



On May 20, 1994, "Intervenor Palmer's Memorandum in Response to Petitioners' Dispositive Motion" (Palmer's Response) was filed with the Board, King County (the County) filed its Response to Petitioners' Dispositive Motion (County's Response) on the same day. Six attachments were affixed to the County's Response. In addition, the County filed a Declaration of Craig Larsen (Larsen Declaration). One exhibit was attached to it.

On May 26, 1994, "Petitioners' Reply to Respondent's and Intervenor's Response to Petitioners' Dispositive Motion" (Petitioners Reply) was filed with the Board. Exhibits A, B and C were attached to BDA's Reply.

#### Motion for Intervention or Amicus Status

On May 17, 1994, the City of Woodinville (Woodinville) filed a "Motion for Intervention or in the Alternative to Appear as Amicus" (Motion for Intervention) for the limited purpose of joining Black Diamond and BDA's dispositive motion. An Affidavit of Wayne D. Tanaka (Tanaka Affidavit) was attached to the Motion to Intervene.

On May 26, 1994, "Palmer's Response to the City of Woodinville's Motion to Intervene," opposing the request, was filed with the Board. Likewise, the County's Response to the Motion for Intervention was filed on the same day, also in opposition to the request. The Declaration of Janet Masuo was attached to the County's response.

#### Hearing on Motions

The Board held a hearing on these motions at 1 :30 p.m. on Tuesday, May 31, 1994, at 1225 One Union Square, Seattle, Washington. The Board's three members were present: Joseph W. Tovar, presiding, M. Peter Philley, and Chris Smith Towne. William H. Chapman and Eric S. Laschever represented BDA; Duncan Wilson represented Black Diamond; Charles E. Maduell represented the County; John C. McCullough represented Palmer; and Wayne D. Tanaka represented Woodinville. Court reporting services were provided by Robert H. Lewis of Robert H. Lewis & Associates, Tacoma.

Initially, the Presiding Officer ruled that oral argument would be heard on the dispositive motion only. The Motion to Intervene was not orally argued.

#### I. PETITIONERS' DISPOSITIVE MOTION

The Petitioners' Motion challenged King County Ordinance No. 11110 (Ordinance IIIIO or the Ordinance) as failing to comply with the Growth Management Act (GMA or the Act). The Ordinance designated interim urban growth areas (IUGAs) and established interim development regulations pursuant to RCW 36.70A.110. Without referring to the specific Legal Issues before the Board as set forth in the Board's Prehearing Order of

1 April 28, 1994, Petitioners allege that Ordinance 11110 fails to comply with the GMA  
because:

- 2 1. the Ordinance does not identify the Interim Urban Growth Area with sufficient  
3 precision; [Legal Issue No. 1 addresses this issue].  
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5 2. the Ordinance does not include all of the City [ of Black Diamond] within the  
6 City's IUGA; [Legal Issue No.3 addresses this issue].  
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8 3. the Ordinance does not include all of the City's designated expansion area  
9 within the City's IUGA; [Legal Issues No.2 and 4 address this issue].  
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11 4. the Ordinance designates an IUGA for Black Diamond consisting solely of  
12 lands that the County has designated as forest lands of long-term commercial  
13 significance. [Legal Issue No.5 addresses this issue]. Petitioners' Memorandum,  
14 at 3.

15 The Board will examine each of the issues raised in the Petitioners' Memorandum.  
16 However, the Board will do so by sequentially addressing the specific corresponding legal  
17 Issue.

18 Legal Issue No. 1

19 Legal Issue No. 1 corresponds to the Petitioners' first issue and asks:

20 *Is the map used to identify the interim urban growth areas (IUGAs) in King  
21 County Ordinance No.11110 (Ordinance 11110) sufficiently precise to comply  
22 with RCW 36. 70A.110(4)?*

23 The Board holds that the county-wide map used to identify the IUGAs within the  
24 Ordinance is inadequate. Ordinance 11110 is attached to the Petitioners' Memorandum as  
25 Exhibit A. It was passed by the King County Council on November 8, 1993 and approved  
26 by the King County Executive on November 22, 1993. Finding No.6 of the Ordinance  
indicates that:

27 The [King County] council finds that for the purpose of designating interim urban  
28 growth areas in compliance with RCW 36.70A.110 King County will designate as  
29 its urban growth areas the same areas adopted as framework policies in the 1992  
30 Countywide Planning Policies [ CPPs ], except for a technical area east of the City  
31 of Issaquah. and the East Sammamish Community Plan Area. Petitioners'  
32 Memorandum, Ex. A, at 2.

