

1 BEFORE THE WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

2
3 IRONDALE COMMUNITY ACTION
4 NEIGHGBORS (ICAN),

5 Petitioners,

6 v.

7
8 JEFFERSON COUNTY,

9 Respondent.

Case No. 07-2-0012

FINAL DECISION AND ORDER

Case Nos. 03-2-0010 and 04-2-0022

ORDER ON COMPLIANCE

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11
12 **I. SYNOPSIS OF DECISION**

13 This order arises from prior orders finding non-compliance on issues relating to Jefferson
14 County's establishment of a non-municipal urban growth area (UGA) in the Irondale and
15 Port Hadlock region. Final Decision and Order/Compliance Order, WWGMHB Case Nos.
16 04-2-0022 and 03-2-0010, May 31, 2005 and Compliance Orders, May 30, 2006. The
17 County does not request a compliance finding on the central task still facing it – the plan for
18 provision of urban levels of service (especially sewer) for the UGA during the 20-year
19 planning period of the comprehensive plan. On that score, the County has sought and been
20 granted more time due to the “unusual scope and complexity” of the task. Instead, this
21 Order addresses only minor compliance issues as identified in the April 9, 2007 Order
22 Finding Continuing Compliance and Granting Additional Time for Compliance and those
23 issues raised in the new petition for review in case no. 07-2-0012.

24 In this combined Final Decision and Order and Order on Compliance the Board concludes
25 that County Policy TRP 1.10 is in compliance with RCW 36.70A.020(6) and
26 36.70A.130(1)(d) because the administrative discretion it grants regarding urban design for
27 roadways is properly limited and implemented by JCC 18.30.080(1)(a).
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1 The Board also finds that TRP 4.10(2) does not impermissibly allow degradation of the
2 Level of Service standards, and that the County has appropriate development regulations in
3 place to preserve LOS.

4
5 The Board finds that the County's Transportation Plan is now compliant with the GMA. The
6 County has corrected previously identified math errors. Its assumptions regarding traffic
7 generation from industrial and commercial land are within the range of appropriate
8 discretion and not clearly erroneous.

9
10 As agreed by the parties it is appropriate to defer any determination regarding the County's
11 use of a market factor until the County has revised its UGA boundaries.

12
13 The Board finds that Policy 1.6 inappropriately allows land designated as Urban Residential
14 on the Zoning Map to be designated Urban Commercial on the Future Land Use Map, in
15 violation of RCW 36.70A.110(2) and RCW 36.70A.130(1)(d).

16
17 The Board further finds a lack of compliance with RCW 36.70A.070(3) in that the County, by
18 removing references which incorporated the PUD Water Supply Plan, no longer
19 incorporates the necessary inventory of capital facilities.

20
21 Finally, the Board finds that the County remains out of compliance with regard to references
22 in its plan to the appropriate 20 year planning period.

23 24 25 **II. PROCEDURAL HISTORY**

26 In our May 2005 Decision and Order, the Board determined that the Irondale/Hadlock UGA
27 and its implementing regulations did not comply with the GMA because the County's Capital
28 Facilities Plan for the area did not provide sanitary sewer service throughout the proposed
29 UGA over the 20-year planning period, and the plan failed to show a firm funding element
30 for sewer service within the first six years.

1 In subsequent rulings issued May 30, 2006 and April 9, 2007, we again referenced non-
2 compliance in the Unified Development Code and Comprehensive Plan, and established a
3 timeline by which legislative measures needed to be taken. In our May 30, 2006
4 Compliance Order we found that the 2004 update did not address the non-compliance
5 findings in Conclusions of Law C, E, F, G and H of the May 31, 2005 Final Decision and
6 Order/Compliance Order. An amended three month compliance schedule was issued on
7 May 2, 2007. The first actions to be taken according to the timeline were the minor
8 corrections referenced in Conclusions of Law G through I of the May 31, 2005 FDO, while
9 compliance for sewer facility planning and adoption of revised UGA boundaries would follow
10 in April of 2008, and compliance for development regulations for the Port Hadlock/Irondale
11 UGA would follow in April of 2009.

12
13
14 This order addresses the following non-compliance findings from the original Final Decision
15 and Order:

16 Conclusion of Law G, which found that TRP 1.10 of the Transportation Element failed
17 to link transportation improvements to the County's level of service standards does
18 not comply with RCW 36.70A.070(6)(b).

19 Conclusion of Law H, which found that the County's use of a market factor to
20 increase the OFM population range on which planning is based in the Irondale and
21 Port Hadlock UGA does not comply with RCW 36.70A.110(2).

22 Conclusion of Law I, finding UGA policy 1.6 to be non-compliant with RCW
23 36.70A.130(1)(b) and 36.70A.110(2).

24 Conclusion of Law K, which provided that amendments to the PUD's water supply
25 system will automatically incorporated by reference into the County's Comprehensive
26 Plan without the opportunity for review and comment fails to comply with the public
27 participation requirements of the GMA.

28
29 On July 10, 2007 the County filed its Report of Action Taken detailing its actions in
30 complying with the first milestone of the May 2, 2007 Amended Three Month Compliance
31 Schedule.

1 On September 4, 2007 Petitioners filed a new petition for review challenging provisions of
2 Ordinance No. 04-0702-07, the ordinance adopted by the County in order to come into
3 compliance with the items identified in Conclusions of Law G through K.

4
5 On October 2, 2007 the Board considered ICAN's motion to conduct the Compliance
6 hearing on case Nos. 03-2-0010 and 04-2-0022, at the time of the Hearing on the Merits on
7 case No. 07-2-0012. The Board denied the motion and determined to set an expedited
8 schedule for case No. 07-2-0012 and issue a single order on the County's compliance
9 efforts taken in enacting Ordinance No. 04-0702-07, following the Hearing on the Merits in
10 that case.
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12
13 On October 9, 2007 the Board conducted a Compliance Hearing on case Nos. 03-2-0010
14 and 04-2-0022.

15
16 On December 17, 2007 we conducted the Hearing on the Merits on case No. 07-2-0012. At
17 both hearings, ICAN was represented by Gerald Steel. The County was represented by
18 Mark Johnson. All three Board members attended both hearings which were held at the
19 Board offices in Olympia, Washington.
20

21 III. ISSUES PRESENTED

22 The following issues were presented in the Petition for Review in this case:

- 23 1. Whether TRP 1.10, adopted by Ordinance No. 04-0702-07, complies with RCW
24 36.70A.020(6) and 36.70A.130(1)(d) when it gives administrators discretion to
25 determine when it is "deemed appropriate" to require urban design standards but fails
26 to provide clear and detailed criteria for exercising that discretion?
27
28 2. Whether the County has fully implemented the "deemed appropriate" criterion in TRP
29 1.10 in development regulations in a manner that is consistent with and implements
30 this policy in compliance with RCW 36.70A.020(6), 36.70A.040(3) and
31 36.70A.130(1)(d)?
32

