the Board or not-- will substantially interfere with the fulfillment of Planning Goals 6 and 11 found at RCW 36.70A.020. Therefore, pursuant to the authority conferred by RCW 36.70A.300(2) as amended by ESHB 1724, the Board declares Zoning Amendments 81 and 81A, and Plan Amendments 89, 90, and 101, and any site-specific development regulations that implement the Plan Amendments are **invalid.**

E. PERMITTED USES IN THE RURAL AREA

Several parties have argued that certain non-residential uses are prohibited in the rural area. The Board has been asked to specifically rule on whether K-12 schools, golf courses, industrial uses and theme parks are permitted uses in the rural area. In so doing, we necessarily must review what the Act and prior Board decisions have said on the subject.

The Board previously answered the question of what patterns of residential lot sizes are permitted in the rural area. *See Bremerton*, at 51. However, lot sizes alone are not determinative of whether other uses, such as industrial, commercial and public facilities, are permitted in the rural area. The Board first examines the statute's requirements for the content of a county comprehensive plan rural element, then looks at the broad regional policy context first acknowledged by the Board in the *Bremerton* case.

Among the mandatory elements in a county comprehensive plan is the "rural element." Legislative amendments made to this section in 1995 (Chapter 400, Laws of 1995; EHB 1305) are noted below in underlining.

> Counties shall include a rural element including lands that are not designated for urban growth, agriculture, forest or mineral resources. The rural element shall permit <u>appropriate</u> land uses that are compatible with the rural character of such lands and provide for a variety of rural densities <u>and uses and may also provide for clustering, density transfer, design guidelines, conservation easements, and other innovative techniques that will accommodate</u>

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

> or the extraction of mineral resources. When allowed to spread over wide areas, urban growth typically requires urban governmental services. "Characterized by urban growth" refers to land having urban growth located on it, or to land located in relationship to an area with urban growth on it as to be appropriate for urban growth. (Emphasis added.)

This definition focuses on the intensity of the use of land, specifically naming such physical improvements as "buildings, structures and impermeable surfaces." Thus, the net intensity of physical improvements placed on rural land can, alone, be conclusive in determining if growth proposed for a rural area can be permitted or if it crosses the threshold into impermissible urban growth. Measures of development intensity traditionally include building height, setbacks, parking requirements, impervious surface coverage, and the extent of grading and its consequent removal of existing vegetation.

This would appear to be a useful screen to prohibit inappropriate growth in the rural area. Because "the production of food, other agricultural products, or fiber, or the extraction of mineral resources" is essential to the nature and character of rural areas, it is important that new growth not be "incompatible" with it. However, there are two problems with a literal and solitary application of this definition as the test of what is permitted in a rural area.

First, when the definition uses the phrase "such land", is it referring to the individual parcel on which development is proposed; to the individual parcel and its immediate vicinity; or to an even larger area, such as a neighborhood or drainage basin? Second, certain uses that by their very nature depend upon a rural setting also meet the definition of urban growth (i.e., the intensity of physical improvements or activities on the ground) and would thus be excluded from the rural area.

Regarding the first problem, FOTL argued that the correct reading is to read the words "such lands" as describing the individual parcel on which development is proposed. This may work well with respect to residential uses, particularly in light of the Board's prior holdings regarding minimum lot sizes in rural areas. However, such a rigid reading, when applied wholesale to all non-residential uses, achieves an absurd result. For example, if a rural fire station were proposed on a 2-acre parcel, it most certainly would have "buildings, structures and impermeable surfaces" on a portion of the land that would preclude the balance of the parcel from being primarily devoted to "the production of food, other agricultural products, or fiber, or the extraction of mineral resources." The Board concludes that such a reading is far too narrow.

At the other extreme, the County pointed out that the definition does not speak of individual parcels and that "such lands" must therefore refer to a much broader area. While the County is closer to the mark than FOTL, the Board cannot agree that the scope of "area-wide" means, as the County infers, an entire drainage basin or community planning area of many square miles. To measure the "incompatibility" of a proposed site development with the rural character of such a large area looks too far afield. Functional and visual rural character is perceived at relatively close quarters (e.g., within the view shed, "just up the road", or across the fence line) rather than beyond the immediate vicinity. While the County's proposed broad reading of "such lands" might eliminate very large projects, such as theme parks in the rural area, it would permit uses that, in close proximity, would be incompatible with "low-density residential development,

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

that a variety of non-residential uses are required in the rural area, the Board adopts a general rule and two specific exceptions.

The Board holds that, as a general rule, proposed uses that meet the definition of urban growth will be prohibited in a rural area unless: (1) the use, by its very nature, is dependent upon being in a rural area and is compatible with the functional and visual character of rural uses in the immediate vicinity; OR (2) the use is an essential public facility. A more specific discussion of this rule and its exceptions follows.

Certain uses, of necessity, must be in a rural area or near resource lands, which are typically adjacent to or surrounded by rural lands. For example, a sawmill should be close to forest lands. Certain recreational uses, such as campgrounds, golf courses without ancillary uses, and small airfields, are dependent upon the type of open and relatively undeveloped settings that exist on rural lands. Likewise, localized commercial or public facility uses that serve a rural population or other activities in the rural area are dependent upon a rural location close to their constituencies.

On the other hand, an industry that has no orientation to rural or resource based activities is not dependent upon a rural location. Likewise, a commercial operation that is oriented to a larger than rural market or service area is not dependent upon a rural location. Recreational activities that are not dependent upon such a location are not permitted. Thus, theme parks or mixed recreational uses (e.g., a combination of golf course, restaurant, office, or residential uses) are not permitted in a rural area. These uses would, however, potentially be permitted as "master planned resorts" pursuant to RCW 36.70A.360.

The "functional" portion of this analysis requires an evaluation of whether the functions traditionally found in the rural area would be unduly and negatively impacted. Such an "impact" assessment is traditionally associated with SEPA, including traffic, noise, light, air, runoff, and growth inducing impacts. Such an assessment may result in appropriate and necessary mitigating measures.

The "visual" portion of this test requires an assessment of the visual character of the rural area. Certain classes of uses may fit within the rubric of the "rural visual landscape" regardless of their specific location with the rural area. Campgrounds, parks, grange halls, churches, sawmills, small scale retail and other uses and activities fall into this category. They would easily fit into the visual context of any rural landscape. Still other potential uses would require a more location-specific and site-specific assessment. This could be administered through some combination of design guidelines and discretionary permit approval and would focus on the view shed *[FN53]* in which the proposed development is located.

The second class of exceptions to the rule is the essential public facilities that the Act specifically acknowledges are difficult to site. RCW 36.70A.200 provides:

> (1) The comprehensive plan of each county and city that is planning under this chapter shall include a process for identifying and siting essential public facilities. Essential public facilities include those facilities that are typically difficult to site, such as airports, state education facilities and state or regional transportation facilities, state and local correctional facilities, solid waste handling facilities, and in-patient facilities including substance abuse

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

permitted before the effective date of this Plan or the needs of public facilities such as schools. Public sewers may be extended only if they are tightlined and only after a finding is made that no reasonable alternative technologies are feasible. Public sewers which are allowed in the Rural Area pursuant to this policy shall not be used to convert Rural Area land to urban uses and densities or to expand permitted non-residential uses.

FOTL IV Conclusion No. 1

The County, by allowing K-12 schools in the rural area, is permitting a form of growth in the rural area that meets a narrow reading of the Act's definition of "urban growth". Nevertheless, K-12 schools meet the above-articulated exceptions to the general rule prohibiting urban growth in a rural area. The Board concludes that, by their nature, some schools may be in the rural area in order to serve the school children who live there. Schools can be compatible with rural character, depending largely on how they are designed and configured on the site. It is the County's duty and prerogative to adopt and enforce such policies and regulations as are necessary to keep K-12 schools in the rural area from being incompatible with the character of the rural land use pattern.

Further, the Board notes that, while schools are a primary duty of state government, and receive construction funding through the state, they are not a unit of state government. Rather, they are special districts and thus outside the ambit of RCW 36.70A.200. Therefore, within the meaning of the GMA, schools are not essential public facilities.

The Board concludes that the contested policies do not allow urban growth in the rural area. Therefore, the Board need not and will not address the portion of this issue that alleges inconsistency with the cited CPPs.

2. CARKEEK LEGAL ISSUE NO. 2 [FN56]

Does the Plan create internal inconsistencies between Policies R-208, R-209, R-307, R-308, R-309, R-311 and the aforementioned Plan policies R-314, R-315 and R-316, thereby rendering the Plan in non-compliance with RCW 36.70A.070?

R-208 provides:

Accessory and non-residential uses in predominantly residential portions of the Rural Area should be limited to those that:

a. Provide convenient local services for nearby residents; or

b. Require location in a Rural Area (for example, some utility installations); or

c. Support natural resource-based industries or adaptive reuse of significant historic resources.

These uses should be sited and designed to ensure protection or enhancement of rural character and the components of the Rural Area listed in policy R-101.

R-209 was previously quoted.

R-307 provides:

Convenience shopping and services for Rural Area residents should be provided by existing

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

appropriate environmental review. Any application for potential zoning actualization, however, shall be extensively conditioned to maintain the rural character and scale of the adjacent Rural Neighborhood and to protect sensitive natural features of the environment. Such sites may be denied actualization of industrial or mixed use zoning where such sites are found to be too sensitive or too near a sensitive area to permit adequate mitigation, even where mitigating conditions are proposed.

R-316 provides:

Development regulations for non-vested industrial development in Rural Areas shall require the following:

a. Greater setbacks, and reduced building height, floor/lot ratios, and maximum impervious surface percentage standards in comparison to standards for urban industrial development.

b. Maximum protection of sensitive natural features, especially salmonid habitat and water quality.

c. Building and landscape design that respects the aesthetic qualities and character of the Rural Area, and provides substantial buffering from the adjoining uses and scenic vistas.

d. Building colors and materials that are muted, signs that are not internally illuminated, and site and building lighting that is held to the minimum necessary for safety.

e. Heavier industrial uses, non-vested industrial uses producing substantial waste by-products or wastewater discharge, or non-vested paper, chemical and allied products manufacturing uses in the urban industrial zone shall be prohibited.

f. Industrial uses requiring substantial investments in infrastructure such as water, sewers or transportation facilities shall be scaled to avoid the need for public funding of the infrastructure.

Discussion

The County asserts that "Policy R-316 provides that all industrial development in the rural area must be rural in nature" and that "Significantly, this policy does not allow industrial development anywhere. It simply imposes mandatory conditions on industrial development in the rural area that is otherwise authorized." County Prehearing Brief, at 16-17. The Board disagrees with the County's statement that Policy R-316 provides that uses will be "rural in nature". Rather, by its own terms, this policy deals with "building and landscape design that respects the aesthetic qualities and character of the Rural Area" and directs that building setbacks, dimensions, colors and materials are to be selected that minimize visual impacts.

While these are laudable objectives aimed at achieving compatibility with the visual character of the rural area, they do not speak to the nature, or essence of the use as appropriate for the functional character of a rural setting. Subparagraphs "e" and "f" do identify as inappropriate "heavier industrial uses" (heavier than what?) and uses that are capital improvement intensive. Yet, even these limiting subparagraphs leave an overly broad range of potentially industrial uses that, pursuant to the above-identified holdings, are not dependent upon a rural location.

The County further argues that Policies R-314, R-315 and R-316 do not create urban growth in a rural area. County Prehearing Brief, at 28. The Board rejects this contention. Policies R-314 and

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

Prehearing Brief, at 3. Further, it argues that the allocation of growth targets to the Rural Areas is, on its face, in direct conflict with the GMA. Vashon Prehearing Brief, at 7. The County argues that no evidence has been presented to demonstrate that the 300 to 500 new households 'targeted' for Vashon would harm the water supply. County Prehearing Brief, at 8. Further, the County argues that, as long as appropriate mitigation measures are applied, even urban densities would not be inconsistent with aquifer protection. County Prehearing Brief, at 12.

Vashon-Maury Conclusion No. 1

The Board rejects Vashon's argument that allocating growth to rural areas is, on its face, a violation of the GMA. The Board has previously held that growth may be allocated to rural areas, provided that it does not constitute urban growth. *See Bremerton*, at 50. While the simple allocation of population or employment to a rural area does not, on its face, violate the Act, how that rural growth is manifested on the ground is a separate matter. *See Kitsap Citizens for Rural Preservation and Kitsap Audubon Society v. Kitsap County (KCRP I)*, CPSGMHB Case No. 94-3-0005, Final Decision and Order (1994), at 16.

2. VASHON-MAURY LEGAL ISSUE NO. 2

If the answer to issue #1 is yes, does Policy R-104B setting a target of 300-500 families for Vashon violate RCW 36.70A.070(5) and .110 by providing for urban growth in a rural area, and RCW 36.70A.020(10) and .070(1) by failing to provide protection of groundwater quality and quantity?

Vashon-Maury Discussion and Conclusion No. 2

Because the Board answers Legal Issue No. 1 in the negative, the Board need not and will not answer the portion of Legal Issue No. 2 dealing with the allocation of growth to a rural area. The portion dealing with groundwater protection will be addressed in Issues No. 3 and 4.

3. VASHON-MAURY LEGAL ISSUE NO. 3

Does Plan Policy R-205 describing the application of 10-acre zoning violate RCW 36.70A.070(5) and .110 by providing for urban growth, and RCW 36.70A.020(10) and .070(1) by failing to provide for groundwater protection?

Policy R-205 provides:

> A residential density of one home per 10 acres shall be used in the Rural Area where the predominant lot size is 10 acres or larger and:
>
> a. the lands are adjacent to or within one-quarter mile of a designated Agricultural Production District, Forest Production District or legally approved long-term mineral resource extraction site; or
>
> b. the lands contain significant environmentally constrained areas as defined by County ordinance or federal or state law. Plan, at 65.

Discussion

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

generate use conflicts with nearby resource lands. However, the experience in Florida suggests that five parcels can also constitute a form of sprawl. *See Bremerton*, at 50, fn. 33. Further, the experience in Oregon indicates that, when located immediately adjacent to urban growth boundaries, five-acre parcels can foreclose the opportunity for future expansion of the UGA. *See Achen, et al., v. Clark County*, WWGMHB Case No. 95-2-0067, at 33 . Either of these outcomes would thwart fundamental objectives of the GMA.

Therefore, rather than adopt a minimum rural residential lot size, the Board instead adopts as a general rule a "bright line" at 10 acres. **The Board holds that any residential pattern of 10 acre lots, or larger, is rural.** Any smaller rural lots will be subject to increased scrutiny by the Board to assure that the pattern of such lot sizes (their number, location and configuration) does not constitute urban growth; does not present an undue threat to large scale natural resource lands, such as forest lands, and large scale critical areas, such as aquifers; will not thwart the long term flexibility to expand the UGA; and will not otherwise be inconsistent with the goals and requirements of the Act.

Applying this test to the present facts, the Board finds the evidence unpersuasive that five lots on Vashon Island will contribute to sprawl or thwart the future expansion of a UGA. There is no UGA on the island. Nevertheless, the Board is troubled by two things.

First is the potential threat that further development at any density, but especially in five-acre lots, presents to the island's sole source aquifer. The County's response that such problems must be documented before revisiting the fundamental land use issue does not give sufficient regard to the importance of such water supplies nor the difficulty of lowering development intensity after parcelization and vesting has resulted in five lots.

Second is the prospect that all lots larger than five acres and not subject to the limitations in Policy R-205 would be platted down to five acres, thereby jeopardizing, if not eliminating, the Act's required range of densities. **Accordingly, the Board holds that the pattern of five-acre lots on Vashon Island does not comply with the Act given the County's admission that Vashon Island has a history of water quantity and quality problems.**

Vashon-Maury Conclusion No. 4

Policy 206 violates the Act and is remanded to the County with direction to either delete or justify the five-acre lot option. If the County chooses the latter, it must show how a range of lot sizes on Vashon-Maury Island will be maintained and how the prospect of a catastrophic water shortage and/or ground water contamination can be dealt with proactively rather than after the fact. Policy R-107 is not before the Board.

5. VASHON-MAURY LEGAL ISSUE NO. 5

Does Policy R-208 which sets standards for accessory uses in residential portions of rural areas violate RCW 36.70A.070(5) which places limits on the types of land uses allowed in rural areas?

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

RCW 36.70A.070(1), Comprehensive plans--Mandatory elements, directs the County to provide in the land use element of its Plan " ... for protection of the quality and quantity of ground water used for public water supplies."

WAC 365-190-030(2), a part of the minimum guidelines prepared by the Department of Community, Trade and Economic Development (CTED) to assist counties in classifying and designating critical areas, provides that:

> Areas with a critical recharging effect on aquifers used for potable water are areas where an aquifer that is a source of drinking water is vulnerable to contamination that would affect the potability of the water.

WAC 365-190-040(2)(d) provides that:

> Mapping should be done to identify ... known critical areas. Counties and cities should clearly articulate that the maps are for information or illustrative purposes only unless the map is an integral component of a regulatory scheme.

Noting that the Act does not have a specific requirement for inventorying or mapping either natural resource lands or critical areas, WAC 365-190-040(2)(d) provides that:

> For critical areas, performance standards are preferred, as any attempt to map wetlands, for example, will be too inexact for regulatory purposes. Standards will be applied upon land use application. Even so, mapping for critical areas for information but not regulatory purposes, is advisable.

The Procedural Criteria for Adopting Comprehensive Plans and Development Regulations, adopted by CTED, WAC 365-195-410, discusses a county's obligation to reexamine its earlier designation of critical areas when it prepares its comprehensive plan:

> (1) Requirements. Prior to the development of comprehensive plans, cities and counties ought to have designated critical areas and adopted regulations protective of them. Such areas are defined to include ... (b) areas of critical recharging effect on aquifers used for potable water ... The previous designations and regulations shall be reviewed in the comprehensive plan process to ensure consistency.
>
> (2) Recommendations for Meeting Requirements. Much of the analysis which is the basis for the comprehensive plan will come later than the initial identification and regulation of critical areas. The result may be plan features which conflict with the previous critical area provisions.
>
> ...
>
> (c) The review of existing designations should, in most cases, be limited to the question of consistency with the comprehensive plan, rather than a revisiting of the entire prior designation and regulation process. However, to the extent that new information is available or errors have been discovered, the review process should take this information into account.

The County Council passed Ordinance No. 11481, relating to the protection of critical aquifer recharge areas pursuant to Chapter 36.70A RCW, on September 12, 1994. The findings state that: the Ordinance constituted the County's actions to comply with the Board's order to designate and adopt regulations to protect critical aquifer recharge areas; the County is the lead

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

units/acre) and multifamily (18-dwelling units/acre) units on sewers" and "will provide a major employment center based on retail and business/office park uses." St. Ex. 40, at 2-15-16.

The GWMP, in a discussion of implementation of wellhead protection, notes that:

> [The Seattle-King County Health Department] will propose to the King County Council that the following be considered as critical areas for purposes of compliance with the Growth Management Act: Ground Water Management Areas, Sole Source Aquifers, and Wellhead Protection Areas. St. Ex. 40, at 3-21.

Union Hill attempted without success to have areas of high and moderate potential recharge, identified by a geological report and coinciding in part with the UPD boundaries, designated on the County's map as areas highly susceptible to ground water contamination. O'Farrell Brief, at 13; Brief, Ex. 7, Figure 20.

The Plan discusses ground water in Chapter Seven, Natural Environment, at section I. G, noting that:

> ...the natural hydrologic system can be altered by development practices and overuse of the aquifer. The result may be depletion of aquifers.
> Ground water is also subject to contamination from human activity. Once a source of ground water is contaminated it may be lost forever. The cost of protection is considerably less than the cost of remediation and replacement. Plan, at 125.

After citing the GMA's requirement to designate areas with a critical recharging effect on aquifers used for potable water, the Plan notes that " ... it is very difficult to map, designate, and define aquifer recharge areas."

> King County recognizes the need for aquifer protection and is developing ground water management plans. The protection of ground water requires an understanding of (1) the quantity of water replenishing aquifers relative to the quantity being withdrawn from them, and (2) the potential for contamination. These issues are functions of related, but different factors and cannot adequately be addressed by the same designation. The County is choosing to focus first on the contamination issue. Plan, at 125.

The Plan provides a map entitled "Areas Highly Susceptible to Ground Water Contamination," which:

> ... shows areas most susceptible to such contamination, using geologic characteristics with depth from ground surface to water table, and sole source aquifers in and around the City of Renton and all of Vashon-Maury Island. Plan, at 125 and Map following 125.

The Map shows three small areas of the Bear Creek UPD Urban Growth Area as being highly susceptible to ground water contamination, on the southwest, south and southeast edges of the area. Plan, map following 125.

Plan Policy NE-332 [FN58] provides:

> In unincorporated King County, areas identified as sole source aquifers or as areas with high susceptibility for ground water contamination where aquifers are used for potable water are designated as Critical Aquifer Recharge Areas as shown on the map ... Since this map

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

O'Farrell summarizes the requirements of the Act and the recommendations of the Guidelines as requiring that designations and development regulations for critical areas be reviewed during comprehensive plan adoption, when there is an opportunity to "correct errors and fill gaps that may have existed during the initial process of adopting critical areas." O'Farrell argues that the Union Hill proposal to add its proposed aquifer protection areas to the Plan should have been accepted by the County, and that the previously enacted portions of the King County Code referenced in Ordinance 11481 were not adopted with the protection of groundwater or aquifer recharge areas as their chief purpose.

The County argues that O'Farrell has not identified a GMA duty the County has violated; the County has designated and adopted regulations to protect critical aquifer recharge areas, and the Act does not require that all designated areas receive a rural land use designation. It cites WAC 365-190-030(2) to support its position that the County correctly focused on ground water quality, rather than quantity, in its designations and regulations.

The County points out that the designations of Critical Aquifer Recharge Areas in Plan Policy NE-332 (and Map following page 125) are the same as the designations made in Ordinance 11481, and that NE-332 and the challenged policies do, in fact, address ground water quantity as well as quality.

The Board holds that the designations of Critical Aquifer Recharge Areas made in Ordinance 11481, adopted September 12, 1994, are presumed valid; the only issue before the Board is the extent of the County's duty, at the time of Plan adoption, to reexamine those designations to determine whether any changes were necessary, and if so, to take appropriate action in the Plan.

O'Farrell's objection as to the County's failure to designate the recharge area Union Hill had identified is addressed in NE-332:

> [T]he County shall work in conjunction with cities and ground water purveyors to designate and map recharge areas which address ground water quantity concerns as new information from ground water and wellhead protection studies adopted by County or state agencies becomes available. Updating and refining the map shall be an ongoing process. Plan, at 125.

Similarly, Policy NE-333, protection of ground water quality and quantity, addresses regulations for areas with adopted plans and programs. Plan, at 126.

Where, as here, a ground water study was not adopted as required by NE-332, an aquifer identified by that study was not included on the map.

O'Farrell has not met its burden of showing that the emphasized portions of those policies violate the Act, or that the County abused its discretion when it did not modify the designations or regulations. However, the Board notes that it interprets that provision in NE-332 to mean that, at such time as Union Hill's proposal is adopted by the County or a state agency with jurisdiction, the map showing Critical Aquifer Recharge Areas must be amended at the earliest opportunity to include the areas proposed, and that regulations and programs developed under Policy NE-333 will address such new areas.

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

interest to prevent development of the lands or to control the resource development of the lands. The requirement for acquisition of sufficient interest does not include those corridors regulated by the interstate commerce commission, under provisions of 16 U.S.C. Sec. 1247(d), 16 U.S.C. Sec. 1248, or 43 U.S.C. Sec. 912. Nothing in this section shall be interpreted to alter the authority of the state, or a county or city, to regulate land use activities.

The city or county may acquire by donation or purchase the fee simple or lesser interests in these open space corridors using funds authorized by RCW 84.34.230 or other sources.

RCW 36.70A.370 provides:

(1) The state attorney general shall establish by October 1, 1991, an orderly, consistent process, including a checklist if appropriate, that better enables state agencies and local governments to evaluate proposed regulatory or administrative actions to assure that such actions do not result in an unconstitutional taking of private property. It is not the purpose of this section to expand or reduce the scope of private property protections provided in the state and federal Constitutions. The attorney general shall review and update the process at least on an annual basis to maintain consistency with changes in case law.

(2) Local governments that are required or choose to plan under RCW 36.70A.040 and state agencies shall utilize the process established by subsection (1) of this section to assure that proposed regulatory or administrative actions do not result in an unconstitutional taking of private property.

(3) The attorney general, in consultation with the Washington state bar association, shall develop a continuing education course to implement this section.

(4) The process used by government agencies shall be protected by attorney client privilege. Nothing in this section grants a private party the right to seek judicial relief requiring compliance with the provisions of this section.

In February, 1992, the Attorney General issued the "State of Washington Attorney General's Recommended Process for Evaluation of Proposed Regulatory or Administrative Actions to Avoid Unconstitutional Takings of Private Property." The Board takes official notice that this document was updated in March, 1995.

Discussion

Keesling argues that the County has violated the property right goal at RCW 36.70A.020(6). The Board observed in *Gutschmidt v. Mercer Island*, CPSGPHB Case No. 92-3-0006 (1992) that the Board's jurisdiction is limited to whether the local government *considered* the goal.

> ... the Board holds that cities and counties planning under the Act must consider the planning goals listed at RCW 36.70A.020 before adopting comprehensive plans and development regulations. *Gutschmidt*, at 14. (Emphasis in original.)

The Board has consistently held that its jurisdiction does not include authority to adjudicate alleged constitutional violations or alleged noncompliance with any statutes other than Chapter 36.70A RCW or Chapter 43.21C RCW. [FN59] *See, Gutschmidt*, Order on Dispositive Motions (1992). *See also Twin Falls*, Order on Dispositive Motions (1993).

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

plans and development regulations ...
(5) Economic development. Encourage economic development throughout the state that is consistent with adopted comprehensive plans, promote economic opportunity for all citizens of this state, especially for unemployed and for disadvantaged persons, and encourage growth in areas experiencing insufficient economic growth, all within the capacities of the state's natural resources, public services, and public facilities.
(8) Natural resource industries. Maintain and enhance natural resource-based industries, including productive timber, agricultural, and fisheries industries. Encourage the conservation of productive forest lands and productive agricultural lands, and discourage incompatible uses.

SEPA directs the State Department of Ecology to prepare rules for implementation of the Act, including the scope of coverage and contents of EISs. RCW 43.21C.110(1)(d). RCW 43.21C.110(l)(f) directs preparation of a list of elements of the environment, limited to the natural and built environment. The latter consists of:

Public services and utilities (such as water, sewer, schools, fire and police protection), transportation, environmental health (such as explosive materials and toxic waste), and land and shoreline use (including housing, and a description of the relationships with land use and shoreline plans and designations, including population).

The Rules prepared in response to those instructions are found at Chapter 197-11, Washington Administrative Code. Part Four provides detailed instructions for preparation of an EIS, including: EIS contents, WAC 197-11-440; contents of an EIS on nonproject proposals, WAC 197-11-442; EIS contents when prior nonproject EIS, WAC 197-11-443; and Elements of the environment (natural and built), WAC 197-11-444.

WAC 197-11-448, Relationship of EIS to other considerations, provides:

(1) SEPA contemplates that the general welfare, social, economic, and other requirements and essential considerations of state policy will be taken into account in weighing and balancing alternatives and in making final decisions. However, the EIS is not required to evaluate and document all of the possible effects and considerations of a decision or to contain the balancing judgments that must ultimately be made by the decision makers. Rather, an EIS analyzes *environmental* impacts and must be used by agency decision makers, along with other relevant considerations or documents, in making final decisions on a proposal. The EIS provides a basis upon which the responsible agency and officials can make the balancing judgment mandated by SEPA, because it provides information on the environmental costs and impacts. SEPA does not require that an EIS be an agency's only decision making document.
(2) The term "Socioeconomic" is not used in the statute or in these rules because the term does not have a uniform meaning and has caused a great deal of uncertainty. Areas of urban environmental concern which must be considered are specified in RCW 43.21C.110(1)(f), the environmental checklist (WAC 197-11-960) and 197-11-440 and 197-11-444.
(3) Examples of information that are not required to be discussed in an EIS are: Methods of financing proposals, economic competition, profits and personal income and wages, and social policy analysis (such as fiscal and welfare policies and nonconstruction aspects of education and communications). EISs may include whether housing is low, middle, or high

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

Do Policies R-208 and R-209 fail to comply with RCW 36.70A.020(5) and (8) by forbidding golf courses, gun clubs, parks and tourist attractions in rural areas?

Discussion

Keesling asserts that Policies R-208 and-209, read together, would forbid the siting of golf courses, gun clubs, parks and tourist attractions in rural areas, and that such a restriction is not cured by the narrative text following policy R-209. She contends that the failure to allow such facilities violates Planning Goals 5 and 8 of the Act.

Policy R-208 provides:

> Accessory and non-residential uses in predominantly residential portions of the Rural Area should be limited to those that:
>
> a. Provide convenient local services for nearby residents; or
>
> b. Require location in a Rural Area (for example, some utility installations); or
>
> c. Support natural resource-based industries or adaptive reuse of significant historic resources.
>
> These uses should be sited and designed to ensure protection or enhancement of rural character and the components of the Rural Area listed in policy R-101. Plan, at 66-67. [FN60]

Policy R-209 provides:

> Accessory and non-residential uses appropriate for the Rural Area include raising livestock, sale of agricultural products produced on-site and small-scale cottage industries. Except for uses requiring a rural location or those related directly to farming, forestry, fisheries, mining, or kindergarten through twelfth grade public schools and facilities, the Zoning Code should not permit primary non-residential uses such as golf courses and churches on lands in the rural Area designated for a residential density of one home per 10 acres or lower. Plan, at 66-7.

In text immediately following Policy R-209, the Plan notes that:

> Compatible non-residential uses in rural residential areas might include schools, small day care centers, small churches, home occupations and cottage industries. Neighborhood shopping, gas stations, libraries, high schools and feed and grain stores are examples of activities that also provide services to nearby residents, but are encouraged to locate within rural cities or Rural Towns and neighborhoods. Policy R-209 does not preclude consideration of public schools or new public or commercial recreational facilities, such as golf courses, gun clubs, parks or tourist attractions, in portions of the Rural Area designated for one home per five acres. Plan, at 67.

The preamble to RCW 36,70A.070 requires a comprehensive plan to be internally consistent. The narrative text following Policy R-209 indicates that Policy R-209 does not preclude golf courses in Rural Areas designated for one du/five acres. Yet Policy R-209 specifically excludes golf courses in Rural Areas designated for one du/10 acres or less. The Board holds that this is an internal inconsistency the County will have to cure.

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

Keesling Reply, at 5. She cites to her extensive involvement in the county planning processes, including EIS and Supplemental Environmental Impact Statement (SEIS) scoping.

Keesling Conclusion No. 4

The Board holds that Keesling has not met the SEPA standing test. Therefore, the Board will not examine this issue further.

5. KEESLING LEGAL ISSUE NO. 5

Did the County fail to comply with RCW 36.70A.140 and WAC 365-195-600 when it adopted the Plan, particularly the rural land use, natural resource lands and natural environment chapters and the implementing development regulations relating to rural areas and issues?

Discussion

The County recites its public involvement process, beginning with the CPPs and Comprehensive Plan, and throughout the process of developing its Implementing Regulations. In particular, it points out Ms. Keesling's appearance at many of the meetings as evidence that she availed herself of the many opportunities the County afforded for public involvement. The County further details its broad dissemination of information on how to comment on the proposed regulations; mailings to property owners potentially affected by zoning changes; and public hearings with public notice.

The Board is impressed by the great scope and variety of efforts that the County made to involve the public in the development of the Plan and implementing regulations. With the notable, but limited, exceptions of the Amendments addressed in Section IV. D of this decision above, the County did an excellent job of providing early and continuous public participation. It is inevitable that some of those involved in the public participation will disagree not only with the ultimate choices made by the policy makers, but even the breadth and comprehensiveness of the method employed to engage the public. Except for the Amendments noted above, the Board concludes that, on the whole, the County met or exceeded the Act's public participation requirements.

Keesling has failed to carry her burden of proof to show, by a preponderance of the evidence, specifically how and why the County violated RCW 36.70A.140.

Keesling Conclusion No. 5

With the exception of the Amendments noted in IV.D of this decision, the County did not violate RCW 36.70A.140 when it adopted the Plan, particularly the rural land use, natural resource lands and natural environment chapters and the implementing development regulations relating to rural areas and issues.

6. KEESLING LEGAL ISSUE NO. 6

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

Did the County's use of public advisory committees fail to comply with RCW 36.70A.020(11) and .140 and with WAC 365-190-040(2) and WAC 365-190-040(2)?

RCW 36.70A.140 establishes the specific requirements for that citizen involvement cited above, directing planning jurisdictions to:

> ... establish procedures providing for early and continuous public participation in the development and amendment of comprehensive land use plans and development regulations implementing such plans. The procedures shall provide for broad dissemination of proposals and alternatives, opportunity for written comments, public meetings after effective notice, provision for open discussion, communication programs, information services, and consideration of and response to public comments. Errors in exact compliance with the established procedures shall not render the comprehensive land use plan or development regulations invalid if the spirit of the procedures is observed.

Discussion

In an early case involving County-wide Planning Policies (CPPs), *City of Poulsbo, et al., v. Kitsap County,* CPSGPHB Case No. 92-3-0009 (1993), the Board first discussed the role of citizens in planning activities under the Act. The specific issue was whether a planning policy could delegate to a group of citizens a decision on annexation that would otherwise be solely the responsibility of the County's Commissioners. In holding that such delegation was contrary to the Act, the Board observed:

> ... the "public participation" that is one of the hallmarks of the GMA, does not equate to "citizens decide." The Act requires the elected legislative bodies of cities and counties, not individual citizens, to ultimately "decide" on the direction and content of policy documents such as county-wide planning policies and comprehensive plans. The Act assigns that policy making authority to city and county elected officials, who are accountable to their citizens at the ballot box. *Poulsbo,* at 36.

In *Twin Falls,* one of the issues decided by the Board was whether the county had taken public input into consideration when it took action to designate and regulate natural resource lands--in that instance, forest lands. One of the petitioners alleged that " ... the public's input was not properly considered because the hearing, indeed the entire public participation process, was manipulated." In determining that the County had met the Act's requirements for public participation, the Board explained that:

> ... 'consider public input' does not mean 'agree with' or 'obey' public input. ...The Board notes that participation is one of the cornerstones of the GMA and encourages local governments to consider public input, even when such consideration, as here, is not explicitly required by the Act. The principle that the public should provide input to legislative bodies is one of the most basic precepts of the comprehensive planning process--that a variety of inputs (data, values, public opinion) must be solicited and weighed and then a decision rendered. Public participation is one of many critical inputs that the Act recognizes as indispensable to comprehensive planning (RCW 36.70A.140, RCW 36.70A.020(11)); however, the Act reserves to city and county legislative bodies the authority to 'adopt' or 'enact' or 'designate' plans and regulations pursuant to RCW 36.70A.040(1), RCW 36.70A.060, RCW 36.70A.120 and RCW 36.70A.170. (Footnote omitted.) *Twin Falls,* at 77.

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

neighbors, King County government and others to address complex and difficult issues associated with maintaining working farms near urban areas. Plan, at 104.

RCW 36.70A.020(11), Citizen participation and coordination, directs governments planning under the Act to encourage citizen involvement in planning, and to ensure coordination between communities and jurisdictions.

In each of the Policies cited above, the County has gone beyond the adoption of policies required to be included in a comprehensive plan, and has focused on the steps needed in the future to assure full implementation of its Plan. While tribal trust lands are not subject to the County's land use policies and regulations, Tribes constitute a unique form of government, with a special role in resource management as a result of provisions of federal treaties. The County cannot be faulted for including tribes in its implementation efforts.

Keesling Conclusion No. 9

"Small affected rural landowners" are not specifically included among intended participants named in the above-cited policies--like "citizens," "landowners," "affected groups," and "special interest groups." Further, a single rural landowner without a group affiliation may find it more difficult to participate as an individual. Still, nothing in the policies can be construed as limiting or barring rural landowners' participation. **The Board holds that the County has not violated Goal 11 in its adoption of the cited Plan policies.**

Plan Policies RL-109, RL-111, RL-208, RL-301 and NE-103 do not violate RCW 36.70A.020(11) by virtue of the participation they afford to Native American tribes.

10. KEESLING LEGAL ISSUE NO. 11

Do Policies RL-401 and RL-411 fail to comply with RCW 36.70A.060(1) by protecting adjacent lands from mining activities, rather than the reverse?

Discussion

Keesling asserts that important mining site classes were not identified and protected by the County. The County disputes the contention.

Keesling Conclusion No. 11

The compliance of the County's mineral resource lands designations and regulations was the subject of a recent case. The Board concluded in *Alberg* that the County's implementing regulation ordinances were in compliance with the requirements of the Act. Keesling has presented no new or persuasive evidence in the present case to persuade the Board otherwise relative to either the Plan or the implementing regulations.

11. KEESLING LEGAL ISSUE NO. 12

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

Keesling argues that:

> ... since there was an important intent of setting up hearings boards where ordinary citizens can petition for redress, the Board should give the benefit of the doubt to the citizens and the webbing of WAC 242-02-660. Otherwise, the door was opened to citizen petitioners, only to be shut by restricting the Board from connecting 1 and 1 to equal 2 and thereby preventing citizen petitioners from assembling effective arguments to obtain the needed relief. If the WAC 242-02-660 panoply is not "officially noticed" by hearings boards, then those boards are making blindered decisions with few connections to the reality of interwoven laws." Keesling Brief, at 2.

Taking official notice of a law, enactment, document or decision does not equate to having jurisdiction to render a judgment regarding compliance with same. The Board has no authority to expand its jurisdiction beyond its statutory charge. The adoption of WAC 242-02-660 was not intended to expand the Board's authority and could not have done so. Rather, it was intended to clarify that the Board, in a fashion similar to a court, may take official notice of certain documents if such action would be of assistance in discharging its statutory duty.

The legislature did, in fact, expand the Board's jurisdiction in the 1995 session. ESHB 1724, at Sec. 108, amended RCW 36.70A.280 as follows:

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

In addition, ESHB 1724, at Sec. 110, amended RCW 36.70A.300 to add a new paragraph (4) as follows:

> If the ordinance that adopts a plan or development regulation under this chapter includes a savings clause intended to revive prior policies or regulations in the event the new plan or regulations are determined to be invalid, the board shall determine under subsection (2) of this section whether the prior policies or regulations are valid during the period of remand. (Emphasis added.)

In the above-cited paragraph, "this chapter" refers to Chapter 36.70A RCW, the GMA, while "prior policies or regulations" refers to non-GMA enactments. Thus, the Board would have jurisdiction to determine whether prior policies and regulations adopted under the authority of, for example, Chapter 36.70 RCW, would substantially interfere with the fulfillment of the goals of Chapter 36.70A RCW and, if such was the case, could determine them to be invalid for the period of remand. It is important to note, however, that this is not the same as finding an enactment or action to be in compliance with the internal requirements of that other statute. Thus, the legislature is aware of how to expand this Board's jurisdiction over other statutes and has recently done so in a limited fashion. This bolsters the Board's historical view of its jurisdiction as narrowly drawn.

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

the County sets forth four steps necessary to maintain and enhance commercial agriculture. Step four provides that "farming practices that conserve soils and protect water quality, fisheries and wildlife, but are balanced with the needs of the agricultural industry, should be encouraged." Plan, at 104.

At Section C, Part III, Chapter 6, the Plan notes that:

> Agricultural practices modify the natural environment in order to produce food or fiber or maintain livestock for human use. Ideally, practices that maintain the productivity of the lands also protect environmental quality. Farmers, technical advisors and environmental regulators must work together to understand the relationships between production practices, environmental protection and profitability. These practices, referred to as Best Management Practices, are designed to prevent erosion, retain riparian vegetation, avoid stream bank collapse, properly dispose of animal wastes, safely use and dispose of pesticides and prevent excessive surface water runoff. Plan, at 107.

Policy RL-311 immediately following that text provides:

> On an on-going basis, King County should develop incentives, educational programs and other methods to encourage agricultural practices which maintain water quality, protect public health, protect fish and wildlife habitat, protect historic resources and prevent erosion of valuable agricultural soils. Plan, at 107.

While achieving and maintaining an appropriate balance between agricultural production practices and protection of environmental quality presents a long-term challenge, the County has identified the problem, as well as potential means to address the problem, in the Plan. Its failure to define "degraded" does not constitute a violation of RCW 36.70A (Preamble).

Keesling Conclusion No. 16

Keesling has failed to demonstrate that the County's failure to provide a definition of "degraded" in the Plan is a violation of the specified provision of RCW 36.70A.070

14. KEESLING LEGAL ISSUE NO. 17

Is policy ET-107, a solar-access-protection policy, in the Plan consistent with the Plan's maximum tree-retention policies and thus in violation of the preamble to RCW 36.70A.070?

Discussion

Keesling fails to show by a preponderance of the evidence that these Plan policies are inconsistent. She fails to carry her burden of proof.

Keesling Conclusion No. 17

Policy ET-107 is not inconsistent with the Plan's tree-retention policies and thus does not violate the preamble to RCW 36.70A.070.

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

M. Peter Philley
Board Member

Joseph W. Tovar, AICP
Board Member

Chris Smith Towne
Board Member

Note: This Final Decision and Order constitutes a final order as specified by RCW 36.70A.300 unless a party files a Petition for Reconsideration pursuant to WAC 242-02-830.

The following footnote reference number is unavailable and missing from the preceding opinion.

[FN12]

FN4. *See also Plan, Technical Appendix D, at D-1.*

FN5. This section addresses FOTL III Legal Issues Nos. 10 and 11.

FN6. The appendix also refers to an August 15, 1994 action by the King County Council. Plan, Technical Appendix D, footnote 3, at D-3.

FN7. *Tacoma,* at 13 (footnote omitted):

> The *compact urban development* purpose will require that the land use pattern and urban form of the unincorporated portions of UGAs be "compact" and efficient. As the Board held in *Rural Residents*, a county will have to "show its work" to justify the UGA, a part of which will require the definition, in numeric terms, of "urban" uses and densities and an inventory of land available to accommodate the growth. This is essentially a countywide accounting exercise which must show that the net land available for urban development will be sufficient to accommodate the forecasted growth. The integrity of the accounting and the validity of the UGA depend upon the actual utilization of land achieving the densities adopted in the comprehensive plans. It will no longer be sufficient for development permits to simply meet the minimum lot size specified in a zoning ordinance. RCW 36.70A.120 now requires that planning activities, such as permitting and platting, be consistent with the comprehensive plans.

