

CENTRAL PUGET SOUND

GROWTH MANAGEMENT HEARINGS BOARD

STATE OF WASHINGTON

ROBISON, et al.,)
)**Case No. 94-3-0025**
Petitioners,)(**consolidated**)
)
v.)**FINAL DECISION AND**
)**ORDER**
CITY OF BAINBRIDGE ISLAND)
)
Respondent,)
)
SOUTH BAINBRIDGE COMMUNITY)
ASSOCIATION)
)
and)
)
BAINBRIDGE ISLAND SCHOOL)
DISTRICT)
Intervenors,)
)

I. PROCEDURAL HISTORY

On October 31, November 3, and November 4, 1994 the Central Puget Sound Growth Management Hearings Board (the **Board**) received Petitions for Review from Merrill Robison (**Robison**), Port Blakely Tree Farms Limited Partnership (**Port Blakely**), Barbara Watson (**Watson**), David S. Johnson, Michael L. Silves (**Johnson**) Bainbridge citizens for Zero Adverse Power (**ZAP**), James C. Tracy (**Tracy**), David L. Martin and Michael A. Patterson (**Martin**), Pauline and Bob Deschamps (**Deschamps**), and Philip C. Whitener (**Whitener**) challenging the City of Bainbridge Island (the **City**) Comprehensive Plan (the **Plan**).

On November 10, 1994, the Board consolidated the above Petitions for Review, as consolidated Case No. 94-3-0025, entitled *Robison, et al. v. City of Bainbridge Island*, granted motions to intervene filed by the Bainbridge Island School District (**BISD**) and the South Bainbridge Island

Community Association (SBCA) and issued a Notice of Hearing setting the Prehearing Conference for January 18, 19, and 21, 1995.

On January 18, 19 and 21 1995 the Board held a Prehearing Conference, which set forth 63 legal issues to be determined by the Board, and established a schedule for conduct of the case, motions and witness and exhibit lists. The Board issued a Prehearing Order dated January 24, 1995.

On February 3, 1995, the Board issued an Amended Prehearing Order adding two legal issues for Port Blakely, legal issues Nos. 8 and 9, and correcting legal issue No. 15 for Tracy.

On February 9, 1995, the Board held a hearing on dispositive motions filed by the City, BISD and SBCA.

On February 16, 1995, the Board dismissed with prejudice Robison legal issue No. 9, Port Blakely legal issues Nos. 8 and 9, Johnson legal issue No. 5, Tracy legal issue Nos. 15, 16 and 17, Martin legal issue No. 8 and a portion of Whitener legal issue No. 4 that challenged the validity of City ordinance 93-05. The Board denied the City's motion to dismiss the legal issues of Tracy for lack of standing and denied BISD's motion to dismiss the legal issues of Whitener for lack of standing. The Board reserved ruling on BISD's Motion to Dismiss Whitener's legal issues Nos. 4 and 5, and a portion of No. 2.

On February 22, 1995, Johnson and the City filed a proposed Stipulation and Order for Dismissal of Johnson's Petition for Review; the Board issued the Order on February 22, 1994.

On February 22, 1995, Deschamps and the City filed a proposed Order on Stipulated Dismissal to dismiss their Petition for Review; the Board issued the Order on February 22, 1995.

On February 24, 1995, the Board dismissed with prejudice Whitener legal issues 4, 5 and that portion of legal issue 2 relating to alleged violations of RCW 82.02.050.

On March 7, 1995, Port Blakely and the City filed a proposed Stipulation and Order for Dismissal of Port Blakely's Petition for Review; the Board issued the Order on the same date.

On February 22, 1995 the Board received a Prehearing Brief from Robison; Brief on the Issues (3) with Exhibits by Barbara Watson from Watson; Brief on the Merits by Petitioners Martin and Patterson from Petitioners Martin and Patterson; Petitioners Hearing Brief from Tracy; and Petitioner Whitener's Hearing Memorandum from Whitener.

On March 3, 1995 the Board received separate briefs from the City in Response to the briefs from Robison, Watson, Martin and Patterson, and Whitener. Also on March 3, 1995 the Board received South Bainbridge Island Community Association's Prehearing Response Brief from SBCA and Bainbridge Island School District's Prehearing Response Brief from BISD.

On March 8, 1995 the Board received the Reply Brief from Whitener.

On March 9, 1995, the Board held the hearing on the merits of the remaining Petitions for Review and Legal Issues at the Bainbridge Island Commons, 402 Bjune Drive, Bainbridge Island.

On March 10, 1995 the Board continued the hearing at Two Union Square, Room 5500, 601 Union St., Seattle. Board member Chris Smith Towne presided. Board member Joseph W. Tovar and Hearing Examiner Traci M. Goodwin were also present. Merrill Robison appeared *pro se* in Case No. 94-3-0017; Barbara Watson appeared *pro se* in Case No. 94-3-0021; James C. Tracy represented himself in Case No. 94-3-0022; David L. Martin and Michael A. Patterson were

represented by John W. Maher; Philip C. Whitener was represented by Curt Smelser; the City of Bainbridge Island was represented by Harry E. Grant and Robert Heller; and the SBCA and BISD were represented by Peter J. Eglick and Jonathon Meier. No witnesses testified at the hearing nor were any supplement exhibits offered.

II. FINDINGS OF FACT

1. The City of Bainbridge Island adopted the City of Bainbridge Island Comprehensive Plan on September 1, 1994, by Ordinance 94-21, and published notice of adoption of the Plan on September 7, 1994.
2. The Plan consists of an introduction and separate chapters for the Land Use, Housing, Water Resources, Transportation, Capital Facilities and Six-Year Financing, and Utilities elements. An Appendix to the Plan contains the Appendices to the Land Use Element with the Bainbridge Island Community Values Survey, summary of findings, 1992; Bainbridge Island Community Values Survey Focus Group Project Summary of Findings; City of Bainbridge Island Land Use Inventory; Bainbridge Island Land Use Re-Analysis; Potential Buildout of Winslow under Current Zoning and under CPAC's Preferred Alternative; Ratio of Existing Light-Manufacturing to Existing Population; Vision Winslow Design Workshop Capacity Analysis; and Transfer Development Rights (**TDRs**): Analysis of Development Potential.
3. Bainbridge Island is one of the largest islands in Puget Sound. Its area is 32 square miles with about 45 five miles of shoreline. About 17,200 people live on the island, resulting in a population density of 537 people per square mile.
4. The City encompasses all of Bainbridge Island and was incorporated in 1991.
5. Prior to 1991, the only city on Bainbridge Island was the City of Winslow, which was located in the southeast portion of the island. A major Washington state ferry terminal is located in the former City of Winslow.
6. As a result of the incorporation of Bainbridge Island into the City of Bainbridge Island, the City's Urban Growth Area (**UGA**) boundaries are the shorelines of the island. The size of the City's UGA is significantly larger than what is necessary to accommodate the population projection, allocated to the city for the 20-year planning period.
7. There are a large number of existing undeveloped lots that were platted while Kitsap County (the **County**) was responsible for regulating land use on the island prior to the incorporation of the island into the City of Bainbridge Island in 1991. Many of these lots are non-conforming with the City's existing zoning. Exhibit 115; 155.
8. The City plan directs about 50% of planned growth into the area of the former City of Winslow. The remaining 50% will be dispersed throughout the remainder of the City.
9. On August 10, 1992 the County adopted its County-wide Planning Policies (**CPPs**). Pursuant to these policies the Kitsap Regional Planning Council (**KRPC**) is responsible for allocating the Office of Financial Management (**OFM**) population projections for the County among the cities in the county, including the City of Bainbridge Island. The Kitsap Regional Planning Council is

composed of representatives from the County and each of the cities and Tribes located in Kitsap County.

10. On June 9, 1992, the Kitsap Regional Planning Council voted to allocate 6,000 persons to the City as the population planning forecast for the year 2010. Exhibit 2165. On May 4, 1994, the KRPC adopted a population planning forecast for the City of 6820 by the year 2014. The Plan was based on the June 9, 1992 allocation of 6000 persons from the KRPC.

11. In December 1990, the City Council appointed a citizens' group called the Comprehensive Plan Advisory Committee (**CPAC**) to develop the Plan. See Resolution 91-03. One of CPAC's responsibilities was to obtain broad community participation with respect to the Plan. During the course of developing the proposed Plan, CPAC developed alternatives for various aspects of the Plan.

12. The City Council relied upon the Planning Commission to review the CPAC alternatives and to make recommendations to the Council about the Plan.

13. The City Council also utilized its own Land Use Committee (**LUC**) to review drafts of CPAC's proposed Plan alternatives.

II DISCUSSION

As a preliminary matter, the Board notes that, although this is only the third decision regarding a petition for review of a comprehensive plan, its applicability as guidance for subsequent cases is limited by two factors. First, although the petitioners raised many significant issues of first impression, they frequently failed to support their arguments with adequate briefs and thus failed to meet their burden of proof.^[1] It is difficult for the Board to describe, let alone understand, much of the argument presented in these briefs. Consequently, this Order is spare in its summary and discussion of the petitioners' arguments. Likewise, absent sufficient supporting facts and coherent argument in this case, the Board is prevented from reaching many definitive conclusions with broad application. All we can conclude is that, with the facts and arguments presented, virtually all of the petitioners failed to prove Bainbridge Island's noncompliance with the Act.

Second, the City of Bainbridge Island is an anomaly among cities. The requirements of the Growth Management Act (**GMA** or the **Act**) apply to all 76 cities in the Central Puget Sound region; however, the Board recognizes that local circumstances, traditions and identity will result in unique choices and solutions by each city. See *Tacoma et al. v. Pierce County*, CPSGMHB Case No. 94-3-0001 (1994), at 10. In many important ways, the unique history, geography and development pattern of the City make it unlike any other city in the region. That circumstance must be kept in mind when determining the City's compliance with the GMA and limits the applicability of some of the conclusions in this case to the other cities in the Central Puget Sound region that have grown in more traditional fashion.

