

1 BEFORE THE WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

2 Griffin Bay Preservation Committee,

3
4 Petitioners,

5 v.

6 San Juan County,

7
8 Respondent.

Case No. 07-2-0014

**ORDER GRANTING COUNTY'S MOTION
TO DISMISS ISSUES 1, 3 AND 4**

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11 **I. SYNOPSIS OF THE DECISION**

12 THIS MATTER comes to the Board on San Juan County's Motion for Partial Summary
13 Judgment on Issues 1, 3, and 4 (County's Motion) filed with the Board on November 19,
14 2007. San Juan County seeks to have the Board dismiss issues that claim (Issue 1) that its
15 Six-Year Transportation Improvement Program (TIP) was adopted without an adequate
16 review required by the State Environmental Policy Act (SEPA), (Issue 3) the TIP designated
17 Project 17 (Griffin Bay Marine Access) an essential public facility without following the
18 appropriate County policies, regulations, and county-wide planning policies, and (Issue 4)
19 the TIP was adopted without following adopted GMA goals and requirements and the
20 County's regulations for public participation for the adoption of comprehensive plan
21 amendments.¹ The County raises several arguments concerning Issues 1, 3 and 4 and also
22 maintains that the Six-Year TIP is not a comprehensive plan amendment, therefore, the
23 Board has no jurisdiction over it.² Petitioners oppose the motion and argue that RCW
24 36.70A.070(6) requires the TIP to be part of the Transportation Element of the County's
25 comprehensive plan. In addition, Petitioner argues, the County's own policies make the TIP
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¹ Prehearing Order at 1-3.

² San Juan County's Motion for Partial Summary Judgment and Dismissal on Issues 1, 3 and 4 at 1.

1 a part of the Transportation Element, and in fact, San Juan County does use the Six-Year
2 TIP as its multi-year financing plan required by the GMA.³

3
4 In this decision, the Board first finds that RCW 36.70A.070(6)(a)(iv)(B) does not require the
5 TIP to be part of the Transportation Element. This provision of the GMA requires the
6 County to use the multi-year financing plan for the Transportation Element as the basis for
7 its TIP but it does not provide that the TIP is necessarily a part of the Transportation
8 Element. Further, the Board finds that San Juan County has not adopted its TIP as part of
9 its comprehensive plan. The County offers a different document (Appendix A to the San
10 Juan County Comprehensive Plan) as its multi-year financing plan and claims that the multi-
11 year financing plan for the Transportation Element does not incorporate the TIP. Petitioner
12 has not demonstrated that the County has adopted this or any other TIP as part of the
13 County's comprehensive plan. For these reasons, the Board finds that the TIP is not a
14 comprehensive plan amendment and the County was not required to follow the procedural
15 requirements for adoption of such an amendment under the GMA and its own policies.
16 Therefore, Issues 1 and 4 will be dismissed. Issue 3 further alleges an "internal
17 inconsistency" between the TIP and the County's comprehensive plan and development
18 regulations. Since the TIP is not a comprehensive plan amendment or development
19 regulation, the requirements for internal consistency within a comprehensive plan (RCW
20 36.70A.070 (preamble)) and between a comprehensive plan and the development
21 regulations (RCW 36.70A.040 and 36.70A.130(1)(d)) do not apply. Issue 3 is therefore also
22 dismissed.
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26 The County did not move to dismiss Issue 2, (which challenges the consistency of the TIP
27 with the Transportation Element pursuant to RCW 36.70A.070(6)(c)) so the Board does not
28 decide that issue here. However, the Board considers the analysis applicable to the
29 question of board jurisdiction to determine compliance with RCW 36.70A.070(6)(c) to be
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³ Griffin Bay Protection Committee's Opposition to San Juan County's Motion for Partial Summary Judgment
on Issues 1, 3 and 4 at 13-19.

