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**I. PROCEDURAL BACKGROUND**

Between January 27, 1995, and March 8, 1995, the Central Puget Sound Growth Management Hearings Board (the **Board**) received four petitions for review challenging the adoption by

Kitsap County (the **County**) of its 1995 comprehensive plan (the **Plan**) urban growth areas (**UGAs**), interim critical area regulations and certain regulations implementing the Plan under the Growth Management Act (**GMA** or **Act**). In addition, some of the petitioners alleged that the County's environmental analysis conducted pursuant to the State Environmental Policy Act (**SEPA**) was inadequate. Association of Rural Residents (**Rural Residents**) and Kitsap Citizens for Rural Preservation (**KCRP**) filed a joint petition for review (**ARR & KCRP**) on January 27, 1995, Case No. 95-3-0010. The Suquamish Tribe (**Suquamish**) filed a petition for review on February 27, 1995, Case No. 95-3-0018. The City of Bremerton (**Bremerton**) filed a petition for review on March 2, 1995, Case No. 95-3-0019.

On February 10, 1995, the Board issued a "Notice of Hearing" for Case No. 95-3-0010. On February 23, 1995, the Board issued an "Amended Notice of Hearing and Notice of Hearing on Motions for Expedited Review and Summary Disposition (by Petitioners Rural Residents and Kitsap Citizens)" for Case No. 95-3-0010.

On March 8, 1995, the Board received a petition for review from Leslie Banigan and Nyle Hartley (**Banigan I**), Case No. 95-3-0022.

On March 8, 1995, the Board issued an "Order of Consolidation, Notice of Hearing, Amended Notice of Hearing, and Notice of Hearing on Motions for Expedited Review and Summary Disposition" (the **Order of Consolidation**). The Order of Consolidation assigned Case No. 95-3-0022 to the consolidated matter including the four above-referenced petitions for review.

On March 10, 1995, the Board received "Port Blakely's Motion to Intervene" (**Port Blakely**). Also on March 10, 1995, the Board received 14 petitions for review from the following parties and assigned the following case numbers: Olalla Community Council and Beth Wilson (**Olalla**), Case No. 95-3-0023; Charlotte Garrido (**Garrido**) Case No. 95-3-0024; North Kitsap Coordinating Counsel [sic] (**Council**), Zane Thomas, Linda Cazin, Ray Bock, and Vivian Hiatt-Bock (**Council I**), Case No. 95-3-0025; Leslie Banigan and Charlie Burrow (**Banigan II**), Case No. 95-3-0026; Sandra M. Adams and Nobi Kawaski (**Adams**), Case No. 95-3-0027; City of Poulsbo (**Poulsbo**), Case No. 95-3-0028; 1000 Friends of Washington (**1000 Friends**), Case No. 95-3-0029; Kitsap Citizens for Rural Preservation, Zane Thomas, Tom Donnelly, and Beth Wilson (**KCRP I**), Case No. 95-3-0032; Zane Thomas, North Kitsap Coordinating Council, Nyle Hartley, Central Kitsap Coordinating Council (**Thomas I**), Case No. 95-3-0033; North Kitsap Coordinating Council, Zane Thomas, Leslie Banigan, Tom Donnelly, and Olalla Community Council (**Council II**), Case No. 95-3-0034; North Kitsap Coordinating Council, Rural Residents, Zane Thomas, Leslie Banigan, Moira Kane (**Council III**) Case No. 95-3-0035; Zane Thomas, North Kitsap Coordinating Council, Nyle Hartley, Central Kitsap Coordinating Council, Moira Kane, Rural Residents, Leslie Banigan, and Tom Donnelly (**Thomas II**), Case No. 95-3-0036; State of Washington by and through the Director of Community, Trade and Economic Development, on behalf of the Commissioner of Public Lands, the Director of the Department of Fish and Wildlife, the Director of the Department of Ecology and the Secretary of the Department of Transportation (**State**), Case No. 95-3-0037; and Kitsap Citizens for Rural Preservation and Association of Rural Residents (**KCRP II**), Case No. 95-3-0038.

On March 13, 1995, the Board received a petition for review from Ronald R. Ross (**Ross**) and assigned it Case No. 95-3-0039.

On March 15, 1995, the Board issued its “Amended Order of Consolidation and Notice of Hearing, and Order Denying Motions for Expedited Review and Summary Disposition,” consolidating all the above-mentioned cases, including Consolidated Case No. 95-3-0022, assigning the consolidated matter Case No. 95-3-0039, and stating that the case would be referred to as *Bremerton, et al., v. Kitsap County* (**Bremerton**). No further consolidation occurred.