The City's history as a corporate entity is relatively new; however, its development pattern is much older. The fact that it is an island has insulated Bainbridge from certain kinds of inter-jurisdictional disputes, such as drainage or service areas, has constrained its growth rate for most

of the past century and limited its regional transportation links to the Winslow ferry and Agate Pass bridge. At the same time, the island does not lie in a remote corner of the state. It is within five miles of the epicenter of the largest metropolitan region in the Northwest, a region that is projected to grow by 563,267 people within the next 15 years.^[1]

The island itself is one of the largest in Puget Sound, measuring 32 square miles in area and with forty-five miles of shoreline. About 17,200 people live on the island, yielding a gross population density of 537 people per square mile. This is a lower density than any other Washington city of comparable area or population. In fact, with the exception of five much smaller cities, Bainbridge Island is the least dense city in the region.^[1]

Most urban growth in North America has occurred incrementally, radiating along transportation corridors from a central place of commerce or employment.^[1] This has been the pattern of city expansion in the Central Puget Sound region, wherein the geographic expansion of existing cities has been achieved by annexation of adjacent territory. Typically, the geographic extent of such annexation has been a fraction of the land mass and population of the annexing jurisdiction. The experience of Bainbridge Island has been very different. Most of the island was part of unincorporated Kitsap County until 1991, when the island residents incorporated the entire island into a city. Prior to 1991, the only city on the island was the City of Winslow, which is the site of the ferry dock as well as the most densely populated part of the island. Prior to 1991, the rest of the island was developed subject to the jurisdiction of Kitsap County.

As a result of the incorporation of the entire island as the City of Bainbridge Island in 1991, the shoreline of the island became the city limits. Thus, the City's geographic extent jumped immediately out to the perimeter of its logical ultimate annexation and service area, rather than radiating incrementally over time from an established urban center. In terms of GMA compliance, this had the effect of establishing the entire island as a UGA because RCW 36.70A.110(1) provides, in pertinent part:

... Each city that is located in such a county shall be included within an urban growth area. Therefore, the entire City of Bainbridge Island is a UGA and subject to the provisions of RCW 36.70A.110(2) which requires that:

... Each urban growth area shall permit urban densities and shall include greenbelt and open space areas.

Thus, the GMA requires that Bainbridge Island "permit urban densities" and "include greenbelt and open space areas" in its Comprehensive Plan, while also meeting the other goals and requirements of the Act. How the City can meet this directive, in view of its unique circumstances, is the focus of much of the petition presently before the Board.

IV. ISSUES AND CONCLUSIONS

Robison Legal Issue No. 1

Is the Capital Facilities Element of the Plan inconsistent with the Land Use Element of the

Plan for Old Winslow?

The preamble to RCW 36.70A.070 provides:

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. The plan shall be an internally consistent document and all elements shall be consistent with the future land use map. A comprehensive plan shall be adopted and amended with public participation as provided in RCW 36.70A.140

Local jurisdictions planning under the Act must comply with the preamble of RCW 36.70A.070. *Aagaard, et al. v. Bothell*, CPSGMHB Case No. 94-3-0011 (1995), at 13; *West Seattle Defense Fund v. City of Seattle*, CPSGMHB Case No. 94-3-0016 (1995), at 26.

Actions taken by a local jurisdiction in adopting a comprehensive plan are presumed valid upon adoption. RCW 36.70A.320. The burden rests with the petitioner to show by a preponderance of the evidence that a local jurisdiction has failed to comply with the Act. *Aagaard, et. al, supra*, at 10, quoting *Gutschmidt v. Mercer Island*, CPSGPHB Case No. 92-3-0006 (1993), at 9. Robison argues that the Land Use Element of the Plan is inconsistent with the Capital Facilities Element of the Plan because the planning process occurred over a three year period while the Capital Facilities Element "was only done at the last" and failed to incorporate a financial estimate of infrastructure costs prepared by a citizens' committee. Robison's Brief, at 2-3.

The fact that the Capital Facilities Element of the Plan was drafted later than the Land Use Element of the Plan does not suffice as proof that the two are inconsistent with each other. In fact, .070(3) and .020(12) seems to contemplate that the Capital Facilities Element will be developed after the Land Use Element is completed. While the citizens' committee may well have wished to have its financial estimates included in the Plan, Robison admits that the City has more than adequate bonding capacity for these costs. Accordingly, as in *Aagaard*, petitioner Robison has failed to carry his burden of proof to show that the Land Use Element of the Plan is inconsistent with the Capital Facilities Element.

Robison Conclusion No. 1

The Land Use Element has not been shown to be inconsistent with the Capital Facilities Element of the Plan.

Robison Legal Issue No. 2

Is the City required by the Act to include funding for failing infrastructure (i.e., septic systems around Eagle Harbor) in the Capital Facilities Element of the Plan? If yes, did the City fail to do so?

Although Robison does not direct the Board to any legal authority for such a requirement in his statement of the issue, he directs the Board to RCW 36.70A.020(10) in his brief. RCW 36.70A.020

(10) provides:

Protect the environment and enhance the state's high quality of life, including air and water quality, and the availability of water.

Local jurisdictions need not show procedural compliance with the planning goals of RCW 36.70A.020, but they must be substantively guided by these goals when adopting comprehensive plans. *Association of Rural Residents v. Kitsap County*, CPSGMHB Case No. 93-3-0010 (1994) at 27-28; *Gutschmidt, supra*. The City points out that the septic systems around Eagle Harbor are privately owned and operated, while permitting and enforcement are under the jurisdiction of the Bremerton-Kitsap County Health Department. City Brief, at 5-6.

Even if these systems were under the jurisdiction of the City, the broadly stated Environmental goal of the Act does not create an affirmative duty upon the City to assume the funding responsibility to improve failing infrastructure in its Plan. Robison's reliance upon planning goal 10 alone, as authority that the City must provide funding in its Plan to repair these systems, is insufficient to support his argument. However, fulfillment of the spirit of the law might lead the City to ascertain the nature and significance of pollution from this source, and if appropriate, take steps available to it to encourage and assist property owners to remedy problems.

Robison Conclusion No. 2

RCW 36.70A.020(10) does not require the City to provide funding for failing infrastructure in its comprehensive plan.

Robison Legal Issue No. 3

Is it necessary for the City to provide funding for neighborhood parks as part of the Land Use Element of the Plan? If yes, did the City fail to do so?

Robison's argument consists entirely of the conclusory statement that the answer to Legal Issue No. 3 is "yes", and that the Board should refer to RCW 36.70A.070 and the Land Use Element at p. 49.

A petitioner must first show that the Act imposes a duty upon a local jurisdiction to undertake a particular action and then show by a preponderance of the evidence how the local jurisdiction has breached that duty. Conclusory statements that the Act imposes a duty are insufficient to carry the petitioner's burden of proof. Here, Robison fails to direct the Board to any specific language in RCW 36.70A.070 that supports his argument that the Act imposes a duty upon the City to provide funding for neighborhood parks.

Robison Conclusion No. 3

Neither the Act nor the Land Use Element of the Plan requires the City to provide for funding for neighborhood parks in the Land Use Element.

Robison Legal Issue No. 4

Is the City required by the Act to provide funding for capital operating costs necessary to assume the District 7 sewage plant as part of the Capital Facilities Element of the Plan? If yes, did the City fail to do so?

Rather than directing the Board to any particular portion of the Act that supports his argument, or offering any analysis, Robison concludes:

These is no way that 70 +/- hookups can support this facility. It will end up in the city's lap!!

There is nothing in the revenue or expense part of the Capital Facilities Element.

Robison Brief, at 13. The City correctly points out that the sewer plant is owned and operated by a separate municipal corporation: Kitsap Sewer District No. 7. While Robison's concerns over the financial viability of the plant may be well taken, he has failed to show that the Act imposes a duty upon the City to assume financial responsibility for the plant in the Plan.

Robison Conclusion No. 4

The Act does not require the City to provide funding for the operating costs of the District 7 sewage plant as part of the Capital Facilities Element of the Plan.

Robison Legal Issue No. 5

Is the City required by the Act to provide funding for reuse and recharge of the sewer plant's effluent? If yes, has it failed to do so?

Again, Robison concludes that the answer is "yes" and cites to portions of the Act and the Plan without offering any analysis in support of his position. See RCW 36.70A.070(1) and Water Resources goal 1 of the plan. Bare citation to the provisions of the Act and the Plan without legal argument does not suffice to overcome the presumption of validity enjoyed by the City under RCW 36.70A.320.

Robison Conclusion No. 5

Robison has not shown that the Act requires the City to provide funding for reuse and recharge of the sewer plant's effluent.

Robison Legal Issue No. 6

Does the Act require a local government to provide for growth and employment? If yes, did the City fail to do so?

After stating that the "answer is yes," Robison directs the Board to RCW 36.70A.020(5) which

provides:

Encourage economic development throughout the state that is consistent with adopted comprehensive plans, promote economic opportunity for all citizens of this state, especially for unemployed and disadvantaged persons, and encourage growth in areas experiencing insufficient economic growth, all within the capacities of the state's natural resources, public services, and public facilities.

Like any other goal of the Act, the City is required to be guided by the Economic Development Goal which includes providing for growth and employment. However, Robison directs the Board generally to the Vision Statement and the Goals of the Plan without explaining how he believes they show that the City failed to be guided by the economic development goal of the Act.

Robison Conclusion No. 6

The City did not fail to be guided by the Economic Development goal of the Act in adopting the Vision Statement and Goals of the Plan.

Robison Legal Issue No. 7

Does the Act, in RCW 36.70A.150, require the City to identify long range sites for public facilities? If so, did the City fail to do so?

RCW 36.70A.150 provides in pertinent part

Each county and city that is required or chooses to prepare a comprehensive land use plan under RCW 36.70A.040 shall identify lands useful for public purposes such as utility corridors, landfills, sewage treatment facilities, storm water management facilities, recreation, schools, and other public uses ... The jurisdictions within the county shall prepare a prioritized list of lands necessary for the identified public uses including an estimated date by which the acquisition will be needed.

Robison argues that the City has failed to undertake general siting for parking, new sewage plants, additional ferry terminals (including foot ferries), fire stations, schools, helicopter pads, transportation corridors (cross-town or Winslow infill) and notes that the intent of the Act is to provide long range planning of public facilities.

The City responds that it is required to identify lands necessary for facilities it believes are necessary to support anticipated growth, and that these are listed in its Forecast of Future Needs, Capital Facilities Element. The Forecast does not identify the need for new sewage plants, ferry terminals, helicopter pads or transportation corridors as being necessary to accommodate growth. City Brief, at 11. In addition, the City explains that the Fire District 2 has developed its own fire protection and emergency medical services plan. See Appendix F of the Capital Facilities Element. The Bainbridge Island Parks and Recreation District has identified lands useful for recreation in the Capital Facilities Element, at 43. The Bainbridge Island School District has identified potential sites for new schools on land already owned by the school district. Appendix

D - Capital Facilities Element. The City points out that parking improvements will be included when the Winslow Master Plan is adopted.