1 Section One of the Ordinance, entitled "Designation of interim urban growth areas,"  
states:

2 The interim urban growth areas for King County are shown on the map In  
3 Attachments A, A-1 and A-2,... Petitioners' Memorandum, Ex. A, at 4,

4 Attachment A to Ordinance 11110 is a map entitled "Interim Urban Growth Area and  
5 Areas Under Interim Controls." It is dated October 2, 1993. The map contains a scale of  
6 miles and the legend explaining that the map's symbols refer to the "Countywide Planning  
7 Policies UGA line," the "Interim UGA," "Areas Under Interim Controls" and "Roads."  
The Interim UGA and Areas Under Interim Controls are designated by shaded areas. The  
map labels unshaded areas as "Rural Area" which, but for Vashon Island, is in the eastern  
half of King County.

8 The following narrative information is provided on the map:

9 King County PCDD  
1 Geographic Information System

0 This map is intended for planning purposes only and is not guaranteed to show  
1 accurate measurements.  
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2 Boundaries may be incomplete and are the best available at the current time.  
3 Petitioners' Memorandum, Ex. A, at Attachment A.  
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4 The map also indicates that "For Black Diamond Detail, see map in Attachment A-2."  
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5 Attachment A-2 to the Ordinance is an undated map entitled "Interim Urban Growth  
1 Boundary -- City of Black Diamond." The "Recommended Growth Area." depicted by a  
2 dashed line. contains all of the City of Black Diamond (shaded portion), and an unshaded  
3 area immediately to the east of the City that is referred to elsewhere as "the East  
4 Property." Palmer's Reply, at 2.  
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9 Petitioners refer to the Board's decision in *Happy Valley Associates et al. v. King County*,  
2 CPSGPHB Case No.93-3-0008 (1993) as the basis for their contention that the  
0 Attachment A map is insufficient to comply with the Act. The petitioners in that case  
2 contended that the County had already adopted IUGAs when it adopted its CPPs. The  
1 Board concluded that the County had not yet adopted IUGAs. In doing so, the Board,  
2 reviewed a map included within the CPPs<sup>2</sup> and concluded:  
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2 . . . that the only part of the CPPs which could even be considered as the County's  
~ designation of UGAs would be the map, entitled "Growth Mgmnt Planning  
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2 A copy of the King County CPPs' map is attached to the Petitioners' Memorandum as Exhibit J.

1 Council -- Recommended Urban Growth Area," that is found on the reverse side  
2 of page 15 of the CPPs. This map simply is inadequate to designate UGAs. It is  
3 not precise nor are legal boundaries labeled. For instance, aside from obvious  
4 geographic features such as Vashon Island and large blocks of eastern King  
5 County, it is extremely difficult to determine boundary line locations with any  
6 degree of certainty. Furthermore, the map itself indicates that:

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8 This map is intended for planning purposes only and is not guaranteed to  
9 show accurate measurements. Ex. 2 to Masuo Aff., between 15 and 16  
10 (emphasis added).

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12 The Board holds that when a county does designate urban growth areas it must do  
13 so accurately precisely and in detail for the designation to have binding legal effect  
14 under the GMA. The map in the CPPs does not meet an of these requirements.  
15 Instead it is simply a broad conceptual depiction of King County used solely for  
16 planning purposes. It cannot be a binding legal document. *Happy Valley*, at 21  
17 (emphasis added).

18 Here, the Petitioners contend that the map reviewed by the Board in *Happy Valley* and the  
19 Attachment A map are virtually identical and therefore the latter cannot be a binding legal  
20 document. Petitioners' Memorandum, at 4.