Between March 31, 1995, and April 13, 1995, the Board received motions to intervene from the following: Overton and Associates, Overton and Alpine Evergreen Co., Inc. (**Overton**); Harvey B. Hubert (**Hubert**); McCormick Land Company (**McCormick**); the Economic Development Council of Kitsap County (**EDC**); Manke Lumber Co. (**Manke**); Pope Resources (**Pope**); and Rainier Evergreen (**Rainier**).

On April 17 through 19, 1995, the Board held a prehearing conference at Fire Station No. 1 in Poulsbo, Washington.

On May 5, 1995, the Board issued a “Prehearing Order, Order Granting in Part Motions to Intervene, and Motion to Extend Deadline for Filing of Motions to Supplement the Record,” which granted intervention to the above listed parties; set forth a statement of issues; and set the final schedule for motions, briefing and hearing.

On June 5, 1995, the Board issued an “Order on the County’s Dispositive Motions” that dismissed several of the petitioners’ SEPA issues.

Between June 14 and 21, 1995, the Board received hearing briefs and attached exhibits from the Petitioners.

On June 19, 1995, the Board received the County’s amended submittal of core documents. The County’s ten “core documents” (**CD**) comprise key documents from the record below. References to those documents will utilize the CD prefix and page number(s). CD 1, the Kitsap County 1995 Comprehensive Plan, will be referred to as only “the **Plan**.”

Between July 20 and 25, 1995, the Board received reply briefs from Adams; 1000 Friends; Poulsbo; KCRP I; Thomas I; Thomas II; Banigan II; Banigan I; Council I; Ross; ARR & KCRP; State; Suquamish; Council II; Garrido; and Ross.

On July 26, 27 and 28, 1995, the Board held a hearing on the merits of the 19 consolidated petitions for review at Fire Station No. 1 in Poulsbo, Washington. Present were the three members of the Board: Chris Smith Towne, Joseph W. Tovar and M. Peter Philley, Presiding Officer. Representing ARR & KCRP and KCRP II was David A. Bricklin. Representing Suquamish was Mary Linda Pearson. Representing Bremerton was Ian R. Sievers. Representing Banigan I was Leslie Banigan. Representing Olalla was Beth Wilson. Representing Garrido was Charlotte Garrido. Representing Council I was Vivian Hiatt-Bock. Representing Banigan II was Charlie Burrow. Representing Adams was Nobu Kawaski. Representing Poulsbo was Phil A. Ohlbrechts. Representing 1000 Friends were Larry Smith and Tracy Burrows. Representing KCRP I, Council II, Council III and Thomas I was Zane Thomas. Representing Thomas II was Tom Donnelly. Representing the State was Tommy Prud’homme. Representing Ross was Tom C. O’Hare.

Representing the County was Sue Tanner. Representing Intervenor Port Blakely were Thomas A. Goeltz and Katherine Kramer Laird. Representing Intervenor McCormick was Robert Johns. Representing Intervenors Pope Resources was Marvin L. Gray, Jr. Representing Intervenor Rainier was Eric Laschever. Representing Intervenor Manke was William T. Lynn. Representing Intervenors Overton and EDC was Elaine Spencer. Court reporting services were provided by Nancy A. Poppe, CSR, on July 26, 1995, and Cynthia LaRose, CSR on July 27 and 28, 1995, both of Robert H. Lewis & Associates.

On August 11, 1995, the Board received “Petitioners’ Joint Statement of Proposed Invalidity Finding.” It asked that the Board find invalid certain portions of the County Plan, Zoning Ordinance and Critical Areas Ordinance on the basis that they substantially frustrate achieving the goals of the Act. On August 14, 1995, the Board received the “State’s Joinder in Petitioners’ Joint Statement of Proposed Invalidity Finding.”

On August 14, 1995, the Board received “Petitioners’ Joint Statement of Proposed Invalidity Finding.”

On August 21, 1995, the Board received “Overton and Associates, Peter Overton and Alpine Evergreen’s Submission of Adjacent Counties’ Forest Land Designation.”

On August 22, 1995, the Board received the “Response of Intervenors Pope Resources and Port Blakely Tree Farms to Proposed Invalidity Finding,” and the “Response of Intervenor McCormick Land Company to Petitioners’ Joint Statement of Proposed Invalidity Finding.”