RCW 36.70A.150 alone does not require the City to specifically identify lands useful for the siting of helicopter pads, parking or ferry terminals. Which lands and which facilities are useful for public purposes are left to the discretion of the county or city creating the Plan. However, RCW 36.70A.070(6)(a-e) does identify the subelements required for the Transportation Element of the Plan and, depending upon the needs of the local jurisdiction, may require an inventory and the creation of LOS standards for such facilities as helicopter pads, parking and ferry terminals. In this case, the City has identified which lands it believes are necessary for these purposes and what kind of facilities it planned for future: schools, fire and emergency medical services and parks and recreation in the Capital Facilities Element. Robison's bare allegation regarding the sufficiency of planning for these facilities does not overcome the presumption of the Plan's validity.

Robison Conclusion No. 7

The City is not required by RCW 36.70A.150 alone to specifically identify long range sites for helicopter pads, parking or ferry terminals. The Plan does identify long range sites for schools and parks, and identifies a process for addressing parking through the adoption of the Winslow Master Plan, and thus satisfies RCW 36.70A.150.

Robison Legal Issue No. 8

Is the Water Resources Element of the Plan inconsistent with the Environmental Goal of the Act, RCW 36.70A.020(10), and the Land Use Element of the Plan?

The City has chosen to include a Water Resources Element in its Plan that is separate from the Land Use Element even though RCW 36.70A.070(1) does not require the Water Resource Element to be separate. This Board has characterized the nature of the discretion enjoyed by a local government agency as follows:

"...a city enjoys broad discretion in its comprehensive plan to make many specific choices about how growth is to be accommodated. These choices include the specific location of particular land uses and development intensities, community character and design, spending priorities, level of service standards, financing mechanisms, site development standards and the like..."

Aagaard, supra, at 9. Robison asks the following rhetorical questions:

Why should we restrict water that only comes from Bainbridge Island? Why don't we conserve more? Where is the land to recharge or reuse the Winslow sewer plant effluent?

Robison Brief, at 16. While Robison clearly does not agree with the policy choices made by the City in the Plan, his argument does not prove that the Act imposes any duty upon the City to

adopt a separate Water Resources Element, or to adopt a Water Resources Element that responds to his rhetorical questions. Nor has Robison shown that the Water Resources Element is inconsistent with the Environmental Goal of the Act and the Land Use Element of the Plan.

Robison Conclusion No. 8

The City does not have a duty to adopt a separate Water Resource Element in its Plan. The Water Resource Element is not inconsistent with RCW 36.70A.020(10) and the Land Use Element of the Plan.

Watson Legal Issues No. 1 and 2

Did the City violate the public participation requirements of the Act at RCW 36.70A.140 in adopting the Plan?

Does the Act require the City to refer public comments and proposed amendments to the Plan back to the Planning Commission?

The Act requires that local governments adopt and amend comprehensive plans in accordance with the public participation requirements of RCW 36.70A.140 which provides in pertinent part:

Each ...city... shall establish procedures providing for early and continuous public participation in the development and amendment of comprehensive land use plans and development regulations implementing such plans. The procedures shall provide for broad dissemination of proposals and alternatives, opportunity for written comments, public meetings after effective notice, provision for open discussion, communication programs, information services, and consideration of and response to public comments. Errors in exact compliance with the established procedures shall not render the comprehensive land use plan or development regulation invalid if the spirit of the procedures is observed.

See also RCW 36.70A.020(11) (citizen participation and coordination goal). Watson argues that the City violated RCW 36.70A.140 by improperly accepting only written, rather than oral, comments from the public during several points in the process of developing and adopting the Plan. Watson Brief, at 1-5. Also, Watson argues the City improperly made substantial changes to the draft Plan after the final Planning Commission hearing without allowing for any additional public comment before adoption of the Plan. *Id.* She argues that the following changes were made by the Council in the final adopted Plan that differ from the Planning Commission's recommendations: Capital Facilities Element added to the Plan; Winslow urban boundaries shrunk; southeast portion of island put into a special planning area; area available for light manufacturing shrunk and additional restrictions placed on light manufacturing; creation of a critical area overlay and open space residential district; added provisions for greenways, forest land, fish, and wildlife. *See* Watson Brief, at 2-4.

The City denies that significant changes were made to the Plan without the opportunity for public comment, and offers a chronology of the public participation process associated with the adoption

of the Capital Facilities Element of the Plan. *See* City's Response to Tracy Brief, at 23-28 adopted by reference in response to Watson Brief.

As a preliminary matter, the Board notes that the overall level of public participation for the City of Bainbridge was significant. Even those petitioners who raised specific public participation issues in this appeal do not quarrel with the City's overall efforts to engage the public in the planning process. *See* for instance, discussion of Martin/Patterson Legal Issues No. 1 and 2; Tracy Legal Issue No. 3.

The Board has held in previous cases that, particularly when a specific proposal is under review, written comments carry as much weight as oral comments for the purposes of satisfying the public participation requirements of RCW 36.70A.140. *WSDF*, at 75-76. In that case, the petitioners argued that the City of Seattle (**Seattle**) violated RCW 36.70A.140 by allocating too little time at a public hearing for individual speakers to make their opinions about the proposed comprehensive plan known to the city council. *WSDF*, at 75. The Board observed that since nothing in the record suggested that the opportunity for written comment had been foreclosed, Seattle did not violate the public participation requirements of RCW 36.70A.140.

Similarly, the City of Bainbridge Island Council did not violate the public participation requirements of RCW 36.70A.140 by confining public comment on the proposed plan to written responses at certain points in the process. To assist it with preparation of the Plan, the City appointed a seven-member citizen-advisory committee (CPAC) to obtain broad public participation in the comprehensive planning process. Exhibit 834 - City Council Resolution 91-03, January 17, 1991. Over the three-and-a-half year planning process, CPAC held public meetings, undertook telephone surveys, and conducted workshops and conferences about the plan. During some of the public meetings, oral comment from the public was not allowed. However, like Seattle, CPAC accepted written comments from citizens at all times during the process, even when oral comment was not being accepted. Accordingly, the City did not violate the Act when it decided to accept only written comment during certain parts of the process.

Nor did the changes to the Plan, adopted by the City Council after receiving the Planning Commission recommendations, fail to satisfy the public participation requirements of RCW 36.70A.020(11) and .140. Watson offers a list of changes made to the Plan by the Council as evidence that the public's comments were not properly considered by the council. In *Twin Falls et. al v. Snohomish County*, CPSGPHB Case No. 93-3-0003 (1993), at 78, the Board explained:

...Certainly, many of the choices that the Act places before elected officials are essentially value driven, and hearing the opinions of citizens is an important duty for elected officials. Nevertheless, the Act also obliges local elected officials to be responsive to many other duties and it therefore does not follow that a local legislative enactment will always comport with popular public opinion.

...

It is relatively easy to document that a fact or opinion was entered into the record and therefore to presume that the legislative body was aware of it. It is not possible to document that every one of the many thousands of bits of information in the record was subjected to

independent evaluation and disposition in the mind of each of the members of the legislative body. Likewise, it is impossible to prove that an elected official did *not* evaluate and dispose of every bit of input. The mere fact that an individual comment or fact in the record is not explicitly mentioned prior to the action by the legislative body is not evidence that consideration was not given.

(citation omitted) *See also City of Poulsbo v. Kitsap County*, CPSGMHB, Case No. 92-3-0009 (1993), at 133. ("public participation" does not equal "citizens decide"). Similarly, in *Twin Falls*, *supra*, the Board held that changes in draft GMA required plans were to be expected as part of the iterative process of public participation.

In *WSDF*, the Board created a two-part test to determine whether or not changes made by a local legislative body to a comprehensive plan without the opportunity for public comment violated the requirement of RCW 36.70A.140 that public participation be "early and continuous." The Board explained:

"...if the changes which the legislative body wishes to make are substantially different from the recommendations received, its discretion is contingent on two conditions: (1) that there is sufficient information and/or analysis in the record to support the Council's new choice (e.g. SEPA disclosure was given, or the requisite financial analysis was done to meet the Act's concurrency requirements) and (2) that the public has had a reasonable opportunity to review and comment upon the contemplated change. If the first condition does not exist, additional work is first required to support the Council's subsequent exercise of discretion. If the second condition does not exist, effective public notice and reasonable time to review and comment upon the substantial changes must be afforded to the public in order to meet the Act's requirements for "early and continuous" public participation pursuant to RCW 36.70A.140.^[1] *WSDF*, at 76-77. (emphasis in the original)

Here the City Council did not violate the public participation requirements of RCW 36.70A.140 because the changes made were not substantially different. On April 14, 1994 the Planning Commission and City Council held a joint public hearing on the Capital Facilities Element. After the hearing, the Capital Facilities Element was revised to include more detail on capital projects and the methods of financing those projects. On June 9, 1994, another public hearing was held; as a result, a June 15th draft and then a June 22 draft emerged. CPAC made a preliminary review of the draft Capital Facilities Element and after consideration of public comments, offered proposed changes that were incorporated into the July 30, 1994, draft. Both the Planning Commission and public offered comments on the July 30, 1994, draft and the draft was revised in response to these comments. Written comments were accepted throughout the process.

Examination of the record also shows that many of the changes characterized by Watson as substantive changes were either already incorporated as part of the Plan or changed in only minor ways. For example, the Critical Areas Overlay District was part of the earlier drafts, but in those it was called a "TDR Sending Overlay District." Exhibit 2042, at 48; Exhibit 1199 generally. The boundaries for the Winslow urban growth area were not changed significantly from those originally proposed by the Planning Commission.

Moreover, the full City Council did hold a public hearing on the Plan prior to adoption. The City correctly notes that "[I]logically, at some point before adoption, the 'last' public hearing does take place. That does not prove that public participation requirements were not satisfied." City's Response to Watson, at 7. The Board also notes that given the size of the population of the City of Bainbridge, approximately 17,000 persons, the public participation process was extensive and robust. The fact that the City did not adopt the specific substantive results desired by certain citizens, such as Watson, who participated extensively in the process does not mean that the process itself violated the Act.

Watson Conclusion No. 1 and 2

Watson has not shown that the City violated the public participation requirements of RCW 36.70A.140 in its adoption of the Plan.

Watson Legal Issue No. 3

Are the restrictions in the Plan on the use of property designated as light manufacturing (LM) inconsistent with the Economic Development goal of the Act at RCW 36.70A.020(5)? (See LM 1.1, 1.2, 1.3, 1.4, 1.6, 1.9, 1.10, 2.1, 2.2, 3.1)^[1]

The 13 planning goals of the GMA "shall be used exclusively for the purpose of guiding the development of comprehensive plans..." RCW 36.70A.020 (preamble). Although local jurisdictions need not show procedural compliance with the planning goals of the Act, they must be substantively guided by these goals when adopting comprehensive plans. Gutschmidt, supra. 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). Local jurisdictions will also be held to a higher standard of compliance with the planning goals when adopting comprehensive plans than they will when adopting interim development regulations. Gutschmidt, at 17 (Conclusion B-1).