- 1 3. Whether TRP 4.10(2), adopted by Ordinance No. 04-0702-07, complies with RCW
2 36.70A.070(6)(b), 36.70A.070(6)(a) and 36.70A.020(12) because it authorizes an
3 impact fee ordinance that would collect fees that allow development approval without
4 any requirement that the impacted transportation facilities would be improved in the
5 statutory timeframe?
6
- 7 4. Whether the UGA Transportation Plan adopted by Ordinance No. 04-0702-07 has
8 underestimated the UGA Average Daily Trips (ADT) for vacant commercial
9 designated lands for 2011 to 2024 in a manner inconsistent with the Urban Growth
10 Area Element of the Comprehensive Plan in violation of RCW 36.70A.070 (preamble)
11 (“internally consistent”)?
12
- 13 5. Whether the UGA Transportation Plan adopted by Ordinance No. 04-0702-07 has
14 underestimated the increase in UGA Average Daily Trips (ADT) between 2004 to
15 2024 on lands in the UGA with existing rural commercial and industrial development
16 in a manner inconsistent with the designation of the UGA in the Comprehensive Plan
17 in violation of RCW 36.70A.070 (preamble) (“internally consistent”)?
18
- 19 6. Whether an underestimate of ADT alleged in issues 4 and 5, above, causes the
20 transportation capital facilities and fiscal planning in the Transportation Plan for 2004-
21 2024 to be inconsistent in the remainder of the Comprehensive plan in violation of
22 RCW 36.70A.070 (preamble) (“internally consistent”)?
23
- 24 7. Whether the UGA Transportation Plan and Commercial land use designations in the
25 UGA should be found in violation of RCW 36.70A.070 (preamble) (“internally
26 consistent”) based on the allegations contained in issues 4, 5 and 6?
27
- 28 8. Whether the County, in deleting rather than making corrections to its market factor
29 analysis on page 2-8 of the Comprehensive Plan, is in noncompliance with RCW
30 36.70A.130 (1) (d) and 36.70A.110(2) for failing to provide an adequate population
31 growth needs and capacity analysis particularly when virtually all of the population
32 growth for the UGA can be accommodated on vacant land proposed for multifamily
development?

- 1 9. Whether the County's amended 37% market factor in the UGA is justified and in
2 compliance with RCW 36.70A.130(1)(d) and 36.70A.110(2)?
- 3 10. Whether UGA Policy 1.6 as amended fails to comply with RCW 36.70A.130(1)(b)
4 and 36.70A.040(3) by proposing zoning not be required to implement new
5 commercial land use designations?
- 6 11. Whether UGA Policy 1.6 as amended fails to comply with RCW 36.70A.130(1)(b) and
7 36.70A.110(2) because it authorizes the County to enlarge the UGA commercial area
8 at the whim of property owners if the property owners can provide "any"
9 documentation that their property is wanted for commercial development?
- 10 12. Whether the removal of the PUD Water Supply Plan from the Comprehensive Plan
11 causes the County to fail to meet the requirements of RCW 36.70A.070(3)(a), (b),
12 and (c) for water planning for the UGA?
- 13 13. Whether any portion of Ordinance No. 04-0702-07 found not to comply with the Act
14 in issues 1 to 12 above should also be found invalid under RCW 36.70A.302 for
15 substantial interference with the fulfillment of Goals 1, 2, 5, 6, 9, 10, 11, and/or 12?
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19 In its briefing for the Compliance hearing on this case, ICAN raised an issue regarding the
20 adequacy of public notice the County provided during the adoption of Ordinance No. 04-
21 0702-07.¹ However, that issue was abandoned by ICAN at the October 9, 2007 Compliance
22 hearing.
23

24 The compliance issues before the Board from the Final Decision and Order of May 31, 2005
25 are:

26 Conclusion of Law G: Policy TRP 1.10 of the Transportation Element of the
27 County's comprehensive plan does not comply with RCW 36.70A.070 (6) (b)
28 since the County does not have a regulation that links the County's requirements
29 for transportation improvements at the time of development to the County's level
30 of service standards.
31

32 ¹ ICAN's Objections, at 6-7.

1 Conclusion of Law H: The County's use of a market factor to increase the OFM
2 population range on which planning is based in the Irondale and Port Hadlock UGA
3 does not comply with RCW 36.70A.110(2).

4 Conclusion of Law I: UGA Policy 1.6 fails to comply with RCW 36.70A.110(2) and
5 RCW 36.70A.130(1)(b).

6 Conclusion of Law K: The incorporation of future amendments to the PUD's water
7 supply plan into the County's comprehensive plan without opportunity for review and
8 comment through the County's comprehensive plan amendment process does not
9 comply with the RCW 36.70A.130(2) and RCW 36.70A.140.

10 Additionally, the following additional compliance issue identified in the May 30, 2006

11 Compliance Order is before the Board:

12 Conclusion of Law F: The failure to use the same planning period throughout the
13 County's comprehensive plan is clearly erroneous and violates RCW 36.70A.070.

14 **IV. BURDEN OF PROOF**

15 For purposes of board review of the comprehensive plans and development regulations
16 adopted by local government, the GMA establishes three major precepts: a presumption of
17 validity; a "clearly erroneous" standard of review; and a requirement of deference to the
18 decisions of local government.
19

20 Pursuant to RCW 36.70A.320(1), comprehensive plans, development regulations and
21 amendments to them are presumed valid upon adoption:
22

23 Except as provided in subsection (5) of this section, comprehensive plans and
24 development regulations, and amendments thereto, adopted under this chapter are
25 presumed valid upon adoption.
26

27 RCW 36.70A.320(1).

28 This same presumption of validity applies when a local jurisdiction takes legislative action in
29 response to a noncompliance finding; that legislative action is presumed valid. The only
30

1 time that the burden of proof shifts to the County is when the County is subject to a
2 determination of invalidity.²

3
4 The statute further provides that the standard of review is whether the challenged
5 enactments are clearly erroneous:

6 The board shall find compliance unless it determines that the action by the state
7 agency, county, or city is clearly erroneous in view of the entire record before the
8 board and in light of the goals and requirements of this chapter.
9 RCW 36.70A.320(3).

10 In order to find the County's action clearly erroneous, the Board must be "left with the firm
11 and definite conviction that a mistake has been made." *Department of Ecology v. PUD1*,
12 121 Wn.2d 179, 201, 849 P.2d 646 (1993).

13
14 Within the framework of state goals and requirements, the boards must grant deference to
15 local governments in how they plan for growth:

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

27 In challenging the sufficiency of compliance efforts as well as in an initial petition for review,
28 the burden is on Petitioners to overcome the presumption of validity and demonstrate that
29 any action taken by the County is clearly erroneous in light of the goals and requirements of
30 Ch. 36.70A RCW (the Growth Management Act). RCW 36.70A.320(2). Where not clearly
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² RCW 36.70A.320(2) and (4).
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1 erroneous, and thus within the framework of state goals and requirements, the planning
2 choices of local government must be granted deference.

3 4 V. DISCUSSION

5 ***Preliminary Matter – Scope of Compliance Hearing vs. New Petition for Review***

6
7 Petitioners request that the Board issue a ruling that “its policy is to hear and decide all
8 issues of continued noncompliance, even on alternative grounds, in a Compliance Hearing
9 such that a new petition is not required for arguments related to continued noncompliance.”³

10 Petitioners argue that it takes less resources to hear and decide all issues of non-
11 compliance in a compliance hearing rather than adding a new independent case.⁴

12 While the present case, in which the arguments made during the Compliance Hearing and
13 the Hearing on the Merits were substantially the same, might serve as an example of how
14 Petitioners’ suggested ruling would serve the interests of efficiency, we decline to issue
15 such a ruling.
16

17
18 WAC 242-02-210(2)(c) provides that a petition for review shall contain “A detailed statement
19 of the issues presented for resolution by the board that specifies the provision of the act or
20 other statute allegedly being violated and, if applicable, the provision of the document that is
21 being appealed.” (emphasis added). It is the petition for review that defines the scope of
22 the issues during the proceedings leading up the hearing on the merits, and in subsequent
23 compliance hearings. Petitioners’ suggestion that the Board hear arguments “on alternative
24 grounds” would broaden the scope of issues beyond those raised in the original petition for
25 review to the prejudice of the local jurisdiction. Alternative grounds for noncompliance are
26 more properly brought as new issues in a petition for review challenging the action the local
27 jurisdiction took to attain compliance.
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32 _____
³ ICAN’s Opening Brief (WWGMHB Case No. 07-2-0012) at 2.

⁴ Id. at 3.

