CENTRAL PUGET SOUND

GROWTH PLANNING HEARINGS BOARD

STATE OF WASHINGTON

ASSOCIATION OF RURAL RESIDENTS,)**Case No. 93-3-0010**
)
Petitioner,)
)**FINAL DECISION AND ORDER**
v.)
)
KITSAP COUNTY,)
)
Respondent.)
)

A.PROCEDURAL HISTORY

On December 6, 1993, the Central Puget Sound Growth Planning Hearings Board (the **Board**) received a Petition for Review from the Association of Rural Residents (**Rural Residents**) challenging the adoption by Kitsap County (the **County**) of its Interim Urban Growth Area (**IUGA**) in the area north of the community of Kingston.
On December 15, 1993, the Board issued a Notice of Hearing in this case setting the dates for the prehearing conference and the hearing on the merits.The Notice also contained a tentative schedule including deadlines for submittal of the Index, filing of motions and a briefing schedule.
On December 30, 1993, the Board received a Motion of City of Poulsbo Requesting Status as Amicus.
On January 11, 1994, the Board entered an Order Amending Dates for Prehearing Conference, Briefing Schedule and Hearing on the Merits and Granting Motion of City of Poulsbo as Amicus.
The Board held a prehearing conference on January 18, 1994, and on January 20, 1994, issued a Prehearing Order which contained a list of legal issues to be decided and included deadlines for filing dispositive and non-dispositive motions, responses to such motions, and rebuttals to responses to motions.
On January 26, 1994, Rural Residents filed a Dispositive Motion re: Legal Issue No. 1, and the County filed a Motion to Dismiss SEPA Claims; Rural Residents also filed a Motion to Supplement the Record.
On February 11, 1994, The Board held a hearing on dispositive motions at its Seattle office.
On February 16, 1994, the Board issued an Order Partially Granting Rural Residents' Motion to

Supplement the Record and Granting Revision to the Filing Dates for Final Exhibit Lists and Exhibits.
On February 16, 1994 the Board also issued its Order Granting Dispositive Motions.The Board decided Rural Residents' Motion on Legal Issue No. 1 by concluding that IUGAs must be guided by the planning goals of Chapter 36.70A RCW.Responding to the County's Motion to dismiss SEPA Claims, the Board held that because Rural Residents had failed to exhaust the County's administrative remedies for appealing SEPA compliance issues, the Board was precluded from hearing its SEPA claim.Therefore, the Order granted both Rural Residents' Dispositive Motion re: Legal Issue No. 1 and the County's Motion to Dismiss SEPA Claims.
On February 25, 1994, the Board received Poulsbo's "Motion to Withdraw as Amicus" and on March 4, 1994, the Board entered an Order Granting Motion of Amicus [Poulsbo] to Withdraw.
On March 28, 1994, the Board held a hearing on the merits of the Petition for Review at Fire Station No. 1, Poulsbo.Present were the three members of the Board: M. Peter Philley, Chris Smith Towne, and Joseph W. Tovar, Presiding Officer.Representing Rural Residents was David A. Bricklin; representing the County was Douglas B. Fortner.Court reporting services were provided by Carolyn Lopez of Robert H. Lewis & Associates.No witnesses testified in this matter.

B.FINDINGS OF FACT

1.The Growth Management Act (**GMA** or the **Act**) became effective on July 1, 1990.It mandates that each county planning under the Act designate one or more urban growth areas " ... within which urban growth shall be encouraged and outside of which growth can occur only if it is not urban in nature."RCW 36.70A.110(1).

2.On January 31, 1992, the Washington State Office of Financial Management (**OFM**) Forecasting Division published its "Washington State County Population Projections, 1990-2010, 2012."The year 2012 forecast for Kitsap County's population was 269,687.
3.The 1993 Legislature enacted ESHB 1761 (lst sp.s. c 6 s 2, effective June 1, 1993), which amended the Act to require each county planning under the Act to adopt development regulations designating IUGAs.The requirement is codified at RCW 36.70A.110(4).
4.In a memorandum dated August 16, 1993 to elected officials and planning directors of jurisdictions planning under the Act, the Department of Community Development (**DCD**), Growth Management Division, stated that:

> UGAs are areas where urban growth occurs; outside UGAs growth can occur only if it is not urban in nature [RCW 36.70A.110(l)]."Interim" does not change the definition of UGAs, except to recognize that the boundary is not necessarily final.
> ESHB 1761's interim UGA requirement was passed in part due to concern about the continuation of urban sprawl during the year or more extension local governments have received to prepare their comprehensive plans ... The intent of the new law is that the line

have meaning.

Public notice, a public hearing, and compliance with the state Environmental Policy Act are required.This indicates that designating an interim UGA is more than drawing a line; it must be backed up and supported during the interim by development regulations.

....

Once an interim UGA is established, urban growth must not occur outside its boundaries. The ordinance establishing the interim UGA must make that clear.Counties are encouraged to define what is urban and what is rural as part of their interim UGA process, if they have not already done so.

....

The SEPA analysis should include a land capacity analysis and address the effects of sprawl.

....

If an existing urban growth area meets the GMA definition for a UGA and if a public hearing and SEPA analysis were conducted, an existing UGA can be used for an interim UGA.Ex. 16, at 1-3 (emphasis added).

Existing Conditions

5.The area in dispute, referred to by the parties as "**the North Kingston area**," is in the northeastern part of Kitsap County, north of the unincorporated community of Kingston and adjacent to Puget Sound.Kingston is served by a ferry connecting it to Edmonds.In the immediate area of the ferry dock and for a short stretch along State Route 104 is a concentration of commercial and residential development known locally as "downtown Kingston" (**Kingston**). Immediately north of the community is the area which is the subject of this petition for review.

6.The area is generally wooded, with a ravine running through the area from the southeast to the northwest, elevations ranging from sea level to 400 feet, steep slopes along the ravine, numerous wetlands, and abundant wildlife.The area is situated above two aquifers providing potable water to the North Kingston area and also to properties below the bluff on Puget Sound.Ex. 111.

7.North Kingston residents report sighting raptors, songbirds, ducks, and sea birds; upland mammals; reptiles; shellfish, fish and marine mammals in the area of their residences and on or offshore of the adjoining beach.Ex. 118.

8.A map entitled "Potential Wetlands, Kingston Area" and intended for general planning purposes related to the GMA, does not identify any hydric soils in the upland portion of the area in contention.Ex. 133.

Comprehensive Plan

9.The Kitsap County Comprehensive Plan (**1977 Comprehensive Plan**), adopted on August 3, 1977, established three categories of land use: Urban, Intermediate and Rural.Kingston was designated Urban, and the North Kingston area was designated Rural.Ex. 70.

North Kitsap Subarea

10.In April, 1984, Kitsap County adopted the North Kitsap Subarea Plan (**Subarea Plan**) amending the Comprehensive Plan.In the North Kingston area, the land use designation was

changed to Semi-Urban, and an area to the north, northeast and northwest of that area was redesignated as Semi-Rural.Ex. 32, Map 2A.

11.The Subarea Plan describes land designated as Semi-Urban as:

> ... areas near urban centers which have been substantially developed, or areas where services exist or can reasonably be extended to allow for higher intensity land uses, primarily residential, with related commercial and non-residential services.The Semi-Urban designation has a twofold purpose.First it is intended to provide a transition between the more intense land uses of an urban area and the less intense uses found in semi-rural areas. Secondly, it is intended to accommodate medium and higher density residential development and related neighborhood scale commercial development.
>
> Suquamish, land around the City of Poulsbo, Kingston and Keyport were designated Semi-Urban.These areas either have existing services or have the potential to be served in the near future at a reasonable cost.
>
> Semi-Urban Goal:To encourage medium and higher density land uses which are primarily residential in nature, offering a choice in density, in services available, in amenities, and which accommodate neighborhood commercial development.
>
> Semi-Urban Residential Goal:To promote a mix of quality multi-family and single-family housing in a range of densities.
>
>> Policy SR-1:Residential densities of from 3 to 6 units per acre will be permitted, with higher densities possible in planned unit developments.
>>
>> Policy SR-2:Maximum densities for those areas having public water and sewers available should be limited to thirty (30) dwelling units per acre, when compatible with adjacent land uses, density and character.Ex. 70, at 49.

12.The maximum density for lands designated Urban is 30 thirty dwelling units per acre.For Rural lands, density of development on platted lots is limited to one unit per 2½ acres in upland areas, and two per acre on waterfront lands.These densities may be increased with use of a planned unit development, subject to certain conditions.Ex 70, at 45, 53.

13.At the same time, the North Kingston area was rezoned to allow for two or three units per acre (R-2 and R-3 designations).Ex. 32, Map 2B.

14.In its discussion of sewer facilities, the Subarea Plan noted that:

> The Kingston treatment plant was built in 1974 and is operated by the Kitsap County Department of Public Works.It currently has the equivalent of 396 connections and treats an average flow of 55,000 gallons per day, only 37% of design capacity is presently being used.Therefore, additional development can be accommodated with existing sewage facilities.Ex. 70, at 23.

15.In its analysis of water facilities, the Subarea Plan stated:

> Kingston has approximately 200 connections.It has two wells with a combined 260 gallon per minute capacity and a 130,0000 gallon storage tank.Source development has been a problem at Kingston.The PUD drilled a 1200 foot deep test well but did not find water. Additional sources of water will have to be developed to accommodate growth expected in

the Kingston area.

....

... There is also a substantial number of individual or community wells to serve private households.Ex. 70, at 24, 26.

16.The Subarea Plan mentions unstable slopes as the only geologic hazard areas identified in North Kitsap.Ex. 70, at 34.

17.The Subarea Plan includes a map showing 15% or greater slopes, and policies for those areas including:

> Policy NS-1:Kitsap County shall adopt, in conjunction with the adoption of this North Kitsap Subarea Plan, the mylar overlay maps showing unstable slopes ... The maps shall be used as guides to aid in locating Environmentally Sensitive Areas (**ESAs**) and may be modified (either by addition or deletion of areas) by qualified professional studies. (Emphasis in original.)
>
> Policy NS-2:Steep slopes should be preserved and protected and any development on such slopes shall pose no hazard to health and property.Ex. 70, at 70, 70A.

18.The Draft Supplemental Environmental Impact Statement (**Draft SEIS**) notes that zoning for the North Kitsap Subarea:

> ... falls into two categories, residential and commercial..Residential zoning classifications in the Urban and Semi-Urban designation remain consistent with the densities of the 1977 Comprehensive Plan.Zoning classifications for residential use in Urban designations will range from R-6 to R-30, and from R-3 to R-30 in Semi-Urban designations.Land that was designated Intermediate and was replaced with Semi-Urban was zoned R-3, unless the existing zoning classification was of a higher density (in which case the higher density classification was retained).Ex. 71, at 26.

19.The Draft SEIS identifies the first goal for the Kingston/East Shore area as:

> To maintain the rural character of the surrounding community while retaining and promoting the small town atmosphere of Kingston.Ex. 71, at 32.

20.The Final Supplemental Environmental Impact Statement (**Final SEIS**), in a listing of changes made between the Draft SEIS and the Final SEIS, notes that the Kingston area has been redesignated Semi-Urban, with the Urban designation eliminated, and the maximum density in the Semi-Rural designation has been increased from two to three units per acre where topography and soil conditions permit.Ex. 72, at 1, 4..

21.In March, 1991, the County's planning department proposed an urban growth boundary north and west of Kingston of approximately one square mile, including Apple Tree Point and Parcell Road.After area residents expressed opposition, the County appointed an urban design steering committee to determine an urban growth boundary and long-range plan for the Kingston area.Ex. 8.

22.In February, 1993, a group of citizens submitted a Petition for Redesignation and Rezoning to Rural of the North Kingston area.The Petition asked that the 1984 upzoning and redesignation in

an area delineated on Map 1 attached to the petition " ... revert to Rural or Resource Protection (not Semi-Rural) at the same density as Rural areas in general, in the upcoming Comprehensive Plan."In their rationale, the petitioners commented that "[I]n 1984 much of this Rural neighborhood was designated Semi-Urban and Semi-Rural and upzoned to R3MH and R2MH (Map 2)..."Ex. 32, with Maps 1 and 2 attached. *See also* replacement attachments, Third Supplement to Record.

Planning Commission Action on Designation of Interim Urban Growth Areas

23.On July 7, 1993, the Kitsap County Department of Community Development (**KCDCD**) recommended "use of the existing 1977 Kitsap County Comprehensive Plan to designate 'interim urban growth areas.'"Exhibit (**Ex.**) 4, at 1.

24.On July 8, 1993, the Kitsap County Planning Commission (**Planning Commission**) heard public testimony on a proposed IUGA at a public hearing.Ex. 6.

25.KCDCD Planning Director Ron Perkerewicz testified at the hearing that:

> The only way to maintain the schedule is to leave the boundaries alone so as not to require preparation of an EIS now.Ex. 6, at 1.

26.At a further public hearing on July 27, l993 the Planning Commission considered IUGA designations proposed by County planning staff.The staff background memorandum to the Commission stated that:

> The proposed action is consistent with the requirement of the Growth Management Act.The Act requires that counties and cities designate areas already served with urban services, or areas likely to be served by urban services as "urban growth areas".Under the Comprehensive Plan, "Urban" and "Semi-Urban" areas are designated to receive urban services, i.e. sewer service.These designated areas have the densities to support urban services.Attachment to Ex. 59, at 2.

27.At the July 27 meeting, the Planning Commission voted to exempt the North Kingston area from the proposed IUGA designation, as delineated on a sketch map identified as Attachment B to the staff memorandum.Ex. 59, at 2.

