

1 BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD
2 WESTERN WASHINGTON REGION
3 STATE OF WASHINGTON
4

5 WRIGHT'S CROSSING, LLC, SCOTT B.
6 THOMPSON,

7 Petitioner,
8

9 v.

10 ISLAND COUNTY,
11

12 Respondent,
13

14 and

15 WHIDBEY ENVIRONMENTAL ACTION
16 NETWORK, (WEAN)

17 Intervenor.
18

CASE No. 17-2-0011

ORDER OF DISMISSAL

19
20 **I. INTRODUCTION**

21 This matter came before the Board pursuant to two separate motions to dismiss. The
22 first, filed by Island County, requests dismissal of the Petition for Review in its entirety, or
23 alternatively, dismissal of specific allegations. The second motion was filed by WEAN and
24 requests dismissal of Issues 1 and 2.¹ The Petitioner filed a response on February 20,
25 2018. On February 27, 2018, the Board heard oral argument on the motions. Stephanie
26 Marshall appeared as counsel for Petitioner Wright's Crossing, LLC. Sarah Doar, Island
27 County deputy prosecuting attorney, appeared on behalf of Respondent Island County.
28 Intervenor WEAN appeared through Steve Erickson. Board members Nina Carter, Bill
29 Hinkle, and William Roehl participated with Roehl presiding.
30
31
32

¹ The Petitioner withdrew Issue 2. See Petitioner's Response to Motions to Dismiss at 11.

1 **II. ANALYSIS AND DISCUSSION**

2 **A.** The Petitioner challenges Island County Resolution No. C-110-17 which was the
3 County's 2018 Annual Docket. RCW 36.70A.470(2) provides for annual consideration of
4 comprehensive plan and development regulation amendments submitted by interested
5 parties and RCW 36.70A.470(4) explains the purpose of docketing.² The Petitioner had
6 submitted an application for a Comprehensive Plan amendment which would expand the
7 City of Oak Harbor's urban growth area (UGA). The Petitioner states that it also requested
8 reconsideration of the County's 2016 buildable lands analysis (BLA) and the addition of the
9 land proposed for the UGA expansion to the City of Oak Harbor's Joint Planning Area
10 (JPA).³ The UGA expansion request was to add approximately 250 acres to the UGA, as
11 well as approximately 50 acres between the existing UGA and the property controlled by the
12 Petitioner. As described by the Petitioner, once the UGA was expanded, Oak Harbor would
13 annex the property and it would then be zoned to allow for the development of 1000-1500
14 single-family homes.⁴ Petitioner's basic argument is that the GMA as well as the County
15 Comprehensive Plan, including its County-wide planning policies (CWPPs), and its Code,
16 required the County to docket the proposed comprehensive plan amendment for
17 subsequent consideration. It argues that GMA and County requirements mandate that
18 docketing. With adoption of Resolution No. C110-17 the Board of County Commissioners
19
20
21
22
23

24 _____
25 ² RCW 36.70A.470 Project review—Amendment suggestion procedure—Definitions.

26 (2) Each county and city planning under RCW 36.70A.040 shall include in its development regulations a
27 procedure for any interested person, including applicants, citizens, hearing examiners, and staff of other
28 agencies, to suggest plan or development regulation amendments. The suggested amendments shall be
29 docketed and considered on at least an annual basis, consistent with the provisions of RCW 36.70A.130.

30 (4) For purposes of this section, docketing refers to compiling and maintaining a list of suggested changes to
31 the comprehensive plan or development regulations in a manner that will ensure such suggested changes will
32 be considered by the county or city and will be available for review by the public.

³ The County disputes the request to reconsider the BLA. See Island County's Motion to Dismiss, page 2,
footnote 1. The BLA was completed in conjunction with the County's most recent RCW 36.70A.130
comprehensive plan update (2016). The BLA had concluded that Oak Harbor's UGA had adequate land to
accommodate the 20 year allocated population and employment growth. Petitioner alleges the BLA was
flawed. The Board will assume the request was made. In Island County UGAs may not be designated outside
of a Joint Planning Area boundary.