21 The Petitioners also contend that the map of the Black Diamond IUGA (i.e., Ex. A,  
22 Attachment A-2) does not comply with the Board's *Happy Valley* decision since it was  
23 inadequate by failing to label boundaries, and that it was inaccurate because it did not  
24 contain all City incorporated areas. Petitioners' Memorandum, at 4.

25 The County responds that the Board's language from *Happy Valley*, quoted above, was  
26 simply *dicta*. Furthermore, the County refers to the Larsen Declaration which indicates  
that Attachment A:

27 . . . is a black and white copy of a map produced by the County's computer mapping  
28 program, the Planning and Community Development Division Geographic  
29 Information System (PCDDGIS) . . . that is able to show the location of a line  
30 running the entire length of the County with such precision that the location of the  
31 line can be determined on a parcel by parcel basis, throughout the County.  
32 County's Response Brief at 7.

33 . . . shows the same IUGA line that is shown on the larger size and scale maps  
34 located at the Planning and Community Development Division (PCDD). County's  
35 Response Brief at 8.

36 . . . The location of the IUGA line was determined by King County on a parcel  
specific basis on November 8, 1993.... County's Response Brief at 8.

2 The County goes on to argue that it would have been impractical to attach a map "nine  
3 feet high and four feet wide" to provide the clarity provided by the PCDDGIS map located  
4 at PCDD. County's Response Brief, at 8. Finally, the County argues that citizens who ask  
5 for a copy of Ordinance 11110 and a map are directed to PCDD, which can then answer  
6 their inquiries. Therefore, the public will know precisely where the IUGA line is located.

7 The Board first notes that nothing in RCW 36.70A.110 explicitly requires that a County  
8 prepare an IUGA map, nor will the Board absolutely require such a map for IUGAs. In  
9 lieu of a map, a metes and bound legal description of the entire IUGA is at least  
10 theoretically possible, if not very practical as a method to communicate with the general  
11 public. In contrast, RCW 36.70A.070 provides:

12 The comprehensive plan of a county or city that is required or chooses to plan  
under RCW 36.70A.040 shall consist of a map or maps, and descriptive text  
covering objectives, principles, and standards used to develop the comprehensive  
plan.

Thus, maps are mandatory at the comprehensive plan stage. Final urban growth areas  
(FUGAs) are a part of comprehensive plans and therefore will have to be shown on a  
map, *See* RCW 36.70A.110(5).

In the meantime, for practical purposes, the Board strongly recommends that an IUGA  
map be prepared. Maps are extremely useful illustrative devices. As the Washington  
Supreme Court indicated about a zoning map:

. . . Upon examining the map and the ordinance, the zoning classification of any and  
all property located within the city, the uses permitted, the restrictions attached to  
them, and the effect of such restrictions on the property is quickly ascertainable.  
*Chestnut Hill Co. v. City of Snohomish*, 76 Wn.2d 741,744, 458 P.2d 891 (1969).

In essence, the map in *Chestnut Hill* created "one-stop shopping" where an interested  
party could glean virtually all the information needed just from reading the map. A similar  
goal is appropriate for an IUGA map. Recall that an IUGA is a development regulation.  
*See Association of Rural Residents v. Kitsap County (Rural Residents)*, CPSGPHB Case  
No.93-3-0010 (1993), at 20. It is therefore necessary that any map purporting to have a  
regulatory effect must be as detailed as a zoning map.

The Board concludes that the county-wide IUGA map at issue here, Attachment A to  
Ordinance 11110, is inadequate. The Attachment A map is virtually identical to the CPPs  
map that the Board has already criticized in *Happy Valley*. Thus, it is inadequate for the  
same reasons. In addition, the map misleads the public by stating that its boundaries are  
"the best available at the current time. " The map is dated October 2, 1993; yet the King  
County Council did not adopt Ordinance 111110, including the map that was incorporated

by reference to the Ordinance, until November 8, 1993. An IUGA map date, if any, must coincide with the date of adoption of the underlying enactment, not pre-date the enactment. An earlier date coupled with the language "best available at the time," implies that what the County Council determined the line should be in November may be different from what the map depicted in October.