1 Petitioners request that this Board use this Order and an opportunity to create a new rule on
2 the scope of compliance procedures. We note that Board rules of practice and procedure
3 are adopted by all three Growth Management Hearings Boards, pursuant to RCW
4 36.70A.270(7). Any person may petition the joint boards for the adoption of a rule according
5 to the procedures set out in WAC 242-02-052.
6

7 Further, we would note that the Board does not have the authority to foreclose a petitioner
8 from filing a new petition for review based on the fact that there is a pending compliance
9 case. RCW 36.70A.280 and 36.70A.290 set out the requirements for filing a petition for
10 review. There is no basis in these provisions for barring a petition for review on a new
11 legislative enactment on the grounds that there is a compliance case pending. The boards
12 have the authority to consolidate petitions under RCW 36.70A.290(5) and a new party may
13 choose to participate in the compliance proceeding pursuant to RCW 36.70A.330(2) rather
14 than filing a new petition. However, the boards may not dismiss a new petition for review
15 merely because it raises a challenge to an enactment adopted in response to a non-
16 compliance finding. Because of these statutory constraints, the boards are relegated to
17 addressing efficiency by attempting to consolidate and coordinate new petitions with
18 compliance cases and, where possible, setting an expedited schedule for the new petition.
19
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21

22 ***Issues 1, 2 and Conclusion of Law G***

23 Issues 1 and 2 from the new petition and Conclusion of Law G from the Final Decision and
24 Order are related and will be discussed together:
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26 **Issue #1:** Whether TRP 1.10, adopted by Ordinance No. 04-0702-07, complies with RCW
27 36.70A.020(6) and 36.70A.130(1)(d) when it gives administrators discretion to determine
28 when it is “deemed appropriate” to require urban design standards but fails to provide clear
29 and detailed criteria for exercising that discretion?

30 **Issue #2:** Whether the County has fully implemented the “deemed appropriate” criterion in
31 TRP 1.10 in development regulations in a manner that is consistent with and implements
32 this policy in compliance with RCW 36.70A.020(6), 36.70A.040(3) and 36.70A.130(1)(d)?

1 **Conclusion of Law G:** Policy TRP 1.10 of the Transportation Element of the County's
2 comprehensive plan does not comply with RCW 36.70A.070 (6) (b) since the County does
3 not have a regulation that links the County's requirements for transportation improvements
4 at the time of development to the County's level of service standards.

5 **Positions of the Parties**

6 In its arguments in the compliance phase of this case, ICAN challenged the language in
7 TRP 1.10 that states:

8 Encourage the use of roadway features that enhance urban qualities
9 by applying urban design standards as deemed appropriate

10 ICAN asserts this language gives administrators discretion to determine when it is "deemed
11 appropriate" to require urban design standards but fails to provide clear and detailed criteria
12 for exercising that discretion and that the GMA requires that the policies in the
13 Comprehensive Plan be clear and not subject to arbitrary interpretation inconsistent with
14 RCW 36.70A.020(6).⁵

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17 In response, the County argues that this objection was not raised by ICAN prior to filing its
18 objections to compliance, and that the reference to TRP 1.10 in the May 2005 FDO was a
19 typo.⁶ In any event, the County notes that TRP 1.10 does not implement the County's
20 concurrency policy; that concurrency is implemented by TRP 4.10 and section 6.2.5 of the
21 Unified Development Code. Instead, the County points out, TRP 1.10 addressed the
22 appropriate application of urban design standards such as curbs, gutters and sidewalks,
23 and is implemented by JCC 18.30.080(1)(a) which adopts by reference the County's road
24 standards.
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⁵ ICAN's Objections at 9.

⁶ Jefferson County's Reply to ICAN's Objections, at 4.

1 **Board Discussion**

2 As a preliminary matter, we find that TRP 1.10 was before us on compliance. ICAN's
3 opening brief for the earlier Hearing on the Merits made a clear challenge to the TRP 1.10
4 where it alleged TRP 1.10 was not in compliance with RCW 36.70A.070(6).⁷ The Board's
5 May 31, 2005 FDO found "We find that Policy 1.10 does not comply with RCW
6 36.70A.070(6) without a concurrency requirement that links transportation improvements
7 and development approval to maintaining the County's LOS.⁸ Even if there is some
8 confusion in the Final Decision and Order concerning the comprehensive plan policy at
9 issue, and prior Board orders made reference to TRP 1.10 instead of TRP 4.10 by mistake,
10 an objection on that basis is untimely. Furthermore, as the Board is now also considering a
11 new PFR that clearly challenges TRP 1.10, the issue is squarely before us.
12

13
14 TRP 1.10 is implemented by JCC 18.30.080(1)(a) which adopts by reference the County's
15 road standards, including the American Association of State Highway and Transportation
16 Officials *Policy on Geometric Design of Highways and Streets*, Washington Department of
17 Transportation *Highway Design Manual*, Federal Highway Administration Manual on
18 Uniform Traffic Control Devices, and Transportation Research Board *Highway Capacity*
19 *Manual*. The requirement that the County engineers follow the referenced design manuals
20 in JCC 18.30.080(1)(a) is a sufficiently specific delegation to implement TRP 1.10.
21

22
23 Additionally, the policy being implemented by TRP 1.10 -- to "encourage" roadway features
24 to enhance urban qualities in the UGA -- is a laudable comprehensive plan policy, but not
25 one required by the GMA.
26

27 The cases ICAN relies upon for the assertion that urban design standards must have "clear
28 and detailed criteria" so that they are not subject to arbitrary interpretation in fact dealt with
29
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32 ⁷ ICAN's March 8, 2005 Opening Brief, at 18-19.

⁸ May 31, 2005 FDO at 27 and 49.

1 development regulations, not comprehensive plan policies.⁹ In *WEC v. Whatcom County*
2 and *Pilchuck v. Snohomish County*, the Western and Central Boards were addressing
3 administrative discretion in the interpretation of critical areas ordinances, an area local
4 jurisdictions are required to regulate. As we have just noted, JCC 18.30.080(1)(a) is
5 sufficiently specific to implement TRP 1.10.
6

7 **Conclusion:** Policy TRP 1.10 is appropriately implemented by JCC 18.30.080(1)(a). This
8 policy is not mandated by the GMA and the adoption of JCC 18.30.080(1)(a) to implement it
9 is not a clearly erroneous violation of RCW 36.70A.020(6) or RCW 36.70A.130(1)(d).
10

11 **Issue #3:** Whether TRP 4.10(2), adopted by Ordinance No. 04-0702-07, complies with
12 RCW 36.70A.070(6)(b), 36.70A.070(6)(a) and 36.70A.020(12) because it authorizes an
13 impact fee ordinance that would collect fees that allow development approval without any
14 requirement that the impacted transportation facilities would be improved in the statutory
15 timeframe?
16

17 **Positions of the Parties**

18 During the Compliance proceedings ICAN challenged the second of the three criteria in TRP
19 4.10 for meeting concurrency. That section provides:

20 2. At such time as Jefferson County adopts and implements an impact fee
21 ordinance, contribute an impact fee that is a proportionate share of the cost
22 of improvements necessary to maintain the adopted Level of Service Standards;

23 ICAN argues that this provision is not properly linked to the maintenance of the LOS
24 because there is no requirement that the transportation facility impacted by the proposed
25 project will actually be improved within the timeframe required by RCW 36.70A.070(6)(b).¹⁰
26

27 In response, the County notes that the 2005 FDO provided that TRP 4.10 would be
28 compliant if it linked development approval to maintaining LOS. The County points out that
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31 ⁹ See, *WEC v. Whatcom County*, WWGMHB No. 95-2-0071 (FDO 12/20/95) and *Pilchuck v. Snohomish*
32 County, CPSGMHB No. 95-3-0047.

¹⁰ ICAN's Objections at 8.