On August 24, 1995, the Board received “Kitsap County’s Response to Petitioner’s Proposed Finding of Invalidity,” the “Response of Harvey B. Hubert to Petitioners’ Joint Statement,” and “Comments of the Economic Development Council of Kitsap County, Overton & Associates, Peter E. Overton and Alpine Evergreen, Inc. Regarding the Consequences of the Proposed Invalidity of the Kitsap Comprehensive Plan”; and on August 29, 1995, the Board received “Supplemental Declaration of Service of Overton and Associates, Peter Overton and Alpine Evergreen’s Submission of Adjacent Counties’ Forest Land Designation.”

On September 1, 1995, the Board received “Petitioners’ Reply in Support of Invalidity Finding.”

On September 12, 1995, the Board received “Petitioner’s Submission of Forest Land Grade Designations Utilized by Other Counties.”

## **II. FINDINGS OF FACT**

1. On April 20, 1992, the County adopted a document entitled “Strategies for Resource Lands Designations and Interim Development Regulations” (the **Strategies Document**) “... to fulfill the requirements of the 1990 Growth Management Act to classify and designate natural resource lands and implement interim development regulations.” CD 10, at cover page.

2. The Kitsap Regional Planning Council (**KRPC**), composed of representatives from the County, its four cities and two tribes, serves as the regional planning policy body for Kitsap County, and was responsible for recommending County-wide Planning Policies (**CPPs**) for adoption by the County, and adopted a population forecast to be used in drawing urban growth

areas (**UGAs**.) On August 10, 1992, the County adopted CPPs allocating population to cities and subareas of the County. CD 5.

3. On June 3, 1994 the Board entered a Final Decision and Order in *Association of Rural Residents v. Kitsap County* (**Rural Residents**), CPSGMHB Case No. 93-3-0010, ruling that the County's Interim Urban Growth Area (**IUGA**) did not comply with the GMA because it was not based on the Washington State Office of Financial Management (**OFM**) population projection, did not show how its IUGA included land uses and densities sufficient to accommodate the 20 years of forecasted growth and did not include open space and greenbelt areas as required by the Act. The County was ordered to adopt an IUGA that met the requirements of the Act and the Board's Order by October 3, 1994; the County did not do so. See *Rural Residents*, Finding of Noncompliance.

4. On December 29, 1994, the County enacted Ordinance No. 169-1994 which adopted the Comprehensive Plan (the **Plan**), published on January 11, 1995. <sup>[1]</sup> The Plan has three parts: Part I — population and economic development; Part II — Natural systems and lands, land use and open space, rural lands and UGAs; and III — housing, utilities, transportation, parks and recreation and capital facilities. The three parts are separately bound into three volumes: Plan, Parts I, II, III.

5. Also on December 29, 1994, the County enacted Ordinance 168-1994 which adopted an Interim Zoning Ordinance (**Zoning Ordinance**). CD 6.

6. On December 29, 1994, the County also enacted Ordinance No. 170-1994 which adopted an Interim Critical Areas Ordinance (**ICAO**), "... to implement the provisions of the [GMA] Comprehensive Plan, and RCW 36.70A.060..." A note on the document cover states that the ICAO: "Includes amendments as adopted February 27, 1995, by the Kitsap County Board of Commissioners." The ICAO repealed two documents: *Strategies for Critical Areas Designations and Interim Development Regulations, December 1991*, adopted January 27, 1992, and *Strategies for Resource Lands Designations and Interim Development Regulations*, adopted April 20, 1992. CD 7, at 1, 2.

7. The Washington State Senate and House of Representatives passed Engrossed Substitute House Bill 5876 (**ESHB 5876**) on March 15, 1995, and April 13, 1995, respectively. This bill was approved by the Governor on April 27, 1995.

8. The Washington State Senate and House of Representatives passed Engrossed Substitute House Bill 1724 (**ESHB 1724**) on April 11, 1995, and April 23, 1995, respectively. With the exception of Sections 103, 302, and 903, this bill was approved by the Governor on May 15, 1995.

9. The Washington State Senate and House of Representatives passed Engrossed House Bill 1305 (**EHB 1305**) on April 14, 1995, and April 20, 1995, respectively. With the exception of Section 5, this bill was approved by the Governor on May 16, 1995.

10. Having determined that the OFM population forecasts did not reflect past population trends and realistic population growth in the County, and that the County would continue to experience population growth comparable to that experienced in the past decade, and thus higher than the OFM forecast, the County chose to:

... formulate population forecasts which accurately reflected the historical population trends of Kitsap County, as well as considering the economic future. It was these population forecasts which Kitsap County and the cities planned for when developing their comprehensive plans.