The Economic Development goal of the Act provides:

Encourage economic development throughout the state that is consistent with adopted comprehensive plans, promote economic opportunity for all citizens of this state, especially for unemployed and disadvantaged persons, and encourage growth in areas experiencing insufficient economic growth, all within the capacities of the state's natural resources, public services, and public facilities.

RCW 36.70A.020(5). In the Land Use Element of the Plan, the City has adopted goals and policies to guide the development of light manufacturing on the island. See p. 73-76. Watson argues that a number of these goals fail to comply with the Economic Development goal of the Act because they unreasonably restrict the amount of land available for light manufacturing activities and impose unreasonable restrictions in the manner in which light manufacturing businesses are operated. For example, LM 1.2 provides in pertinent part:

1. New manufacturing businesses that plan to utilize toxic/hazardous substances must list these substances and quantities projected for annual usage; demonstrate compliance with all Federal, State and Bremerton-Kitsap County Health District requirements for handling; and receive a City business license.

...

2. Uses of certain toxic/hazardous substances can disqualify the application from approval because of potential environmental impact. However, proposals that use toxic/hazardous substances defined in the above references may be approved upon review of factors such as quantities used, adequacy of storage, containment, spill management, and waste disposal plans.

3. LM 2.2 - Any additional light manufacturing should not be designated until the City completes an Economic Development Element.

4. LM 3.1 - Isolated light manufacturing zones are designated to reflect historical use and the designation should not be expanded.

The City argues that these policies do not violate the Economic Development goal of the Act because they are the product of a lengthy public participation process and reflect the values of the City. In addition, the City argues that Watson improperly speculates about the purpose or intent of the policies or about how the policies will be enforced. City's Brief, at 20.

While these Light Manufacturing policies reflect an unambiguous intent of the City to severely restrict the amount of light manufacturing that may take place in the City as well as an intent to confine the manufacturing to just one place, this decision alone does not show that the City failed to be substantively guided by the Economic Development goal of the Act. Rather, the City's decision to not rely upon light manufacturing as a significant portion of its economic development is part of the broad discretion enjoyed by local legislative bodies in making policy choices based on the value judgments of the community.

Watson Conclusion No. 3

LM 1.2 and 2.2 violate the Economic Development goal of the Act. LM 1.2 is invalid as written. LM 2.2 is remanded to the City for establishment of a specific date for completion of the Economic Development Element of the Plan.

Martin/Patterson Legal Issue Nos. 1 and 2

Did the City comply with the public participation requirements of the Act at RCW 36.70A.140 in adopting the Plan?

Does the Act require the City to refer public comments and proposed amendments to the Plan back to the Planning Commission? If so, did the City fail to do so?

See discussion of Watson Legal Issues Nos. 1 and 2.

Petitioners Martin and Patterson (Martin) own a 9.33 acre parcel located at the northwest corner of High School and Ferncliff Roads near the corporate limits of the former City of Winslow. Martin's Brief, at 1. Martin objects to the planning designations given their property by the Plan at W (Winslow) 10.3 which provides:

The 9+ acres located at the northwest corner of High School and Ferncliff Roads is designated as a contract zone^[1] due to its location between the high-intensity, commercial area on High School Road and the low-density, residential area which begins at Ferncliff Road. The three eastern acres (approximately) of the site are currently zoned R-2 and shall remain R-2. The six western acres (approximately) are currently zoned R-2.9 and shall be zoned to R-8. No density bonuses will be permitted on either portion of the site and development of this site is encouraged to be clustered on the western portion of the property, with a significant buffer retained along the eastern boundary of the site along Ferncliff Avenue.

The Planning Commission recommended that the entire site be rezoned from R-2.9 to a Special Planning Area that would allow residential development at a density of 8 units per acre, with the possibility of 12 units per acre through the use of TDRs. See Exhibit 1824 at 23. CPAC offered the above alternative. The Land Use Committee of the Council (LUC) considered three alternatives that ranged from maintaining the current zoning to the CPAC recommendation to the Planning Commission recommendation. Ultimately, LUC determined that the proposed increase in density from R-2 and R-2.9 was significant and "presented an impact on the surrounding neighborhood that should not be compounded with more density through TDRs and affordable housing bonuses." Ex. 1824, at 23. The City Council adopted LUC's recommendation for this property in the Plan.

Martin's allegations that the public participation provisions of the Act were violated because the City Council adopted the "low end" recommendation of CPAC are unfounded. The fact that the Council chose an alternative that actually increased the density of the property, but not as greatly as the petitioners would have preferred, does not show that the public participation provisions of the Act were violated^[1].

Martin/Patterson Conclusion Nos. 1 and 2

The City did not violate the public participation requirements of RCW 36.70A.140 in its adoption of the Plan.

Martin/Patterson Legal Issues Nos. 3, 4 and 5

Does the Act require the City to encourage growth in areas of the city with infrastructure adequate to support urban development?

Does the Act require the City to designate properties served by adequate infrastructure for the

highest intensity uses? If so, did the City fail to do so? If so, did that failure violate the Private Property goal of RCW 36.70A.020(6)?

Does the Act require the Plan to promote efficient transportation by placing high density housing along a wide arterial designed for high capacity buses? If yes, did the City fail to do so?

As explained above with respect to Robison Legal Issue No. 8, cities enjoy broad discretion to decide how growth will be located and configured within a UGA when adopting comprehensive plans. Aagaard, supra, at 9. In order to prevail in a challenge to local government action with respect to a comprehensive plan, Martin must show that the Act imposed an affirmative duty upon cities to locate growth in those areas where adequate infrastructure already exists. Legal Issue No. 3. In addition, with respect to Legal Issue No. 5, Martin must direct the Board to the portion of the Act he believes supports his argument that the Act requires high density housing to be placed along major arterials.

Rather than direct the Board to any portion of the Act, Martin simply argues that the Act required the City to designate his property for high intensity uses because the property borders an arterial. Although urban growth should be located where there is adequate infrastructure to support it, (Rural Residents at 44-47) the Act does not prevent cities from planning for urban growth in areas where growth or infrastructure to support urban growth currently does not exist, so long as they simultaneously plan for the infrastructure necessary to support such growth. Neither does the Act require cities to locate urban growth in every area having one or more types of infrastructure capable of supporting urban growth. The fact that certain infrastructure may exist near a parcel does not mean that high intensity urban development at the site within the 20-year horizon of the comprehensive plan is a foregone conclusion. Here the City selected an alternative for the Martin property which provided for a combination of densities, in recognition of the high intensity uses on one side of the property and the low intensity residential uses on the other side. While Martin may disagree with the City's substantive policy choice, the City's decision is one that falls within the scope of discretion enjoyed by cities to locate and configure growth within their urban growth boundaries. The Act does not require the City to designate Martin's property for the highest intensity uses simply because infrastructure already exists that is capable of supporting urban growth.

Martin Conclusion No. 3, 4 and 5

The City did not violate the Act by declining to designate the Martin property for the highest intensity uses. The Act does not require the City to designate areas of the City with infrastructure adequate to support urban development for the highest intensity uses.

Martin Legal Issue Nos. 6

Does the Act require the Plan to allow the use of TDRs? If so, did the City prohibit the use of

TDRs for the petitioners' property in violation of the GMA?

Once again, as correctly noted by the City, Martin fails to direct the Board to any particular portion of the Act that requires the City to allow the use of TDRs everywhere in the City. While the Act recommends that local government jurisdictions provide for innovative land use techniques such as TDRs in their comprehensive plans, nowhere does the Act compel the use of any or all these techniques.^[1]

Martin Conclusion No. 6

The City did not violate the Act by not designating Martin's property as a TDR receiving area.

Martin Legal Issue No. 7

Does the Plan limit the techniques for affordable housing and violate RCW 36.70A.020(4) and (6)?

RCW 36.70A.020(4) provides:

Encourage the availability of affordable housing to all economic segments of the population of this state, promote a variety of residential densities and housing types, and encourage preservation of existing housing stock.

Martin argues that the City failed to comply with the Affordable Housing goal and the Private Property goal because it did not designate their property for a land use density that would have allowed their particular project. The City points out that the Plan's Housing Element Goals 1-4 are designed to promote and increase the existence of affordable housing. Also, the Plan provides for density bonuses for affordable housing projects. See Housing Element at Goal 4. The fact that the City chose not to designate Martin's property for a land use intensity that would have allowed his particular project does not show a violation of the Affordable Housing goal.^[1]

Martin Conclusion No. 7

The Plan does not violate the Affordable Housing goal.

Tracy Legal Issue No. 1(a-g)

Is the Plan inconsistent with the County-wide Planning Policies (CPPs) with respect to:

a. population allocations for urban growth area #2 (and Element 2 of the Region Wide Growth Management Strategy)?

b. contiguous and orderly development 3(b)?

c. transportation 3(a), 3(b), 4(b)?

d. housing 2(c), 2(e)?

e.coordination of planning 2?

f.(dismissed by petitioner)

g.roles and responsibilities A(iii), A(iv)?

Plan Consistency With County Population Allocations - Issue 1(a)

The Board has characterized the purpose of CPPs as follows:

...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.

City of Snoqualmie v. King County, CPSGPHB Case No. 92-3-0004 (1993), at 17.One of three major purposes of CPPs is to achieve consistency among comprehensive plans within a county. Rural Residents, supra, at 14.Here, Tracy argues that the Plan is inconsistent with the Kitsap CPPs (KCCPs) identified above because the Plan is based upon a planning allocation of 6000 persons by the year 2010 rather than 6820 persons by the year 2014.

KCCP #2 provides:

The process for allocating the forecasted population shall follow that outlined in Element 2 of the Region Wide Growth Management Strategy (See Appendix B) adopted by the KRPC on November 13, 1991.

Under the GMA, counties have the ability to allocate OFM's population projections to cities within their jurisdiction if their CPPs so provide. Edmonds and Lynnwood v. Snohomish County, CPSGPHB Case No. 93-3-0005 (1993), at 31.On June 3, 1994, the Board held that Kitsap County was required to base the designation of its IUGAs on the population projection for the year 2012 made by OFM and that it had failed to do so.Rural Residents, at 48.^[1]

On June 9, 1992, the KRPC voted to allocate 6,000 persons to the City of Bainbridge by the year 2010.Exhibit 2165.In March, 1994, Kitsap County proposed revising the initial City of Bainbridge population allocation from 6000 to 6914.In May, 1994, the KRPC adopted a planning forecast of 6820 for the City by the year 2014.Exhibit 2301.The City's Plan was passed on September 1, 1994 and based upon the June 9, 1992 allocation of 6000 persons from the KRPC for the year 2010.