1 the preliminary language in TRP 4.10 states that “Jefferson County should not approve new
2 development that would generate traffic that would decrease the Level of Service below the
3 adopted Level of Service Standards” and that this language guides the remainder of the
4 policy. The County also notes that JCC 18.30.020(5) requires that the adopted LOS be
5 maintained.
6

7 **Board Discussion**

8
9 In our May 30, 2006 Compliance Order we declined to find compliant a provision of TRP
10 4.10 that provided that new development that would “significantly” decrease the LOS below
11 the adopted LOS standard without mitigation. In particular, under Section 2 of TRP 4.10 a
12 development that would lower the LOS below the adopted LOS standard could:

13 “Contribute an impact fee that is a proportionate share of the cost of
14 improvements related to the project”, yet the LOS would be impermissibly
15 reduced below adopted levels.
16

17 We found that RCW 36.70A.070(6)(b) did not allow for “degrees of decline from the LOS”
18 and that Section 2 of TRP 4.10 was not a guarantee of concurrency. Further, we stated that
19 “For this alternative to be part of a compliant concurrency regulation, it would need to show
20 that payment of an impact fee is a proportionate share of improvements or to a system of
21 improvements related to the impacts on the LOS that will be in place to guarantee the
22 maintenance of the LOS within the timeframe required by RCW 36.70A.070(6)(b).”¹¹
23

24 In response, the County has modified TRP 4.10 to remove any reference to development
25 that would “significantly” decrease the LOS. Instead, TRP 4.10 begins:
26

27 Jefferson County should not approve new development that would generate
28 new traffic that would decrease the Level of Service below the adopted
29 Level of Service Standard.
30

31
32 ¹¹ May 30, 2006 Compliance Order at 19.

1 Option 2, for a development that causes LOS to decline below the adopted standard now
2 provides:

3 At such time as Jefferson County adopts and implements an impact
4 fee ordinance, contribute and impact fee that is a proportionate share
5 of the cost of improvements necessary to maintain the adopted Level
6 of Service Standards

7 In addition, the County revised its Unified Development Code 6.2.5 (now Jefferson County
8 Code 18.30.020(5) to provide:

9 All land use activities shall be served by appropriate transportation facilities.
10 Transportation facilities shall be adequate both to serve the proposed land use and
11 to avoid adverse effects to the existing transportation system. A transportation
12 facility shall be adequate to meet the level of service standards adopted in the
13 Jefferson County Comprehensive Plan and the appropriate design standards
14 reflected in JCC Ch. 18.30.080(1)(a). If transportation facilities are inadequate, the
15 applicant shall be required to make provision for necessary improvements or to
16 implement alternative measures such as transportation demand management,
17 (TDM), project phasing, or other measures acceptable to Jefferson County that will
18 maintain the adopted level of service standards and meet design standards. If
19 transportation facilities are not adequate, Jefferson County shall not approve the
20 proposed development. Transportation facilities shall be deemed adequate if
21 necessary improvements are planned and designated funding is secured in the
22 Jefferson County Six-Year Transportation Improvement Program.¹² (emphasis
23 added)

24 As we stated in our May 31, 2005 FDO, “we note that the key place for the required
25 prohibition of development approval is in the development regulations. Development
26 regulations that implement the comprehensive plan must prohibit development that causes
27 the LOS to decline below locally adopted standards.”¹³ Jefferson County has now done
28 exactly that.

29 With regard to ICAN’s argument that TRP 4.10 is now out of compliance with RCW
30 36.70A.020(12) because the policy, when implemented by a development regulation, would

31 _____
32 ¹² See, Ordinance 04-0702-07, Section 2.

¹³ May 31, 2005 FDO at 26.

1 allow the development to proceed without necessary road improvements funded,¹⁴ the
2 County clearly requires that the necessary transportation facilities be reasonably funded
3 before development may proceed. The express language of JCC 18.30.020(5) provides
4 that "Transportation facilities shall be deemed adequate if necessary improvements are
5 planned and designated funding is secured in the Jefferson County Six-Year Transportation
6 Improvement Program."
7

8 Finally, Jefferson County has not adopted an impact fee ordinance. TRP 4.10 merely sets
9 the framework for such an ordinance and lists this among other mechanisms to maintain
10 LOS. If and when the County adopts an impact fee ordinance, the requirements of RCW
11 82.02.080(1) shall apply. We find no violation of RCW 36.70A.070(6)(b) here.
12

13
14 **Conclusion:** For the foregoing reasons, we find that TRP 4.10 complies with RCW
15 36.70A.070(6)(b).
16

17 **Issues 4, 5, 6 and 7**

18 Issues 4-7 are substantially related and will be discussed together.
19

20 **Issue #4:** Whether the UGA Transportation Plan adopted by Ordinance No. 04-0702-07 has
21 underestimated the UGA Average Daily Trips (ADT) for vacant commercial designated
22 lands for 2011 to 2024 in a manner inconsistent with the Urban Growth Area Element of the
23 Comprehensive Plan in violation of RCW 36.70A.070 (preamble) ("internally consistent")?

24 **Issue #5** Whether the UGA Transportation Plan adopted by Ordinance No. 04-0702-07 has
25 underestimated the increase in UGA Average Daily Trips (ADT) between 2004 to 2024 on
26 lands in the UGA with existing rural commercial and industrial development in a manner
27 inconsistent with the designation of the UGA in the Comprehensive Plan in violation of RCW
36.70A.070 (preamble) ("internally consistent")?

28 **Issue #6** Whether an underestimate of ADT alleged in issues 4 and 5, above, causes the
29 transportation capital facilities and fiscal planning in the Transportation Plan for 2004-2024
30
31

32

¹⁴ ICAN's Opening Brief at 4.
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1 to be inconsistent in the remainder of the Comprehensive plan in violation of RCW
2 36.70A.070 (preamble) (“internally consistent”)?

3 **Issue #7** Whether the UGA Transportation Plan and Commercial land use designations in
4 the UGA should be found in violation of RCW 36.70A.070 (preamble) (“internally
5 consistent”) based on the allegations contained in issues 4, 5 and 6?

6 **Positions of the Parties**

7 ICAN argues that the traffic generation calculations are internally inconsistent with the land
8 use designations and that the necessary corrections will result in a 50 percent increase in
9 traffic.¹⁵ Given this increase, ICAN asserts that the County must amend its transportation
10 capital facilities and fiscal planning or determine if the UGA should contain such a large
11 amount of commercial land.¹⁶

13
14 ICAN further notes that one acre of commercial land would generate 928 trips per day
15 (TPD)¹⁷. (The County’s prior calculation resulted in 179 TPDs.) Using this TPD figure and
16 land assumptions it draws from the County’s Urban Growth Area Element of the
17 Comprehensive Plan, ICAN calculates that the Transportation Plan is missing an analysis
18 for an additional 17,075 TPDs in regard to retail commercial lands and 6,142 TPDs for
19 industrial lands, for a total of 23,217 TPDs or an increase of 53 percent in TPDs based on
20 net vacant lands.¹⁸ In addition, ICAN asserts that the County has not utilized an assumption
21 that correctly reflects the change in impacts arising from the redevelopment of existing rural
22 commercial and industrial lands as the surrounding area becomes more urban in nature.¹⁹
23
24

25 In response, the County contends that the Board has already determined that the
26 methodology utilized for the Transportation Plan, with the exception of the noted
27
28

29
30 _____
¹⁵ ICAN Brief, at 4.

31 ¹⁶ *Id.*

32 ¹⁷ ICAN’s Opening Brief, Attachment 2, at 9-10.

¹⁸ *Id.*

¹⁹ *Id.* Attachment 2, at 11.

1 mathematical error, is compliant with the GMA.²⁰ The County further asserts that ICAN's
2 challenge is based on a series of errors including citations to gross acres of land as net
3 acres and demonstrates the calculations which arrived at the acreage used in the
4 Transportation Plan.²¹

5
6 In reply, ICAN simply states that the Transportation Plan does not provide reasonably
7 accurate projections of traffic and that the County must plan for traffic in a manner that is
8 consistent with the applicable land use designations.²²

9
10 **Board Discussion**

11
12 In our 2005 Final Decision and Order, we stated that while the County acknowledged a
13 math error in its transportation projections, its methodology was not clearly erroneous.²³

14
15 ICAN acknowledges that the County has now applied an appropriate trip generation rate,
16 but challenges the County's assumptions regarding the number of acres of commercial and
17 industrial land that would be developed.