FN8. *Tacoma,* at 19:

> ... it is nonetheless imperative that the County base its UGAs on OFM's twenty-year population projection, collect data and conduct analysis of that data to include sufficient areas and densities for that twenty-year period (including deductions for applicable lands designated as critical areas or natural resource lands, and open spaces and greenbelts), define urban and rural uses and development intensity in clear and unambiguous numeric terms, and

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

same is true of population and employment allocations. Each has a duty to work with the other, but the County ultimately has the responsibility to act as the regional government to adopt final CPPs, final urban growth areas and final population and employment allocations to urban growth areas, including cities. As the County performs these duties, particularly the allocation of population and employment, it must be responsive to the concerns and needs of the cities, and mindful of the obligations that the cities have as primary providers of urban services under the Act.

Cities and the County are operating under an entirely new statutory scheme under Chapter 36.70A RCW. The newly clarified roles for cities and counties, and the careful balancing of obligations and prerogatives, will require ongoing dialogue, flexibility and adjustments by all parties. The Board agrees with the argument of 1000 Friends that allocating growth (and its constituent parts, population and employment) is a regional policy exercise rather than a local regulatory exercise. *Edmonds*, at 31. (Emphasis in original.)

FN22. This matter addresses FOTL III's Legal Issue No. 5, at 51.

FN23. The Plan introduces this statement as follows, at 34-36:

King County's growth strategy encourages efficient use of urban land and maximizes the benefits of public facility spending. The growth strategy designations established in this chapter will help the County concentrate its limited funds by designating priority areas for spending on transit and road improvements. The County's priorities are as follows:

FIRST PRIORITY: Alleviate existing safety and maintenance and pipeline transportation, health, human and public safety needs within the entire Urban Growth Area (shown in green and yellow on the Service and Finance Strategy map contained in Chapter One, Plan Vision).

SECOND PRIORITY: Fund transportation improvements which support new growth in the green area. Funds are prioritized this way because the County does not have the resources to fund new growth throughout the entire Urban Growth Area while meeting the funding needs of the first priority, above.

FN24. The quotation continues:

The following factors support the Service and Finance Strategy designations:

1 Proximity to designated Urban Centers;

1 Proximity to cities;

1 Public sewer availability, defined as the presence of sewers now or within six years through extensions included in adopted sewer comprehensive plans;

1 Water supply availability, defined as the presence of a water source with applicable water rights that can serve the projected demand through the year 2000, as shown by adopted water comprehensive plans, and

1 Areas highly susceptible to ground water contamination.

The following definitions are used in this chapter and Chapter Nine, Transportation, for transportation needs associated with the Service and Finance Strategy:

1 Existing transportation needs are associated with households and businesses which are in existence at the time of plan adoption.

1 Pipeline transportation needs are associated with growth that is pending through the County's development review process.

1 Transportation needs for new growth are associated with growth that has been planned for

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

incorporated rural cities are Black Diamond, Carnation, Duvall, Enumclaw, North Bend, Skykomish and Snoqualmie. For purposes of recognizing its land use authority and the need for intergovernmental cooperation, the Muckleshoot Indian Tribe is recognized, even though it is not subject to the requirements of the Growth Management Act.

FN30. The Plan defines "tightlined" as:

"Tightline" means a sewer line designed and sized specifically to serve only a particular facility or place. Plan, at 64.

FN31. Only Black Diamond's existing city limits and a 783 acre approved annexation area are included within the UGA. Plan, at 220.

FN34. The Board assumes that the total capacity of the Rural Cities includes incorporated and expansion areas. *See* Rural Cities Urban Growth Areas report, Stip. Ex. 27, at 7 which indicates that the cities in rural areas have room for approximately 6,500 new dwelling units within existing city limits and an additional 6,500 dwelling units within their expansion areas.

FN35. The paragraphs preceding the quote run as follows: Highlights:

By working together, five cities and King County staff have reached agreement on the size and location of the UGAs. Following discussions and public workshops, King County and the cities of Enumclaw, Carnation, Duvall, Snoqualmie and Skykomish have developed recommended preliminary UGAs. The joint recommendations are included in this report The cities of Black Diamond and North Bend were not able to reach agreement with King County staff.... Stip. Ex. 27, at 3.

...

Supplemental Environmental Impact Statement Scenarios

A Draft Supplemental Environmental Impact Statement (SEIS) on changes to the Countywide Planning Policies was published in January 1994. That document includes an analysis of the environmental impacts of five different scenarios for managing growth in King County. For each scenario, a different amount of household growth is allocated to the rural cities.

For example, if most growth is directed to 14 urban centers (downtown-like areas) in the western part of the County over the next 20 years, about 6,450 new households total would likely be built in the seven rural cities. Under the scenario, the rural cities would get the smallest growth increase. However, if growth were to follow trends of the past 10 to 20 years, about 12,800 new households would likely be built in all the rural cities. Under this scenario, the rural cities would get the largest growth increase.

The sum of the individual rural cities growth projections is 10,980 households. While this number falls within the range of the growth scenarios reviewed in the Countywide SEIS, it may be interpreted to be contrary to the vision of growth established in the Countywide Planning Policies adopted in 1992. The policies call for the vast bulk of residential growth to be built in the western part of the County, either in urban centers or other urban areas, not in the rural cities. Stip. Ex. 27, at 6-7.

...

FN36. The 1995 legislature enacted ESHB 1724 which replaced the writ of certiorari process on

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

n. Development on land added to the Urban Growth Area under this policy shall be subject to the same growth phasing policies applicable to all other urban development; and
o. Where a contiguous band of publicly dedicated open space currently exists along the Urban Growth Area line, the above program shall not be utilized. Plan, at 218-219 (Emphasis added.)

FN39. That passage reads:

I-205 King County shall amend the Urban Growth Area to add rural lands to the UGA consistent with policy I-204. Comprehensive Plan Land Use Map amendments pursuant to this policy shall occur each year as part of the annual review of the Plan, and shall consist of a rural to urban redesignation and a reclassification to an urban residential zone. Detailed site suitability and development conditions for both the urban and open space portions of the proposal shall be established through the preliminary formal plat approval process. Open space dedication shall occur at final formal plat approval. If the applicant fails to actively pursue and receive preliminary formal plat approval during a reasonable period of time the urban and open space properties shall convert to a rural designation and rural zone classification during the next yearly review of the King County Comprehensive Plan. Plan, at 219-220.

FN40. RCW 36.70A.160 provides:

Each county and city that is required or chooses to prepare a comprehensive land use plan under RCW 36.70A.040 shall identify open space corridors within and between urban growth areas. They shall include lands useful for recreation, wildlife habitat, trails, and connection of critical areas as defined in RCW 36.70A.030. Identification of a corridor under this section by a county or city shall not restrict the use or management of lands within the corridor for agricultural or forest purposes. Restrictions on the use or management of such lands for agricultural or forest purposes imposed after identification solely to maintain or enhance the value of such lands as a corridor may occur only if the county or city acquires sufficient interest to prevent development of the lands or to control the resource development of the lands. The requirement for acquisition of sufficient interest does not include those corridors regulated by the interstate commerce commission, under provisions of 16 U.S.C. Sec. 1247(d), 16 U.S.C. Sec. 1248, or 43 U.S.C. Sec. 912. Nothing in this section shall be interpreted to alter the authority of the state, or a county or city, to regulate land use activities.

The city or county may acquire by donation or purchase the fee simple or lesser interests in these open space corridors using funds authorized by RCW 84.34.230 or other sources.

FN41. THIS DISCUSSION ADDRESSES FOTL IV LEGAL ISSUES NOS. 3 AND 4.

FN42. The Plan specifically incorporates by reference Technical Appendix.

FN43. For instance, the Federal Safe Drinking Water Act, the state Water Resources Act and Public Water System Coordination Act.

FN44. F-301 provides:

F-301 In the Full Service Areas of the Urban Growth Area, Group A water systems are

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

FN48. Because the Board is answering Duwamish Legal Issue No. 3 in the affirmative and remanding Amendment 89, the Board need not and will not answer Duwamish Legal Issues Nos. 1, 2, 4, and 5. Because the Board answers Tolt Legal Issue No. 7 in the affirmative, and remands Amendment 101, the Board need not answer Tolt Legal Issue No. 8. Because the Board answers O'Farrell II Legal Issue No. 1 in the affirmative, and remands Amendment 90, the Board need not and will not answer O'Farrell II Legal Issues Nos. 2, 3 and 4.

FN49. The four county members of the Puget Sound Regional Council are King, Kitsap, Pierce and Snohomish.

FN50. The Board notes that the numeration of definitions in the Act was revised by Section 103 of ESHB 1724.

FN51. The King, Kitsap and Pierce County Plans have all adopted "rural character" policies. Much work has been done in these counties to identify what physical attributes of the existing landscape should be preserved and what design characteristics of new development can help achieve compatibility with the rural context. The Board takes official notice of the *South Kitsap Rural Community Design Report,* Kitsap County Department of Community Development, July, 1993. *See also*, King County Plan Policy R-101, at 59. The Board also takes official notice of *Rural by Design*, Randall Arendt, American Planning Association, Chicago, Illinois (1994). The latter text provides examples from other parts of the United States of design techniques to preserve rural character.

FN52. The above cited documents are replete with examples of how the specifics of building and site design can make a difference. For example, buildings so large in scale that they dwarf nearby buildings or that employ materials, shapes and colors alien to a rural setting, disrupt the visual character of the rural landscape. Visual disruption can also result from the injudicious placement of the structure(s) on a site and the degree to which existing topography and vegetation must be altered to accommodate the use. Placing a building on high ground for better views not only destroys a key element in the rural visual landscape (forested ridgelines), it calls attention to the new structure by making it so visually prominent. Likewise, the wholesale grading away of a prominent landform and its mature vegetation, degrades visual rural character. Because such outcomes are, in large measure, the consequence of intensive land uses (i.e., those that require extensive grading and lot coverage) it follows that such uses are incompatible with the visual character of the rural landscape.

FN53. A "view shed" is simply that portion of the landscape that is visible from a given point, terminating at the horizon. It is somewhat analogous to a watershed, generally defined by a ridgeline, treeline or other prominent linear physical feature.

FN54. The Board has held that these two subparagraphs must be read together in order to discern what the Act defines as "essential public facilities." *See Children's Alliance, et al., v. City of Bellevue*, CPSGMHB Case No. 95-3-0011 (1995), at 7.

FN55. FOTL IV abandoned Legal Issue No. 2. See FOTL IV Prehearing Brief, at 1.

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

7

Bremerton, et al.,
v.
Kitsap County
(Bremerton I)

1995 WL 903165 (Wash.Central.Puget.Sd.Growth.Mgmt.Hrgs.Bd.)

Central Puget Sound Growth Management Hearings Board
State of Washington

BREMERTON, ET AL., PETITIONERS
v.
KITSAP COUNTY, RESPONDENT

Consolidated Case No. 95-3-0039

October 6, 1995

Additions are indicated by <<+ Text +>>; deletions by <<- Text ->>.

FINAL DECISION AND ORDER (with Scrivener's Error underlining corrections)

TABLE OF CONTENTS

I. PROCEDURAL BACKGROUND
II. FINDINGS OF FACT
III. GENERAL DISCUSSION
A. SUMMARY OF PRIOR BOARD HOLDINGS
B. COMPACT URBAN DEVELOPMENT VS. SPRAWL
1. Sprawl
2. Compact Urban Development within a Resource Land and Rural Landscape
C. DETERMINING THE SIZE AND SHAPE OF UGAS
1. Rank Order for Including Lands in UGAs and Market Factors
2. Permitted Uses in Urban Areas and Rural Areas
D. SUMMARY
IV. DISCUSSION OF SPECIFIC LEGAL ISSUES AND CONCLUSIONS
A. OFM POPULATION PROJECTION ISSUES
CONCLUSION NO. 1
B. URBAN GROWTH AREAS ISSUES
Are Kitsap's UGAs Too Large?
Designated UGAs
Land Capacity Analysis
Market Factor
CONCLUSION NO. 2
C. RURAL LAND ISSUES
Current Land Use Inventory
Future Land Use
Does the County Permit Urban Growth Outside the UGAs?
Do the Rural Element's Residential Classifications Constitute a Variety of Rural Densities
CONCLUSION NO. 3
D. CAPITAL FACILITIES ISSUES

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

CONCLUSION NO. 4
E. SITING ESSENTIAL PUBLIC FACILITIES
CONCLUSION NO. 5
F. FOREST LAND ISSUES
CONCLUSION NO. 6
G. IMPLEMENTING DEVELOPMENT REGULATIONS
CONCLUSION NO. 7
H. OTHER LEGAL ISSUES
V. DETERMINATION OF INVALIDITY
A. PETITIONERS' JOINT STATEMENT OF PROPOSED INVALIDITY FINDING
B. COUNTY'S/RESPONDENT INTERVENORS' RESPONSE REGARDING INVALIDITY
C. STATUTORY AUTHORITY
D. FINDINGS OF FACT, REASONS FOR INVALIDITY, CONCLUSIONS OF LAW AND DETERMINATION OF INVALIDITY
Findings of Fact
Reasons for Invalidity
Conclusions of Law
VI. ORDER
A. FINDING OF NONCOMPLIANCE
B. DETERMINATION OF INVALIDITY
APPENDIX A: GLOSSARY OF ABBREVIATIONS

I. PROCEDURAL BACKGROUND

Between January 27, 1995, and March 8, 1995, the Central Puget Sound Growth Management Hearings Board (the **Board**) received four petitions for review challenging the adoption by Kitsap County (the **County**) of its 1995 comprehensive plan (the **Plan**) urban growth areas (**UGAs**), interim critical area regulations and certain regulations implementing the Plan under the Growth Management Act (**GMA** or **Act**). In addition, some of the petitioners alleged that the County's environmental analysis conducted pursuant to the State Environmental Policy Act (**SEPA**) was inadequate. Association of Rural Residents (**Rural Residents**) and Kitsap Citizens for Rural Preservation (**KCRP**) filed a joint petition for review (**ARR & KCRP**) on January 27, 1995, Case No. 95-3-0010. The Suquamish Tribe (**Suquamish**) filed a petition for review on February 27, 1995, Case No. 95-3-0018. The City of Bremerton (**Bremerton**) filed a petition for review on March 2, 1995, Case No. 95-3-0019.

On February 10, 1995, the Board issued a "Notice of Hearing" for Case No. 95-3-0010. On February 23, 1995, the Board issued an "Amended Notice of Hearing and Notice of Hearing on Motions for Expedited Review and Summary Disposition (by Petitioners Rural Residents and Kitsap Citizens)" for Case No. 95-3-0010.

On March 8, 1995, the Board received a petition for review from Leslie Banigan and Nyle Hartley (**Banigan I**), Case No. 95-3-0022.

On March 8, 1995, the Board issued an "Order of Consolidation, Notice of Hearing, Amended Notice of Hearing, and Notice of Hearing on Motions for Expedited Review and Summary

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

Disposition" (the **Order of Consolidation**). The Order of Consolidation assigned Case No. 95-3-0022 to the consolidated matter including the four above-referenced petitions for review.

On March 10, 1995, the Board received "Port Blakely's Motion to Intervene" (**Port Blakely**). Also on March 10, 1995, the Board received 14 petitions for review from the following parties and assigned the following case numbers: Olalla Community Council and Beth Wilson (**Olalla**), Case No. 95-3-0023; Charlotte Garrido (**Garrido**) Case No. 95-3-0024; North Kitsap Coordinating Counsel [sic] (**Council**), Zane Thomas, Linda Cazin, Ray Bock, and Vivian Hiatt-Bock (**Council I**), Case No. 95-3-0025; Leslie Banigan and Charlie Burrow (**Banigan II**), Case No. 95-3-0026; Sandra M. Adams and Nobi Kawaski (**Adams**), Case No. 95-3-0027; City of Poulsbo (**Poulsbo**), Case No. 95-3-0028; 1000 Friends of Washington (**1000 Friends**), Case No. 95-3-0029; Kitsap Citizens for Rural Preservation, Zane Thomas, Tom Donnelly, and Beth Wilson (**KCRP I**), Case No. 95-3-0032; Zane Thomas, North Kitsap Coordinating Council, Nyle Hartley, Central Kitsap Coordinating Council (**Thomas I**), Case No. 95-3-0033; North Kitsap Coordinating Council, Zane Thomas, Leslie Banigan, Tom Donnelly, and Olalla Community Council (**Council II**), Case No. 95-3-0034; North Kitsap Coordinating Council, Rural Residents, Zane Thomas, Leslie Banigan, Moira Kane (**Council III**) Case No. 95-3-0035; Zane Thomas, North Kitsap Coordinating Council, Nyle Hartley, Central Kitsap Coordinating Council, Moira Kane, Rural Residents, Leslie Banigan, and Tom Donnelly (**Thomas II**), Case No. 95-3-0036; State of Washington by and through the Director of Community, Trade and Economic Development, on behalf of the Commissioner of Public Lands, the Director of the Department of Fish and Wildlife, the Director of the Department of Ecology and the Secretary of the Department of Transportation (**State**), Case No. 95-3-0037; and Kitsap Citizens for Rural Preservation and Association of Rural Residents (**KCRP II**), Case No. 95-3-0038.

On March 13, 1995, the Board received a petition for review from Ronald R. Ross (**Ross**) and assigned it Case No. 95-3-0039.

On March 15, 1995, the Board issued its "Amended Order of Consolidation and Notice of Hearing, and Order Denying Motions for Expedited Review and Summary Disposition," consolidating all the above-mentioned cases, including Consolidated Case No. 95-3-0022, assigning the consolidated matter Case No. 95-3-0039, and stating that the case would be referred to as *Bremerton, et al., v. Kitsap County* (***Bremerton***). No further consolidation occurred.

Between March 31, 1995, and April 13, 1995, the Board received motions to intervene from the following: Overton and Associates, Overton and Alpine Evergreen Co., Inc. (**Overton);** Harvey B. Hubert (**Hubert**); McCormick Land Company (**McCormick**); the Economic Development Council of Kitsap County (**EDC**); Manke Lumber Co. (**Manke**); Pope Resources (**Pope**); and Rainier Evergreen (**Rainier**).

On April 17 through 19, 1995, the Board held a prehearing conference at Fire Station No. 1 in Poulsbo, Washington.

On May 5, 1995, the Board issued a "Prehearing Order, Order Granting in Part Motions to Intervene, and Motion to Extend Deadline for Filing of Motions to Supplement the Record," which granted intervention to the above listed parties; set forth a statement of issues; and set the

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

final schedule for motions, briefing and hearing.

On June 5, 1995, the Board issued an "Order on the County's Dispositive Motions" that dismissed several of the petitioners' SEPA issues.

Between June 14 and 21, 1995, the Board received hearing briefs and attached exhibits from the Petitioners.

On June 19, 1995, the Board received the County's amended submittal of core documents. The County's ten "core documents" (**CD**) comprise key documents from the record below. References to those documents will utilize the CD prefix and page number(s). CD 1, the Kitsap County 1995 Comprehensive Plan, will be referred to as only "the **Plan**."

Between July 20 and 25, 1995, the Board received reply briefs from Adams; 1000 Friends; Poulsbo; KCRP I; Thomas I; Thomas II; Banigan II; Banigan I; Council I; Ross; ARR & KCRP; State; Suquamish; Council II; Garrido; and Ross.

On July 26, 27 and 28, 1995, the Board held a hearing on the merits of the 19 consolidated petitions for review at Fire Station No. 1 in Poulsbo, Washington. Present were the three members of the Board: Chris Smith Towne, Joseph W. Tovar and M. Peter Philley, Presiding Officer.

Representing ARR & KCRP and KCRP II was David A. Bricklin. Representing Suquamish was Mary Linda Pearson. Representing Bremerton was Ian R. Sievers. Representing Banigan I was Leslie Banigan. Representing Olalla was Beth Wilson. Representing Garrido was Charlotte Garrido. Representing Council I was Vivian Hiatt-Bock. Representing Banigan II was Charlie Burrow. Representing Adams was Nobi Kawaski. Representing Poulsbo was Phil A. Ohlbrechts. Representing 1000 Friends were Larry Smith and Tracy Burrows. Representing KCRP I, Council II, Council III and Thomas I was Zane Thomas. Representing Thomas II was Tom Donnelly. Representing the State was Tommy Prud'homme. Representing Ross was Tom C. O'Hare. Representing the County was Sue Tanner. Representing Intervenor Port Blakely were Thomas A. Goeltz and Katherine Kramer Laird. Representing Intervenor McCormick was Robert Johns. Representing Intervenors Pope Resources was Marvin L. Gray, Jr. Representing Intervenor Rainier was Eric Laschever. Representing Intervenor Manke was William T. Lynn. Representing Intervenors Overton and EDC was Elaine Spencer. Court reporting services were provided by Nancy A. Poppe, CSR, on July 26, 1995, and Cynthia LaRose, CSR on July 27 and 28, 1995, both of Robert H. Lewis & Associates.

On August 11, 1995, the Board received "Petitioners' Joint Statement of Proposed Invalidity Finding." It asked that the Board find invalid certain portions of the County Plan, Zoning Ordinance and Critical Areas Ordinance on the basis that they substantially frustrate achieving the goals of the Act. On August 14, 1995, the Board received the "State's Joinder in Petitioners' Joint Statement of Proposed Invalidity Finding."

On August 14, 1995, the Board received "Petitioners' Joint Statement of Proposed Invalidity Finding."

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

On August 21, 1995, the Board received "Overton and Associates, Peter Overton and Alpine Evergreen's Submission of Adjacent Counties' Forest Land Designation."

On August 22, 1995, the Board received the "Response of Intervenors Pope Resources and Port Blakely Tree Farms to Proposed Invalidity Finding," and the "Response of Intervenor McCormick Land Company to Petitioners' Joint Statement of Proposed Invalidity Finding."

On August 24, 1995, the Board received "Kitsap County's Response to Petitioner's Proposed Finding of Invalidity," the "Response of Harvey B. Hubert to Petitioners' Joint Statement," and "Comments of the Economic Development Council of Kitsap County, Overton & Associates, Peter E. Overton and Alpine Evergreen, Inc. Regarding the Consequences of the Proposed Invalidity of the Kitsap Comprehensive Plan"; and on August 29, 1995, the Board received "Supplemental Declaration of Service of Overton and Associates, Peter Overton and Alpine Evergreen's Submission of Adjacent Counties' Forest Land Designation."

On September 1, 1995, the Board received "Petitioners' Reply in Support of Invalidity Finding."

On September 12, 1995, the Board received "Petitioner's Submission of Forest Land Grade Designations Utilized by Other Counties."

II. FINDINGS OF FACT

1. On April 20, 1992, the County adopted a document entitled "Strategies for Resource Lands Designations and Interim Development Regulations" (the **Strategies Document**) " ... to fulfill the requirements of the 1990 Growth Management Act to classify and designate natural resource lands and implement interim development regulations." CD 10, at cover page.

2. The Kitsap Regional Planning Council (**KRPC**), composed of representatives from the County, its four cities and two tribes, serves as the regional planning policy body for Kitsap County, and was responsible for recommending County-wide Planning Policies (**CPPs**) for adoption by the County, and adopted a population forecast to be used in drawing urban growth areas (**UGAs**.) On August 10, 1992, the County adopted CPPs allocating population to cities and subareas of the County. CD 5.

3. On June 3, 1994 the Board entered a Final Decision and Order in *Association of Rural Residents v. Kitsap County* (***Rural Residents***), CPSGMHB Case No. 93-3-0010, ruling that the County's Interim Urban Growth Area (**IUGA**) did not comply with the GMA because it was not based on the Washington State Office of Financial Management (**OFM**) population projection, did not show how its IUGA included land uses and densities sufficient to accommodate the 20 years of forecasted growth and did not include open space and greenbelt areas as required by the Act. The County was ordered to adopt an IUGA that met the requirements of the Act and the Board's Order by October 3, 1994; the County did not do so. *See Rural Residents,* Finding of Noncompliance.

4. On December 29, 1994, the County enacted Ordinance No. 169-1994 which adopted the Comprehensive Plan (the **Plan**), published on January 11, 1995. [FN1] The Plan has three parts: Part I--population and economic development; Part II--Natural systems and lands, land use and

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

open space, rural lands and UGAs; and III--housing, utilities, transportation, parks and recreation and capital facilities. The three parts are separately bound into three volumes: Plan, Parts I, II, III.

5. Also on December 29, 1994, the County enacted Ordinance 168-1994 which adopted an Interim Zoning Ordinance (**Zoning Ordinance**). CD 6.

6. On December 29, 1994, the County also enacted Ordinance No. 170-1994 which adopted an Interim Critical Areas Ordinance (**ICAO**), " ... to implement the provisions of the [GMA] Comprehensive Plan, and RCW 36.70A.060.... " A note on the document cover states that the ICAO: "Includes amendments as adopted February 27, 1995, by the Kitsap County Board of Commissioners." The ICAO repealed two documents: *Strategies for Critical Areas Designations and Interim Development Regulations, December 1991*, adopted January 27, 1992, and *Strategies for Resource Lands Designations and Interim Development Regulations*, adopted April 20, 1992. CD 7, at 1, 2.

7. The Washington State Senate and House of Representatives passed Engrossed Substitute House Bill 5876 (**ESHB 5876**) on March 15, 1995, and April 13, 1995, respectively. This bill was approved by the Governor on April 27, 1995.

8. The Washington State Senate and House of Representatives passed Engrossed Substitute House Bill 1724 (**ESHB 1724**) on April 11, 1995, and April 23, 1995, respectively. With the exception of Sections 103, 302, and 903, this bill was approved by the Governor on May 15, 1995.

9. The Washington State Senate and House of Representatives passed Engrossed House Bill 1305 (**EHB 1305**) on April 14, 1995, and April 20, 1995, respectively. With the exception of Section 5, this bill was approved by the Governor on May 16, 1995.

10. Having determined that the OFM population forecasts did not reflect past population trends and realistic population growth in the County, and that the County would continue to experience population growth comparable to that experienced in the past decade, and thus higher than the OFM forecast, the County chose to:

> ... formulate population forecasts which accurately reflected the historical population trends of Kitsap County, as well as considering the economic future. It was these population forecasts which Kitsap County and the cities planned for when developing their comprehensive plans.
>
> Base data was provided by the 1990 U.S. Census and was an important tool in determining the projected future growth. Plan, Part I, at 10, 13.

11. The CPPs direct that two-thirds of the projected growth shall be accommodated within UGAs, including potential reserves for fully contained communities (**FCCs**). Plan, Part I, at 12.

12. A total UGA population of 63,575 was allocated to six UGAs: Bainbridge Island--6,820; Kingston--3,380; Poulsbo--7,200; Central Kitsap--17,625; Bremerton--20,000; and Port Orchard--8,550. Plan, Part I, Table PE-7, at 13.

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

13. Rainfall varies widely across the County, averaging 26 inches annually at the northern tip to 70 inches in the southwest, causing variations in aquifer recharge rates, stream flows and suitability for forestry and agriculture. Plan, Part II, at 4.

14. When non-native settlement began, about 150 years ago, most of the County was covered with old-growth forest, predominantly Douglas Fir. Plan, Part II, at 6.

15. Using U.S. Soil Conservation Service (**SCS**) classifications, seven soil types, accounting for 15,020 acres widely dispersed throughout the County, are prime agricultural soils. Plan, Part II, at 17, Figure NR-4 at 19.

16. There are few large commercial agricultural operations in the County today, which is attributed to poor soil conditions and recent land use conversions. A significant part of agricultural production occurs on non-commercial farms, and provides a secondary source of income. In 1992, 10,302 acres, 4.1 percent of the County's land, was in farm use, with 366 farms ranging in size from one to more than 1000 acres, and averaging 28 acres. Plan, Part II, at 81-4.

17. The SCS identifies as prime timberland those soils not located in areas of urban or built-up land uses, and capable of producing wood fiber at a mean annual increment of 85 cubic feet per acre. Most soils in the county meet this national standard. Plan, Part II, at 20.

18. The County's soils are rated for potential forestry productivity by the SCS, as well as by the Washington State Department of Natural Resources (**DNR**), using a "50 site index," the average height in feet that dominant species reach in 50 years in a given soil type. In western Washington, that species is the Douglas fir. Plan, Part II, at 20, 92.

19. The Forestry Soil Suitability Map shows the location and extent of four site index ranges, from 84 to 110, based on SCS data. The most productive soils lie in the northern and the least productive in the southwest parts of the County. Plan, Part II, at 20, 21.

20. Of the County's 251,520 acres of land, 76,818 acres are forest land. Of that total, 27,804 acres are owned by DNR, the City of Bremerton, or are part of the Port Madison and Port Gamble S'Klallam Indian Reservations; 49,014 acres are privately owned, and taxed as forest land (parcels 20 acres or larger) or open space timber (at least five acres) by the County Assessor's Office. [FN2] These private lands are used for long-term commercial production, reforestation or forest habitat. Plan, Part II, at 87-89, 91.

21. Current Use Timberlands, Classified and Designated Forests, are shown on Figure LU-2, Inventory of Open Space and Timberlands. Plan, Part II, at 148.

22. These forest lands:

... are suitable for commercial production and cultivation of Douglas fir and Western hemlock. The forest industry provides lumber, firewood, Christmas trees and other forestry-related products for local use and export outside of the county. Forests also provide recreational opportunities and open space.

While only 495 people were employed in forestry, lumber and wood products in 1990, the forestry areas demand few services awhile generating substantial direct revenues to local governments. Plan, Part II, at 89-90.

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

23. All forest lands provide habitat benefits to fish and wildlife, and public forest lands afford recreational opportunities. Plan, Part II, at 92-3.

24. In the 18 month period prior to Plan adoption, over 2000 acres of forest land were converted to non-forest uses, primarily residential. Plan, Part II, at 92.

25. Most of the County's hardrock, sand and gravel deposits are volcanic, glacial or erosional in origin. Mineral deposits other than sand, gravel and rock are believed to be insignificant. DNR has issued 29 surface mining permits, 26 for sand and gravel. Five of these are held by the County. While DNR has delineated potential deposits on state land, there has been no large-scale county-wide inventory of commercially viable mineral resource deposits. The Plan recommends that a geologic study to identify commercial deposits be completed within one year of Plan adoption. Plan, Part II, at 94-5, 159.

26. The type of soil available for installation of an on-site sewage system is critical to its successful operation over time. Using the SCS rating system for soil suitability, most soils in the county are rated severe for conventionally designed disposal fields. With that rating, special design, significant increases in constructions costs and potentially increased maintenance costs are required. Plan, Part II, at 24.

27. The Strategies Document, at the Foreword, sets forth the three-step process for designating resource lands in WAC 365-190: classification by value of each type of resource lands, agricultural, forest and mineral; designation, formally establishing the classification scheme for and location of resource lands, and applying the classification scheme to each resource and conducting an inventory; and adoption of interim development regulations for protecting resource lands. The County used a fourth step, by establishing a group, the Rural Policy Roundtable, charged with reaching consensus on rural land use issues. CD 8, at ii-iii.

28. Section Six of the Strategies Document is entitled "Recommendations to Designate Forest Resource Lands and Implement Policies." The preface notes that:

> In determining the criteria for the designation of forest resource land, the rural Policy Roundtable recognizes that the following lands will likely remain in long-term forestry:
>
> Bremerton Watershed--4,000 acres
>
> Tribal Lands--3,200 acres
>
> Bangor--4,700 acres
>
> Pope Resources and the Washington State Department of Natural Resources have committed to identify and set aside at least 15,200 acres of their lands in the Green Mountain Area for designation as forest resource lands under the Growth Management Act for the interim period pending adoption of the county-wide comprehensive plan. When finalized this designation shall last not less than twenty (20) years. CD 10, at B17.

29. The Strategies Document sets forth a list of criteria for forest land designation. If each criterion is met, a parcel will be designated "as Growth Management Act (GMA) [forest] resource lands for at least twenty years":

> 1. A Douglas Fir fifty (50) year site index of 110 or greater for a predominant portion of the parcel;

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

2. A nominal 80 acres or more of single ownership;
3. Property tax classification: Property is enrolled, as of January 1, 1991, in the Open Space Timber or Designated Forest or classified Forest property tax classification program pursuant to Chapter 84.33 or 84.34 RCW, or is owned by a state or local governmental body with long-term forest management as its primary use; and
4. In designating forest lands, the effects of proximity to population areas and the possibly [sic] of more intense uses of the land as indicated by the following shall also be considered (WAC 365-190-060 Forest Resource Lands):

1. The availability of public services and facilities conducive to the conversion of forest land--Not within a special purpose sewer or local (not countywide) water district;
2. The proximity of forest land to urban and suburban areas and rural settlements--forest lands of long-term commercial significance are located outside the urban and suburban areas or rural settlements;
3. The size of the parcels--forest lands consist of predominately large parcels;
4. The compatibility and intensity of adjacent and nearby land use settlement patterns with forest lands of long-term commercial significance--greater than fifty percent (50%) of the linear frontage, as of March 1, 1992, of the perimeter of any parcel meeting the above criteria shall abut parcels that are greater than five (5) acres in size;
5. Property tax classification--Property is assessed as open space of forest land pursuant to chapter 84.33 or 84.34 RCW;
6. Local economic conditions which affect the ability to manage timberlands for long-term commercial production--economic conditions should be conducive to long-term commercial forestry management; and
7. History of land development permits issued nearby--would allow for compatibility with forestry activities.

...

Lands within the federally recognized external boundaries of the Port Madison Indian reservation, under the Forestry Management Plan of the Suquamish Tribe, are recognized as forest resource lands. CD 10, at B17-20.

30. Under the caption "Interim Development Regulations," the Strategies Document sets forth 13 policies in order to:

... fulfill the interim development regulations requirement of the Growth Management Act for forest resource lands. These policies should be considered in determining appropriate mitigation to minimize the impact of adjacent land uses on forest resource lands.
Those interim regulatory policies: allow mining, agricultural, and other uses on forest lands if compatible with forest management; encourage continuation of forest tax classifications and retention of large parcel sizes; direct that impacts on forest lands from other land uses be mitigated, and that notice of forest resource use be attached to plats and building permits near forest resource lands; recognize forestry as the preferred use of forest lands; encourage use of a range of techniques to conserve forest lands; direct preparation of an inventory of forest lands; direct use of best management practices and compliance with the State Forest Practices Act; place restrictions on residences within forest lands; and direct that forest land conversion be consistent with adopted land use policies and compatible with adjacent uses.
Following those policies, the Strategy Document recommends that the County: Amend agency SEPA procedures required by Chapter 197-11 WAC and Chapter 43.21C RCW to classify designated forest resource lands as environmentally sensitive until development

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

regulations, as required by RCW 36.70A.120, are adopted. CD 10, at B20-21.

31. Lands devoted to mines and quarries, a total of 670 acres, are included within the industrial land use category. Plan, Part II, at 141.

32. Groundwater, constituting 80 percent of the County's water supply, is withdrawn primarily by means of major production wells in principal aquifers, located from 100 feet above to 800 feet below sea level. Almost all of the surface area of the County contributes to groundwater recharge. Plan, Part II, at 27-8; Figure NR-7, at 29.

33. Shallow aquifers (defined as less than 100 feet below surface elevation) are especially susceptible to surface contamination. Shallow wells located near the saltwater shoreline have experienced saltwater intrusion. Plan, Part II, at 125.

34. The aquifers' water quality is generally good, although saltwater intrusion, high concentrations of metals, and chemical contamination have been identified, specifically in four North Kitsap aquifers. Water quantity is expected to be adequate for projected demand until 2010. Plan, Part II, at 28.

35. The County and Kitsap Public Utility District are preparing a Groundwater Management Plan for the County, including a more complete inventory and designation of aquifer recharge areas. Information and data resulting from the planning process will be incorporated into the Comprehensive Plan. Plan, Part II, at 27.

36. The Plan uses two categories to classify aquifers for purposes of the Plan and subsequent regulations: Critical Aquifer Recharge Areas, and Aquifer Recharge Areas of Concern, shown on Figure NR-13. One Critical Area, Hansville, is shown; general areas of concern are illustrated, and will be delineated more specifically after evaluation of surface soil types, depth to aquifer, areas needed for wellhead protection, and clusters of small wells. In the policy section, the County commits to implementation of the future recommendations of the Groundwater Management Plan. Plan, Part II, at 103-7.

37. The Plan recognizes that stream habitat and water quality are degraded by development and increased runoff, reducing the value and functions of a stream system, and cites the [Washington State] Department of Fish and Wildlife estimate that the hydraulic properties of a stream are affected when 12 percent of a watershed is developed. Plan, Part II, at 37.

38. The ICAO defines Critical Areas as including: wetlands, areas with a critical recharging effect on aquifers used for potable water, fish and wildlife habitat conservation areas, geologically hazardous areas, and frequently flooded areas, and includes sections on each of these areas. CD 7.

39. The ICAO's definition of "aquifer recharge" and "aquifer recharge area" notes that "In Kitsap County, most areas are aquifer recharge areas." "Areas with a critical recharging effect on aquifers used for potable water," a part of the GMA's definition of "Critical areas" (RCW 36.70A.030(5)), are not defined or discussed. CD 7 at 9.

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

40. The Critical Aquifer Recharge Areas section of the ICAO, at Section 610, notes that: "Although an accurate, highly detailed map of Critical Aquifer Recharge Areas does not yet exist, the following designations have been mapped from information that is currently available:" The section then lists high recharge potential areas, in three categories: (1) Hansville Critical Aquifer Recharge Area, as mapped on a Kitsap County Public Utility District No. 1 Aquifer Recharge Areas map in the Comprehensive Plan; (2) Recharge Areas of Concern, delineated on the same map; and (3) Aquifers with Contamination Potential (Hansville and Poulsbo), shown on Exhibit II-8 of the Draft Kitsap County Groundwater Management Plan (Groundwater Plan), April, 1991, Part I. CD 7, at 64-5.

41. The Draft Environmental Impact Statement (**EIS**) provides a map showing the locations of the County's principal aquifers, with the notation that the boundaries are shown "very approximately." CD 8, at III-27.

42. The Final EIS provides a map showing the locations of principal aquifers, indicating above sea-level and below sea-level aquifers. CD 9, Figure 8, Corrections and Changes, opposite II-8.

43. The ICAO, at section 615, provides standards for development in High Aquifer Recharge Areas:

> A hydrogeologist report may be required on sites that have been identified as having soil types with high infiltration rates, or having high aquifer recharge or infiltration potential for land uses identified in exhibit titled "Operations with Potential Threat to Ground water" (See Appendix F).... The report will address the impact the proposed land use will have on both the quality and quantity of the water transmitted to the aquifer. The report will recommend mitigation for impacts that have the potential to decrease quantity or quality of water transmitted to the aquifer....
>
> Appendix F is a list of 32 "Operations with Potential Threat to Ground Water," e.g., auto repair/body shops, laundromats, research laboratories, machine shops and metal platers, subdivisions using private wastewater disposal, single-family septic systems, and heating oil storage. CD 7, following 76.

44. The County began development of the Plan's Land Use Element with an inventory of existing land use (development, density, and acreage) and ownership. The inventory used records of the County Assessor, validated with, and adjusted as necessary after, a field survey. Plan, Part II, at 119.

45. The County's 1977 Comprehensive Plan (**1977 Plan**), a pre-GMA enactment, allowed residential densities of two units per acre for waterfront property in rural areas, and semi-rural densities which exceed rural (one to three units per acre) in certain areas not planned for future urban use, served by public water systems and not served by public sewer facilities. Semi-urban densities (three to six units per acre, with 30 units possible through use of a planned unit development process) were allowed on or near the waterfront. Plan, Part II, at 122-3. The 1977 Plan was repealed by Ordinance No. 169-1994 when the Plan was adopted.

46. In a final EIS response to a letter commenting on the Draft EIS, the County noted that:

> In general, rural is land that is not designated urban, or resource lands. Generally, suburban is characterized by land adjacent to urban areas that have public water exists [sic] and may

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

transition to higher densities if a demonstrated need for additional urban lands exists. CD 9, Response to Letter No. 10.

47. The Plan describes "vacant land" as including:

... Open, wooded and undeveloped land in parcels less than ten acres in size that do not contain a dwelling unit at this time. These lands have apparently been segregated into parcels of various sizes, all less than ten acres in size, to be used or sold as building sites. Some parcels are simply left vacant for economic reasons. On the other hand, vacant lands are usually the easiest to develop because of no active use and the size of the parcel. Land in this category accounts for 19.8 percent of the land. Plan, Part II, at 129.

48. Land uses prior to adoption of the Plan are shown on Figure LU-1. Forty-eight and one-half percent (102,256 acres) were in the wooded and open land category; 19.8 percent in vacant land (parcels less than ten acres, without a dwelling unit [**du**]); 24 percent in residential use; 1.4 percent commercial and industrial uses; 3.1 percent public land; and 3.2 percent military. The discussion notes that vacant lands "have apparently been segregated into parcels of various sizes, all less than ten acres in size, to be used or sold as building sites." Plan, Part II, at 127-8, 130.

49. The Plan notes that:

In Kitsap County there are three distinct types of residential development patterns besides urban and rural, and the plan has identified these three patterns as suburban, waterfront and Village Residential. These designations reflect the existing trends and/or historical development patterns. Plan, Part II, at 152.

50. Gross residential density is described as "the total number of dwelling units divided by the total land area of the site including land used for public purposes such as roads, parks and utilities." Plan, Part II, at 131.

51. Suburban lots, or one to 2.5 dwelling units (**du**) per acre, are characterized as "the most difficult to divide into smaller parcels. At this density septic tanks and wells on the same lot can be a problem and further development is constrained by the location of existing structures." Plan, Part II, at 131-2.

52. "Urban Low" lots, 12,500 square feet (**s.f.**) to one acre per dwelling unit, are described as suitable for sewer and water services, although existing development at this density may not have those services, with the caution that without those services, septic systems and wells are often a problem due to site constraints. Plan, Part II, at 132.

The total number of residential dwelling units at the time of Plan adoption was 47,805, with 3.4 percent on lots of five acres or more; 23.7 percent on lots of one to five acres; 33.8 percent at densities of one to 3.5 per acre; and 39.1 percent at densities above 3.5 per acre. Plan, Part II, Table LU-3 at 134.

53. The Plan notes that the Land Use Element classifies forest, agricultural and mineral resource lands as resource lands, to help keep those lands available for resource production. However:

... in the case of agriculture and forest lands, the element recognizes that in Kitsap County long-term commercially significant resource lands have been lost to competing demands, i.e., residential development or poor forest production compared to other areas. The element does

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

include a forest designation, labeled as Rural Wooded, and agriculture is encouraged throughout the rural areas of the county.

...

The plan does not propose lands for designation as prime agricultural lands since there does not appear to be a significant amount of commercial farming in the county at this time. This issue may be revisited should additional data indicate that it would be appropriate. Farming is encouraged and permitted in the rural areas of the county. Plan, Part II, at 155-6, 161.