County Board of Commissioners' Action on Designation of IUGAs

28.On August 18, 1993, the County published notice of an August 30, 1993 hearing on proposed IUGA designations.The notice included the statement that:

> To meet the new interim requirements, Kitsap County intends to use the existing Kitsap County Comprehensive Plan.The County generally includes those areas designated "Urban" and "Semi-Urban", incorporated cities and those areas designated "Manufacturing" that are adjacent to "Urban" and Semi-Urban" areas.These designations are implemented by appropriate regulations contained in the Zoning Ordinance.The County has met the requirements of the State Environmental Policy Act (SEPA) for existing plans through an Environmental Impact Statement and Supplemental Environmental Impact Statements for Subarea Plans.Ex. 135, at 1.

29.In a memorandum to the County Board of Commissioners dated August 19, 1993, County Planner Jeff Smith stated:

> The Planning Commission recommended that the Kitsap County Board of Commissioners adopt the proposal for "interim urban growth areas" with amendments.The Planning Commission recommended ... the exclusion of an area in Kingston, as requested by some Kingston residents.The area recommended to be excluded is designated "Semi-Urban", east of State Highway 104 and north of the Jamaica West Subdivision, located on Kings View Loop Road.The subject properties have a Zoning of R-3, which allows for 3 dwelling units per acre.The R-3 zoning is found in areas with a "Semi-Urban" and a "Semi-Rural" designations.The Planning Commission determined that based on current zoning, and existing low residential densities, the area should be excluded.At a later date the area to be excluded was modified by the County planning staff.Ex. 53, at 2-3.*See also* 2nd Supplement - Maps 1 and 2, attached to Third Supplement to Record.

30.On August 30, 1993, the County Board of Commissioners held a public hearing on the proposed IUGA.County Commissioner Granlund explained his reasons for supporting the IUGA initially proposed by staff, which included the North Kingston area within the IUGA:

> ... It makes sense to me, and still does, that the interim boundary designation follow that which was in fact in force in 1984.Because that's the only thing that we can complete.We cannot complete the letter of the law by October 1 unless we in fact comply with that boundary ... I'm not quite sure I see the rationale in pulling the boundary back on Kingston. I don't quite follow that.If we are going to abide, I don't think we make a choice about what we're abiding by.We abide by what we agreed and in a sense have said that that's the only thing we can comply with ... But I'm not incorrect in that.Jeff [Smith, Planning Dept.], right?
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> Jeff Smith:Correct.
>
> Glenn [Grass (sic), Planning Dept.], right?
>
> Glenn Gross:Okay.
>
> Comm. Granlund: ... And there's no way that we could adopt an interim proposal without doing SEPA. ...Now whether cities entirely want to agree with that or not, it really doesn't make a lot of difference, because we don't have any choice. ... But that's literally what it means is an interim boundary that will suffice from now until July.And <u>the ones that we've designated, with the exception of the Kingston one, meet that standard in application with what has been proposed</u>.Petitioners' Prehearing Brief, Ex. B: partial transcription of Ex. 75 and Ex. 49, at 127 (emphasis added).

31.Commissioner Endresen then asked whether the area that the Planning Commission had recommended to be excluded was included within the 1984 growth boundary.Mr. Smith responded affirmatively, noting that it was zoned R-3 with a semi-urban designation.Ex. 49, at 126.

32.On September 20, 1993, the County Board of Commissioners adopted Resolution No. 349-1993, entitled "A Resolution Adopting Interim Urban Growth Areas as required by the Growth Management Act," directing staff to prepare an Ordinance to be adopted on October 4, 1993.Ex. 22.

33.The Board's Minutes of the September 20, 1993 meeting report Commissioner Endresen's discussion of the North Kingston area which the Planning Commission had recommended be excluded: "Although she did not want to disagree with the Planning Commission's recommendation, she felt the request had been made by those who did not have ownership in the property involved and there had not been proper notification of the suggested changes."Ex. 48, at 180.

34.On October 1, 1993, Rural Residents transmitted a Letter of Record to the County Board of Commissioners expressing its continuing opposition to "The Board's September 20 decision to overrule the Planning Commission and expand urban land use northward."The letter reminded the Commissioners of Rural Residents' March, 1993 petition to the Planning Commission seeking to exclude from the IUGA an area north of the lumber yard currently designated R-3 and R-2, and identified the percentage of owners of property within the potentially affected area who supported exclusion.Rural Residents further noted that " ... there was [proper notification of the suggested changes] as the Department of Community Development notified the owners of the [potentially affected] property and gave them an entire month to prepare and testify at the August 30 hearing, then two additional weeks for written comment."Ex. 47.

35.On October 4, 1993, the County Board of Commissioners adopted Ordinance No. 155-1993, entitled "Ordinance Adopting Interim Urban Growth Areas as Required by the Growth Management Act."Ex. 76.

36.On the same date, the County Commissioners passed Resolution 365-1993, entitled "A Resolution adopting Justifications for Adoption of Interim Urban Growth areas as Required by the Growth Management Act," to comply with a requirement of the Act, RCW 36.70A.110(2), that the County justify in writing any designated urban growth area different from an area proposed by a city or cities.The disputed North Kingston area is not discussed in the Resolution. Justification No. 1 states in part:

> The county has adopted regulations using the existing Kitsap County Comprehensive Plan and Subarea Plans.The interim designation generally includes those areas designated "Urban" and "Semi-Urban" ... Any significant changes from the Comprehensive Plan would create additional environmental review to meet the requirements of the Washington State Environmental Policy Act, causing the County to miss the deadline for adoption of interim urban growth boundaries in RCW 36.70A.110(4).Ex. 28, at 1.

37.The County stated that "[T]he Kingston IUGA is that area designated as Semi-Urban on the 1977 Comprehensive Plan [Ex. 69], as modified and updated by the 1984 North Kitsap Subarea Plan. [Ex. 70]"County's Prehearing Brief, at 2.

38.The County "did not explicitly consider the planning goals set forth in RCW 36.70A.020 in designating its IUGA's..."County's Prehearing Brief, at 3.

39.On October 7, 1993, the County published notice of its adoption of the IUGA.

40.A map printed February 17, 1994, and entitled "North Kitsap County, Interim Urban Growth Areas, Comprehensive Plan Designations" delineates the IUGA and land use designations for the areas within and adjacent to the IUGA. . For the area which is the subject of this petition, the area

within the IUGA is designated Semi-Urban (30 DU/Ac); for the adjacent area outside of the IUGA, the designation is Semi-Rural (3 DU/Ac.)Ex. 73.

C.STATEMENT OF LEGAL ISSUES

1.Must IUGAs be guided by the planning goals of RCW 36.70A.020?
2.If IUGAs must be guided by RCW 36.70A.020, was the County guided by RCW 36.70A.020?
3.Did the County comply with RCW 36.70A.110 in adopting its IUGAs?
4.Was there a failure by Petitioners to exhaust administrative remedies below which precludes the Board from determining SEPA compliance issues?
5.If the Board has jurisdiction, did the County comply with RCW 43.21C.030(2)(c)?
6.Did the County comply with the public participation, notice and hearing provisions of the GMA, RCW 36.70A.020(11), RCW 36.70A.110(4), and RCW 36.70A.140 in adopting its IUGAs?

D.GENERAL DISCUSSION

The Board finds that the resolution of the legal issues raised in the Rural Residents case must begin with a general discussion.Because this is the first case before the Board specifically dealing with the urban growth areas (**UGAs**)[1] requirements of the Act, it is appropriate to summarize the relevant provisions of the Act and previous Board decisions that describe the decision-making framework into which UGAs fit.It will then be possible to identify the nature, purpose and effect of UGAs and to differentiate between interim UGAs and final UGAs.Following this general discussion, the Board then answers the specific legal issues.

1.Urban Growth Areas

The requirement that urban growth should be directed to designated urban growth areas is one of the main organizing principles of Washington's approach to managing growth.This requirement was adopted by the Legislature as Section 11 of ESHB 2929, the Growth Management Act of 1990, and was codified at RCW 36.70A.110.This section, which requires planning counties to adopt "urban growth areas," provides in part:

> (1) Each county that is required or chooses to adopt a comprehensive land use plan under RCW 36.70A.040 shall designate an urban growth area or areas within which urban growth shall be encouraged and outside of which growth can occur only if it is not urban in nature. Each city that is located in such a county shall be included within an urban growth area. An urban growth area may include more than a single city. An urban growth area may include territory that is located outside of a city only if such territory already is characterized by urban growth or is adjacent to territory already characterized by urban growth.

> (2) Based upon the population forecast made for the county by the office of financial management, the urban growth areas in the county shall include areas and densities sufficient to permit the urban growth that is projected to occur in the county for the succeeding twenty-year period.Each urban growth area shall permit urban densities and shall include greenbelt and open space areas.Within one year of July 1, 1990, each county that as of June 1, 1991, was required or chose to plan under RCW 36.70A.040, shall begin consulting with each city located within its boundaries and each city shall propose the location of an urban growth area.... The county shall attempt to reach agreement with each city on the location of an urban growth area within which the city is located.If such an agreement is not reached with each city located within the urban growth area, the county shall justify in writing why it so designated the area an urban growth area.A city may object formally with the department over the designation of the urban growth area within which it is located.Where appropriate, the department shall attempt to resolve the conflicts, including the use of mediation services.
>
> (3) Urban growth should be located first in areas already characterized by urban growth that have existing public facility and service capacities to serve such development, and second in areas already characterized by urban growth that will be served by a combination of both existing public facilities and services and any additional needed public facilities and services that are provided by either public or private sources.Further, it is appropriate that urban government services be provided by cities, and urban government services should not be provided in rural areas.

ESHB 2929 also adopted critical definitions.These were codified as RCW 36.70A.030, which provides in part:

> (14) "Urban growth" refers to growth that makes intensive use of land for the location of buildings, structures, and impermeable surfaces to such a degree as to be incompatible with the primary use of such land for the production of food, other agricultural products, or fiber, or the extraction of mineral resources.When allowed to spread over wide areas, urban growth typically requires urban governmental services."Characterized by urban growth" refers to land having urban growth located on it, or to land located in relationship to an area with urban growth on it as to be appropriate for urban growth.
>
> (15) "Urban growth areas" means those areas designated by a county pursuant to RCW36.70A.110.
>
> (16) "Urban governmental services" include those governmental services historically and typically delivered by cities, and include storm and sanitary sewer systems, domestic water systems, street cleaning services, fire and police protection services, public transit services, and other public utilities associated with urban areas and normally not associated with nonurban areas.

While ESHB 2929 did not establish a deadline for adoption of UGAs, it did establish a requirement for the adoption of county-wide planning policies (**CPPs**), a portion of which required the county to include policies related to urban growth areas.RCW 36.70A.210 provides

in part:

> (3)A county-wide planning policy shall at a minimum address the following.
> (a)Policies to implement RCW 36.70A.110.

...

(f)Policies for joint county and city planning within urban growth areas.(Emphasis added.)

Like UGAs, CPPs are county-wide in scope, require a collaborative process between cities and the county, and are to be adopted by the county legislative authority.

But for a minor change enacted in 1991, replacing the word "forecast" with "growth management planning population projection," the Act's requirements for UGAs remained unchanged until 1993, when the legislature enacted ESHB 1761.Among other things, this bill amended RCW 36.70A.110 by adding requirements for adoption of IUGAs and FUGAs.The first three paragraphs of RCW 36.70A.110 remained substantively unchanged from the 1990 language, but two additional subsections were added as follows:

> (4) On or before October 1, 1993, each county that was initially required to plan under RCW 36.70A.040(1) shall adopt development regulations designating interim urban growth areas under this chapter... Adoption of the interim urban growth areas may only occur after public notice; public hearing; and compliance with the state environmental policy act, chapter 43.21C RCW, and RCW 36.70A.110.Such action may be appealed to the appropriate growth planning hearings board under RCW 36.70A.280.Final urban growth areas shall be adopted at the time of comprehensive plan adoption under this chapter.
> (5) Each county shall include designations of urban growth areas in its comprehensive plan. (Emphasis added.)

Both interim and final urban growth areas are to be adopted by the county legislative authority and both are subject to all the specific requirements of RCW 36.70A.110.The most prominent procedural difference between IUGAs and FUGAs is the deadline date for each.The Act established October 1, 1993 as the deadline for IUGAs and specified that FUGAs were to be adopted "at the time of comprehensive plan adoption," which in the Central Puget Sound region is July 1, 1994.*See* RCW 36.70A.040(3).

Following a brief review of relevant prior Board decisions, the Board turns to the question of the nature, purpose and effect of IUGAs.In that discussion, the Board will discuss substantive differences that exist between IUGAs and FUGAs.

2.UGAs and prior Board decisions

Previous Board decisions have established a body of law describing more fully the framework for planning and decision-making under the GMA.Because UGAs are an important piece of this overall framework, it is useful to briefly summarize previous Board decisions that create this context.

The Board has held that the GMA consists of a *hierarchy of policy* that provides direction to

implementing actions by state and local governments.[2] Planning under GMA is an *iterative* and *interactive* process.[3] The legislative bodies of counties and cities enjoy broad discretion; however, choices are now made within the framework of GMA mandates and are subject to diminished deference.[4] The foundation for planning and decision-making under the GMA are the local comprehensive plans adopted by counties and cities; however, it is inaccurate to describe this as an entirely bottom-up process.The Act's requirements for consistency and coordination oblige cities and counties to balance local interests with regional and state interests when implementing the GMA.*See Happy Valley Associates, et al. v King County*, CPSGPHB 93-3-0008 (1993), at 19.

The above synopsis applies to all planning, including UGA planning, under the Act.Because the Rural Residents case is the first petition for review alleging non-compliance with RCW 36.70A.110, this is the first instance in which the Board has had to describehow UGAs relate to that framework.

UGAs are a part of the GMA's *hierarchy of directive policy*.UGAs take direction from the Act's planning goals at RCW 36.70A.020 and from CPPs.UGAs therefore also serve the three purposes of CPPs:(1) to achieve consistency between plans as required by RCW 36.70A.100; (2) to achieve a *transformation of local governance within the UGA*; and (3) to *direct urban development to urban areas* and *to reduce sprawl*.*SeeEdmonds*, at 25.

