

**CENTRAL PUGET SOUND
GROWTH MANAGEMENT HEARINGS BOARD
STATE OF WASHINGTON**

CITY OF BREMERTON, et al.,)	
)	CPSGMHB Consolidated Case
Petitioners,)	No. 04-3-0009c
)	(Bremerton II)
v.)	
)	
KITSAP COUNTY,)	ORDER ON
)	RECONSIDERATION
Respondent,)	
)	
MANKE LUMBER COMPANY;)	
OVERTON FAMILY; MCCORMICK)	
LAND COMPANY; OLYMPIC)	
PROPERTY GROUP; and PORT OF)	
BREMERTON,)	
)	
Intervenors,)	
)	
and)	
)	
1000 FRIENDS OF WASHINGTON,)	
)	
<i>Amicus Curiae.</i>)	

I. BACKGROUND

The Board issued its Final Decision and Order (**FDO**) in this matter on August 9, 2004.

On August 20, 2004 the Board received a Motion for Reconsideration from Petitioner Suquamish Tribe, *et al.* (**Motion to Reconsider**)

On August 23, 2004 the Board issued an Order Requesting Answer to Motion for Reconsideration, finding that the Petitioners' Motion was timely and setting a schedule.

The following responsive pleadings were received by the Board:

- Joinder of Respondents Overton & Associates, Olympic Property Group and Alpine Evergreen Co. in Response to Petitioners Motion for Reconsideration, August 26, 2004
- Intervenor Port of Bremerton's Reply to Motion for Reconsideration, August 27, 2004
- Kitsap County Response to Motion for Reconsideration, (**County Answer**) August 27, 2004
- Response of Intervenor McCormick Land Company to Motion for Reconsideration, August 27, 2004

On September 7, 2004, the Board received Petitioner's Motion for Leave to File Reply Brief with attached Reply Memorandum of Suquamish Tribe, et al., in Support of Motion for Reconsideration.

On September 8, 2004 the Board issued an Order Setting Date for Corrected Order on Reconsideration, establishing September 17, 2004 as the date for issuing its Order on Reconsideration.

II. DISCUSSION

The Board's rules at WAC 242-02-832(2) provide in relevant part:

(2) A motion for reconsideration shall be based on at least one of the following grounds:

(a) Errors of procedure or misinterpretation of fact or law, material to the party seeking reconsideration; . . .

Petitioners contend that the FDO misinterpreted a key fact concerning the size of the SKIA UGA and misinterpreted matters of law relating to several Legal Issues.

The Board acknowledges its factual error regarding the SKIA UGA and has reviewed its ruling with respect to the SKIA UGA in light of the corrected information.

As to the other legal issues in contention, having reviewed the FDO and the briefing of the parties, the Board declines reconsideration of these issues but has determined that some clarification of the Board's FDO discussion is warranted.

SOUTH KITSAP INDUSTRIAL AREA (SKIA)

Factual Correction and Discussion

In the Board's August 9, FDO the Board concluded 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." FDO, at 43.¹

The Board's review of the findings contained in Ordinance No. 311-2003 pertaining to the SKIA Subarea Plan,² and the SKIA Subarea Plan itself, led the Board to believe that while the existing SKIA UGA had been reconfigured, it had not been expanded.

However, in the Motion for Reconsideration Petitioners note that their prehearing brief identified "the magnitude of the SKIA UGA expansion as approximately 1710 acres." Motion to Reconsider, at 1-2.³ Additionally, Petitioners note that the County "will not contest that the impact of Ordinance No. 311-2003 was to increase the size of the [SKIA] UGA by approximately 1700 acres." *Id.* at 3.

In its Answer to Petitioners' motion, the County states,

The Board's conclusion that the County's 2003 adoption of the SKIA Subarea Plan did not expand the SKIA UGA is erroneous. According to the SKIA Subarea Plan, the 2003 amendments added approximately 1675 acres to the SKIA UGA. However, because that expansion of the SKIA UGA was justified under the Land Capacity Analysis included in the County's 1998 Comprehensive Plan, the Board's error is not material and therefore does not provide the basis for a Motion for Reconsideration.

County Answer, at 2. Since the parties agree that the SKIA UGA was expanded (apparently, somewhere between 1675 and 1710 acres), and notwithstanding the language in the Ordinance Findings and the confusing language in the Subarea Plan itself, the Board stands corrected. The question now becomes whether this SKIA UGA expansion complies with the UGA requirements of the GMA, as set forth in Legal Issues 12, 14 and 15.