1 different from the question of whether the TIP is a comprehensive plan amendment. A
2 challenge to compliance with RCW 36.70A.070(6)(c) addresses the comprehensive plan
3 itself, whose Transportation Element is specifically required to remain consistent with the
4 TIP even as the TIP is amended in the biennial process mandated by Chapter 36.81 RCW.
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6 In summary, the Board grants the County's motion to dismiss Issues 1, 3 and 4. Issue 2,
7 will be heard at the Hearing on the Merits.
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9 II. PROCEDURAL HISTORY

10 In August, 2007, San Juan County adopted Resolution 32-2007 that adopted the County's
11 Six-Year Road Program, otherwise referred to the Transportation Improvement Program
12 (TIP).⁴ Petitioner Griffin Bay Preservation Committee filed a petition for review on October
13 2, 2007. The Petition claimed the following: (1) the TIP was adopted without an adequate
14 review required by the State Environmental Policy Act, (2) the TIP violated various goals
15 and requirements of the GMA, (3) the TIP designated Project 17 an essential public facility
16 without following the appropriate County policies, regulations, and county-wide planning
17 policies, and (4) the TIP was adopted without following adopted GMA goals and
18 requirements and the County's regulations for public participation in the adoption of
19 comprehensive plan amendments.
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22 On October 25, 2007, a prehearing conference was held. Prosecuting Attorney Randall
23 Gaylord represented San Juan County, Peter Eglick represented the Griffin Bay
24 Preservation Committee; Board Member Holly Gadbow presided. As a result of the
25 prehearing conference, Petitioner filed an Amended Petition for Review on November 2,
26 2007 and the parties submitted a stipulated motion for an extension of the Final Decision
27 and Order for thirty days to explore the possibilities of settlement.
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⁴ The County refers to the action adopted by Resolution 32-2007 as the Six-Year Road Program. Petitioner refers to this action as the Six-Year Transportation Improvement Program.

1 On November 7, 2007, a Prehearing Order was issued, and on November 8, 2007, an order
2 extending the date of the Final Decision and Order to April 30, 2008 was issued. The
3 County filed its motion for a partial summary judgment on issues 1, 3, and 4 on November
4 19, 2007. Petitioner filed its opposition to the motion on December 5, 2007, and a corrected
5 version the following day.⁵ The Board held a telephonic hearing on December 12, 2007.
6 Deputy Prosecutor Randall Gaylord represented San Juan County, Peter Eglick
7 represented Petitioner, and all three Board Members attended. Board Member Holly
8 Gadbow presided.
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11 At the hearing, the County objected to Petitioner's Exhibits 330, 334, 342, and 346 because
12 these exhibits were not material to the motion or part of the County's record for the adoption
13 of the TIP. The County argued that Exhibit 342 is a public disclosure request and not
14 subject to the Board's jurisdiction. Petitioner asserted that these exhibits were part of an
15 earlier action that related specifically to Item 17 (Griffin Bay Marine Access) of the
16 Transportation Improvement TIP. The County's objection to adding these Exhibits is
17 sustained at this time. They are not part of the County's record below and are not relevant
18 to the issue of the Board's jurisdiction over Issues 1, 3 and 4. However, Petitioner is
19 permitted to submit these items for addition to the Index with a properly supported Motion to
20 Supplement the Record by the deadline for Motions to Supplement the Record as specified
21 in the Prehearing Order. Petitioner also should use the Additions to the Index form that was
22 attached to the Preliminary Notice and Schedule and the Prehearing Order and give the
23 items the appropriate Index number in accordance with the instructions in the Prehearing
24 Order.
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28 At the hearing, the Board also asked the County to submit the multi-year financing plan for
29 the Transportation Element contained in its Comprehensive Plan. On December 12, 2007,
30 the County submitted Appendix 6 of its comprehensive plan as its multi-year financing plan.
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32 ⁵ Griffin Bay Protection Committee's Opposition to San Juan County's Motion for Partial Summary Judgment
on Issues 1, 3, and 4 and (Corrected) Griffin Bay Protection Committee's Opposition to San Juan County's
Motion for Partial Summary Judgment on Issues 1, 3, and 4 (GBPC's Opposition).

1 On December 13, 2007 Petitioner’s representative submitted a letter objecting to Appendix
2 6 because it was not relied upon in Petitioner’s Partial Summary Judgment Motion.
3 Petitioner’s letter also asserted that Appendix 6 does not support Petitioner’s claim that it is
4 a “multi-year financing plan”. Pursuant to WAC 242-02-540, Appendix 6 is added to the
5 record and is given Index Number 00400.⁶
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7 **III. ISSUES PRESENTED⁷**