The Board will grant the Petitioners' Motion regarding Attachment 1 and remand the map to the County. The County must either improve the accuracy of Attachment 1 itself, or edit the narrative of Attachment I to accurately reflect the situation, or submit a new attachment to Ordinance 11110 that contains more precise graphic or narrative descriptions of the boundary lines. For example, the County could improve the existing map by color-coding it, and/or by clearly indicating municipal corporate limits, labeling highways, streets, and rivers or other geographical features that constitute boundary lines.

Individual members of the Board know that sophisticated mapping technologies are available. The Larsen Declaration confirms this knowledge. Therefore, the County could edit the narrative portion of the map to indicate, for instance:

*This map is intended for illustrative purposes only to depict the County's IUGAs and is not guaranteed to show accurate measurements. Precise information on the location of the IUGA boundaries is available from the King County Planning and Community Development Department, [insert address and phone number where precise information is available. If the information is only available at certain times, or via modem, so specify,]*

The key is to provide persons reading Ordinance 11110, or persons solely interested in determining whether their property is located inside or outside an IUGA, with sufficient information to make that determination. If the map attached to the adopting ordinance cannot provide that information by itself, the County must inform the public where the information can be found. Simply putting "PCDD" on the map is insufficient. The illustrative map must explain not only that it is insufficient by itself, but that precise information is available at a specific location.

Having concluded that the Attachment A map is inadequate does not mean that the Board will vacate Ordinance 11110 in its entirety. Instead, the County will be instructed to correct this specific matter. The IUGA line continues to exist. Attachment A simply inadequately depicts it. *See also* further discussion below in discussion of Legal Issue No. 3 of Board's options when a limited error has occurred.

As for Attachment A-2 map, depicting the Black Diamond portion of the IUGA. the Board concludes that it minimally meets the standard for an adequate IUGA map. Although the only label on the map is the IUGA line and a shaded portion representing the city limits, a reader can ascertain existing roads and lot lines in sufficient detail to determine the location of the IUGA. If the IUGA line were more serrated than in this

specific case, the level of detail used in Attachment A-2 would be insufficient. For now it suffices, and therefore that portion of the Petitioners' Motion dealing with the inadequate labeling of Attachment A-2 is denied. Nonetheless, the County is cautioned that its FUGA map must be more clearly labeled.

Legal Issue No 2

The third issue raised by the Petitioners' Memorandum, which involves Legal Issue No. 4,<sup>3</sup> requires the Board to apply a specific policy of the King County's CPPs to Ordinance 11110. Before the Board can answer Legal Issue No.4, the Board must first answer Legal Issue No.2. Although this question was not included in the list of four issues raised by the Petitioners' Memorandum ( at page 3 ), Petitioners did address this prefatory issue at pages 5 through 9. Legal Issue No.2 asks:

*Must the County comply with its countywide planning policies (CPPs) in designating IUGAs?*

The Board holds that the County must comply with its CPPs in designating IUGAs, thus fully resolving Legal Issue No.2. As originally enacted in 1990, the GMA required that counties adopt urban growth areas (UGAs). .See Laws of 1990, 1st Ex. Sess., ch. 17, § 11. This provision of SHB 2929 was codified at RCW 36. 70A.11 0.

In 1991, the legislature added the requirement to the GMA that counties adopt CPPs. See Laws of 1991, 1st Sp. Sess., ch. 32, § 2. This section was codified as RCW 36.70A.210. Among the requirements of RCW 36.70A.210(3) was that, at a minimum, CPPs address:

(a) Policies to implement RCW 36. 70A.11 0;

(t) Policies for joint county and city planning within urban growth areas:

On July 6, 1992, the King County Council passed Ordinance 10450, adopting the CPPs for King County pursuant to RCW 36.70A.210. *Snoqualmie v. King County*, CPSGPHE Case, No.92-3-0004 (1993), at 5 [finding of fact 18]. Within these CPPs, LU-14(a) is one policy that provides direction for implementation of RCW 36.70A.110.