Base data was provided by the 1990 U.S. Census and was an important tool in determining the projected future growth. Plan, Part I, at 10, 13.

11. The CPPs direct that two-thirds of the projected growth shall be accommodated within UGAs, including potential reserves for fully contained communities (**FCCs**). Plan, Part I, at 12.

12. A total UGA population of 63,575 was allocated to six UGAs: Bainbridge Island — 6,820; Kingston — 3,380; Poulsbo — 7,200; Central Kitsap — 17,625; Bremerton — 20,000; and Port Orchard — 8,550. Plan, Part I, Table PE-7, at 13.

13. Rainfall varies widely across the County, averaging 26 inches annually at the northern tip to 70 inches in the southwest, causing variations in aquifer recharge rates, stream flows and suitability for forestry and agriculture. Plan, Part II, at 4.

14. When non-native settlement began, about 150 years ago, most of the County was covered with old-growth forest, predominantly Douglas Fir. Plan, Part II, at 6.

15. Using U.S. Soil Conservation Service (**SCS**) classifications, seven soil types, accounting for 15,020 acres widely dispersed throughout the County, are prime agricultural soils. Plan, Part II, at 17, Figure NR-4 at 19.

16. There are few large commercial agricultural operations in the County today, which is attributed to poor soil conditions and recent land use conversions. A significant part of agricultural production occurs on non-commercial farms, and provides a secondary source of income. In 1992, 10,302 acres, 4.1 percent of the County's land, was in farm use, with 366 farms ranging in size from one to more than 1000 acres, and averaging 28 acres. Plan, Part II, at 81-4.

17.The SCS identifies as prime timberland those soils not located in areas of urban or built-up land uses, and capable of producing wood fiber at a mean annual increment of 85 cubic feet per acre.Most soils in the county meet this national standard.Plan, Part II, at 20.

18.The County’s soils are rated for potential forestry productivity by the SCS, as well as by the Washington State Department of Natural Resources (**DNR**), using a “50 site index,” the average height in feet that dominant species reach in 50 years in a given soil type.In western Washington, that species is the Douglas fir.Plan, Part II, at 20, 92.

19.The Forestry Soil Suitability Map shows the location and extent of four site index ranges, from 84 to 110, based on SCS data.The most productive soils lie in the northern and the least productive in the southwest parts of the County.Plan, Part II, at 20, 21.

20.Of the County’s 251,520 acres of land, 76,818 acres are forest land.Of that total, 27,804 acres are owned by DNR, the City of Bremerton, or are part of the Port Madison and Port Gamble S’Klallam Indian Reservations; 49,014 acres are privately owned, and taxed as forest land (parcels 20 acres or larger) or open space timber (at

least five acres) by the County Assessor’s Office. <sup>[2]</sup> These private lands are used for long-term commercial production, reforestation or forest habitat.Plan, Part II, at 87-89, 91.

21.Current Use Timberlands, Classified and Designated Forests, are shown on Figure LU-2, Inventory of Open Space and Timberlands.Plan, Part II, at 148.

22.These forest lands:

... are suitable for commercial production and cultivation of Douglas fir and Western hemlock.The forest industry provides lumber, firewood, Christmas trees and other forestry-related products for local use and export outside of the county.Forests also provide recreational opportunities and open space.

While only 495 people were employed in forestry, lumber and wood products in 1990, the forestry areas demand few services awhile generating substantial direct revenues to local governments.Plan, Part II, at 89-90.

23.All forest lands provide habitat benefits to fish and wildlife, and public forest lands afford recreational opportunities.Plan, Part II, at 92-3.

24.In the 18 month period prior to Plan adoption, over 2000 acres of forest land were converted to non-forest uses, primarily residential.Plan, Part II, at 92.

25. Most of the County's hardrock, sand and gravel deposits are volcanic, glacial or erosional in origin. Mineral deposits other than sand, gravel and rock are believed to be insignificant. DNR has issued 29 surface mining permits, 26 for sand and gravel. Five of these are held by the County. While DNR has delineated potential deposits on state land, there has been no large-scale county-wide inventory of commercially viable mineral resource deposits. The Plan recommends that a geologic study to identify commercial deposits be completed within one year of Plan adoption. Plan, Part II, at 94-5, 159.

26. The type of soil available for installation of an on-site sewage system is critical to its successful operation over time. Using the SCS rating system for soil suitability, most soils in the county are rated severe for conventionally designed disposal fields. With that rating, special design, significant increases in construction costs and potentially increased maintenance costs are required. Plan, Part II, at 24.