IUGAs, in turn, provide direction to subsequent actions, including adoption of comprehensive plans, and result in a prohibition on urban development beyond the growth boundary.The interim nature of IUGAs also fits into the *iterative* cycle of planning and decision making.Absent a complete set of facts, detailed capacity analyses and decisions, IUGAs postulate a first cut, "minimum sprawl hypothesis" for accommodating the twenty-year population forecast.[5] In keeping with the *iterative* planning cycle, the Act affords the flexibility for the FUGA boundary to be adjusted as those subsequent facts, analyses and decisions become available.

IUGAs are also *interactive* inasmuch as the county and the cities are to work together on the allocation of projected population, the setting of the boundaries and other joint planning activities. RCW 36.70A.110(2);*see also* RCW 36.70A.210(3)(f).Only after the actual capacity of cities to take this growth is definitively known, and it is determined how much of the forecasted growth could not be accommodated by cities, would it then be appropriate for the FUGA to include unincorporated lands that now have urban growth on them.Urban growth may be allocated to unincorporated areas that are not now characterized by urban growth only as a third rank order choice and only in unusual circumstances.

3.Nature, Purpose and Effect of Interim Urban Growth Areas

a.Nature of IUGAs

UGAs are both geographic and policy in nature.They create a policy framework to govern the geographic extent of the comprehensive plans of cities and counties.IUGAs, as a subset of UGAs, likewise are both geographic and policy in nature.However, IUGAs have two other important attributes that differentiate them from FUGAs.First, IUGAs are interim, which is to say that they have a limited life.The policy purpose and effect of an IUGA ceases upon the adoption of the comprehensive plan which must include FUGAs.Second, IUGAs are regulatory in nature because they control development or land use activities by automatically prohibiting annexations (RCW 35.13.005 and RCW 35A.14.005), and by prohibiting urban development beyond the boundary.In contrast, FUGAs by themselves only prohibit annexations beyond the boundary.The policy purpose of IUGAs ceases upon the adoption of the comprehensive plan.The regulatory effect of IUGAs ceases upon adoption of the FUGA boundary with regard to annexations, and upon adoption of implementing regulations with regard to prohibiting urban development beyond the boundary.

UGAs are *geographic* in nature because they deal with physical geography and do so by means of graphic representation, which is to say maps.Whereas CPPs rely on written policies [6] to answer questions such as *what*, *when* and *how* (e.g. which facilities, with what timing and by what process?), UGAs answer questions of *where* urban growth is to occur and, as a result, *who* is to establish development standards and provide urban governmental services.

Both types of UGAs are also *policy* in nature as suggested by the very title of RCW 36.70A.110, "Comprehensive plans--Urban growth areas."The Board has previously held that comprehensive plans are policy documents as opposed to development regulations.*SeeSnoqualmie,* at 12.Thus, IUGAs and FUGAs are policy documents.This conclusion is even more clear with regard to FUGAs due to language of RCW 36.70A.110, which provides in part as follows:

> (4)... [FUGAs] are to be adopted at the time of comprehensive plan adoption...
> (5)Each county shall include designations of urban growth areas in itscomprehensive plan." (Emphasis added.)

Thus, in order to be included in a comprehensive plan (which is a policy document), it follows that the FUGA must be of a like policy nature.The Board notes that implementing regulations are to be adopted simultaneously with or following the adoption of the comprehensive plans (RCW 36.70A.040) and these will serve to implement the plan, including the FUGAs.

Having concluded that FUGAs are policy in nature, does the same hold true for IUGAs?The answer is yes.The fact that IUGAs, by necessity, precede the comprehensive plans means that they will not be a part of the comprehensive plans.However, this does not mean that IUGAs are not policy documents.There are other policy documents under the GMA, such as CPPs, that likewise are not comprehensive plans, but are part of the policy framework for comprehensive plans.Pursuant to the GMA, policy documents are no longer advisory, but rather directive. *SeeSnoqualmie,* at 15.IUGAs are directive to comprehensive plans because they identify the geographic area for which each city and county should be preparing its comprehensive plan. IUGAs are analogous to CPPs in this respect and are an important part of the "hierarchy of

directive policy" under the Act.

b.Purpose of IUGAs

There is no "purpose" section of the Act that explicitly describes the purpose of UGAs.[7] In order to discern the purpose, the Board reviewed the legislative findings of the Act, the planning goals, and the relationship of UGAs to CPPs as presaged by the Board's three county-wide planning policies cases -- *Snoqualmie v. King County, Poulsbo, et al. v. Kitsap County*, CPSGPHB No. 92-3-0009 (1993) and *Edmonds and Lynnwood v. Snohomish County.*

RCW 36.70A.010, legislative findings, is the touchstone for all analyses of the purpose of GMA provisions.In reviewing it, the Board attaches particular importance to the emphasized words:

> The legislature finds that uncoordinated and unplanned growth, together with a lack of common goals expressing the public's interest in the conservation and the wise use of our lands, pose a threat to the environment, sustainable economic development, and the health, safety, and high quality of life enjoyed by residents of this state.It is in the public interest that citizens, communities, local governments, and the private sector cooperate and coordinate with one another in comprehensive land use planning.Further, the legislature finds that it is in the public interest that economic development programs be shared with communities experiencing insufficient economic growth.(Emphasis added.)

The first sentence of RCW 36.70A.010 describes the negative consequences of the land use decision-making process that preceded the GMA and attributed these to "uncoordinated and unplanned growth" that lacked "common goals."Prior to GMA, plans were voluntary and advisory and there was no requirement that plans be guided by state goals or be consistent with the plans of others.Under GMA, plans are now **mandatory** (RCW 36.70A.040) and **directive.** RCW 36.70A.100, .103 and .120.Plans must now be guided by planning goals (RCW 36.70A.020) and be mutually consistent.RCW 36.70A.110 and .210.

The second sentence of RCW 36.70A.010 identifies "comprehensive land use planning" as the strategy to achieve a different future for our state.Under the new system, the GMA, land use decision-making is to be "comprehensive, coordinated, and consistent."[8] A purpose of any section of the Act, therefore, is to further growth and land use decision-making that is **comprehensive, coordinated** and **consistent**.

The "common goals" that RCW 36.70A.010 said were lacking have been supplied by RCW 36.70A.020 - Planning Goals.While all thirteen planning goals guide the development and adoption of comprehensive plans and development regulations, the Board has previously held that Goal 1 and Goal 2 are particularly germane to county-wide matters, such as the CPPs.*See Edmonds*, at 25.Because UGAs are also county-wide in scope and are adopted by the county legislative authority, they are part of the policy framework for comprehensive plans as established by CPPs.The Board therefore holds that a major purpose of UGAs is to serve Planning Goal 1 and Planning Goal 2.

RCW 36.70A.020 sets forth these goals as follows:

> (1) Urban growth.Encourage development in urban areas where adequate public facilities

> and services exist or can be provided in an efficient manner.
>
> (2) Reduce sprawl.Reduce the inappropriate conversion of undeveloped land into sprawling, low-density development.(Emphasis added.)

Sprawl is specifically and prominently named in Planning Goal 2 as a serious malady.While the Act does not define the term, this goal provides a number of clues as to what sprawl is and how steps can be taken to reduce or contain it.For example, it is easy to deduce that sprawl is the product of the "threat" portion of legislative findings, i.e. growth that is "uncoordinated" and "unplanned."One can readily deduce that sprawl consumes more land than is necessary to accommodate forecasted growth, that sprawl is a configuration and location of growth that makes urban service delivery inefficient, and that sprawl is both a cause and a result of the blurring of local government roles and responsibilities for service delivery.

The word or its derivative appears only at RCW 36.70A.020(2).From this planning goal, one also knows that sprawl deals with the conversion of "undeveloped land" to "developed land" such that it results in "low-density" development.The modifier "inappropriate" conveys that not all conversion of undeveloped land to developed land is to be avoided, only "inappropriate" conversion.It also follows that low-density development, *per se*, is not to be avoided, but rather when or where it is "inappropriate."

The next question, then, is when and where such conversion is "inappropriate."There are a number of clues, such as the language of Planning Goal 1 which conveys that "efficient" development is desired and that it should therefore be encouraged where facilities either exist or can be provided in an efficient manner.The principle of directing urban development first to areas within a UGA where capacity exists is reiterated in several places in the Act, most prominently at RCW 36.70A.110(3) which provides:

> Urban growth should be located first in areas already characterized by urban growth that have existing public facility and service capacities to serve such development, and second in areas already characterized by urban growth that will be served by a combination of both existing public facilities and services and any additional needed public facilities and services that are provided by either public or private sources.Further, it is appropriate that urban government services be provided by cities, and urban government services should not be provided in rural areas.(Emphasis added.)

The above language conveys that within a UGA urban development should locate first in areas that have already been committed to urban use and which have or can get capacity to serve that growth.The Act has a clear bias for efficiency and concurrency in the placement and financing of infrastructure and urban governmental services.*Seealso* Planning Goal 12 at RCW 36.70A.020 (12).The urban form and land use pattern that is implicit in these legislative directions is one that is more compact and dense than what market forces alone have historically produced.[9] The Board holds that *compact urban development* is the antithesis of sprawl.By striving to achieve a land use pattern and urban form that is compact,[10] cities and counties will serve the explicit direction of Planning Goals 1 and 2.

As noted, UGAs that comply with the substantive and procedural requirements of RCW 36.70A.020 and RCW 36.70A.110 will result in compact urban development."Compact urban development" does not require that the urban environment be exclusively a built environment, nor that the built environment be of a homogenous intensity, form or character.Other provisions of the Act will require that the urban landscape be interspersed with natural systems, passive and active open space and a variety of public facilities.For example, UGAs must include "greenbelts and open space areas" (RCW 36.70A.110(2)),[11] and critical areas must be protected (RCW 36.70A.060), regardless of whether they are inside or outside of the UGA.

Further, the planning goals require comprehensive plans and implementing actions to include important urban amenities, such as parks, waterfront access, historic areas and artifacts.*See* RCW 36.70A.020, Planning Goals (9) Open Space and Recreation, (10) Environment and (13) Historic Preservation.Such amenities and other public facilities and services, are most appropriately addressed in the land use and capital facilities elements of comprehensive plans.*See* RCW 36.70A.070 (1) and (3).Cities may also choose to adopt policies articulating community character and design pursuant to RCW 36.70A.080.*See Snoqualmie*, at 30, fn 20.

Thus, while UGAs regionally set the stage for "compact urban development," it is the comprehensive plans and implementing actions that will locally achieve the desired result.Local governments, primarily cities, will have the burden and the discretion to locally design, configure and furnish compact urban development in a manner that reflects local character and enhances rather than threatens the quality of urban life.*See* RCW 36.70A.010.

c.Effect of IUGAs

IUGAs have both a policy effect and a regulatory effect.The policy effect provides direction to the preparation of comprehensive plans while the principal regulatory effect is the prohibition of urban development and annexation outside the urban growth area.

The directive effect of an IUGA on comprehensive plans was discussed earlier.The degree to which an IUGA can be directive to a comprehensive plan depends upon its clarity and precision. Because IUGAs may consist of both written policies and graphic policies (i.e. maps) it is important to recognize that written policy can only be as directive as it is clear, a graphic policy can only be as directive as it is precise.

The Board concludes that IUGAs also have a regulatory effect because RCW 36.70A.110(4) directs that counties:

> "...shall adopt development regulations designating interim urban growth areas."(Emphasis added.)

RCW 36.70A.030(7) provides the following definition:

> "Development regulations" means any controls placed on development or land use activities by a county or city, including, but not limited to, zoning ordinances, official controls, planned unit development ordinances, subdivision ordinances, and binding site plan ordinances.(Emphasis added.)

IUGAs do place "controls" on the development or use of land in order to meet the explicit

direction of RCW 36.70A.110(1) which provides:

> (1) Each county that is required or chooses to plan under RCW 36.70A.040 shall designate an urban growth area or areas within which urban growth shall be encouraged and outside of which growth can occur only if it is not urban in nature....(Emphasis added.)

RCW 36.70A.110(1) uses the somewhat equivocal word "encouraged" with respect to what is to happen inside the designated urban growth area.Significantly, however, it says something very different with regard to the land outside the urban growth area.The phrase "... outside of which growth can occur only if it is not urban in nature" (emphasis added) is not equivocal.It does not say "reduce" or "discourage" urban growth outside the UGA.The use of the word "only" clearly means that urban growth is **prohibited** outside of the UGA.The only manner to achieve such a prohibition is for the IUGAs to have some immediate and controlling regulatory effect relative to what happens beyond the designated growth area.

The Board notes that the regulatory effect of the IUGA in controlling land use may require the county to amend its land use regulations and permitting procedures so as to "prohibit urban development" beyond the boundary.At the very least, this will require the county to collect and analyze data; to define urban and rural uses and development intensity in clear and unambiguous numeric terms, including lot sizes, how many and specifically where;and to specify the methods and assumptions used to support the designation.It must be clear to a potential permit applicant what can be permitted on one side of the line that cannot be allowed on the other.Further, recall that the IUGA continues as a development regulation until it is replaced by the development regulations that implement the comprehensive plan.If there is a temporal gap between the comprehensive plan adoption and the adoption of the subsequent implementing regulations, the IUGAs continue in effect so as to preclude a regulatory gap in the prohibition of urban growth beyond the boundary.If the comprehensive plan and the FUGA it incorporates moves the urban growth area boundary line from its IUGA alignment, the county must be mindful of a potential need to amend or otherwise adjust the IUGA development regulation for the interim period until the implementing development regulations arrive.

E.SPECIFIC DISCUSSION AND CONCLUSIONS

Legal Issue No. 1

Must IUGAs be guided by the planning goals of RCW 36.70A.020?