18
19 The County's methodology is laid out in the March 18, 2004 memo from Al Scalf, whose
20 assumptions appear to have been incorporated into the County's Transportation Plan.
21 ICAN and the County appear to have used differing methodologies in computing trip
22 generation.

23
24 ICAN has applied a 15% Market Reduction Factor to the 100 acres of industrial and
25 commercial lands in the UGA to reach 85 net acres.²⁴ From this, it concludes that the
26 County's use of 66.6 acres of net developable land undercounts the available land by 18.4
27

28
29 _____
30 ²⁰ Jefferson County's Hearing Brief, Attachment B, at 5-6.

31 ²¹ *Id.*, at 6. The County cites to Director Scalf's March 18, 2004 memo for development rates of vacant lands
during the 2004-2024 20-year planning period.

32 ²² ICAN's Reply Brief, at 3.

²³ May 31, 2005 FDO, at 24.

²⁴ ICAN's Objections at 10.

1 acres (85 – 66.6 = 18.4). However, the County, while it starts with the assumption of 99
2 available acres, first reduces this figure by 3.6 acres presumed to be developed in the 2003
3 – 2004 timeframe. From this subtotal, the County subtracted 16.5 acres of land to be
4 devoted to public facility use.²⁵ It was to the resultant 78.9 acres (95.4 – 16.5) that the
5 County applied its Market Reduction Factor to reach an assumed 66.9 acres of available
6 commercial and industrial land. The County then further reduced this by 12.6 acres
7 assumed to be consumed during the 2005-2010 timeframe for a resultant 54.3 acres. ICAN
8 has not shown the County’s assumptions to be clearly erroneous.
9

10
11 ICAN has likewise failed to demonstrate that it was clearly erroneous for the County to
12 assume that eleven acres of land currently zoned commercial will be converted to Light
13 Industrial. Considering that the County assumed that this conversion would take place over
14 the 2011-2024 planning horizon, it cannot be said that such an assumption rises to the level
15 of “clearly erroneous.” This reduction of eleven acres for industrial land resulted in the 43
16 acres which formed the basis of the County’s trip generation calculation.
17

18 **Conclusion:** The County has corrected the math error identified in our 2005 FDO. Its
19 assumptions regarding lands that will be placed into Public Facility use and other lands that
20 will be converted to Light Industrial are well within the range of local discretion, comply with
21 RCW 36.70A.070 (preamble) and are not clearly erroneous.
22

23
24 **Issues 8 and 9 and Conclusion of Law H**

25 Issues 8 and 9, and Conclusion of Law H are substantially related and will be discussed
26 together.
27

28 **Issue #8** Whether the County, in deleting rather than making corrections to its market factor
29 analysis on page 2-8 of the Comprehensive Plan, is in noncompliance with RCW
30

31 ²⁵ While ICAN suggested at oral argument that it was more reasonable to assume that public facilities would
32 be situated on residential land, it has presented no evidence to support this assumption, or to demonstrate that
the County’s assumption was clearly erroneous.

1 36.70A.130(1)(d) and 36.70A.110(2) for failing to provide an adequate population growth
2 needs and capacity analysis particularly when virtually all of the population growth for the
3 UGA can be accommodated on vacant land proposed for multifamily development?

4 **Issue #9** Whether the County's amended 37% market factor in the UGA is justified and in
5 compliance with RCW 36.70A.130(1)(d) and 36.70A.110(2)?

6 **Conclusion of Law H:** The County's use of a market factor to increase the OFM population
7 range on which planning is based in the Irondale and Port Hadlock UGA does not comply
8 with RCW 36.70A.110(2).

9 **Positions of the Parties**

10 ICAN asserts that the County, even after deleting a portion of the comprehensive plan that
11 addressed market factors, has not supported or justified the 37 percent market factor it
12 proposes for the UGA with an adequate population growth needs and capacity analysis.²⁶

13 ICAN assumes that the County has adopted a 37 percent market factor based on the
14 existing population in the UGA and the County's projected twenty-year growth for the UGA,
15 but contends that the County has not made any attempt to justify it.²⁷ Nor, according to
16 ICAN, can the County justify the market factor based on its proposal to accommodate nearly
17 all of the proposed population growth in new multifamily development.²⁸

18
19
20 In response, the County notes that it removed the market factor²⁹ in its entirety in direct
21 response to the Board's May 2005 Final Decision and Order.³⁰ In addition, the County
22 asserts that it has "not applied a market factor to its projected population in order to increase
23 the [UGA] boundaries" rather, the UGA is being sized to recognize existing urban-sized lots
24 and development patterns that are incompatible with a rural land use designation.³¹

25
26
27
28
29 ²⁶ ICAN Brief, at 4-5.

30 ²⁷ Id. Attachment 2, at 12.

31 ²⁸ Id., at 12-13.

32 ²⁹ The market factor at issue in the prior case was a 25 percent market factor.

³⁰ County Response, at 3; Attachment B, at 7.

³¹ County Response, at 3-4.

1 In reply, ICAN reiterates its claim that the County is sizing the UGA based on a 37 percent
2 market factor and fails to show its analysis and, that the Board's order to adjust the UGA
3 boundaries due to sewer restrictions will effectively remove most of the urban-sized
4 residential lots that the County asserts support its action. ³²

5
6 **Board Discussion**

7
8 At the hearing on the merits the parties were in agreement that, in light of the County's
9 requirement to revise the boundaries of the UGA in compliance with the schedule set forth
10 in the April 9, 2007 order, the issue of market factor should be determined at a later date.

11
12 **Conclusion:** A determination of whether the County has applied the correct market factor
13 is premature at this time. This issue may be addressed at the time the County redraws the
14 boundaries of the UGA in accordance with the schedule set out in our April 9, 2007 order.

15
16 **Issues 10, 11 and Conclusion of Law I**

17
18 Issues 10 and 11, which arise from Compliance Issue I³³ are substantially related and will
19 be discussed together.

20
21 **Issue #10** Whether UGA Policy 1.6 as amended fails to comply with RCW
22 36.70A.130(1)(d)³⁴ and 36.70A.040(3) by proposing zoning not be required to implement
23 new commercial land use designations?

24 **Issue #11** Whether UGA Policy 1.6 as amended fails to comply with RCW 36.70A.130(1)(b)
25 and 36.70A.110(2) because it authorizes the County to enlarge the UGA commercial area at
26 the whim of property owners if the property owners can provide "any" documentation that
27 their property is wanted for commercial development?

28 **Conclusion of Law I:** UGA Policy 1.6 fails to comply with RCW 36.70A.110(2) and RCW
29 36.70A.130(1)(b).

30
31 ³² ICAN Reply, at 3.

32 ³³ May 31, 2005 FDO, at 49

³⁴ Formerly codified as RCW 36.70A.130(b).

1 **Positions of the Parties**

2 ICAN asserted in its briefing for the compliance hearing that changes to UGA Policy 1.6
3 made no change to the provisions that allow land designated as urban commercial to retain
4 urban residential zoning.³⁵ Thus, ICAN claims, the County remains in noncompliance with
5 RCW 36.70A.130(1)(d) because “it proposes that the zoning not be required to implement
6 the CP land use designation.”³⁶
7

8 In addition, ICAN argues, UGA Policy 1.6 allows the County to enlarge the UGA commercial
9 area “at the whim of property owners” without a requirement that the added commercial
10 lands are consistent with County commercial needs analysis.³⁷
11

12 In response, the County claims that it has placed sufficient checks on future changes to
13 urban commercial zoning to ensure that redesignation will not take place without adequate
14 safeguards of public process and deliberation, including six criteria that must be met before
15 a parcel can qualify for redesignation.³⁸ The County points out that it does not rezone
16 property at the “whim” of property owners, but only during the annual comprehensive plan
17 amendment cycle.
18
19

20 **Board Discussion**

21 In our May 31, 2005 Final Decision and Order we found that UGA Policy 1.6 allows for
22 cross-designation of urban residential lands as commercial lands and that there is no
23 estimate of how much acreage of the Urban Residential land use designation could be
24 designated at the owners’ option. Therefore, we found that there is no link between a need
25 for such commercial lands and the cross designation option.³⁹
26
27
28
29

30 ³⁵ ICAN's Objections, at 14.