⁴ Petition for Review (December 27, 2017) at 5-7.

1 accepted the recommendation of its Planning Commission and declined to docket the
2 proposal.⁵

3 The basic underpinning of the County's motion is that there are no applicable GMA or
4 County requirements mandating the County to docket the Petitioner's requests to consider
5 expansion of the UGA, to review its buildable lands analysis, and to "act" on the Petitioner's
6 request to include lands in a "joint planning area". Rather, the County's takes the position
7 that the decision to not docket was within its legislative discretion, and that, among other
8 claims, the Petitioner has failed to state a statutory basis upon which the Board could grant
9 relief.⁶ The Petitioner asserts that numerous GMA duties required the County to docket its
10 request.

11
12 The Board finds and concludes that the County's decision was within its legislative
13 discretion and that the County's motion to dismiss should be granted.
14

15 **B.** The Petitioner raised six issues⁷, all of which are related to the County's decision not
16 to docket the UGA expansion request. While the Petitioner made two other requests, they
17 are directly related to the docketing of the UGA expansion: 1) a challenge of the validity
18 /accuracy of the County's 2016 buildable lands analysis upon which 2016 UGA boundaries
19 were established, and; 2) the request to have the UGA expansion land first added to the
20 City of Oak Harbor Joint Planning Area (a necessary requirement prior to designation as a
21 UGA).
22

23
24 Issues (emphasis added):

- 25 1. Did Island County fail to take into consideration recently enacted changes to
26 RCW 36.70A.215(3)(a), CWPP 4.3(7)-(8) and its 2017 revised CWPPs,
27 Appendix A, and thus did it fail to evaluate information to determine if there is
28 sufficient land to accommodate the countywide population estimates for new
29 growth in violation of CWPP 3.3(14) and these statutory requirements: RCW
30 .36.70A.110 (requirements for urban growth areas), RCW 36.70A.115
31

32 ⁵ Resolution No. C110-17, at page 2, did direct the County Planning Department to continue ("roll over" from the 2017 docket) consideration of revisions to the Oak Harbor JPA to its 2018 work plan.

⁶ Island County's Motion to Dismiss (February 9, 2018) at 4.

⁷ Prehearing Order (January 26, 2018).

1 (requiring sufficient land capacity for development) and/or RCW 36.70A.210(3)
2 setting forth requirements that CWPPs must meet, (a) when refusing to docket
3 Petitioner's application for a site-specific Plan amendment to alter the Oak
4 Harbor UGA, (b) by denying Petitioner's request to review the County's BLA
5 and (c) by refusing to act on the City's request to include lands optioned by
6 Petitioner in a JPA?

7 2. Did the County, by withholding the underlying data, metrics and assumptions
8 for its buildable lands analysis, violate RCW 36.70A.020(11), as implemented
9 by RCW 36.70A.035; 140, and did it act inconsistent with CWPP Goals, No. 3
10 to allow meaningful public participation and comment by denying Petitioner's
11 request to review the County's BLA before proceeding to consider docketing
12 for further review Petitioner's application for a site-specific Plan amendment to
13 alter the Oak Harbor UGA and the City's request to include lands owned by
14 Petitioner in a JPA?

15 3. Did the County violate RCW 36.70A.210(3), RCW 36.70A.115 and RCW
16 36.70A.020(11) and/or RCW 36.70A.110 (urban growth areas) and did it act
17 inconsistent with CWPPs, Goal 2 (1)-(2 (Intergovernmental cooperation);
18 CWPPs Goal 2(4), 3.1(municipal responsibility) 3.4(11), 3.2(1)(2)(a)(f), 3.2(7),
19 3.3(1), 3.3(13) and 4.4(1)(a): (a) in delaying and refusing to docket for further
20 review Petitioner's site-specific Comprehensive Plan UGA amendment for
21 certain land located within unincorporated Island County, (b) in delaying and
22 refusing to act upon the City's request to include the land in a Joint Planning
23 Area; (c) by failing to use a "stated and rational criteria" to support its decision-
24 making; (d) by failing to properly coordinate with the City on its JPA boundary
25 change request ; and (e) by failing to adequately monitor annual housing data
26 to support its decision-making?