Discussion

The Board granted Rural Residents' dispositive motion regarding Legal Issue No. 1 in its Order Granting Dispositive Motions in this case (entered on February 16, 1994).Therefore, Legal Issue No. 1 was resolved.

Conclusion No. 1

The Board concluded in its Order on Dispositive Motions in this case that IUGAs must be guided by RCW 36.70A.020.

Legal Issue No. 2

If IUGAs must be guided by RCW 36.70A.020, was the County guided by RCW 36.70A.020?

Position of Rural Residents

Rural Residents alleges that the County failed to be guided by, consider and/or comply with a number of the GMA's goals in establishing its IUGA.Rural Residents' Prehearing Brief, at 2. Rural Residents maintains that there is both a procedural and substantive element to the GMA's planning goals provisions, RCW 36.70A.020.Citing *Gutschmidt v. Mercer Island*, CPSGPHB Case No. 92-3-0006 (1993), Rural Residents pointed out that this Board had "warned" that documenting consideration of planning goals in writing would facilitate demonstration of compliance with the procedural requirement to be "guided by" the planning goals.Rural Residents' Prehearing Brief, at 14.Procedurally, Rural Residents claims that:

> Even a cursory review of the record demonstrates that the County Commissioners wholly failed to consider the GMA planning goals when they adopted the IUGA.Rather, believing it would be more expedient to simply re-adopt the old Comprehensive Plan and zoning designations, the County did just that.The only consideration the County Commissioners gave to the planning goals was a decision to ignore them.... Rural Residents' Prehearing Brief, at 15.

Rather than the County's attempting to show that its prior, pre-GMA documents "fortuitously" were consistent with the Act, Rural Residents argues that:

> ...[T]he GMA requires that current planners and legislative bodies consider the GMA goals. It does not operate retroactively to require prior planning documents to have been developed in like manner.Rural Residents' Reply Brief, at 2 (emphasis added).

Substantively, Rural Residents contends that the County's IUGAs must be in compliance with the GMA's planning goals.Rural Residents' Prehearing Brief, at 14.Rural Residents then examined in detail six specific planning goals that it alleges the County failed to comply with when it adopted its IUGAs.Because the Board determines (below) that the County has not yet complied with the specific requirements of RCW 36.70A.110 and must first do so before the Board can determine whether the County's IUGAs substantively complied with the Act's planning goals, that portion of Rural Resident's position will not be summarized.

Position of the County

The County contends that its IUGAs incorporate the relevant GMA planning goals and also comply with the Act.The County acknowledged that it did not "... explicitly consider the planning goals set forth in RCW 36.70A.020..." in designating its IUGAs.Instead, the County, also citing to *Gutschmidt*, maintains that it had the discretion whether or not to follow the Board's

recommendation that local governments explicitly consider the goals in writing.County's Prehearing Brief, at 3.

The County admits that it used its 1977 Comprehensive Plan designations as the basis for its IUGAs.However, the County contends that even though the GMA is "a recent enactment, the goals of the Act are not new to planning, nor do they represent a major change from the goals articulated in the 1977 Plan."The County, in an analysis specifically prepared by the prosecutor's office after this case had been filed, contends that "... ten of the Act's thirteen goals have direct counterparts in the 1977 [Comprehensive] Plan."County's Prehearing Brief, at 3 and Ex. A attached thereto.

Furthermore, the County took the position that not all the goals listed in RCW 36.70A.020 are specifically relevant to the designation of IUGAs.It also pointed out that DCD[12] "suggested that designation of urban growth areas involved only four of the Act's thirteen goals" while Rural Residents cited to six of the goals.The County then analyzed each of these goals, whether it was one cited by DCD or Rural Residents.

Rural Residents' Reply Brief

Rural Residents examined the prosecutor's document that compared the GMA's goals with the 1977 Comprehensive Plan.Rural Residents argued that the Board should reach the "unassailable conclusion" that the County could not simply re-adopt the Subarea Plan to comply with the GMA when its acknowledged life expectancy was five to seven years.Rural Residents' Reply Brief, at 6.

Discussion

Procedural Compliance with RCW 36.70A.020

Because this case involves a challenge of the County's IUGAs, adopted pursuant to RCW 36.70A.110(4) as development regulations, the Act's thirteen planning goals at RCW 36.70A.020 apply.The Board rules that it will not overturn its prior decisions regarding the relationship between interim development regulations and the GMA's planning goals of RCW 36.70A.020. The Board first examined this relationship in *Gutschmidt*, an interim critical areas case.Rural Residents has referred to that case as standing for the proposition that RCW 36.70A.020 has both a procedural and a substantive element.Although the Board has not previously explicitly recognized such a distinction, the Board concurs that it exists and was implicitly discussed in *Gutschmidt* and a subsequent case, *Twin Falls*.

As the Board indicated in *Gutschmidt*:

> ... The easiest way to show that a jurisdiction has "considered" planning goals is to acknowledge their existence in writing.
>
> This recommendation is a practical one; however, it is not a mandatory requirement.To give serious thought to something, to ponder it or carefully examine it does not mean that written proof of that subjective process must exist.Whether the document in question is an

> interim critical areas development regulation, a comprehensive plan or an implementing development regulation, it need not have an explicit discussion of the planning goals. However, the Board strongly recommends that the document itself or a part of the underlying record contain such a discussion, so that there can be no question that planning goals were "considered."Especially in adopting comprehensive plans and implementing development regulations, it is crucial to balance the thirteen planning goals.This balancing of competing goals and their application to local circumstances cries out for documentation. Whether a local jurisdiction decides to explicitly consider the planning goals in writing remains in that jurisdiction's discretion.However, whether the planning goals are just mentally considered or discussed in writing, the hurdle that the document in question must clear is achieving compliance with the GMA.RCW 36.70A.290(2) requires that comprehensive plans and development regulations "meet" or are "in compliance" with "the goals and requirements" of the Act.Therefore, the Board holds that both types of development regulations, interim and implementing, must meet or be in compliance with the planning goals of the Act specified at RCW 36.70A.020.*Gutschmidt*, at 15 (emphasis added).

Therefore, the "procedural" element of RCW 36.70A.020 is the mental process of considering the planning goals.Because it involves thinking about how to achieve the Act's goals, it cannot be quantified, nor need the record document such consideration.The substantive portion of RCW 36.70A.020 requires a determination whether an enactment actually complies with the planning goals.

This case has forced the Board to reevaluate whether the "procedural element" of *Gutschmidt* should be overruled.In other words, should the Board now impose a tangible procedural requirement that cities and counties actually show in writing that they had considered the planning goals?The evidence before the Board shows absolutely no explicit consideration of the planning goals by the County staff or elected officials.*Seealso* County's Prehearing Brief, at 3. Instead, because of the single-mindedness of the County in trying to avoid conducting any additional SEPA analysis, the record strongly suggests a blatant disregard for the planning goals. Nonetheless, after long deliberations on the matter, the Board has determined that it will not overturn *Gutschmidt*.Consequently, no tangible procedural demonstration will be instituted nor will the Board attempt to read the collective minds of the County's elected officials or staff to determine whether they considered the GMA's planning goals when adopting development regulations that designated IUGAs.Instead, the ultimate test of consideration of the goals remains to determine whether the County's actions were substantively guided by those goals -- whether the actions comply with the planning goals.

The Board reaffirms its *Gutschmidt* decision for several reasons.The *Gutschmidt* decision was entered on March 16, 1993.ESHB 1761, which created the requirement for IUGAs, was signed by the governor on May 28, 1993 and became effective on June 1, 1993.[13] The Board was created by the legislature.Just as the legislature is presumed to be aware of judicial decisions interpreting

its laws, so too does the Board presume that the legislature is aware of the decisions of one of its quasi-judicial boards.Accordingly, if the legislature felt that the Board's interpretation of the "guided" language in RCW 36.70A.020 was improper, it could have amended that provision.It has not chosen to do so and, instead, it created an additional requirement and specifically labeled it as "interim" -- IUGAs.[14]

In addition to having had two legislative sessions to amend section .020 since the Board's *Gutschmidt* decision, the Board also notes that the legislature clearly knows how to require written proof of a matter if it wants.For instance, RCW 36.70A.110(2) requires a county to "... justify in writing why it so designated an urban growth area..." (emphasis added) when the county cannot agree with a city.

Thus, if the legislature wants written statements from counties and cities showing how these jurisdictions have considered the planning goals, it can add this procedural requirement to RCW 36.70A.020.However, the legislature has *wisely* elected not to do so.Although practical reasons may exist for showing written consideration of being guided by the planning goals (*see* below), another strong policy reason exists for not imposing this type of procedural step.

If written proof were required, the focus of attention could readily convert from determining whether an enactment was substantively guided by the planning goals.Instead, the focus would shift to determining whether the level of procedural compliance was sufficient (i.e., whether the writing proving that the jurisdiction had considered the planning goals was adequate).The analysis would digress to an adequacy analysis of procedural compliance (for instance, how much writing is necessary to weigh the pros and cons: a one page statement or a 100 page dissertation?) rather than the appropriate substantive analysis of whether the required action itself (e.g., the adopted IUGAs) complies with the Act's planning goals.

Nonetheless, despite refusing to conclude that RCW 36.70A.020 imposes this type of procedural requirement, the Board notes the practical merit of showing consideration in writing.Putting one's thoughts about the goals in writing will promote clarity and assist decisionmakers in focusing on the issues.Balancing the Act's thirteen planning goals is a difficult task where policy makers could use any assistance.Writing about the planning goals promotes public participation in that it gives the public a concrete document to discuss.

At least one other reason exists for putting thoughts into writing about the planning goals.All actions taken by local jurisdictions are presumed valid.*See* RCW 36.70A.320.As the Board indicated in *Twin Falls*, although the Board will continue to give local legislative actions deference:

> ... the great degree of deference that legislative bodies have historically enjoyed is diminished by the explicit direction of RCW 36.70A.320 that the presumption of validity may be overcome by a preponderance of the evidence. *Twin Falls*, at 59.

Therefore, if the record below contains written evidence that a county or city considered the Act's planning goals, the Board will give the local jurisdiction deference to the degree permissible.As the Board also indicated in *Twin Falls*:

> ... if the Board determines that the local legislative authority has erroneously interpreted or applied the GMA, this Board is required to find that body's action not in compliance with the Act.Thus, if a local jurisdiction had ten policy options, each of which was in compliance with the GMA, and selected one that the Board believed was not the best option, this Board would nonetheless grant deference to the local legislative decision and find the action in compliance.However, if the local body, faced with the same ten choices, elected an eleventh option -- one not in compliance with the GMA -- this Board would not hesitate to find the action in noncompliance.*Twin Falls*, at 58.

In contrast, if the record is devoid of any evidence of written consideration, a potential challenger may have an easier task of overcoming the presumption of validity by a preponderance of other evidence from the record.The local government would not have any evidence to rely upon to show that it had considered the planning goals.Instead, the local entity would, like the County here, hope that its enactment substantively complied with the goals of the Act.

Substantive Compliance with RCW 36.70A.020

When the Board concluded in *Gutschmidt* that a jurisdiction only had to "consider" the planning goals, it was discussing the extent of the Board's understanding of the procedural requirements of section .020.The Board did not intend *Gutschmidt* to mean that jurisdictions no longer had to be substantively guided by the Act's goals.It is crucial to emphasize that simply because the Board refuses to interpret RCW 36.70A.020 as imposing a procedural requirement to produce documentation upon local jurisdictions, the Board is not downplaying the substantive significance of the requirement to be guided by the Act's planning goals.Jurisdictions must still be guided by those goals when adopting development regulations and comprehensive plans.That guidance is much more than a mental process.

As previously indicated in *Gutschmidt*, to be guided means "to point out the way for; direct on a course; conduct; lead."*Webster's New World Dictionary of the American Language* 621 (2d College Ed. 1984).Therefore, by replacing the "to guide" and "guiding" phrases in RCW 36.70A.020 with the terms from the definition above, the prefatory section would read:

> The following goals are adopted to point the way or direct the course of the development and adoption of comprehensive plans and development regulations of those counties and cities that are required or choose to plan under RCW 36.70A.040.The following goals are not listed in order of priority and shall be used exclusively for the purpose of leading, directing the course of, or pointing the way for the development of comprehensive plans and development regulations. (Underlining shows replacement language.)

One of the reasons the GMA was enacted was to provide common goals.*See* RCW 36.70A.010. RCW 36.70A.020's thirteen planning goals fulfill this need.It is this set of planning goals that "lead" the entire process; without them, the entire GMA equation falters.Unlike the purely mental procedure of simply considering these goals, the substantive prong of RCW 36.70A.020 is integral to the Act.Accordingly, the Board concludes that cities and counties must use the

planning goals to point the way for theenactment of development regulations and comprehensive plans that substantively comply with the GMA.What does that mean?

To be guided by something is to follow directions that lead to an ultimate destination.The GMA's ultimate destination that local jurisdictions must reach is to adopt development regulations and comprehensive plans that are consistent with the planning goals.Although the Board has previously held that individual jurisdictions have a large degree of discretion in how they achieve a specific planning goal, each jurisdiction must nonetheless substantively meet and comply with the Act's planning goals.*SeeGutschmidt*, at 17 and *Twin Falls*, at 46.

Yet, even this holding affords jurisdictions leeway depending on the wording of a specific goal and the nature of the jurisdiction attempting to implement the goal.For instance, a highly urbanized city like Seattle will have a difficult, if not impossible, time in maintaining and enhancing resource-based industries.*See* RCW 36.70A.020(8).Or, when the language of a goal is less directory, more discretion will be permitted.Goals using the verb "encourage" permit a greater degree of flexibility than planning goal 12, for instance, which uses the verb "ensure."Despite these factors, the Board must review all challenged development regulations and comprehensive plans to determine whether these documents have achieved the legislature's intended result: consistency with the planning goals of the Act.