31 ³⁶ *Id.*

32 ³⁷ *Id.*

³⁸ Jefferson County's Reply to ICANs' Objections, at 8.

³⁹ May 31, 2005 FDO, at 47.

1 The County amended Policy 1.6 to add 3 additional criteria under which land designated as
2 Urban Residential on the UGA Zoning Map could be designated Urban Commercial on the
3 UGA Future Land Use Map. These included that the parcels have a documented evidence
4 of the need for transformation; that a capital facilities plan be in place with the capacity to
5 support the transfer from Urban Residential to Urban Commercial; and the area rezoned be
6 planned for sewer service within the 20 year planning horizon of the Comprehensive Plan.
7 These, the County argues, are adequate checks to prevent indiscriminate conversion of
8 urban residential areas to urban commercial.⁴⁰
9

10
11 The Board found that the County's analysis of its commercial needs was not open to
12 challenge. Nevertheless, the Board found that allowing a change from residential to
13 commercial without linking it to an analysis of the commercial needs for the Irondale/Port
14 Hadlock UGA or an analysis of the impacts of these commercial needs did not comply with
15 the GMA. This lack of analysis, along with the lack of identification of the lands needed to
16 meet these needs did not comply with RCW 36.70A.110(2). Further, the Board found that
17 this policy created an inconsistency with the plan itself, and therefore was not consistent
18 with the County's comprehensive plan and therefore did not comply with RCW
19 36.70A.130(1)(b) (now RCW 36.70A.130(1)(d)).⁴¹
20

21
22 RCW 36.70A. 110(2) requires (in pertinent part):

23 Based upon the growth management population projection made for the county by
24 the office of financial management, the county and each city within the county
25 shall include areas and densities sufficient to permit the urban growth that is
26 projected to occur in the county or city for the succeeding twenty-year period,
27 except for those urban growth areas contained totally within a national historical
28 reserve.
29
30
31

32 ⁴⁰ Jefferson County's Hearing Brief at 4.

⁴¹ Final Decision and Order/Compliance Order (May 2005) at 36 and 37.

1 RCW 36.70A.130(1)(b)⁴² provides:

2 Any amendment of or revision to a comprehensive land use plan shall conform to
3 this chapter. Any amendment of or revision to development regulations shall be
4 consistent with and implement the comprehensive plan.

5 Policy 1.6 now provides that the change for residential to commercial must have adequate
6 capital facilities to support it, which implies that capital facilities needs will be analyzed to
7 approve the change. However, Policy 1.6, even as amended still does not link changes in
8 residential designations to commercial designations to a county analysis of commercial
9 needs. It still causes an inconsistency in the comprehensive plan.
10

11 Also, if the designation in the plan and the zoning map allowed for both residential and
12 commercial uses, then a zoning change would not be necessary. However, this is not the
13 case here. The change from residential to commercial would also need a change in the
14 comprehensive plan map and the zoning map to make them consistent.
15

16
17 UGA Policy 1.6, even as amended, still allows for an inconsistency between the plan and
18 the development regulations. Therefore, it remains non-compliant.
19

20 **Conclusion:** Policy 1.6, which allows land designated as Urban Residential on the UGA
21 Zoning Map to be designated Urban Commercial on the UGA Future Land Use Map allows
22 an inconsistency between the plan and the development regulations and is non-compliant
23 with RCW 36.70A.110(2) and RCW 36.70A.130(1)(d).⁴³
24

25 ***Issue 12 and Conclusion of Law***
26

27 **Issue #12** Whether the removal of the PUD Water Supply Plan from the Comprehensive
28 Plan causes the County to fail to meet the requirements of RCW 36.70A.070(3)(a), (b), and
29 (c) for water planning for the UGA?
30

31
32 ⁴² RCW 36.70A.130(1)(b) at the time of the Final Decision and Order is now found at RCW 36.70A.130(1)(d).

⁴³ See footnote 40 above.

1 **Conclusion of Law K:** The incorporation of future amendments to the PUD's water supply
2 plan into the County's comprehensive plan without opportunity for review and comment
3 through the County's comprehensive plan amendment process does not comply with the
4 RCW 36.70A.130(2) and RCW 36.70A.140.

5 **Positions of the Parties**

6 In the May 2005 Final Decision and Order, the Board held that the incorporation of future
7 amendments to the PUD's water supply plan into the County's comprehensive plan without
8 the opportunity for review and comment through the County's comprehensive plan
9 amendment process does not comply with RCW 36.70A.130(2) and 36.70A.140.
10

11 ICAN acknowledges that the County deleted the section of the comprehensive plan which
12 has incorporated by reference the PUD water system plan and any amendments to the plan
13 but argues that the amendment violates RCW 36.70A.070(3) because the County is relying
14 on the existing PUD Water Supply Plan to supply the required information for water facilities
15 for the UGA.⁴⁴ Instead, ICAN asserts that PUD Water Supply Plan must be included in the
16 comprehensive plan.
17

18
19 In response, the County points out that this Board directed it to remove portions from its
20 plan which allowed the automatic incorporation of future amendments to the PUD's Water
21 Supply Plan into the County's' Comprehensive Plan without the opportunity for review and
22 comment. It notes that it has now removed such language and should be found in
23 compliance.⁴⁵
24

25 **Board Discussion**

26 The basis for finding non-compliance with the Potable Water section of the plan was that the
27 County made an amendment of the PUD water plan an automatic amendment of the
28 County's comprehensive plan without the opportunity for public review and comment during
29
30

31 ⁴⁴ ICAN conceded at the compliance hearing that the County had not violated statutory notice requirements, as
32 asserted in its briefing.

⁴⁵ Jefferson County's Reply to ICAN's Objections at 9.

1 the plan amendment process. We specifically found, however, that “the County’s
2 incorporation of the PUD water supply plan into its comprehensive plan as the source of the
3 water supply and service to the UGA is proper”.⁴⁶ By removing the provision that provided
4 for automatically incorporating future amendments of the PUD water supply plan, the
5 County has corrected the deficiency found by this Board previously.
6

7 Unfortunately, in removing the provisions whereby the Comprehensive Plan was amended
8 without public participation, the County went too far. It removed those provisions by which
9 the PUD water supply plan was incorporated by reference.
10

11 The County suggests that there is sufficient information on pages 2-15 and 2-16 of its
12 Comprehensive Plan to meet the requirements of RCW 37.70A.070(3). We disagree. RCW
13 36.70A.070 (3) requires:
14

15 3) A capital facilities plan element consisting of: (a) An inventory of existing
16 capital facilities owned by public entities, showing the locations and capacities of
17 the capital facilities; (b) a forecast of the future needs for such capital facilities;
18 (c) the proposed locations and capacities of expanded or new capital facilities;
19 (d) at least a six-year plan that will finance such capital facilities within projected
20 funding capacities and clearly identifies sources of public money for such
21 purposes; and (e) a requirement to reassess the land use element if probable
22 funding falls short of meeting existing needs and to ensure that the land use
23 element, capital facilities plan element, and financing plan within the capital
24 facilities plan element are coordinated and consistent. Park and recreation
25 facilities shall be included in the capital facilities plan element. (emphasis
26 added)
27

28 Pages 2-15 and 2-16 describe existing system connections, major and minor wells,
29 reservoir(s), and water pressure zone. It also notes that existing supply meets current
30 demands and that additional capacity is available from existing water rights. This section
31 delineates three improvement projects. However, as ICAN points out, RCW
32 36.70A.070(3)(a)-(c) requires that an inventory and needs assessment which should include

⁴⁶ May 31, 2005 FDO at 42.