Neither party suggests that the SKIA UGA expansion encompasses any residential land. Consequently, as the Board found in the FDO, the SKIA UGA expansion is for nonresidential (*i.e.* industrial and commercial) land uses. Has there been a land capacity

¹ The Board's entire discussion of the SKIA Subarea Plan is attached as Appendix A to this Order.

² Ordinance No. 311-2003, Section 6, Substantive and Procedural Findings Relating to the South Kitsap Industrial Area, A-1, at 16.

³ The Suquamish PHB stated, "[T]he SKIA Subarea Plan expands the UGA to include approximately 1,710 gross acres and designates them 'Industrial' and 'Business Park.'" Citing Suquamish PHB, at 30.

analysis to address the need for this expansion of the UGA? Again, as the Board discussed in the FDO, “the SKIA Subarea Plan is accompanied by an Industrial Land Capacity discussion and Appendix C.” See Appendix A.

The County explains in its Answer,

[A] Land Capacity Analysis for the SKIA UGA was conducted as part of the County’s 1998 Comprehensive Plan; that Land Capacity Analysis included the 1675 acre expansion area added to the UGA in the County’s 2003 Amendments. See Economic Development Appendix, pp. 174-187, to the Kitsap County Comprehensive Plan, May 7, 1998.⁴ At that time, after calculating its total industrial land needs through 2017, the County “reserved” 1,904 acres of those needed lands to account for employment needs for the 2013 to 2017 period:

The map reserves 1904 acres of the designated industrial lands for employment needs of the 2013-2017 period; this land is designated Urban Reserve to [preserve] planning options until the appropriate plan amendments can be made.

Comprehensive Plan, at 92.

The County then designated these areas as “Urban Joint Planning Areas,” requiring that certain outstanding provision of service and governance issues be resolved before the County included the areas within the UGA. *Id.* Thus, while the County conducted the required Land Capacity Analysis and planned for redesignating this property as industrial and including it within the SKIA UGA, it kept the expansion area in reserve status and delayed the actual implementation of the redesignation and UGA expansion until more thorough subarea planning was completed. [The County then went on to cite this Board’s conclusions in the *Alpine* case, where the Board upheld the County’s Industrial and Commercial Land Capacity Analysis including the 1904 acres of Industrial Reserve area, which is at issue in this proceeding.]

County Answer, at 2-3.⁵

⁴ In a footnote, the County notes that the land capacity analysis was discussed in the SKIA Subarea Plan and included in an Appendix – both are referenced in the FDO.

⁵ The Board notes that Petitioners filed a reply to the County’s answer, which was not requested or desired. There Petitioners argue that the County’s buildable lands report did not compel the expansion of the SKIA UGA. Petitioners’ Reply to County Answer, at 1-2. The Board rejects this argument for two reasons. First, the Board addressed the BLR in the FDO and will not reopen that issue here; second, as the area in question was already included in the land capacity analysis done by the County in 1998, it logically follows that these lands were within the base area upon which the BLR was conducted.

To summarize, the Board agrees with the County: the factual error regarding the size of the SKIA UGA expansion is not material to the Board's conclusion. An industrial and commercial land capacity analysis was conducted for this area; it was identified and designated in 1998 as an area appropriate for industrial and commercial uses and for UGA expansion – an Industrial Reserve; outstanding issues have been resolved among the affected governmental entities – as evidenced by the SKIA Subarea Plan, and its inclusion of the 1700+/- acres in the UGA is appropriate.

As noted in the FDO the initial UGA abuts the city-limits of Bremerton; this expansion is of the initial UGA. The Board is not persuaded by Petitioners that the SKIA UGA expansion failed to meet the locational criteria of the Act.

Consequently, even in light of the corrected fact regarding the 1700 acre SKIA UGA expansion, the Board **affirms** its conclusion in the August 9, 2004 FDO – 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**.

LEGAL ISSUES REGARDING LAND-CAPACITY ANALYSIS AND BLR

Clarification

Petitioners Suquamish Tribes, *et al.*, challenged Kitsap County's subarea UGA expansions as "oversized, and therefore noncompliant" with the GMA. *See* Suquamish PHB, at 18-28. Petitioners' legal theories included Legal Issues No. 12, 17, and 18.⁶

In the Board's August 9, 2004 FDO, with respect to each of the three UGA subareas at issue, the Board concluded in each instance:

Petitioners have **failed to carry the burden of proof** in demonstrating noncompliance with the GMA.