Finally, the Board addresses the level of compliance necessary for complying with the planning goals when the enactments under review are interim UGAs.In *Gutschmidt*, the Board noted that the level of compliance with the GMA's planning goals would depend upon the document in question.Thus, the Board held that:

> ... local jurisdictions will be held to a higher standard of compliance with the planning goals in adopting comprehensive plans and implementing development regulations than they will for adopting interim development regulations.... *Gutschmidt*, at 17 (Conclusion B-1).

Likewise, in *Twin Falls*, a forest lands case, the Board extended the same lesser compliance standard to interim natural resource lands development regulations.*Twin Falls*, at 45.At issue now is whether the Board should hold that this lesser standard also applies to **interim** UGAs.

The Board likewise holds that counties will be held to a lesser standard of compliance with the Act's planning goals when adopting IUGAs than when adopting comprehensive plans and implementing development regulations, since IUGAs are only temporary.However, on the spectrum of compliance, with strict compliance required for comprehensive plans and implementing development regulations, and lowest compliance required for interim critical areas and natural resource lands development regulations, IUGAs fall closer to the high end of the range.

As the Board explained in *Gutschmidt*, it made sense to hold interim critical areas regulations to a lower standard of compliance with the goals since these interim regulations were required to be adopted prior to either the CPPs or comprehensive plans having been adopted.In addition, the interim critical areas and natural resource lands regulations were "self-guided" by an internal goal. *See Gutschmidt*, at 16.In sharp contrast, IUGAs are adopted after CPPs have been enacted.

Furthermore, IUGAs are not self-guided by one internal goal like interim critical areas regulations, but instead are closely related to the mandatory elements of a comprehensive plan, which in turn, are intertwined with the Act's planning goals.Thus, a higher level of compliance will be required for IUGAs than for interim critical areas regulations, albeit not the highest level of compliance with the planning goals.

Having reviewed its prior decisions and deliberated on the nature of IUGAs, the Board nonetheless will not determine at this time whether the County's IUGAs substantively comply with the GMA.As the discussion below of Legal Issue No. 3 reveals, the County has not complied with the requirements of RCW 36.70A.110 in adopting its IUGAs.Therefore, the Board must remand this matter back to the County with instructions for it to comply with the Act.The Board will not apply RCW 36.70A.020 to the County's IUGAs until the County first complies with RCW 36.70A.110.

Conclusion No. 2

Although the record did not contain any evidence that the County considered the GMA's planning goals at RCW 36.70A020 when it adopted its IUGAs, the Board concludes that the procedural element of RCW 36.70A.020 constitutes only a mental process.Although there are legitimate reasons for doing so, a local entity need not submit written evidence into the record that it has considered the Act's planning goals.Therefore, the Board will not overturn its prior decisions on this point.

Furthermore, the substantive element of RCW 36.70A.020 is the heart of the GMA.All development regulations and comprehensive plans must comply with the Act's planning goals. Nonetheless, local jurisdictions have a broad array of mechanisms for achieving this result.In addition, the level of compliance with the planning goals will vary depending on the document being enacted.Comprehensive plans and implementing development regulations will be held to the highest standard of compliance; interim UGAs to a lower level of compliance; and interim critical areas and natural resource lands regulations the lowest standard of compliance.The physical characteristics of the jurisdiction adopting the enactment and the specific goal in question will also indicate how much flexibility can be afforded.

Finally, the Board will not determine whether the County's IUGAs substantively comply with RCW 36.70A.020 until the County first complies with the specific requirements of RCW 36.70A.110.

Legal Issue No. 3

Did the County comply with RCW 36.70A.110 in adopting its IUGAs?

Position of the Parties

Rural Residents contends that an IUGA must be consistent with the requirements of RCW 36.70A.110 and that the County failed to comply with several such requirements.It urges the

Board to conclude, as DCD did, that the word "interim" does not change the definition of UGAs except to recognize that the boundary is not necessarily final.Rural Residents' Reply Brief, at 22. Rural Residents then discusses three requirements it alleges the County violated.

Rural Residents -- OFM Population Projections

First, Rural Residents contends that the County failed to designate its IUGA based on OFM's population projections.Rural Residents claims that the legislature specifically assigned the task of making such projections to OFM because it was an independent state agency.Thus the OFM projections would not be biased, as would be the case if counties or cities based their IUGAs on their own projections.

Rural Residents alleges that the County failed to take into account any population projections in adopting the IUGA.Rural Residents pointed out that the County never used the county-wide planning policies' population allocation of expected growth to Kingston and Poulsbo when it developed the Kingston IUGA.Rural Residents' Prehearing Brief, at 11, and Reply Brief, at 20. Rural Residents did not argue whether the Kingston IUGA was either too big or too small to accommodate twenty years' growth; instead, it contends that the record is silent on that issue because the County failed to "base" its IUGA on the OFM forecast.Rural Residents' Reply Brief, at 20.

> Inasmuch as the OFM population projections have been developed in the last year or two and the County adopted as its IUGA planning documents developed in the late 1970s and early 1980s, the County's noncompliance with this requirement is blatant.Rural Residents' Reply Brief, at 20.

County -- OFM Population Projections

The County contends that the GMA set forth only two criteria for determining urban areas: projected population and urban character.Although admitting that there "... is no specific reference to population projection in the ordinance," the County alleges that:

> ... the area encompassed by the Kingston IUGA does include areas and allows densities sufficient to permit the urban growth that is projected to occur in the area for the next twenty years.County's Prehearing Brief, at 13.

According to the County, OFM's population projection was for Kitsap County as a whole and served as a basis for the "working population forecast" adopted by the County and its cities through the Kitsap Regional Planning Council.The County projected a 17,000 person increase for the North Kitsap Subarea and allocated 12,750 of that number to the two urban areas (i.e., Kingston and Poulsbo) within this subarea.The County contends that the zoning of the semi-urban areas around Poulsbo and Kingston "... can be adjusted to accommodate 12,750 persons over the next twenty years, if necessary...." and will occur as development is proposed.County's Prehearing Brief, at 13.

The County also argues that because the Kingston area is unincorporated, one of the reasons for designating IUGAs, e.g., to provide cities with some certainty concerning the conditions under which the cities needed to complete their own plans, is less important since the County "can tolerate less certainty."County's Prehearing Brief, at 14.

The County also contends that final UGAs, due in July, 1994, will supersede the IUGAs and therefore it is extremely unlikely that the IUGAs will ever need to accommodate twenty years worth of growth.Because the IUGAs are only "interim":

> A certain amount of flexibility in designating IUGAs should be granted to the County due to the temporary nature of the designation.County's Prehearing Brief, at 14.

Rural Residents -- Greenbelts and Open Space

Second, Rural Residents maintains that neither the County's 1977 Comprehensive Plan or zoning ordinance provides any assurance that the Kingston IUGA will include greenbelts and open space areas.Rural Residents' Prehearing Brief, at 11-12.

County -- Greenbelts and Open Space

The County did not respond to Rural Residents' claim that the IUGAs failed to meet the requirement at RCW 36.70A.110(2) to include greenbelts and open spaces.

Rural Residents -- Locating UGAs

Third, Rural Residents contends that the GMA requires that IUGAs be sized to accommodate twenty years of growth and that urban growth does not occur at will anywhere within the urban growth area.Accordingly, Rural Residents alleges that the legislature mandated three tiers of phased growth within a UGA.Urban growth is first to be located in areas "already characterized by urban growth that have existing public facility and service capacities."Rural Residents' Prehearing Brief, at 12.Next, urban growth is directed to areas "characterized by urban growth that will be served" in the future.

> In other words, urban growth is first directed to areas that have existing public facilities and services which are sufficient to accommodate the urban growth while the second phase encompasses areas that have some public facilities and services but which facilities and services must be augmented.Rural Residents' Prehearing Brief, at 12.

Finally, urban growth is not necessarily limited to areas already "characterized by urban growth."It may be extended to include an area adjacent to territory already characterized by urban growth.However, Rural Residents argued that "[B]y necessary implication, urban growth may occur, third, in 'adjacent territory' only <u>after</u> the first two phases are complete."Rural Residents' Prehearing Brief, at 13 (emphasis added).[15] The County was accused of failing to provide for any phasing of growth.Rural Residents' Prehearing Brief, at 13; and Reply Brief, at 24.

> Because the North Kingston area is not currently served by any public facilities or services, a phasing mechanism was required to direct growth in the early years of the planning period into the areas of the IUGA which already have some or complete public facilitates and services....Rural Residents' Reply Brief, at 24

County -- Locating UGAs

As for urban character, the County disagrees with Rural Residents that the statute created a three tier system.The County refers to the definition of "characterized by urban growth," at RCW 36.70A.030(14), to conclude that lands adjacent to lands having urban services are already included within the definition.Therefore, the County contends that since North Kingston is

adjacent to Kingston and both have been part of the sewer service area since 1984, both areas are appropriate for urban growth.

Discussion

OFM Population Projections

The County has erroneously interpreted and applied RCW 36.70A.110(2). That subsection dictates that UGAs in the county shall include areas and densities sufficient to permit the urban growth that is projected to occur in the county for the succeeding twenty-year period.In order for counties to accomplish this requirement, subsection (2) provides that UGAs must be:

> [B]ased upon the population growth management planning population projection made for the county by the [Washington state] office of financial management. (Emphasis added.)

OFM is charged with several duties, which have been numbered within brackets for ease of reference as follows:

> The office of financial management [1] shall determine the population of each county of the state annually as of April 1st of each year and [2] on or before July 1st of each year shall file a certificate with the secretary of state showing its determination of the population for each county.The office of financial management also [3] shall determine the percentage increase in population for each county over the preceding ten-year period, as of April 1st, and [4] shall file a certificate with the secretary of state by July 1st showing its determination.At least once every ten years the office of financial management [5] shall prepare twenty-year growth management planning population projections required by RCW 36.70A.110 for each county that adopts a comprehensive plan under RCW 36.70A.040 and [6] shall review these projections with such counties before final adoption.RCW 43.62.035 (emphasis added).

In summarizing the relevant portions of the two statutes quoted above as they relate to the counties in the Central Puget Sound region, OFM must at least once every ten years make twenty-year population projections and the counties must base their urban growth areas on these projections.

Next, the Board determines what "based upon" means in the context of RCW 36.70A.110 specifically and the GMA overall.The verb "to base" means:

> 1. to form or make a base for2. find a basis for:establish.*Webster's II New Riverside University Dictionary* 155 (1988).

In turn, the noun "base" means:

> 1.the lowest or bottom part2.a supporting layer or part:foundation3.a fundamental principle or underlying concept: basis.*Webster's II New Riverside University Dictionary* 155 (1988).

The third definition is most appropriate here.The Board holds that counties must use only OFM's twenty-year population projection in adopting UGAs.OFM's forecast is the exclusive source for

the relevant countywide figures -- both the floor and the ceiling for population projections. Counties must base their UGAs on only these projections.Counties cannot add their own calculations to nor deduct from OFM's projections.

The Board reaches this decision for several reasons.First, this interpretation constitutes a sound legislative policy.If the legislature intended to permit counties to modify OFM's projections, it would have drafted RCW 36.70A.110 and RCW 43.62.035 differently.Second, OFM is a state agency independent of local political considerations.If counties were free either to alter OFM's projections or derive their own projections, local biases could enter into the formula and, as Rural Residents argued, enable counties to skew the forecasts to justify any size UGA.*See* Rural Residents' Prehearing Brief, at 11.Accordingly, by placing the sole responsibility on OFM for making countywide population projections, the legislature has accomplished an overriding purpose of the GMA: achieving consistency.Yet, the legislature protected local jurisdictions by requiring OFM to review its projections with each county.RCW 43.62.035.

Third, if a county concludes that OFM's twenty-year population projections are incorrect and should be adjusted, it can appeal the matter to the Board.*See* RCW 36.70A.280(1).If the legislature intended that a county could modify OFM's numbers at will, it need not have bothered to establish a specific appeals procedure to challenge OFM projections. Importantly, if a county does not timely appeal an OFM projection, a county is bound by it.Fourth, counties are also required to review their designated UGAs at least once every ten years, presumably to coincide with OFM's decennial review.*See* RCW 36.70A.130(3).If OFM elected to prepare a twenty-year projection more than once every ten years, counties could re-evaluate their UGAs accordingly.In addition, because OFM is required to annually determine the current population of each county, the Board presumes that if OFM observed an unexpected fluctuation in annual population, it would re-analyze its twenty-year forecast sooner than every decade.

Fifth, RCW 36.70A.350(2) provides:

> New fully contained communities may be approved outside established urban growth areas only if a county reserves a portion of the twenty-year population projection and offsets the urban growth area accordingly for allocation to new fully contained communities that meet the requirements of this chapter.Any county electing to establish a new community reserve shall do so no more often than once every five years as a part of the designation or review of urban growth areas required by this chapter.The new community reserve shall be allocated on a project-by-project basis, only after specific project approval procedures have been adopted pursuant to this chapter as a development regulation.When a new community reserve is established, urban growth areas designated pursuant to this chapter shall accommodate the unreserved portion of the twenty-year population projection....(Emphasis added.)

Again, the legislature has made it clear that OFM's figures are the only population projections that matter.RCW 36.70A.350 recognizes this by requiring counties to deduct from OFM's projections the number of persons it expects to reside in a new fully contained community.

In sharp contrast to OFM's twenty-year population projections for an entire county, which are

both a minimum and a maximum number, counties are required to allocate OFM's figure within the county.In *Edmonds*, the Board held that a county does have the authority to allocate OFM's population projections to cities within its jurisdiction. *See Edmonds***,** at 31.Precisely how this distributive process, called "disaggregation," is carried out is discretionary -- a matter for a county to determine.However, the Board fully expects local considerations to play a role in determining these final allocations.For instance, a county could utilize methods such as the procedures outlined in its CPPs or refer to subarea population projections such as those from the US Census Bureau, a regional agency, or estimates from individual cities, in determining how to allocate OFM's forecast.As long as the sum of the individual population allocations equals the OFM twenty-year population projection for the entire county, the county will be in compliance with the GMA.