Tracy argues the City's Plan is inconsistent with KCCP #2 because it is not based on the final planning allocation of 6820 persons from the KRPC on June 4, 1994 and is not based upon the OFM population projections for Kitsap County as required by the Board's decision in Rural Residents.

The City concedes that it relied on the June 9, 1992 population allocation rather than the May 4, 1994 population allocation for the Plan, but argues that it would have been unduly burdensome for the City to revise the Plan to incorporate this later forecast only three months before the Plan was adopted.City's Brief, at 10.The City acknowledges that it will adjust the allocation during the next review of the Plan, but does not state when this review will occur. See Land Use Element, at 47. The fact that the information arrived at an inconvenient time does not excuse the City from incorporating the latest population figures from the KRPC into

its Plan, or at the least, setting forth a process and schedule for incorporating this new information at a later date.

Besides relying upon an outdated forecast, the City planned for the wrong year because it planned for the year 2010 instead of 2012. The Act requires local governments to plan for urban growth for a 20-year period that runs from the year OFM makes its projection. Kitsap County, supra, at 21; RCW 36.70A.110(2); RCW 36.70A.130(3). The 20-year planning projection runs from the year 2012, not the year 2010. Accordingly, the City must base its Plan on a projection that runs to 2012, not 2010.

Tracy has argued that the City cannot adopt a comprehensive plan which is based on a County population allocation that is fundamentally flawed due to the County's failure to base the county-wide twenty year IUGA on the OFM projection. The Board disagrees. It is the Kitsap County CPP that allocates population to Bainbridge Island. That enactment was never challenged. Therefore, the City is obliged to comply with it, regardless of the County's noncompliance with its own mandate under the Act^[1]. Simply put, the City's duty in this instance is to comply with RCW 36.70A.210 by following the CPPs; the County's duty is to comply with the direction of RCW 36.70A.110 by basing its IUGA/UGA on the OFM projection. If and when the County amends the population allocation to Bainbridge Island in the CPPs, the City will be required to amend its comprehensive plan to accommodate at least that future allocation^[1]. In the meantime, the City is obliged to use the most recent population allocation, which was conveyed by the May, 1994 CPP. In this case, the City will be required to amend its Comprehensive Plan to incorporate that figure, or whatever subsequent more recent allocation is made via the CPPs.

Consistency with KCCP for Contiguous and Orderly Development 3(b)

Tracy's arguments with respect to alleged inconsistency with the remaining KCCPs are less persuasive. For example, Tracy argues that the City violated the KCCP Policy for Contiguous and Orderly Development 3(b). It which provides in material part:

The county and the cities shall work together...and act to encourage development within designated urban growth areas.

The intent of this policy appears to be to encourage development in urban areas and to reduce development in non-urban areas. See RCW 36.70A.020(1) and (2). Here, where the KRPC has allocated a specific share of anticipated growth to the City, and the City has designated its Plan to accommodate it, the City cannot be found to have violated KCCP Policy for Contiguous and Orderly Development 3(b). If, in fact, that number of people cannot be accommodated as planned, the remedy is to direct the unaccommodated portion elsewhere within the City, not to direct the growth to an area external to a UGA.

Tracy argues that 3000 persons - roughly half the projected growth for the City - cannot be accommodated within the Winslow core, but fails to explain how this problem with the Plan reveals a lack of cooperation between the City and the County as required by the above KCCP.

Consistency with KCCP Transportation #3(a), (b) and #4(b)

KCCP Transportation #3(a) provides:

As a part of the local comprehensive planning process, the KRPC shall be responsible for reviewing consistency of land use and transportation plan elements.

KCPP Transportation#3(b) provides:

A common street classification system shall be developed for use by all jurisdictions in Kitsap County.

KCPPTransportation #4(b) provides:

A common methodology for defining and establishing level of service standards county-wide shall be adopted.

Comprehensive plans are presumed valid unless petitioner shows by a preponderance of the evidence that a local jurisdiction has failed to comply with the Act. Gutschmidt, supra, at 9.

KCCP Transportation #3(a) places a duty upon the KRPC to act rather than the City. Besides failing to recognize the entity upon whom the duty is placed, Tracy attempts to improperly shift his burden of proof by arguing that the record fails to show that the City cooperated with County with respect to these issues.

Similarly, Tracy has failed to show that the City is the entity with the responsibility to develop county-wide street classification systems and level of service methodologies with respect to KCPP Transportation#3(b) and KCPPTransportation #4(b). Rather, these KCCPs appear to place a duty upon the County rather than the City to undertake these efforts. Even if the City did have this duty, Tracy fails to direct the Board to any portion of the record that supports his argument about the alleged lack of cooperation between the City and the County with respect to a common methodology for street issues. As the City points out, the Plan does contain a "common street classification" for primary arterials, secondary arterials, collector systems, and residential systems in the Transportation Element at p. 24.

KCPP Housing #2(c) and (e)

KCPP Housing Element #E2(c) provides:

Based on the percentage share of the existing and forecasted county-wide population, projected county-wide below market rate housing needs shall be determined for each jurisdiction in order to disperse below market rate housing county-wide. Such needs shall be the responsibility of the appropriate jurisdiction and shall not be transferred to other jurisdictions without approval of the KRPC.

KCPP Housing Element #E2(e) provides:

Housing policies and programs shall address the provision of diverse housing opportunities to accommodate the elderly, physically challenged, mentally impaired, and other segments of the population that have special needs.

Again, Tracy attempts to improperly shift his burden of proof to the City by arguing that the record of the City's compliance with this goal is deficient and that there is no assurance that special needs housing will ever be built in the City.

The Board previously discussed the relationship between the GMA and the private development market as being:

...strongly dependent upon the dynamics of the market...planning under the GMA is not a

'socialistic five-year plan' wherein the policy decisions of government can effectively dictate and effectuate actions, i.e. investment decisions by private individuals or corporations.

Aagaard, supra, at 9. Review of the Housing Element of the Plan shows that the City adopted a number of goals to provide diverse housing opportunities to accommodate those with special needs: See i.e. Goal 1: H 1.1-H 1.6; Goal 2: H 2.1-H 2.2, H 2.4; Goal 3, Goal 4: H 4.1-H 4.7; and Goal 6: H 6.1 and H 6.2. Whether or not below market housing is ever constructed is dependent upon the forces of the private market: the Plan does not violate the Act simply because it cannot guarantee special needs housing will eventually be built. Here, since there is no evidence in the record that the County ever determined and allocated the below market housing needs for each city as set forth in KCCP Element #E2(c), Tracy has failed to prove that the City violated KCCP #E2(e)

KCCP Coordination of Planning #2

Coordination of Planning #2 provides:

While it is recognized that nothing in the county-wide planning policy shall be construed as altering the land use planning authority of the county or the Cities, adopted urban growth management agreements shall specify the process by which affected jurisdictions may review and comment on comprehensive plan amendments, zone changes and development applications processed by another jurisdiction within urban growth areas.

The plain language of this KCCP limits its applicability to UGAs with more than one local government with land use jurisdiction inside it. Since the City's boundaries are coterminous with its UGAs, KCCP does not apply to the City. City's Brief, at 17.

KCCP Roles and Responsibilities A (iii) and (iv) provides:

(The KRPC shall)...assure consistency among local plans and the county-wide planning policy and the Growth Management Act to the extent necessary to achieve regional policies and objectives...(and) review transportation plans for consistency with land use plans.

The City correctly argues that this CPP directs the Regional Council, not the City, to take action. As with the other issues, Tracy has failed to direct the Board to substantive evidence in the record showing that the Plan is inconsistent with this CPP.

Tracy Conclusion No. 1(a - f)

The Plan is remanded to the City for incorporation of the May 4, 1994 KRPC population allocation of 6820 people. The Plan is consistent with the KCCPs raised in Tracy Legal Issues 1 (b-f).

Tracy Legal Issue No. 2

Do RCW 36.70A.070(3)(b) and (c) and RCW 36.70A.020(12) require level of service standards

be established in the Plan for water, sewer, and parks?

RCW 36.70A020(12) provides:

Public facilities and services. Ensure that those public facilities and services^[1] necessary to support development shall be adequate to serve the development at the time the development is available for occupancy and use without decreasing current service levels below locally established minimum standards.

The public facilities and services goal in RCW 36.70A020(12) is a directive goal because of the verb "ensure." WSDF, supra, at 49. The way to achieve that goal is through the Capital Facilities Element requirements for the Plan specified in RCW 36.70A.070(3).

Under RCW 36.70A.070(3)(b), a comprehensive plan must contain a forecast of "future needs" for existing capital facilities. WSDF, supra, at 45. In WSDF, the Board held that Seattle failed to provide this necessary forecast for proposed urban villages^[1] when the Plan simply concluded that the City of Seattle already possessed a well-built and long established infrastructure, without providing the necessary analysis to show that the infrastructure does actually exist. The Board reasoned:

...such detailed analysis might be unnecessary were the Plan a purely generalized document for a city where new growth will be dispersed evenly throughout the geographic area; that is not the case with Seattle. It has elected to concentrate growth, for admirable reasons, into small portions of the City. Although the City's vision of compact urban development has merit, RCW 36.70A.030(3) requires that visions be grounded in reality. To do this, Seattle must conduct an adequate analysis of infrastructure for the adopted urban centers and villages.

WSDF, at 46. In addition, as Tracy points out, RCW 36.70A.070(c) requires that the Capital Facilities Element contain the "proposed locations and capacities of expanded or new capital facilities." Tracy Brief, at 8. The City flatly denies that the Act requires the City to establish LOS standards for water, sewer and parks. City's Brief, at 22-23.

The similarities between WSDF and the instant case are striking. The City of Bainbridge Island proposes to concentrate about 50% of its growth within the area of the former City of Winslow and disperse the other 50% throughout the remainder of the island. Thus, the concentrated urban growth proposed for old Winslow is very much like the urban centers and villages proposed for Seattle. Here, as in WSDF, the City has failed to specify in sufficient detail where, when and how the localized infrastructure in the Winslow area will be provided to accommodate the allocated growth. A generalized system-wide inventory and analysis is inadequate to describe how such an intense localized growth allocation can be served to meet the Act's requirements.

Tracy Conclusion No. 2

The Capital Facilities Element of the Plan is remanded to the City for analysis of the localized infrastructure necessary to support the proposed growth for the Winslow urban core as

required by RCW 36.70A.070(3)(b) and (c).

Tracy Legal Issue No. 3

Did the City comply with the requirements of RCW 36.70A.140 in its adoption of the Plan as a whole and with respect to the Capital Facilities Element specifically?