Two years later, the legislature amended RCW 36,70A.110, effective June 1, 1993, by adding the requirement that counties adopt IUGAs. See Laws of 1993, 1st Sp. Sess., ch. 6, § 2. This provision was codified as subsection (4) of RCW 36.70A.110. Prior to this

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3: Legal Issue No.4 asks:

*Did the County comply with policy LU-14(a) of the CPPs if it failed to designate as IUGAs all the "designated expansion areas " for the City of Black Diamond?*

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amendment, the Act had only referred to "urban growth areas;" however, subsection (4) differentiated between interim and final UGAs.

The Petitioners contend that the County must comply with its own CPPs in adopting IUGAs and that specifically, the County failed to comply with LU-14(a) when it passed Ordinance 11110 on November 8, 1993. Petitioners' Memorandum, at 5-6. The County did not disagree that it must comply with its CPPs. However, the County claims that its IUGA does, in fact, comply with the CPPs, particularly LU-14. County's Response, at 16, fn.7.

In *Rural Residents* the Board explained the relationship between UGAs and CPPs as follows:

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*. See *Edmonds*, at 25.

*Rural Residents*, at 14.

... 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. . . . *Rural Residents*, at 17.

The Board now concludes that counties, when adopting IUGAs, must comply with those provisions of their CPPs that were adopted to direct the implementation of RCW 36.70A.110.

In the Board's first decision, *Tracy v. Mercer Island*, the Board noted the distinction between interim and implementing development regulations:

... when the GMA simply refers to 'development regulations' alone, without any indication as to which specific type of development regulation is being discussed, the Board holds that the term is referring to all types ... *Tracy v. Mercer Island*, CPSGPHB Case No. 92-3-0001 (1993), at 14.

The *Tracy* decision was entered on January 5, 1993. ESHE 1761 was not signed by the Governor until May 28, 1993 -- well after the *Tracy* decision. " 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." *Rural Residents*, at 25. In *Rural Residents*, the Board noted that it when it used the term "UGAs," it was referring to both IUGAs and FUGAs. *Rural Residents*, at 11, fn. 1. The

Board now explicitly holds that when the GMA refers to UGAs generically, it is referring to both interim and final UGAs.

Thus, the legislature, when it created the interim-final UGAs distinction in ESHE 1761, could have amended the language in RCW 36.70A.210(3)(a) and (t) to refer specifically to only FUGAs if it so intended. The Board concludes that because RCW 36.70A.210(3) was not amended to refer only to FUGAs, that it applies to both IUGAs and FUGAs. Therefore, the County was required to comply with its own CPPs regarding the implementation of UGAs when it adopted its IUGAs. How strictly a county must comply will depend, in part, on how clearly the CPPs were written and how directive or discretionary they are.

The Board is cognizant of the fact that the process of adopting CPPs can be laborious and time-consuming. See RCW 36.70A.210(2). The Board is not holding that counties were required to amend their CPPs to specifically address the interim-final UGAs distinction. Instead, counties are simply required to apply those portions of their CPPs that were adopted to implement RCW 36.70A.110 when adopting IUGAs. The Board so concludes even though it realizes that CPPs were, in effect, written with FUGAs in mind (since when CPPs were adopted in 1992, RCW 36.70A.210 mentioned only one type of UGA). Again, as outlined in *Rural Residents*, the nature, purpose and effect of UGAs is closely related to that of CPPs.

Notwithstanding this conclusion, the Board also points out that:

. . . 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. 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. *Rural Residents*, at 14 ,

In recognition that CPPs were adopted with final-type UGAs in mind, the Board will give counties some flexibility in complying with requirements of CPPs when adopting IUGAs and will not hold counties to as strict a level of compliance as will be demanded for FUGAs. Nonetheless, counties must still comply with their CPPs.