To recap, the first requirement a county must meet in establishing its UGAs is to ascertain what twenty-year population projection OFM has made for it.A county cannot "base" its UGAs on OFM's projection if it does not know what the OFM projection is.Secondly, a county must apply OFM's countywide projection locally by disaggregating the overall forecast to subparts of the county.In order to comply with the GMA, a county must indicate both what its OFM projection is and precisely how it allocated that forecast throughout the county.

Before turning to the facts of this particular case, the Board will briefly discuss one other requirement regarding UGAs generally, that is closely related to population projections and allocations: "densities sufficient to permit the urban growth that is projected."RCW 36.70A.110 (2).In order to achieve sufficient urban densities, a county must determine the geographic size of a UGA.Accordingly, counties must specify how many acres (or some other common measurement of land) are within a UGA so that, in the event of an appeal, the Board can determine whether the selected UGA is indeed "sufficient."In undertaking this requirement, counties must distinguish between gross acres and net (or buildable) acres.For instance, undevelopable critical areas, open spaces, rights of way, etc. should be deducted from the gross acreage.*See also* WAC 365-195-335(3).Counties have great deal of discretion in how they achieve this requirement.The Board only demands that counties "show their work" so that both the general public and the Board (if a UGA is appealed) know how the county derived its UGAs and established the appropriate densities.

In this case, the Board has reviewed the entire record to ascertain if Kitsap County showed its work in regards to the Kingston area IUGA.The Board takes official notice that OFM's Forecasting Division indeed did adopt twenty-year county population projections pursuant to RCW 43.62.035 in a document, dated January 31, 1992, entitled "Washington State County Population Projections 1990-2010, 2012" (**OFM's 20 Year Projections**).It is the year 2012 projection that must be used for growth management planning in adopting IUGAs since that is the most current forecast.The twenty-year forecast for Kitsap County's population in the year 2012 was 269,687 people.*Id*., at 11.

The County admits that there is "no specific reference to population in" Ordinance No. 155-1993. County's Prehearing Brief, at 13.The Board notes that nothing in either Resolution 349-1993 or

Resolution 365-1993 reveals OFM's twenty year forecast for the county as each of these documents and the ordinance itself rely on prior enactments, adopted long before the GMA was enacted.Obviously, nothing in a 1977 Comprehensive Plan or the 1984 North Kitsap Subarea Plan could refer to OFM's GMA mandated population projections since those projections were not made until 1992.Furthermore, virtually nothing whatsoever in the remainder of the record before the Board indicates what OFM's twenty-year population projection for Kitsap County was. [16]

Instead, only Exhibit 31 refers to population.The first page, taken from the County's Draft Comprehensive Plan (dated June 24, 1993), generally refers to the county's past and existing population.The second page of Exhibit 31, taken from the Kitsap County CPPs [Supplemental Exhibit, at Appendix E, at 36], shows a Year 2010 forecast of 280,985 persons in Kitsap County which was established by the Kitsap Regional Planning Council (**KRPC**) and ratified by the County on March 4, 1992. [17] The Board takes official notice that OFM forecasts Kitsap County's year 2010 population as 261,970, or 19,015 fewer than the KRPC's.OFM's 20 Year Projections, at 11.The Board further notes that OFM's twenty-year population forecast does not end in the year 2010.Instead, the OFM twenty-year population projection specifically prepared to comply with RCW 43.62.035, ends in the year 2012.It is this latter projection, ending in the year 2012, that all UGAs must be based upon.For internal planning purposes only, such as ascertaining whether OFM's projections needed adjustment and therefore should be appealed to the Board, the County could use the KRPC's year 2010 figure or any other entities' forecasts as it saw fit. However, nothing in the record indicates that the County based its IUGAs on OFM's twenty-year population projection.A county cannot comply with the GMA by using a 1984 document that contains its own population estimates for the year 2000 (*see* Ex. 70, at 10) when the Act requires counties to use OFM's year 2012 forecast.That is a fatal flaw.
The Board therefore holds that the County failed to comply with RCW 36.70A.110 because it failed to indicate what OFM's twenty-year population projection for the county was, because it failed to base its IUGAs on those projections and because it failed to indicate how densities for the Kingston IUGA, among other IUGAs, had been calculated so that the Board could determine whether the densities within the IUGAs were sufficient to permit the projected urban growth.

Greenbelts and Open Space Areas

RCW 36.70A.110(2) provides in part that:

> ...Each urban growth area shall permit urban densities and shall include greenbelt and open space areas....(Emphasis added.)

The terms "greenbelt" and "open space areas" are not explicitly defined in the GMA.However, RCW 36.70A.160 describes "open space corridors" as "...lands useful for recreation, wildlife habitat, trails and connection of critical areas."The Board holds that when the GMA does not provide a definition of a key term or phrase such as "greenbelt" or "open space areas," the local

jurisdiction must do so in order to promote consistency and provide certainty.Allowing local governments to define undefined terms is one of the factors that makes Washington's growth management legislation unique (*see alsoTracy*, at 22); it is an integral part of what has been referred to as the GMA's "bottom-up" approach in which local governments are given great discretion and flexibility in implementing the Act.

Kitsap County Resolution No. 349-1993 and Ordinance No. 155-1993 adopted the County's IUGAs.Exhibits 22 and 76, respectively.Neither document refers to greenbelts or open space areas.However, both cite to portions of the existing Kitsap County Comprehensive Plan, Subarea Plans and Environmental Impact Statements to be used in conjunction with the IUGAs.A map labeled "North Kitsap County, Washington -- Interim Urban Growth Areas -- Comprehensive Plan Designations," printed February 17, 1994, is contained in the record.Ex. 73.However, it does not show any greenbelts or open space areas.

The 1977 Comprehensive Plan has a section entitled "Parks, Recreation and Open Space" (Ex. 69A, at 22-23) and a section entitled "Open Space Development Criteria."Ex. 69A, at 47.Both provisions contain goal and policy statements.However, neither defines the phrase "open space."In addition, neither section, nor for that matter any provision in the 1977 Comprehensive Plan, specifies the location of greenbelts or open space.The few maps in this document generally refer to transportation systems or educational facilities.

The North Kitsap Subarea Plan (**Subarea Plan**) is dated April, 1984.Ex. 70.It does not contain a section on greenbelts.Housing Policy HP-7 does state that "buffer strips" should be used to reduce potential conflicts between residential uses and resource productive activities.Ex. 70, at 59. However, the term "buffer strips" is undefined and the Subarea Plan does not contain a map showing such strips.

The Subarea Plan does contain a section entitled "Parks, Recreation, Open Space and Trails."Policy PR-3 states that "Developers should submit labelled [sic], dated photographs to show open space quality with applications for development..."Ex. 70, at 67.Policy PR-6 indicates that "Trail systems should be developed connecting parks, open space..."Ex. 70, at 67.However, the term "open space" is undefined.Furthermore, no map showing open spaces is in the Subarea Plan.

In addition, Policy UR-2(c) provides that a residential development within an urban designation should "... maintain open space held in common by the residents of a development." Ex. 70, at 46. However, again, the term "open space" is undefined.Furthermore, no map delineating open space is included.[18]

The Subarea Plan contains a section on "Natural Systems" that contains maps of the area showing lands with 15% or greater slopes (Ex. 70, at 70A), erosion potential (Ex. 70, at 70B), unstable slopes (Ex. 70, at 70C), unofficial shoreline environmental designations (Ex. 70, at 71A), wetlands (Ex. 70, at 72A), anadromous steams (Ex. 70, at 73A) and prime agricultural land (Ex. 70, at 74A).None of these maps purport to show greenbelts or open spaces.

The Draft SEIS prepared for the proposed Subarea Plan is dated January 11, 1984.Ex. 72.[19] It

does not contain sections on either greenbelts or open space areas.In the Parks and Recreation portion, the Draft SEIS indicates that:

> Within the North Kitsap study area there are 19 parks sites totalling [sic] over 215 acres.... Ex. 72, at 70.

The Draft SEIS does not specify where these parks are located nor contain a map showing their location.Moreover, since the document was prepared in 1984, the Draft SEIS does not indicate whether park sites constitute "open space areas" as required by the GMA.

The Draft SEIS does contain maps labeled identically to those cited above in the Subarea Plan. Ex. 72, at 17-22.

In the "Aesthetics" portion, under Mitigative Measures, the Draft SEIS does provide that:

> The total impact should be reduced in Rural areas.Open space requirements should also provide for preservation of greenbelts and buffers....Ex. 72, at 87.

Again, this document fails to define the terms "greenbelts" or "open spaces" nor does it contain any maps depicting such areas.

The fact that the County did not respond to Rural Residents' arguments regarding the failure of the IUGAs to include greenbelts and open space areas is telling.The County did not respond because its IUGAs totally failed to include greenbelts and open space areas.Although it may have been convenient for the County to use existing documents such as its 1977 Comprehensive Plan, the Subarea Plan and its accompanying SEPA documents, it was unlikely that these documents (written long before the GMA was enacted) could comply with a specific provision of the Act such as requirement to include greenbelts and open space areas within IUGAs.Having now reviewed these documents, the Board confirms this assumption and holds that the County failed to include greenbelts and open space areas in its IUGAs.

In order to include greenbelts and open space areas within IUGAs, a county must first define these terms and secondly show them on its IUGAs map so that the public knows precisely what is being included.Although the Board has noted that IUGAs, as opposed to final UGAs, are a first cut, to use a baseball analogy, here the County did not even bother to pick up the bat.Thus, although the Board may have granted the County some discretion if it had not fully completed mapping its greenbelts and open spaces by the time its IUGAs were adopted, to not have any evidence in the record whatsoever of an effort to "include greenbelts and open space areas" or even to define the terms cannot be tolerated.For instance, the County could have named or mapped existing or planned parks, trails and critical areas; referenced a development regulation requiring provision of open space in development applications or other similar mechanisms.The County has failed to act pursuant to the requirements of RCW 36.70A.110(2) as it pertains to greenbelts and open space areas.

Moreover, the Board is not sympathetic to the argument the County could have made, that it did not have time to include greenbelts and open space areas in its IUGAs.The Board would agree that the legislature did not give counties a great deal of time between when ESHB 1761 became effective on June 1, 1993 and the date it mandated that IUGAs be adopted, October 1, 1993. However, the Board notes that the requirement to "include greenbelts and open space areas" was

enacted in 1990.Therefore, the County had more than adequate advance notice of this GMA requirement, which gave it more than sufficient time to prepare something to implement the requirement.

Locating UGAs and Directing Growth Within Them

In this portion of the decision, the Board is asked to determine where Central Puget Sound counties must locate UGAs and to what extent, if any, the GMA requires what the parties have referred to as "tiering" of growth within the UGAs.To do so, the Board must interpret and reconcile portions of subsection (1) and all of subsection (3) of RCW 36.70A.110.
First, the relevant portion of subsection (1) provides:

> ... Each city that is located in such a county shall be included within an urban growth area. An urban growth area may include more than a single city.An urban growth area may include territory that is located outside of a city only if such territory is already characterized by urban growth or is adjacent to territory already characterized by urban growth.

Second, the following language from subsection (3) must also be factored into the UGA equation:

> Urban growth should be located first in areas already characterized by urban growth that have existing public facility and service capacities to serve such development, and second in areas already characterized by urban growth that will be served by a combination of both existing public facilities and services and any additional needed public facilities and services that are provided by either public or private sources.Further, it is appropriate that urban government services be provided by cities, and urban government services should not be provided in rural areas.

On occasion, the GMA is not the model of clarity.In such instances, the Board is required to interpret the provision in question to provide consistent meaning to the Act.When called upon to do so, the Board's inquiry is not limited to a specific section of the Act but can be expanded to interpret that section in light of the legislative findings, planning goals and other provisions of the GMA as a whole.This is one such instance.The problem with the language in RCW 36.70A.110 (1) and (3), coupled with the language of several key terms and phrases defined by the Act, is that together it is redundant and circular, leading to perplexing results that are inconsistent with the findings and goals of the Act.It is the Board's task to reconcile these differences.
Experience has shown that when a portion of the GMA is unclear, it is helpful to begin the analysis with what is more certain.First, it is certain that outside of a UGA, growth can occur only if it is not urban in nature.Thus, only "nonurban" growth can occur outside a UGA.The Act does not define "nonurban" although it does use the word.*See* RCW 36.70A.030(16) and RCW 36.70A.350(1)(g).However, the antonym of urban is "rural." [20] Although the GMA does not define "rural," it does provide guidance as to its meaning.Counties are required to include a rural element in their comprehensive land use plans.The rural element shall include lands:

> ... not designated for urban growth, agriculture, forest, or mineral resources.The rural element shall permit land uses that are compatible with the rural character of such lands and provide for a variety of rural densities.RCW 36.70A.070(5).

Consistent with this provision, WAC 365-195-210(19) defines "rural lands" as:

> all lands which are not within an urban growth area and are not designated as natural resource lands having long term commercial significance for production of agricultural, products, timber, or the extraction of minerals.

The Board therefore has considered WAC 365-195-210(19) and adopts it as the proper definition of "rural" in a GMA context, with the caveat that the word "timber" refers to forest lands.*See* RCW 36.70A.030(8) and .170(1)(b).The Board also notes that the WAC definition of "rural lands" excludes designated natural resource lands of long-term commercial significance. Presumably, natural resource lands that have not been designated pursuant to RCW 36.70A.170 are included within the definition of rural lands.In any case, the Board holds that the term "nonurban lands" includes all natural resource lands, whether designated as such pursuant to RCW 36.70A.170 or not, and rural lands.The Act indicates that only nonurban growth can occur outside a UGA.