27 4. Did the County violate RCW 36.70A. 115, RCW 36.70A.070(2)(a)-(d) and did it
28 act inconsistent with CWPPs Goal 4, CWPPs 3.3(14), CWPP 4.3(7) and
29 Appendix A thereto, by failing to prepare an adequate lands capacity analysis
30 to support its decision to deny Petitioner's request to docket for further review
31 (a) its application for a site-specific Plan amendment to alter the Oak Harbor
32 UGA and (b)the City's request to include lands owned by Petitioner in a JPA?

- 1 5. Did the County fail to “show its work” as required by RCW 36.70A.110 and/or
2 RCW 36.70A.115 and CWPP 3.3(1)(a)-(e), and CWWP Goals, No. 4, pursuant
3 to holdings of the Growth Management Hearings Boards in Master Builders
4 Assoc.v. Snohomish County, CPSGMHB No. 01-3-0016 (2001); Panesko v.
5 Lewis County, WWGMHB No. 08-2-0007c (2008); Knapp v. Spokane County,
6 EWGMHB No. 97-1-0015c (1997); City of Spokane v. Spokane County,
7 EWGMHB No. 02-1-0001 (2002); Strahm v. City of Everett, CPSGMHB No.
8 05-3-0042 (2006); Suquamish Tribe v. Kitsap County, CPSGMHB No. 07-3-
9 0019c (2007); Kittitas County Conservation v. Kittitas County, EWGMHB No.
10 07-1-004c (2009); and Pillchuck Audubon Society v. Snohomish County,
11 CPSGMHB No. 06-2-0015c (2006) (a) when refusing to docket Petitioner’s
12 application for a site-specific Plan amendment to alter the Oak Harbor UGA,
13 (b) by denying Petitioner’s request to review the County’s BLA and (c) by
14 refusing to act on the City’s request to include lands optioned by Petitioner in a
15 JPA?
- 16 6. Did the County violate RCW 36.70A.110(1) and (3) and/or RCW 36.70A.115
17 and/or RCW 36.70A 210; 215(1) and/or RCW 36.70.020(4) as implemented by
18 RCW 36.70A.070(2), and/or RCW 36.70A.040(d) and RCW 36.70A.120, and
19 CWPPs provisions, Goal 2 (11) and 3.9 (1)-(6) and CWPPs 3.3(3)(a)-(d);
20 3.3(6), 3.3(13) and 4.3(8) and CWPP Goals, Nos. 7-8, and 3.6(1)-(3)(7) (a), its
21 obligation to provide sufficient lands to accomodate projected urban growth,
22 and did it act inconsistent with adopted comprehensive land use plan, in
23 particular, Goal 1, Plan. Ch 9, p 26), Plan, Chapter 1, p 5, Chapter 1, Goal 4 p.
24 57(facilitate efficient provision of urban services); Plan, Introduction p 1
25 (accommodate population growth and development); Plan. Introduction, p. 1,
26 Chapter 4, p. 21, Goal 1, Goal 2, p. 22(encourage availability of affordable
27 housing); Plan, Chapter 1, and Goal 5, p 57(coordinate establishment of
28 JPAs, when (a) refusing to docket Petitioner’s application for a site-specific
29 Plan amendment to alter the Oak Harbor UGA, (b) by denying Petitioner’s
30 request to review the County’s BLA and (c) by refusing to act on the City’s
31 request to include lands optioned by Petitioner in a JPA, because the GMA
32 mandates adjustment of urban growth areas on a yearly basis under specified
circumstances, provision of adequate housing, including affordable housing,
and making long-range planning decisions that are consistent with the
comprehensive plan? [sic]