8 Should Issues 1 and 4 be dismissed because the TIP is not a comprehensive plan
9 amendment or development regulation subject to the procedural requirements of the GMA
10 for an adoption of such enactments?
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12 Should Issue 3 also be dismissed because the TIP is not a comprehensive plan amendment
13 or development regulation required to meet the “internal consistency” requirements of RCW
14 36.70A.070 (preamble) or RCW 36.70A.040 and 36.70A.130(1)(d) (requiring consistency
15 between a comprehensive plan and the development regulations)?
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18 **IV. DISCUSSION OF THE ISSUE**

19 **Positions of the Parties**

20 San Juan County’s Position

21 San Juan County argues that Resolution 32-2007, that adopted the County’s Six-Year Road
22 Program, (TIP), is not a comprehensive plan, development regulation or an amendment to
23 either a plan or regulation. The County argues that RCW 36.70A.290 (2) and RCW
24 36.70A.280(1) limit the subject-matter jurisdiction of the growth management hearings
25 boards to comprehensive plans, development regulations, or amendments to either.
26 Because the adoption of the TIP is not one of these actions, the County maintains the Board
27 does not have jurisdiction over the County’s adoption of its TIP. ⁸
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32 ⁶ “A board may order, at any time, that new or supplemental evidence be provided.”

⁷ Because we decide that the TIP is not a part of the County’s comprehensive plan, the Board will not address the other arguments raised by the County in support of dismissing Issues 1, 3 and 4.

⁸ County’s Motion at 3 and 11.

1 The County points out that the TIP was adopted pursuant to RCW 36.81.121 which requires
2 each county to prepare and adopt a comprehensive road program for a six-year period
3 every biennium. The County describes the purpose of the six-year TIP as a prerequisite for
4 any construction activity and an orderly ranking of road projects to provide for an orderly
5 distribution of funding for transportation projects.⁹ The County contends that nothing in
6 RCW 36.81.121 provides the growth boards authority to review procedures for adopting six-
7 year road plans.¹⁰ To date, the County asserts, there are no growth board cases which
8 have reviewed the procedures for the adoption of Six-Year TIPs for compliance with the
9 State Environmental Policy Act (SEPA), and there are no cases in which the growth boards
10 have reviewed TIPs for compliance with the “Public Participation requirements or the use of
11 the phrase “essential public facilities”.”¹¹
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14 The County claims that in the Central Puget Sound Growth Management Hearings Board’s
15 (Central Board’s) February 13, 2007 Final Decision and Order in *Fallgatter v. City of Sultan*,
16 the Central Board reviewed the consistency between the comprehensive plan and the Six-
17 Year TIP, but it did not discuss the jurisdictional question.¹² The County maintains that
18 even if the Board decides to accept jurisdiction, it must limit its jurisdiction to the question of
19 whether the Six-Year Road Plan is inconsistent with the comprehensive plan.¹³
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22 **Petitioner’s Position**

23 Petitioner argues that the Growth Management Act (GMA) requires that capital facilities and
24 transportation inventories and improvement programs, such as six-year TIPs, be adopted as
25 part of and consistent with the comprehensive plan¹⁴. Petitioner asserts that the TIP is a
26 “mandatory component of the mandatory Transportation Element, required to be adopted by
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30 ⁹ Ibid at 5.

31 ¹⁰ Ibid at 11.

32 ¹¹ Ibid at 11.

¹² Ibid at 11.

¹³ Ibid at 11.

¹⁴ GBPC’s Opposition at 14.

1 the County pursuant to RCW 36.70A.070 (6)(a)(iv)(B) and RCW 36.81.121.¹⁵ Petitioner
2 further contends that the GMA makes it clear that the TIP is the county multi-year financing
3 plan required by RCW 36.70A.070(6) and it is therefore subject to challenge to the Board.¹⁶
4 Petitioner asserts that several Central Board decisions support its position that the growth
5 boards have jurisdiction over TIPs.¹⁷
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7 Petitioner further argues that several of the County's comprehensive plan policies show that
8 the County considers the TIP to be part of the County's comprehensive plan. Petitioner
9 points to the following policies to support its argument:
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- 11 • Policy 6.2.B, which directs the County Engineer to prepare a TIP in accordance with
12 Chapter 36.81.RCW,
- 13 • Policy 6.2.B.3b, which directs the Board of County Commissioners (now the County
14 Council) to submit the TIP to the County Planning Department and Planning
15 Commission for review and recommendation regarding its relationship to adopted
16 county plans and regulations at least 45 days before adoption, and
17
- 18 • Policy 6.2.A, which directs that the implementation of the TIP should be done with
19 citizen participation; consider the needs and desires of citizens of each of the islands;
20 and should be evaluated for consistency with the land use goals and policies in the
21 comprehensive plan and shoreline master program.¹⁸
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23 Board Discussion

24 RCW 36.70A.280(1) and RCW 36.70A.290, read together, define board jurisdiction¹⁹:

25 A growth management hearings board shall hear and determine only those
26 petitions alleging either:

27 (a) That a state agency, county, or city planning under this chapter is not in
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29 ¹⁵ *Ibid.*

30 ¹⁶ GBPC Opposition at 14.