FDO, at 40, 43, 46.

Petitioners challenged Kitsap's failure to consider its Buildable Lands Report analysis in adopting the subarea UGA expansions (Legal Issues 17 and 18) and its failure to adopt

⁶ *Legal Issue 12: Did the County violate RCW 36.70A.110 in using the Ordinance to expand UGAs?*

Legal Issue 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 UGAs to accommodate projected growth?

Legal Issue 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?

reasonable measures to address inconsistencies between the Comprehensive Plan and actual development patterns in the county (Legal Issues 18, 19, 20, and 21).

In the Board's August 9, 2004 FDO, with respect to Buildable Lands and Reasonable Measures, the Board concluded:

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's CPP and Plan. The Act, as interpreted by this Board in *FEARN*, requires the County to implement reasonable measures no later than December 1, 2004. Therefore the Tribe's challenge in this issue is untimely.

FDO, at 55.

In their Motion for Reconsideration, Petitioners contend:

- that the Board failed to resolve Legal Issue No. 17 (expansion of UGAs despite BLR finding of sufficient capacity within existing UGAs), Motion to Reconsider, at 5-8;
- that the Board erroneously treated subarea land capacity analyses as substitutes for a county-wide land capacity analysis, *Id.*, at 8-11; and
- that the Board misconstrued the five-year time frame for adopting reasonable measures in RCW 36.70A.215(4), *Id.*, at 11-13.

In its Response to Petitioners Motion for Reconsideration, the County states:

The remaining issues raised in Petitioners' Motion for Reconsideration amount to no more than a re-briefing of the arguments included in Petitioners' briefing on the merits. While Petitioners argue that the Board did not address several of its [sic] arguments, the reality is that the Board ruled against Petitioners on those arguments. The fact that the Board disagreed with Petitioners' legal analysis does not provide a basis for a Motion for Reconsideration under WAC 242-02-832.

County Answer, at 4.

The Board agrees with the County and **declines reconsideration** of the legal issues in contention.

Nevertheless, acknowledging that the structure of the Board's FDO, particularly the Board's discussion of overlapping Legal Issues 12, 17, and 18 in different sections of the FDO may not have been as clear as the Board desired, the Board provides the following clarification.

Land-Capacity Analysis Requirement

The Board's August 9, 2004 FDO, at pages 34-35, discusses the sizing requirement for UGA designations. The discussion first addresses the *periodic county-wide planning update* mandated by RCW 36.70A.130(3).

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.

FDO, at 34, emphasis in original, citations omitted.

The Board's Order then speaks to UGA changes which may be considered other than during the 10-year update. For these decisions, the Board has adopted a "show your work" rule. As stated in the FDO:

The Board has made clear that changes in the size of UGAs must be supported by land capacity analyses and the County must "show its work." "If UGAs are altered and challenged...this Board requires an accounting to support the alteration." ...

The land capacity analysis required in RCW 36.70A.110(1) and (2), now underscored by the buildable lands reports required by RCW 36.70.215, is a vital component of the work that must be shown.

FDO, at 34, 35, citations omitted.

In adopting its 1998 Comprehensive Plan, Kitsap left unresolved the accommodation of some of the county's projected residential and industrial growth. Kitsap's county-wide land capacity analysis and urban population allocations indicated Kitsap's intent to make future adjustments of the urban growth boundaries following more detailed subarea planning. The County "reserved" land area and population allocation for this work.

The County's subsequent decision to extend the planning horizon for the subarea plans from 2012 to 2017 did not by itself trigger the requirement for a new *county-wide* land capacity analysis. The Board found that Kitsap properly prepared and used detailed *subarea* land capacity calculations in designating the resultant subarea UGAs.

SKIA UGA

See FDO, at 40-43 and clarification discussion, *supra*, at 3, 4.

ULID #6 UGA

The County has shown the work it has done as a basis for the decision to expand ULID #6 UGA. The work included a land capacity analysis applying the methodology used in the 1998 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.

FDO, at 39.

Kingston UGA

A detailed Holding Capacity Analysis [for the Kingston Subarea Plan] 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.

FDO, at 45.