54. The County, through its Rural Policy Roundtable and subarea planning efforts, sought to reach a consensus definition of "rural character." While that goal was not reached, a list of rural characteristics was developed:

Two-lane roads with gravel shoulders; driveways disappearing into the forest with no house visible; trees as a backdrop to open fields and meadows; mountain or water vistas; agricultural lands including rolling pastures and meadows; farm buildings including original farmhouses; clusters of housing at the water's edge; sense of community; quietness; stream corridors, wetlands and floodplains; and forested areas. Plan, Part II, at 190.

55. The Plan notes that:

It is the intent of the plan to designate certain forest lands which are most suitable for forest production in a manner which encourages the use of land for tree growing while keeping future options open. The Rural Wooded designations should be reviewed no later than the five year anniversary of the plan to determine whether the lands should be designated for alternative uses or designated as long-term commercial forest lands as provided for by the Growth Management Act.

...

The county has designated land as Rural Wooded as an alternative to long-term commercial forest land based upon the "bottom-up" feature of the Growth Management Act. It is the county's position that the density provisions and development guidelines of the Rural Wooded designation are appropriate for protection of the land as a resource as well as being appropriate given the local setting and existing development patterns.

...

The plan encourages the practice of forestry as an important element of rural character and designates many areas as Rural Wooded even though the currently wooded areas are not designated forest lands of long-term commercial significance.

...

... [L]and designated as Rural Wooded will generally be characterized by: good forest soils and/or natural limitations for development, large open parcels, possibly in tree production. In addition, these areas are generally not needed for non-resource use at this time.
Minimum lot size is 2.5 acres per dwelling. As an alternative, cluster development may be approved. Maximum cluster development density is one dwelling per one acre. Lot sizes in cluster developments should range from 1/4 to 1- 1/2 acres with a minimum project size of 20 acres. Plan, Part II, at 157-8.

The Rural Low Density Residential designation is applied to areas with a development pattern of five-to ten-acre parcels. The intended minimum lot size is 2.5 acres, except that with clustering, on sites of at least ten acres, the density may be increased to one unit per acre, with lot sizes of 1/2 to 1- 1/2 acres. Plan, Part II, at 161-2.

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

The Rural Medium Density Residential designation is applied to areas with a development pattern of 2.5-to five-acre parcels, and with few development limitations. The permitted density is 2.5 acres, except that clustering, on parcels of at least ten acres, will allow densities of one unit per acre with lot sizes from 1/2 to 1- 1/2 acres. Plan, Part II, at 162.

The Rural High Density Residential designation is intended for areas with similar current zoning to provide additional areas for suburban development near or adjacent to urban growth areas. The areas may have public water supplies, but are usually not sewered. Plan, Part II, at 163.

56. There are 54 sites zoned for manufacturing and light manufacturing uses in unincorporated portions of the County. The sites are generally small-scale and widely dispersed. The majority of developed sites are used for storage and warehousing; other sites have low intensity uses not requiring industrial zoning. The South Kitsap subarea has 17 sites with 2,250 acres; Central has 19 sites totaling 62 acres; and North has five sites from 30 to 60 acres in size. Most sites are outside urban areas and lack urban services. Twelve hundred acres are unimproved and available for new development. Two large sites in the Central subarea, operated by the Port of Bremerton, are improved, serviced and have transportation access. The Plan concludes that:

> ... there appears to be more than adequate land zoned for manufacturing and light manufacturing uses that require larger sites. It may be that more of this land needs to be improved in order to accommodate or attract businesses that need or want land that is ready to be built on. Another consideration is to determine if there are other general locations with appropriate site criteria in Kitsap County that could meet a need that is not being served by existing sites. It could be that new sites that can provide better access and urban type services need to be identified. Plan, Part II, at 138-40.

57. The Plan recognizes that:

> Since there are already significant industrial lands in the rural areas of the county, the hope is to recognize these lands and encourage and support the retention and expansion of these lands where appropriate. Plan, Part II, at 175.

58. The Plan identifies areas for industrial use, due to topography, highway access and existing land use. Current access to public water, sewer and utilities was not a selection criterion. Industrial development on such sites would require a rezoning action, but not a Plan amendment. Plan, Part II, at 176.

59. The Plan policies for industrial lands specify that: "[I]ndustrial development may be allowed when sewers are not required for the protection of natural systems, in particular the protection of the quality and quantity of both surface and ground water." Plan, Part II, at 177.

60. Residential land uses are permitted on Mineral Resource sites, with 2.5-acre minimum lot sizes, unless a cluster development is used; then, the lots in a development of at least 20 acres may range from 1/4 to 1- 1/2 acres. Plan, Part II, at 159.

> In the Plan, the County withdrew a portion of the 20 year population projection previously allocated to urban growth areas, 3,500 people, for allocation to fully contained communities, and stated that such population reservation cannot be made more often than every five years. The Plan Map identifies areas with potential for development of fully contained

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

communities, depicted with the FCC symbol. Development of such a site would require only a master plan and rezoning action, with no change to the Plan Map. Plan, Part II, at 184-6.

61. The Plan is based a population increase of 90,260 from 1994 through 2014, reflecting the Kitsap Regional Planning Council 2014 Population Forecast and Subarea Allocation. In accordance with the direction of the CPPs, it assigns two-thirds of that growth to UGAs and, optionally, fully contained communities. The UGAs "reflect the goals and policies of the Land Use Element [of the Plan.]" That Element also assigns density to certain historic settlements, while retaining their village character. The UGAs designated in the Plan included the County's four incorporated cities: Bremerton, Port Orchard, Bainbridge Island and Poulsbo. Urbanized areas adjacent or near to these cities were included within UGAs. Finally, the Kingston area was designated a UGA. Plan, Part II, at 199-201.

62. The Plan describes urban growth areas depicted on the land use plan map as including lands characterized by urban growth, and notes that:

> ...[b]ecause intervening vacant or underdeveloped land was captured by the urban growth boundary encompassing these patches of urban development, the total acreage contained within urban growth areas may exceed the acreage needed to accommodate the twenty year forecast. Plan, Part II, at 199.

63. The initial allocations to each of the five UGAs were adjusted downward by a total of 3,500 to account for an allocation to one future FCC. The adjusted net population forecasts for each UGA are: Bainbridge Island--6,450; Kingston-- 3,190; Poulsbo--6,800; Central Kitsap (including Bremerton and Silverdale)-- 35,555; and Port Orchard--8,080. Plan, Part II, at 202.

64. The Board of Commissioners' Minutes of October 17 and 19, 1994, records the passage of a motion "establishing an urban growth area in the Port Gamble area to include the town of Port Gamble previously designated village residential and the industrial designation." It was noted that the Planning Commission agreed with the recommendation to establish that UGA. Ex. 9610, at 259. The Plan's narrative contains no indication that the Port Gamble area was a designated a UGA.

65. In describing existing urban development within UGAs, the Plan observes that:

> Generally, single family residential development on lots less than one acre in size is considered as urban development. Of course, multi-family residential development at densities greater than one unit per acre are also considered as urban development. In addition, many commercial and other nonresidential uses are considered urban in nature. The plan also considers vacant platted land which contains lots less than one acre in size to be characterized by urban growth because these plats represent a commitment to urban development. Plan, Part II, at 200.

66. To determine whether the amount of land designated within the UGAs would be sufficient to accommodate the projected population growth, the County undertook a land capacity analysis, generally following the direction of the CPPs. The process: (1) tabulated vacant and underutilized land; (2) applied an efficiency factor; [FN3] and (3) applied a reduction factor. [FN4] The remaining acreage was considered to be net developable acreage for residential purposes. Table UG-3 shows total acreage and net developable acreage for each UGA:

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

Bainbridge Island [FN5]--15,835 and 5,830; Kingston--1,620 and 745; Poulsbo--3,880 and 1,525; Central Kitsap--23,400 and 6,990; and Port Orchard-- 6,230 and 1,800. The totals, excluding Bainbridge Island, are 35,130 acres and 11, 060 acres. Plan, Part II, at 202-3.

67. In a discussion of population density within the UGAs, the Plan assumes a range of densities from one to more than 40 dwellings per acre, with an average of six. The average number of persons per dwelling is assumed to be 2.42, as reported for urban areas in the 1990 census. [FN6] The average density per acre is 14.52. Plan, Part II, at 204.

68. Applying the average population density to the adjusted population allocations to each UGA, the acreage needed for residential development in each is: Bainbridge Island--445; Kingston--220; Poulsbo--470; Central Kitsap--2,450; and Port Orchard--560. The total acreage needed is 4,145. Plan, Part II, at 204.

69. The Plan then applies a market factor to the acreage needed to accommodate the allocated growth, explaining that use of that factor " ... is appropriate because an urban growth area which is too 'tight' will have an undue adverse impact on the land market." The Plan assumes an additional .75 acres will be needed for each acre initially determined to be needed, " ... to keep urban land prices from rising dramatically due to speculation." After application of the factor, the total acreage within each UGA is: Bainbridge Island--780; Kingston--385; Poulsbo--825; Central Kitsap--4,290; Port Orchard--980, for a total of 7,260 acres. Plan, Part II, at 204-5.

70. Finally, the Plan compares for each UGA the projected land needed, with market factor, and the net developable acreage designated for urban growth in each UGA: Bainbridge Island--5,830 [FN7]; Kingston--745; Poulsbo--1,525; Central Kitsap--6,990; and Port Orchard--1,800. The total acreage, excluding Bainbridge Island, is 11,060 acres. Plan, Part II, at 206.

III. GENERAL DISCUSSION

This is the first decision entered by the Board to address the alleged noncompliance of a county comprehensive plan, including a Final Urban Growth Area (**FUGA**), with the requirements of the GMA. In such matters of first impression, it is important to begin the analysis with a description of the statutory and case law context for the specific legal issues. Accordingly, the Board sets forth below the pertinent provisions of GMA case law and the statute itself, including the 1995 legislative amendments.

In discerning the Act's requirements for county comprehensive plans, FUGAs, and implementing regulations, the Board has the benefit of the facts and arguments in not only the present case, but two other pending cases: *Vashon-Maury, et al., v. King County* (CPSGMHB Case No. 95-3-0008) (***Vashon-Maury***) and *Gig Harbor, et al., v. Pierce County* (CPSGMHB Case No. 95-3-0016) (***Gig Harbor***). While the facts and allegations vary in these three counties, the 49 parties (16 in *Vashon-Maury*, 30 in *Bremerton* and three in *Gig Harbor*) arguing the 160 issues (64 in *Vashon*, 86 in *Bremerton* and ten in *Gig Harbor*) in these cases have thoroughly illuminated the GMA's statutory landscape, seemingly from every conceivable perspective.

While the Final Decisions and Orders in the *Vashon-Maury* and *Gig Harbor* cases are not due until later this month, [FN8] the resolution of common issues in each of these cases must be based on an analysis of the GMA's requirements regarding county comprehensive plans, FUGAs

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

and implementing regulations. It is the purpose of this general discussion to set forth both the statutory and case law foundation for the resolution of the specific legal issues in these three cases. After providing this overview and adopting several new holdings, the Board proceeds in Part IV below to answer selected legal issues regarding Kitsap County's alleged noncompliance with the requirements of the Act.

A. SUMMARY OF PRIOR BOARD HOLDINGS

Prior Board holdings generally address either the Act's *procedural* requirements or its *substantive* requirements, or both. These holdings clarify the Act's procedural requirements, the hierarchy and sequence of required actions, where the authority to take action resides, the breadth of local discretion, and indeed the very nature and structure of decision-making under GMA. [FN9] Allegations of noncompliance with the procedural requirements of the Act usually focus on *if, when* and *by what process* a local government did or did not do something. In such instances, the record below is critical because it describes not only what the final enactment was, but documents the sequence of actions that led up to adoption.

By contrast, allegations of noncompliance with a substantive requirement focus on the specific legal content of the local government enactment and how the real-world outcome required or enabled by that enactment squares with the outcome that is either explicitly described or necessarily implicit in the Act. [FN10] If a local government adopts a comprehensive plan or development regulation that does not meet a substantive requirement mandated by the Act, or if its outcome thwarts a substantive requirement of the Act, the enactment is not cured by the mere fact of procedural compliance.

Following is a sequential summary of Board holdings that provide the GMA case law context for evaluating the alleged noncompliance in the county comprehensive plan/FUGA cases presently under review. Where the Board makes specific reference to one of these holdings in the body of this Order, more specific citation or quotation is provided.

Snoqualmie v. King County, CPSGPHB Case No. 92-3-0004 (1993) ***(Snoqualmie)***

• Policy documents are now mandatory and directive, not voluntary and advisory.

• GMA is a hierarchy of directive policy.

• Cities are primary providers of urban services and counties are to be regional policy makers and rural service providers. GMA intends a "transformation of local governance."
Twin Falls, et al., v. Snohomish County, CPSGPHB Case No. 93-3-0003 (1993) ***(Twin Falls)***

• Local governments enjoy substantial deference from the Board; however, under GMA, that deference is diminished when the presumption of validity is overcome by a preponderance of the evidence.
Edmonds and Lynnwood v. Snohomish County, CPSGPHB Case No. 93-3-0005 (1993) ***(Edmonds)***

• Counties may allocate population and employment to cities.

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

• A long-term purpose of county-wide planning policies is to direct urban development to urban areas and to reduce sprawl.
Association of Rural Residents v. Kitsap County, CPSGPHB Case No. 93-3-0010 (1994) ***(Rural Residents)***

• A county may draw a UGA beyond the boundaries of cities only under certain circumstances.

• A county must use exclusively the OFM population forecast in sizing UGAs.

• UGAs must include land uses and densities sufficient to permit the projected growth, and must include open spaces and greenbelts.

• A county must "show its work" in accounting for the sizing of the UGA.

• The Act has resource lands designated before IUGAs for a reason. This is why IUGAs are a "minimum sprawl hypothesis."

• That which is urban should be municipal.

• "Compact urban development" is the antithesis of sprawl.
Tacoma, et al., v. Pierce County, CPSGMHB Case No. 94-3-0001 (1994) ***(Tacoma)***

• A county may include subjective considerations, including a "market factor" in the sizing and configuration of its UGA, but must explicitly "show its work" to describe both the objective and subjective factors used.

• Ten-acre lots are clearly rural ..

• The largest portion of unincorporated UGAs should be assigned to respective cities, not to a generic metropolitan UGA.

• While development standards in city and county plans for unincorporated UGAs will require coordination in the near term, over the long term, there will be a shift to standards that are consistent with city standards.
Kitsap Citizens for Rural Preservation v. Kitsap County, CPSGMHB Case No. 94-3-0005 (1994) ***(KCRP I)***

• Urban growth is not permitted in a rural area.

• The Board can conceive of well designed, well furnished compact rural development.
Aagaard, et al., v. City of Bothell, CPSGMHB Case No. 94-3-0011 (1995) ***(Aagaard)***

• Cities have broad discretion in the specific location, density and servicing of growth; however, this discretion is subject to practical and legal limitations, including specific provisions of the Act.

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

• City plans may provide more capacity for population and employment than is allocated to them by the County, absent a county CPP to the contrary.
Kitsap County v. OFM, CPSGMHB Case No. 94-3-0014 (1995) ***(Kitsap v. OFM)***

• Proposed population projection adjustments must be supported by more objective data, credible assumptions and analytical methods than the OFM projection and must not thwart the goals and requirements of the Act.

• The nature of population projections is that they are technical rather than policy. They represent the likely, as opposed to the desired, future population.

• OFM population projections are more a star by which to navigate than a milestone to be reached.
WSDF I v. City of Seattle, CPSGMHB Case No. 94-3-0025 (1995) ***(WSDF I)***

• The Act does not establish a minimum level of service for transportation; it only requires that a local government adopt a method of measuring the performance of transportation facilities.

• A localized concentration of growth requires a localized analysis of capital infrastructure and financing capacity.

• "Early and continuous public participation" per RCW 36.70.140 requires that, when adopting last-minute changes, the legislative body must ascertain if the changes would be substantial, and, if so, provide the public with a reasonable opportunity to comment.
Children's Alliance and Low Income Housing Institute v. City of Bellevue, CPSGMHB Case No. 95-3-0011 (1995) ***(Children's Alliance)***

• Under GMA, residential land use regulations must cease to be exclusionary and instead must reflect that our population has changed with regard to age, ethnicity, culture, economic, physical and mental circumstances, household size and makeup.

B. COMPACT URBAN DEVELOPMENT VS. SPRAWL

The Act's legislative findings set forth the threat of "uncoordinated and unplanned growth" and declare the purpose of the GMA to meet that threat with a "common set of goals" and "comprehensive planning." RCW 36.70A.010 provides:

> The legislature finds that uncoordinated and unplanned growth, together with a lack of common goals expressing the public's interest in the conservation and the wise use of our lands, 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. Further, the legislature finds that it is in the public interest that economic development programs be shared with communities experiencing insufficient economic growth. (Emphasis added.)

Further, the common goals referred to above were set forth in RCW 36.70A.020 as "Planning Goals." The Board has previously held that:

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

> ... the substantive element of RCW 36.70A.020 is the heart of the GMA. All development regulations and comprehensive plans must comply with the Act's planning goals. Nonetheless, local jurisdictions have a broad array of mechanisms for achieving this result. In addition, the level of compliance with the planning goals will vary depending on the document being enacted. Comprehensive plans and implementing development regulations will be held to the highest standard of compliance; interim UGAs to a lower level of compliance; and interim critical areas and natural resource lands regulations the lowest standard of compliance. *Rural Residents*, at 29. (Emphasis added.)

RCW 36.70A.020 sets forth planning goals 1, 2 and 8, which state that urban growth should be directed to urban areas, and that natural resource areas, such as forest and agricultural areas, should be maintained. Planning Goal 2 explicitly names "sprawl" as a negative outcome that is to be minimized. RCW 36.70A.020 provides, in pertinent part:

> (1) Urban growth. Encourage development in urban areas where adequate public facilities and services exist or can be provided in an efficient manner.
> (2) Reduce sprawl. Reduce the inappropriate conversion of undeveloped land into sprawling, low-density development.
> (8) Natural resource industries. Maintain and enhance natural resource-based industries, including productive timber, agricultural, and fisheries industries. Encourage the conservation of productive forest lands and productive agricultural lands, and discourage incompatible uses. (Emphasis added.)

While the preamble to RCW 36.70A.020 clarifies that the goals are not listed in any order of priority, a close examination of the 13 goals reveals that there are some important distinctions that can be drawn among them. Unlike the other ten, the three planning goals cited above operate as organizing principles at the county-wide level. Thus, they have not only a procedural dimension, but they also direct a tangible and measurable outcome. In contrast, Goal 6, regarding property rights, and Goal 11, regarding public participation, do not specifically or implicitly describe the physical form or configuration of the region that should evolve. Rather, they address *how* local government is obligated to undertake the comprehensive planning and implementing actions that will shape the region (i.e., without taking private property and with enhanced public participation).

The Board examines the origins and negative consequences of sprawl below. This is followed by a review of how the specific requirements of the GMA are designed to reduce sprawl and its negative consequences.

1. Sprawl

The technological capability has existed for 50 years for growth to sprawl across a vast landscape. In combination with powerful market forces, and absent an effective public policy to resist it, sprawl has resulted in the proliferation of low-density metropolitan regions such as Phoenix and Los Angeles. The rise of sprawl in the United States after the Second World War, and the public policy reasons why state and local governments across the country have chosen to combat it, is well documented in the literature of urban planning and real estate development. The Board takes official notice of this literature.

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

The seminal treatise on this subject was *The Costs of Sprawl: Executive Summary and Detailed Cost Analysis*, Real Estate Research Corporation, U.S. Government Printing Office, Washington, D.C. (1974). Prepared for the Council on Environmental Quality, Department of Housing and Urban Development and Environmental Protection Agency, this report developed a comprehensive and consistent set of quantitative and qualitative estimates of the environmental, economic, natural resource and other personal and community costs associated with alternative patterns of residential land development. It concluded that:

> Stated in the most general form, the major conclusion of this study is that, for a fixed number of households, "sprawl" is the most expensive form of residential development in terms of economic costs, environmental costs, natural resource consumption, and many types of personal costs. *The Costs of Sprawl*, at 7.

More recently, the negative environmental, economic and social consequences of sprawl were addressed in *Rural by Design*, Randall Arendt, American Planning Association, Chicago, Illinois (1994). Arendt observed that, given powerful market forces and current technology, suburban sprawl continues to be an inevitable consequence of a laissez-faire land use policy:

> Although people generally do not yearn to live in a seamless web of sprawling subdivisions, shopping centers, and office parks, that is the ultimate future being provided for them and their children by the current planning system in almost every jurisdiction in the country, with assistance from engineers, developers, land-use lawyers, and realtors, most of whom uncritically accept the standard suburban approach to community growth. *Rural by Design*, at 4.

In *Beyond Sprawl: New Patterns of Growth to Fit the New California,* Executive Summary, Bank of America, et al., San Francisco, California (1995), a coalition of banking, environmental, government and housing advocacy groups agree that sprawl is a continuing threat to the people of their state. They argue that the public and private sectors, acting together:

> ... must pursue growth and development that is sustainable. Unfettered sprawl will make the state less competitive, burden taxpayers with higher costs, degrade the environment, and lower the quality of life.

Although the word "sprawl" is not defined in the GMA, its meaning can be readily deduced not only from the above cited literature, but from the Act's legislative findings and planning goals (cited above as RCW 36.70A.010 and RCW 36.70A.020(2), respectively). The Board has previously held that these provisions of the GMA:

> ... provide(s) a number of clues as to what sprawl is and how steps can be taken to reduce or contain it. For example, it is easy to deduce that sprawl is the product of the "threat" portion of legislative findings, i.e., growth that is "uncoordinated" and "unplanned." One can readily deduce that sprawl consumes more land than is necessary to accommodate forecasted growth, that sprawl is a configuration and location of growth that makes urban service delivery inefficient, and that sprawl is both a cause and a result of the blurring of local government roles and responsibilities for service delivery.
>
> The word or its derivative appears only at RCW 36.70A.020(2). From this planning goal, one also knows that sprawl deals with the conversion of "undeveloped land" to "developed land" such that it results in "low-density" development. The modifier "inappropriate" conveys that not all conversion of undeveloped land to developed land is to be avoided, only "inappropriate" conversion. It also follows that low-density

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

development, *per se*, is not to be avoided, but rather, when or where it is "inappropriate." The next question, then, is when and where such conversion is "inappropriate." There are a number of clues, such as the language of Planning Goal 1 which conveys that "efficient" development is desired and that it should therefore be encouraged where facilities either exist or can be provided in an efficient manner. The principle of directing urban development first to areas within a UGA where capacity exists is reiterated in several places in the Act, most prominently at RCW 36.70A.110(3) which provides:

> Urban growth should be located first in areas already characterized by urban growth that have existing public facility and service capacities to serve such development, and second in areas already characterized by urban growth that will be served by a combination of both existing public facilities and services and any additional needed public facilities and services that are provided by either public or private sources. Further, it is appropriate that urban government services be provided by cities, and urban government services should not be provided in rural areas. (Emphasis added.)

The above language conveys that within a UGA urban development should locate first in areas that have already been committed to urban use and which have or can get capacity to serve that growth. The Act has a clear bias for efficiency and concurrency in the placement and financing of infrastructure and urban governmental services. *See also* Planning Goal 12 at RCW 36.70A.020(12). The urban form and land use pattern that is implicit in these legislative directions is one that is more compact and dense than what market forces alone have historically produced. The Board holds that *compact urban development* is the antithesis of sprawl. *Rural Residents*, at 18. (Footnotes omitted; emphasis in original.)

Others have agreed with this general description of the origins, nature and consequences of sprawl. The Board takes official notice of a publication issued by the Washington State Department of Community Development, (now the Department of Community, Trade and Economic Development (**DCTED**) entitled *The Art and Science of Designating Urban Growth Areas--Part II* , March 1992. That document defines "urban sprawl" as:

> Scattered, poorly planned urban development that occurs particularly in urban fringe and rural areas and frequently invades land important for environmental and natural resource protection. Urban sprawl typically manifests itself in one or more of the following patterns: (1) leapfrog development (when new development is sited away from an existing urban area, bypassing vacant parcels located in or closer to the urban area that are suitable for development; (2) strip development (when large amounts of commercial, retail, and often multifamily residential development are located in a linear pattern along both sides of a major arterial and, typically, accessing directly onto the arterial); and (3) large expanses of low-density, single-family dwelling development. *The Art and Science of Designating Urban Growth Areas--Part II*, at 35.

Citing the experiences in Oregon and Florida, each of which have over 20 years of experience with state-wide growth management systems, the DCTED document identifies special density considerations that should be given for future urban areas. It states:

> If "sprawl" densities in between urban and rural densities are permitted, a development pattern can occur which will preclude future development at more efficient densities. The recent *Urban Growth Management Study: Case Studies Report*, prepared for Oregon's Department of Land Conservation and Development, concluded that low densities in the one to five-acre range presented major problems for future annexation, extension of

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

> urban services and, in general, conversion to more efficient urban patterns. ... The report recommends that Oregon communities establish a minimum lot size of at least ten to 20 acres for areas without urban services.... Florida communities have experienced similar problems where sprawl patterns (which they define as two units per acre to one unit per ten acres) are established. *Ibid.*, at 31. (Emphasis added.)

From this literature review, and an analysis of the problems addressed by specific requirements of the Act, the Board concludes that there are at least eight major negative consequences of sprawl: (1) it needlessly destroys the economic, environmental and aesthetic value of resource lands; (2) it creates an inefficient land use pattern that is very expensive to serve with public funds; (3) it blurs local government roles, fueling competition, redundancy and conflict among those governments; (4) it threatens economic viability by diffusing rather than focusing needed public infrastructure investments; (5) it abandons established urban areas where substantial past investments, both public and private, have been made; (6) it encourages insular and parochial local policies that thwart the siting of needed regional facilities and the equitable accommodation of locally unpopular land uses; (7) it destroys the intrinsic visual character of the landscape; and (8) it erodes a sense of community, which, in turn, has dire social consequences.

2. Compact Urban Development within a Resource Land and Rural Landscape

After reviewing the pertinent prior Board holdings and the Act, including the pertinent amendments made during the 1995 legislative session, the Board concludes that the GMA requires not only procedural and substantive compliance, but also a substantive outcome. The Act intends local governments to plan meaningfully for the future--to change the way land use planning has traditionally been done. Nowhere is this conclusion more apparent than with regard to the physical form of the Central Puget Sound region.

The regional physical form required by the Act is a compact urban landscape, well designed and well furnished with amenities, [FN11] encompassed by natural resource lands and a rural landscape. Neither this vision nor this reality are new to Western civilization. It describes two millennia of European growth and most of the past two centuries of North American growth. As this country has moved from an agrarian economy to an industrial to a post-industrial economy, the technological reasons that development located in central places have been superseded in the latter half of this century by equally compelling environmental, societal and public finance rationales for compact urban development.

a. Compact Urban Development as an Adopted Strategy in Regional and County Plans

The GMA's focus on regional diversity contemplates that the solutions that are necessary and appropriate for the Central Puget Sound region may not pertain to other parts of Washington. *See Kitsap v. OFM*, at 5. This region's far greater population density, [FN12] physiography, [FN13] projected growth [FN14] and concentration of local governments, [FN15] set it apart from other regions of the state.

This region's unique circumstances make the compact urban development model even more compelling, as evidenced by its adopted regional growth management strategy. [FN16] In October 1990, the Puget Sound Council of Governments [FN17] adopted *Vision 2020 Growth*

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

and Transportation Strategy for the Central Puget Sound Region, which provided:

> Create a Regional System of Central Places Framed by Open Space, and provide ... a regional urban form characterized by compact, well defined communities.... *Vision 2020*, at 12. (Emphasis added.)

It further provided:

> The intent of the strategy is to promote a regional urban form characterized by compact, well defined communities framed by a network of open spaces and connected by new transit lines and ferries. *Vision 2020*, at 20. (Emphasis added.)

Vision 2020 was updated in May 1995. It provides:

> The Vision 2020 strategy for managing growth, the economy and transportation ... constitute[s] the Multicounty Policies for King, Kitsap, Pierce and Snohomish counties and meet the multicounty planning requirements of the Growth Management Act (RCW 36.70A.210). *Vision 2020--1995 Update*, at 3.

It also provides:

> Building on the base provided by the Growth Management Act, countywide planning policies, and local comprehensive plans, the VISION 2020 strategy for urban growth areas includes three parts: (1) identify and maintain urban growth areas, (2) support compact communities, and (3) focus growth in centers. Taken together, these three parts encourage a more compact development pattern that conserves resources and creates additional transportation, housing and shopping choices. *Vision 2020--1995 Update*, at 12. (Emphasis added.)

This multi-county growth management strategy is reflected by Pierce County's Comprehensive Plan. The latter remarks that in a future without growth management:

> Uncontrolled growth sprawls, engulfing rural fields and vistas. Building occurs "out" in rural areas where the property is cheaper. Because development is spread out, the resulting public costs of providing services like roads, transit, sewer, and police are extraordinarily high, and the taxpayer must fund the large projects. Pierce County Plan, at I-2. (Emphasis added.)

The King County Comprehensive Plan also explicitly adopts the Act's and *Vision 2020*'s desired regional form:

> Within the Urban Growth Area, some cities are to contain "Urban Centers" within their boundaries. These Urban Centers are envisioned as areas of concentrated employment and housing, with direct service by high-capacity transit. They are to contain a wide variety of land uses, including retail, recreational, cultural and public facilities, parks and open spaces. The notion is that well-designed, highly livable Urban Centers will encourage people to work and live there and thus contribute to achieving the growth management goal of concentrating infrastructure investments and preventing further urban sprawl. King County Plan, at 2. (Emphasis added.)

b. Specific GMA Tools to Combat Sprawl

Two of the Act's most powerful organizing concepts to combat sprawl are the identification and conservation of resource lands and the protection of critical areas (*see* RCW 36.70A.060 and

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

.170) and the subsequent setting of urban growth areas (UGAs) to accommodate urban growth (*see* RCW 36.70A.110). It is significant that the Act required cities and counties to identify and conserve resource lands and to identify and protect critical areas before the date that IUGAs had to be adopted. This sequence illustrates a fundamental axiom of growth management: "the land speaks first." **[FN18]** Only after a county's agricultural, forestry and mineral resource lands have been identified and actions taken to conserve them, and its critical areas, including aquifers, are identified and protected, is it then possible and appropriate to determine where, on the remaining land, urban growth should be directed pursuant to RCW 36.70A.110. A more specific discussion of the Act's requirements regarding county comprehensive plans and UGAs appears below, including the pertinent 1995 legislative amendments.

For purposes of this portion of the discussion, it suffices to say that one major rationale for the designation and conservation of resource lands is to prevent the needless loss of resource lands. Another reason is to help focus growth in order to achieve greater efficiencies with scarce public funds in servicing the urban area. Other sections of the Act equip local governments to attack other negative consequences of sprawl. For example, RCW 36.70A.100 and .210, which require consistency among and between comprehensive plans, serve to clarify appropriate long-term roles for counties and cities, reducing the inter-jurisdictional conflict and competition that wastes resources and paralyzes regional decision-making. *See Snoqualmie*, at 9.

RCW 36.70A.210 also provides the mechanisms to focus regional growth and link it to major regional capital investments, to assure that cities plan for sufficient population and employment to meet UGA objectives (*see Edmonds*, at 28) and, in combination with RCW 36.70A.200, enables the siting of essential public facilities for the good of the greater region. Finally, the destruction of visual character and local identity that results from undifferentiated suburban sprawl will be greatly lessened when clear land use distinctions are made between urban and rural areas. In addition, the Act provides authority for communities to adopt design policies to protect the character of the rural landscape and enhance the character of the urban landscape. Such design policies can take the form of "innovative techniques" pursuant to RCW 36.70A.090 and/or an optional plan element pursuant to RCW 36.70A.080.

C. DETERMINING THE SIZE AND SHAPE OF UGAS

1. Rank Order for Including Lands in UGAs and Market Factors

In IUGA cases decided previously, the Board interpreted the Act's requirements regarding how to determine how large an IUGA must or may be, and which lands are to be included. The present three county comprehensive plan cases are concerned with the Act's requirements for Final UGAs. Unlike IUGAs and CPPs, the Act requires that "Final Urban Growth Areas shall be adopted at the time of comprehensive plan adoption under this chapter" (*see* RCW 36.70A.110(5)). "Each county shall include designations of urban growth areas in its comprehensive plan" (*see* RCW 36.70A.110(6)). Thus, Final Urban Growth Areas are inextricably linked to the content and quality of the comprehensive plans of counties and the cities within their boundaries.

Further, the statute was amended by the 1995 legislature. It is necessary, therefore, to review the Board's holdings in the earlier IUGA cases, what the Act now says, and what, if any, clarification

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

or expansion of prior Board decisions is required. The following review of the Board's prior cases, and of the pertinent 1995 legislative amendments, focuses on two related topics: (1) the rank order for including lands in FUGAs, which determines the configuration or shape of the FUGAs; and (2) the use of a "land supply cushion" or "market factor" which may greatly affect the size of the FUGAs.

a. Prior Board Decisions

The Board addressed the requirements of RCW 36.70A.110 in three 1994 IUGA cases: *Rural Residents*, *Tacoma* and *FOTL II*. These three decisions to some degree were the focus of amendments in the 1995 legislative session, the pertinent portions of which are discussed below.

Rural Residents

The Board held that, in sizing a UGA, a county must explicitly "show its work." The Board held:

> ... the Board will briefly discuss one other requirement regarding UGAs generally, that is closely related to population projections and allocations: "densities sufficient to permit the urban growth that is projected." RCW 36.70A.110(2). In order to achieve sufficient urban densities, a county must determine the geographic size of a UGA. Accordingly, counties must specify how many acres (or some other common measurement of land) are within a UGA so that, in the event of an appeal, the Board can determine whether the selected UGA is indeed "sufficient." In undertaking this requirement, counties must distinguish between gross acres and net (or buildable) acres. For instance, undevelopable critical areas, open spaces, rights of way, etc. should be deducted from the gross acreage. *See also* WAC 365-195-335(3). Counties have great deal of discretion in how they achieve this requirement. The Board only demands that counties "show their work" so that both the general public and the Board (if a UGA is appealed) know how the county derived its UGAs and established the appropriate densities. *Rural Residents*, at 35. (Emphasis added.)

The Board also held that, as a general rule, cities were the only areas that the Act absolutely required be included in UGAs, and that in order to include unincorporated land, one of six exceptions had to be met. The six exceptions to the general rule are:

> First, UGAs can be located outside existing city limits if the detailed requirements for a new fully contained community are met. RCW 36.70A.350.
> Second, UGAs can be located outside existing city limits if the detailed requirements for master planned resorts are met. RCW 36.70A.360.
> Third, UGAs may include territory outside existing city limits only if that additional territory is already "land having urban growth located on it." RCW 36.70A.110(1); or
> Fourth, UGAs may include territory outside existing city limits only if that additional territory is already "land located in relationship to an area with urban growth on it as to be appropriate for urban growth." RCW 36.70A.110(1); or
> Fifth, UGAs may include territory outside existing city limits only if that additional territory is adjacent to territory already " ... having urban growth located on it." RCW 36.70A.110(1); or
> Sixth, UGAs may include territory outside existing city limits only if that additional territory is adjacent to territory already " ... located in relationship to an area with urban growth on it as to be appropriate for urban growth." RCW 36.70A.110(1). *Rural Residents*, at 44.

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

The Board is aware that the *Rural Residents* decision evoked spirited debate on the question of the degree of discretion that RCW 36.70A.110 allows to counties to include unincorporated lands within the UGA. This debate culminated in legislative action to amend RCW 36.70A.110 as outlined in the following section. Here, it suffices to note that the focal point of this debate appears to be the Board's use of the conjunction"and", emphasized below:

> Once a satisfactory showing has been made that existing cities cannot accommodate the projected population growth, and that the area meets the legal test of the third exception, counties will be permitted to extend IUGAs beyond existing incorporated areas into lands covered by the third exception. However, because the fourth, fifth and sixth exceptions permit UGAs to extend beyond existing city limits and areas covered by the third exception to lands where it would be more inconsistent with the Act's first two planning goals to permit urban growth, the Board will apply a much higher level of scrutiny to a county's actions in extending UGAs to such lands. Counties do not have carte blanche permission to include nonurban areas that fall within the fourth, fifth and sixth exceptions within UGAs. In those rare cases when exceptional circumstances so warranted, the counties will be required to convincingly demonstrate their rationale for drawing UGA boundaries to include lands within the fourth, fifth and sixth exceptions, specifically utilizing the statistical information that has been compiled. *Rural Residents*, at 48-49. (Emphasis added.)

Tacoma

The Board expanded upon *Rural Residents* in the *Tacoma* case. This 1994 decision presaged the 1995 legislature's inclusion of a "reasonable market factor" in Sec. 2 of EHB 1305. The Board held that:

> Local circumstances, traditions and identity will result in unique choices and solutions by each county and each city within it. Jurisdictions have broad discretion to make UGA policy decisions. For instance, emphasis on market factors, or a jobs-based economy, or urban village concepts are all policy choices. While such policy choices may be included in the sizing or configuration of the UGA, they must be made in a measurable way and with sufficient documentation as to the rationale. *Tacoma*, at 10. (Emphasis added.)

The Board observed further that:

> ... comprehensive plans, including FUGAs, must follow the direction provided by the three fundamental purposes of both UGAs and CPPs: (1) to achieve *consistency* among plans pursuant to RCW 36.70A.100; (2) to achieve the *transformation of local governance* within the UGA such that cities are the primary providers of urban governmental services; and (3) to achieve *compact urban development*. *Tacoma*, at 12. (Footnote omitted. Emphasis in the original.)

With regard to the requirements for coordinated and consistent planning between the cities and counties in the unincorporated portions of the UGA, the Board held:

> The County asserts that neither the GMA nor state annexation law distinguishes between one city's UGA, and another city's UGA, and that it is therefore appropriate for the County to use a generic "metropolitan" appellation. County Prehearing Brief (County's PHB), at 49-50. While there is no explicit requirement to make such a distinction, the Board finds that it is a necessary implication of the Act. This implied requirement arises from RCW 36.70A.110(2)

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

which provides that "each city shall propose the location of an UGA," and the necessity for a county to know, for each portion of the lands covered by the county's comprehensive plan, which city's comprehensive plan must be addressed to meet the consistency requirements of RCW 36.70A.100 and the joint planning requirements of RCW 36.70A.210(3)(f). *Tacoma*, at 13. (Emphasis added.)

The Board also held that the UGA sizing task is essentially "an accounting exercise":

As the Board held in *Rural Residents*, a county will have to "show its work" to justify the UGA, a part of which will require the definition, in numeric terms, of "urban" uses and densities and an inventory of land available to accommodate the growth. This is essentially a countywide accounting exercise which must show that the net land available for urban development will be sufficient to accommodate the forecasted growth. The integrity of the accounting and the validity of the UGA depend upon the actual utilization of land achieving the densities adopted in the comprehensive plans. It will no longer be sufficient for development permits to simply meet the minimum lot size specified in a zoning ordinance. RCW 36.70A.120 now requires that planning activities, such as permitting and platting, be consistent with the comprehensive plans. *Tacoma*, at 13. (Footnote omitted).

FOTL II

In the last IUGA case heard by this Board, *Friends of the Law and Bear Creek Citizens for Growth Management (FOTL II) v. King County*, CPSGMHB Case No. 94-3-0009 (1994), the Board stated:

Although instances clearly may exist where a FUGA should be drawn precisely at existing municipal boundaries, the Act does permit FUGAs to be extended beyond existing city limits. If the legislature intended FUGAs to be identical to corporate limits, it would have explicitly so stated. Instead, the legislature crafted the GMA to allow FUGAs to be designated in six additional areas. *See Rural Residents v. Kitsap County*, CPSGPHB Case No. 93-03-0010 and *Tacoma, et. al., v. Pierce County*, CPSGPHB Case No. 94-3-0001.

...

While the objective analysis is essential, counties also have the latitude to consider subjective factors, such as a land supply market factor and the preferred vision that each city expresses in its comprehensive plan. [FN19] The explicit articulation and balancing of these factors has been described as the requirement to "show your work" when designating urban growth areas. *See Rural Residents*, at 20-21.

...

Although the County may conclude after conducting rigorous analysis (and as urged by FOTL) that it would be best to adopt FUGAs limited exclusively to existing incorporated areas or to encompass only those additional areas already characterized by urban growth that have existing public facility and service capacities to serve such development, the Act does not *per se* mandate such a conclusion. The County is entitled to exercise its discretion in applying the requirements of the Act for designating FUGAs. The appropriate exercise of that discretion may lead to FUGAs being drawn to include unincorporated lands and even non-urbanized lands. *FOTL II*, Order on Dispositive Motions, at 15. (Emphasis added.)

b. GMA and Pertinent 1995 Legislative Amendments

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

Section 2 of EHB 1305 (Chapter 400, Laws of 1995) amended RCW 36.70A.110 which establishes the requirements for UGAs. Language deleted by EHB 1305 is shown with strike-throughs, and new language is shown with underlining. That section provides:

> (1) Each county that is required or chooses to plan under RCW 36.70A.040 shall designate an urban growth area or areas within which urban growth shall be encouraged and outside of which growth can occur only if it is not urban in nature. Each city that is located in such a county shall be included within an urban growth area. An urban growth area may include more than a single city. An urban growth area may include territory that is located outside of a city only if such territory already is characterized by urban growth whether or not the urban growth area includes a city, or is adjacent to territory already characterized by urban growth, or is a designated new fully contained community as defined by RCW 36.70A.350.
>
> (2) Based upon the <<-population->> growth management <<-planning->> population projection made for the county by the office of financial management, the urban growth areas in the county shall include areas and densities sufficient to permit the urban growth that is projected to occur in the county for the succeeding twenty-year period. Each urban growth area shall permit urban densities and shall include greenbelt and open space areas. <<+An urban growth area determination may include a reasonable land market supply factor and shall permit a range of urban densities and uses. In determining this market factor, cities and counties may consider local circumstances. Cities and counties have discretion in their comprehensive plans to make many choices about accommodating growth....+>>
>
> (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, <<-and->> second in areas already characterized by urban growth that will be served <<+ adequately+>> by a combination of both existing public facilities and services and any additional needed public facilities and services that are provided by either public or private sources<<+, and third in the remaining portions of the urban growth areas. Urban growth may also be located in designated new fully contained communities as defined by RCW 36.70A.350.+>> <<-Further, it is->>
>
> (4) In general, cities are the units of local government most appropriate <<-that->> to provide urban <<-government->> <<+ governmental+>> services <<-be provided by cities, and.->> <<+In general, it is not appropriate+>> that urban <<-government->> <<+ governmental+>> services <<-should not->> be <<-provided->> <<+ extended to or expanded+>> in rural areas except in those limited circumstances shown to be necessary to protect basic public health and safety and the environment and when such services are financially supportable at rural densities and do not permit urban development....