31 ¹⁷ *McVittie v. Snohomish County*, CPSGMHB Case No. 99-3-0016c (Final Decision and Order, February 9,
32 2000) (*McVittie*), *Fallgatter v. Sultan*, CPSGMHB Case No.06-3-0003 (Final Decision and Order, June 6, 2006)
(*Fallgatter*), *Kent Cares v. City of Kent*, CPSGMHB Case No. 02-3-0019(Order on Motions, March 14, 2003)
(*Kent Cares*). GBPA Opposition at 14 and 15.

¹⁸ GPBA Opposition at 17 and 18.

¹⁹ *Wenatchee Sportsmen v. Chelan County*, 141 Wn. 2d 169, 178, 4 P.3d 123 (2000)

1 compliance with the requirements of this chapter, chapter 90.58 RCW as it
2 relates to the adoption of shoreline master programs or amendments thereto,
3 or chapter 43.21C RCW as it relates to plans, development regulations, or
4 amendments, adopted under RCW 36.70A.040 or chapter 90.58 RCW; or
5 (b) That the twenty-year growth management planning population projections
6 should be adjusted.

7 RCW 36.70A.280(1)

8 All petitions relating to whether or not an adopted comprehensive plan,
9 development regulation, or permanent amendment thereto, is in compliance
10 with the goals and requirements of this chapter or chapter 90.58 or 43.21C
11 RCW must be filed within sixty days after publication by the legislative bodies
12 of the county or city.

13 RCW 36.70A.290(2)

14 The courts, and the boards themselves, have repeatedly recognized the limited jurisdiction
15 granted to the boards by the GMA. Most recently, the Supreme Court, in *Woods v. Kittitas*
16 *County*, reaffirmed the courts' position in regard to the boards limited jurisdiction, with
17 jurisdiction being limited "to decide only petitions challenging comprehensive plans,
18 development regulations, or permanent amendments" to those documents. *Woods v.*
19 *Kittitas County*, Docket No. 78331-4 (Dec. 20, 2007) at Paragraph 19 (citing RCW
20 36.70A.280; RCW 36.70A.290(2)); *Wenatchee Sportsmen Assoc. v. Chelan County*, 141
21 Wn. 2d 169, 178, 4 P.3d 123 (2000)²⁰. This Board, as have the other Boards, has adhered
22 to this requirement. See e.g., *Harader et al. v. Napavine*, WWGMHB Case No. 04-2-0017c,
23 FDO (Feb. 2, 2005); *Roth et al. v. Lewis County* 04-2-0014c, Order on Motions (Sept. 10,
24 2004).²¹ The Board has further stated that it does not have jurisdiction to review an action
25 for compliance with a statute or regulation that is not set forth in RCW 36.70A.280. *Friends*
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29 ²⁰ The question before the Court in both the *Woods* matter and *Wenatchee Sportsmen* pertained to the
30 difference in jurisdiction over land use decisions based on the GMA and LUPA, RCW 36.70C, and whether
31 these statutes created two separate avenues for a petitioner to seek review of whether a land use decision
32 complies with the GMA. The Court concluded that a challenge to a site-specific land use decision can be only
for violations of the comprehensive plan and/or development regulations, under the jurisdiction of the Superior
Court, but not violations of the GMA, which is the jurisdiction of the Boards. *Woods*, at Paragraph 32.

²¹ A review of cases from the Central Puget Sound Board and the Eastern Washington Board addressing the
limitations on subject matter jurisdiction is available through the *Digest of Decisions* available on each Board's
website.

1 of *San Juans, et al. v. San Juan County*, WWGMHB Case No. 03-2-0003c, Compliance
2 Order and *James Nelson, et al. v. San Juan County*, WWGMHB Case No. 06-2-0024c, FDO
3 (Feb. 12, 2007); *Roth et al. v. Lewis County*, WWGMHB Case No. 04-2-0014c, Order on
4 Motions (Sept. 10, 2004).