### Legal Issue No 3

Legal Issue No.3 provides:

*Did the County comply with RCW 36.70A.110(1) and/or policy LU-14 of the CPPs if it failed to designate as IUGAs all the incorporated areas of the City of Black Diamond?*

The Board holds that the County did not comply with RCW 36.70A.110(1) because it failed to include a non-contiguous incorporated portion of the City within the IUGA. RCW 36.70A.110(1) provides that "... Each city that is located in such a county [planning under the Act] shall be included within an urban growth area...." It is undisputed by the parties that the City of Black Diamond annexed 60 acres of non-contiguous land lying southeast of the City in 1987. This area is known as the "Black Diamond Watershed." See Petitioners' Memorandum, Exhibit B. Furthermore, it is undisputed that this "island" of incorporated territory is not contained in the County's IUGA for Black Diamond.

The County contends that it would be inappropriate to include any city's non-contiguous watershed within IUGAs since urban growth is encouraged inside a UGA. Instead, the County contends that watersheds should be protected from all types of development, be it urban or rural. County's Response, at 14.

Although the Board, as a policy matter, agrees with the County that watersheds should be protected from all types of development, the Board disagrees that non-contiguous watersheds, if incorporated, should not be within UGAs. The Act is clear that all incorporated lands of cities must be included within UGAs. The County has failed to include the Black Diamond Watershed within its IUGA and will be ordered to do so in compliance with the GMA. Since the Board concludes that the County did not comply with the GMA it is unnecessary to determine whether the County complied with the CPPs at LU-14(a).

The Board points out, in responding to the County's concerns, that RCW 36.70A.110(2) requires that greenbelts and open space areas be included within UGAs. Furthermore, RCW 36, 70A.060(4) allows for even forest and agricultural lands of long-term commercial significance to be included within UGAs under certain conditions. Finally, RCW 36. 70A.170(1)(d) requires cities and counties to designate critical areas and RCW 36.70A.060(2) mandates the adoption of development regulations that protect critical areas. Presumably the Black Diamond Watershed may constitute such a critical area that must be protected, thus alleviating the County's policy concerns....

Finally, the scope of the remedy the Board will impose in this instance must be discussed. The Petitioners ask the Board to "issue an order declaring Ordinance 11110 unlawful, vacating King County's Interim Urban Growth [Area], and remanding it to King County for further deliberation." Petitioners' Memorandum, at 14. Conversely, the County argues that if the Board determined that the Black Diamond Watershed had to be included within the IUGA, that the Board "not indiscriminately invalidate the County's entire IUGA"

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4. The Board notes that the Petitioners referred to Exhibit D to their Memorandum. which contains a colored map entitled "Black Diamond Area Map." The map shows the Black Diamond Watershed in the southeast portion and denotes two springs within the area. the Board does not take a position based on the limited record before it nor is it an issue whether these two springs constitute "areas with a critical recharging effect on aquifers used for potable water" or are an integral part of the watershed. See the definition of critical areas at RCW 36.70A.030(5Xb). The Board merely suggest that a "watershed" normally could be considered as such a type of critical area. The Board further notes that the Green River flows through the northwestern portion of the Black Diamond Watershed.

because this would allow the Petitioners" . . . to subvert the intent of the GMA by slipping its proposed annexation through a loophole..." County's Response, at 13-14.

This Board has routinely remanded a specific enactment adopted pursuant to the GMA with instructions for a county or city to "fix" only that portion of the document not in compliance with the Act. See for instance, *Edmonds and Lynnwood v. Snohomish County*, CPSGPHB Case No.93-3-0005 (1993), at 65; *Poulsbo et al. v. Kitsap County*, CPSGPHB Case No.92-3-0009 (1993), at 47; *Snoqualmie v. King County*, CPSGPHB Case No.92-3-0004 (1993), at 42 and *Tracy v. Mercer Island*, CPSGPHB Case No. 92-3-0001 (1993), at 28, The Board has never interpreted RCW 36.70A.300(1)(b) to mean that if it finds one item in a GMA enactment to not be in compliance with the Act, it must in all cases vacate the entire document. Furthermore, the Board will not do so now.

For sound policy reasons, the legislature did not require growth management hearings boards to "throw out the baby with the bath water." The legislature required counties to adopt IUGAs by October 1, 1993. See RCW 36.70A.110(4).

...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)... *Rural Residents*, at 15.