With regard to the use of the OFM population projections, the legislature adopted ESB 5876 (Chapter 162, Laws of 1995) which amended RCW 43.62.035. Language added by ESB 5876 is underlined, such that the section now reads as follows:

> The office of financial management shall determine the population for each county of the state annually as of April 1st of each year and on or before July 1st of each year shall file a certificate with the secretary of state showing its determination of the population for each county. The office of financial management also shall determine the percentage increase in population for each county over the preceding ten-year period, as of April 1st, and shall file a certificate with the secretary of state by July 1st showing its determination. At least once every ten years the office of financial management shall prepare twenty-year growth management planning population projections required by RCW 36.70A.110 for each county

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

that adopts a comprehensive plan under RCW 36.70A.040 and shall review these projections with such counties and the cities in those counties before final adoption. The county and its cities may provide to the office such information as they deem relevant to the office's projection, and the office shall consider and comment on such information before adoption. Each projection shall be expressed as a reasonable range developed within the standard state high and low projection. The middle range shall represent the office's estimate of the most likely population projection for the county. If any city or county believes that a projection will not accurately reflect actual population growth in a county, it may petition the office to revise the projection accordingly. The office shall complete the first set of ranges for every county by December 31, 1995.

A comprehensive plan adopted or amended before December 31, 1995, shall not be considered to be in noncompliance with the twenty-year growth management planning population projection if the projection used in the comprehensive plan is in compliance with the range later adopted under this section.

c. New Holdings

Rank Order for Inclusion of Lands in the UGA

EHB 1305 sheds some light on earlier Board holdings regarding the rank order in which lands may be included within a UGA and how the land supply included in a final UGA must relate to the OFM population projection. As detailed below, the rank order priority set forth in *Rural Residents* for including land within UGAs (cities must be included in a UGA and unincorporated areas may be included as one of six exceptions) remains essentially intact; however, its specific interpretation and application warrants clarification.

Subsection 1 of EHB 1305 appears to direct a "broadening" of the Board's *Rural Residents* holdings. The text added to RCW 36.70A.110(1), "whether or not the urban growth area includes a city," clarifies that it should now be easier for a county to include unincorporated urbanized area in an FUGA than it was prior to the amendments. The Board presaged this clarification in its *FOTL II* holding cited above. This new language also validates ongoing trends and the logic of other Board holdings. For example, since the June 3, 1994, adoption date of the *Rural Residents* decision, a number of significant actions have occurred and relevant new facts have become known. Many city comprehensive plans have been adopted. [FN20] This gives a clearer indication of how much growth cities actually do have the capacity to accommodate. [FN21] Also, the Board has held that city comprehensive plans are permitted to have more population capacity than is allocated by a county, absent a CPP to the contrary. [FN22] Moreover, in keeping with the Act's desired "transformation of local governance" (*see Snoqualmie*, at 9), there is a continuing trend for urbanized areas outside of cities to annex to existing cities or to incorporate. [FN23] Finally, the Board has held in the present case that a central organizing principle of the GMA is compact urban development within a rural/resource lands landscape. These facts and Board decisions lead us to conclude that it is appropriate to respond to the amendments in EHB 1305 by revising and amplifying upon the application of the general rule and six exceptions from *Rural Residents*.

Specifically, the Board now adopts a new holding to interpret and apply the general test and six exceptions set forth in *Rural Residents*. For purposes of comparison, the Board repeats below

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

language from *Rural Residents*, showing new language with underlining and deleted language with strike-throughs as follows:

> <<-Once->> <<+Regardless of whether+>> a satisfactory showing has been made that existing cities <<-cannot->> <<+can+>> accommodate the projected population growth, <<-and that the area meets the legal test of the third exception->>, counties will be permitted to <<-extend IUGAs->> <<+designate FUGAs+>> beyond existing incorporated areas <<-into->> on lands covered by the third exception. However, this does not give counties carte blanche permission to designate as UGAs *all* urbanized unincorporated lands, because to do so would violate two of the fundamental purposes that both UGAs and CPPs must serve: to achieve the *transformation of local governance* within the UGA such that cities are, in general, the primary providers of urban governmental services and to achieve *compact urban development*. *See Tacoma*, at 12. It must be remembered that much of the impetus to adopt the GMA was the sprawling urbanization of many of these unincorporated areas. It would be illogical to now blindly include within UGAs not only every unincorporated parcel urbanized within the past century, but non-urbanized intervening lands. The Board will give a higher degree of scrutiny to UGA challenges that allege that these fundamental purposes are thwarted. [FN24]
>
> <<-because t->> [T]he fourth, fifth and sixth exceptions <<+ would+>> permit UGAs to extend <<+not only+>> beyond existing city limits but even beyond urbanized unincorporated <<-and->> areas covered by the third exception. <<+Because including such+>> <<-to->> lands <<-where it->> would be more inconsistent with the Act's first two planning goals <<+regarding where+>> to permit urban growth, the Board will apply a much higher level of scrutiny to a county's actions in extending UGAs to such lands. Counties do not have carte blanche permission to include nonurban areas that fall within the fourth, fifth and sixth exceptions within UGAs. In those rare cases when exceptional circumstances so warrant, the counties will be required to convincingly demonstrate their rationale for drawing UGA boundaries to include lands within the fourth, fifth and sixth exceptions, specifically utilizing the statistical information that has been compiled, and demonstrating how such lands serve the fundamental purposes of UGAs and CPPs cited above.

Turning to the other sections of the 1995 amendments to RCW 36.70A.110, the Board finds that Subsection (2) of RCW 36.70A.110 buttresses earlier Board holdings (e.g., it establishes a "reasonable land market supply factor" which parallels language in *Tacoma*, at 10).

Subsection (3) is somewhat incongruous in the context of the whole section, because rather than dealing with how to draw the UGA, it deals with where to locate growth once the UGA has been drawn. This conclusion is inescapable due to the legislature's addition of the phrase " ... and third in the remaining portions of the urban growth areas." Had the subsection instead said " ... the remaining portions of the county," then this subsection would provide useful direction for drawing the UGA. *See also Rural Residents,* at 46, where the Board first noted the distinction between determining where to draw the UGA boundaries and, once having done so, where to locate growth within the UGA.

Subsection (4) does two things. First, it says that "in general" cities are the units of local government most appropriate to provide urban governmental services. This buttresses the Board's earlier holdings that cities are to be the primary providers of urban governmental services (*see Snoqualmie,* at 11) but that this primary role does not mean that cities will be the

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

exclusive providers of urban governmental services (*see Poulsbo v. Kitsap County*, CPSGMHB Case No. 92-3-0009, [***Poulsbo***] Order Granting Kitsap County's Petition for Reconsideration, at 13). Second, this subsection says that "in general" urban governmental services should not be extended to or expanded in rural areas, except in limited exceptional circumstances where environmental, public health and safety issues require it. It further clarifies that such exceptions are to be "supportable at rural densities and do not permit urban development" in rural areas. This buttresses the Board's holdings that urban growth does not belong in rural areas. [FN25]

Market Factors in Sizing the UGA

We now turn from the question of which lands to include in the FUGA to the question of how large an FUGA must and may be. Two points bear making here. The first has to do with how the OFM population projection is to be used and the second has to do with the upper limit on the maximum size of a FUGA.

RCW 36.70A.110(2) reads, in pertinent part:

> ... the urban growth areas in the county shall include areas and sufficient to permit the urban growth that is projected to occur in the county for the succeeding twenty-year period. (Emphasis added.)

In the *Rural Residents* case, the County argued that "sufficient to permit" equates with "at least," and implied there was no upper limit on how much land a county could include in its UGA. The Board rejected this argument, pointing out that, if the OFM projection was not a "ceiling," there would be no sense in requiring counties to "offset" the UGA when including fully contained communities or master planned resorts. "Sufficient" in this context is not synonymous with "enough" or "at least." Rather, it conveys that the amount of land should be sufficiently (i.e., appropriately) sized in view of the demand. This logic is buttressed by the derivation of the word "sufficient" as found in *Webster's II New Riverside University Dictionary*, 1988, at 1159.

> "Sufficient" means: "from the Latin *sufficiens*, pr. part. of *sufficiere*, to suffice. 1. That is enough: ADEQUATE. The derivative, "to suffice" is defined as: "from the Latin *sufficiere*. 1. To meet present needs or requirements. be sufficient to. 2. To be equal to a specified task." (Emphasis added.)

This conclusion has been buttressed by ESB 5876, which established that OFM is to adopt a population range for each county, rather than a single point. Thus, the legislature has simply moved the theoretical population ceiling from the midpoint of OFM's projected range to the top of the range.

ESB 5876 did not amend the language in RCW 36.70A.110(2) regarding what the Board has interpreted as the exclusive use of OFM's projections. This clearly indicates that the GMA still prohibits counties from using their own population figures, rather than OFM's, in sizing UGAs. It clarifies that counties are to consider the population projection as a finite quantity. This conclusion is further reinforced by the fact that the legislation did not amend the requirement for a county to "offset" the size of the UGA if it chooses to include in its comprehensive plans and implementing regulations provisions for fully contained communities or master planned resorts. The sizing of UGAs remains dependent upon an accounting exercise requiring a reasonable relationship between its selected size and the likely future population for each county.

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

With regard to the question of the permissible size of a "land supply cushion" or "market factor," several conclusions are in order. The Board has previously held that a county may size its UGA with more land than is required to meet the demands of 20 years of projected growth. *See Tacoma*, at 10. This "excess land supply" may be called a "market factor," as EHB 1305 does, or a "safety factor" or "cushion." What a county chooses to call such excess land supply does not matter so much as that such a factor is explicitly quantified and expressed as a percentage of land beyond the minimum necessary to accommodate the OFM projected growth, at the land use densities stated in each jurisdiction's land use map. Sec. 2 of EHB 1305 further establishes that such a market factor must be "reasonable." This legislative directive embodies the Board's prior holdings. Not only must the UGA be based on the OFM population projection, but at *some* point of excess capacity (i.e., with some added market factor), the size of the UGA is not reasonable.

While it is difficult to draw an absolute limit beyond which a county may not go in using such a factor, the Board holds that a "market factor bright line" will be drawn at the 25 percent threshold. The Board takes official notice of the DCTED publication, *Issues in Designating Urban Growth Areas--Part I--Providing Adequate Urban Area Land Supply*, March 1992. Citing several approaches in other growth management states, this publication discusses the concept of an excess land supply and the need to strike a balance in sizing UGAs so as to contribute neither to sprawl nor to increased housing costs. It reports the results of national research by F. Stuart Chapin and Edward J. Kaiser:

> ... a [safety factor] allows for unanticipated choices of individuals and firms who may acquire land in excess of the anticipated need, and it allows for land which may be held out of use because of personal preferences or whims of a few property owners or because of legal complications which make the land unavailable for immediate development. However, they caution that the excess should not be more than 25 percent ... When community plans provide a residential land supply which is more than 25 percent of the area needed to accommodate projected growth, the Florida Department of Community Affairs reviews the plans more closely. *Issues in Designating Urban Growth Areas--Part I--Providing Adequate Urban Land Supply*, at 16-17.

The Board concludes that this is a prudent approach to implement the legislature's direction that a "reasonable" market factor may be included in sizing the UGA. Where counties adopt a land supply market factor between 1 and 1.25 (i.e., of 25 percent), the Board will presume that the factor is reasonable. In evaluating allegations that a county has used an unreasonable land supply market factor, the Board will give increased scrutiny to those cases where the factor exceeds the 25 percent bright line. In determining whether the county's choice was reasonable, the Board shall consider three general questions:

(1) What is the magnitude of the "land supply market factor" beyond the 25 percent bright line?

Exceeding the 25 percent threshold by ten percent (thus utilizing a factor of 35 percent) is a very different circumstance than exceeding it several-fold (for example, utilizing a 75 percent excess supply). At some point, the exception swallows the rule. The greater the degree the county's land supply exceeds the 25 percent bright line, the more closely the Board will scrutinize the record for the indicators described in (2) below and consider remanding the UGA with direction to include the approach described in (3) below.

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

(2) *Is there other evidence to suggest that the land supply market factor is not reasonable?*

Various indicators might suggest that a large excess land supply (i.e., 25 percent+) was the cumulative or inadvertent consequence of failures to comply with other requirements of the Act, rather than the deliberate addition of a "market supply" increment beyond the land supply that is necessary for the projected growth. If the preponderance of the evidence in a record so indicates, the Board would find the "market" factor not reasonable.

For example, was the UGA sized using the criteria listed in RCW 36.70A.110? Did the County "show its work" ? Were a variety of rural densities included? Has there been a showing that the cities within the county, as evidenced in their adopted GMA comprehensive plans, cannot accommodate more population and employment than was allocated by the county? Does the county's capital facilities element indicate that adequate services will be available for the type and density of uses designated both for the UGA and the rural area? Are the types and densities of land uses allocated to the rural areas violative of the Act's prohibition against urban growth in a rural area?

(3) Has the county also availed itself of other approaches, such as continuously monitoring land supply and making necessary adjustments over the life of the plans for the county and its cities?

The Act requires that counties adopt a UGA of sufficient size to accommodate 20 years of projected growth. However, the market factor is not the only device available to achieve a supply that is neither too large nor too small. The Act also requires review of UGAs at least every ten years (RCW 36.70A.130(3)); no more than annual reviews of comprehensive plans (RCW 36.70A.130(2)); and even more frequent amendments to the CPPs. Although the size of the UGA should not be increased in a frequent or cavalier manner, counties should consider the option of including a more modest land supply market factor at the beginning of the twenty-year period, and considering adjustments on a three- or five-year cycle.

If, in answering questions 1, 2 and 3, the Board concludes that the land supply market factor above 25 percent is not reasonable (i.e., it is too large), the UGA will be remanded.

2. Permitted Uses in Urban Areas and Rural Areas

Apart from the rank order for inclusion of lands within the UGA and reasonable size for a land supply market factor, a series of related and fundamental questions remain. What *specifically* does the Act permit in rural areas? Even more basically, what is rural, what is urban and what is growth? When does development constitute impermissible sprawl [FN26] and how does the concept of "suburban" fit into the GMA cosmology?

Part of the difficulty in answering these questions arises because the Act does not include a definition of "rural." The Act establishes that urban growth should occur only in urban areas, but does not explicitly say what should be permitted in rural areas. Reading the Act's definition of "urban growth," the Board has held that the Act does not allow urban growth in rural areas, but more specific parameters are necessary to determine when, and under what circumstances, residential, commercial, industrial and public facilities growth may be permitted in a rural area,

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

which is to say, when and under what circumstances do such uses constitute "rural growth"?

We begin with a review of what prior Board Decisions and the Act have to say about "urban growth," "rural," and "suburban." From this discussion will emerge a series of holdings that set forth the circumstances under which residential uses are permissible in the rural area. Future Board decisions in other cases will examine the parameters for commercial, industrial and public facility uses in rural areas.

a. Prior Board Decisions

The Board has held that urban growth is prohibited in a rural area. In *Rural Residents*, the Board held:

> RCW 36.70A.110(1) uses the somewhat equivocal word "encouraged" with respect to what is to happen inside the designated urban growth area. Significantly, however, it says something very different with regard to the land outside the urban growth area. The phrase " ... outside of which growth can occur only if it is not urban in nature" is not equivocal. It does not say "reduce" or "discourage" urban growth outside the UGA. The use of the word "only" clearly means that urban growth is **prohibited** outside of the UGA. The only manner to achieve such a prohibition is for the IUGAs to have some immediate and controlling regulatory effect relative to what happens beyond the designated growth area. *Rural Residents*, at 20. (Emphasis added.)

RCW 36.70A.070(5) indicates that designated urban growth, agriculture, forest or mineral resource lands shall be excluded from the rural element of a comprehensive plan. Accordingly, WAC 365-195-210(19) basically comports with this provision by defining "rural lands" as:

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

The Board has adopted this definition:

> The Board therefore has considered WAC 365-195-210(19) and adopts it as the proper definition of "rural" in a GMA context, with the caveat that the word "timber" refers to forest lands. *See* RCW 36.70A.030(8) and .170(1)(b). *Rural Residents*, at 41.

The Board also addressed the issue of what constitutes impermissible growth in a rural area in another 1994 Kitsap County case, *KCRP I*. There, the Board held:

> The true test of whether the CEO results in urban growth is to ask the question--what does the CEO permit to be physically constructed on the ground, in the real world, and how does that potential outcome square with the Act's definition of urban growth? *KCRP*, at 16.

The specific enactment before the Board in the *KCRP* case was a Conservation Easement Ordinance (CEO), to be used in the rural area, but the same test would be applied to any GMA enactment, whether a policy document, such as a comprehensive plan, or an implementing development regulation, in order to determine whether it permits urban growth to occur in a rural area.

With regard to specific residential densities, to date the Board has held only that "a density of

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

one unit per ten acres is a rural density. *Tacoma*, at 21.

b. GMA and Pertinent 1995 Legislative Amendments

In the previous section, the Board discussed the amendments to RCW 36.70A.110 regarding the rank order for inclusion of land inside urban growth areas, but the focus here is on what may be outside the UGA, in the rural area. The Board's holding in *Rural Residents* that urban growth is prohibited in rural areas is validated both by what the legislature did and did not do in enacting EHB 1305. First, the final phrase in the new subsection (4) of RCW 36.70A.110 directs that limited urban governmental services in a rural area are to be "financially supportable at rural densities and [do] not permit urban development." This comports with the Board's holding cited above that urban growth is prohibited in a rural area.

Equally significant is that the statutory linchpins for this *Rural Residents* holding, cited above, were not amended by the legislature. The definitions of "urban growth" and "urban governmental services" remain as they have been since 1990; [FN27] neither did the legislature amend the following critical phrase in subsection (1) of RCW 36.70A.110:

> ... each county ... shall designate an urban growth area or areas within which urban growth shall be encouraged and outside of which growth can occur only if it is not urban in nature. (Emphasis added.)

Section 3 of EHB 1305 did amend the portion of the GMA that discusses what is to be in the rural element of a county comprehensive plan. RCW 36.70A.070 (5) now provides:

> Counties shall include a rural element including lands that are not designated for urban growth, agriculture, forest, or mineral resources. The rural element shall permit appropriate land uses that are compatible with the rural character of such lands and provide for a variety of rural densities and uses and may also provide for clustering, density transfer, design guidelines, conservation easements, and other innovative techniques that will accommodate appropriate rural uses not characterized by urban growth. (Language added by EHB 1305 is underlined).

The addition of the word "appropriate" reinforces the premise that not all types of growth should be permitted in the rural area. The phrase "and uses" underscores that uses other than residential are appropriate in a rural area. The reference to "clustering, density transfer, design guidelines, conservation easements, and other innovative techniques" appears to encourage a kind of compact rural development. *See KCRP*, at 15.

c. New Holdings

The GMA universe consists of three major land use types: (1) *resource lands* (designated forest, agricultural and mineral resource lands); (2) *urban lands,* which are within UGAs; and (3) *rural lands* which are entirely outside UGAs and exclude resource lands. [FN28] In order to discern the uses permitted in each of these types of lands, it is important to recognize that various provisions of the Act create a relationship between and among them. For example, the great majority of resource lands are outside the UGAs, and in fact, provide some of the rationale for the location of the UGAs. Also, forest lands and mineral resource lands are typically a part of the landscape that surrounds, but does not penetrate, the already urbanized areas of the region.

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

Because such resource lands also typically abut, or are surrounded by, non-resource rural lands, they are sensitive to the patterns of development that occur in those nearby rural areas. This relationship has been characterized as:

> One of the most important symbiotic relationships is the one between rural and resource lands. Properly planned rural areas provide necessary support of and buffering for resource lands. *Achen, et al., v. Clark County*, WWGMHB Case No. 95-2-0067, at 28.

Based upon a reading of the Act, prior Board decisions and the arguments in the present cases, we are now prepared to hold what residential densities are permitted in urban and rural areas.

Urban Areas

The Act does a good job of describing what is to be in urban areas. The definitions of urban growth and urban governmental services describe the form and intensity of development, services and infrastructure that are to be developed in urban areas. The Board has also clarified that critical areas exist wherever they are found, be it in or outside of urban areas.

Compact urban development was discussed at length earlier, but it bears repeating here that this is a central organizing principle, both at the county-wide level where the size and shape of UGAs are determined, and at the community and project level where growth is actually manifested on the ground. The Board pointed out in the *Tacoma* case that there is a relationship between these levels because the GMA accounting that justifies the size and shape of a UGA depends upon achieving efficient land use utilization at the plan and project level. *See Tacoma*, at 13.

The Board again holds that new urban land uses may be located only within UGAs. Although there may be areas within UGAs that have historically been rural and presently look rural, these areas may not be platted or otherwise developed in a manner that thwarts their ultimate urban use. *See Robison v. Bainbridge Island*, CPSGMHB Case No. 94-3-0025 (1995) (***Robison***), at 32.

The language that the legislature added to RCW 36.70A.110(2) requires that UGAs "shall permit a range of urban densities and uses." The range of densities to be selected may be very high at the upper end, for example, the residential density and non-residential intensity of downtown Seattle. The Board has previously acknowledged that the specific location, density/intensity and development standards for accommodating growth within cities is subject to broad local discretion. *See Aagaard,* at 9.

Some have contended that 1-acre and 2.5-acre lots are neither urban nor rural, but instead are "suburban" and are permitted by the Act. The Board rejects this argument. It flies in the face of the Act's clear direction to protect all areas from "inappropriate conversion to sprawling low density development" (RCW 36.70A.020(2)), incorrectly presumes that roads are the only local government services required by such a land use pattern, and hangs its intellectual hat on the skimpiest of pegs--two oblique references that the Act makes to this term. [FN29]

The Board holds that "suburban" is a subset of "urban." [FN30] A pattern of 1-and 2.5-acre lots meets the Act's definition of urban growth, which is to say that it precludes "the primary use of such land for the production of food, other agricultural products, or fiber, or the extraction of

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

mineral resources." RCW 36.70A.030(14). To argue that the ability to grow berries on a 1-and 2.5-acre lots renders them "rural," within the meaning and objectives of the GMA, is preposterous. [FN31] The Board's conclusion that suburban is a subset of urban comports not only with the definition in the Act itself and the earlier referenced experiences in other states, but with common sense. A pattern of such lot sizes is an extremely land-consumptive way to accommodate growth and is the antithesis of compact urban development.

However, a pattern of 1-or 2.5-acre lots is not an appropriate urban density either. **Absent a persuasive and well documented justification of a unique area-wide circumstance (e.g., a major equestrian facility surrounded by 'horse-acre lots' or large areas with very steep slopes or wetlands) the Board holds that an urban land use pattern of 1-or 2.5-acre parcels would constitute sprawl.**

At the low end of the range of permissible urban densities, it is difficult to draw a universally appropriate maximum urban lot size. Several sources in the literature and the experience of growth management in other states strongly suggest that anything less than seven dwelling units per acre is not supportive of transit objectives [FN32] and anything less than four per acre is sprawl. [FN33] **As noted above, the Board holds that up to 2.5-acre lots are urban. However, rather than adopt a maximum urban lot size, the Board instead adopts as a general rule a "bright line" at four net dwelling units per acre.** Any residential pattern at that density, or higher, is clearly compact urban development and satisfies the low end of the range required by the Act. Any larger urban lots will be subject to increased scrutiny by the Board to determine if the number, locations, configurations and rationale for such lot sizes complies with the goals and requirements of the Act, and the jurisdiction's ability to meet its obligations to accept any allocated share of county-wide population. Any new residential land use pattern within a UGA that is less dense is not a compact urban development pattern, constitutes urban sprawl, and is prohibited. There are exceptions to this general rule. For example, 1-or 2.5-acre lots may be appropriate in an urban setting in order to avoid excessive development pressures on or near environmentally sensitive areas. However, this circumstance can be expected to be infrequent within the UGA and must not constitute a pattern over large areas.

Rural Areas

In determining what residential uses are permitted in rural areas, it must first be remembered that growth is permitted in the rural area. RCW 36.70A.070(5), as amended by EHB 1305, permits "appropriate land uses that are compatible with the rural character of such lands and provide for a variety of rural densities and uses." The definition of "urban growth" enables one to distinguish between "growth" generally and "urban growth." Simply put, growth is urban growth if it:

> Makes intensive use of the land ... to such a degree as to be incompatible with the primary use of such land for the production of food, other agricultural products, or fiber, or the extraction of mineral resources.

If growth does not make such intensive use of the land, then it is not urban growth.

Significantly, the definition of urban growth specifically focuses on the intensity of the use of land, specifically naming such physical improvements as "buildings, structures and impermeable surfaces." Thus, the net intensity of physical improvements placed on rural land can, alone, be

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

conclusive in determining if growth proposed for a rural area can be permitted or if it crosses the threshold into impermissible urban growth. Dimensions of development intensity traditionally include building height, setbacks, parking requirements, impervious surface coverage, the degree of grading and its consequent removal of existing vegetation.

The challenge then is to discern what are "appropriate land uses" in the rural area. What type of residential uses and activities does the Act contemplate will furnish a landscape that is rural in both character and nature?

The Puget Sound Regional Council's 1994 Rural Workshop opined that:

> Rural lands primarily contain a mix of low-density residential development, agriculture, forests, open space and natural areas, as well as recreation uses. Counties, small towns, cities and activity areas provide limited public services to rural residents. Rural lands are integrally linked to and support resource lands. They buffer large resource areas and accommodate small-scale farming, forestry, and cottage industries as well as other natural-resource based activities. *Vision 2020--1995 Update*, at 27.

The Board holds that the above description of rural land accurately describes the intensity and character of new residential activity and development that the Act permits in rural areas (i.e., land outside the UGA, excluding resource lands). The Board held above that a predominant pattern of 1-and 2.5-acre lots within the urban area would also constitute *sprawl*. The Board now holds that such a development pattern within the rural area would also constitute *sprawl*. Continuation of sprawl in either area violates the Act (*see* RCW 36.70A.020(2)). In addition, the Act requires a variety of rural densities within the rural area (*see* RCW 36.70A.070(5)) which will typically require a range from ten-, to 20-, 40-and 80-acre lot sizes.

The Board is aware that there are many 1-and 2.5-acre parcels throughout the region. These can be shown on a current land use map and continue with whatever rights are guaranteed by state and local law, such as the vested rights doctrine and continued use under a legal nonconforming status. However, the county's future land use map and zoning regulations may not permit the future creation of such lot sizes. **The Board now holds that, as a general rule, new 1-and 2.5-acre lots are prohibited as a residential development pattern in rural areas.**

D. SUMMARY

In specifically rejecting the sprawl model for Washington State, the GMA asserts the importance of taking a balanced, long-term view and promoting and serving the broad public interest. When the GMA's substantive requirements for county plans and FUGAs (i.e., the above holdings) are read together, what emerges is a sketch, in broad strokes, of a specific physical and functional regional outcome. The Act's mandated outcome stands in sharp contrast to the undifferentiated suburban sprawl that, in many other parts of the country, has contributed to environmental degradation, economic stagnation and an eroded sense of community that, in turn, has dire social consequences.

Rather, the Act mandates that local governments in Central Puget Sound shape the next 20 years of growth into compact urban development surrounded by a landscape of rural and resource

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

lands. In combination with the other requirements of the Act, the required substantive outcome of RCW 36.70A.070, .110 and .210 provides the best chance for this region to achieve sustainable economic development, protect the environment and assure a high quality of life for Washington residents.

IV. DISCUSSION OF SPECIFIC LEGAL ISSUES AND CONCLUSIONS

Fifteen pages of the Board's Prehearing Order list 86 legal issues to be determined in this case. [FN34] In an effort to save space, the Board incorporates by reference the Prehearing Order's recitation of the legal issues and will not repeat them in the text of this document. The discussion headings will have footnote references to the issues that will be determined.

A. OFM POPULATION PROJECTION ISSUES [FN35]

Certain petitioners contend that the County did not use the Office of Financial Management's (**OFM**) population projections when it designated its final UGAs. The relevant part of RCW 36.70A.110(2) states:

> Based upon the growth management population projection made for the county by the office of financial management, the urban growth areas in the county shall include areas and densities sufficient to permit the urban growth that is projected to occur in the county for the succeeding twenty-year period....

In *Rural Residents*, the Board first held that when determining the population component of the formulation of UGAs, counties must use only OFM's population projections. *Rural Residents*, Final Decision and Order, at 33-34 and Order Denying Kitsap County's Petition for Reconsideration, at 2-3; *see also Tacoma*, Final Decision and Order, at 25. "Counties cannot add their own calculation to nor deduct from OFM's projections." *Rural Residents*, Final Decision and Order, at 34.

OFM is statutorily directed to prepare population projections to be used for growth management planning purposes, and to review these projections with counties prior to adopting them.

> ... At least once every ten years the office of financial management shall prepare twenty-year growth management planning population projections required by RCW 36.70A.110 for each county that adopts a comprehensive plan under RCW 36.70A.040 and shall review these projections with such counties and the cities in those counties before final adoption.... RCW 43.62.035.

On January 31, 1992, OFM published its "Washington State County Population Projections, 1990-2010, 2012." The year 2012 forecast for Kitsap County's population was 269,687. *Kitsap County v. OFM*, Final Decision and Order, Finding of Fact No. 6; Exhibit 3 to County's Brief, at 5c-2.

In March of 1992, the County, acting in conjunction with its four incorporated cities through the Kitsap Regional Planning Council, (**KRPC**), projected a Kitsap County total population of 280,985 in the year 2010. This figure is set forth on page 36 of Appendix E of the Kitsap County-wide Planning Policy. *Kitsap County v. OFM*, Final Decision and Order, Finding of Fact No. 7.

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

In May of 1994, KRPC updated the population allocations by subarea to extend to the year 2014. This action resulted in an estimate of 303,460 people by 2014. This is the amount adopted in the Plan which thus indicates that the county-wide total projection for Kitsap County is 303,460 people for the year 2014. Plan, Part I, at 11; *see also Kitsap County v. OFM*, Final Decision and Order, Finding of Fact No. 9.

On June 7, 1995, the KRPC "rolled back" its population projection from the year 2014 to the year 2012 in order to "coincide with the current OFM projection period." Exhibit 4 to County's Brief, at 4a-4. Consequently, the KRPC now plans on a year 2012 population of 292,224 persons. Furthermore, on July 10, 1995, the Kitsap County Board of Commissioners passed a motion to "approve" the KRPC's recommendation regarding population projections. Exhibit 5 to County's Brief, at 8. The Board notes that the record contains no indication that the County Commissioners intended to amend the Plan, or that the Plan indeed was amended to correspond with this action (which would require publication of notice of adoption pursuant to RCW 36.70A.290(2)). In addition, the KRPC's 2012 projection is not the same as OFM's for that year.

The Plan explains the County's rationale for not using OFM's projections:

> KRPC determined that the OFM forecasts did not reflect past population trends and realistic population growth in Kitsap County. This assertion was based on a number of significant reasons: first, Kitsap County's forecast by OFM was based on an average annual growth rate of 1.9 percent, which, compared to the average growth rate experienced between 1980-90 of 2.89 percent, appeared deficient. Second, Kitsap County has experienced a strong economic and employment base, specifically with stability offered by the military presence. This security has softened recessions and high unemployment rates, thus presenting consistent employment opportunities. Third, Kitsap County has, and is currently, attracting residents who are military retirees, or commuters to Seattle or Tacoma. The county's proximity to metropolitan areas, paired with lower housing prices, has made Kitsap an attractive and affordable place to live. These significant reasons, as well as others [not identified here], indicated to the KRPC that Kitsap County would continue to experience a level of growth comparable to that in the last decade.
>
> It was the consensus of KRPC to formulate population forecasts which accurately reflected the historical population trends of Kitsap County, as well as considering the economic future. The ensuing forecasts were higher than the original forecasts from OFM. It was these population forecasts which Kitsap County and the cities planned for when developing their comprehensive plans.... Plan, Part I, at 10.

In *Kitsap County v. OFM*, the Board rejected the County's request pursuant to RCW 36.70A.280(4) to adjust OFM's 1992 population projection. Therefore, the Board has already concluded that the reasons described in the Plan are insufficient to cause an adjustment to OFM's projection.

One of the reasons for using OFM's projections exclusively is that:

> ... OFM is a state agency independent of local political considerations. If counties were free either to alter OFM's projections or derive their own projections, local biases could enter into the formula and ... enable counties to skew the forecasts to justify any size UGA. Accordingly, by placing the sole responsibility on OFM for making countywide population

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

> projections, the legislature has accomplished an overriding purpose of the GMA: achieving consistency.... *Rural Residents*, Final Decision and Order, at 34.

Local politics are the backbone of American democracy and the Act gives local elected officials broad discretion in making a number of policy choices. Sizing UGAs to accommodate the projected growth is one such policy choice. However, projecting the size of the population to be accommodated is not. Instead, population forecasting is a technical exercise to determine the likely, as opposed to the desired, future population. *See Kitsap v. OFM.* The legislature has clearly indicated that population forecasting must remain solely in the purview of OFM, and OFM's projections are what a county's other policy determinations in sizing UGAs must be based upon.

If the language of RCW 36.70A.110(2) is not crystal clear on that point, certainly the Board's decisions in *Rural Residents* and *Tacoma* are. The legislature is presumed to be aware of the interpretations given the GMA by the quasi-judicial bodies the legislature created to interpret the Act. *Rural Residents* was decided on February 16, 1994; the Final Decision and Order in the *Tacoma* case was entered on March 4, 1994.

As the general discussion in Part III of this document indicates, the 1995 legislature has subsequently amended RCW 36.70A.110. Importantly, however, the legislature did not amend the provisions of subsection (2) that indicate that the population component of designating UGA boundaries must be based exclusively upon OFM's projections. In fact, the legislature rejected attempts to amend that subsection to make OFM's projections a minimum figure only (House Bill 1824 and Senate Bill 5620, Supplemental Exhibit B to State's Reply) or to grant counties the sole power to make projections (House Bill 1925 [FN36]).

Accordingly, OFM's 1992 projection for the County remains the exclusive population projection to be used in designating UGAs. **The Board holds that the County did not base its UGA on the proper projection.**

Before leaving this issue, the Board will further address legislative amendments to RCW 36.70A.110 that were passed in 1995. ESB 5876 (Chapter 162, Laws of 1995) took effect immediately on April 27, 1995. It amended RCW 43.62.035 to require OFM by December 31, 1995, to express its population projections "as a reasonable range developed within the standard state high and low projection." In addition, as was stated earlier in this decision, a new paragraph was added which states:

> A comprehensive plan adopted or amended before December 31, 1995, shall not be considered to be in noncompliance with the twenty-year growth management planning population projection if the projection used in the comprehensive plan is in compliance with the range later adopted under this section.

The County points out that the KRPC's Director contacted OFM and ascertained that:

> ... OFM calculates a state high and low projection as a part of preparing population estimates. Presently, the "high" range is 9% higher than the official forecast while the "low" is 6.5% less. Exhibit 3 to County's Brief, at 5c-2.

OFM's 1992 population projection for Kitsap County in the year 2012 (269,687 people) plus nine

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

percent equals 293,959 people. In comparison, the KRPC population allocation for the year 2012 is 292,224. Therefore, KRPC's population projection (but not the Plan's) falls within the upper range of OFM's *potential future* projection. Nonetheless, the County has not complied with requirements of the Act. The Plan was adopted on December 29, 1994. Therefore, at the time of adoption, the only relevant projection that existed was OFM's projection of 269,687 people in the year 2012. Pursuant to RCW 36.70A.110(4) and (5), UGA designations must be included within comprehensive plans. Pursuant to RCW 36.70A.110(2), the population projections used in designating UGAs must be based upon OFM's projections. The Plan did not use this projection. Moreover, the Plan still does not use this projection. Instead, it indicates a year 2014 projection of 303,460. Although the County may intend to use KRPC's 2012 projection, it has not formally amended its Plan to so indicate. Any person who reads the Plan will see only the year 2014 KRPC projection.

In addition, OFM has not derived new projections. It has until December 31, 1995, to do so. When OFM complies with the requirement of RCW 43.62.035 to establish new population projections expressed as a range, everyone will know whether the Plan falls within the appropriate range. At this time however, it is premature for the Board to guess what that range will be. According to the County, OFM has historically made an unpublished projection that extends nine percent higher than the published projection. There is no confirmation from OFM of that fact in the record and, more importantly, no indication that OFM will use that same range when it issues its new projection for Kitsap County. Until OFM complies with the statute by providing a new population projection, the Board cannot ascertain whether the projected population used by the County to draw its FUGAs falls within the yet-to-be established range.

The Board reiterates that the Plan currently under review contains a year 2014 population projection of 303,460 persons. That is the wrong year, based upon the wrong entity's projections, and clearly well above even the nine percent higher range the County expects OFM to adopt. However, pursuant to the 1995 amendments to RCW 36.70A.110, at the time OFM announces its new range of projections, the County's Plan may no longer be construed to be in non-compliance with the Act's requirements to use OFM's projection.

CONCLUSION NO. 1

The Board concludes that the County failed to comply with the requirements of RCW 36.70A.110(2). The Plan uses a population projection for the year 2014, compiled by the KRPC rather than OFM, that is well above the original OFM projection of 269,687 persons for the year 2012. Although the KRPC has subsequently "rolled back" its projection to the year 2012, and the County has passed a motion to accept the KRPC's 2012 projection, the County has not amended its Plan to incorporate that year 2012 projection of 292,224 persons.

B. URBAN GROWTH AREAS ISSUES [FN37]

Are Kitsap's UGAs Too Large?

Several petitioners contend that the UGAs the County designated are too large. RCW 36.70A.110 now requires in relevant part:

(1) Each county that is required or chooses to plan under RCW 36.70A.040 shall designate

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

an urban growth area or areas within which urban growth shall be encouraged and outside of which growth can occur only if it is not urban in nature. Each city that is located in such a county shall be included within an urban growth area. An urban growth area may include more than a single city. An urban growth area may include territory that is located outside of a city only if such territory already is characterized by urban growth whether or not the urban growth area includes a city, or is adjacent to territory already characterized by urban growth, or is a designated new fully contained community as defined by RCW 36.70A.350.
(2) Based upon the growth management population projection made for the county by the office of financial management, the urban growth areas in the county shall include areas and densities sufficient to permit the urban growth that is projected to occur in the county for the succeeding twenty-year period. Each urban growth area shall permit urban densities and shall include greenbelt and open space areas.... (Emphasis added.)

In *Rural Residents*, the Board pointed out that population density is closely related to population projections and allocations:

... In order to achieve sufficient urban densities, a county must determine the geographic size of a UGA. Accordingly, counties must specify how many acres (or some other common measurement of land) are within a UGA so that, in the event of an appeal, the Board can determine whether the selected UGA is indeed "sufficient." In undertaking this requirement, counties must distinguish between gross acres and net (or buildable) acres. For instance, undevelopable critical areas, open spaces, rights of way, etc. should be deducted from the gross acreage. *See also* WAC 365-195-335(3). Counties have a great deal of discretion in how they achieve this requirement. The Board only demands that counties "show their work" so that both the general public and the Board (if a UGA is appealed) know how the county derived its UGAs and established the appropriate densities. *Rural Residents*, Final Decision and Order, at 35.

The Board also held that:

... a major purpose of UGAs is to serve Planning Goal 1 and Planning Goal 2.*Rural Residents*, Final Decision and Order, at 17.

Contrary to the County's assertion that the Board "elevated the first two planning goals of RCW 36.70A.020 above the others" (County's Brief, at 13), the Board affirmed that Goals 1 and 2 are "particularly germane" to county-wide issues. The Board has repeatedly acknowledged that the preamble to RCW 36.70A.020 states that the goals are not listed in order of priority. That statement does not mean, however, that certain goals are not more important than others when placed in context of a specific GMA requirement listed elsewhere in Chapter 36.70A RCW. Implementation of most of the 13 planning goals is carried out by more specific requirements of the Act. For instance, Planning Goal 11, citizen participation, is implemented through the requirements of RCW 36.70A.140. Likewise, the Board concluded that Planning Goals 1 and 2 are primarily achieved by meeting the requirements of RCW 36.70A.110.

Here the County has admitted that its UGAs are too large:

There is no question that the urban growth areas designated in the Kitsap County Comprehensive Plan exceed the area necessary to accommodate the OFM population forecast, even when expressed as a range.... County's Brief, at 16.

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

However, the County nonetheless contends that it has complied with the GMA since its Plan "reflects important local choices about accommodating growth, as permitted by RCW 36.70A.110(2)." County's Brief, at 17. In short, the County contends that the Act places no restrictions on designating UGAs. Accordingly, the County continues to reject what it refers to as the Board's "locational hierarchy."

The Board has always agreed with the County that literally read, no restrictions are imposed upon counties in designating UGAs by the language of RCW 36.70A.110(1). The problem with such a narrow, literal reading of the Act is that it makes Planning Goals 1 and 2 and the legislative intent of the Act at RCW 36.70A.010 meaningless. The Board must read the Act as a whole and give weight and meaning to each of its provisions. The fourth sentence of RCW 36.70A.110(1) (which provides that UGAs may include territory outside incorporated areas of cities if the land is "already characterized by urban growth" or "adjacent to territory already characterized by urban growth"), coupled with the Act's definition of "characterized by urban growth," might lead a reader ignorant of the Act's legislative findings (RCW 36.70A.010) and its Planning Goals 1 and 2 (RCW 36.70A.020(1) and (2)) to conclude that UGAs could be designated virtually anywhere, if not everywhere, in a county. That is because, simply put, virtually every parcel of land in the Central Puget Sound is either "already characterized by urban growth" or "adjacent" to property so characterized.

Such an interpretation would render the planning exercise of designating UGAs a useless activity and therefore an absurd result, particularly in view of the time and money that the legislature, state agencies, local governments and the general public have invested in growth management. The Board soundly rejected the County's interpretation in *Rural Residents* and continues to conclude that the legislature requires more from local government. As the Board's general discussion indicates, the general rule and six exceptions first discussed in *Rural Residents* stand. Despite this fact, the Board's interpretation of how the third exception will be applied has been clarified. That portion of the general discussion in Part III of this decision is incorporated by reference here.

Having thus concluded that counties clearly have the authority to extend UGA boundaries beyond city limits, but that the restraints on how far the UGA boundaries can be extended beyond those limits continue to exist, the Board must now determine whether the area encompassed by the County's UGAs is too large.