Second, the Board turns to lands located inside a UGA.The Act indicates that "urban growth" is encouraged only within UGAs.RCW 36.70A.110(1)."Urban growth" is defined as:

> ... growth that makes intensive use of land for the location of buildings, structures, and impermeable surfaces to such a degree as to be incompatible with the primary use of such land for the production of food, other agricultural products, or fiber, or the extraction of mineral resources.When allowed to spread over wide areas, urban growth typically requires urban governmental services.[21] RCW 36.70A.030(14).

Although the Act does not define "urban," its common meaning is helpful:

> of, relating to, or constituting a city. *Webster's II New Riverside University Dictionary* 1270 (1988).

In turn, this definition indicates that the Latin root of "urban" is *urbanus*, which means "belonging to a city."Thus, one can readily observe that urban growth areas are closely connected to cities.This relationship will be examined more closely below.Although the Act uses the verb "encourage" in describing where urban growth can occur, and the Act clearly prohibits such growth outside a UGA, the Board holds, <u>as an absolute rule, the only place urban growth is permitted is within a UGA.</u>This holding is consistent with what the Board earlier referred to as the GMA's "minimum sprawl hypothesis" and the Act's mandates for efficiency and compact urban development.

Third, it is also clearthat the Act does permit at least somenonurban lands to be located within a UGA.RCW 36.70A.060(4) indicates that forest and agricultural lands of long-term commercial significance can be located within UGAs if a transfer or purchase of development rights program has been enacted.Furthermore, a sentence within RCW 36.70A.110(2) requires that greenbelt and open space areas be included in UGAs.

Fourth, it is clear that annexations are prohibited beyond UGAs. RCW 35.13.005 and RCW 35A.14.005.

Finally, it is also certain that all cities must be included within UGAs."City" is defined by RCW 36.70A.030(3) as meaning "any city or town, including a code city."The common meaning of "city," in turn, is defined more broadly and meaningfully than the Act's definition:

> a center of population, commerce, and culture.*Webster's II New Riverside University Dictionary* 266 (1988).

Thus, cities are the focal points of urban growth, governmental service delivery, and governance within UGAs.This is the *fundamental tenet* of RCW 36.70A.110(1).In adopting UGAs, counties must comply with the Act's mandate that all cities are automatically within a UGA.This is the general rule that drives the adoption of UGAs.Central to this rule is that UGAs need not be drawn outside existing city limits if the cities within a county are capable of accommodating the population growth projected for that county.To enable counties to make that determination, cities must provide counties with detailed information about their current size, population, population densities and zoning.Counties, in determining how to distribute OFM's twenty-year population projections, can then analyze this information to ascertain how much infilling of vacant land or redevelopment of underdeveloped land is possible to accommodate the growth projections within the existing cities, after providing for green belts and open spaces.*See also* WAC 365-195-335(3). The consultations described in RCW 36.70A.110(2) must rely on this type of information and analysis, factored in with an individual city's willingness to accept additional growth, in order for cities and counties to attempt to reach agreement as to the location of UGAs.

As with any general rule, exceptions exist and the Act is no different.Although boundaries of UGAs generally are to be limited to include only existing cities, four limited exceptions exist.The first two are derived from other sections of the Act.The final two are derived from a facial reading of RCW 36.70A.110(1), without knowing the definition of any relevant terms or phrases.

First,UGAs can be located outside existing city limits if the detailed requirements for a new fully contained community are met. RCW 36.70A.350.

Second, UGAs can be located outside existing city limits if the detailed requirements for master planned resorts are met. RCW 36.70A.360.

Third, UGAs may include territory outside existing city limits only if that additional territory is already "characterized by urban growth." RCW 36.70A.110(1); or

Fourth, UGAs may include territory outside existing city limits only if that additional territory is adjacent to territory already "characterized by urban growth."RCW 36.70A.110(1).

The first two exceptions are clearly delineated by the GMA and contain strict requirements that must be met before the UGA can be drawn to include such "islands."Neither is at issue in this case.On its face, without knowing the GMA's definition of the phrase "characterized by urban growth," the third exception makes sense in light of the GMA's first two goals at RCW 36.70A.020(1) and (2) to encourage future development in already existing urban areas (whether incorporated or not) or areas where adequate public facilities and services can be provided efficiently, and to reduce sprawl.While under the general rule UGAs must go no further than

existing city limits, where land has already been urbanized, the third exception extends UGAs beyond city limits to unincorporated areas of a county.

However, even without knowing the legal definition of the phrase "characterized by urban growth," the fourth exception listed above is much more problematic.It does not make sense in light of the Act's first two planning goals, at RCW 36.70A.020(1) and (2), because it permits UGAs to include areas that have no urban facilities or services and that are presumably rural yet simply happen to be "adjacent" to territory that is already characterized by urban growth.

The problem is exacerbated by the fact that the third and fourth exceptions both use the phrase "characterized by urban growth" and that phrase has a defined meaning in the GMA.It refers:

> ... to land having urban growth located on it, or to land located in relationship to an area with urban growth on it as to be appropriate for urban growth.RCW 36.70A.030(14).

Paraphrased, "characterized by urban growth" itself involves two types of land: first, land having urban growth already on it, and second, land related to land with urban growth on it.Thus, if one inserts the definition of "characterized by urban growth" [in italics below] into the actual statutory language [i.e., last sentence of RCW 36.70A.110(3)] of the third and fourth exceptions or locations where UGAs can be drawn outside existing city limits, one can see the circular and redundant nature of the legislation:

> ... An urban growth area may include territory that is located outside of a city only if such territory already is ~~characterized by urban growth~~ *land with urban growth located on it or land located in relationship to an area with urban growth on it as to be appropriate for urban growth* or is adjacent to territory already ~~characterized by urban growth~~ *having urban growth located on it or land located in relationship to an area with urban growth on it as to be appropriate for urban growth.*

A reiteration of the Act's exceptions is helpful in light of the definition of "characterized by urban growth."In effect, the phrase, which is used in both the third and fourth exceptions, already contains a "relationship" provision, which is something different than the "adjacency" provision in the fourth exception listed by the Board.As a result, <u>six</u> exceptions actually exist:

> First,UGAs can be adopted outside existing city limits if the detailed requirements for a new fully contained community are met. RCW 36.70A.350.
>
> Second, UGAs can be adopted outside existing city limits if the detailed requirements for master planned resorts are met. RCW 36.70A.360.
>
> Third, UGAs <u>may</u> include territory outside existing city limits <u>only</u> if that additional territory is already "land having urban growth located on it." RCW 36.70A.110(1); or
>
> Fourth, UGAs <u>may</u> include territory outside existing city limits <u>only</u> if that additional territory is already "land located in relationship to an area with urban growth on it as to be appropriate for urban growth." RCW 36.70A.110(1); or
>
> Fifth, UGAs <u>may</u> include territory outside existing city limits <u>only</u> if that additional territory is adjacent to territory already "... having urban growth located on it."RCW 36.70A.110(1); or
>
> Sixth, UGAs <u>may</u> include territory outside existing city limits <u>only</u> if that additional

territory is adjacent to territory already "... located in relationship to an area with urban growth on it as to be appropriate for urban growth."RCW 36.70A.110(1).

Counties can include lands covered by the third exception once a satisfactory showing has been made that existing cities cannot accommodate the projected population growth, and that this territory legally meets the test set forth in the exception.This exception is consistent with the Act's first two planning goals.However, the fourth, fifth and sixth exceptions permit UGAs to extend beyond existing city limits and areas covered by the third exception, to lands related to areas with urban growth on it; to lands adjacent to territory having urban growth on it; and to lands adjacent to territory that are related to lands with urban growth on it.Or, more simply put, the last three exceptions permit UGAs to be drawn in purely nonurban, nondeveloped areas which have no correlation whatsoever to cities, be it geographic ("adjacent") or cultural ("in relationship").Surely, the legislature did not intend that urban growth would be as appropriate in unincorporated, undeveloped areas as in cities, but rather that it would be an unusual circumstance that urban growth would be allocated to such areas.Therefore, the Board holds that counties do not have cart blanche permission to include nonurban areas in UGAs.In those rare cases when exceptional circumstances so warrant, the counties will be required to convincingly demonstrate their rationale for drawing UGA boundaries to include lands within the fourth, fifth and sixth exceptions, specifically utilizing the statistical information that has been compiled.

Next, the Board applies its holding to the facts of this case as it involves the County's Kingston area IUGA.First, it is important to note that the entire area is currently unincorporated.Thus, the Act's general rule for drawing UGA boundaries at existing city limits was inapplicable to that area.As a result, the County did not have to contact a specific city to determine how much projected growth could be distributed to it.The fact that the area was not already incorporated did not preclude the County from creating an IUGA there.However, for the County to adopt an IUGA in the Kingston area it must justify in writing why the projected twenty-year population growth for Kitsap County cannot be handled by cities within their existing borders and why an IUGA in that area was necessary.This justification must include detailed information about existing population densities in the area and throughout the incorporated areas of the county.Such a written justification is not a part of the record before the Board.

Furthermore, even were the Board to assume, for argument's sake only, that the "urban" portion of Kingston, i.e., the "downtown" area near the ferry terminal, were incorporated, nothing in the record before the Board indicates why the North Kingston area (whose only qualifying characteristic appears to be that it is adjacent to Kingston) should be included within the County's UGA.Lacking such detailed analysis, the Board can only remand this matter.Although the Board has referred to IUGAs as a "first cut" hypothesis, this does not mean that no analysis is required. Here, the County provided absolutely no current analysis.All the County did was conclude that its 1977 Comprehensive Plan and 1984 Subarea Plan would have to suffice so that additional SEPA compliance would not be necessary.Such a conclusion without updated analysis to support it does not meet the Act's requirements.

Finally, the Board notes that in analyzing RCW 36.70A.110, the following distinction is

important.Deciding where to draw a UGA boundary line is one requirement imposed on counties. The Board holds that those provisions primarily in subsection (1) address where a county should draw its UGA boundaries in the first place.An entirely different task is determining where to direct new development within the UGA once the UGA boundaries have been drawn.The Board rules that subsection (3) of RCW 36.70A.110 addresses this matter as it relates to planning for the allocation of public resources to provide urban governmental services.Cities are the primary providers of urban governmental services within UGAs.*See also* RCW 36.70A.210(1). Subsection (3) provides that first, additional urban growth should be located in areas already characterized by urban growth that have existing public facility and service capacities.Second, when these areas reach capacity, only then should growth be located in areas which will be served by a combination of both existing public facilities and services and any additional needed public facilities and services.The exact timing of this process will depend on local conditions. Rural Residents agrees that the Act creates the first two "tiers" discussed above but also argues that a third, implied tier exists for areas adjacent to territory already characterized by urban growth.Accordingly, Rural Residents contends that urban growth should not be permitted there until the first two tiers have been fully developed.The Board agrees with Rural Residents' contention that subsection (3) does create a third tier by necessary implication.Subsection (3) does not address those limited portions of UGAs (i.e., the fourth, fifth and sixth exceptions) that may contain no existing public facilities or service capacities but are nonetheless included within the UGA because they are necessary to accommodate projected growth and are related to or adjacent to an area with urban growth.However, the Board reiterates that subsection (3) only addresses how local governments should plan to allocate public resources in anticipation of additional projected growth.

The Board holds that the Act neither mandates nor prohibits temporal phasing of development within a UGA as urged by Rural Residents.Subsection (3) alone does not prohibit development within UGAs of the limited areas that have no existing public facilities and service capacities. Instead, if a private developer is willing and able to provide adequate facilities and services in lieu of the government doing so, nothing in the Act prevents this from happening, subject to the local government's exercise of its discretion.

The concurrency planning goal is integral in reaching this determination.Using mandatory language, planning goal twelve, entitled "Public facilities and services," provides that counties and cities must:

> Ensure that those public facilities and services necessary to support development shall be adequate to serve the development at the time the development is available for occupancy and use without decreasing the current service levels below locally established minimum standards.RCW 36.70A.020(12) (emphasis added).

In addition, the Act's requirement that comprehensive plans contain a capital facilities plan element is crucial.RCW 26.70A.070(3).[22] Thus, planning goal twelve and the capital facilities plan element of a comprehensive plan are critical factors that legally and practically will dictate

phased growth rather than permitting growth to occur anywhere within a UGA at any time.

Conclusion No. 3

OFM Population Projections

OFM has prepared twenty-year growth management planning population projections for each of Washington's counties in the year 2012.Counties planning under the GMA must use only OFM's population projections for the year 2012 in adopting UGAs.The County failed to identify the OFM projection of its population and to base its IUGA on that projection.Instead, the County relied upon its 1977 Comprehensive Plan, the 1984 North Kitsap Subarea Plan and the accompanying SEPA documents.A county cannot base its UGAs on its own outdated documents but instead must rely exclusively on OFM's twenty-year population projections for the year 2012. Therefore, the County could not indicate how densities within its IUGAs were sufficient to permit the projected urban growth.Accordingly, the County has not complied with RCW 36.70A.110(2).

Greenbelt and Open Space Areas

The County has not complied with RCW 36.70A.110(2) because it failed to include any reference whatsoever to greenbelt or open space areas in its IUGA and because none of the documents the County relied upon to adopt its IUGA defined either greenbelt or open space areas nor indicated their locations.

Locating IUGAs and Directing Growth Within Them

Outside a UGA, only nonurban growth can occur, while urban growth can only take place within a UGA.However, the Act does permit some nonurban lands to be located within a UGA. RCW 36.70A.110(1) specifies where UGAs should be located.The fundamental tenet of RCW 36.70A.110(1) is that cities are the focal point of urban growth.Therefore, in drawing UGA boundaries, the general rule is that all cities must be automatically included within UGAs.The central theme to the general rule is that UGAs should not be drawn outside existing incorporated areas if the cities are capable of accommodating the twenty-year population growth projected for the county.
The Act does provide six exceptions to the general rule governing locations where UGAs can be extended beyond existing city limits.