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6 Therefore, in order for the Board to have jurisdiction over the TIP, Petitioners must
7 demonstrate that it is a comprehensive plan, development regulation, or an amendment.

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9 A. *Is the TIP a mandatory part of a GMA comprehensive plan?*

10 RCW 36.81.121 delineates the requirements for the adoption of a six-year TIP:

11 1) At any time before adoption of the budget, the legislative authority of each
12 county, after one or more public hearings thereon, shall prepare and adopt a
13 comprehensive transportation program for the ensuing six calendar years. *If*
14 *the county has adopted a comprehensive plan pursuant to chapter 35.63 or*
15 *36.70 RCW, the inherent authority of a charter county derived from its charter,*
16 *or chapter 36.70A RCW, the program shall be consistent with this*
17 *comprehensive plan.*

18 The program shall include proposed road and bridge construction work and
19 other transportation facilities and programs deemed appropriate, and for those
20 counties operating ferries shall also include a separate section showing
21 proposed capital expenditures for ferries, docks, and related facilities. The
22 program shall include any new or enhanced bicycle or pedestrian facilities
23 identified pursuant to RCW 36.70A.070(6) or other applicable changes that
24 promote nonmotorized transit. Copies of the program shall be filed with the
25 county road administration board and with the state secretary of transportation
26 not more than thirty days after its adoption by the legislative authority. The
27 purpose of this section is to assure that each county shall perpetually have
28 available advanced plans looking to the future for not less than six years as a
29 guide in carrying out a coordinated transportation program. The program may
30 at any time be revised by a majority of the legislative authority but only after a
31 public hearing thereon.

32 (2) Each six-year transportation program forwarded to the secretary in
compliance with subsection (1) of this section shall contain information as to
how a county will expend its moneys, including funds made available pursuant
to chapter 47.30 RCW, for nonmotorized transportation purposes.

(3) Each six-year transportation program forwarded to the secretary in
compliance with subsection (1) of this section shall contain information as to
how a county shall act to preserve railroad right-of-way in the event the

1 railroad ceases to operate in the county's jurisdiction.

2 (4) The six-year plan for each county shall specifically set forth those projects
3 and programs of regional significance for inclusion in the transportation
4 improvement program within that region.
5 RCW 36.81.121 (emphasis added)

6 San Juan County argues that its Six-Year TIP is not a comprehensive plan, a development
7 regulation or an amendment to either. The County claims that its TIP was not adopted
8 pursuant to the Chapter 36.70A RCW, the GMA, but in accordance with RCW 36.85.121.
9 Petitioner disputes this assertion and argues that the TIP is a "mandatory component of the
10 mandatory Transportation Element"²² required by RCW 36.70A.040 for GMA adopted
11 comprehensive plans.
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14 Petitioner contends that this makes the TIP part of the comprehensive plan and subject to
15 the Board's jurisdiction. Petitioner bases its claim that the TIP the multi-year financing plan
16 required as part of the transportation element on RCW 36.70A.070(6)(a)(iv)(B), which
17 requires, in pertinent part:

18 A multiyear financing plan based on the needs identified in the
19 comprehensive plan, *the appropriate parts of which shall serve as the basis for*
20 *the six-year street, road, or transit program* required by RCW 35.77.010 for
21 cities, RCW 36.81.121 for counties, and RCW 35.58.2795 for public
22 transportation systems. The multiyear financing plan should be coordinated
23 with the six-year improvement program developed by the department of
24 transportation as required by RCW 47.05.030...
25 RCW 36.70A.070 (6)(a)(iv)(B). (emphasis added)

26 However, this provision only requires that the multi-year financing plan must form the basis
27 for the TIP it does not make the TIP a part of the comprehensive plan.

28
29 The Board does not agree with Petitioner that RCW 36.70A(6)(a)(iv)(B) requires that the six-
30 year road program be adopted as part of the comprehensive plan. What RCW 36.70A.070
31 (6)(a)(iv)(B) requires is that the appropriate parts of the transportation element's multi-year
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²² GBPC's Opposition to San Juan County's Motion for Partial Summary Judgment at 14.