Designated UGAs

The Plan indicates that the County's designated UGAs include: the incorporated cities (Bainbridge Island, Bremerton, Port Orchard and Poulsbo); areas adjacent to or near the incorporated cities (Gorst and Silverdale); and an unincorporated area provided with urban services (Kingston). Plan, Part II, at 199.

In addition to the areas described above, the [Future] Land Use Element Map shows a UGA around Port Gamble, in the northern portion of the County near the Hood Canal Bridge. The Port Gamble UGA is not referenced in the Plan's UGA chapter text. [FN38]

Land Capacity Analysis

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

Kitsap County contains 251,520 acres. Plan, Part II, at 87. The unincorporated portion of Kitsap County equals 210,877 acres. Plan, Part II, at 128. By deducting unincorporated acreage from the County's total acreage, the Board derived gross acreage of the County's incorporated areas as being 40,643 acres.

251,520 acres	=	total acres in Kitsap County (Plan, Part II, at 87).[FN39]
-210,877 acres	=	unincorporated acres in Kitsap County (Plan, Part II, at 128).
40,643 acres	=	incorporated acres in Kitsap County

FN39. According to the Draft EIS, Kitsap County is comprised of 256,000 acres. CD 8, at III-61.

Table UG-3 (Plan, Part II, at 203) lists the total amount of "Net Developable Acreage by Urban Growth Area" as 11,060--excluding Bainbridge Island. Like the other tables showing UGA information, it does not list Port Gamble. **Therefore, the Board holds that the County has not "shown its work" at all regarding a Port Gamble UGA.** But for a line on the map, no indication in the Plan exists to indicate that the Port Gamble area has been designated as within a UGA. Nothing in the Plan indicates the size of this UGA either in population or acreage.

Table UG-3 also excludes Bainbridge Island from the calculation of total gross and net acreage. **The Board holds that the County erred by excluding the City of Bainbridge Island from its acreage calculations.** The GMA indicates that cities must be included within UGAs. RCW 36.70A.110. Although it might have been appropriate for the legislature to place restrictions on that requirement, for instance based on population (only cities with over 10,000 persons must be included within UGAs) or population density (only cities with over 1,000 persons per square mile), the legislature did not do so. Therefore, despite Bainbridge Island's unique characteristics (*see Robison,* at 5), that city must be included within the County's calculations in determining the appropriate size of its UGAs. This does not mean, however, that simply because Bainbridge Island may have enough physical space (assuming it has sufficient water supplies) to accommodate all of the County's projected 20 year population growth, that the County cannot extend its UGAs beyond existing city limits. To so hold would preclude legitimate County discretion.

Accordingly, by adding Bainbridge Island's 15,835 acres of gross land to the total acreage in Table UG-3, the county-wide total gross acreage for the designated UGAs is 50,965 acres. In comparison, the Board calculated the total acreage of the incorporated areas within Kitsap County as 40,643 acres. Therefore, the County's UGAs extend 10,322 acres outside existing incorporated city limits.

50,965 acres	=	total gross acreage of Kitsap County's designated UGAs
-40,643 acres	=	total gross acreage of Kitsap County's incorporated cities
10,322 acres	=	total gross acreage of Kitsap County's designated

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

		UGAs outside cities

The Plan describes the County's land capacity analysis to determine the appropriate size of its UGAs. First, the County tabulated the total amount of vacant and underutilized land within each urban growth area. By making these tabulations, the County in effect deducted for built and fully utilized lands. Then, the County made two other basic deductions from its total gross acreage to derive its net developable acreage for the UGAs.

A second deduction was for an "efficiency" factor which varies according to parcel size. Generally, the smaller the existing parcel of property with an existing home located on the land, the larger the deduction. *See* Finding of Fact No. 66. A third deduction is what is referred to as a "reduction factor" to account for non-residential development, critical lands and street rights-of-way. Plan, Part II, at 202-203.

Applying these deductions, the County concluded that it had 11,060 net developable acres within its UGAs. For the same reason as discussed above, the Board adds the 5,830 acres of net developable land on Bainbridge Island to achieve a county-wide total of 16,890 net developable acres of land within the County's designated UGAs. *See* Plan, Part II, Table UG-3, at 203. Accordingly, by applying the three deduction procedures, the County removed 34,075 acres of land:

50,965 acres	=	total gross acreage of Kitsap County's designated UGAs
-34,075 acres	=	total acreage of non-developable land within UGAs
16,890 acres	=	total net acreage of Kitsap County's designated UGAs

Various petitioners challenge the County's procedures for reaching net developable acreage. The Board has reviewed the Plan's discussion of the County's land capacity analysis. The Board will not rule that counties are automatically precluded from developing and applying such procedures. For instance, the Board has already determined that counties must make deductions for critical areas and rights-of-way. *Rural Residents*, Final Decision and Order, at 35.

In addition, developing efficiency and reduction factors conceptually makes sound planning sense. Nonetheless, the Board's dilemma is two-fold: first, ensuring that the use of those factors does not allow a jurisdiction to "double-dip," as the State contends the County might have don here, by counting the same parcel twice. Second, ascertaining whether the precise amounts utilized are appropriate (50 percent, 25 percent, 20 percent and 0 percent efficiency factors [relating respectively to 1-to 2.5-acre, 2.5-acre to 5-acre, 5-to 10-acre and 10+-acre parcels of property respectively], and 40 percent for the reduction factor). **The Board holds that the Petitioners have not convinced the Board that the use of efficiency and reduction factors is inappropriate or fails to comply with the Act.** However, the Board must remand this portion of the County's land capacity analysis. In essence, the County failed to "show its work." Accordingly, it makes it impossible to determine whether the County has made deductions from the same parcel of land more than once, and/or whether the chosen percentages are appropriate.

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

For instance, the Plan is silent as to how many parcels fall within the four categories described in the efficiency factor. The Plan is also silent as to how many acres are accounted for by non-residential development, critical areas and street right-of-way for the 40 percent reduction factor. In addition, the Plan does not indicate how many acres of vacant and underutilized land were tabulated nor does it, for that matter, indicate what "vacant" or "underutilized" means. Does "vacant" mean a parcel is totally undeveloped or does it mean that a house exists on a parcel but is not occupied?

Moreover, the Plan does not differentiate between the City of Bremerton (an incorporated area) and Silverdale (an unincorporated area). *See* Plan, Part II, Tables UG-2, UG-3, UG-4, UG-5 and UG-6 at 202-206. Finally, the Plan does not indicate how much of the net developable acreage is within existing incorporated areas and how much falls outside of existing city limits. Without this information, neither the Board nor any reader of the Plan can fully understand or verify the County's analysis. Importantly, although a County has the discretion to include within a UGA areas outside incorporated cities that have urban growth, without knowing the capacity of the four cities in Kitsap County, it is impossible to ascertain how far beyond city limits the UGAs should be drawn.

Despite this conclusion, that the Plan's land use capacity analysis is insufficient, the Board's analysis of the size of the County's designated UGAs will proceed in order to examine other analytical assumptions the County made. Solely for purposes of enabling the Board to continue its review of the County's analysis, the Board will assume that the net developable acreage is a total of the acreage listed in Table UG-3 plus the Bainbridge Island acreage.

The Board will also use the Plan's population projection (even though the Board concluded above that this projection is erroneous), for purposes of examining the County's analysis. The County projected that the population of Kitsap County would increase 90,260 persons between 1994 and 2014. Plan, Part I, Table PE-6, at 11; and Table UG-1, Part II, at 201.

Pursuant to Element A(1)(b) of the County's CPPs:

> At least two-thirds of new growth shall be directed to designated urban growth areas and may include population reserves established for new fully contained communities. KCCPPs, at 4. (Emphasis added.)

Accordingly, applying the CPPs' population formula to the population projections shown in the Plan, the County and its cities must plan for at least two-thirds of the 90,260 persons projected to move to Kitsap County by 2014 to live inside the designated UGAs. The formula breaks down as follows, with the calculation for persons within UGAs constituting a minimum:

60,173	persons within designated UGAs
30,067	persons outside designated UGAs
90,260	additional persons projected to live in Kitsap County by 2014

Table UG-2 in the Plan indicates that the increase in population for Kitsap County inside UGAs

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

will be 63,575 persons. Pursuant to the Kitsap County CPPs Element (A)(1)(b), the County then deducted 3,500 persons for one anticipated new fully contained community, [FN40] bringing the net population forecast to 60,075 persons expected within the UGAs by the year 2014.

The County determined that the average residential density within the designated UGAs is six dwelling units per acre. Furthermore, the County determined that the average persons per dwelling within the designated UGAs is 2.42 persons. Therefore, the County calculated that, on average, there would be 14.52 persons per acre within the UGAs (2.42 persons/du times 6 dwellings/acre = 14.52 persons per acre).

The preamble to RCW 36.70A.070 requires that a comprehensive plan be internally consistent. The Board notes three internal inconsistencies in the Plan regarding the average number of persons per dwelling calculation. The Land Use Element assumes 2.42 persons per dwelling on average in 1990 (Plan, Part II, at 204) while the Housing Element assumes 2.64 persons in 1990 (Plan, Part III, at 2) and the Capital Facilities Element assumes 2.65 persons in 1990 (Plan, Part III, at 153 and 176): 2.65 persons per dwelling times 6 dwellings per acre equals 15.9 persons per acre compared with 14.52 persons per acre that the UGAs were based upon. This is a not a minor difference. For example, if one takes the population projection of 6,800 people for Poulsbo and divides by 15.9 rather than 14.5, the result is that only 428 acres are needed for residential development in Poulsbo compared with 470 acres listed in Table UG-4 (Plan, Part II, at 204). County-wide, the difference is even more notable. Table UG-4 lists a total of 60,075 persons expected within the UGA by the year 2014. Dividing that number by 15.9 equals 3,778 acres. In comparison, dividing 60,075 by 14.5 persons per acre equals 4,143 acres needed, or 365 additional acres--nearly a ten percent increase. **The Board holds that these internal inconsistencies in the Plan violate the Act.**

Table UG-4 (Plan, Part II, at 204) represents the County's analysis of the amount of land within designated UGAs needed for residential development. Presumably, the County derived these figures by dividing the population allocation by 14.52 persons per acre. [FN41] As a result of these calculations, the County concluded that it needed 4,145 acres of land to accommodate the 60,075 persons anticipated to live within the UGAs.

Market Factor

As detailed in the Board's general discussion, that part of the *Tacoma* decision that authorizes counties to incorporate a "market factor" has subsequently been codified in RCW 36.70A.110(2). Counties are now permitted to include a "reasonable land market supply factor" in determining the size of UGAs. This amendment confirms the Board's *Rural Residents* holding that the OFM projections are both a floor and ceiling. If the legislature concluded that OFM projections were a minimum that any county could exceed, it would not have codified the provision permitting counties to incorporate a reasonable market supply factor, nor required a deduction for FCCs.

Pursuant to this authority, the County applied a market factor:

> Unfortunately, there is not a universally accepted method of determining an appropriate market factor. Lacking a standard ratio of needed acreage to total acreage designated for market consideration, the plan assumes a 1.75 to 1 ratio. For every acre of land estimated to

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

be needed to accommodate the population forecast, the plan assumes that an additional .75 acres should be added to keep urban land prices from rising dramatically due to speculation.... Plan, Part II, at 205.

Table UG-5 applies the 75 percent market factor quoted directly above and shows that, in addition to 4,145 acres of land needed without the market factor, 3,115 acres of additional land within the designated UGAs are needed to supply the anticipated population growth in Kitsap County by the year 2014. Plan, Part II, at 205. The following chart summarizes the Plan's various acreage calculations:

UGA ACREAGE				
UGA	Gross[FN42]	Net[FN43]	Additional Acreage Needed[FN44]	Needed with Market Factor[FN45]
Bainbridge Island	15,835	5,830	445	780
Kingston	1,620	745	220	385
Poulsbo	3,880	1,525	470	825
Central Kitsap	23,400	6,990	2,450	4,290
Port Orchard	6,230	1,800	560	980
TOTALS	50,965	16,890	4,145	7,260

FN42. Total Gross Acreage as shown on Table UG-3 (Plan, Part II, at 203).
FN43. Total Net Acreage as shown on Table UG-3 (Plan, Part II, at 203).
FN44. Total Net Acreage Needed for Urban Residential Development as shown on Table UG-4 (Plan, Part II, at 204).
FN45. Total Net Acreage Needed for Urban Residential Development with Market Factor added as shown on Table UG-5 (Plan, Part II, at 205).

Accordingly, by applying the market factor, the County increased the number of necessary acres by 75 percent [FN46] or 3,115 acres.

The question remains whether the 75 percent market factor is reasonable. **The Board holds that it will not declare a 75 percent market factor to be *per se* in violation of the Act.** However, any market factor above the 25 percent bright line test adopted above in the general discussion must contain an adequate justification for its usage. Because the County's 75 percent market factor is three times the recommendation, the Board will more closely scrutinize its record.

Particularly, the Board examines the following pursuant to step two of the test:

(2) *Is there other evidence to suggest that the land supply market factor is not reasonable?* For example, was the UGA sized using the criteria listed in RCW 36.70A.110? Did the County "show its work?" Were a variety of rural densities included? Has there been a showing that the cities within the county, as evidenced in their adopted GMA comprehensive plans, cannot accommodate more population and employment than was allocated by the county? Does the county capital facilities element indicate that adequate services will be available for the type and density of uses designated both for the UGA and the rural area?

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

Were the types and densities of land uses allocated to the rural areas violative of the Act's prohibition against urban growth in a rural area?

Here, the County has not adequately shown its work to substantiate the size of the UGAs or the market factor. Moreover, the Plan did not include any justification whatsoever for the 75 percent market factor, other than to indicate that no universally accepted method exists. This "justification" not only ignores the DCTED recommendation, but more importantly, it lacks any rationale why a smaller ratio was not adequate or why 75 percent was necessary. Although the Board does not reject the County's 75 percent market factor out of hand, it cannot conclude that it is reasonable without adequate justification. Accordingly, the 75 percent market factor is unreasonable and will be remanded with instructions for the County to justify or reduce it.

Finally, the Board will briefly address the contention of several parties, but particularly Adams, that the County did not conduct "build out analysis" of the maximum population which can be accommodated by the land use and zoning designations to determine whether its UGAs would be too large or its capital facilities extended beyond capacity. The Board notes that "build out" analysis is not explicitly required by the Act. Nonetheless, it is a useful tool that serves as an excellent indicator of (theoretical) population capacity. The Board also notes that, although the Plan itself does not contain such analysis, the County did conduct such analysis.

In the County's Draft EIS for the Plan, four alternative scenarios were explored. Alternative 4 provided the most dispersed population and housing growth of the four alternatives analyzed. Under Alternative 4, the UGAs the County could designate would be sufficient to accommodate enough growth within them until the year 2100 or later (this is not a typographical error). The result of the build-out analysis under Alternative 4 was a total population county-wide of 773,640 people as compared to the 269,687 projected by OFM. CD 8, Table 17, at III-80.

The Board notes that on remand, the County should be aware of its build-out capacity and remember that the Act requires UGAs to accommodate projected growth for the next 20 years only. This does not mean that the County cannot conduct long range planning beyond a 20 year horizon, for instance for economic development, water supply and sewage treatment capacity, and major transportation system improvements. It simply means that it cannot use such long range planning, or its build-out capacity, as a basis for sizing its UGAs. *See Kitsap v. OFM*, at 24.

CONCLUSION NO. 2

The County's designated UGAs do not comply with the requirements of RCW 36.70A.110. They are far too large to accommodate the urban portion of the necessary growth projected to occur in the next 20 years and also meet the Act's other requirements. They are based upon inflated population projections (*see* Conclusion No. 1). The City of Bainbridge Island is erroneously excluded from the calculations. The chapter on UGAs contains no discussion as to why the Port Gamble area is included within a UGA. In addition, there is no breakdown showing the difference between existing incorporated area capacity as opposed to unincorporated area capacity (*see* for instance the tables that combine information for Bremerton and Silverdale). In essence, the County has not shown its work or justified why its UGAs should extend beyond existing city limits.

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

Moreover, the Plan is internally inconsistent. Three different average household size figures are used throughout the Plan. By using the low household size figure in calculating UGAs, the County increased the needed size of its UGAs by nearly ten percent. The [Future] Land Use Element Map also shows Port Gamble as being included within a UGA while the Plan's UGA chapter does not mention the area, nor contain any justification for including it within a UGA boundary.

Furthermore, the County did not show its work regarding its efficiency and reduction factors nor articulate a definition for some of the key terms used in those factors such as "underutilized" and "vacant." Finally, the Plan contains absolutely no justification for using a 75 percent market factor which is triple the bright line test percentage. The County's market factor does not pass the three part test developed by the Board to determine reasonableness. The Plan does not comply with the requirements of RCW 36.70A.110. Accordingly, the Plan's UGA chapter, its land use and rural elements do not comply with the requirements of the Act.

C. RURAL LAND ISSUES [FN47]

Since its initial passage in 1990, the GMA has required that all counties planning under the Act develop a rural element in their comprehensive plan that includes:

> ... lands that are not designated for urban growth, agriculture, forest or mineral resources. The rural element shall permit land uses that are compatible with the rural character of such lands and provide for a variety of rural densities. RCW 36.70A.070(5). (Emphasis added.)

In addressing this requirement of the Act, the Plan contains a chapter on rural lands, Chapter 3 of Part II. The Plan states:

> It is the intent of the Rural Lands chapter to preserve and enhance the rural character of Kitsap County. Rural areas are meant to remain rural in nature over the long term. The Rural Lands chapter designates areas in Kitsap County appropriate for rural activities, both residential and non-residential. Further, it is the intent of this plan to preserve and protect the rural character by reducing the inappropriate conversion of undeveloped rural land.... Plan, Part II, at 189.

The Plan recites the County's history of rural development, noting that:

> There is a variety of parcel sizes occurring in rural areas ranging from small, urban-sized lots in the villages (2,250 square feet--Suquamish and Indianola) to square miles (sections) of undivided land in forested areas (Holly area). In this range are lots and parcels of every imaginable size and shape. Subdivisions have occurred in both organized and disorganized fashion over the years. Some developments have occurred through the planned unit development (PUD) process allowing up to one dwelling unit per acre in an organized, planned and clustered fashion. Other divisions have occurred through the large lot platting process with very little County review, while still others have occurred through the short subdivision process with slightly more County oversight. This has resulted in a platting pattern in the rural areas of the county which are hard to serve with utilities and public services and also creates problems for future planning. Plan, Part II, at 189.

Current Land Use Inventory

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

The County conducted an inventory of existing land use outside incorporated areas. Plan, Part II, at 119. Existing residential land use was classified into seven designations: rural; estate; suburban; and urban low, standard, medium and high. These uses comprise 24 percent of the unincorporated portion of the County. Plan, Part II, at 128 and 131. [FN48] Wooded (defined for purposes of the inventory as land used or committed to forest use on ten-acre parcels or larger) and open land (which includes ten-acre parcels or larger of agricultural land and open or brush-covered land that cannot be used for seasonal or periodic grazing), together comprised 48.5 percent of unincorporated Kitsap County. Vacant land, parcels ten or less acres in size that did not contain a dwelling unit, comprised 19.8 percent of the unincorporated area. Plan, Part II, Table LU-1, at 128.

Rural lands were defined for purposes of the existing land use inventory as containing a gross density of 5.00 to 9.9 acres per dwelling unit. The Board notes that this is the lowest residential density classification shown on Table LU-2 since that table does not designate residential parcels greater than ten acres. [FN49] Inventory results indicated that Kitsap County contains 9,436 acres of lands that fall within the "rural" (5.00--9.9 acre) category, or 18.7 percent of the County's shown inventory of residential lands within the unincorporated area. "Estate" lands (2.5-5 acres/du) comprise 28 percent and "suburban" lands (defined as 1-2.5 acres/du) comprise 28.2 percent of the unincorporated residential lands. Plan, Part II, Table LU-2, at 133.

A summary of this information follows:

RESIDENTIAL UNINCORPORATED KITSAP COUNTY			
Land Use Classification	Acres[FN50]	Dwelling Units[FN51]	
Density			
Rural	9,436	1,250	5-10 acres/du
Estate	14,154	3,591	2.5-5 acres/du
Suburban	14,268	7,743	1-2.5 acres/du
Urban Low	8,667	16,149	1-3.5 du/acre
Urban Standard	2,943	14,144	3.5-8.7 du/ac
Urban Medium	167	1,833	8.7-14.5 du/ac
Urban High	139	2,737	14.5+ du/acre
Mobile Home Parks	788	[FN52]	[3.5-8.7 du/ac]
Wooded/Open Land	102,256	358	10+ acres
TOTAL	152,818[FN53]	47,805	

FN50. Acreage for all but Wooded/Open Land obtained from Table LU-2 (Plan, Part II, at 133). Acreage for Wooded and Open Land obtained from Table LU-1 (Plan, Part II, at 128).
FN51. Number of dwelling units obtained from Table LU-3 (Plan, Part II, at 134).
FN52. The unincorporated portion of Kitsap County has 788 acres of mobile home parks (*see* Plan, Part II, Table LU-2, at 133) that were not broken down into separate dwelling units in Table LU-3 but which "commonly fall within the Urban Standard classification." Plan, Part II, at 132.

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

FN53. Kitsap County's total unincorporated area comprises 210,877 acres. Plan, Part II, at 128. In addition to the 152,030 accounted for by this summary, unincorporated Kitsap County contains 41,669 acres of vacant land, 1,076 acres of commercial land, 1,926 acres of industrial land, 6,533 acres of public land (not including roads), and 6,582 acres of military land--none of which contain residential dwelling units. *See* Plan, Part II, Table LU-1, at 128. 152,818 acres plus the acreage of the lands identified in this footnote equals 210,874 acres, a difference of only three acres from the published county-wide total. Table LU-1 shows the acreage of non-residential unincorporated lands:

NON-RESIDENTIAL UNINCORPORATED KITSAP COUNTY		
Land Use Classification	Acres	Dwelling Units
Vacant Land	41,669	0
Commercial	1,076	0
Industrial	1,926	0
Public	6,533	0
Military	6,852	0
Total	58,056	0

47,805 dwelling units on 152,818 acres of land equals .31 dwelling units per acre or approximately one dwelling unit for every three acres of land.

Future Land Use

The Plan indicates on numerous occasions that the land use element, constituting a major component of the County's land use planning for the future, is "to recognize the existing development pattern." Plan, Part II, at 152-153. In fact, the Plan indicates that:

> The failure to recognize these existing patterns of residential development will not allow effective planning for their future. Nor will these issues go away if they are not recognized by the plan. Plan, Part II, at 153.

The Plan (Part II, at 161-166; *see also* [Future] Land Use Element Map) contains eight residential classifications: [FN54]

Category	Location	Zoning Density
1) Rural Low	Outside UGAs	1 du/2.5 acres
2) Rural Medium	Outside UGAs	1 du/2.5 acres
3) R-2	Outside UGAs	1-2 du/1 acre
4) Rural High	Outside UGAs	1 du/1 acre
5) Rural Village Residential	Outside UGAs	1-9 du/1 acre
1) Urban Low	Within UGAs	1-9 du/1 acre
2) Urban Medium	Within UGAs	10-19 du/1 acre
3) Urban High	Within UGAs	20-43 du/1 acre

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

In addition, the Plan (Part II, at 156-159; *see also* [Future] Land Use Element Map) permits residential development in two other land use classifications:

Category	Location	Zoning Density
1) Rural Wooded	Outside UGAs	1 du/2.5 acres
2) Mineral Resource	Outside UGAs	1 du/2.5 acres

Two questions are before the Board: (1) whether the five classifications of rural lands constitute "rural densities" or conversely, whether these five classifications permit urban growth outside the UGAs; and (2) whether these five constitute a "variety of rural densities" as required by RCW 36.70A.070(5).

Does the County Permit Urban Growth Outside the UGAs?

First, the Board will determine whether the five classifications of rural land actually constitute rural densities. RCW 36.70A.110(1) provides:

> (1) Each county that is required or chooses to plan under RCW 36.70A.040 shall designate an urban growth area or areas within which urban growth shall be encouraged and outside of which growth can occur only if it is not urban in nature.... (Emphasis added.)

As the Board held in *Rural Residents* when discussing this provision:

> RCW 36.70A.110(1) uses the somewhat equivocal word "encouraged" with respect to what is to happen inside the designated urban growth area. Significantly, however, it says something very different with regard to the land outside the urban growth area. The phrase " ... outside of which growth can occur only if it is not urban in nature" (emphasis added) is not equivocal. It does not say "reduce" or "discourage" urban growth outside the UGA. The use of the word "only" clearly means that urban growth is **prohibited** outside of the UGA.... *Rural Residents*, Final Decision and Order, at 20-21. (Emphasis in original.)

Kitsap County has basically classified all lands outside UGAs as having either 1 du/ 2.5 acres or denser. [FN55] As the Board's general holding in Part III of this document reveals, a predominate development pattern of 1 du/1-or 2.5-acre parcels constitutes sprawl, whether it occurs in an urban growth area (a subset of which is suburban areas) or in a rural area. In effect, all of Kitsap County has been made into one giant suburban growth area which the Act prohibits. This is particularly true when many 2.5-acre parcels could potentially be developed at 1-acre densities through the PUD process. Zoning county-wide at such levels does not constitute rural densities. **Although the County may be able to have 1 du/ 2.5-acre zoning in limited areas under certain specified circumstances, the Board holds that it cannot zone the entire unincorporated area of the county outside of UGAs at such levels.**

Permitting the entire county outside the designated UGAs to be subdivided into 2.5-acre lots not only contributes to the fabulously inflated population capacity of Kitsap's Plan, it also constitutes urban growth in a rural area. **The Board holds that both the 1-acre and 2.5-acre lot sizes are an urban development pattern, not a rural one.** [FN56] **A pattern of new lots of these sizes is prohibited in rural areas**. Importantly, by classifying all lands outside UGAs in this density

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

category, the County has violated the Plan's stated intent of "preserving" the rural character of Kitsap County. Plan, Part II, at 189. **The Board holds that this is an additional internal inconsistency in the Plan that violates RCW 36.70A.070.**

As indicated in Part III of this decision, new lot sizes in the 1-and 2.5-acre range even within urban growth areas can only be created in special, limited circumstances; they must be utilized as the rare exception (for reasons such as steep slopes or large wetland areas) rather than the general rule. When valid reasons exist for these lot sizes on an occasional site specific basis, they must be clearly articulated. More important, lots of this size should constitute only a small fraction of the lot pattern county-wide, certainly not the lion's share. When these lot sizes (too large to mow, too small to farm) become the dominant pattern, they constitute sprawl. Indeed, what the County insists on calling "suburban" is, in fact, nothing more than sprawl.

This does not mean that the County can or must ignore what has occurred in the past. Reality dictates that its past development patterns will certainly affect its future for many years to come. Those past development patterns cannot be easily undone. The landowners affected by those pre-GMA development activities are protected, for better or worse, by the fact that their uses, although nonconforming with future planning and zoning, are legal. They are also protected by the fact that their fully completed development permit applications are vested. Nonetheless, the County cannot base its *future planning* for *new growth* on its past development practices if those past practices, as here, do not comply with the GMA. What was once permissible is no longer so. The GMA was passed to stop repeating past mistakes in the future. In *Poulsbo*, Final Decision and Order, (April 6, 1992), the Board referred to a statement by the County about retaining the historical status quo. The Board stated:

> It is an acknowledgment that Kitsap's status quo, which is the result of its unique history of urbanization, service delivery and governance, has been used as the template for crafting these CPPs. The county is saying, in effect, that Kitsap's present situation is the product of its past decisions and that in planning for the future, it essentially contemplates more of the same. The CPPs entitled "Provision of Urban Services" reveal at best a lack of a grasp of the legislature's clear direction on the subject, and at worst an attempt to circumvent that legislative direction.
>
> As adopted, the CPPs perpetuate, rather than transform, Kitsap's past pattern of urbanization and local government service delivery. The Board is persuaded by Bremerton's argument that such past practices have "created urban sprawl, abandonment of urban core areas and the need for growth management." The GMA contemplates quite a different future.... *Poulsbo*, at 35.

Thus, what was once the norm in Kitsap County is now an anomaly under the GMA. Although past practices cannot be ignored, they also cannot be the template for the future. As a consequence, the future land use map must show land use as anticipated because of GMA goals and requirements rather than an illustration and continuation of pre-existing development.

Do the Rural Element's Residential Classifications Constitute a Variety of Rural Densities?

The Board also holds that the five classifications of rural residential land use do not constitute a variety of appropriate rural densities. The word "variety" is not defined in the

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

Act. Therefore, the Board resorts to the common meaning found in *Webster's II New Riverside Dictionary*, at 1277. "Variety" means:

1. the quality or state of being various or varied; diversity.
2. a number of varied things, esp. of a particular group: assortment.
3. a group set off from other groups by a particular characteristic or set of characteristics..

The Board held above that the five rural classifications above do not constitute "rural" land use. Even if they did, the Board must nonetheless conclude that they do not constitute a variety of rural densities. In essence, the County has zoned the majority of its unincorporated lands outside UGAs at 1 du/2.5 acres. The literal exception to this is 1 du/acre or 1-9 du/acre in areas that even the Plan acknowledges are limited. *See* Plan, Part II, at 163. Even if the five classifications were more evenly distributed throughout the County than they are, these five do not constitute a variety. Of the five, two have identical densities of 1 du/2.5 acres, Rural Low and Rural Medium. Two others are virtually the same, R-2 and Rural High. Only Rural Village Residential is potentially different and, at 1-9 du/1 acre, is absolutely not a rural density. Instead, the Board expects to see a true variety of rural densities such as, for example, 1 du/10 acres, 1 du/20 acres, 1 du/40 acres and 1 du/80 acres.

Finally, the County's two other classifications that allow residential use are "Rural Wooded" and "Mineral Resource." These also have 1 du/2.5-acre limits. Pursuant to RCW 36.70A.070(5), rural lands must exclude designated agricultural, forest and mineral resource lands. **Yet the County has designated "Mineral Resource" lands within its rural element, which the Board holds is a violation of the Act. Furthermore, the Board holds that permitting new residences on mineral resource lands at densities of 1 du/2.5 acres is fundamentally incompatible with the use of that land for mineral resource purposes**. *See also* RCW 36.70A.060(1).

CONCLUSION NO. 3

The Plan's rural element does not comply with RCW 36.70A.070(5) and RCW 36.70A.110(1). It permits urban rather than rural growth outside UGAs by designating the entire unincorporated portion of the county outside UGAs at 1 du/2.5 acres minimum density with potential 1 du/acre densities through use of the PUD process. It does not contain a variety of rural densities. Finally, the rural element contains mineral resource land which are not to be included. Accordingly, the Plan's rural element does not comply with the requirements of the Act.

D. CAPITAL FACILITIES ISSUES [FN57]

RCW 36.70A.070(3) mandates that a county's comprehensive plan contain a capital facilities plan element. Chapter 4 of Part III is the Plan's capital facilities element. Numerous petitioners contend that this chapter does not comply with the requirements of the GMA for various reasons. RCW 36.70A.070(3) requires that the capital facilities plan element of a comprehensive plan contain:

(a) an inventory of existing capital facilities owned by public entities, showing the locations and capacities of the capital facilities;
(b) a forecast of the future needs for such capital facilities owned by public entities;
(c) the proposed locations and capacities of expanded or new capital facilities;

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

(d) at least a six year plan that will finance such expanded or new capital facilities within projected funding capacities and clearly identifies sources of public money for such purposes; and
(e) a reassessment of the comprehensive plan's land use element if probable funding falls short of meeting existing needs.

Significantly, RCW 36.70A.070(3) also mandates that the land use element, capital facilities plan element and the financing plan within the capital facilities plan element be coordinated and consistent.

The second and third paragraphs of the capital facilities chapter acknowledge that the capital facilities element is incomplete:

The Capital Facilities element of the plan focuses on the first 6 years of the planning period and specific 6 year capital improvement programs are included for most of the facilities dealt with in the plan. The exceptions are water systems, storm drainage and solid waste facilities. There are 32 independent water systems in the county included in this plan. Indications of existing and probable deficiencies expressed as water connections are included but have not been translated into capital cost estimates. The County is now in the process of preparing a comprehensive plan for stormwater and water quality programs. Solid waste facilities and services are provided by private contractors.
Longer term facility projections for 12 and 20 years have been made to indicate anticipated deficiencies, if any. The Land Use Plan proposes land uses for 20 years and public facilities must be available to serve these uses at the time of development. However, long-term capital cost estimates are questionable and in most cases were not made. The system deficiencies indicated for each system serve to signify long-term problems, and can function as a guide for future capital facility planning. Plan, Part III, at 128. (Emphasis added.)

Furthermore, the Plan indicates that:

... a detailed financial plan will be prepared to ensure there is reasonable assurance of availability of services when development is constructed in the first six years of the planning period. Plan, Part III, at 129. (Emphasis added.)

According to the County's Brief:

The Capital Facilities Element of the Comprehensive Plan is clearly not yet finished. The element currently has good background information, complete inventories and nearly complete level of service standards. Attached as Exhibit 30 is the County's comprehensive work plan for the remainder of the element and an accompanying work schedule.... County's Brief, at 44.

Exhibit 30 to the County's Brief is an undated document entitled "Capital Facilities Element--Assessment of Needed Revisions." It provides:

The Capital Facilities section of the Comprehensive Plan consists of nine sections, an introduction section and eight individual facilities sections. Five of the nine sections are relatively complete, requiring only minor modifications or updating of information. The completed sections are the Introduction, Schools, Fire Protection, Sheriff, and Parks and Recreation. Four sections need substantial modification and/or creation of new subsections to be considered complete sections. These sections are Sewer, Water, Solid Waste, and Storm

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

Drainage. Exhibit 30 to County's Brief, at 1. (Emphasis added.)

The document explains that all sections of the capital facilities plan will need to be revised once OFM's range of population projections is made. **The Board holds that because the Plan as adopted uses projections for the wrong year made by the wrong entity, all sections of the capital facilities element will have to be revised to correspond to OFM's projections.**

Exhibit 30 also indicates that the Plan's sewer and its water facilities sections are only 50 percent complete and are missing a six year capital improvement program (**CIP**) and a financing plan. This incompleteness by itself is a fatal violation of the Act. The significance of having an incomplete capital facilities plan element in the Plan is magnified in light of recognized problems caused by so-called "suburban" type land use. The Plan's land use element inventory of existing development patterns describes "suburban" land use as having 1 to 2.5 acres/du densities. Plan, Part II, at 132-133. As the Board's discussion above indicates, the Plan's predominant (and minimum) residential density outside the UGAs is 1 du/2.5 acres. This density falls squarely within the existing "suburban" density of 1 to 2.5 acres/du. According to the Plan, this is a problem:

> Suburban lots are the most difficult to divide into smaller parcels. At this density septic tanks and wells on the same lot can be a problem and further development is constrained by the location of existing structures. Plan, Part II, at 132. [FN58]

In addition:

> ... Most soils in Kitsap County are rated severe for conventionally designed on-site sewage disposal fields due to cemented pan, soil saturation, flooding, ponding, slow percolation, poor filtering and slope. Cathcart soils, which comprise about 1,690 acres of Kitsap County, are the only soil not rated severe for conventional septic design. Plan, Part II, at 24.

Furthermore:

> Groundwater constitutes over 80 percent of the water used by Kitsap County residents. It originates in aquifers--saturated geologic formations located beneath the ground's surface. Aquifers are recharged from precipitation that slowly infiltrates the ground and eventually reaches the aquifer. Places where water passes through the ground to replenish aquifers are known as "aquifer recharge areas." [FN59]
>
> ...
>
> 27 principal aquifers have been identified in Kitsap County. The aquifers are typically composed of glacially derived deposits of sand and gravel which are encountered from about 100 feet above to 800 feet below sea level ... Most major production wells in the county tap water from the principal aquifers, which are relatively deep. Some production wells and numerous private domestic wells withdraw water from principal aquifers which are relatively shallow, or from localized perched water tables....
>
> ...
>
> As the county becomes more urbanized, the changing quality and quantity of the water recharging aquifers will play a greater role in determining the quality, quantity and cost of the water source available to county residents and businesses. Plan, Part II, at 27-28.

When the Plan was written, approximately 50,000 homes in Kitsap County were on septic systems, of which approximately five percent are failing. Plan, Part II, at 126.

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

> ... A failing system is one which the chemical and biological processes that treat the effluent before it reaches groundwater, or a restrictive layer, do not occur. Bacteria, viruses and/or hazardous chemicals reach the surface or groundwater.
> ...
> Development of shoreline areas at densities greater than one unit per acre has particular implications for on-site sewage disposal. Although it is possible to install a system on less than half an acre, the impact of a number of small lots concentrated near the shoreline is significant if soil conditions are poor or there is a high seasonal water table. Drainfields are more likely to fail in these conditions, threatening water quality and public health. Plan, Part II, at 126.

Thus, according to the Plan, septic systems and wells on parcels 2.5 acres or smaller are a problem. Yet this is the Plan's predominant residential classification outside UGAs. Even assuming that the Plan otherwise complied with the Act's requirements, it must fail here. For example, assume that the County's allegedly "rural" minimum density of 1 du/2.5 acres complied with the Act. In order to avoid the environmental problems that the Plan itself acknowledges are caused by such densities, the County will have to require the use of a combination of innovative technological advances and a major expansion of public facilities throughout the entire "rural" area. The Act first requires counties to do capital facilities analysis to determine what the capacity and status of existing facilities are, what facilities will be needed in the future to accommodate projected growth at the chosen density levels, what regulatory programs will be needed, and how the jurisdiction assumes this will be financed.

The County has yet to complete its sewer, water and stormwater facilities subsections of the capital facilities plan element. None of these has a six year CIP or a financing plan. Just as troublesome is the fact that the storm drainage facilities subsection of the capital facilities element plan is "the least complete section." Exhibit 30 to County's Brief, at 4. The storm drainage facilities subsection does not contain a projected needs section nor does it contain population projections. Finally, the solid waste facilities subsection is only 30 percent complete in the adopted Plan. The County acknowledges that it does not contain a level of service standard, properly formatted population projections, a six year CIP or a financing plan. Exhibit 30 to County's Brief, at 6.

By the County's own admission, its Plan does not include a complete capital facilities element. The County asks that it be directed to adopt one on remand and, in the interim, be permitted to allow the balance of the Plan to survive and function. This request indicates a fundamental lack of understanding of the necessity for a capital facilities element and, indeed, all of the mandatory plan elements listed at RCW 36.70A.070, to be adopted simultaneously with the land use element in order to have a comprehensive plan.

Although not defined by the Act, the word "comprehensive" is given GMA context by the definition of "comprehensive plan" at RCW 36.70A.030(4) [FN60] and by the mandatory elements required in a comprehensive plan at RCW 36.70A.070. The County's Plan is not comprehensive, in the GMA meaning of the term, because it is not complete. All of the mandatory requirements of a comprehensive plan must be fully complete at the time of plan adoption. *WSDF I*, Final Decision and Order, at 14. A comprehensive plan's capital facilities element is inextricably linked to the land use element. The two must be consistent. RCW

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

36.70A.070(3). The linkage between the two elements is what makes planning under the GMA truly comprehensive (i.e., complete, inclusive; connected) as compared to pre-GMA planning.

Jurisdictions cannot set land use policy without completing the necessary capital facilities analysis. **The Board holds that the lack of a fully completed capital facilities plan is more than a conceptual shortcoming--it is a fatal legal defect in the County's plan.** It alone is sufficient cause for the Board to find that the land use element and every other component of the County's Plan violates the requirements of the Act.

CONCLUSION NO. 4

The capital facilities element of the County's Plan is incomplete. As such, the Plan does not include all of the analysis required by RCW 36.70A.070(3). In addition, because the capital facilities plan and the financing plan within it are incomplete, it cannot be found consistent with the land use element of the Plan. Therefore, the Plan's capital facilities element does not comply with the Act, nor can the Plan's land use element since the two elements are inextricably linked.

E. SITING ESSENTIAL PUBLIC FACILITIES [FN61]

RCW 36.70A.200(1) requires cities and counties planning under the Act to include in their comprehensive plans a process for identifying and siting essential public facilities. RCW 36.70A.200(2) mandates that no comprehensive plan or development regulation can preclude the siting of essential public facilities.

The County acknowledges that its Plan does not contain a process for identifying and siting essential public facilities.

CONCLUSION NO. 5

The Plan does not comply with RCW 36.70A.200 since it does not contain a process for identifying and siting essential public facilities.

F. FOREST LAND ISSUES [FN62]

RCW 36.70A.170 required cities and counties to designate forest lands not already characterized by urban growth and that have long-term significance for the commercial production of timber by September 1, 1991. In turn, RCW 36.70A.060(1) requires that:

> (1) Each county that is required or chooses to plan under RCW 36.70A.040, and each city within such county, shall adopt development regulations on or before September 1, 1991, to assure the conservation of agricultural, forest, and mineral resource lands designated under RCW 36.70A.170. Regulations adopted under this subsection may not prohibit uses legally existing on any parcel prior to their adoption and shall remain in effect until the county or city adopts development regulations pursuant to RCW 36.70A.120....

On April 20, 1992, the County adopted a document entitled "Strategies for Resource Lands Designations and Interim Development Regulations" (the **Strategies Document**) to fulfill the requirements of the GMA at RCW 36.70A.170 and .060. Although the Strategies Document was

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

subsequently appealed to the Board for not complying with those statutory provisions, the Board dismissed the petition for review because its filing was not timely. *See Kitsap Citizens for Rural Preservation et al. v. Kitsap County*, CPSGMHB Case No. 94-3-0005, Order on Kitsap County's Dispositive Motion, July 27, 1994. Therefore, the Strategies Document became irrefutably valid.

The preface to Chapter Two of the Strategies Document, addressing forest resource lands, notes that 50,354 acres of privately owned land is considered forest land for tax purposes under Chapters 84.33 and 84.34 RCW. Table One, Acreage of Private Lands Taxed as Forest Lands, indicates that 131 parcels of privately owned lands, totaling 37,500 acres, exceed 80 acres in size. Major non-private ownerships are: DNR--16,000 acres; City of Bremerton--8,600 acres; Port Madison Indian reservation--2,204 acres; and Port Gamble S-Klallam Indian Reservation--1000 acres. CD 10, at B3-4.

Chapter Two, Section Six of the Strategies Document, "Recommendations to Designate Forest Resource Lands and Implement Policies," notes that the following lands, totaling 27,100 acres, will likely remain in long-term forestry: Bremerton Watershed--4,000 acres; Tribal Lands--3,200 acres; Bangor-- 4,700 acres; and Pope Resources/DNR--15,200 acres. CD 10, at B17.