The Board adopts by reference the reasoning with respect to Watson Legal Issues 1 and 2 and Martin/Patterson Legal Issues No. 1 and 2.

Tracy argues that the City violated RCW 36.70A.140 because it refused to engage in a dialogue with him, refused to respond to his comments on the Plan and adopted the Capital Facilities Element of the Plan at "the eleventh hour" without allowing for sufficient public participation. The City responds that Tracy had ample opportunity to offer public comment on the Plan and did, in fact, avail himself of that opportunity.

Although it is unclear from his brief, Tracy seems to suggest that citizens are entitled to a face-to-face confrontation and verbal exchange with elected officials about the Plan. While a literal interpretation of the word "response" may conjure up such an approach, such a burden would be far too onerous if the Act was construed to assure that every citizen has the right to an individual face-to-face confrontation with elected officials. The Board has previously rejected such a proposition. WSDP, supra, Order Denying Motion for Reconsideration.

Rather, in RCW 36.70A.140, the Act envisions a "response" to public comments and "open discussion" to occur within a variety of forums including vision workshops, open houses, focus groups, opinion surveys, charettes, committee meetings and public hearings. This dialogue evolves and focuses over the course of development of the Plan. As the proposed Plan evolves as the result of this iterative and interactive process, the type of direct dialogue is less appropriate and necessary than during the early phases of the process. As explained with respect to Watson Legal Issues No. 1 and 2 the City utilized a wide variety of techniques over a several year period to encourage early and continuous public participation in development of the comprehensive plan.

Tracy Conclusion No. 3

The City complied with the public participation requirements of RCW 36.70A.140 when it adopted the Plan.

Tracy Legal Issue No. 4^[1] and 9

Does the Plan's "Overriding Principle[s] #1 and #5 violate RCW 36.70A.020 (1), (2), (3), (5), (6), (11) and (12)?

Does the Plan's designation of "residential open space" areas/zones violate RCW 36.70A.020 (1) and (2)?

Tracy argues that the following five "Overriding Principles" from the Plan show that the City did not substantively comply with the above described goals of the Act:

1) preserve the "rural" character of the Island, 2) protect the water resources of the Island, 3) foster the diversity of the residents of the Island, 4) balance the costs and benefits to property owners in making land use decisions, and 5) base development on the principle that the Island's environmental resources are finite and must be maintained at a sustainable level.

The City is partially correct when it argues that Tracy gives these broadly stated goals too much weight, by construing them as taking precedence over the goals of the Act or the more specific provisions of the Plan. While these "Overriding Principles" provide guidance about future development, the City does not appear to construe them as overriding the goals of the Act and the Board holds that they cannot override the plain language of other sections of the Act.

Next, Tracy argues that the City's use of the term "rural" in the Plan cannot outweigh the meaning of the term "rural" in the Act. Although the Act does not define "rural", the Board has adopted the following definition offered by the Department of Community Trade and Economic Development (CTED) as the proper definition of "rural" in a GMA context:

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.

WAC 365-195-210(19); cf. RCW 36.70A.020(1) (urban growth); Rural Residents, supra.

The City explains in a footnote in its brief that the term "rural", as applied in its Plan, has a different meaning than the term "rural" may have under the GMA. In both the Land Use Element and the glossary of the Plan, the City defines the term "rural" as:

"...the special character of the Island, winding, narrow and vegetative roadways and forested areas, meadows, farms, which contain much of the Island's wetlands and streams, aquifer recharge areas and fish and wildlife habitat." Glossary at 11 (emphasis added)

The City denies the term "rural" attempts to avoid the type of compact urban development that must occur within a UGA. See Rural Residents at 44-47. Instead, the City argues, the term "rural" in the context of the City's Plan merely describes desirable qualities of the Island's character.

Although the City may intend to limit the use of the term "rural" to intangible characteristics rather than actual land use, there is a great potential of confusion for anyone who understands the plain meaning of the word, and then reads RCW 36.70A.020 (1) and (2) and Overriding Principle #1. If the City wishes the Overriding Principles to convey intangible qualities that reflect the island's bucolic character, a word synonymous to "rural" should be chosen.

As the Board explained in Rural Residents, the goal of the Act is to provide for compact urban development within the UGAs. Compact urban development is not "rural" land use. The City of

Bainbridge Island presents an unusual situation because its UGA is currently much larger than is necessary to accommodate the next 20 years of growth projected to occur within the City. Notwithstanding the City's desire to retain a rural "character", it cannot engender a near term land use pattern that will effectively thwart long term (beyond the 20-year planning horizon) urban development within its boundaries . For example, excessive use of five acre lots, septic tanks and easement roads could inappropriately preclude subsequent development at urban densities, or urban levels of street and utility services. While Tracy made allegations to this effect, these were more in the vein of generalized assertions than specific facts proving that the City's plan would thwart the island's long term future as an urban area.

Overriding Principle # 5 is less objectionable. The concept that the Island's environmental resources are finite and must be maintained at a sustainable level does not inherently limit future urban development with the City's boundaries.

Nor is the term "residential open space" "logically irrational" (Tracy Brief, at 13), given the current anomalous nature of the City's development. Because the City's urban growth boundaries are more than adequate to accommodate growth within the City for the next 20 years, use of the term "residential open space" does not violate the Act. However, because Bainbridge Island has chosen to be a city, it must remain cognizant of its duty under the Act to plan for compact urban development within its boundaries as it grows. RCW 36.70A.020(1) and (2).

Tracy Conclusion No. 4 and 9

"Overriding Principle #1 violates RCW 36.70A.020 (1) and (2) and is remanded to the City for revision. Overriding Principle #5 and the Plan's designation of "residential open space" does not violate RCW 36.70A.020 (1), (2), (3), (5), (6), (11) and (12).

Tracy Legal Issue No. 8

Does the Plan's Land Use Element comply with the requirements of RCW 36.70A.070(1)? RCW 36.70A.070(1) requires comprehensive plans to contain:

"... a land use Element designating the general distribution and general location and extent of the uses of land, where appropriate, for agriculture, timber production, housing, commerce, industry, recreation, open spaces, public utilities, public facilities, and other land uses. The land use Element shall include population densities, building intensities, and estimates of future population growth...."

The essence of Tracy's argument with respect to this issue is described in the following portion of his brief:

"...[C]ounties are expected to be counties and cities are expected to be cities, providing the location where growth is absorbed first in an effort to prevent urban sprawl, providing efficient and adequate public services and infrastructure."

Tracy Brief, at 15. In addition, Tracy complains that too much of the necessary decision-making for the Plan is deferred.

These objections to the City's Plan are too generalized to show that the Plan does not comply with the requirements of RCW 36.70A.070(1). Although Tracy's opinions may be strongly held, he has failed to offer specific examples of how he believes the Land Use Element is defective.

Tracy Conclusion No. 9

The City's Plan complies with RCW 36.70A.070(1).

Tracy Legal Issue No. 10

Do the following definitions in the Plan comply with the consistency requirements of RCW 36.70A.070 and .100?

a. affordable housing?

b. concurrency requirement?

c. environmentally sensitive areas (ESA)?

d. general obligation debt?

e. goal?

f. level of service (LOS)?

g. mineral resource lands?

h. neighborhood?

i. open space?

j. rural?

k. substandard housing?

The preamble to RCW 36.70A.070 requires a comprehensive plan to be "an internally consistent document and all elements shall be consistent with the future land use map." Aagaard, supra, at 13. Similarly, RCW 36.70A.100 requires the comprehensive plans of cities and counties to be coordinated with the comprehensive plans of those counties or cities or both, with which the county or city has, in part, common borders or related regional issues. Tracy alleges that the definitions in the glossary for the terms listed above violate RCW 36.70A.070 or .100, but he fails to offer specific legal argument explaining how or why each of the definitions is inconsistent with the Plan itself or the plans of neighboring jurisdictions. For example, he characterizes the definition of concurrency as "vague and incomplete" but fails to explain to why being "vague or incomplete" makes the definition inconsistent. Deficiencies in grammar or style do not necessarily cause a definition in the Plan to violate the internal consistency requirements of the Act.

Likewise, he criticizes the definition of "Level of Service" as incomplete and misleading but fails to explain how this alleged deficiency prevents the Plan from being internally inconsistent. The fact that a term may be less than elegant does not suffice as proof of inconsistency

between the term and the Plan under RCW 36.70A.070 and .100. None of the other terms that Tracy alleges fail to meet the consistency requirements of RCW 36.70A.070 and .100 fail to comply with the requirements of these sections of the Act.

Tracy Conclusion No. 10

The following City's use of the definitions does not violate the consistency requirements of RCW 36.70A.070 and .100: affordable housing, concurrency requirement, environmentally sensitive areas (ESA), general obligation debt, goal, level of service (LOS), mineral resource lands, neighborhood, open space, rural and substandard housing.

Tracy Legal Issue No. 11

Did the City comply with the Act's goals for Urban Growth and Reduction of Sprawl under RCW 36.70A.020(1) and (2), and with .070, in its adoption of LU 1.9 and with respect to the following policies:

a. OS 1.4, 3.2, 3.3, 4.1, and 4.2?

b. EN 1.1 and 1.2?

c. abandoned

d. AQ 1.4, 1.14?

e. GW 4.2?

f. PF 1.3, 2.2?

g. abandoned

h. abandoned

i. SSP 2.1?

j. TR 2.1, 2.2, 2.6, 2.8, 2.9, 5.1?

k. CF 1.3?

l. W 6.5?

LU 1.9

LU 1.9 provides as follows:

A Special Planning area is an area which reflects uses and/or conditions which are unique to that area and would benefit from a local and/or neighborhood planning process. The Special Planning Area process would address such issues as current use, future mix and location of uses and densities, transportation, public facilities services and amenities, and protection of natural systems. The Special Planning Area process would include property owners and neighborhood participation, and may include mediation as a means to resolve significant issues, if directed by the City Council. The end result of a special planning process would be a "neighborhood," "subarea" or site-specific plan which will require an amendment to the Comprehensive Plan, unless no changes to the Plan's policies are proposed.

Land Use Element, at 53. Tracy objects to the deferred decision-making he believes is inherent in LU 1.9, objects to the burdens placed on a landowner who wishes to develop property in a Special Planning Area, and objects to what he characterizes as the creation of a "special class" of the City's "rural area." While he asserts these as legitimate substantive objections to the policy choices made by the City in enacting this section of the Plan, Tracy fails to explain just how or why these objections prevent LU 1.9 violates the urban growth and reduction of sprawl goals of RCW 36.70A.020 and the requirements of RCW 36.70A.070.