1 The Petitioner correctly poses the question before the Board: "Thus, the sole
2 question is whether the GMA requires action."⁸ Similarly, the County observes that ". . . the
3 Growth Board only has authority to grant relief if Wright's Crossing can make a showing that
4 its requested amendment is required by the Growth Management Act or other law".⁹ In
5 order to prevail on its claims based on the County's decision not to docket the proposal, the
6 Petitioner must establish a duty requiring the County to do so. That duty would first arise
7 from a specific provision of the GMA or secondarily from a local regulation or policy. Absent
8 such a duty, the Board has held on numerous occasions that a decision not to docket a
9 proposal lies within the legislative discretion of the jurisdiction. In more than one instance
10 such a Board decision has been upheld on appeal.

11
12 As the Washington Supreme Court stated in *Stafne*:

13 While RCW 36.70A.130 authorizes a local government to amend
14 comprehensive plans annually, it does not require amendments. Moreover, it
15 does not dictate that a specific proposed amendment be adopted. [When] the
16 County takes an action pursuant to the authority of RCW 36.70A.130 or fails to
17 meet a duty imposed by some other provision of the GMA, [the petitioner] may
18 have an action that could properly be brought before the Board.¹⁰

19 Similarly, in considering the denial of a requested comprehensive plan and zoning map
20 amendment, the Board stated:

21 The Board concurs with the County and Intervenor: The Petitioners can prevail
22 if, and only if, the GMA, the County's Plan or its development regulations
23 impose a duty on the County to designate MRL during an annual update when
24 all applicable designation criteria are met.¹¹

25 ⁸ Petitioner's Response to Motions to Dismiss at 2.

26 ⁹ Island County's Motion to Dismiss at 7.

27 ¹⁰ *Stafne v. Snohomish County*, 174 Wn.2d 24, 38 (2012).

28 ¹¹ *Concrete Nor'West and 4M2K, LLC v. Whatcom County*, GMHB Case No. 12-2-0007 (Final Decision and
29 Order, September 25, 2012) at 11. That decision was upheld by the Court of Appeals in *Concrete Nor'West v.*
30 *W. Wash. Growth Mgmt. Hr'gs Bd.*, 185 Wn. App. 745 (2015). Review denied *Concrete Nor'West v. W. Wash.*
31 *Growth Mgmt. Hearings Bd.*, 183 Wn.2d 1009. See also: A decision not to docket a proposal for further
32 consideration does not result in an amendment to a plan or development regulation falling within the
Board's subject matter jurisdiction [See RCW 36.70A.280(1)]. Here the challenged action is such a
decision, and there is no evidence that the County has a duty to amend its plan to address the
Petitioner's proposal. *SR9/US2 II, Case No. 08-3-0004* (Order Granting Motion to Dismiss, April 19, 2009) at 5.
Denial of a docket request or private comprehensive plan amendment is not appealable under the GMA.
(citing multiple Board decisions) Thus, the City's mid-year decisions *not to amend* need not be re-
packaged with proposed amendments in an annual adoption cycle. *Petso II*, Case No. 09-3-0005 (Final

1 As previously observed, the County alleges numerous bases in support of its motion
2 to dismiss: that the Petitioner lacks standing to challenge RCW 36.70A.210(3); that portions
3 of its allegations are frivolous, and; that the Petitioner has failed to state a basis upon which
4 the Board can grant relief.¹² The Board will focus on the latter basis, finding that it is
5 dispositive. Additionally, in that the Board has determined to grant the County's Motion to
6 Dismiss, it will not address WEAN's Motion regarding Issue 1 (Issue 2 having been
7 withdrawn by the Petitioner).
8