Consequently, although no document in the record presently before the Board indicates precisely how many acres were designated forest land pursuant to the GMA's requirements, it appears that at least 27,100 acres were designated as forest lands.

Pursuant to RCW 36.70A.060, upon adopting its Plan, the County was required to do the following regarding its forest land designations:

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

Rather than simply review the Strategies Document, the County decided it would significantly alter it by repealing it. *See* Finding of Fact No. 6. The County elected not to designate any lands as forest lands pursuant to the requirements of RCW 36.70A.170 and the definition of such lands at RCW 36.70A.030(9) when it adopted its Plan. Instead, it designated land as "Rural Wooded" as an "alternative" to long-term commercial forest land "based upon the 'bottom-up' feature of the Growth Management Act." Plan, Part II, at 155 and 157. Because the Board is remanding the Plan and finding it invalid in its entirety, it will not resolve the legal issues regarding forest land designations at this time. However, the Board notes with interest that according to the Plan itself:

> ... Most Kitsap County soils, and indeed most soils in western Washington, meet this national standard for prime timberland.
>
> ...
>
> ... Table NR-4 lists the most productive soil types, those with a site index greater than 100. The 180,000 acres of productive soils listed in the tables includes lands not available to forestry due to development or other conflicting uses.
>
> According to Figure NR-5, the most productive timberlands lie in the north part of the county and the least productive soils are found in the southwest corner of the county. Despite the lower site index, this area is actively managed for timber production and remains one of the few areas with large contiguous tracts of forest land.

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

...

... It is important to note that even the lowest site indexes in Kitsap County are considered highly productive when compared to other forestry soils throughout the nation, indicating the significance of the county's forest reserve. Plan, Part II, at 20-21 (Emphasis added.)

The Plan's existing inventory of land use indicates that 102,256 acres of unincorporated Kitsap County are wooded and open land, or 48 percent of that area. Plan, Part II, Table LU-1, at 128.

Furthermore:

Most large wooded parcels in Kitsap County are devoted to forestry and Christmas tree farming, many of which are under the Current Use Tax Exemption program for forest and timber land.... Plan, Part II, at 128.

...

Wooded land is important to Kitsap County for many reasons. Commercial forestry provides lumber, firewood, Christmas trees and other forestry related products for local use and export outside the county.... Plan, Part II, at 129.

Within Kitsap County, 49,014 acres are taxed as forest land or open space timber. "These lands are used for long-term commercial production, reforestation or forest habitat." Plan, Part II, at 87.

Pursuant to Table NR-17 (Plan, Part II, at 88) there were 76,818 acres of forest land in Kitsap County when the Plan was adopted. Of that amount, 49,014 acres are in private ownership while the remaining 27,804 acres are owned by the City of Bremerton, Port Madison and Port Gamble S'Klallam Indian Tribes, and the State of Washington Department of Natural Resources. Plan, Part II, at 87-88.

The majority of the large parcels of forest land (tracts greater than 80 acres) are owned by a few landowners. Table NR-17 shows the number of acres of forest lands owned by the largest landowners in Kitsap County. These lands have large stands of unharvested timber or future commercial crops. ... Plan, Part II, at 87. (Emphasis added.)

Although Kitsap County appears to be heavily forested, in reality only a few major timber owners harvest, log or cultivate their lands for commercial forest production. ... Plan, Part II, at 89. (Emphasis added.)

The Board finds it surprising that, given the County's Strategies Document and the information quoted above from the Plan itself, that the County could possibly conclude that it has no forest lands of long-term commercial significance. Because of the significant nature of the flaws in the Plan otherwise addressed by this decision, the Board will not rule on the specific forest land issues presently before it. However, the Board expects the County to closely and seriously re-examine its forest land policy during the remand period. The close scrutiny is imperative given the Plan's clearly erroneous statement that:

The Rural Wooded designations should be reviewed no later than the five year anniversary of the plan to determine whether the lands should be designated for alternative uses or designated as long-term commercial forest lands as provided by the Growth Management Act. Plan, Part II, at 156. (Emphasis added.)

The legislature clearly and unequivocally declared its intention that forest lands be designated

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

and conserved by 1991. The legislature made this a top priority of the Act by requiring that this be done before comprehensive plans or even county-wide planning policies were due. Accordingly, counties and cities were required to designate forest lands and adopt development regulations to assure the conservation of these designated lands by September 1, 1991,--not "no later than the five year anniversary of the plan" which would be December 29, 1999 at the latest. The time to conserve forest lands was 1991, not the turn of the century.

CONCLUSION NO. 6

Due to the significant flaws contained in the Plan, the Board will not determine the specific legal issues before it regarding forest lands. However, the Board will order the County to re-examine its forest land policy decisions to ascertain the extent to which Kitsap County indeed has any forest lands of long-term commercial significance as defined by the Act.

G. IMPLEMENTING DEVELOPMENT REGULATIONS [FN63]

Several petitioners have challenged the development regulations that the County adopted to implement its Plan, specifically, the Zoning Ordinance and the ICAO.

RCW 36.70A.040(3) requires counties and cities to adopt development regulations that implement and are consistent with an adopted comprehensive plan. In the Board's second West Seattle Defense Fund case, *WSDF II v. Seattle,* CPSGMHB Case No. 95-3-0040 (***WSDF II***), the Board first dealt with the question whether such implementing development regulations could stand if only a portion of the underlying comprehensive plan had been found not to comply with the Act. The Board concluded:

> ... that when portions of a comprehensive plan have been remanded with instructions to bring those provisions into compliance with the Act, and when other portions of the plan have been found to comply with the Act, the Board must determine on a case-by-case basis whether the contested portions of implementing development regulations comply with the GMA. In such a circumstance, the Board will not automatically conclude that, simply because portions of a comprehensive plan do not comply with the Act, all implementing development regulations necessarily also do not comply. .*WSDF II*, Order Denying WSDF's Dispositive Motion (June 16, 1995), at 6.

In *WSDF II*, the Board addressed the scenario before it here:

> ... If the Board concludes that a jurisdiction's comprehensive plan fundamentally fails to comply with the Act, the Board will remand the entire comprehensive plan. Furthermore, because the comprehensive plan itself does not comply with the Act, the Board could automatically conclude that any development regulations adopted to implement a completely noncomplying comprehensive plan do not *per se* comply with the Act. *WSDF II*, Order Denying WSDF's Dispositive Motion, at 5.

Here, the Board has concluded that the County's Plan fundamentally fails to comply with the requirements of the Act and that it substantially interferes with fulfillment of the GMA's goals (*see* Part V below). **The Board holds that any development regulations that attempt to implement such a fully noncomplying comprehensive plan cannot stand as a matter of law during the period that the plan fails to comply with the Act.** Regulations that attempt to

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

implement and be consistent with a fatally flawed comprehensive plan are in turn poisoned by the plan's defects.

CONCLUSION NO. 7

Any and all development regulations adopted by the County to implement its Plan, whether specifically challenged by Petitioners or not, cannot comply with the requirements of the Act as a matter of law. These regulations were adopted to implement and be consistent with a comprehensive plan that the Board has by this time concluded must be entirely remanded and that must be declared fully invalid.

H. OTHER LEGAL ISSUES

Petitioners have raised numerous other legal issues challenging the County's Plan or implementing development regulations. These include all legal issues the Board has not addressed above, such as the alleged inconsistencies between the County's and Poulsbo's comprehensive plans (Legal Issue No. 6), fully contained communities (Legal Issues Nos. 16 through 22), economic development and industrial land use outside the UGAs (Legal Issue No. 26), water (Legal Issue No. 27), mineral resource land (Legal Issues Nos. 31 and 32), critical areas (Legal Issues Nos. 33 through 36), transportation (Legal Issues Nos. 45 through 55, excluding No. 53 which Bremerton abandoned), SEPA (Legal Issues Nos. 62 through 71 to the extent they were not already abandoned by the petitioners), public participation (Legal Issues Nos. 74 through 76), affordable housing (Legal Issue No. 79) and the Bucklin Ridge Community Plan (Legal Issue No. 81). Due to the Board's conclusions reached above, the Board will not address these issues at this time but instead will declare the entire Plan and implementing development regulations invalid (*see* below) and remand the Plan and its implementing development regulations to the County.

The Board reminds all parties and the County that it has not reached a substantive determination on any of these other legal issues. In most instances, however, the various petitioners have clearly placed the County on notice as to what complaints they have with the Plan, enabling the County to take corrective action, if necessary. Whether those issues remain ripe for subsequent review will to a great extent depend on what actions the County takes on remand to bring the Plan and implementing development regulations into compliance. The County is reminded that it must ensure that any amendments it makes to the Plan to bring it into compliance with the Board's order and the GMA are also consistent with the KCCPPs and are internally consistent. Furthermore, all development regulations adopted to implement the Plan or any amendments to those regulations must be consistent with the Plan.

V. DETERMINATION OF INVALIDITY

A. PETITIONERS' JOINT STATEMENT OF PROPOSED INVALIDITY FINDING

On August 14, 1995, the "Petitioners' Joint Statement of Proposed Invalidity Finding" was filed with the Board. Footnote No. 1 on this document indicates that all petitioners had consented to the request contained in this document. Subsequently, "Petitioner's Reply in Support of Invalidity Finding" was filed on September 1, 1995. In the two documents the Petitioners

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

request, pursuant to RCW 36.70A.300, that the Board find invalid part or parts of the County's Plan, Zoning Ordinance and Critical Areas Ordinance:

1. Those portions of the Comprehensive Plan and implementing regulations which allow subdivision of land into parcels smaller than ten acres outside of the area that was served by sewer and water lines as of December 29, 1994.

2. Those portions of the Comprehensive Plan and implementing regulations which allow non-residential, non-resource based development to occur outside of the area that was served by sewer and water lines as of December 29, 1994.

3. Those portions of the Comprehensive Plan and implementing regulations which allow properties to be subdivided into parcels smaller than 80 acres on lands in a timber taxation status as of December 29, 1994 or lands designated Rural Wooded status by the County's Comprehensive Pan and/or Zoning Ordinance as adopted on December 29, 1994. (Underlined phrases were added by "Petitioners Reply in Support of Invalidity Finding," at 13).

4. Those portions of the Comprehensive Plan and implementing regulations which allow development to occur <<+on that portion of a parcel+>> <<-on land->> (a) mapped or defined by the County as a critical area or critical area buffer; or (b) determined by the County during the development review process to be a critical area or critical area buffer. <<+To the extent there is a variation between the County's (a) generalized map or definition and (b) the determination made by the County during the development process as a result of a site specific evaluation, the latter determination shall govern.+>> (Underlined phrases and words shown in strike-throughs were revisions proposed by "Petitioners' Reply in Support of Invalidity Finding," at 14).

5. Those portions of the Comprehensive Plan or map or Zoning Code map which reflect changes authorizing more intense uses which changes were made by the County Commissioners without the benefit of adequate public participation (i.e., those changes for which no property-specific public notice of the contemplated change was provided.

6. Those portions of the Comprehensive Plan and implementing regulations which allow New Fully Contained Communities, particularly the three "FCC" symbols on the Comprehensive Plan map.

7. Those portions of the Comprehensive Plan and implementing regulations that apply to any lands and/or resources within the Port Madison Indian Reservation.

8. Those portions of the Comprehensive Plan and implementing regulations which allow the Director discretion to modify critical area protection requirements.

Petitioners also stated they had no objection to the Board including in an invalidity determination a "reasonable use" exception worded as follows:

> If the effect of this invalidity determination is to deprive a property owner of all reasonable use of its property, the County may employ a reasonable use exception process if it is narrowly tailored to allow the minimum reasonable use necessary, avoids impact to critical areas to the maximum extent possible, and provides for full mitigation to the extent that any impacts occur. Petitioners' Reply in Support of Invalidity Finding, at 15.

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

B. COUNTY'S/RESPONDENT INTERVENORS' RESPONSE REGARDING INVALIDITY

Between August 22 and 24, 1995, responses from the County and following Intervenors were filed with the Board in opposition to the Petitioners' specific request: Pope Resources and Port Blakely Tree Farms, McCormick Land Company, Economic Development Council of Kitsap County, Overton & Associates, Peter E. Overton and Alpine Evergreen, Inc., and Harvey B. Hubert.

C. STATUTORY AUTHORITY

Section 110 of ESHB 1724 (Chapter 347, Laws of 1995) creates new statutory authority for the Board to find certain enactments adopted pursuant to the GMA invalid. It amends RCW 36.70A.300 by adding new subsections (2), (3) and (4) as follows:

> (2) A finding of noncompliance and an order of remand shall not affect the validity of comprehensive plans and development regulations during the period of remand, unless the board's final order also:
> (a) Includes a determination, supported by findings of fact and conclusions of law, that the continued validity of the plan or regulation would substantially interfere with the fulfillment of the goals of this chapter; and
> (b) Specifies the particular part or parts of the plan or regulation that are determined to be invalid, and the reasons for their invalidity.
> (3) A determination of invalidity shall:
> (a) Be prospective in effect and shall not extinguish rights that vested under state or local law before the date of the board's order; and
> (b) Subject any development application that would otherwise vest after the date of the board's order to the local ordinance or resolution that both is enacted in response to the order of remand and determined by the board pursuant to RCW 36.70A.330 to comply with the requirements of this chapter.
> (4) If the ordinance that adopts a plan or development regulation under this chapter includes a savings clause intended to revive prior policies or regulations in the event the new plan or regulations are determined to be invalid, the board shall determine under subsection (2) of this section whether the prior policies or regulations are valid during the period of remand.

Section 110 of ESHB 1724 took effect on July 23, 1995. Accordingly, this is the first case in which parties have requested that the Central Puget Sound Board issue a determination of invalidity. However, the Western Washington Growth Management Hearings Board **(Western Board**) has issued a decision entering a determination of invalidity. *In Olympic Environmental Council, Washington Environmental Council and State of Washington Department of Natural Resources v. Jefferson County* ***(Olympic Environmental Council)***, WWGMHB Case No. 94-2-0017, Compliance Hearing Order (August 17, 1995), the Western Board examined the declaration of invalidity for the first time. Initially, the Western Board concluded that Sections 110 and 112 of ESHB 1724 were " ... clearly remedial in nature. The entire scheme is designed to provide a supplemental remedy for non-compliance." *Olympic Environmental Council*, Compliance Hearing Order, at 12. As a result, the Western Board imposed a determination of invalidity at the post-remand compliance hearing even though its earlier Final Decision and

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

Order had been entered prior to the effective date of ESHB 1724. The Central Board concurs with the Western Board's analysis of RCW 37.70A.300.

However, the Central Board is not faced with such a dilemma since this Board's Final Decision and Order is being entered after ESHB 1724 took effect. Consequently, the Board must determine whether the continued validity of the Plan and development regulations that implement it will substantially interfere with the fulfillment of the GMA's goals.

D. FINDINGS OF FACT, REASONS FOR INVALIDITY, CONCLUSIONS OF LAW AND DETERMINATION OF INVALIDITY

The Board concludes that the continued validity of the entire Plan and all development regulations that implement it (whether specifically appealed to the Board or not) will substantially interfere with the fulfillment of the Act's goals. Therefore, the Board issues a determination of invalidity finding the entire Plan and all its implementing development regulations **invalid**.

Findings of Fact

Part II of this decision contains the Board's findings of fact for general as required by RCW 36.70A.270(6). Part IV of this document discusses in detail several serious flaws contained in the County's Plan that are in violation of the GMA. The Board incorporates by reference those findings in Part II and its discussion, holdings and conclusions in Part IV, in addition to the following findings:

1. The Plan indicates that the County based its FUGA on the wrong entities' twenty year population projections (the KRPC instead of OFM), for the wrong year (2014 instead of 2012) and in the wrong amount (303,460 people rather than 269,687).

2. The Plan's [Future] Land Use map indicates that the Port Gamble area has been designated a UGA while the Plan's narrative and accompanying support data contain no reference whatsoever to the Port Gamble area.

3. In determining the size of its UGAs, the County deducted the gross and net acreage for the City of Bainbridge Island.

4. The Plan's UGAs chapter fails to disclose the information and calculations necessary to determine how many acres of land the County deducted for its "efficiency" and "reduction" factors and whether the County deducted the same parcel more than once.

5. The Plan's UGAs chapter fails to show the capacity of existing incorporated areas to accommodate projection population growth.

6. The Plan utilizes three different figures for its average person per dwelling calculations (2.42, 2.64 and 2.65 persons per dwelling), making it internally inconsistent.

7. The Plan's 75 percent market factor is totally unsubstantiated and unjustified, three times the

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

Board's adopted 25 percent bright line standard and therefore is unreasonable.

8. The Plan's one and 2.5 acre lot sizes outside the designated UGAs throughout the county do not constitute rural residential densities. This development pattern constitutes impermissible urban growth in rural areas. It also constitutes sprawl.

9. The Plan's five rural residential land use classifications (Rural Low, Medium and High; R-2 and Rural Village Residential) establish a minimum density of 1 du/2.5 acres. These classifications do not constitute a variety of appropriate rural densities.

10. The Plan includes designated mineral resource lands within its rural land element.

11. The Plan permits new residential structures at densities of 1 du/2.5 acres or greater on lands designated as mineral resource lands, which is fundamentally incompatible with the use of those lands for mineral resource purposes.

12. The Plan's Capital Facilities Plan Element has not been completed, including six year capital improvement programs, projected needs sections and financing plans.

13. The Plan does not contain a process for identifying and siting essential public facilities.

14. Neither the Plan nor Ordinance No. 169-1994, which adopted it, contains a savings clause that would revive prior policies or regulations in the event that the Plan is determined invalid.

Reasons for Invalidity

As revealed by the Board's general discussion in Part III, its discussion of specific legal issues in Part IV of this decision and the Findings of Facts above, the County's Plan is deeply and pervasively flawed. The cumulative impact of the Plan's noncompliance with the Act is that the Plan substantially interferes with the fulfillment of the GMA's goals. In particular, the adopted Plan substantially interferes with Planning Goals 1, 2, 3, 4, 5, the second sentence of 6 and 12, each of which is discussed below.

Planning Goals 1 and 2

RCW 36.70A.020(1) encourages development in urban areas where adequate public facilities and services exist or can be provided in an efficient manner. RCW 36.70A.020(2) seeks a reduction in the inappropriate conversion of undeveloped land into sprawling, low-density development.

As the Board's discussion regarding the sizing of the UGAs indicates, the Plan is defective since it uses the incorrect planning projections made by the wrong forecasting entity for the wrong year. In addition, the UGAs were designated by excluding the City of Bainbridge Island from the relevant calculations and by failing to indicate why Port Gamble should be included. Three deduction factors, besides the 75 percent market factor, were applied without indicating whether lands have been deducted more than once and for what purposes. In addition, the 75 percent market factor is totally unsubstantiated and therefore not reasonable.

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

Outside the designated UGAs, the Plan permits only 2.5 acre zoning (at a minimum density). These are not rural but rather urban densities. In addition, the Plan does not permit a true variety of rural densities. Furthermore, the Plan's capital facilities element is woefully incomplete. Finally, the Plan relied to heavily on Kitsap County's historic land use patterns rather than concentrating on the future development of presently undeveloped parcels.

These facts, coupled together, increase the inappropriate conversion of undeveloped land into sprawling, low-density development, rather than reducing it. Furthermore, these cumulative facts fail to encourage development in urban areas. Moreover, the Plan was adopted without knowing whether adequate public facilities and services exist or can be provided in an efficient manner.

Planning Goal 3

Some Petitioners challenged the Plan's transportation element as failing to comply with the GMA. Because of the seriousness of the other defects that the Board found with the Plan, it has not determined whether the Plan's transportation element complies with the Act. However, the Board did examine the Plan's land use, rural and capital facilities plan elements and concluded that they did not comply with the Act. RCW 36.70A.070(6) requires that a transportation element be included within a comprehensive plan and that it be consistent with the land use element.

The Board has concluded that the land use element of the Plan does not comply with the Act. RCW 36.70A.020(3) requires the encouragement of efficient multimodal transportation systems that are coordinated with county and city comprehensive plans. Since the Plan's land use element does not comply with the Act and since the transportation element must be consistent with that land use element, Planning Goal 3 cannot be achieved until the Plan is amended to comply with the Act.

Planning Goal 4

RCW 36.70A.020(4) encourages a variety of residential densities. The Plan's five classifications of rural residential densities, because they are essentially identical, do not constitute such a variety. Therefore, the Plan substantially interferes with achieving this goal.

Planning Goal 5

RCW 36.70A.020(5) encourages economic development in areas experiencing insufficient economic growth but within the capacity of natural resources, public services and public facilities. The Plan's capital facilities plan element is incomplete. Therefore, until that element of the Plan is complete, the County cannot achieve Planning Goal 5's intent of encouraging economic development within the capacity of public services and facilities.

Planning Goal 6

The second sentence of RCW 36.70A.020(6) requires that the property rights of landowners shall be protected from arbitrary and discriminatory actions. The County has designated UGAs without "showing its work" regarding acreage and population breakdowns, without showing the capacity of existing cities to accommodate future population growth and without any justification whatsoever for applying a 75 percent market factor. This constitutes arbitrary action.

Planning Goal 12

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

RCW 36.70A.020(12) requires counties and cities to ensure that those public facilities and services necessary to support development shall be adequate to serve the development at the time development is available for occupancy and use without decreasing current service levels below locally established minimum standards. By failing to have completed the Plan's capital facilities plan element, the County is unable at this time to achieve this goal.

Finally, RCW 36.70A.040 requires that development regulations adopted to implement comprehensive plans be consistent with those plans. Because the Board has determined that the Plan itself does not comply with the Act's requirements and substantially interferes with the fulfillment of the Act's goals, thus making it invalid, the Board also concludes that development regulations adopted to implement such a plan also cannot comply with the Act nor remain valid as a matter of law.

Conclusions of Law

During the period of remand (*see* below), the continued validity of the Kitsap County Comprehensive Plan adopted on December 29, 1994, and any and all development regulations adopted to implement the Plan--whether specifically appealed to the Board or not--will substantially interfere with the fulfillment of Planning Goals 1, 2, 3, 4, 5, the second sentence of 6, and 12 found at RCW 36.70A.020. **Therefore, pursuant to the authority conferred by RCW 36.70A.300(2) as amended by ESHB 1724, the Board declares the entire Plan and all its implementing development regulations invalid.**

VI. ORDER

A. FINDING OF NONCOMPLIANCE

Having reviewed the above-referenced documents and the file in this case, having considered the oral arguments of the parties, and having deliberated on the matter, the Board finds that the Kitsap County Comprehensive Plan is **not in compliance** with the requirements of the Growth Management Act. Furthermore, as a matter of law, all development regulations adopted to implement the Plan are **not in compliance** with the Act since the Plan itself does not comply and is invalid. The Board therefore remands the Plan and its implementing development regulations to the County and orders it to take actions necessary to bring the Plan and implementing development regulations into compliance with the GMA, as interpreted by the Board.

Specifically, the County shall do the following:

1. Explicitly show how the size of the UGAs designated in the Plan will meet the OFM twenty year population projection for Kitsap County for the year 2012 (or any subsequent population projection adopted by OFM).
2. Explicitly show how and why the Plan's UGAs were designated. The Plan or documents specifically incorporated by reference in it, must indicate the capacity of all existing incorporated areas (including the City of Bainbridge Island) to accommodate future growth, the definition of terms used in various factors that are used to obtain "net" acreage (i.e., the Plan's deduction factors in addition to its "market factor"), and a rationale for utilizing in sizing the UGAs.any "market factor" or "cushion" above the Board's 25 percent bright line standard.

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

3. Amend its land use, housing and the capital facilities plan elements to contain a consistent figure for the average number of persons per household.
4. Amend its rural element to include a variety of rural, as opposed to urban, densities as required by RCW 36.70A.070(5).
5. Review its determination as to whether Kitsap County has any forest lands of long-term commercial significance; and to designate such forest lands if it concludes that such lands do exist, and amend the Plan and implementing development regulations accordingly.
6. Amend its rural element to not include designated natural resource lands (agricultural, mineral and forest) as required by RCW 36.70A.070(5).
7. Amend the Plan so as not to permit new residences on designated mineral resource lands at incompatible densities such as 1 du/2.5 acres.
8. Include a complete capital facilities plan element as required by RCW 36.70A.070(3).
9. Include a process for identifying and siting essential public facilities as required by RCW 36.70A.200.
10. Review the other legal issues raised by Petitioners that the Board has not addressed in this decision to determine whether Petitioners' claims are legitimate, thus requiring a modification of the Plan.
11. Conduct any necessary SEPA analysis as a result of actions taken to bring the Plan and its implementing regulations into compliance.
12. Review the Plan and amend it as necessary to ensure that it is internally consistent as required by the preamble to RCW 36.70A.070. In particular, attention should be paid to ensure that the land use, capital facilities and transportation elements are consistent.
13. Review and amend as necessary all development regulations that implement the Plan to ensure that these regulations are consistent with the Plan as required by RCW 36.70A.040 and .130(1).
14. Not adopt any amendments to the Plan, or its implementing development regulations, without early and continuous public participation as required by RCW 36.70A.140.

Pursuant to RCW 36.70A.300(1)(b), the County is given until **5:00 p.m.** on **Wednesday, April 3, 1996** to adopt a comprehensive plan, including final urban growth areas, and development regulations to implement the comprehensive plan, as are necessary to achieve compliance with the Board's Final Decision and Order and the requirements of the Act.

Although the Board has ordered major revisions to the adopted Plan and indeed, determined that the Plan is invalid, this does not mean that the County must start from scratch when adopting a new comprehensive plan. The Plan and the record indicate that much useful data has been assembled, professionally competent technical analysis performed, and the costs and consequences of various choices disclosed. Also, a considerable amount of public and Planning Commission input provide a broad range of community sentiment and thoughtful recommendations for the legislative body to consider. All of this record remains available for the County Commissioners' benefit as they set about the task of making the difficult policy decisions needed to adopt a comprehensive plan that complies with the requirements and goals of the Growth Management Act.

The County shall file by **5:00 p.m.** on **Friday, April 12, 1996** one original and three copies with the Board and serve a copy on each of the other parties of a statement of actions taken to comply with the Final Decision and Order. The Board will then promptly schedule a compliance hearing

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

to determine whether the County has procedurally complied with this Order. Substantive compliance will not be determined until and unless new petitions for review are filed within sixty days of publication of notice of adoption of a new comprehensive plan and/or implementing development regulations.

B. DETERMINATION OF INVALIDITY

Based upon the Board's findings of fact, reasons for invalidity, and conclusions of law listed above, and pursuant to the authority conferred by RCW 36.70A.300(2) as amended by ESHB 1724, the Board declares the entire Plan and all its implementing development regulations **invalid.**

So ORDERED this 6th day of October, 1995.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

M. Peter Philley
Board Member

Joseph W. Tovar, AICP
Board Member

Chris Smith Towne
Board Member

Note: This Final Decision and Order constitutes a final order as specified by RCW 36.70A.300 unless a party files a Petition for Reconsideration pursuant to WAC 242-02-830.
FN1. Cities and counties were required to adopt comprehensive plans by July 1, 1994, pursuant to RCW 36.70A.040.

FN2. In 1992, the County Treasurer's Office listed 48,604.7 acres as designated forest land. Plan, Part II, at 91.

FN3. The Plan describes the factor as recognizing that smaller parcels, especially with residences, may be difficult to redevelop. The reductions vary with size: 1 to 2.5 acres--50 percent; 2.5 to 5 acres--25 percent; 5 to 10 acres--20 percent; and for any acreage, with or without a residence, in excess of 10 acres--no reduction. Plan, Part II, at 202-3.

FN4. A 40 percent reduction factor accounts for non-residential development, critical lands and street rights-of-way. Plan, Part II, at 203.

FN5. A footnote to Table UG-3 notes:

> Bainbridge Island is incorporated and therefore the entire island is considered to be an urban growth area under the provisions of GMA. Therefore, it is excluded from the total since it is not comparable to the other growth areas in terms of matching land need to population forecast.

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

FN6. Part III of the Plan notes that the average household size was 2.64 persons in 1990. Plan, Part II, at 2.

FN7. Again, the Plan distinguishes Bainbridge Island from the other UGAs, noting that:

> Bainbridge Island is unique in that the entire island is by definition an urban growth area. The City may need to phase growth or use other techniques to reconcile apparent differences in need versus available land.

FN8. The Final Decision and Order in the *Vashon-Maury* case is due October 23, 1995. The Final Decision and Order in the *Gig Harbor* case is due October 31, 1995.

FN9. The Board on several occasions has described the decision-making regime under GMA. In its first IUGA case, the Board noted:

> The Board has held that the GMA consists of a *hierarchy of policy* that provides direction to implementing actions by state and local governments. Planning under GMA is an *iterative* and *interactive* process. The legislative bodies of counties and cities enjoy broad discretion; however, choices are now made within the framework of GMA mandates and are subject to diminished deference. The foundation for planning and decision-making under the GMA are the local comprehensive plans adopted by counties and cities; however, it is inaccurate to describe this as an entirely bottom-up process. The Act's requirements for consistency and coordination oblige cities and counties to balance local interests with regional and state interests when implementing the GMA. *See Happy Valley Associates, et al., v King County*, CPSGPHB 93-3-0008 (1993), at 19. Th[is] ... synopsis applies to all planning, including UGA planning, under the Act. *Rural Residents*, at 13, 14. (Footnotes omitted.) More recently, the Board has held that the GMA is:
>
> ... a cascading hierarchy of substantive and directive policy, flowing first from the planning goals to the policy documents of counties and cities (such as CPPs, IUGAs and comprehensive plans), then between certain policy documents (such as from CPPs to IUGAs and from CPPs and IUGAs to comprehensive plans), and finally from comprehensive plans to development regulations, capital budget decisions and other activities of cities and counties. *See* RCW 36.70A.120. *Aagaard, et al., v. Bothell*, CPSGMHB Case No. 94-3-0011 (1995), at 6.

FN10. The Board held that such an outcome-based evaluation for GMA compliance was required in *KCRP v. Kitsap County*, CPSGMHB Case No. 94-3-0005 (1994):

> The Board agrees that, under the terms of the CEO itself, it is necessary to consider the gross acreage and zoning of all properties involved in an agreement for the purpose of calculating total UNIT COUNT. Thus, one needs to consider acreage and zoning of both the sending and receiving properties to make this density calculation. But gross acreage, gross unit count or even gross density are mere abstractions. The true test of whether the CEO results in urban growth is to ask the question--what does the CEO permit to be physically constructed on the ground, in the real world, and how does that potential outcome square with the Act's definition of urban growth? *KCRP*, at 16. (Emphasis added.)

FN11. The Board has previously observed that:

> "Compact urban development" does not require that the urban environment be exclusively a built environment, nor that the built environment be of a homogenous intensity, form or

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

character. Other provisions of the Act will require that the urban landscape be interspersed with natural systems, passive and active open space and a variety of public facilities. For example, UGAs must include "greenbelts and open space areas" (RCW 36.70A.110(2)), and critical areas must be protected (RCW 36.70A.060), regardless of whether they are inside or outside of the UGA.

Further, the planning goals require comprehensive plans and implementing actions to include important urban amenities, such as parks, waterfront access, historic areas and artifacts. *See* RCW 36.70A.020, Planning Goals (9) Open Space and Recreation, (10) Environment and (13) Historic Preservation. Such amenities and other public facilities and services, are most appropriately addressed in the land use and capital facilities elements of comprehensive plans. *See* RCW 36.70A.070 (1) and (3). Cities may also choose to adopt policies articulating community character and design pursuant to RCW 36.70A.080. *See Snoqualmie*, at 30, fn. 20. (Footnote omitted.) *Rural Residents*, at 19.

FN12. The population density of the Central Puget Sound region is 12 times that of the balance of the state. The Board takes official notice of the *July 6, 1995, Correction Release of the Washington State Office of Financial Management's April 1, 1995, Populations of Cities, Towns and Counties used for the Allocation of State Revenues*. According to these counts, the four counties of the Central Puget Sound Region contain 3,020,000 people (approximately 56 percent of the state's population) in 6,287 square miles (approximately 9.4 percent of the total area of the state) for a regional population density of 480 people per square mile. The balance of the population (2,409,900 people) on the remaining land area of the state (60,295 square miles) equals a population density of 40 people per square mile.

FN13. The Central Puget Sound region's unique geography is a function of a geological history unlike that of Eastern Washington and even most of Western Washington. It is a glaciated north-south landform, framed by the Olympics to the west and the Cascades to the east. Its dominant physiographic features are north-south bodies of water including Puget Sound and its various arms (such as Hood Canal and Dyes Inlet), lakes (Goodwin, Sammamish, Sawyer, Stevens, Tapps and Washington), islands (Blake, Bainbridge, Maury, Mercer, Vashon and, in effect, Kitsap), forested ridgelines and river valleys.

FN14. The projected regional population growth during the forecast period is over 563,000. The Board takes official notice of the "Washington State County Population Projections for 1990-2010, 2012" issued in January of 1992 by the Washington State Office of Financial Management Forecasting Division. "County Population Forecasts--1990 to 2012," at page 11, forecasted the 1995 population of the four county Central Puget Sound Region as 3,017,140 and the 2012 population as 3,653,653.

FN15. There are at present four counties and 75 incorporated cities within the Central Puget Sound region. This does not include the cities of Lakewood, Edgewood and University Place where incorporation has been approved by the voters, but the effective date of incorporation has not yet arrived. Every city and county in this region is required to prepare a comprehensive plan and implementing regulations pursuant to the GMA. *See* RCW 36.70A.040(3)(d).

FN16. The four counties in the Central Puget Sound region are King, Kitsap, Pierce and Snohomish. *See* RCW 36.70A.250. These are also the four county members of the Puget Sound

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

Regional Council.

FN17. The Puget Sound Council of Governments was the predecessor regional planning agency to the current Puget Sound Regional Council.

FN18. The Board has previously held that:

> The interactive and iterative sequence under GMA is: (1) Designate and adopt *interim* critical areas and resource land regulations (RCW 36.70A.170, .060); (2) Adopt CPPs with at least **procedural** fiscal analysis (per *Snoqualmie*); (3) Adopt *Interim* Urban Growth Areas (RCW 36.70A.110(4)); (4) Adopt final phases of CPPs and/or **substantive** fiscal analysis as needed (per *Snoqualmie*); (5) Adopt comprehensive plans, including Final Urban Growth Areas (RCW 36.70A.110(4)); (6) Perform activities and make capital budget decisions in conformity with the adopted comprehensive plan (RCW 36.70A.120) *Edmonds*, at page 26, fn. 10. (Emphasis is underlined.)

FN19. The history and theory of North American regional development runs from extremes of low to high density. The Board takes official notice of *The Elusive City: Five Centuries of Design, Ambition and Miscalculation*, Jonathan Barnett, Harper & Rowe, New York, 1986. On the one hand, Frank Lloyd Wright's design for Broadacre City, described on pages 84, 85, is an accurate prediction of post-World War II suburban sprawl ... On the other hand, the extreme concentration of Manhattan, described by the Regional Plan for New York, at page 147, is the model for maximum density. Obtaining such extreme densities could result from relying solely on objective criteria, such as theoretical land capacity of existing cities. Presumably, few Washingtonians would be satisfied living with Manhattan's extreme densities. This is why the GMA leaves discretion to local legislative bodies to balance objective factors with subjective factors.

FN20. The Board takes official notice that, according to a DCTED Growth Management Services Status Report dated September 19, 1995, 50 of the 75 cities in the Central Puget Sound region have adopted comprehensive plans.

FN21. The Board finds that, as more decisions are made and better information becomes available, earlier policy decisions will be reviewed and appropriate adjustments made. In *Edmonds* the Board held:

> ...[t]he nature of growth management planning under GMA is similarly interactive and iterative in nature, with specific steps along the way specifically noted for future review and adjustments. *Edmonds*, at 26.

FN22. The Board has held that:

> ... unless a specific policy in the CPPs prohibits a city from planning for a greater population capacity than the allocation granted it by the county, the city may plan for more than the allocation. This conclusion is based on the Act's requirement that "cities are [the] primary providers of urban governmental services within an urban growth area" (RCW 36.70A.210(1)) and the fact that OFM's population projections are to be used for designating UGAs (RCW 36.70A.110(2), not necessarily for planning once the boundaries of UGAs have been established. *WSDF I*, at 55.

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

FN23. The Board takes official notice of the incorporation petitions currently pending before the King County Boundary Review Board for the proposed cities of Maple Valley, Covington and Briarwood, and the successful incorporation votes for the cities of Lakewood (1995), Edgewood (1995) and University Place (1994) in Pierce County, and Burien (1993), Newport Hills (1993), Woodinville (1993) and Shoreline (1994) in King County.

FN24. The Board has noted that the long term future of unincorporated urbanized communities is to have their urban governmental services primarily provided by existing or *future* cities. *See Tacoma*, at 37.

FN25. The use of the phrase "in general" twice within subsection (4) comports with the notion that these are 'general rules,' each of which has some articulated exceptions. In the first case, the general rule is that cities will be the primary providers of urban governmental services, but that there are some appropriate, unnamed exceptions. In the second case, the general rule is that urban governmental services are not to be provided in the rural area, unless appropriate, explicitly defined exceptions exist.

FN26. The Board notes that the GMA does not use the terms "urban sprawl," "rural sprawl" or "suburban sprawl." It uses the term generically, which suggests that it is an apt description of an inappropriate land use pattern either within the UGA or outside it.

FN27. The following definitions appear at RCW 36.70A.030:

> (14) "Urban growth" refers to growth that makes intensive use of land for the location of buildings, structures, and impermeable surfaces to such a degree as to be incompatible with the primary use of such land for the production of food, other agricultural products, or fiber, or the extraction of mineral resources. When allowed to spread over wide areas, urban growth typically requires urban governmental services. "Characterized by urban growth" refers to land having urban growth located on it, or to land located in relationship to an area with urban growth on it as to be appropriate for urban growth.
>
> ....
>
> (16) "Urban governmental services" include those governmental services historically and typically delivered by cities, and include storm and sanitary sewer systems, domestic water systems, street cleaning services, fire and police protection services, public transit services, and other public utilities associated with urban areas and normally not associated with nonurban areas.

FN28. Critical areas are found throughout all three major land use types because they describe attributes of the land rather than uses to which land is put. Certain large scale critical areas such as aquifer recharge, and may be a factor in determining location of UGAs.

FN29. A review of the two GMA references where the word "suburban" appears indicates that it is being used to describe a historical development pattern not to be repeated. The first reference is in a definition at RCW 36.70A.030(9):

> "Forest land" means land primarily devoted to growing trees for long-term commercial timber production on land that can be economically and practically managed for such production, including Christmas trees subject to the excise tax imposed under RCW 84.33.100 through 84.33.140, and that has long-term commercial significance. In

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

determining whether forest land is primarily devoted to growing trees for long-term commercial timber production on land that can be economically and practically managed for such production, the following factors shall be considered: (a) The proximity of the land to urban, suburban, and rural settlements; (b) surrounding parcel size and the compatibility and intensity of adjacent and nearby land uses; (c) long-term local economic conditions that affect the ability to manage for timber production; and (d) the availability of public facilities and services conducive to conversion of forest land to other uses. (Emphasis added.) The second reference occurs in RCW 36.70A.360 dealing with Master Planned Resorts (which by definition are outside a UGA) and which reads in pertinent part:
A master planned resort may be authorized by a county only if:
(1) The comprehensive plan specifically identifies policies to guide the development of master planned resorts;
(2) The comprehensive plan and development regulations include restrictions that preclude new urban or suburban land uses in the vicinity of the master planned resort, except in areas otherwise designated for urban growth under RCW 36.70A.110; ... (Emphasis added.)

FN30. Many other possible definitions of "suburban" exist. Most apt here is the self-description by its 33 member cities of the "Suburban Cities Association of King County." Inasmuch as many of these cities (e.g., Bellevue, Federal Way, Renton, Redmond) have ratified the King County County-wide Planning Polices, in which they are designated as urban centers, it is clear that they recognize "suburban" as a subset of "urban."

FN31. The primary purpose of such small lot sizes is for residential use, rather than the production of food, agricultural products, fiber or mining. Such ersatz rural estates are known in Florida as "martini ranches" and in Oregon as "McMansions."

FN32. The Board takes official notice of *Public Transportation and Land Use Policy,* Boris Pushkarev and Jeffrey Zupan, Indiana University Press, Bloomington, Indiana, 1977. This work concludes that public transit usage is minimal below a net residential density of seven dwelling units an acre.

FN33. The State of Florida defines densities between one unit per ten acres and two units per acre as "sprawl" development." Florida Department of Community Affairs, Technical Memo (1989), Vol. 4, No. 4, at 11. Also, "Oregon's Land Conservation and Development Commission has rejected low-density provisions in many local plans, prompting density increases from about four units per gross buildable acre to six or more units in most urban areas." *The Art and Science of Designating Urban Growth Areas, Part II,* DCTED, 1992, at 17, 18.

FN34. In addition, the Board's Order on Dispositive Motions reworded Legal Issue No. 64.

FN35. THIS DISCUSSION ADDRESSES LEGAL ISSUE NOS. 1, 2, 3 AND 56.

FN36. House Bill 1925, had it passed, would have amended RCW 36.70A.110(2) as follows (underlining denotes proposed new language; strike-through indicates language proposed to be deleted):

(2) <<-Based upon the population growth management planning population projection made for the county by the office of financial management, the urban growth areas in the county

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

shall include areas and densities sufficient to permit the urban growth that is projected to occur in the county for the succeeding twenty-year period->>. <<+The office of financial management may be a source for which counties base their population forecasts. Counties may add their own calculations or deduct from the office of financial management's forecasts+>> Each urban growth area shall permit urban densities and shall include greenbelt and open space areas. Within one year of July 1, 1990, each county that as of June 1, 1991, was required or chose to plan under RCW 36.70A.040, shall begin consulting with each city located within its boundaries and each city shall propose the location of an urban growth area. Within sixty days of the date the county legislative authority of a county adopts its resolution of intention or of certification by the office of financial management, all other counties that are required or choose to plan under RCW 36.70A.040 shall begin this consultation with each city located within its boundaries. The county shall attempt to reach agreement with each city on the location of an urban growth area within which the city is located. If such an agreement is not reached with each city located within the urban growth area, the county shall justify in writing why it so designated the area an urban growth area. A city may object formally with the department over the designation of the urban growth area within which it is located. Where appropriate, the department shall attempt to resolve the conflicts, including the use of mediation services. <<+This section is intended to establish only a minimum standard for the size of urban growth areas. This section neither limits the discretion of counties to include an ample land supply within urban growth areas nor compels counties to limit or disregard existing property rights.+>>

FN37. THIS DISCUSSION ADDRESSES LEGAL ISSUES NOS. 3, 4, 5, 14 AND 15.