OS 1.4, 3.2, 3.3, 4.1, and 4.2

Similarly, Tracy's objections to OS 1.4, 3.2, 3.3, 4.1, and 4.2 fall wide of the mark in terms of showing how or why these goals and policies reveal that the City was not substantively guided by the urban growth and reduction of sprawl goals as well as RCW 36.70A.070. OS 1.4 looks to maintaining forested vistas while OS 3.2 and 3.3 attempt to preserve open space as well as the natural and scenic qualities of the island. OS 4.1 and 4.2 restrict development to one unit and two units per acres respectively. Both sections provide that: "[t]he boundaries of these land use districts shall not be expanded beyond those that exist at the time of adoption of this comprehensive plan." Since the plain language of both these sections limits their applicability, Tracy's argument that these sections "lock up" the rest of the island from urban densities is not well taken. Since the boundaries of the City's UGA are contiguous with its corporate boundaries (the island's shoreline), the City does not now need to allow more dense development throughout the island in order to accommodate the 20 year population allocations from the County. How the City complies with its responsibilities in the future to accommodate urban growth beyond this 20-year planning cycle is an important question that is not at present before the Board.

EN 1.1 and 1.2; AQ 1.4 and 1.14

Tracy complains that environmental policies EN 1.1 and 1.2 are vague, but fails to explain how vagueness alone prevents these policies from complying with the Act. Likewise he objects to aquatic resource goals AQ 1.4 and 1.14, but does not translate these objections into an explanation of how these policies fail to meet these goals.

GW 4.2; WR 1.7, 2.1, 3.1; SSP 2.1

Nor do policies GW 4.2 and WR 1.7, 2.1, 3.1 and SSP 2.1 violate the urban development and reduction of sprawl goals. Mere vagueness alone does not carry Tracy's burden of proof to overcome the presumption of validity in the Act.

TR 2.1, 2.2, 2.6, 2.8, 2.9, and 5.1

The speculation that developers may face "possibly insurmountable obstacles" with respect to these policies does not, again, state a violation of the Act. The rhetorical questions posed by Tracy do not guide the Board in understanding how and why he believes these policies fail to comply with the Act.

CF 1.3

CF 1.3 provides:

The City shall ensure that those facilities and services necessary to support development shall be adequate to serve the development at the time the development is available for occupancy or use, without decreasing levels of service adopted by this plan. If funding for capital facilities falls short of meeting needs, the City shall review the Comprehensive Plan and make necessary adjustments while taking into consideration fiscal conditions and service quality to existing residents.

Tracy accurately characterizes this policy as "quixotic", since the City professes an intention to plan for the capital facility needs and costs, but fails to provide the necessary forecast of necessary capital facilities. As the Board concluded with respect to Tracy Legal Issue No. 2, the Plan fails to provide the identification of locally established minimum standards necessary to support the proposed growth for the Winslow urban core.

W 6.5

Tracy fails to explain how this policy alone, which requires an unspecified natural buffer for properties that abut SR -305, perpetuates rural sprawl in the UGA. The fact that the effect of this policy cannot be conclusively determined does not show that the City was not guided by the urban development and reduction of sprawl goals of .020 and the requirements of .070.

Tracy Conclusion No. 11

The City did not fail to comply with the urban development and reduction of sprawl goals of the Act at .020(1) and (2) or with .070 when it enacted the following policies: OS 1.4, 3.2, 3.3, 4.1, and 4.2; EN 1.1 and 1.2; AQ 1.4, 1.14; GW 4.2; PF 1.3, 2.2; SSP 2.1; TR 2.1, 2.2, 2.6, 2.8, 2.9, 5.1; and W 6.5. The City did fail to comply with the requirements of RCW 36.70A.070 with respect to CF 1.3. CF 1.3 is remanded to the City for identification of the locally established minimum standards necessary to support the proposed growth for the Winslow urban core as required by RCW 36.70A.070(3)(b) and (c).

Tracy Legal Issue No. 12

Does the Housing Element of the Plan comply with the requirements of RCW 36.70A.070(2)(c) and (d)?

RCW 36.70A.070(2)(c) and (d) requires that a Plan's housing element:

...identifies sufficient land for housing, including, but not limited to, government-assisted housing, housing for low-income families, manufactured housing, multi-family housing, and group homes and foster care facilities.

Tracy makes the bare allegation that the City has failed to identify sufficient land for future housing needs without specifically identifying the deficiencies he believes exists in the Plan. The City directs the Board to the following appendices that identify sufficient land to house an additional 11,000 to 20,000 persons: City of Bainbridge Island Land Use Inventory - Appendix C; Buildout Estimate for Mixed-Use Town Center (Ex. 160); Bainbridge Island Land Use Re-

Analysis (Appendix D); and Potential Build-Out of Winslow Under Current zoning and CPAC's Preferred Alternative (Appendix E). In addition, Policies within the Housing Element address special needs housing. Finally, the Board notes that the City already has hundreds of existing undeveloped properties. See Exhibit 115; 155.

Tracy Conclusion No. 12

The Plan complies with the Housing requirements of RCW 36.70A.070(2)(c) and (d).

Tracy Legal Issue No. 13

Does the Transportation Element of the Plan comply with the requirements of RCW 36.70A.070(6) and .020(5)^[11]?

RCW 36.70A.070(6) requires comprehensive plans to contain a Transportation Element that "implements, and is consistent with, the Land Use Element." The Transportation Element is required to contain subelements that show: (a) land use assumptions, (b) facilities and services needs, (i) inventory of air, water, and land transportation facilities and services, (ii) level of service (LOS) standards for all arterials and transit routes, (iii) specific actions and requirements for bringing into compliance any facilities or services that are below an established LOS, (iv) forecasts of traffic for at least 10 years based on the adopted land use plan to provide information on the location, timing, and capacity needs of future growth, and (v) identification of system expansion needs.

In WSDF, the petitioners challenged the Seattle Council's policy decision to allow for significant traffic congestion during peak hours without triggering system improvements. WSDF, at 60. The Board held that Seattle did not violate the Act by making such a policy decision because:

...establishing LOS methodology for arterials and transit routes, like calibrating a thermometer, is simply an objective way to measure traffic. That is all the Act requires establishing; it does not dictate what is too congested. Under the GMA, setting the desired level of service standard is a policy decision left to the discretion of local elected officials. Citizen dissatisfaction with the City's LOS methodology or its LOS standards may be expressed through the City's legislative process and the ballot box, not through the quasi-judicial system.

Tracy argues that the Transportation Element of the Plan fails to comply with the Act because it lacks: (1) a 10-year forecast of traffic based on the Land Use Element, (2) identification of system expansion needs, (3) an accurate multiyear financing plan, (4) regional coordination of LOS standards for regional roads, (5) improvements to existing geometric/safety roadway. The City contends it did undertake a 10-year forecast of traffic in the general discussion of "roadway system deficiencies" at p. 32 of the Transportation Element. This discussion relies on Figures 3 and 8 which show, respectively, the established and future LOS zones and standards

for the City. The roadway system deficiencies analysis concludes that no island roadway systems, other than SR 305 and the Head of the Bay Road, will experience LOS deficiencies over the next 10 years.^[1] Review of Figure 3 shows the LOS for most of the City's roads will remain at levels A, B, or C during peak level hours except for those road in the old Winslow area. There the LOS will be level D in the cordon around Winslow and level E within the Winslow urban core. Transportation Element, at 43.

Figure 3 and Figure 8 appear to be nearly identical since no road improvements other than those to SR 305 and Head of the Bay Road are planned during the 20-year planning period, even though the LOS for the Winslow urban core is already at E. The City acknowledges that it found a lower LOS to be preferable to "pavement solutions" such as widening roads. City's Brief, at 57.

Close inspection of Figures 3 and 8 show that the City did make a 10-year traffic forecast. Like Seattle in WSDF, the City of Bainbridge Island's policy decision to not make system improvements to accommodate more traffic falls within the substantive policy choices that the legislature left to local governments to decide. The City does explain how it will pay for the two system improvements it has planned for in the next 20 years, so that the multi-year financing plan is accurate. Finally, the Plan shows that LOS standards have been regionally coordinated (Exhibit 347, 345), and that there is a plan for bringing up to standard the transportation system deficiencies identified in the Transportation Element at 28-29.

Tracy Legal Conclusion No. 13

The Transportation Element of the Plan complies with the requirements of RCW 36.70A.070 (6) and .020(5)?

Whitener Legal Issue No. 2, 3, and 7

Does the Capital Facilities Element of the City's Plan which incorporates the School District's Capital Facilities plan fail to comply with RCW 82.02.050 and RCW 36.70A.070(3)^[1]?

Is the Capital Facilities Element of the Plan required to be consistent with the growth projections of the Plan? If yes, is it consistent?

Is the School District Capital Facilities plan, incorporated in the City's Capital Facilities Element of the Plan, or the Plan itself, required to identify student generation by housing type? RCW 36.70A.070(3)(a)-(e) sets forth the contents of the mandatory capital facilities Element in each comprehensive plan:

A capital facilities plan Element consisting 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.

The City incorporated BISS's Capital Facilities Plan as its own in the Capital Facilities Element of the Plan. Whitener argues that the School District improperly calculated the likely school enrollment projection by using a hybrid of two different projection methods: the historic cohort survival method and the original county population projections. The result of using this hybrid method, Whitener argues, is that the enrollment projections for the six year planning period are higher than they should have been. Instead of utilizing the hybrid method, the School District should have determined school enrollment projections by using the actual number and percent split between single-family and multi-family housing units projected by the plan. Whitener Brief, at 13.

Whitener further argues that the revenue likely to be generated by the plan is overstated because the number of new dwelling units likely to be built over the 20 year planning period will be lower than projected by the Plan. The inaccuracies in these projections, Whitener argues, may influence the timing of the collection and use of impact fees under RCW 82.02.080.

The School District responds by arguing that whatever small discrepancies may exist in its enrollment projection methodologies do not rise to the level of an actual inconsistency between the Capital Facilities Element and the Land Use Element in the Plan. The School District acknowledged that it combined two methods to make its projections - the five year cohort survival method and a simple population forecast - then averaged these two methods. The averaging of the two methods, argues the School District, shrinks any discrepancies and results in a total difference between the two methods of 5.5%. The District argues that this discrepancy is not so significant as to make the Capital Facilities Element of the Plan "inconsistent" with the Land Use Element's use of the County's population figures. Finally, the School District notes that the population forecast is "already outdated" because it was based on the original allocation of 6000 new residents to the City rather than the final allocation of 6820 new residents by the KRPC.