1 financing plan form the basis for six-year TIP required for counties by RCW 36.81.121.
2 Contrary to Petitioner’s assertion that the GMA “makes it clear that a six-year TIP is the
3 county multi-year financing plan required by RCW 36.70A.070(6)(a)(iv)(B). This part of the
4 GMA says the multi-year financing plan “shall serve as the basis” for the six-year TIP, but
5 does not state that the six-year road plan is necessarily the same thing as the required
6 multi-year financing plan. Therefore, the Board finds that a TIP is not a mandatory element
7 of a comprehensive plan.
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10 *B. Has the County adopted the TIP as part of the comprehensive plan?*

11 The next question is whether San Juan County adopted this TIP as part of its
12 comprehensive plan. Nothing prevents cities and counties planning under RCW
13 36.70A.040 from adopting the TIP to fulfill some of the requirements of the multi-year
14 financing plan required by RCW 36.70A.070(6)(a)(iv). However, at argument, the County
15 stated it had a financing plan in its comprehensive plan in addition to the challenged TIP. In
16 response to Board questions, the County provided excerpts from Appendix 6 from its
17 comprehensive plan. These excerpts contain parts of the County’s multi-year financing plan
18 for its Transportation Element, including 20-year estimates of County revenues to support
19 transportation projects and estimates of expenses associated with transportation projects.²³
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21
22 The County’s TIP includes more projects than just those needed to correct existing
23 deficiencies or needs identified in the County’s Transportation Element.²⁴ For instance,
24 the 2008 – 2013 TIP includes safety improvements such as guardrails, leveling and
25 resurfacing of roads, storm drainage and chipseal improvements, and float and pile
26 replacements.²⁵ In contrast, the County’s Transportation Element’s explanation of its future
27 needs is very general and based on deficiencies that would occur over the 20-year life of
28 the plan. However, the GMA does not permit a collateral attack on the sufficiency of the
29 County’s Transportation Element instead of bringing a petition for review based on that
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32 ²³ Index No.

²⁴ San Juan County CP Transportation Element at Section 3.Land Transportation.

²⁵ Exhibit 5

1 issue.²⁶ Petitioner does not provide the Board with any County policies making the TIP part
2 of the multi-year financing plan, nor can we find any reference in the County's
3 comprehensive plan that states the Six-Year TIP is part of the County's multi-year financing
4 plan.²⁷

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6 Petitioner argues instead that San Juan Comprehensive Plan Policies 6.2.B.1, 6.2.B.3.b,
7 and Policy 6.2.A²⁸ confirm "the TIP's GMA status".²⁹ Petitioner claims that the Six-Year TIP
8 was adopted pursuant to these policies in the County's own comprehensive plan as well as
9 pursuant to the requirements of RCW 36.70A.070(6). Therefore, Petitioner concludes that it
10 is subject to review by this Board pursuant to RCW 36.70A.280.³⁰

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12 The cited policies simply mirror the requirements for the adoption of a Six-Year TIP in
13 Chapter 36.81 RCW. They do not create new obligations for the County. These policies
14 delineate a distinct process for the adoption of a Six-Year TIP and show that the County
15 does not consider the adoption of its TIP a comprehensive plan amendment for which it
16 outlines a different process in Section D.3 of the County's comprehensive plan.

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19 Finally, Ordinance 32-2007 that adopts the County's Six-Year Road Plan does not indicate it
20 was adopted pursuant to Chapter 36.70A RCW, but in accordance with Chapter 36.81
21 RCW.

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23 **Conclusion:** We find that neither the RCW 36.70A(6)(a)(iv)(B) nor the County's
24 Comprehensive Plan (Policies 6.2.B.1, 6.2.B.3.b, and Policy 6.2.A) require that the Six-
25 Year TIP be adopted as part of the comprehensive plan.. Although the TIP could be
26 adopted as part of the Transportation Element, Petitioner has not demonstrated that the
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30 ²⁶ RCW 36.70A.290(2)

31 ²⁷ In response to the Petitioner's claim that the deputy prosecutor referred to the TIP as the County's
32 comprehensive plan in a public meeting, the Board notes that such a statement has no legal effect on the
status of the TIP.

²⁸ These policies are included in 6.2.A General Goals under the heading General Policies, Exhibit 4.

²⁹ GBPC's Opposition at 17

³⁰ GBPC's Opposition at 18.