FN38. Port Gamble is described as a small commercial center, i.e., typically having a grocery store and gas pumps. Plan, Part II, at 134. It was designated "Semi-Urban" in the County's 1977 Plan. Plan, Part II, at 153.

FN40. New fully contained communities are described in the Act at RCW 36.70A.350. By definition, they are located outside a designated UGA, and become a UGA upon development approval.

FN41. The Board notes that in performing these calculations, the actual results are somewhat different. The difference is presumably due to rounding off the 14.52 figure to 14.5.

FN46. 3,115 / 4,145 = 75%

FN47. THIS SECTION ADDRESSES LEGAL ISSUE NOS. 4, 24, 25 AND 27.

FN48. Unincorporated Kitsap County = 210,877 acres. (Plan, Part II, at 128). Total residential land within unincorporated Kitsap County = 50,565 acres (Table LU-2, at 133). 50,565 / 210,877 = 24 percent.

FN49. Wooded Land, which, with Open Land, comprised 48.5 percent of the unincorporated portion of the County, "may or may not contain a dwelling." Plan, Vol., II, at 128. Since the primary purpose of wooded land is forest use, it was not listed under the residential category. However, pursuant to Table LU-3 (Plan, Part II, at 134), 358 dwelling units were located on the

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

102,256 acres (*see* Plan, Part II, Table LU-1, at 128) of Wooded and Open Land.

FN54. The Plan does not contain tables or narrative indicating how many acres are in these ten classifications, or how much population or the number of dwelling units that will go into each category during the next twenty years. See both the land use chapter (Plan, Part II, at 155-167) and the rural lands chapter (Plan, Part II, at 189-198).

FN55. This is the minimum density since greater densities are permitted through clustering or a Planned Unit Development.

FN56. The County itself concedes that " ... the areas of the county which are designated R-2 along the shoreline are not now rural." County's Brief, at 44.

FN57. THIS SECTION ADDRESSES LEGAL ISSUE NOS. 37 THROUGH 44 AND 57.

FN58. In comparison, the Plan indicates that on "estates" of 2.5 to 5 acres/du:

> ... Lots in this category may or may not be a problem for septic systems depending on soil type and the presence of environmentally sensitive areas. Developments in this category do not have the density to support municipal sewer system services. Plan, Part II, at 131. If soil conditions are good, rural lands, defined as 5 to 10 acres/du:
>
> ... are often not a problem for septic tank systems and are generally not served by public sewer and water systems. There is adequate room to have both on-site septic and a private well on the same parcel with little health risks. Plan, Part II, at 131.

FN59. According to the Plan, "[T]he majority of Kitsap County is considered a potential aquifer recharge area." Plan, Part II, at 30.

FN60. "Comprehensive land use plan," "comprehensive plan," or "plan" means a generalized coordinated land use policy statement of the governing body of a county or city that is adopted pursuant to this chapter.

FN61. THIS DISCUSSION ADDRESSES LEGAL ISSUE NO. 78.

FN62. THIS DISCUSSION ADDRESSES LEGAL ISSUES NOS. 28, 29 AND 30.

FN63. THIS DISCUSSION IN PART ADDRESSES LEGAL ISSUES NOS. 5, 14, 28, 30 THROUGH 33, AND 81 TO THE EXTENT THAT THOSE ISSUES INVOLVE DEVELOPMENT REGULATIONS THAT IMPLEMENT THE PLAN.

APPENDIX A: GLOSSARY OF ABBREVIATIONS	
1000 Friends	petitioner 1000 Friends of Washington in Case No. 95-3-002, now consolidated herein
1977 Plan	Kitsap County's 1977 Comprehensive Plan
Aagaard	*Aagaard et al. v. Bothell, CPSGMHB Case No. 94-3-0011 (1995)*
Act	State of Washington's Growth Management Act

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

Adams	petitioner Case No. 95-3-0024; Case No. 95-3-0026; Sandra M. Adams and Nobi Kawaski now consolidated herein
ARR	Association of Rural Residents
ARR & KCRP	petitioners Association of Rural Residents and Kitsap Citizens for Rural Preservation in Case No. 95-3-0010, now consolidated herein
Banigan I	petitioners Leslie Banigan and Nyle Hartley in Case No. 95-3-0022, now consolidated herein
Banigan II	petitioners Leslie Banigan and Charlie Burrow in Case No. 95-3-0026, now consolidated herein
Board	Central Puget Sound Growth Management Hearings Board
Bremerton	petitioner City of Bremerton in Case No. 95-3-0019, now consolidated herein
Bremerton	Bremerton, et al., v. Kitsap County, CPSGMHB Case No. 95-3-0039 (this case)
CD	Core Document, submitted by Kitsap County
Central Board	Central Puget Sound Growth Management Hearings Board
Children's Alliance	Children's Alliance and Low Income Housing Institute v. City of Bellevue, CPSGMHB Case No. 95-3-0011 (1995)
Council	North Kitsap Coordinating Council
Council I	petitioners North Kitsap Coordinating Counsel, Zane Thomas, Linda Cazin, Ray Bock, and Vivian Hiatt-Bock in, Case No. 95-3-0025, now consolidated herein
Council II	petitioners North Kitsap Coordinating Council, Zane Thomas, Leslie Banigan, Tom Donnelly, and Olalla Community Council in Case No. 95-3-0034, now consolidated herein
Council III	petitioners North Kitsap Coordinating Council, Rural Residents, Zane Thomas, Leslie Banigan, and Moira Kane in, Case No. 95-3-0035, now consolidated herein
County	Kitsap County
CPPs	County-wide Planning Policies
DCTED	Washington State Dept. Of Community, Trade and Economic Development
DNR	Washington State Department of Natural Resources
du	dwelling unit
EDC	intervenor Economic Development Council of Kitsap County
Edmonds	Edmonds and Lynnwood v. Snohomish County, CPSGPHB Case No. 93-3-0005 (1993)
EHB 1305	Washington State Senate and House of Representatives passed Engrossed House Bill 1305 on April 14, 1995, and April 20, 1995, respectively; with exception of Section 5, approved by the Governor on May 16, 1995.
EIS	Economic Impact Statement

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

ESHB 1724	Washington State Senate and House of Representatives passed Engrossed Substitute House Bill 1724 on April 11, 1995, and April 23, 1995, respectively. With the exception of Sections 103, 302, and 903; approved by the Governor on May 15, 1995.
ESHB 5876	Washington State Senate and House of Representatives passed Engrossed Substitute House Bill 5876 on March 15, 1995, and April 13, 1995, respectively.; approved by the Governor on April 27, 1995.
FCCs	fully contained communities
FUGA	Final Urban Growth Area
Garrido	petitioner Charlotte Garrido in, Case No. 95-3-002, now consolidated herein
Gig Harbor	Gig Harbor et al. v. Pierce County, CPSGMHB Case No. 95-3-0016 (pending)
GMA	State of Washington's Growth Management Act
Hubert	intervenor Harvey B. Hubert
ICAO	Kitsap County's Interim Critical Areas Ordinance Ordinance No. 170-1994, adopted on December 29, 1994
IUGA	Interim Urban Growth Area
KCRP	Kitsap Citizens for Rural Preservation
KCRP I	petitioners Kitsap Citizens for Rural Preservation, Zane Thomas, Tom Donnelly, and Beth Wilson in, Case No. 95-3-0032, now consolidated herein
KCRP I	Kitsap Citizens for Rural Preservation v. Kitsap County, CPSGMHB Case No. 94-3-0005 (1994)
KCRP II	petitioners Kitsap Citizens for Rural Preservation and Association of Rural Residents in, Case No. 95-3-0038, now consolidated herein
Kitsap v. OFM	Kitsap County v. Office of Financial Management, CPSGMHB Case No. 94-3-0014 (1995)
KRPC	Kitsap Regional Planning Council
Manke	intervenor Manke Lumber Co.
McCormick	intervenor McCormick Land Company
OFM	Washington State Office of Financial Management
Olalla	petitioners Olalla Community Council and Beth Wilson in, Case No. 95-3-002, now consolidated herein
Olympic Environmental Council	Olympic Environmental Council, Washington Environmental Council and State of Washington Department of Natural Resources v. Jefferson County WWGMHB Case No. 94-2-0017
Overton	intervenors Overton and Associates, Overton, and Alpine Evergreen Co., Inc.
Plan	Kitsap County 1995 comprehensive plan
Pope	intervenor Pope Resources

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

Port Blakely	intervenor in Case No. 95-3-0022, now consolidated herein
Poulsbo	petitioner City of Poulsbo in, Case No. 95-3-002, now consolidated herein
Poulsbo	Poulsbo v. Kitsap County, CPSGMHB Case No. 92-3-0009 (1993)
Rainier	intervenor Rainier Evergreen .now consolidated herein
Ross	intervenor now consolidated herein
Rural Residents	Association of Rural Residents v. Kitsap County, CPSGMHB Case No. 93-3-0010 (1994)
SCS	U.S. Soil Conservation Service
s.f.	single family
Snoqualmie	Snoqualmie v. King County, CPSGPHB Case No. 92-3-0004 (1993)
State	petitioners State of Washington by and through the Director of Community, Trade and Economic Development, on behalf of the Commissioner of Public Lands, the Director of the Department of Fish and Wildlife, the Director of the Department of Ecology and the Secretary of the Department of Transportation in Case No. 95-3-0037, now consolidated herein
Strategies Document (CD 10)	Kitsap County's document entitled "Strategies for Resource Lands Designations and Interim Development Regulations," adopted April 20, 1992
Suquamish	petitioner Suquamish Tribe, Case No. 95-3-0018, now consolidated herein
Tacoma	Tacoma, et al., v. Pierce County, CPSGMHB Case No. 94-3-0001 (1994)
Thomas I	petitioners Zane Thomas, North Kitsap Coordinating Council, Nyle Hartley, Central Kitsap Coordinating Council, Case No. 95-3-0033, now consolidated herein
Thomas II	petitioners Zane Thomas, North Kitsap Coordinating Council, Nyle Hartley, Central Kitsap Coordinating Council, Moira Kane, Rural Residents, Leslie Banigan, and Tom Donnelly Case No. 95-3-0036, now consolidated herein
Twin Falls	Twin Falls, et al., v. Snohomish County, *CPSGPHB Case No. 93-3-0003 (1993)*
UGAs	Urban Growth Areas
Vashon-Maury	Vashon-Maury, et al., v. King County, *CPSGMHB Case No. 95-3-0008 (pending)*
Western Board (WWGMHB)	Western Washington Growth Management Hearings Board
WSDF I	WSDF I v. City of Seattle, *CPSGMHB Case No. 94-3-0025 (1995)*
WSDF II	WSDF II v. Seattle, CPSGMHB Case No. 95-3-0040
Zoning Ordinance	the County's Interim Zoning Ordinance adopted December 29, 1994

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

SCRIVENER'S ERROR CORRECTION TO FINAL DECISION & ORDER

Due to a scrivener's error, some of the emphasis by underlining was omitted from the Final Decision and Order in this case, issued October 6, 1995. Accordingly, the following pages should be replaced with the enclosed, corrected pages, which show the underlining:

Pages 30, 31, 33, 34, 39, 40, 41, 42, 46, 47, and 50

So ordered this 9th day of October, 1995.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

Joseph W. Tovar, AICP
Board Member

1995 WL 903165 (Wash.Central.Puget.Sd.Growth.Mgmt.Hrgs.Bd.)
END OF DOCUMENT

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

8

Friends of Skagit County, et al.,

v.

Skagit County and City of Anacortes *and* City of Mount Vernon, Intervenors

1995 WL 903176 (West.Wash.Growth.Mgmt.Hrgs.Bd.)

Western Washington Growth Management Hearings Board
State of Washington

FRIENDS OF SKAGIT COUNTY, BARBARA RUDGE, AND ANDREA XAVER, PETITIONERS
v.
SKAGIT COUNTY, RESPONDENT
AND
CITY OF ANACORTES AND CITY OF MOUNT VERNON, MUNICIPAL CORPORATIONS, INTERVENORS

No. **95-2-0065**

August 30, 1995

FINAL DECISION AND ORDER

INTRODUCTION

On March 6, 1995, Friends of Skagit County, Barbara Rudge and Andrea Xaver filed separate petitions for review alleging that Skagit County failed to classify and designate natural resource lands and critical areas, adopt development regulations for their protection, and further alleging that the County adopted interim urban growth areas (IUGA) without conducting land capacity analysis, determining fiscal impacts, and adopting capital facilities plans. Petitioners (hereinafter "Friends") alleged non-compliance with the Growth Management Act (GMA, Act) as a result of the County's allowance of urban residential, commercial, and industrial development outside municipal boundaries without proper adoption of IUGAs. They also contended that the County failed to use the Office of Financial Management (OFM) population projections in determining IUGAs.

PROCEDURAL HISTORY

Because of the length of the procedural history of this case, it is attached as Appendix 1 to the Final Decision and Order.

ARGUMENTS, DISCUSSION AND CONCLUSIONS

ISSUE 1--DID SKAGIT COUNTY'S USE OF A POPULATION PROJECTION OTHER THAN OFM'S COMPLY WITH THE GROWTH MANAGEMENT ACT?

Friends argued that the use of the Economic and Environmental Services' (EES), high population projections for use in the Skagit County Coordinated Water System Plan as the 20-year growth figure, rather than the OFM projection or the EES mid-range projection, failed to comply with the Act. Friends pointed out that the high forecast "had been initially selected to maximize the reservation of Skagit River water". Friends went on to point out that according to exhibit R31 the forecast was developed in lieu of using the OFM forecast because the new OFM forecast was not

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

yet completed and the previous OFM forecast for Skagit County was clearly too low based on 1990 census data. The OFM forecast did, however, still fall between the low and medium growth scenarios established by EES. Friends pointed out that the medium forecast and the OFM forecast converge to the same projection for the year 2013.

The County quoted EES's "Skagit County Population Forecast and Growth Management Act," dated February, 1995, as noting that the medium EES forecast for the County for 1994 was 90,519, whereas the actual population estimate was 91,000. The high case EES forecast was 93,647 for 1994, 2,647 higher than the estimate. The OFM forecast for 1994 was 87,564. The County quoted the EES population forecast: "this shows that both the medium and high case EES forecast better reflect the actual population than the forecast provided by OFM".

The County asserted that the term "most likely" which appears in the recent amendment to RCW 43.62.035 in ESB 5876, equating a middle range as representing the estimate of the most likely population projection, was not in effect at the time the County adopted its IUGAs and therefore does not apply to this case. The County went on to say that we should not find the County's use of EES projections to be out of compliance with GMA as ESB 5876 states: "no county's pending comprehensive plan will be deemed out of compliance until the OFM population projections are issued in late 1995".

CONCLUSION 1

The actual language of ESB 5876 states that a comprehensive plan shall not be considered to be in non-compliance if the projection used is within "the range later adopted under this section" (emphasis added). As we cannot know what that range is until adopted, we must rule according to current information.

It is clear from the figures cited that the medium case EES forecast was more accurate than the EES high. It is six times closer to the 1994 estimate than the high case forecast. The EES population forecast stated that "the high case EES forecast was used to reflect the expected growth and to provide a greater level of reliability in meeting needs". It is apparent here that "reliability" does not equal "accuracy", the EES medium forecast being much more accurate. The County's use of "EES high" as its projection appears to have no other basis than the desire to leave as much "cushion" as possible for hoped-for but uncertain growth. The County has not clearly shown that a forecast other than OFM should have been used. We hold that the County's use of "EES high" was not in compliance with the Act.

ISSUE 2.1 - DID SKAGIT COUNTY FAIL TO COMPLY WITH THE GMA BECAUSE IT ALLEGEDLY FAILED TO PROHIBIT NEW NON-RESOURCE-DEPENDENT COMMERCIAL AND INDUSTRIAL GROWTH OUTSIDE THE IUGAS?

Friends stated that the IUGA ordinances did not prohibit or restrict new commercial or industrial development outside IUGAs and that the County was allowing the same. They argued that RCW 36.70A.110 (1) prohibits urban growth outside urban growth areas. In this Board's case *City of Port Townsend, et. al. v. Jefferson County*, #94-2-0006, we held that "in so far as the ordinance purports to allow new urban residential development, new rezones or other approvals for commercial and industrial uses outside an IUGA, the same are prohibited by the Act and as such

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

are not within the discretion of the County Commissioners to allow." Friends further went on to quote from the above cited case "in order to achieve compliance, the language of the ordinance must be clarified to not allow new urban residential, commercial, or industrial development outside a properly designated IUGA."

Friends alleged that "the County not only continues to allow commercial and industrial development on land so zoned outside IUGAs but now proposes in the May 24, 1995, draft comprehensive plan to grandfather, for a period of five years, all commercial and industrial zoning districts that are outside final IUGAs."

The County argued that existing Skagit County zoning regulations (Ex. R3) regulate land uses on lands in unincorporated Skagit County not covered by the interim control ordinances #14925 and #15372 (Ex. R12B and R48). The County went on to say that the cumulative effect of these regulations meets the intent of the GMA with respect to prohibiting new non-resource-dependent commercial and industrial growth outside of IUGAs. The County also observed that the "vast majority" of commercial industrial development is inside the IUGA. Intervenor City of Mount Vernon pointed to exhibits R42, R43, and R44 as indicating the intention of Skagit County to appropriately limit urban growth outside of the IUGAs.

CONCLUSION 2.1

The ordinances and resolutions cited by the County and Intervenors as precluding commercial and industrial development outside of the IUGAs, do not contain any reference to GMA requirements precluding commercial and industrial development outside IUGAs. These appear in neither the County's zoning ordinance nor in the resolutions rejecting petitions to reclassify land from agriculture to commercial use (Ex. R3, R42, 43, 44). The Board of Commissioners addresses such petitions on an ad hoc basis. It is true that petitions changing land use to commercial or urban residential have been rejected. There is, however, no standing prohibition in any ordinance that precludes commercial/industrial development outside IUGAs. While Intervenor contended an effective set of regulations exists, it failed to show where that set of regulations could be found in this record. We conclude that the County has failed to comply with the goals and requirements of the Act by failing to expressly prohibit new commercial/industrial development outside an IUGA.

ISSUE 2.2

DID SKAGIT COUNTY FAIL TO COMPLY WITH GMA BECAUSE IT ALLEGEDLY FAILED TO PROHIBIT VESTING OF URBAN SIZED-LOTS OUTSIDE THE IUGA THAT WERE NOT OTHERWISE VESTED BY OCTOBER 1, 1993?

Argument from Friends on Issue 2.2 centered on two issues; The absence of a cap on clustering in the rural area, and the provisions of Ordinance #15585 (actually #15589, and hereinafter referred to as such) which would allow aggregation of lots platted prior to March 1, 1965, to be as small as 8,400 square feet compared to the 1 unit per 5 acre minimum zoning in the rural area. Friends argued that the Ordinance allowed "new urban residential growth" outside IUGAs and that the vesting of these lots in sizes smaller than the minimum zoning size renders the Ordinance out of compliance with the GMA.

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

In its opening hearing brief Friends pointed out that the zoning ordinance (Ex. R3) allowed planned unit developments (PUD) outside the IUGA, and that unlimited cluster development is allowed within the PUD. Friends argued that this would result in residential urban growth outside IUGAs. Friends cited *Kitsap Citizens for Rural Preservation, et. al., v. Kitsap County*, #94-3-0005, as analogous to this case. The Central Board said:

> "The Board can conceive of a well-designated compact rural development containing a small number of homes that would not look urban in character, not require urban governmental services nor have undue growth-inducing or adverse environmental impacts on surrounding properties. Such rural development could constitute compact rural development rather than urban growth. However, the ordinance does not have parameters to prevent development projects that constitute urban growth from occurring in rural areas."

CONCLUSION 2.2

Given a minimum lot size for rural areas of 5 acres with lots to be aggregated that are not yet vested, we are at a loss to understand the County's argument that a property right or a compelling reason for "relief" existed to create an undersized lot. Platted lots and vested lots are not the same thing. The alleged property rights in question are protected after vesting, not before. The County paid little, if any, attention to the question of cluster size in its presentation and its brief. We conclude that the absence of a cap on cluster size and the relaxation of the aggregation requirement to allow lots 1/25th the size of the minimum called for in the zoning ordinance (8,400 sq. ft. v. 217,800 sq. ft.) fails to comply with the goals and requirements of the GMA.

ISSUE 2.3

DID SKAGIT COUNTY FAIL TO COMPLY WITH THE GMA BECAUSE IT ALLEGEDLY FAILED TO PROHIBIT EXTENSION OF URBAN GOVERNMENTAL SERVICES, IN PARTICULAR, PUBLIC SEWER AND PUBLIC WATER FOR GROWTH OUTSIDE THE IUGAS?

Friends argued that the planned unit development (PUD) section of the zoning ordinance did not prohibit clusters that would ultimately require extension or expansion of public sewer or public water for growth in rural areas. They contended that a violation of RCW 36.70A.110 (4) and of County-wide Planning Policy (CPP) 1.8 occurred. CPP 1.8 requires that development outside IUGAs "shall be rural in nature as defined in the rural element, not requiring urban governmental services."

The County argued that the amendatory language of .110 has provided more latitude than previously existed in the extension of urban governmental services outside IUGAs.

CONCLUSION 2.3

While the GMA provides no outright prohibition of the extension of such services, CPP 1.8 does offer such a prohibition. The PUD ordinance allows clustering without a cap. This may lead to densities outside IUGAs which cry out for urban governmental services in order to protect the environment from undue concentrations of septic systems, with their possible resultant adverse

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

effects on the aquifer. The County, in its arguments concerning this issue, stated that the PUD ordinance "can produce residences that are closer together than one per five acres, but the integrity of the one per five acre zoning density is protected when the development is viewed as a whole." The County then cited an example which seems to belie the protection of the 1/5 zone's integrity: "102 lots on 310 acres or a zoning density of less than one residence per three acres."

The absence of a cluster cap plus the concomitant aggregation policy cited in issue 2.2, which allows aggregation of lots to as little as 8400 square feet, taken together, do not comply with the prohibition in CPP 1.8, that growth outside the urban boundary shall be rural in nature, not requiring urban governmental services.

We hold that the absence of language in the ordinance to restrict extension of urban government services is not in compliance with CPP 1.8 and therefore not in compliance with the GMA.

ISSUE 3.1

DID SKAGIT COUNTY FAIL TO COMPLY WITH THE GMA BECAUSE IT ALLEGEDLY FAILED TO PROPERLY ADOPT PREEXISTING REGULATIONS REGARDING NATURAL RESOURCE LANDS AND CRITICAL AREAS (NRL/CA)?
The Board granted Friends' dispositive motion regarding this issue by the Order dated May 26, 1995, which also required the County to "protect and designate NRL/CA by July 24, 1995." We found that Skagit County's use of preexisting ordinances to comply with the GMA in classification, designation and protection of natural resource lands and critical areas was not in compliance with RCW 36.70A.030 nor with the public participation requirements of the Act.

ISSUE 3.2

DID SKAGIT COUNTY FAIL TO COMPLY WITH THE GMA BECAUSE IT ALLEGEDLY FAILED TO ADOPT DEVELOPMENT REGULATIONS TO CONSERVE NATURAL LANDS AND TO PROTECT CRITICAL AREAS PRIOR TO THE PUBLIC HEARING CONCERNING THE ESTABLISHMENT OF IUGAS?
Friends argued that if the dispositive motion was granted the result would render the adoption of IUGAs by Skagit County out of compliance for failure to follow the proper sequence of first establishing NRL/CA and then adopting IUGAs.

The County argued that the issue was subsumed in the Board's order granting Friends' dispositive motion regarding natural resource lands and critical areas.

CONCLUSION 3.2

The ordinance adopting IUGAs is remanded because of conclusions in other sections of this order. Therefore, the question of the sequencing of NRL/CA and IUGAs is moot.

ISSUE 4

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

DID THE COUNTY FAIL TO COMPLY WITH THE PUBLIC PARTICIPATION GOALS AND REQUIREMENTS OF THE ACT BY FAILING TO HOLD A PUBLIC HEARING TO PROVIDE THE PUBLIC WITH AN OPPORTUNITY TO COMMENT ON THE ADOPTION OF PRE-EXISTING REGULATIONS REGARDING NRL/CA?
This issue was resolved by an order granting the dispositive motion referenced in issue 3.1.

ISSUE 5.1

DID SKAGIT COUNTY FAIL TO COMPLY WITH THE GMA IN THAT IT ALLEGEDLY ADOPTED IUGAS WITHOUT FIRST CONDUCTING AN ANALYSIS OF LAND CAPACITY, FISCAL IMPACTS, AND/OR A CAPITAL FACILITIES PLAN?
Friends argued that their contention of IUGA adoption without analysis is shown by exhibit R28, a generic letter from Planning Director David Hough to the Town of La Conner dated December 15, 1993. The letter stated "we have calculated that the UGAs represent in excess of 20,000 acres with a projected need of approximately 3,000 to 5,000 acres for the expected growth during the mandated planning (period). We have attempted to be very liberal in establishing the revised boundaries." To underscore its arguments, Friends quoted exhibit R24 from the County, which stated in part "[S]ince the County did not have the opportunity to review the proposals from a County-wide perspective, it was recommended that the cities' and towns' proposals be adopted as interim urban growth areas as submitted with the areas of special concern overlayed (sic). On October 5, 1993, the Board of Commissioners adopted the interim urban growth areas as recommended."

The County and Intervenor argued that exhibit R20 presented an "analysis." In the words of City of Mt. Vernon, the analysis was "relevant to land capacity fiscal impacts and/or capital facilities plans".

CONCLUSION 5.1

The analysis allegedly within exhibit R20, a document entitled *Designation of Urban Growth Areas in Skagit County*, is difficult to discern. A page of R20, labeled *Skagit County UGA Analysis,* seems to be the County's only attempt to quantify an analysis. Yet, many of its categories are unclearly titled, and many columns are untotaled. This page sets forth several categories which are difficult to understand.

The less-than-clear composition of exhibit R20 fails to meet the requirement of an adequate land capacity analysis. Further, there is no allusion throughout the entire document to fiscal analysis or a capital facilities plan with the exception of the Anacortes section. In spite of the County's contention that the letters to cities and towns from Mr. Hough (R28) "create IUGA boundaries more in keeping with GMA requirements" none of them allude to land capacity analysis, an essential part of the GMA requirements. Each gave as a primary reason for change only the phrase "logical service boundaries."

The County adopted IUGAs, which were some four to six times larger than needed as noted in Mr. Hough's letter to the Town of La Conner. We conclude that the IUGAs were adopted without first completing the requisite analyses. *Port Townsend v. Jefferson County*, #94-2-0006.

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

ISSUE 5.2

DID SKAGIT COUNTY FAIL TO COMPLY WITH THE GMA WHEN IT ALLEGEDLY ADOPTED IUGAS WITHOUT FIRST IDENTIFYING AREAS OUTSIDE MUNICIPAL BOUNDARIES THAT WERE ALREADY CHARACTERIZED BY URBAN GROWTH?
Friends argued that the County did not identify land outside the cities already having urban growth on it as the County established its IUGAs. The County argued that the GMA does not require a formal study to identify areas outside municipal boundaries characterized by urban growth. The County noted that part of the County review process involved consideration of the "uncataloged historical knowledge" of County staffers relating to areas characterized by urban growth. Finally, the County observed that recently-passed EHB 1305 allows local jurisdictions planning under GMA "discretion to make many choices about accommodating growth."

CONCLUSION 5.2

The area of the adopted IUGAs is much larger than that needed to accommodate projected growth. The question of which lands within this area are characterized by urban growth will be an important one as the County embarks upon the task of reducing the IUGA area to an appropriate size.

ISSUE 6.1

DID SKAGIT COUNTY FAIL TO COMPLY WITH GMA BY ITS ALLEGED FAILURE TO IDENTIFY AND PROTECT GREENBELTS AND OPEN SPACES WHEN ADOPTING ITS IUGAS?
Friends cited RCW 36.70A.110 (2): "each urban growth area shall permit urban densities and shall include greenbelt and open space areas." Friends also cited the Central Puget Sound Board in Case #93-3-0010, *Association of Rural Residents v. Kitsap County*, for the proposition that "in order to include greenbelts and open spaces within IUGAs, the County must first define these terms and secondly show them on its IUGA maps so that the public knows precisely what it is being included."

The County argued that the statute does not require greenbelt and open space areas to be mapped, but that, in any event, greenbelts and open spaces were mapped in exhibit R21.

CONCLUSION 6.1

The requirement for inclusion of open space and greenbelts within IUGAs requires an identification of those areas. A logical method to identify would be mapping the area in question. Exhibit R21 includes a number of maps, none of which identifies greenbelts or open spaces. There is no indication in the record of the adoption process of the IUGAs that open spaces and greenbelts were identified. The County is required to identify this major and integral part of an IUGA in its analysis of land capacity and its drawing of boundaries.

Intervenor City of Mt. Vernon contended that Friends' arguments amounted to alteration of land

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

use power of cities by designating specific land use regulations for cities. Designation and identification of greenbelts and open space areas within municipal boundaries is the prerogative of the city. Making those decisions available so that counties can carry out an adequate land capacity analysis, however, is required and does not impinge on city authority.

ISSUE 6.2 (A)

MAY A COUNTY DESIGNATE AN IUGA CONSISTENT WITH GMA FOR AREAS ALREADY CHARACTERIZED BY URBAN GROWTH WITHOUT CONDUCTING AN IDENTIFICATION OF RESIDENTIAL, COMMERCIAL, AND INDUSTRIAL AREAS WITHIN SUCH AN IUGA?
This issue was abandoned by the petitioner as a result of the May 25th Stipulation and Order of Partial Dismissal pertaining to the IUGA of City of Anacortes.

ISSUE 6.2 (B)

DID SKAGIT FAIL TO COMPLY WITH GMA BY ITS ALLEGED FAILURE TO IDENTIFY COMMERCIAL AND INDUSTRIAL AREAS AND AREAS FOR URBAN RESIDENTIAL DEVELOPMENT WHEN ADOPTING ITS IUGAS?
Friends argued that in order to conduct a land capacity analysis, it was necessary to first analyze the total need for new residential, commercial/industrial, and open space lands for the urban growth area over the planning period. RCW 36.70A.110 (2) requires that urban growth areas shall include greenbelt and open space areas. It is silent on commercial and industrial areas, as well as new residential areas. A thorough land capacity analysis, however, should include those elements.

CONCLUSION 6.2 (B)

There is no requirement in the GMA to specifically identify commercial and industrial areas or areas for urban residential development.

ORDER

We find that Skagit County is not in compliance with the GMA with the adoption of its ordinances pertaining to IUGAs: Skagit County Code #14.04 as amended, #15038, #15280 (amending), and #15589; and with its use of the EES high projection as its population forecast. In order to achieve compliance the following actions must be taken within the time frame specified.

1. Eliminate any urban growth area designations outside of the city or town limits of Anacortes, Mt. Vernon, Burlington, Hamilton, La Conner, Sedro Woolley, Lyman, and Concrete within 30 days of this Order. No other interim growth areas may be designated until the information and analysis required by the GMA is completed.

2. Clarify the language of the ordinances to preclude new urban residential, commercial, or industrial development outside a properly designated IUGA within 60 days of the date of this

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

order.

3. Base any new IUGA designation upon the OFM population forecast and the required land capacity, capital facilities and fiscal impact analyses. The new ordinance must identify open spaces and green belts and must also preclude extension of urban government services outside the IUGA in accordance with CPP 1.8.

This is a Final Order under RCW 36.70A.300 for purposes of appeal.

Dated this 30th day of August, 1995.

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

Les Eldridge
Board Member

Nan A. Henriksen
Board Member

Wm H. Nielsen
Board Member

APPENDIX I
Procedural History

On March 17, 1995, an Order of Consolidation was entered, consolidating petitions 95-2-0064 and **95- 2- 0065** under the format **95- 2- 0065**. Also, on that date, a Notice of Hearing was entered setting the Hearing on the Merits for Tuesday, July 11, 1995, the Prehearing Conference for April 5, 1995, and a motions hearing May 16, 1995.

On March 20, 1995, a motion was received from the City of Anacortes to intervene in the case and on March 22, 1995, a similar motion was received from the City of Mt. Vernon.

Statements of objection to the motions to intervene were received from petitioners on March 27, 1995, as well as a statement from the County offering no objection to the motions for intervention.

On March 24, 1995, an amended Petition for Review was received from Friends of Skagit County, Barbara Rudge, Andrea Xaver, Petitioners.

On March 27, 1995, a dispositive motion for an order determining that the County had failed to designate and protect resource lands and critical areas was received from Friends.

On April 5, 1995, the County's index was received. Also, on April 5, 1995, a prehearing conference was held at 10:00 a.m. at the Skagit County Courthouse Complex. The record, the schedule, and issues were discussed. Motions to intervene were heard. A response to the

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

petitioners' statement of objection to motions to intervene was received from City of Anacortes.

On April 10, 1995, an Order Granting Intervention for the Cities of Mt. Vernon and Anacortes was entered. On April 14th, a prehearing order was entered.

On April 12, 1995, Skagit County's motion to disqualify Gerald Steel as representative for Ms. Rudge and Ms. Xaver was received.

On April 20, 1995, we received City of Anacortes' list of supplemental exhibits for the administrative record, and on April 21, 1995, the petitioners' additions to the index.

On April 27, 1995, we received Friends' amended dispositive motion alleging that the County failed to designate and protect natural resource lands and critical areas (NRL/CA), and Friends' dispositive motion alleging that the County failed to comply with the GMA regarding IUGAs. Also on that date, City of Anacortes' motion and memorandum to dismiss Friends' amended petition for review was received. Also on April 27, 1995, Friends' motion to add to the index Ordinance 15280 and Ordinance 15589 was received.

On April 28th, Skagit County's joinder in City of Anacortes' motion to dismiss the amended petition for review regarding IUGAs was received.

On May 8, 1995, the County's motion for order designating additional exhibits in the record and City of Anacortes' memorandum in opposition to petitioners' dispositive motion on UGA boundaries was received. Also on that date, the County's response to Friends' dispositive motions was received, as well as Friends' response to the County's motion to disqualify Gerald Steel as representative for Rudge and Xaver. Also, on May 8, 1995, we received Friends' response to Anacortes' motion on the memorandum to dismiss Friends' amended petition for review regarding IUGAs. We also received Friends' response to the County joinder in the City of Anacortes' motion to dismiss the amended petition.

On May 12, 1995, the Board received Friends' rebuttal to the County's response to Friend's dispositive motions.

On May 16th, we received a declaration of Gerald Steel regarding use of Ordinance 15589 to vest urban density lots not vested on October 5, 1993. Also on May 16, 1995, a motions hearing was held at the Port of Skagit County in Burlington, Washington. Arguments heard included Skagit County's motion to disqualify Gerald Steel as representative, Friends' motion to add to the index, the County's motion designating additional exhibits, Friends' amended dispositive motion regarding failure to designate NRL/CA, Friends' dispositive motion regarding IUGAs, Anacortes' motion to dismiss Friends' amended petition for review and Skagit County's joinder in that motion.

On May 25th, a Stipulated Order of Partial Dismissal pertaining to the IUGA of the City of Anacortes was entered, dismissing with prejudice any claims set forth in the amended petition which challenged either the City of Anacortes' IUGA or Skagit County's adoption process as it relates to that IUGA. This disposed of issue 6.2 (a).

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

On May 26, 1995, an Order was entered granting motions regarding Petitioners' additions to the index, Friends' additions of Ordinance 15280 and Ordinance 15589 City of Anacortes' list of supplemental exhibits for the administrative record, and Skagit County's designation of additional exhibits to the record. Also on May 26th, the Board entered an order granting Skagit County's motion to disqualify Gerald Steel as representative for petitioners Rudge and Xaver.

Further on May 26th, an order granting Friends' amended dispositive motion regarding NRL/CA was granted. The Order noted the County's failure to designate and protect NRL/CA and required the County to do so by July 24, 1995. We cautioned that in determining compliance we would not determine substantive compliance with the GMA or prior Board decisions. This disposed on issues 3.1 and 4. Also on May 26th, an order was entered regarding Mr. Steel's several declarations, including the one regarding the Burlington FUGA (Declaration #2) which was withdrawn as part of the above noted stipulation and agreement with Anacortes. The Board found Mr. Steel's other three declarations not necessary to its review, and denied his motion to include them as supplements to the record. Further, on May 26th, an order denying Friends' dispositive motion regarding IUGAs was entered. The Board found that the questions raised were complex and required a substantial review of the record.

On May 31, 1995, the Board received Friends' opening hearing brief.

On June 1, 1995 the Board received Skagit County's motion for an order postponing the Hearing date and staying the briefing schedule. On June 5, 1995, we received a statement in opposition to that motion from Friends. On June 7, 1995, the City of Mount Vernon's joinder in the Skagit County motion was received.

On June 8, 1995, a motion to extend time to file a responding brief was received from Skagit County.

On June 14, 1995, an Order denying the motion to postpone and stay and partially granting the motion to extend the deadline for a responding brief was entered.

On June 21, 1995, we received Skagit County's responding brief and City of Mt. Vernon's brief. On June 29, we received Friends' reply brief and the County's table of contents for its June 21 brief.

The Hearing on the Merits was held June 11, 1995, at the Best Western Cottontree Inn in Mt. Vernon. Present were all three Board members, Board Executive Assistant Betty Mackey, Gerald Steel representing Friends of Skagit County; Barbara Rudge, Andrea Xaver, Petitioners; John Moffat representing Skagit County; Linford Smith representing Intervenor City of Mt. Vernon; and David Hough of the Skagit County Planning Department. Peggy Foster of Bartholomew, Moughton & Associates, was court reporter.

During the course of the hearing, Skagit County offered an addition to Exhibit R-21. Gerald Steel and Barbara Rudge objected. We received briefs on Friends' objection (July 10, 1995), Mt. Vernon's response to the objection (July 19, 1995), and the County's reply to the objection (July

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

17, 1995).

An order sustaining the objection was entered on August 7th, 1995.

On July 24, 1995, a Stipulation modifying the order granting Friends' amended dispositive motion regarding NRL/CA was received from Friends and the County.

On August 16, 1995, an order modifying the above order was entered.

On August 9, 1995, a letter requesting permission to file a motion for supplemental relief was received from Friends, as well as the motion itself. The motion requested a determination of invalidity under ESHB 1724.

On August 16, 1996, a letter declining to entertain the motion was sent to the parties, noting that the case time frame precluded a motions hearing and identifying the period open to motions for reconsideration as an appropriate time to refile.

1995 WL 903176 (West.Wash.Growth.Mgmt.Hrgs.Bd.)
END OF DOCUMENT

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

9

Kitsap Citizens for Rural Preservation, Beth Wilson, Charlie Burrow, Tom Donnelly and Charlotte Garrido *and* Kitsap Audobon Society, Intervenor

v.

Kitap County *and* Port Blakely Tree Farms, Intervenor (KCRP I)

1994 WL 907904 (Wash.Central.Puget.Sd.Growth.Mgmt.Hrgs.Bd.)

Central Puget Sound Growth Management Hearings Board
State of Washington

KITSAP CITIZENS FOR RURAL PRESERVATION, BETH WILSON, CHARLIE BURROW, TOM DONNELLY AND CHARLOTTE GARRIDO, PETITIONERS
AND
KITSAP AUDUBON SOCIETY, INTERVENOR
v.
KITSAP COUNTY, RESPONDENT
AND
PORT BLAKELY TREE FARMS, INTERVENOR

Case No.
94-3-0005

October 25, 1994

FINAL DECISION AND ORDER

A. PROCEDURAL HISTORY

On April 29, 1994, the Central Puget Sound Growth Planning Hearings Board [FN1] (the **Board**) received a Petition for Review from Kitsap Citizens for Rural Preservation, Beth Wilson, Charlie Burrow, Tom Donnelly and Charlotte Garrido (collectively referred to hereafter as **Citizens**). The Petition challenged Kitsap County (the **County**) Ordinance No. 93-P-1994, referred to as the Conservation Easement Ordinance **(CEO)**, and the County's alleged failure to designate forest lands and adopt development regulations to assure the conservation of forest lands pursuant to RCW 36.70A.170 and .060 respectively. Subsequently, the Board entered separate orders granting intervention status to Port Blakely Tree Farms (**Port Blakely**) and Kitsap Audubon Society (**Audubon**), and amicus status to 1000 Friends of Washington (**1000 Friends**).

One dispositive motion was filed in this case when the County filed a "Dispositive Motion to Dismiss Petition ..." on May 25, 1994. On June 20, 1994, the County filed an "Amended Motion to Dismiss Petition" (**County's Motion**) that replaced its earlier motion. The County's Motion had two major parts, the first claiming that the Board lacked jurisdiction over Ordinance 93-P-1994, an amendment to the County's zoning ordinance. The second part claimed that the County's document, entitled "Strategies for Resource Lands Designations and Interim Development Regulations" (the **Strategies document**), constitutes the County's effort to comply with the requirements of RCW 36.70A.170 and .060 for forest lands, and that the statute of limitations for challenging that document had run long before Citizens filed their Petition for Review.

On Thursday, July 14, 1994, the Board held a hearing on the County's Motion in Poulsbo, Washington. Subsequently, on July 27, 1994 the Board issued an Order on Kitsap County's Dispositive Motion. The Board dismissed that portion of the case involving the Strategies

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

document. The Board concluded that since the County had acted to procedurally comply with the Growth Management Act (**GMA** or the **Act**) requirement regarding forest lands when it adopted the Strategies document, the statute of limitations had passed for appealing that document before Citizens filed its Petition for Review. In addition, the Board denied the County's Motion regarding Ordinance 93-P-1994, the CEO, and thus permitted the CEO portion of the case to proceed to the hearing on the merits.

Subsequently, the following prehearing, response and reply briefs were filed by the parties and amicus:

1) "1000 Friends of Washington's Brief Amicus Curiae" [with seven exhibits attached]--filed August 12, 1994;
2) "Brief on the Merits by Petitioners Kitsap Citizens for Rural Preservation et al. and Intervenor Kitsap Audubon Society" [with no exhibits attached]--filed August 15, 1994;
3) "Kitsap County's Response to Prehearing Briefs" [with six exhibits attached]--filed August 30, 1994;
4) "Hearing Brief by Intervenor Port Blakely Tree Farms" [with no exhibits attached]--filed August 30, 1994; and
5) [Reply] "Brief on the Merits by Petitioners Kitsap Citizens for Rural Preservation, et al. and Intervenor Kitsap Audubon Society" [with eight exhibits attached]--filed September 6, 1994.