9
10 C. The Petitioner lays out numerous GMA duties which it argues require the County to
11 docket the proposal, including the duties: to size urban growth areas to accommodate
12 growth-RCW 36.70A.110; to provide sufficient housing and adequate land for growth-RCW
13 36.70A.115; to designate sufficiently sized UGA's to efficiently provide infrastructure-RCW
14 36.70A.110(3); to adopt and follow countywide planning policies-RCW 36.70A.210 and
15 RCW 36.70A.215(1), and; to review and evaluate plans and regulations to achieve urban
16 densities capable of accommodating growth-RCW 36.70A.070(2)(a)-(d).¹³ Significantly, it
17 also stresses that amendments must be allowed annually, citing RCW 36.70A.130(1)(a) and
18 (2)(a).¹⁴
19

20 As to the last assertion, the Petitioner misstates the requirements of RCW
21 36.70A.130(1)(a) and (2)(a). The first statute, RCW 36.70A.130(1)(a), does provide for
22 continuing review and evaluation but that review/evaluation is to be conducted pursuant to
23

24
25 _____
26 Decision and Order, August 17, 2009) at 25. The Board finds it has no jurisdiction over the County's docketing
27 decisions. The Central Board decided:

28 When a local government includes a self-imposed duty in its plan, such as a deadline,
29 the consistency requirements of RCW 36.70A.070 and .120 oblige it to meet that duty;
30 however, it retains the discretion to amend its plan, including the revision or deletion of
31 such self-imposed duty, provided that it does so pursuant to the authority and
32 requirements of RCW.36.70A.130. COPAC- Preston Mill Inc. v. King County, CPSGMHB
33 Case No. 96-3-0013c (Final Decision and Order, August 21, 1996).

34 *Citizens for Good Governance, et al. v. Walla Walla County, et al*, EWGMHB Case No. 05-1-0001 (Final
35 Decision and Order, August 10, 2005).

36 ¹² Island County's Motion to Dismiss (February 9, 2018) at 4-8.

37 ¹³ Petitioner's Response to Motions to Dismiss (February 20, 2018) at 3.

38 ¹⁴ *Id.* at 3 and 8. "The County argues that Petitioner 'failed to state a claim' because there is no duty to update
39 its comprehensive plan outside of the periodic update process. But it ignores the GMA, the Comprehensive
40 Plan and CWPPs provisions that require an update based on changed circumstances."
41

1 the deadlines set out in RCW 36.70A.130(4) and (5).¹⁵ The County recently completed that
2 process, having reviewed and amended its comprehensive plan pursuant to the
3 requirements of RCW 36.70A.130(1)(a) in late 2016. The Petitioner did not challenge the
4 County's recent Comprehensive Plan update and, as to the issues it raises herein, it is
5 considered GMA compliant.

6
7 RCW 36.70A.130(2)(a) merely requires that jurisdictions identify "procedures and
8 schedules whereby updates, proposed amendments, or revisions of the comprehensive
9 plan are considered by the governing body of the county or city no more frequently than
10 once every year". It does not require a jurisdiction to accept for consideration any, or all,
11 proposed amendments. The Board disagrees with the Petitioner's assertion under the facts
12 of this case that "a review and evaluation" is required outside of the RCW 36.70A.130
13 update process whenever a party suggests the jurisdiction is out of compliance with "the
14 requirements of this chapter [the GMA]".¹⁶

15
16 The GMA statutes set forth by the Petitioner, and with which the Petitioner contends
17 the County is now out of compliance, would have been very recently addressed during the
18 County's RCW 36.70A.130 mandated regular comprehensive plan update process. As
19 stated, Island County completed that process pursuant to the RCW 36.70A.130(5)
20 schedule.¹⁷ The "continuing review and evaluation" referenced in RCW 36.70A.130(1)(a)
21 pertains to what is now an eight (8) year review cycle, not annually as suggested by the
22 Petitioner.
23

24
25
26
27
28 ¹⁵ Each comprehensive land use plan and development regulations shall be subject to continuing review and
29 evaluation by the county or city that adopted them. Except as otherwise provided, a county or city shall take
30 legislative action to review and, if needed, revise its comprehensive land use plan and development
31 regulations to ensure the plan and regulations comply with the requirements of this chapter according to the
32 deadlines in subsections (4) and (5) of this section. (emphasis added)

¹⁶ The Petitioner states: "The County is required by law to docket for further review any proposed amendments
to the Plan because amendments are required **on at least an annual basis if the GMA requires action.**"
(emphasis in original) Petitioner's Response to Motions to Dismiss (February 20, 2018) at 3.