1 County has done that. Resolution 32-2007 does not adopt the 2003-2008 TIP as part of
2 the San Juan County's Comprehensive Plan and the County's comprehensive plan contains
3 no statement that the TIP is adopted to fulfill a requirement of the comprehensive plan.
4 Therefore, the Board finds that the 2003 - 2013 TIP is not a comprehensive plan
5 amendment.
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7 B. Issues 1 and 4: Compliance with SEPA and the Public Participation
8 Requirements of the GMA
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10 Since no evidence shows that the Six-Year TIP is a comprehensive plan, development
11 regulation, or an amendment to either, we find that the procedural requirements of the GMA
12 for adoption of comprehensive plan amendments and development regulations do not apply
13 to adoption of the TIP. Therefore, Issue 1, alleging a failure to comply with SEPA; and
14 Issue 4, alleging a failure to follow the public participation requirements of the GMA and the
15 public participation program of the County for comprehensive plan amendments, are
16 dismissed.
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18 Additionally, because the TIP is not a comprehensive plan amendment, it is not subject to
19 the "internal consistency" requirement of the preamble to RCW 36.70A.070. This provision
20 of the GMA requires the comprehensive plan to be "an internally consistent document and
21 all elements shall be consistent with the future land use map." Since the TIP is not part of
22 the comprehensive plan, it is not subject to this "internal consistency" requirement. It is also
23 not subject to the requirements that the comprehensive plan and development regulations
24 be consistent with one another.³¹ These requirements would only apply if the TIP were part
25 of the comprehensive plan and therefore this issue is dismissed as well.
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28 **Conclusion:** Therefore, the County's Motion to Dismiss Issues 1 and 4 is granted and these
29 issues are dismissed.
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31 C. Essential Public Facility Siting Challenge - Issue 3
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³¹ RCW 36.70A.040 and 36.70A.130(1)(d)
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1 **Positions of the Parties**

2 County's Position

3 The County acknowledges Petitioner's concerns about including the words "essential public
4 facility" (EPF) in the description of Item 17, the Griffin Bay Marine Access, which are based
5 on Petitioner's allegation that the County has not done an analysis of EPFs throughout the
6 County. The County says that the use of the words "essential public facility" was meant to
7 be descriptive, not a statement of designation. The County states that these words are not
8 necessary. Given Petitioner's objections, the County proposes to remove the language
9 from the narrative. When this is accomplished, the County maintains that this issue will be
10 moot.³²

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13 Petitioner's Position

14 Petitioner contends that Project 17, the Griffin Bay Marine Access, inappropriately refers to
15 a Public Works proposal as an EPF without following the policies in the comprehensive plan
16 that govern the designation of EPFs. Petitioner argues that this failure to comply with EPF
17 siting policies render the County's action in adopting the 2008 TIP noncompliant with the
18 GMA.³³

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21 Petitioner refers to the County's commitment to removing the use of the words "essential
22 public facility" to respond to Petitioner's challenge. Petitioner points out that the County
23 could have removed these words to respond to comments at the hearing on the TIP.

24 Petitioner argues that although the County promises to remove the disputed language, it
25 has yet to do so, but still wants the Board to dismiss the issue without any legal authority to
26 grant this motion.³⁴

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32 ³² County's Motion at 9.

³³ GBPC's Opposition at 28

³⁴ Ibid at 28 and 29.

1 Board Discussion

2 The Board accepts the County's statement that the words 'essential public facility in Project
3 17, the Griffin Bay Marine Access, are descriptive and not a statement of designation.
4 Although the County commits to removing this language from Project 17's narrative, it has
5 not done so to date and we agree that this clarification would assist the public and officials
6 in understanding that no designation change has been accomplished. However, since the
7 TIP is not part of the comprehensive plan, we agree with the County that this language does
8 not accomplish a designation change, as appears to be alleged in Issue 3. While we
9 dismiss Issue 3, the Board wishes to make it clear that the Petitioner is still able to argue in
10 Issue 2 that the use of the term "essential public facility" is inconsistent with the
11 Transportation Element under a challenge pursuant to RCW 36.70A.070(6)(c).
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14 **Conclusion:** Issue 3 is dismissed because the TIP does not constitute a comprehensive
15 plan amendment. However, this dismissal does not bar the Petitioner from arguing that the
16 use of the term "essential public facility" is inconsistent with the Transportation Element of
17 the comprehensive plan based on Issue 2 and RCW 36.70A.070(6)(c).
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20 **V. FINDINGS OF FACT**