1 or reference the location and capacity of needed, expanded or new facilities. This is
2 generally done with maps or charts from which the reader is able to discern the location of
3 wells, transmission lines and other capital facilities.
4

5 **Conclusion:** The County has appropriately removed the provisions regarding automatic
6 amendments without public participation. Therefore, the comprehensive plan no longer
7 incorporates future amendments to the PUD's water supply plan into the County's
8 comprehensive plan without opportunity for review and comment through the County's
9 comprehensive plan amendment process in violation of RCW 36.70A.130(2) and RCW
10 36.70A.140. The County is now in compliance with Conclusion of Law K.
11

12 However, in removing provisions to adopt the PUD Water System Plan by reference, the
13 County's comprehensive plan no longer contains the necessary inventory, locations and
14 capacities of future facilities required by RCW 36.70A.070(3)(a)-(c). Therefore we find that
15 the failure to include the necessary inventory, locations and capacities of future water
16 system facilities fails to comply with RCW 36.70A.070(3)(a), (b), and (c).
17
18

19 **Invalidity**

20 **Issue #13** Whether any portion of Ordinance No. 04-0702-07 found not to comply with the
21 Act in issues 1 to 12 above should also be found invalid under RCW 36.70A.302 for
22 substantial interference with the fulfillment of Goals 1, 2, 5, 6, 9, 10, 11, and/or 12?

23 **Positions of the Parties**

24 ICAN states in its opening brief for the hearing on the merits that it has "no further requests
25 for invalidity at this time."⁴⁷
26
27
28
29
30
31

32 ⁴⁷ ICAN's Opening Brief at 5.

1 **Board Discussion**

2 In our May 2005 Final Decision and Order, the Board found that noncompliant
3 comprehensive plan provisions and development regulations allowing urban levels of
4 development without requiring urban levels of sewer service posed the danger that such
5 development might vest in the new UGA before the County is able to adopt compliant
6 development regulations.⁴⁸
7

8 The recent amendments made by the County in Ordinance No. 04-0702-07 were not
9 intended to address those areas of invalidity but instead were intended to cure minor areas
10 of noncompliance. The County has not requested a lifting of invalidity at this time and we
11 do not do so.
12

13
14 **Conclusion:** The County remains subject to a determination of invalidity as determined in
15 our May 2005 Final Decision and Order. No further determinations of invalidity are
16 warranted.
17

18 **Conclusion of Law F (May 30, 2006 Compliance Order)**

19
20 **Conclusion of Law F:** The failure to use the same planning period throughout the County's
21 comprehensive plan is clearly erroneous and violates RCW 36.70A.070.

22 **Positions of the Parties**

23 ICAN alleged in the compliance hearing that although the Board found in its May 2006
24 Compliance Order that the County was out of compliance for failure to update Table 3-3 and
25 Table 5-1 to provide data for the 2004-2024 planning period, Table 5-1 has yet to be
26 updated.
27

28 The County concedes that while it has corrected most of the old references to the earlier 20
29 year planning period, rather than the current 2004-2024 planning period, it still needs to
30

31
32

⁴⁸ May 31, 2005 FDO at 48.
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1 remove Table 5-1 and the tables in the appendix which reference the 1996-2016 period. It
2 pledges to do so in the next amendment cycle.⁴⁹

3
4 **Board Discussion**

5 There is no disagreement between the parties, and the Board concurs, that the County has
6 not corrected all references to the earlier 20 year planning period in its comprehensive plan.
7

8 **Conclusion:** The County remains out of compliance with regard to the references to the
9 appropriate 20 year planning period. It must update or remove outdated references in order
10 to achieve compliance with RCW 36.70A.070.
11

12
13 **VI. FINDINGS OF FACT**

14 1. Jefferson County is a county located west of the crest of the Cascade Mountains that is
15 required to plan pursuant to RCW 36.70A.040.

16 2. In the Board's May 2005 Final Decision and Order the Board determined that the
17 Irondale/Hadlock UGA and its implementing regulations did not comply with the GMA. In
18 subsequent rulings issued on May 30, 2006 and May 6, 2007, the Board again found non-
19 compliance and established a timeline by which legislative measures needed to be taken to
20 achieve compliance. The first task was a July 3, 2007 date for implementing minor
21 corrections referenced in Conclusions of Law G through I of the May 31, 2005 Final
22 Decision and Order.
23

24 3. On July 2, 2007, the County adopted Ordinance 04-0702-07 to address the items
25 identified in Conclusions of Law G through I of the May 31, 2005 Final Decision and Order.

26 4. On July 10, 2007 the County filed its Report of Action Taken.

27 5. On September 4, 2007 Petitioners filed a timely petition for review challenging provisions
28 of Ordinance No. 04-0702-07.
29
30
31

32

⁴⁹ Id. at 9.

- 1 6. TRP 1.10 is implemented by JCC 18.30.080(1)(a) which adopts by reference the
- 2 County's road standards, including the American Association of State Highway and
- 3 Transportation Officials *Policy on Geometric Design of Highways and Streets*, Washington
- 4 Department of Transportation *Highway Design Manual*, Federal Highway Administration
- 5 Manual on Uniform Traffic Control Devices, and Transportation Research Board *Highway*
- 6 *Capacity Manual*.
- 7
- 8 7. The County has modified TRP 4.10 to remove any reference to development that would
- 9 "significantly" decrease level of service standards (LOS).
- 10 8. The County revised its Unified Development Code 6.2.5 (now Jefferson County Code
- 11 18.30.020(5)) to provide that it will not approve a development when transportation facilities
- 12 are inadequate.
- 13 9. The County has not adopted an impact fee ordinance. TRP 4.10 sets the framework for
- 14 such an ordinance and lists this among other mechanisms to maintain LOS.
- 15
- 16 10. The County has corrected an earlier math error regarding the trip generation rate for
- 17 commercial property.
- 18 11. The County's methodology is laid out in the March 18, 2004 memo from Al Scalf, whose
- 19 assumptions were incorporated into the County's Transportation Plan.
- 20 12. A determination of whether the County has applied the correct market factor is
- 21 premature at this time because the County has not yet re-drawn its urban growth area
- 22 boundaries.
- 23
- 24 13. The County amended Policy 1.6 to add three additional criteria under which land
- 25 designated as Urban Residential on the UGA Zoning Map could be designated Urban
- 26 Commercial on the UGA Future Land Use Map. These included criteria that the parcel have
- 27 a documented evidence of the need for transformation; that a capital facilities plan be in
- 28 place with the capacity to support the transfer from Urban Residential to Urban Commercial;
- 29 and the area rezoned be planned for sewer service within the 20 year planning horizon of
- 30 the Comprehensive Plan.
- 31
- 32

1 14. Policy 1.6, even as amended, still does not link changes in residential designations to
2 commercial designations to a county analysis of commercial needs or change in the
3 comprehensive plan's land use map and the zoning map. These deficiencies still cause an
4 inconsistency in the comprehensive plan and allow for an inconsistency between the
5 comprehensive plan and the development regulations.

6 15. In removing the provisions whereby the Comprehensive Plan provisions regarding the
7 potable water supply was amended without public participation, the County also removed
8 those provisions by which the PUD water supply plan was incorporated by reference.

9 16. While the County has corrected most of the old references to the earlier 20 year
10 planning period, rather than the current 2004-2024 planning period, Table 5-1 and the
11 tables in the appendix continue to reference the 1996-2016 period.