¹⁷ Apparently, the Petitioner did not challenge the legislative decision approving the comprehensive plan
update.

1 With Petitioner's Issue 5, it alleges the County failed to "show its work" when it
2 declined to docket, declined to review the BLA, and decided against adding the lands to the
3 JPA. That concept arises from RCW 36.70A.110's requirement to properly size UGAs to
4 accommodate projected urban growth. Had the County chosen to docket the proposed UGA
5 expansion, the County would have been obligated to review, and possibly update, its BLA
6 on a county-wide basis and to "show its work" establishing that all UGAs were appropriately
7 sized. The obligation did not arise as the County declined to docket the request.
8

9 The Petitioner also suggests that the County's decision not to docket its proposals
10 was mandated by County Comprehensive Plan policies and provisions of the Island County
11 County-Wide Planning Policies (CWPPs).¹⁸ The Board agrees with the Petitioner when it
12 states that the County's Comprehensive Plan binds the County to "follow the requirements
13 of the CWPPs" even when considering an "out-of-cycle" UGA alteration.¹⁹ But the question
14 is whether there are any Comprehensive Plan policies or any CWPPs that require the
15 action(s) requested by the Petitioner. Included in the Plan policies and CWPPs cited by the
16 Petitioner are the following: (emphasis added)
17

18 Comprehensive Plan Policy 1.5.1.2.3: Existing UGAs may be modified
19 (expanded or reduced in size) when it can be demonstrated that the proposed
20 modification is consistent with CWPP Section 3.3. Generally UGAs should
21 only be enlarged or modified during the periodic update process; however,
22 UGAs may be modified outside of the periodic update process if necessary to
23 accommodate major and unanticipated fluctuations in Island County's
24 population, or if necessary to accommodate a large employer or institution
25 which cannot reasonably be accommodated within an existing UGA.
26 Urban Growth Areas may be expanded outside of a GMA mandated periodic
27 update cycle if the expansion is necessary for one of the following reasons.
28

29 ¹⁸ RCW 36.70A.210(1) provides that "a 'county-wide planning policy [CPP]' is a written policy statement or
30 statements used solely for establishing a county-wide framework from which county and city comprehensive
31 plans are developed and adopted pursuant to this chapter. This framework *shall ensure that city and county*
32 *comprehensive plans are consistent* as required in RCW 36.70A.100." "If the CPPs served merely as a
nonbinding guide, municipalities would be at liberty to reject CPP provisions and the CPPs could not ensure
consistency between local comprehensive plans. The Board was therefore correct to conclude that CPPs are
binding on the County." *King County v. Cent. Puget Sound Bd.*, 138 Wn.2d 161, 175, 176 (1999).

¹⁹ Petitioner's Response to Motions to Dismiss (February 20, 2018) at 10.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32

- A. Population growth in the UGA since the start of the planning period equals or exceeds 50% of the population growth allocated to the UGA at the start of the planning period; or
- B. Employment growth in the UGA since the start of the planning period equals or exceeds 50% of the employment growth allocated to the UGA at the start of the planning period; or
- C. Written notification is provided by the Department of Defense, or other reliable and verifiable information is obtained, indicating that prior to the next periodic update cycle, Whidbey Naval Air Station Whidbey staffing will increase in a manner which would result in population growth equal to or exceeding 50% of the population growth allocated to the UGA at the start of the planning period; or
- D. An opportunity is presented to bring a large scale business, industry, institution, or other and municipality agree that due to the facility or institution’s unique characteristics there is no suitable land available inside the current UGA.