The Board has, in the past, analyzed whether verbs used in the Act are directive to determine the scope of a local government's duty to act. See i.e. City of Snoqualmie, supra, at 14. The word "consistent" is defined by the dictionary as:

1. possessing firmness or coherence, 2a. marked by a harmonious regularity or steady continuity; free from irregularity, variation, or contradiction, b. showing steady conformity to character, profession, belief, or custom, 3. tending to be arbitrarily close to the true value of the parameter estimated as the sample becomes large.

Webster's New Collegiate Dictionary, at 242. The legislature, through use of the word "consistent," required that the elements of the Plan work harmoniously but not necessarily identically. Just how consistent the elements need to be in relationship to each other depends

upon the effect any inconsistencies may have on the effective implementation of the Plan. The question is: does the Act require that the methods used to estimate the likely number of students be consistent between the Capital Facilities Element and the Land Use Element, or does the Act merely require that the likely number of students ultimately estimated in the Capital Facilities Element be consistent with the population number in the Land Use Element? Whitener concedes that the "numerical difference between two methodologies may well be insignificant in a small jurisdiction, but very significant in a large jurisdiction (e.g., Bainbridge Island School District as opposed to the City of Seattle School District)." Whitener Reply Brief, at 8.

Even though the School District used a different method to calculate the number of students than did the City in the Land Use Element, the difference is not so great as to make the Capital Facilities Element inconsistent with the Land Use Element. The reason the difference in the methods used is less important here than it may be in other jurisdictions is because this is a city of only 17,000 people. In a larger city, it may be extremely important for the local jurisdiction to use the identical method to estimate the number of students in both the Capital Facilities Element and the Land Use Element, since any discrepancies between the two may cause the resulting numbers to be far apart and render the Elements of the Plan inconsistent with each other.

Next Whitener asks whether the Capital Facilities Element of the Plan is required to be consistent with the county population allocation for the City. The School District relied upon the population allocations from the County to the City in estimating the likely number of students. As discussed above, since the County used incorrect numbers for its population projections, the School District relied upon an incorrect population figure in estimating the number of students. However, as discussed earlier, the Board sees no point in requiring the School District to revise its figures until such time as the City revises its Plan to incorporate the May 1994 population allocation 6820 people, or the County allocates a correct population allocation to the City.

Finally, Whitener argues that the Act requires the School District to identify students by housing type, i.e. single-family housing verses multi-family housing. Whitener argues that this distinction is important because families who live in single-family housing are more likely to have children and thus impact school facilities than families who live in multi-family housing. Whitener urges the Board to consider Table 5 at p. 14 of the Housing Element which estimates that 540 multi-family housing units will be constructed between 1990 and 2010.

The School District argues that its estimate of the number of multifamily housing units is consistent with the Land Use Element because its Capital Facilities Element estimates that 15.5% of all housing units will be multi-family, while the Housing Element of the Plan estimates that 15.7% of all new housing units between 1994 and 2000 will be multi-family units. On average, the School District estimates there will be 31 new housing units per year. Moreover, the Plan recognizes that nearly 350 multifamily units have already been constructed so that the Plan's multifamily housing goal for the year 2000 has been substantially reached by

1994.Housing Element, at 15.

Whitener does not direct the Board to any particular portion of the Act that he believes requires the City to identify student generation by housing type.To the degree such a requirement exists, it is subsumed within the provisions of RCW 36.70A.070(3) that the Capital Facilities Plan be consistent with the Land Use Element of the Plan. Here, although it appears there are some slight discrepancies between the School District's estimates and the City's estimates, these differences are de minimus and do not render the Capital Facilities Element of the Plan inconsistent with the Land Use Element.

Whitener Conclusion No. 2, 3, and 7

The Capital Facilities Element of the Plan complies with RCW 36.70A.070(3), is consistent with the current growth projection of the Plan and properly identifies student generation by housing type.

IV.ORDER

Having reviewed the above-referenced documents and the file in this case, having considered the oral arguments of the parties, and having deliberated on the matter, the Board enters the following order:

The City of Bainbridge Island Comprehensive Plan is in compliance with the requirements of the Growth Management Act except:

1.)The population allocation–The Plan is remanded to the City with instructions for the City to incorporate the May 1994 population allocation of 6,820 persons from the County or if the County makes a later population allocation, to incorporate that allocation as required by RCW 36.70A.130(3).

2.)The Capital Facilities Element of the Plan is remanded to the City for a more localized analysis of the public facilities infrastructure required to support the proposed growth for the Winslow urban core as required by RCW 36.70A.070(3)(b) and (c).

3.)"Overriding Principle #1" which states "preserve rural character of the Island"violates RCW 36.70A.020 (1) and (2) and is remanded to the City for removal of the word "rural." Pursuant to RCW 36.70A.300(1)(b) the City is given until 5:00 p.m. on Friday, November 3, 1995, to bring its Plan into compliance withthe Board's Final Decision and Order and the requirements of the Act.The City shall file by 5:00 p. m. on Friday, November 10, 1995, one original and two copies with the board and serve a copy on the petitioners of a statement indicating what attempts, if any, it made to comply with this Final Decision and Order.The Board will promptly schedule a compliance hearing sometime thereafter.

So ORDERED this 3rd day of May, 1995.

Joseph W. Tovar, AICP

Chris Smith Towne, Presiding Officer

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.

[1] When challenging a local government's compliance with the GMA, the petitioner must first show that the jurisdiction had a duty to take certain action under the Act. Second, the petitioner must explain, by a preponderance of the evidence, how the local government violated that duty. The petitioners in this case frequently failed to show that the GMA actually imposed a specific alleged duty upon the City. Even where such a duty was specifically identified, the petitioners frequently failed to cite facts or otherwise explain how or why the City had failed to comply with a duty imposed by the Act.

[1] The Board takes official notice of the "Washington State County Population Projections for 1990-2010, 2012" issued in January of 1992 by the Washington State Office of Financial Management Forecasting Division. "County Population Forecasts - 1990 to 2012" at page 11, forecasted the 1995 population of the four county Central Puget Sound Region as 3,017,140 and the 2010 population as 3,580,407.

[1] The Board takes official notice of the 1993 Washington State Data Book, which lists Population, Land Area and Density for Cities and Towns, April 1, 1993, p. 268-285. The five Central Puget Sound cities with lower density than Bainbridge Island are also much older. These are Black Diamond (1574 people on 3.7 sq. mi., incorporated 1959), Carnation (1,360 people on 5 sq. mi., incorporated 1912), Du Pont (585 people on 6 sq. mi., incorporated 1912), Skykomish (250 people on 1 sq. mi., incorporated 1909) and Snoqualmie (1,545 people on 5 sq. mi., incorporated 1903). Each of these five has less than 10% of Bainbridge's population and less than 20% of its area.

[1] Planning literature describes the historical development of urban areas in North America. The Board takes official notice of Comprehensive City Planning, Melvin K. Branch, American Planning Association, Chicago, Illinois, 1985, at 44, which describes the typical physical form of an urban area extending outward from its center into the surrounding countryside.

[1] The legislative body would have the option of allowing written comment, oral comment, or both. If a public hearing was selected, the legislative body would have the option of remanding to a Planning Commission or other hearing body and/or conducting its own hearing.

[1] At the hearing on the merits of her appeal, Watson voluntarily abandoned her objections to the following light manufacturing policies in the plan: LM 1.1, 1.3, 1.4, 1.6, 1.9, 1.10, 2.1. Thus, only policies LM 1.2, 2.2, and 3.1 remain before the Board.

[1] During oral argument, Martin objected to the participation of City Council Member Sutton in the vote on the proposed density increases for their property because Sutton had openly and actively opposed any density increases for their property before he voted on the Plan. Martin relies upon the appearance of fairness doctrine, by analogy, but fails to offer any authority to support his position. The Board notes that this issue was not offered by the petitioners in their prehearing statement of issues so it cannot be raised for the first time during the hearing. Moreover, the Board notes that it lacks jurisdiction to decide whether or not Sutton participation violated the appearance of fairness doctrine because legislative actions by local government such as the adoption of comprehensive plans are specifically excluded by statute from the application of the appearance of fairness doctrine. RCW 42.36.010.

[1] Although the term "contract zone" is somewhat confusing, the City explained at oral argument that the petitioners would not be required to enter into a contract with the City in order to develop their property to the

densities specified in the Plan.

[1] Even if such a requirement did exist in the Act, the City does allow for the use of TDRs within the receiving district of the Winslow Mixed-Use Town Center (MUTC). See Land Use Element, p. 68. Martin's property lies outside the MUTC so it, like any other property that lies outside the MUTC, is not eligible to be a TDR receiving area.

[1] Martin does not bolster his argument by urging the Board to consider a letter and excerpts from briefs that the Board has already ruled are inadmissible, or by attaching copies of these inadmissible documents to his pre-hearing brief. See Order Denying Martin/Patterson's Motion to Supplement the Record.

[1] On March 27, 1995, after the parties in this appeal prepared their briefs, the Board issued its decision in Kitsap County v. Office of Financial Management, CPSGMHB Case No. 94-3-0014 (1995). There Kitsap County petitioned the Board to adjust the population planning projection for the county by accepting the projection generated by the County instead of the projection generated by OFM. The Board found the population projection generated by OFM was supported by more objective data, credible assumptions and analytical methods and therefore denied the County's petition.

[1] The Board is aware that the County has elected to use the KRPC as a mechanism to assist the County in certain GMA compliance tasks. Nevertheless, the duty and the authority to adopt interim as well as final UGAs, as well as to allocate population to cities, rest with the County. See RCW 36.70A.110. See also Edmonds, at 28.

[1] A city may plan for even more growth than has been allocated to it by the county. The Board has held that, unless a specific policy in the CPPs prohibits a city from planning for a greater population capacity than the allocation granted it by the county, the city may plan for more than the allocation. This serves the Act's first two goals, RCW 36.70A.020(1) and (2) by encouraging a city to accept in its comprehensive plan as much growth as it determines it can adequately accommodate, subject to the Act's other constraints. See WSDF, at 55.

[1] "Public services" include:

" ... fire protection and suppression, law enforcement, public health, education, recreation, environmental protection, and other governmental services." RCW 36.70A.030(14).

[1] Urban centers and villages are areas of the city where concentrated urban growth is proposed.

[1] There are no legal issues numbered 5 and 6. Tracy has abandoned Legal Issue No. 7.

[1] RCW 36.70A.020(5) requires comprehensive plans to encourage economic development. Tracy abandons any discussion of this goal with respect to this issue in his brief and therefore the board will not discuss it any further.

[1] The 20-year period is apparently calculated from 1990 to 2010 in Figure 8.

[1] Whitener Legal Issues 1, part of 2, 4, 5 were dismissed by Order on BISD's Dispositive Motion on February 24, 1995. Legal Issue No. 6. is abandoned.