12 17. Any Finding of Fact later determined to be a Conclusion of Law is hereby adopted as
13 such.
14
15

16 **VII. CONCLUSIONS OF LAW**

17 A. The Board has jurisdiction over the parties to this action.

18 B. The Board has jurisdiction over the subject matter of this action.

19 C. Petitioner ICAN has standing to raise the issues in this case.

20 D. Ordinance 04-0702-07 was adopted to achieve compliance with this Board's finding of
21 noncompliance in the July 20, 2005 Final Decision and Order.

22 E. Policy TRP 1.10 is not a clearly erroneous violation of RCW 36.70A.020(6) or RCW
23 36.70A.130(1)(d).

24 F. TRP 4.10 is now compliant with RCW 36.70A.070(a) and (b) and RCW 36.70A.020(12).

25 G. ICAN has likewise failed to demonstrate that it was clearly erroneous for the County to
26 assume that eleven acres of land currently zoned commercial will be converted to Light
27 Industrial or does not comply with RCW 3.70A.070.

28 H. The County's assumption that the conversion of eleven acres of commercial land to
29 Light Industrial over the 2011-2024 planning horizon is not clearly erroneous.
30
31
32

1 I. The County's assumptions regarding lands that will be placed into Public Facility use are
2 well within the range of local discretion and are not clearly erroneous.

3 J. Policy 1.6, as amended, does not comply with RCW 36.70A. 110(2), and continues to
4 allow an inconsistency within the plan pursuant to RCW 36.70A.130(1)(d).

5 K. The County's comprehensive plan no longer incorporates future amendments to the
6 PUD's water supply plan into the County's comprehensive plan without opportunity for
7 review and comment through the County's comprehensive plan amendment process in
8 violation of RCW 36.70A.130(2) and RCW 36.70A.140. The County is now in compliance
9 with Conclusion of Law K from the May 31, 2005 Final Decision and Order.

10 L. In removing provisions to adopt the PUD Water System Plan by reference, the County's
11 comprehensive plan no longer contains the necessary inventory, locations and capacities of
12 future facilities required by RCW 36.70A.070(3)(a)-(c). The failure to include the necessary
13 inventory, locations and capacities of future water system facilities fails to comply with RCW
14 36.70A.070(3)(a), (b), and (c).

15 M. The County's plan remains out of compliance with regard to the references to the
16 appropriate 20 year planning period and therefore does not comply with RCW 36.70A.070.

17 N. Any Conclusion of Law later determined to be a Find of Fact is hereby adopted as such.
18
19
20

21 VIII. ORDER

22 Based on the foregoing, the County is ordered to bring its Comprehensive Plan into
23 compliance with the Growth Management Act pursuant to this decision within 180 days.

24 Compliance shall be due no later than July 10, 2008. The following schedule for
25 compliance, briefing and hearing shall apply:
26

Item	Date Due
Compliance Due	July 10, 2008
Compliance Report and Index to Compliance Record	July 17, 2008
Objections to a Finding of Compliance	July 31, 2008
Response to Objections	August 14, 2008
Compliance Hearing	August 27, 2008

1 DATED this 8th day of February, 2008.

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4 _____
James McNamara, Board Member

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6 _____
Margery Hite, Board Member

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8
9
10 Gadbaw, concurring:

11 I concur in the above decision. I am writing separately to try to clarify what appears to be
12 confusion on what the County's arguments and briefs declare as its understanding about
13 the requirements for allocating population and commercial needs to the Irondale/Port
14 Hadlock UGA and what the Board has actually held. This discussion relates to the Board's
15 findings regarding UGA Policy 1.6 and the County's use of a market factor.
16

17 In its brief, the County asserts that it has "not applied a market factor to its projected
18 population in order to increase the [UGA] boundaries" rather, "the UGA is being sized to
19 recognize existing urban-sized lots and development patterns that are incompatible with a
20 rural land use designation".⁵⁰ At argument at the December 17, 2007 Hearing on the
21 Merits, the County's attorney also stated that the Irondale/Port Hadlock UGA was not based
22 on need for residential land, but to recognize residential urban growth that already existed in
23 the Irondale area.
24

25
26 I believe it is important to clarify that the Board has found that the choice of Irondale/Port
27 Hadlock for a new urban growth area is appropriate under RCW 36.07A.110(3) since it is an
28 area of existing urban growth. However, this does not relieve the County of the
29 responsibility to allocate urban population growth and uses to the new UGA commensurate
30

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32
⁵⁰ County Response, at 3-4.
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ORDER ON COMPLIANCE
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1 with the size of the ultimate UGA boundaries under RCW 36.70A.110(2). Much of the
2 County's planning activity to date has recognized that sizing of the UGA must match the
3 land with an allocation of urban population growth and uses. For example, even though the
4 County stated that the UGA was sized to recognize existing small lots, it has allocated
5 residential urban growth to the Irondale/Port Hadlock UGA.⁵¹ Likewise, the County's
6 allocation of commercial uses to the Irondale/Port Hadlock UGA was based on the
7 commercial needs of the County overall, as identified in the Trottier study.⁵²
8

9
10 As the County moves forward with its sewer planning, if the County determines it will not be
11 able to serve the residential development on small lots in the currently designated
12 Irondale/Port Hadlock UGA and indicates a need to resize the UGA, it is important that the
13 size of the UGA also be based on an urban population allocation and those commercial and
14 industrial needs which are planned to be met in the Irondale/Port Hadlock UGA. As the
15 County establishes its boundaries for the Irondale/Port Hadlock UGA, a market factor may
16 be used to adjust the amount of land needed to accommodate the population allocation to
17 the Irondale/Port Hadlock UGA but the County must "show its work". And, as the County is
18 well aware, it must be capable of serving land the County decides to include in the UGA with
19 urban services.
20

21
22 The problem with Policy 1.6 is that no evidence in the record exists that County made any
23 assumptions about the amount of designated residential land that would convert to
24 commercial uses and whether the assumption of conversions is within the County's
25 allocation for commercial uses to the Irondale/Port Hadlock UGA. Additionally, the County
26 should "show its work" to ensure that County's population allocation to the Irondale/Port
27
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32 _____
⁵¹ Final Decision and Order (August 22, 2003) at 12 and 14.

⁵² Final Decision and Order/Compliance Order (May 31, 2005) at 34 and 37.

1 Hadlock UGA can still be accommodated in the UGA if the residential uses become
2 commercial uses.

3
4
5 _____
6 Holly Gadbaw, Board Member

7 Pursuant to RCW 36.70A.300 this is a final order of the Board.
8

9 **Reconsideration.** Pursuant to WAC 242-02-832, you have ten (10) days from the
10 mailing of this Order to file a petition for reconsideration. Petitions for
11 reconsideration shall follow the format set out in WAC 242-02-832. The original and
12 three copies of the petition for reconsideration, together with any argument in
13 support thereof, should be filed by mailing, faxing or delivering the document directly
14 to the Board, with a copy to all other parties of record and their representatives.
15 Filing means actual receipt of the document at the Board office. RCW 34.05.010(6),
16 WAC 242-02-330. The filing of a petition for reconsideration is not a prerequisite for
17 filing a petition for judicial review.

18 **Judicial Review.** Any party aggrieved by a final decision of the Board may appeal the
19 decision to superior court as provided by RCW 36.70A.300(5). Proceedings for
20 judicial review may be instituted by filing a petition in superior court according to the
21 procedures specified in chapter 34.05 RCW, Part V, Judicial Review and Civil
22 Enforcement. The petition for judicial review of this Order shall be filed with the
23 appropriate court and served on the Board, the Office of the Attorney General, and all
24 parties within thirty days after service of the final order, as provided in RCW
25 34.05.542. Service on the Board may be accomplished in person, by fax or by mail,
26 but service on the Board means actual receipt of the document at the Board office
27 within thirty days after service of the final order.

28 **Service.** This Order was served on you the day it was deposited in the United States
29 mail. RCW 34.05.010(19)
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