On Wednesday, September 7, 1994, the Board held a hearing on the merits of the remaining legal issues before it at Kitsap County Fire District No. 18 headquarters in Poulsbo, Washington. The Board's three members were present: M. Peter Philley, presiding, Joseph W. Tovar, and Chris Smith Towne. David A. Bricklin represented Citizens and Audubon, Douglas B. Fortner represented the County, and Thomas A. Goeltz represented Port Blakely. Court reporting services were provided by Duane W. Lodell, CSR of Robert H. Lewis & Associates, Tacoma. No witnesses testified.

During the prehearing conference held in this case, the parties orally stipulated that the exhibits attached to their briefs would constitute the record below that the Board would review. The parties were either to stipulate to a list of numbered exhibits or, in lieu of such a stipulation, to refer to the number assigned to an exhibit in the County's Index. As a preliminary matter, because the parties did not fully comply with their stipulation and the Board's June 16, 1994 Prehearing Order regarding the numbering of exhibits, and to avoid duplication and be consistent with the Prehearing Order, the parties agreed to the following "re-numbering" of exhibits that took place on the record. *See also* September 6, 1994 File Memorandum from the Board's Presiding Officer regarding "Exhibits comprising the record below."

Correct Exhibit Number	Incorrect Exhibit Number Listed by Parties	Document
244	Citizens' 7	Motion for ... Stay
245	Citizens' 8;	Kitsap County Zoning Ordinance
	County's 2, 3 and 4; and 1000 Friends' unnumbered	
98	Citizens' 9	DNS

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

53	Citizens' 10	9/13/93 Agenda Summary
2	Citizens' 11	4/4/94 Granlund letter
5	Citizens' 12	Conservation Easement
190	Citizens' 13	10/11/93 Minutes
77	Citizens' 14	6/7/93 Staff Report
246	County's 1	Ordinance 155-1993
1	County's 5	Ordinance 93-P-1994 (CEO)
247	County's 6	Resolution 288-1987

The Board's reference to exhibits in this Final Decision and Order is to the "Correct Exhibit Number" that corresponds to the specific numbers assigned to exhibits in the County's Index. Exhibits 244 through 247 were not listed on the County's Index but constitute additional exhibits the Board took official notice of pursuant to WAC 242-02-660 and-670.

B. FINDINGS OF FACT

For convenience and clarity, the Board repeats the Findings of Fact regarding Ordinance No. 93-P-1994 that were included in the Board's Order on Kitsap County's Dispositive Motion (at 7-10), and includes further findings based upon additional exhibits submitted for the hearing on the merits. References to exhibits in italics correspond to the exhibit number the parties assigned to the particular exhibit at the time in arguing the County's Dispositive Motion since these exhibits were not refiled with prehearing briefs. References to exhibits in [brackets] refer to the "Corrected" Index exhibit number (see above).

1. The Kitsap County Zoning Ordinance, No. 93-1983 (the Zoning Ordinance) was initially adopted on June 6, 1983. Prior to the amendment in question (i.e., the CEO), the Zoning Ordinance was last amended on March 1, 1990 by Ordinance 93-M-1989. [Exhibit 245.]

2. The Growth Management Act was adopted on April 1, 1990, effective July 1, 1990. SHB 2929; Laws of 1990, 1st Ex. Sess., ch. 17; it was codified primarily at Chapter 36.70A RCW.

3. Effective June 1, 1993, subsection (4) was added to RCW 36.70A.110, pursuant to ESHB 1761. Laws of 1993, 1st Sp. Sess., ch. 6. Subsection (4) requires counties planning under the Act to adopt development regulations designating interim urban growth areas (IUGAs) by October 1, 1993, after public notice, public hearing and compliance with the requirements of chapter 43.21C and subsections (1), (2) and (3) of RCW 36.70A.110.

4. A June 7, 1993 Staff Report from John P. Vodopich, Senior Planner, to the Kitsap County Planning Commission outlined proposed amendments to several County enactments. One proposal would amend Section 14(p) of the Zoning Ordinance (regarding the applicability of planned unit developments (PUDs) in Rural 2.5 and Resource Protection 2.5 acre zones). A second proposal added a new subsection (b) (regarding conservation easements and density transfer agreements) to Section 14 of the Zoning Ordinance. [FN2] In addition, amendments to the 1977 Kitsap County Comprehensive Plan, the 1984 North Kitsap Subarea Plan, the 1983 Central Kitsap Subarea Plan and the 1982 South Kitsap Subarea Plan were proposed. [Exhibit 77.] [FN3]

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

5. On June 11, 1993, the County issued a Determination of Nonsignificance (DNS), pursuant to the State Environmental Policy Act (SEPA), based upon the June 7, 1993 Staff Report proposal. The DNS described the proposed Zoning Ordinance amendments as follows:

> Description of Proposal: Proposed Adoption [sic: of] Amendments to the Planned Unit Development (PUD) section of the Kitsap County Zoning Ordinance to include a public benefit rating for use in determining maximum densities in rural planned unit developments and provisions for conservation easements and internal density transfers.
>
> ...
>
> COMMENTS: The proposal will not result in more than moderate adverse impacts to the existing environment. The proposed amendments will reduce the maximum density possible, through the Rural Planned Development process, in outlining [sic] areas of the County which are currently designated rural on the County Comprehensive Plan. This reduction in maximum density will result in an overall reduction of impacts associated with development in Rural designated portions of Kitsap County. This may result in a moderate increase in impacts from development in Semi-Urban and Urban designated areas of the County over time. [Exhibit 98 (emphasis in original).]

The DNS also notified interested persons that they could appeal this determination no later than June 29, 1993. [Exhibit 98.]

6. On June 11, 1993, the County also issued a Notice of the DNS that was virtually identical to the DNS. County's Exhibit 4.

7. On September 13, 1993, the Board of County Commissioners held an initial public hearing on proposed amendments to the Zoning Ordinance. The proposal being considered at this hearing had been altered from the version attached to the June 7, 1993 Staff Report. More specifically, this latest proposal amended Section 6 (re: rural, residential, agricultural, forestry and undeveloped land zones) of the Zoning Ordinance by adding a new subsection (m), the "internal transfer of density through the conservation easement process." In contrast, the June 7, 1993 Staff Report contained conservation easement proposals that amended Section 14 (re: PUDs) of the Zoning Ordinance.

The September 13, 1993 proposal also contained different language than the initial June 7, 1993 proposal about what factors staff should analyze before making a recommendation:

> ... The staff recommendation shall include an evaluation of the size and characteristics of the proposed easement area to ensure that approval is consistent with and carries out the intent of the Zoning Ordinance, Comprehensive and Subarea Plan policies and is in the public interest. [[[Exhibit 53, at 1.]

The September 13, 1993 proposal also added the following new language to § 6(m)(1)(b) of the Zoning Ordinance, not contained in the prior version:

> ... In reaching its decision, the County shall determine whether all or part of the conservation easement shall count toward applicable open space requirements should a Planned Unit Development (PUD) be subsequently proposed for the future use of the property receiving the transferred development rights. [Exhibit 53, at 2.]

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

In addition, the September proposal amended Section 14 (re: planned unit development) of the Zoning Ordinance by adding new subsections (p)(4) and (5) creating "design criteria for rural planned unit developments" in lieu of the "Public Benefit Rating System" in the June proposal. The Board of Commissioners' Agenda Summary explained that both sets of proposed amendments had been "recommended by the Kitsap County Planning Commission with additions and deletions recommended by the Department of Community Development in the August, 1993 Staff Report." [Exhibit 53.] [FN4]

8. On September 20, 1993, the Board of County Commissioners adopted Kitsap County Resolution No. 349-1993, entitled "A Resolution Adopting Interim Urban Growth Areas as Required by the Growth Management Act." The first finding to Resolution 349-1993 provides:

> WHEREAS, the Board of County Commissioners, pursuant to the requirements of RCW 36.70A.110, Kitsap County is hereby adopting development regulations designating "Interim Urban Growth Areas" with the use of the existing Kitsap County Comprehensive Plan, Subarea Plans, and Environmental Impact Statements before the October 1, 1993 deadline as required by the Growth Management Act." Citizens' Exhibit A-2.

The resolution portion (second paragraph of the document) provides:

> ... The designations will be implemented by appropriate regulations contained in the Kitsap County Zoning Ordinance. Citizens' Exhibit A-2.

9. On October 4, 1993, the Board of County Commissioners adopted Ordinance No. 155-1993, entitled "A [sic] Ordinance Adopting Interim Urban Growth Areas as Required by the Growth Management Act." Section 2 of Ordinance 155-1993 provides:

> The [IUGAs] designations will be implemented by appropriate regulations contained in the Kitsap County Zoning Ordinance. [Exhibit 246.]

10. Also on October 4, 1993, the Board of County Commissioners adopted Kitsap County Resolution No. 365-1993, entitled "A Resolution Adopting Justifications for Adoption of Interim Growth Areas as Required by the Growth Management Act." Numbered paragraph one provides:

> The County has adopted regulations using the existing Kitsap County Comprehensive Plan and Subarea Plans.... These designations will be implemented by appropriate land use regulations in the County Zoning Ordinance.... Citizens' Exhibit A-3.

11. An October 4, 1993 staff report was prepared by John P. Vodopich, Senior Planner, to the Kitsap County Board of Commissioners. The report continued to recommend adding a new subsection (m) (regarding conservation easements) to Section 6 of the Zoning Ordinance. The report also recommended adding the following sentence to subsection 6(m)(1)(a):

> The use of the Conservation Easement process precludes any future increase in density through the Planned Unit Development process. Citizens' Exhibit D, at 1.

In addition, rather than requiring any conservation easement and density transfer agreement to have a section on "Future Use of Resource and Remaining Lands," the October 4, 1994 Staff Report recommended requiring a section on:

> Master Plan Concept which includes densities, amenities, buffers, open space, roads and a conceptual preliminary platting layout utilizing a clustering concept for the resource and remaining lands. Citizens' Exhibit D, at 2.

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

A third recommended change to the prior proposed conservation easement provisions was to add subsection (m)(1)(c) to require clustering:

> Standards. All development or subdivision of the subject property shall utilize a clustering concept and be subject to all applicable regulations in place at the time of said development or subdivision. In no case shall the transferred density be allowed to exceed the allowable densities under health regulations in place at the time of said development. Citizens' Exhibit D, at 2.

This staff report also recommended replacing Section 14(p)(1)(a) of the Zoning Ordinance (regarding PUDs), in light of public input received at the initial public hearing held by the county commissioners on September 13, 1993, with different design criteria for rural planned unit developments. Citizens' Exhibit D. [FN5]

12. An intra-departmental Kitsap County Department of Community Development (DCD) memorandum from Christine Nasser, Open Space Planner, to John Vodopich,

Senior Planner, was dated October 5, 1994. Ms. Nasser raised several "concerns about the proposed interim ordinance":

> ... A conservation easement is a legal agreement a property owner makes to restrict the type and amount of development that may take place on his or her property. It is not "a means by which the internal transfer of density may occur ..." By transferring density, we are not "restricting the type or amount" of development, we are simply relocating it. Thus it is not really a conservation easement in the true sense of the term....
> ... I have never come across conservation easements used to transfer density to another part of a property. This is an unexplored use of this tool which will have consequences for existing land preservation throughout the county ...
> To summarize, I am concerned that we are promoting a revolutionary use of conservation easements without giving the enormous complexities and expense of this preservation tool due consideration. And, I believe, by loosely applying the conservation easement concept to density transfers, we are threatening the integrity of the conservation tool for non-PUD related open space preservation throughout Kitsap County. [Exhibit 39 (emphasis in original).]

13. On October 11, 1993, the Board of County Commissioners held a second public hearing on proposed amendments to the Zoning Ordinance. [Exhibit 190.]

14. On November 16, 1993, Keith W. Dearborn sent a letter containing proposed amendments to the CEO to Kitsap County Commissioner Win Granlund. [Exhibit 23.] Specifically, Mr. Dearborn recommended:

> i. making the internal transfer of density process through a conservation easement be applicable only in Rural 2.5 acre and Resource Protection 2.5 acre zones; {§ 6(m)};
> ii. adding a sentence about the purpose of conservation easements that provided:
> ... It is intended to allow property owners an option that allows development decisions to be deferred while securing for the citizens of Kitsap County long term protection of open space and resource lands ...; { (§ 6(m)(1)(a)}
> iii. precluding the use of the conservation easement process to increase density in PUDs

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

unless the commitment imposed by the conservation easement was in perpetuity; {§ 6(m)(1)(a)}
iv. imposing at least a twenty (20) year term on the conservation easement rather than in perpetuity; {§ 6(m)(1)(b)}
v. replacing the requirement for a Master Plan Concept section with a section on covenants or conditions of future use; {§ 6(m)(1)(b)}
vi. requiring the staff recommendation to include an evaluation of the size and characteristics of the portion of the subject property to which density is proposed to be transferred; {§ 6(m)(1)(b)}
vii. striking the clustering concept requirement [FN6]; {§ 6(m)(1)(c)}
viii. requiring development to be subject to rural design standards, once they are adopted by the Board of County Commissioners; {§ 6(m)(1)(c)}
ix. requiring any development proposing density greater than the permitted base density to be approved through the PUD process and to meet minimum open space, buffer and setback requirements for PUDs; {§ 6(m)(1)(c)}
x. requiring that the maximum density for the property covered by the PUD cannot exceed the maximum density that would be permitted without the transfer. {§ 6(m)(1)(c)} [Exhibit 23.]

All but recommended Items ii and iii above were ultimately adopted by the Board of County Commissioners (BCC) when they adopted Ordinance 93-P-1994, the CEO amendment to the Zoning Ordinance. See Finding of Fact No. 19 below. [FN7]

15. Pursuant to the BCC Minutes of December 13, 1993, a November 23, 1993 staff report was prepared for the Board of County Commissioners regarding the proposed conservation easement amendments. See Citizens' Exhibit C, at 332-333. [FN8]

16. On December 13, 1993, the Board of County Commissioners continued its public hearing (i.e., third such hearing) on the proposed amendments to the Zoning Ordinance. The hearing was limited to a discussion of the proposed conservation easement amendment. The Public Benefit Rating System and Design Criteria for Rural PUDs were to be discussed at a future hearing. Citizens' Exhibit C, at 332.

Pursuant to the BCC Minutes of December 13, 1993, the following recommended changes to the conservation easement ordinance proposal, from the preceding version contained in the October 4, 1993 staff report, were contained in the November 23, 1993 staff report:
1) November 23rd staff report, Item m, added that the conservation easement or the internal transfer of density would be applicable only in the rural 2.5 acre and the resource protection 2.5 acre zones; 2) Section (1)a. deleted a sentence that referred to the use of the conservation easement would preclude use of a PUD at a future date; 3) Page 2 deleted the section to the master plan concept and replaced it with a section called Covenants or Conditions of Future Use; 4) Second paragraph added the sentence that staff recommendation shall include an evaluation of the size and characteristics of the proposed easement area as well as the portion of the subject property to which the density was proposed to be transferred; 5) item c, All development or subdivision of the subject property shall be subject to all applicable regulations in place at the time of said development, shall meet health regulations, any development proposing density greater than the permitted base density shall be approved

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

through a Planned Unit Development process, and maximum density for the property covered by the Planned Unit Development cannot exceed the maximum density that would be permitted without the transfer. Citizens' Exhibit C, at 332-333.

17. At the December 13, 1993 public hearing, John Vodopich responded to Commissioner Granlund's question by indicating that "he thought there was" wording in the proposal regarding contiguous land owners. Citizens' Exhibit C, at 337. The Board has been unable to locate language in any version of the CEO before it that requires lands subject to the CEO to be contiguous. Subsequently, the County, in a letter signed by Commissioner Granlund but prepared by staffer "JPV," concurred:

2. As adopted, there is no requirement that the properties be contiguous, adjacent or abutting. [Exhibit 2, at 1; see also Finding of Fact No. 22 below.]

18. On February 28, 1994, the Board of County Commissioners proceeded with the public hearing (i.e., fourth such hearing) on the proposed amendments to the Zoning Ordinance regarding conservation easements. Citizens' Exhibit B.

19. At the conclusion of the February 28, 1994 hearing, the Board of County Commissioners adopted Ordinance 93-P-1994, the CEO. [Exhibit 1.] [FN9] The full text of the CEO is as follows:

ORDINANCE AMENDMENT
93-P-1994
The following amendments are hereby made to Kitsap County Ordinance 93-1983, An Ordinance Concerning Land Use:
Section 6. Rural, residential, agricultural, forestry and undeveloped land zones.
m. The internal transfer of density through the conservation easement process is allowed in the Rural 2.5 acre and Resource Protection 2.5 acre zones as follows:
(1) Conservation Easements
a. Purpose. A conservation easement is a means by which the internal transfer of density may occur on a parcel or parcels of property under the same or multiple ownership(s). The conservation easement allows for the preservation of productive commercial resource uses, open spaces, critical areas and significant rural areas on a portion of the property while allowing all or a portion of the permitted density to be transferred to the remaining portion of the property. Once approved by the Board of County Commissioners, a conservation easement becomes a binding agreement controlling the use and density of the subject property.
b. Procedure. The applicant shall submit a written request for a conservation easement to the Kitsap County Department of Community Development together with a legally binding conservation easement and density transfer agreement for a minimum twenty (20) year timeframe. The agreement will include at a minimum the following sections (sample agreement is available upon request):
Grantor;
Grantee;
Purpose;
Grant of Easement;
Anticipated Future Use;
Transfer of Development Rights;

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

Indemnification;
Enforcement;
Right to Inspect Property;
Modification;
Notarized Signature Blocks.

Following review and approval by the Kitsap County Prosecuting Attorney, the Department of Community Development shall prepare a staff recommendation. The staff recommendation shall include an evaluation of the size and characteristics of the proposed easement area as well as the portion of the subject property to which the density is proposed to be transferred to ensure that approval is consistent with and carries out the intent of the Zoning Ordinance, Comprehensive and Subarea Plan policies and is in the public interest. The staff recommendation together with the conservation easement and density transfer agreement will be sent forward to the Kitsap County Hearing Examiner for consideration and recommendation to the Kitsap County Board of Commissioners for final decision. In reaching its decision, the Board of County Commissioners shall determine whether all or part of the conservation easement shall count toward applicable open space requirements should a Planned Unit Development (PUD) be subsequently proposed for the future use of the property receiving the transferred development rights.

c. Development Standards. All development or subdivision of the subject property shall be subject to all applicable regulations in place at the time of said development or subdivision, including once adopted by the Board of County Commissioners, rural design standards. Any development proposing density greater than the permitted base density shall be approved through a Planned Unit Development process and shall meet the minimum open space, buffer and setback requirements for a Planned Unit Development. In no case shall the transferred density be allowed to exceed the allowable densities under health regulations in place at the time of said development [FN10] and the maximum density for the property covered by the Planned Unit Development cannot exceed the maximum that would be permitted without the transfer.

These amendments shall be in full force and effect upon approval by the Board of County Commissioners.

20. Comparison between original proposal [Exhibit 77] and as-adopted CEO [[[Exhibit 1]:

Differences	
Exhibit 77 (Proposed)	**Exhibit 1 (Adopted CEO)**
Contains public benefit rating system	Public benefit rating system deleted
Amends § 14 of Zoning Ordinance (i.e., PUDs) by adding new subsection (b)	Amends § 6 of Zoning Ordinance (i.e., rural, residential, agricultural, forestry and undeveloped land zones) by adding new subsection (m)
Applies to all land zones only	Applies to rural, residential, agricultural, forestry & undeveloped lands only
Has special rules for R-2.5 and RP-2.5 zones	Limited to R-2.5 and RP-2.5 zones
Same ownership of property required	Multiple ownership of properties permitted

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

No mention of BCC approval & effect on controlling use & density	Once BCC approves, becomes binding agreement controlling use & density
In effect for perpetuity	In effect for a minimum of 20 years
Agreement must have section on "Future Use of Resource and Remaining Lands"	Agreement must have section on "Anticipated Future Use"
Staff evaluation includes: (at a minimum) project size; site characteristics; open space requirements; characteristics of proposed transferred area	Staff evaluation includes: size of proposed easement area; characteristics of proposed easement; size of proposed transferred area;
No consistency requirement	Proposal must be consistent with: Zoning Ordinance Comprehensive Plan Subarea Plans the public interest
No PUD clause (presumably since it amends the PUD section of the Zoning Ordinance)	BCC must determine how much of easement counts toward open space requirements if a PUD is sought
No development standards section	Has development standards, subsection (c):
	Development applications on "subject property" subject to all applicable regulations at time of development
	Applications proposing more density than the permitted base density must obtain PUD approval and meet minimum open space, buffer and setback requirements for PUDs
	Transferred density cannot exceed densities permitted by health regs in place at time of development
	Maximum density for the property covered by a PUD cannot exceed the maximum density that would be permitted without the transfer
Similarities	
Exhibit 77 (Proposed)	**Exhibit 1 (Adopted CEO)**
Internal transfer of density	Internal transfer of density
May occur on a parcel or parcels	May occur on a parcel or parcels
Purpose: preservation & transfer	Purpose: preservation & transfer
DCD staff recommendation	DCD staff recommendation
Prosecuting Attorney approval	Prosecuting attorney approval
Hearing examiner recommendation	Hearing examiner recommendation
Final decision by BCC	Final decision by BCC

21. On March 11, 1994, Thomas F. Donnelly sent a letter containing a series of questions about the Ordinance to the Kitsap County Board of Commissioners. [Exhibit 3.]

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

22. On April 4, 1994, Kitsap County Commissioner Win Granlund sent Thomas F. Donnelly a letter in response to Donnelly's prior questions. [Exhibit 2.] The letter explained that the CEO's reference to "subject property" referred to:

> ... all of the property or properties which are involved in the Conservation Easement. This includes both the property from which the density is transferred and the property to which the density is transferred. [Exhibit 2, at 2.]

23. The Board is unaware of how many conservation agreements have actually been entered into by the County. Although the County, in written argument only, indicates that one application for a conservation easement has been received since the adoption of the CEO (see Kitsap County's Response to Prehearing Brief, at 15), nothing in the record before the Board indicates the status of the conservation easement process: either the number of agreements solicited, the number of applications received or the number of conservation agreements actually reached.

C. STATEMENT OF REMAINING LEGAL ISSUES BEFORE THE BOARD

1. Was Kitsap County Ordinance No. 93-P-1994 (the CEO) enacted pursuant to the requirements of the Growth Management Act (the GMA or the Act)?

If Legal Issue No. 1 is answered affirmatively:

2. Does the CEO comply with RCW 36.70A.110?

3. Does the CEO comply with RCW 36.70A.020, subsections 1, 2, 3, 8, 9, 10, 11 and 12?

4. Does the CEO comply with RCW 36.70A.060?

5. Does the CEO comply with RCW 36.70A.350?

6. Did the Petitioners exhaust all administrative remedies below before raising a State Environmental Policy Act (SEPA) challenge of the CEO?

7. Assuming the Petitioners' SEPA challenge is properly before the Board, did the County comply with the requirements of SEPA when it failed to prepare an environmental impact statement (EIS) for the CEO?

D. DISCUSSION AND CONCLUSIONS

Legal Issue No. 1

Was Kitsap County Ordinance No. 93-P-1994 (the CEO) enacted pursuant to the requirements of the Growth Management Act (the GMA or the Act)?

Discussion

Kitsap County Ordinance 93-P-1994, which has been referred to as the Conservation Easement Ordinance or CEO, is a GMA enactment. The Board has previously determined that, because the County incorporated unspecified "appropriate" provisions of the Kitsap County Zoning Ordinance to serve as its GMA required implementing regulations when it designated IUGAs,

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

the Zoning Ordinance became a GMA enactment. See Findings of Fact Nos. 8, 9 and 10. More specifically, the Zoning Ordinance became an IUGA development regulation. See Association of Rural Residents v. Kitsap County, CPSGMHB Case No. 93-3-0010 and the Board's Order on Kitsap County's Dispositive Motion in the present case. Because the CEO is an amendment to Zoning Ordinance provisions that can significantly affect IUGAs, it too is a GMA development regulation. However, the CEO does not comply with the requirements of the GMA because it allows urban growth to occur in rural areas, a direct contradiction of the explicit purpose of urban growth areas (UGAs).

RCW 36.70A.110(1) provides:

> Each county that is required or chooses to plan under RCW 36.70A.040 shall designate an urban growth area or areas within which urban growth shall be encouraged and outside of which growth can occur only if it is not urban in nature.... (Emphasis added.)

The Board can conceive of a well designed compact rural development containing a small number of homes that would not look urban in character, not require urban governmental services, nor have undue growth-inducing or adverse environmental impacts on surrounding properties. Such a rural development proposal could constitute "compact rural development" rather than "urban growth." However, the CEO does not have parameters to prevent development projects that constitute urban growth from occurring in rural areas.

For example, there is no upper limit on the acreage or unit count that the CEO would permit to occur in rural areas, nor are there any parameters regarding the configuration, servicing or location of such development. The CEO could potentially result in thousands of dwelling units being aggregated in a single development in the rural area. It is difficult to conceive of a project of such magnitude, no matter how compact and how well designed, that would not meet the Act's definition of urban growth. As the size of a rural development project increases, the demand for urban governmental services inevitably increases, as do the offsite impacts on both natural systems and abutting properties. Likewise, as the size of a project site increases, the more likely it is that it will exhibit the characteristics of urban growth (i.e. "the intensive use of land for the location of buildings, structures and impermeable surfaces to such a degree as to be incompatible with the primary use of such land for the production of food, other agricultural products, or fiber, or the extraction of mineral resources.... ") RCW 36.70A.030(15). While no clear breakpoint is evident from information presently before the Board, it is only logical that, at some point along the continuum of potential project size and intensity, the quantitative dimension of clustered development in a rural area must have qualitative urban growth consequences.

As for calculating densities resulting from the CEO, there is fundamental disagreement between Citizens on the one hand and the County and Intervenor Port Blakely on the other. Citizens argue that the Board should look only at the impact on the "receiving" property. The County and Intervenor argue that the Board should look at both the "receiving" and the "sending" properties.

The Board agrees that, under the terms of the CEO itself, it is necessary to consider the gross acreage and zoning of all properties involved in an agreement for the purpose of calculating total UNIT COUNT. Thus, one needs to consider acreage and zoning of both the sending and receiving properties to make this density calculation. But gross acreage, gross unit count or even gross density are mere abstractions. The true test of whether the CEO results in urban growth is

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

to ask the question--what does the CEO permit to be physically constructed on the ground, in the real world, and how does that potential outcome square with the Act's definition of urban growth? [FN11]

It is the Board's conclusion that, for the purposes of this latter test, the "land" in question is the receiving property where the CEO-enabled development would occur rather than both the sending and receiving land. Preserving lands as open space in a natural state on the sending property may well be a significant public good, and satisfy important objectives of the GMA. However, a GMA development regulation must comply with the requirements of the entire Act. Therefore, if the mechanism to achieve this public good also creates as a consequence urban growth within a rural area, it does not comply with the Act. Because that clearly is a potential outcome of the operation of the CEO, the Board must find that the CEO does not comply with the Act.

The Board's finding that the CEO is in violation of the Act does not presume that a PUD will be used, nor has the Board concluded that the use of a PUD enables an increase in base density. Section 6(m)(1)(c), entitled Development Standards (see Finding of Fact No. 19), gives apparently contradictory direction on this latter point. On the one hand, this section states that "Any development proposing density greater than the permitted base density shall be approved through a Planned Unit Development process ...". However, in the very next sentence, it states that "In no case shall the transferred density be allowed to exceed the ... maximum density that would be permitted without the transfer." The Board need not reconcile this apparent contradiction at this time [FN12] because the CEO allows urban development within a rural area, with or without a PUD.

The Board also notes that both the County and Port Blakely argued that the CEO complies with the GMA because it is an "innovative technique" that is specifically mentioned in the GMA. RCW 36.70A.090 provides:

> Comprehensive plans--Innovative techniques
> A comprehensive plan should provide for innovative land use management techniques, including, but not limited to, density bonuses, cluster housing, planned unit developments, and the transfer of development rights. [FN13] (Emphasis added.)

A review of the CEO shows that it includes some of the techniques used in this GMA provision. [FN14] Most importantly, however, the County and Port Blakely ignored the emphasized words that indicate that this section applies to comprehensive plans, not development regulations. Comprehensive plans are encouraged to "provide" for the listed techniques. The unstated shared concept among most of the listed techniques is setting aside and conserving open space and natural systems as a predicate to land development. This concept is often referred to generically as "clustered development."

The concept of "clustered development" is not new or innovative in and of itself. [FN15] The true innovation under the GMA, and the approach suggested by RCW 36.70A.090, is to first establish a clear public policy strategy for managing growth, i.e., a comprehensive plan, and then craft and apply land use management techniques, such as development regulations, to implement that adopted comprehensive plan. Absent a comprehensive plan, there is no final urban growth area (FUGA) as required by RCW 36.70A.110(5), and there is no "rural" comprehensive plan

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

element, as required by RCW 36.70A.070(5). [FN16] The comprehensive plan provides the necessary "policy context" to explain not just that these techniques are good ideas, but just how, when and where they are to be applied to achieve the GMA policy purposes that the comprehensive plan represents. [FN17]

Conclusion No. 1
Kitsap County Ordinance 93-P-1994, the CEO, being an amendment to the Kitsap County Zoning Ordinance that directly affects lands inside and outside IUGAs, is a GMA enactment. However, it does not comply with the requirements of the Growth Management Act because it permits urban growth to occur in rural areas outside the IUGA.

The most prudent course at this time is for the County to repeal the CEO and to re-consider such a regulation after the comprehensive plan has been adopted. [FN18] This would clarify how an innovative land use management technique for development in the rural area, such as the CEO and/or a transfer of development rights ordinance, would affect and be affected by the assumptions and objectives that underlie the FUGA. [FN19] The rural element of the County's comprehensive plan could include a discussion of what comprises rural development, and set forth procedural safeguards and development standards to assure that the result of such an innovative land use management technique in a rural area will not be urban growth.

Alternatively, in order for the County to pursue this regulatory path before it adopts its comprehensive plan, it must first establish sufficient explicit requirements, criteria and safeguards to prevent the CEO from being used as a mechanism for allowing urban growth in rural areas. For instance, the CEO might be amended to permit the transfer of unit count only to receiving property sites within the IUGAs. However, whatever action the County elects to take must be in compliance with the requirements of the Act.

Legal Issues Nos. 2, 3, 4 and 5

Conclusion Nos. 2, 3, 4 and 5
The County pointed out that Legal Issue No. 1 was dispositive and that accordingly, Legal Issues Nos. 2, 3, 4, and 5 need not be addressed. Kitsap County's Response to Prehearing Briefs, at 8. The Board concurs. The Board concluded in Legal Issue No. 1 that the CEO does not comply with the GMA because it permits urban growth in rural areas outside the IUGAs. Therefore, the Board need not and will not decide Legal Issues Nos. 2, 3, 4, and 5.

Legal Issue No. 6
Did the Petitioners exhaust all administrative remedies below before raising a State Environmental Policy Act (SEPA) challenge of the Ordinance?

Legal Issue No. 6 was addressed by the Board in response to the County's Dispositive Motion. In denying that portion of the motion dealing with the SEPA challenge to the Ordinance, the Board concluded that Citizens could not exhaust the County's administrative SEPA appeals procedures since that process only involved challenges to the initial threshold determination. Instead, rather than challenging the issuance of the DNS itself, Citizens were challenging the failure of the County to withdraw its DNS--a type of challenge for which the County did not have an administrative appeals process. Order on Kitsap County's Dispositive Motion, at 16.

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

Conclusion No. 6
Kitsap County does not have an administrative process for challenging the failure of the County to withdraw a DNS. Therefore, Citizens are entitled to bring this SEPA appeal challenging the Ordinance directly to the Board for review. Accordingly, Citizens SEPA challenge is properly before the Board.

Legal Issue No. 7
Assuming the Petitioners' SEPA challenge is properly before the Board, did the County comply with the requirements of SEPA when it failed to prepare an environmental impact statement (EIS) for the CEO?

Conclusion No. 7
Because the Board held in Legal Issue No. 1 that the CEO does not comply with the GMA because it permits urban growth in rural areas outside the IUGAs, the Board need not and will not decide Legal Issue No. 7.

E. ORDER

Having reviewed the file and record in this case, having reviewed and considered the parties' and amicus briefs and the arguments of counsel, and having entered the foregoing Findings of Fact and Conclusions, the Board finds that Kitsap County Ordinance No. 93-P-1994, the CEO, is not in compliance with the requirements of the Growth Management Act. The Board therefore orders the County to either repeal the CEO in its entirety or to modify it in compliance with this Final Decision and Order by 5:00 p.m. on Friday, December 30, 1994.

So ORDERED this 25th day of October, 1994.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

M. Peter Philley
Presiding Officer

Joseph W. Tovar, AICP
Board Member

Chris Smith Towne
Board Member

Note: This Final Decision and Order constitutes a final order as specified by RCW 36.70A.300 unless a party files a Petition for Reconsideration pursuant to WAC 242-02-830.
FN1. Effective June 9, 1994, the Board's name was changed to Growth Management Hearings Board. See ESSHB 2510.

FN2. Section 14 of the Zoning Ordinance already had a subsection (b).

FN3. The Board notes that for purposes of its review, the proposal contained in the June 7, 1993

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

Staff Report was the initial proposal. Although at least one earlier version of the proposal must have existed, since the June 7, 1993 report amends prior language, that prior version was not submitted as part of the record nor is it relevant to the legal issues before the Board.

FN4. Neither the Kitsap County Planning Commission's recommendation nor "the August, 1993 Staff Report" appears to be part of the record before the Board. The Board notes, however, that Exhibit 53, the Agenda Summary, was initially dated August 17, 1993 for an August 23, 1993 meeting. The August 23, 1993 date was crossed out and replaced by a September 13, 1993 date.

FN5. Citizens' Exhibit D, the October 4, 1993 Staff Report from Vodopich to the County Commissioners, refers to "staff's September 13, 1993 recommendation on the proposed Planned Unit Development Ordinance Amendment.... " Presumably, the reference to a September 13, 1993 recommendation is to Exhibit 53, the recommended action contained in the Board of Commissioners' Agenda Summary. Citizens' Exhibit D is Exhibit 42 in the County's Index but was not re-submitted when Citizens filed their prehearing brief.

FN6. Although the title of the paragraph in Mr. Dearborn's letter was captioned "Clustering Should Be Mandatory," the narrative portion of the letter was consistent with the proposed recommendation--that clustering should not be mandatory. See Exhibit 23, at 2.

FN7. The Board of County Commissioners did strike the Master Plan concept as recommended in Item v. However, instead of replacing it with a required section entitled "Covenants or Conditions of Future Use," the adopted CEO requires a section on "Anticipated Future Use." [See Exhibit 1, at § 6(m)(1)(b).]

FN8. The November 23, 1993 staff report itself is not in the record before the Board.

FN9. Although Exhibit 1 is undated, a copy of the Ordinance attached to Citizens' Petition for Review is dated February 28, 1994. During oral argument of the County's Dispositive Motion, the County confirmed that the Ordinance 93-P-1994 was adopted on February 28, 1994.

FN10. Copies of applicable health regulations were not before the Board in this case.

FN11. 1000 Friends discussed the example given in the Conservation Easement and Density Transfer Agreement (i.e., Exhibit 5). [The Board is aware that the County pointed out that this agreement was not created or approved by the County. Kitsap County's Response to Prehearing Briefs, at 6, fn. 10. Nonetheless, the CEO itself indicates that a "sample agreement is available upon request." Although the County may not have created or approved Exhibit 5, it was the only sample agreement before the Board.] In that example, the property owner owned 3,880 acres of property that was zoned Rural 2.5, or one du/2.5 acres. Thus, under existing zoning, the property owner was allowed to build 1,552 units on the 3,880 acres. In the example given, the property owner wants to keep 1,680 acres (or 43%) of the property zoned "as is" and build only 84 dwelling units on that 1,680 acres instead of the permissible 672 dwelling units. Accordingly, under the CEO, the land owner would be able to transfer the difference, 588 dwelling units, to the other 57% of the property (2,200 acres). As for the 2,200 acres, under existing zoning the property owner would be permitted to build only 880 dwelling units on that land. By utilizing the CEO, the owner would be able to build 880 dwelling units permitted by existing zoning on this

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

portion of the site, plus build an additional 588 dwelling units transferred from the 1,680 acre portion of the property, i.e., the sending portion of the property. Consequently, the property owner would be able to build 1,468 dwelling units on the remaining 2,200 acres (i.e., the receiving property) instead of 880 dwelling units. 1,468 du on 2,200 acres equates to .67 du/acre or 1.5 acres/du. In contrast, per existing zoning, 880 du on 2,200 acres equals .40 du/acre or 2.5 acres/du. 1000 Friends then calculated that the property owner in the example above intended to place 95% of the possible dwelling units for the entire 3,880 acres (1,468 du out of 1,552 possible du) onto the 2,200 acre portion of the property. 1000 Friends illustrated what would happen if the same 95% of the permitted dwelling units were again transferred, but to only 25% of the property (979 acres), and to 10% of the property (388 acres), instead of transferring 95% of the dwelling units to 57% of the property, as occurred in the example given in the Agreement. Under the 10% of the property scenario, the resulting density would be 3.78 du/acre, calculated as follows: 10% of 3,880 acres is 388 acres. 1,474 du (i.e., 95% of the total du permitted) on 388 acres equals .26 acres/du, or rounded off to 3.8 du/acre. 1000 Friends of Washington's Amicus Brief, at 7-8. The Board notes that .26 acres/du on the receiving property (per the 10% property development scenario given by 1000 Friends) is nearly six times the 1.5 acres/du per the 57% property development scenario contained in the example in Exhibit 5. Furthermore, 3.8 du/acre on the receiving property is nine and one-half times the .4 du/acre permitted on the receiving property pursuant to existing zoning. Accordingly, more than a fivefold increase in density is possible because of the CEO when one looks at the resulting density increase on the "receiving" property.

FN12. In its first case, the Board held that development regulations must be internally consistent. Tracy v. Mercer Island, CPSGPHB Case No. 92-3-0001 (1993), at 26.

FN13. Several of the innovative techniques listed are "development regulations." See RCW 36.70A.030(8). While the Act does advocate the use of such innovative tools, the operative verb in RCW 36.70A.090 is "provide for" in the plan as opposed to "include" or "incorporate within" the plan. This is an important distinction to make because comprehensive plans are policy, rather than regulatory, in nature. Development regulations are specific controls on the use of land, rather than direction-setting policy documents. The Board has addressed this difference and the relationship between policy and implementing measures in Snoqualmie v. King County, CPSGPHB Case No. 92-3-0004 (1993), at 12.

FN14. The CEO allows for the transfer of development rights by "sending" unit count from one parcel to another parcel, but does not require that the parcels be contiguous. See Finding of Fact No. 17. The CEO does not require a planned unit development permit; however, a PUD is required for any proposed increased density (i.e., a density bonus). Although the CEO does not use the word "cluster" to describe its ostensible purpose or what it requires of ultimate on-site development, the operational concept does seem to be that of concentrating development on a portion of property(ies) rather than configuring it in a more dispersed fashion. The County acknowledges the CEO's clustering effect when it states:

> Ordinance 93-P-1994 allows for the clustering of development ... Kitsap County's Response to Prehearing Briefs, at 11 (emphasis added).

FN15. The history of human settlement and the literature of city and regional planning is replete with clustered development as an organizing principle. The Board takes official notice of The

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

Design of Cities, Edmund N. Bacon, Penguin Books, New York, 1967; Design with Nature, Ian L. McHarg, Natural History Press, Philadelphia, Pa. 1969; and Rural by Design, Randall Arendt, Planners Press, Chicago, 1994. Traditional objectives of such innovative techniques, such as the protection and conservation of natural resources, have been augmented by more recent public policy priorities such as housing affordability, air quality and transportation goals.

FN16. RCW 36.70A.070(5) provides:

> Counties shall include a rural element including lands that are not designated for urban growth, agriculture, forest, or mineral resources. The rural element shall permit land uses that are compatible with the rural character of such lands and provide for a variety of rural densities.

FN17. The Board of County Commissioners did not include a suggestion to add a sentence to the "Purpose" portion of the CEO that specified that one purpose of the ordinance was to let citizens defer development decisions. See Finding of Fact No. 14. However, omission of that clause does not mean that the effect of the CEO is any different.

FN18. Waiting until after a comprehensive land use plan has been adopted is consistent with the GMA's interactive and iterative sequence: (1) Designate and adopt interim critical areas and resource lands regulations (RCW 36.70A.170, .060); (2) Adopt CPPs with at least procedural fiscal analysis (per Snoqualmie); (3) Adopt Interim Urban Growth Areas (RCW 36.70A.110(4); (4) Adopt final phases of CPPs and/or substantive fiscal analysis as needed (per Snoqualmie); (5) Adopt comprehensive plans, including Final Urban Growth Areas (RCW 36.70A.040 and .110(5)); (6) Perform activities and make capital budget decisions in conformity with the adopted comprehensive plan. RCW 36.70A.120. City of Edmonds and City of Lynnwood v. Snohomish County, CPSGPHB Case No. 93-3-0005 (1993), at 26, fn 10.

FN19. For example, if the County elects to allow a density multiplier in the rural areas, via a PUD or other regulatory mechanism, it should be mindful of the potential impact on the county-wide allocation of growth inside and outside the UGA. Without some accounting mechanism to adjust the UGA assumptions and population allocation, similar to the adjustment that must be made for fully contained communities (see RCW 36.70A.350), a density multiplier mechanism in the rural area could erode the validity of the UGA accounting and thwart the Act's predilection for growth to locate primarily in UGAs.

Sent to:

Kitsap Citizens for Rural Preservation, et al.; and
Kitsap Audubon Society
David A. Bricklin WSBA No. 7583
Bricklin & Gendler
Suite 1015, Fourth and Pike Building
Seattle, WA 98101
Tel: (206)621-8868
Fax: (206)621-0512

Kitsap County

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.

Douglas B. Fortner WSBA No. 12641
Kitsap County Prosecutor's Office
614 Division St. MS-35
Port Orchard, WA 98366-4676
Tel: (206)895-4992
Fax: (206)876-7083

1000 Friends of Washington
Tracy Burrows, Planning Director
1305 Fourth Ave., Suite 303
Seattle, WA 98101
Tel: (206)343-0681
Fax: (206)343-0683

Port Blakely Tree Farms
Thomas A. Goeltz WSBA No. 5157 or
Hossein Nowbar WSBA No. 23355
Davis Wright Tremaine
1501 Fourth Avenue, Suite 2600
Seattle, WA 98101-1662
Tel: (206)628-7698
Fax: (206)628-7699

1994 WL 907904 (Wash.Central.Puget.Sd.Growth.Mgmt.Hrgs.Bd.)
END OF DOCUMENT

© 2008 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works.