If any of these criteria are met, it will trigger a reevaluation of the population projections, based on the range of options provided to the County by the Washington State Office of Financial Management. From there, the allocations and buildable lands analysis will also be reevaluated on a countywide scale.²⁰

...

UGA modifications outside of the period update cycle may be proposed by a municipality, the County, or an individual. Modifications proposed by municipalities or individuals shall be submitted to the County in a manner consistent with the County’s procedures for comprehensive plan amendments and placed on the County’s annual review docket. Modifications proposed by individuals shall not be approved by the County unless the modification is supported by the legislative authority of the affected municipality. For any proposed UGA modification, a current land capacity analysis shall be prepared and shall utilize the procedures described in the CWPPs.²¹

CWPP 2.2. Joint City and County Planning: Decisions regarding Joint Planning Areas, Municipal Urban Growth Areas, areas for future UGA

²⁰ Island County Comprehensive Plan, at 29 and 31.

²¹ *Id.*, at 30-31.

1 expansions, and JPA Overlay designations will be made by the County
2 and Municipalities in a cooperative fashion.²²

3 CWPP 3.3.3. Urban Growth Areas may be expanded outside of a GMA
4 mandated periodic update cycle if the expansion is necessary for one of
5 the following reasons. . . .

- 6 b. Employment growth in the UGA since the start of the planning
7 period equals or exceeds fifty percent of the employment growth
8 allocated to the UGA at the start of the planning period; or
- 9 c. Written notification is provided by the Department of Defense,
10 or other reliable and verifiable information is obtained, indicating
11 that prior to the next periodic update cycle, Naval Air Station
12 Whidbey staffing will increase in a manner which would result in
13 population growth equal to or exceeding fifty percent of the
14 population growth allocated to the UGA at the start of the planning
15 period; or²³

16 The Board has carefully reviewed all Comprehensive Plan sections and all CWPPs
17 referenced by the Petitioner. That includes consideration of the Comprehensive Plan
18 provision that states “For any proposed UGA modification, a current land capacity analysis
19 shall be prepared and shall utilize the procedures described in the CWPPs.” The County
20 observes, and the Board agrees, that such a requirement applies only if the County opts to
21 docket the proposal for further consideration. It does not apply until a UGA modification has
22 been docketed.

23 There are simply no cited Plan Policies or CWPPs that can be read to mandate
24 docketing of the Petitioner’s proposal. None of them are directive in nature so as to require
25 the action requested.

26
27 **D.** It is also evident that the County did not exercise its discretion to deny adding the
28 Petitioner’s proposals to the 2018 docket lightly. The Planning Commission and Board of
29 County Commissioner Findings of Fact attached to Resolution No. C-110-17 set forth with
30
31
32

²² Island County Resolution No. C-73-17, Exhibit A, Goal 1 (1)-(2), at.12.

²³ *Id.* at 17.

1 great specificity the factors considered by the County, including consideration of many of
2 the claims raised by the Petitioner in this matter.²⁴

3 Finally, reference to chapter 365-193 WAC is appropriate. That chapter constitutes
4 an extensive set of guidelines adopted by the Department of Commerce at the direction of
5 the state Legislature. While the guidelines do not establish requirements, they do make
6 recommendations for meeting GMA requirements. The chapter includes guidance for
7 counties when considering UGA expansions outside of the RCW 36.70A.130 update cycle.
8 It appears to the Board that the County, in exercising its discretion not to docket the
9 Petitioner's proposal, took the Department's guidance into consideration: (emphasis has
10 been added)

11
12 WAC 365-196-640(6) Docketing of proposed amendments.

13 (a) RCW 36.70A.470(2) requires that comprehensive plan amendment
14 procedures allow interested persons, including applicants, citizens, hearing
15 examiners, and staff of other agencies, to suggest amendments of
16 comprehensive plans or development regulations. This process should
17 include a means of docketing deficiencies in the comprehensive plan that
18 arise during local project review. These suggestions must be docketed and
19 considered at least annually.