- 21 1. San Juan County is located west of the crest of the Cascade Mountains and plans in
22 accordance with RCW 36.70A.040.
23 2. On August 7, 2007, San Juan County approved Resolution No. 32-2007 adopting the
24 Comprehensive Six-Year Transportation Improvement Program (TIP) for 2008-2013.
25 3. Petitioner Griffin Bay Preservation Committee participated in writing and orally in the
26 adoption of Ordinance No. 13-2005.
27 4. Petitioner filed a Petition for Review on October 2, 2007 and an Amended Petition for
28 Review on November 2, 2007.
29 5. Resolution 32-2007 was adopted pursuant to RCW 36.21.181.
30 6. The County's Transportation Element's multi-year financing plan "shall serve as the
31 basis" for the County's Six Year TIP. (RCW 36.70A.070(6)(a)(iv)(B)).
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- 1 7. San Juan Comprehensive Plan Policies 6.2.B.1, 6.2.B.3.b, and Policy 6.2.A simply mirror
2 the requirements for the adoption of a Six-Year TIP in Chapter 36.81 RCW.
- 3 8. Section D.3 of the County's comprehensive plan sets out the requirements for a
4 comprehensive plan amendment adoption.
- 5 9. The Transportation Element of the County's comprehensive plan generally identifies
6 projects that will be needed to maintain the County's identified transportation Level of
7 Service Standards over the 20-year time period of the comprehensive plan.
- 8 10. The Appendix 6, Transportation, to the County's comprehensive plan is the multi-year
9 financing plan for the Transportation Element of the comprehensive plan.
- 10 11. The multi-year financing plan estimates expenses and amounts generated from various
11 sources of revenues to fund the cost of transportation improvements for the 20-year life of
12 the San Juan County's comprehensive plan.
- 13 12. Petitioners have not demonstrated that the 2008-2013 TIP adopted by Resolution 32-
14 2007 is part of the County's comprehensive plan.
- 15 13. RCW 36.70A.130(1) requires the Transportation Element to be reviewed and updated, if
16 necessary every seven years while RCW 36.81.121 requires the Six-Year TIP to be updated
17 annually.
- 18 14. The use of the term "essential public facilities" in the TIP does not accomplish a
19 designation change.
- 20 15. Any Finding of Fact hereafter determined to be a Conclusion of Law is hereby adopted
21 as such.
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26 VI. CONCLUSIONS OF LAW

- 27 A. The Western Washington Growth Management Hearings Board has jurisdiction over the
28 parties in this case.
- 29 B. Petitioners have standing to raise the challenges in the Petition for Review.
- 30 C. San Juan County's 2008-2013 TIP is not a comprehensive plan amendment.
- 31
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1 D. Because the Six-Year TIP is not a comprehensive plan amendment or development
2 regulation, the Board lacks jurisdiction to determine whether the requirements of SEPA were
3 met in its adoption. RCW 36.70A.280(1)(a).

4 E. Because the Six-Year TIP is not a comprehensive plan amendment or development
5 regulation, the GMA requirements for public participation do not apply to its adoption.

6 F. Because the Six-Year TIP is not part of the County's comprehensive plan, the
7 requirement for "internal consistency" of all the elements of a comprehensive plan is not
8 applicable to adoption of the TIP. RCW 36.70A.070 (preamble).

9 G. Because the Six-Year TIP is neither a part of the comprehensive plan nor a
10 development regulation, the requirements for consistency between the comprehensive plan
11 and the development regulations in RCW 36.70A.040 and 36.70A.130(1)(d) do not apply to
12 the TIP.

13 H. Any Conclusion of Law hereafter determined to be a Finding of Fact is hereby adopted
14 as such.
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17 VII. ORDER

18 Based on our review of RCW 36.70A.070(6)(b) and (c), RCW 36.81.121, the County's
19 comprehensive plan, Six-Year TIP and various Central Board and Supreme Court cases
20 pertaining to the Board's jurisdiction, the County's motion to Dismiss Issues 1 ,3, 4 is
21 GRANTED. Issue 2 will be carried forward to the Hearing on the Merits.
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23 Entered this 10th day of January 2008.
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27 _____
Holly Gadbow, Board Member

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James McNamara, Board Member
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Margery Hite, Board Member

This is not a final order. It will become final upon entry of the Final Decision and Order in this case.

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