The Board rejects Petitioners’ theory that *county-wide* land capacity analysis is required in these instances. However, a *county-wide* land capacity analysis is required for periodic reviews. The next periodic review, per RCW 36.70A.130, is required for Kitsap County by December 1, 2004.

The Board reads RCW 36.70A.130 to require that on or before December 1, 2004 (.130(4)(a)), Kitsap County’s planning cycle must be brought into the GMA sequence, using OFM’s most recent ten-year population forecast, (.130(1)(a)), evaluating its UGA boundaries and densities (.130(3)), and applying BLR findings to its UGA decisions (.130(3) and .215).

Consequently, the Board rejects Kitsap’s implicit contention that it may continue to use and extend outdated population projections and land-capacity analysis so long as some portion of a previously-valid number has not yet been allocated. Nor is Kitsap’s dismissal of the relevance of its own BLR findings credible. Kitsap, through its own tardiness in complying with GMA requirements, is out of sequence with the general scheme of the Act.

Legal Issue No. 17

Each of the UGA extensions in this case involves a subarea plan based on reserve lands and reserved population allocations from the 1998 Comprehensive Plan. UGA expansions into these areas were anticipated and accounted for in the 1998 Plan. Therefore the Board concluded that the County's BLR findings, related to the three challenged Sub Area Plans and related UGA expansions, did not apply to these specific and limited circumstances.

Five-Year Time Frame for Adopting Reasonable Measures

Petitioner contends that the Board's ruling on the Buildable Lands requirement is based on misinterpretation of the law through a misconstruing of the five-year time frame for adopting reasonable measures. Motion to Reconsider, at 11.

RCW 36.70A.215(4) provides in pertinent part:

(4) If [the buildable lands evaluation] demonstrates an inconsistency between what has occurred since the adoption of the county-wide planning policies...and what was envisioned in those policies and plans and the planning goals and the requirements of this chapter, ... the county and its cities shall adopt and implement measures that are *reasonably likely to increase consistency during the subsequent five-year period*.

(Emphasis added.)

Petitioner reads "subsequent" to mean "the five-year time period subsequent to the time-frame analyzed in the BLR." Motion to Reconsider, at 11, *citing* Tribe Reply, at 3. As the time frame analyzed in Kitsap's BLR is 1995-99, the "subsequent" five-year period, 2000-2004, is almost at an end. *Id.* Petitioner acknowledges that applying the statutory time frame in this manner creates an untenable result. "This violates the standard rule of statutory construction..." *Id.* at 12, and urges the Board to reconsider its ruling that "failure to act" challenges prior to December 1, 2004 are untimely.

The Board **declines to reconsider** its Order based on such a strained and admittedly-unworkable reading of the statute. A plain reading of the statute is that the phrase, "during the subsequent five-year period," refers to the period subsequent to the required action of a county or city to "adopt and implement measures that are reasonably likely to increase consistency."

III. ORDER

The Board having reviewed Petitioners' Motion for Reconsideration, the Board's August 9, 2004 Final Decision and Order, the briefing and exhibits and materials submitted by the parties, the GMA, the Board's Rules of Practice and Procedure, prior decisions of this

Board and other Growth Management Hearings Boards, case law, and deliberating and considering the matter, the Board enters the following ORDER:

Regarding SKIA:

- The Suquamish Tribe's Motion for Reconsideration is **granted in part** and **denied in part**. The Board **corrects** the factual error regarding the SKIA UGA expansion. Nonetheless, the Board **affirms** its conclusion that Petitioners have failed to carry the burden of proof in challenging the SKIA subarea plan.

Regarding Land Capacity Analysis, Legal Issue 17 and Subsequent Five Year Period:

- The Motion for Reconsideration is **denied**. However, the Board **clarifies** and **supplements** its conclusions in the August 9, 2004 FDO with the discussion contained herein.

So ORDERED this 16th day of September 2004.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

Bruce C. Laing, FAICP
Board Member

Edward G. McGuire, AICP
Board Member

Margaret A. Pageler
Board Member

Note: Pursuant to WAC 242-02-832(3), a Board Order on Reconsideration is not subject to a motion for reconsideration.

APPENDIX A

Board Discussion of the South Kitsap Industrial Area (SKIA) UGA From the Board's August 9, 2004 FDO (pp. 40-43)

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. 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 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.⁷

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-

⁷ Appendix C to the SKIA Subarea Plan was not included among the Core Documents provided to the Board.

wide land capacity analysis⁸ 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.

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**.

⁸ 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.