Simply by drawing the IUGA boundary, a county automatically prohibits annexations outside the line. The Board is aware of the on-going annexation struggle between Black Diamond and the County. See *King County v. Boundary Review Board*, 122 Wn. 2d 648 860 P .2d 1024 ( 1993 ). That is a matter beyond the Board's jurisdiction. However, if the Board were to vacate Ordinance 11110 in its entirety, merely because the County failed to include the Black Diamond Watershed within its IUGA, the Board would be opening the floodgates to inappropriate annexations, not only in the Black Diamond area but throughout King County. These are precisely the gates that the legislature intended remain shut by adopting RCW 35.13.005 and RCW 35A.14.005. The Board will not subvert such clear legislative direction. Consequently, the Board is unwilling to declare that an entire ordinance must be vacated when only a portion in fact fails to comply with the Act, and that error can be easily rectified, as here.

#### Legal Issue No.4

In determining Legal Issue No.2 above, the Board concluded that the County must comply with its CPPs in adopting IUGAs. Accordingly, the third issue raised by Petitioners' Memorandum, which corresponds to Legal Issue No.4, asks the Board to determine whether Ordinance 11110 complied with LU-14(a) of the County's CPPs. The Board declines to do so at this time.

In discussing the nature of dispositive motions, the Board specified certain factors it

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would take into consideration in determining when to resolve a legal issue before it.

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A third related Board consideration in deciding whether to grant or deny a dispositive motion is necessitated by practical concerns. If a motion goes to the heart of the issue(s) before the Board and it is one of first impression and/or complex in nature, the Board generally cannot compress making its decision on the motion into the short period of time allotted to decide dispositive motions. Unlike other quasi-judicial bodies, growth planning hearings boards must issue a final decision and order relatively promptly.

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. . . The Board is afforded very little time between the time the hearing on the motions takes place and the first prehearing briefs are due. The Board cannot rush making difficult decisions when it only has a limited time for review to begin with. Instead, to some extent, the Board must protect the short time it is given for deliberations and decision making. *Twin Falls, et al., v. Snohomish County*, CPSGPHB Case No.93-3-0003 (1993), Order on Dispositive Motions, at 20.

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In its Prehearing Order in this case, the Board imposed a June 9, 1994 deadline for entering an order on dispositive motions. After hearing oral argument regarding it, the Board has determined that Legal Issue No.4 is one of first impression that goes to the heart of the case. It therefore demands more time and attention than the Board is able to give it before this self-imposed deadline. Therefore, the Board denies the Petitioners' motion regarding Legal Issue No.4. In denying the motion, the Board is not taking a position on the merits of the parties' positions regarding the issue. Instead, the Board is simply indicating that it will not answer the question raised by Legal Issue No.4 until it enters its Final Decision and Order in this case. In the meantime, the parties need not further brief the issue nor orally argue it further at the hearing on the merits on July 20, 1994.

#### II Legal Issue No.5

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Legal Issue No.5 corresponds to the fourth question raised in the Petitioners' Memorandum and asks:

*Does Ordinance 11110 comply with the Growth Management Act (GMA), specifically, but not limited to. RCW 36. 70A.110 and. 060(4)?*

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Petitioners contend that the County's IUGA for Black Diamond "consists solely of lands designated and regulated by the County as commercially significant forest lands under RCW 36. 70A.170 and RCW 36.70A.060." Petitioners contend that an IUGA consisting solely of such forest lands violates the GMA. Petitioners' Memorandum, at 11.

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Petitioners carefully articulate a distinction about their claim. They do not contend that an IUGA cannot include any natural resource lands -- simply that an IUGA that consists of

nothing but resource lands is invalid as a matter of law. Petitioners' Memorandum, at 11-12.