20 (b) A consideration of proposed amendments does not require a full analysis
21 of every proposal within twelve months if resources are unavailable.

22 (c) As part of this process, counties and cities should specify what information
23 must be submitted and the submittal deadlines so that proposals can be
24 evaluated concurrently.

25 (d) Once a proposed amendment is received, the county or city may
26 determine if a proposal should receive further consideration as part of the
27 comprehensive plan amendment process.

28 (e) Some types of proposed amendments require a significant investment of
29 time and expense on the part of both applicants and the county or city. A
30 county or city may specify in its policies certain types of amendments that will
31 not be carried forward into the amendment process on an annual basis. This
32 provides potential applicants with advance notice of whether a proposed
amendment will be carried forward and can help applicants avoid the expense
of preparing an application.

²⁴ Resolution No. C-110-17, Exhibit B, at 5-14.

1 WAC 365-196-310(4)(e) County actions in adopting urban growth areas.

2 (i) A change to the urban growth area is an amendment to the comprehensive
3 plan and requires, at a minimum, an amendment to the land use element.
4 Counties and cities should also review and update the transportation, capital
5 facilities, utilities, and housing elements to maintain consistency and show
6 how any new areas added to the urban growth area will be provided with
7 adequate public facilities. A modification of any portion of the urban growth
8 area affects the overall urban growth area size and has county-wide
9 implications. Because of the significant amount of resources needed to
10 conduct a review of the urban growth area, and because some policy
11 objectives require time to achieve, frequent, piecemeal expansion of the
12 urban growth area should be avoided. Site-specific proposals to expand the
13 urban growth area should be deferred until the next comprehensive review of
14 the urban growth area. (emphasis added)

13 The Supreme Court's observation in *Stafne* is applicable here as well:

14 We agree with the board's determinations in cases like *Cole* and *SR 9/US 2*
15 *LLC*. County and city councils have legislative discretion in deciding to amend
16 or not amend their comprehensive plans. Absent a duty to adopt a
17 comprehensive plan amendment pursuant to the GMA or other law, neither
18 the board nor a court can grant relief (that is, order a legislative discretionary
19 act). In other words, any remedy is not through the judicial branch. Instead,
20 the remedy is to file a proposal at the County's next annual docketing cycle or
21 mandatory review or through the political or election process.²⁵

21 A local government legislative body has the discretion to docket or not docket a
22 particular proposed comprehensive plan amendment during a RCW 36.70A.130(2)(a) annual
23 cycle in the absence of a GMA or self-imposed mandate. Here, the Board finds and
24 concludes that the Petitioner has failed to meet its burden to establish the existence of such
25 a mandate.
26
27
28
29
30
31
32

²⁵ *Stafne v. Snohomish County*, 174 Wn.2d 24, 38 (2012).

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32

III. ORDER

- Island County's Motion to Dismiss is **Granted**.
- Having granted Island County's Motion to Dismiss, the Board finds it unnecessary to address WEAN's Motion to Dismiss Issue 1.
- Case No. 17-2-0011 is closed.

DATED this 2nd day of March, 2018.

William Roehl, Board Member

Nina Carter, Board Member

Bill Hinkle, Board Member

Note: This is a final decision and order of the Growth Management Hearings Board issued pursuant to RCW 36.70A.300.²⁶

²⁶ Should you choose to do so, a motion for reconsideration must be filed with the Board and served on all parties within ten days of mailing of the final order. WAC 242-03-830(1), WAC 242-03-840. A party aggrieved by a final decision of the Board may appeal the decision to Superior Court within thirty days as provided in RCW 34.05.514 or 36.01.050. The petition for review of a final decision of the board shall be served on the board but it is not necessary to name the board as a party. See RCW 36.70A.300(5) and WAC 242-03-970. It is incumbent upon the parties to review all applicable statutes and rules. The staff of the Growth Management Hearings Board is not authorized to provide legal advice.