First,UGAs can be located outside existing city limits if the detailed requirements for a new fully contained community are met. RCW 36.70A.350.

Second, UGAs can be located outside existing city limits if the detailed requirements for

master planned resorts are met. RCW 36.70A.360.

Third, UGAs may include territory outside existing city limits only if that additional territory is already "land having urban growth located on it." RCW 36.70A.110(1); or

Fourth, UGAs may include territory outside existing city limits only if that additional territory is already "land located in relationship to an area with urban growth on it as to be appropriate for urban growth." RCW 36.70A.110(1); or

Fifth, UGAs may include territory outside existing city limits only if that additional territory is adjacent to territory already "... having urban growth located on it."RCW 36.70A.110(1); or

Sixth, UGAs may include territory outside existing city limits only if that additional territory is adjacent to territory already "... located in relationship to an area with urban growth on it as to be appropriate for urban growth."RCW 36.70A.110(1).

Once a satisfactory showing has been made that existing cities cannot accommodate the projected population growth, and that the area meets the legal test of the third exception, counties will be permitted to extend IUGAs beyond existing incorporated areas into lands covered by the third exception.However, because the fourth, fifth and sixth exceptions permit UGAs to extend beyond existing city limits and areas covered by the third exception to lands where it would be more inconsistent with the Act's first two planning goals to permit urban growth, the Board will apply a much higher level of scrutiny to a county's actions in extending UGAs to such lands.Counties do not have cart blanche permission to include nonurban areas that fall within the fourth, fifth and sixth exceptions within UGAs.In those rare cases when exceptional circumstances so warrant, the counties will be required to convincingly demonstrate their rationale for drawing UGA boundaries to include lands within the fourth, fifth and sixth exceptions, specifically utilizing the statistical information that has been compiled.

Because Kitsap County's strategy for complying with the GMA's requirement to adopt IUGAs was to wholly rely upon outdated documents, without conducting any updated analysis, the County has not attempted to justify, let alone in a convincing manner, why existing cities within the county cannot accommodate the projected additional twenty-year population growth for the county.Furthermore, the County has not justified why it should adopt an IUGA in the Kingston and North Kingston areas of the county -- both unincorporated lands.Accordingly, the County has not complied with the requirements of RCW 36.70A.110(1).

RCW 36.70A.110(3) addresses where to direct new development within a UGA once UGA boundaries have been drawn, for purposes of planning for the allocation of public resources to provide for urban governmental services.Subsection (3) explicitly creates two planning tiers to achieve this purpose.The subsection also creates a third tier by necessary implication to address the extremely limited situations where UGAs are drawn on lands covered by the fourth, fifth and sixth exceptions listed above.The Board nonetheless does not agree that urban growth cannot be permitted in the third tier until after the first two are filled.Based on the limited information before the Board in this case, it would be inappropriate for the Board to reach such a conclusion at this time.The existence of the three planning tiers, by themselves, does not prevent urban

growth from occurring anywhere within a UGA.Instead, once a UGA has been adopted, additional development can occur in any location within the UGA, including the third planning tier, if a private developer is willing and able to provide adequate facilities and services rather than the government, and the local jurisdiction permits such development.Nothing in the Act specifically prohibits such broad dispersal of growth *per se* within a UGA.However, the legal and practical effects of the concurrency planning goal and the capital facilities plan element of the comprehensive plan must also be considered and applied.

Legal Issue No. 4

Was there a failure by Petitioners to exhaust administrative remedies below which precludes the Board from determining SEPA compliance issues?

Discussion

In its Order Granting Dispositive Motions, the Board granted the County's motion to dismiss Rural Residents' SEPA claims.Therefore Legal Issue No. 4 was dismissed with prejudice.

Conclusion No. 4

Because the Board concluded in its Order Granting Dispositive Motions that Rural Residents had failed to exhaust the administrative remedies available to it, the Board is precluded from determining SEPA compliance issues in this case.

Legal Issue No. 5

If the Board has jurisdiction, did the County comply with RCW 43.21C.030(2)(c)?

Discussion

Since the Board has concluded that it did not have SEPA jurisdiction in this case, Legal Issue No. 5 was dismissed with prejudice when the Board entered its Order Granting Dispositive Motions.

Conclusion No. 5

The Board cannot determine Legal Issue No. 5 because the Board does not have SEPA jurisdiction in this case since Rural Residents failed to exhaust all administrative remedies below.

Legal Issue No. 6

Did the County comply with the public participation, notice and hearing provisions of the GMA, RCW 36.70A.020(11), RCW 36.70A.110(4), and RCW 36.70A.140 in adopting its IUGAs?

Discussion

In its Prehearing Brief, Rural Residents withdrew Legal Issue No. 6.Rural Residents indicated:

> We have not briefed and hereby abandon our claim regarding inadequate public participation.We do so not because of any lack of confidence in the merits of that issue. Rather, given the strength of the other issues and in the interest of minimizing expense, we see no need to pursue Issue No. 6 further.We do not want either the Board or the County to assume from this that ARR will not continue to be vigilant and insist on full compliance by the County with the enhanced public participation requirements of the GMA.Rural Residents' Prehearing Brief, at 19 -- fn. 11.

Conclusion No. 6

Because Rural Residents has abandoned Legal Issue No. 6, the Board will not consider it any further.[23] Legal Issue No. 6 is dismissed with prejudice.

F.ORDER

Having reviewed the file and record in this case, having considered the briefs and arguments of counsel, and having entered the foregoing Findings of Fact and Conclusions, the Board finds that Kitsap County Ordinance No. 155-1993 is **not in compliance** with the requirements of the Growth Management Act.The Board therefore orders that:

1)Kitsap County Ordinance No. 155-1993 is **remanded** to the County with instructions to bring it into compliance with the Growth Management Act, specifically RCW 36.70A.110, and with the Board's holdings and conclusions in this case.

2)Pursuant to RCW 36.70A.300(1)(b), the Board directs Kitsap County to comply with this Final Decision and Order no later than **5:00 p.m.** on **Monday, October 3, 1994**.

So ORDERED this 3rd day of June, 1994.

CENTRAL PUGET SOUND GROWTH PLANNING HEARINGS BOARD

_____

M. Peter Philley
Board Member

_____
Joseph W. Tovar, AICP
Board Member

_____
Chris Smith Towne
Board Member

Note:This Final Decision and Order constitutes a final order as specified by RCW 36.70A.300 unless a party files a Petition for Reconsideration pursuant to WAC 242-02-830.

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[1] When the Board uses the term "UGAs," it means both interim and final UGAs (**FUGAs**).Where the Board specifically means interim or final, it will use the terms IUGA or FUGA, respectively.

[2] CPPs "...are part of a hierarchy of substantive and directive policy.Direction flows first from the CPPs to the comprehensive plans of cities and counties, which in turn provide substantive direction to the content of local land use regulations, which govern the exercise of local land use powers, including zoning, permitting and enforcement."*Snoqualmie v. King County*, CPSGPHB 92-3-0004 (1993), at 17.

[3] A process that is *iterative* requires a number of drafts, adjustments and reiterations over time as additional information becomes available, additional related decisions are made and subsequent adjustments are made.A process that is *interactive* is one in which many parties participate in a dialogue, expressing preferences, interests and positions and responding to those of others.*See Edmonds and Lynnwood v. Snohomish County*, CPSGPHB No. 93-3-0005 (1993), at 26.

[4] In *Twin Falls, et al. v. Snohomish County*, CPSGPHB Case No. 93-3-0003 (1993), the Board held:

> With regard to GMA mandated plans and regulations, the great degree of deference that legislative bodies have historically enjoyed is diminished by the explicit direction of RCW 36.70A.320 that the presumption of validity may be overcome by a preponderance of the evidence.*Twin Falls*, at 59.

[5] IUGAs test the hypothesis that most, if not all, of the forecasted growth can be accommodated within existing cities.In so doing,it is logical that IUGAs would err on the side of setting aside too little urban land rather than too much.This is so because urban development is basically a one-way ratchet.It takes weeks to convert land from rural or resource land to urban land; it can take generations to do the reverse.

[6] RCW 36.70A.210(1) provides:

> "For the purposes of this section, a "county-wide planning policy" is a <u>written policy statement or statements</u> used solely for establishing a county-wide framework from which county and city comprehensive plans are developed and adopted pursuant to this chapter... (Emphasis added.)

[7] There likewise was no description of the purpose of IUGAs in ESHB 1761.The Board observes that one practical purpose of IUGAs was to allow the legislature to move back the comprehensive plan deadline by nine months without similarly delaying a prohibition on urban development outside of designated UGAs.

[8] If growth that was "uncoordinated" is to be avoided, it follows that RCW 36.70A.010 calls for growth that is "coordinated."The GMA also explicitly calls for plans to be "coordinated" and "consistent" at RCW 36.70A.100

which provides:

> The comprehensive plan of each county or city that is adopted pursuant to RCW 36.70A.040 shall be coordinated with, and consistent with, the comprehensive plans adopted pursuant to RCW 36.70A.040 of other counties and cities with which the county or city has, in part, common borders or related regional issues. (Emphasis added.)

[9]

The Board has made previous reference to the Act's basic premise that growth is to be configured in a relatively compact manner.The rationale of efficiency was cited in *Edmonds*, at 29:

> "Cites are reminded that the Act is premised on the efficient delivery of services to relatively compact urban growth areas."(Emphasis added.)

Also, the Board noted that individual choice and market forces alone would not serve the Act's objectives of coordinated planning, efficiency and concentrated urban development.*Poulsbo et al*, at 37 provides:

> ... To allow costs, determined by individual and localized self interest, to dictate which entity will provide a local government service is the antithesis of coordinated planning, efficient service delivery and the concept of concentrating urban development to avoid the loss of resource lands and critical areas.

[10]

The Board's use of the word "compact" is intended to convey the intensity of the use of land.Density may be more descriptive when speaking of residential uses; however, urban development will include not just residential uses, but a variety of commercial, industrial and public facilities.

[11]

The Board notes that another apparent reason for including "greenbelts and open spaces areas" within UGAs is to assure that the land supply set aside to accommodate the twenty year forecast is predicated on net land available for urban development.

[12]

This agency was merged in 1994 into the Washington State Department of Community, Trade and Economic Development (CTED).

[13]

The penultimate version of ESHB 1761, which was read for the first time on March 3, 1993, did not refer to interim UGAs but only "urban growth areas."

[14]

As initially enacted, the GMA did not use the word "interim."The phrase "interim development regulations" evolved by common usage and was codified by DCD (now CTED) at WAC 365-190-040.The Board pointed out this common usage in its *Gutschmidt* decision and thereafter has continued to rely upon the phrase.*See Gutschmidt*, at 12, fn 3.Subsequently, RCW 36.70A.390, enacted in 1992, uses the word "interim."

[15]

In its reply brief, Rural Residents states:

> The phasing mandate does not require that the third tier of land be excluded from the IUGA until the first two tiers are full.Nor did we advance that contention in our opening brief.Rather, when an IUGA includes all three tiers, the IUGA regulations must include a phasing mechanism to direct growth to the first tier first, the second tier second, and the third tier last.The third tier is not excluded from the IUGA.Rather, growth is directed away from the third tier until the first two tiers become more developed.Rural Residents' Reply Brief, at 23.

[16]

As Rural Residents pointed out (Rural Residents' Prehearing Brief, at 11), the OFM population forecast is referenced in the appendix to the Kingston Community Design Study Final Report.Exhibit 88.The Board notes that the reference itself is inaccurate.The appendix erroneously lists OFM's projection for the year 2010 as 194,323 persons while the Board officially notes that OFM's actual forecast for 2010 was 261,970.*See* Exhibit 88, Appendix 1, at 20.In addition, the Board notes that the County specifically indicated that the Kingston Community Design Study "has not been reviewed formally by the Board of County Commissioners." County's Prehearing Brief, at 14.

Finally, the urban design study is an independent action undertaken by the County and unrelated to the adoption of the IUGAs.

[17]

KRPC's population forecast was adopted on November 13, 1991 [Exhibit 31, at 2] -- long before the amendments to RCW 36.70A.110 were enacted adding the requirements of an IUGA and before OFM's 20 Year Projections had been made.

[18]

Policy SR-3(c) uses the same language for semi-urban designations. Exhibit 70, at 49.

[19]

Exhibit 72 also contains a separate document,the Final SEIS, dated March, 1984.

[20]

The common meaning of "rural" is:

> 1. of or relating to the country: rustic. 2. Of or relating to people who live in the country. 3. Of or relating to farming: agricultural. *Webster's II New Riverside University Dictionary* 1027 (1988).

[21]

"Urban governmental services" are defined as:

> those governmental services historically and typically delivered by cities, and include storm and sanitary sewer systems, domestic water systems, street cleaning services, fire and police protection, public transit services, and other public utilities associated with urban areas and normally not associated with nonurban areas.RCW 36.70A.030(16).

[22]

RCW 36.70A.070(3) provides that a capital facilities plan element must consist of:

> (a) An inventory of existing capital facilities owned by public entities, showing the locations and capacities of the capital facilities; (b) a forecast of the future needs for such capital facilities; (c) the proposed locations and capacities of expanded or new capital facilities; (d) at least a six-year plan that will finance such capital facilities within projected funding capacities and clearly identifies sources of public money for such purposes; and (e) a requirement to reassess the land use element if probable funding falls short of meeting existing needs and to ensure that the land use element, capital facilities plan element, and financing plan within the capital facilities plan element are coordinated and consistent.

[23]

The Board has previously determined the extent of the public participation requirements at RCW 36.70A.140 in relation to interim natural resource lands and critical areas designations and development regulations in *Tracy v. Mercer Island*, CPSGPHB Case No. 92-3-0001 (1993), at 11-13; in *Gutschmidt,* at 32-33; and in *Twin Falls*, at 67-70.