The Petitioners' Motion is denied without the Board taking a position on the substantive merits of the motion. The Board is unwilling to determine this issue at this time. First, the Board is unable to ascertain, from the limited record before it, whether the Petitioners' factual allegations are correct. Presumably, Petitioners are referring to only the East Property and their actual contention is that unincorporated portions of IUGAs cannot consist only of designated forest lands. Second, Legal Issue No.5 also goes to the heart of this IUGA case. Because of the precedential implications this decision will have on FUGAs, and in order to give the parties an opportunity to consider the Board's recent *Rural Residents* decision, at 40-47, as it relates to locating UGAs, the Board will not decide this issue until it issues its Final Decision and Order.

II. WOODINVILLE'S MOTION FOR INTERVENTION

The Board has reviewed Woodinville's Motion for Intervention and attached Tanaka Affidavit, the County's and Palmer's Responses to the Motion for Intervention, and the appropriate court rules. The Board concludes that Woodinville is not entitled to intervention of right nor permissive intervention. However, the Board concludes that Woodinville should be granted *amicus* status.

III. ORDER

Having reviewed the documents listed above that were filed with the Board in support of and in opposition to the dispositive motions, having considered the oral arguments of the parties, and having deliberated on the matter, the Board enters the following order.

A. PETITIONERS' DISPOSITIVE MOTION

1) The first issue raised by the Petitioners' Memorandum ( at page 3 ), which *Legal Issue No. 1* addresses, is partially granted. Attachment A to King County Ordinance 11110 is remanded with instructions for the County to more accurately label the existing map and delete the existing narrative, or to more accurately label the existing map and edit the - narrative, or to provide legal descriptions for the entire, countywide IUGA boundary line in lieu of or in addition to the map. That portion of the Petitioners' Memorandum challenging Attachment A-2 of the Ordinance because it is inadequately labeled is denied. Accordingly, *Legal Issue No. 1* has been entirely resolved.

2) The second issue raised by the Petitioners' Memorandum (at page 3), which *Legal Issue No.3* addresses, is granted. King County Ordinance 11110 is remanded with instructions for the County to add that portion of the City of Black Diamond that was excluded from the IUGA, i.e., the Black Diamond Watershed, to the IUGA. Accordingly, *Legal Issue No.3* has been entirely resolved.

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3A) The first part of the third issue raised by the Petitioners' Memorandum (which was not listed at page 3 but was discussed at pages 5-9 of the brief), correlates to *Legal Issue No.2*. It is resolved since the Board concludes that counties must comply with the provisions of CPPs in adopting IUGAs. Therefore, *Legal Issue No.2* has been disposed of in its entirety.

3B) However, the second part of the third issue raised by Petitioners' Memorandum (at page 3), which correlates to *Legal Issue No. 1*, is denied. The Board will determine this issue when it issues its Final Decision and Order. The parties need not further brief nor argue this issue.

4) The fourth issue raised by the Petitioners' Memorandum (at page 3), which *Legal Issue No.5* addresses, is denied. The Board will determine this issue when it issues its Final Decision and Order. Although not required to do so, the parties are encouraged to provide additional briefing and to orally argue this issue further at the hearing on the merits, if they so desire.

#### B. WOODINVILLE'S MOTION FOR INTERVENTION

- 1) Woodinville's Motion for Intervention is denied; however, Woodinville's Motion for Amicus Status is granted pursuant to W AC 242-02-280.
  - 2) Woodinville shall file an original and three copies of its Prehearing Brief (on the remaining legal issues) with the Board and serve a copy upon the parties (including Palmer) by 5:00 p.m. on Thursday, June 16, 1994.
  - 3) The County and Palmer shall each file a copy of its Prehearing Brief with Woodinville by 5:00 p.m. on Thursday, July 7,1994.
  - 4) Woodinville shall not be permitted to file any exhibits with the Board but is free to cite to exhibits of the parties.
  - 5) Woodinville shall not be permitted to orally argue its position at the hearing on the merits of the petition for review that will take place on Wednesday, July 20 1994, unless otherwise notified.
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So ORDERED this 9th day of June, 1994.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

2 M. Peter Philley  
3 Board Member

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5 Joseph W. Tovar, AICP  
6 Presiding Officer

7 Chris Smith Towne  
8 Board Member  
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0 NOTE: This order does not constitute the Board's final order in this case as specified by  
1 RCW 36.70A.300.  
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