27. The Strategies Document, at the Foreword, sets forth the three-step process for designating resource lands in WAC 365-190: classification by value of each type of resource lands, agricultural, forest and mineral; designation, formally establishing the classification scheme for and location of resource lands, and applying the classification scheme to each resource and conducting an inventory; and adoption of interim development regulations for protecting resource lands. The County used a fourth step, by establishing a group, the Rural Policy Roundtable, charged with reaching consensus on rural land use issues. CD 8, at ii-iii.

28. Section Six of the Strategies Document is entitled "Recommendations to Designate Forest Resource Lands and Implement Policies." The preface notes that:

In determining the criteria for the designation of forest resource land, the rural Policy Roundtable recognizes that the following lands will likely remain in long-term forestry:

Bremerton Watershed — 4,000 acres

Tribal Lands — 3,200 acres

Bangor — 4,700 acres

Pope Resources and the Washington State Department of Natural Resources have committed to identify and set aside at least 15,200 acres of their lands in the Green Mountain Area for designation as forest resource lands under the Growth Management Act for the interim period pending adoption of the county-wide comprehensive plan. When finalized this designation shall last not less than twenty (20) years. CD 10, at B17.

29. The Strategies Document sets forth a list of criteria for forest land designation. If each criterion is met, a parcel will be designated "as Growth Management Act (GMA) [forest] resource lands for at least twenty years":

1. A Douglas Fir fifty (50) year site index of 110 or greater for a predominant portion of the parcel;
2. A nominal 80 acres or more of single ownership;
3. Property tax classification: Property is enrolled, as of January 1, 1991, in the Open Space Timber or Designated Forest or classified Forest property tax classification program pursuant to Chapter 84.33 or 84.34 RCW, or is owned by a state or local governmental body with long-term forest management as its primary use; and
4. In designating forest lands, the effects of proximity to population areas and the possibly [sic] of more intense uses of the land as indicated by the following shall also be considered (WAC 365-190-060 Forest Resource Lands):

1. The availability of public services and facilities conducive to the conversion of forest land — Not within a special purpose sewer or local (not countywide) water district;

2. The proximity of forest land to urban and suburban areas and rural settlements — forest lands of long-term commercial significance are located outside the urban and suburban areas or rural settlements;

3. The size of the parcels — forest lands consist of predominately large parcels;

4. The compatibility and intensity of adjacent and nearby land use settlement patterns with forest lands of long-term commercial significance — greater than fifty percent (50%) of the linear frontage, as of March 1, 1992, of the perimeter of any parcel meeting the above criteria shall abut parcels that are greater than five (5) acres in size;

5. Property tax classification — Property is assessed as open space of forest land pursuant to chapter 84.33 or 84.34 RCW;

6. Local economic conditions which affect the ability to manage timberlands for long-term commercial production — economic conditions should be conducive to long-term commercial forestry management; and

7. History of land development permits issued nearby — would allow for compatibility with forestry activities.

...

Lands within the federally recognized external boundaries of the Port Madison Indian reservation, under the Forestry Management Plan of the Suquamish Tribe, are recognized as forest resource lands. CD 10, at B17-20.

30. Under the caption “Interim Development Regulations,” the Strategies Document sets forth 13 policies in order to:

... fulfill the interim development regulations requirement of the Growth Management Act for forest resource lands. These policies should be considered in determining appropriate mitigation to minimize the impact of adjacent land uses on forest resource lands.

Those interim regulatory policies: allow mining, agricultural, and other uses on forest lands if compatible with forest management; encourage continuation of forest tax classifications and retention of large parcel sizes; direct that impacts on forest lands from other land uses be mitigated, and that notice of forest resource use be attached to plats and building permits near forest resource lands; recognize forestry as the preferred use of forest lands; encourage use of a range of techniques to conserve forest lands; direct preparation of an inventory of forest lands; direct use of best management practices and compliance with the State Forest Practices Act; place restrictions on residences within forest lands; and direct that forest land conversion be consistent with adopted land use policies and compatible with adjacent uses. Following those policies, the Strategy Document recommends that the County: Amend agency SEPA procedures required by Chapter 197-11 WAC and Chapter 43.21C RCW to classify designated forest resource lands as environmentally sensitive until development regulations, as required by RCW 36.70A.120, are adopted. CD 10, at B20-21.

31. Lands devoted to mines and quarries, a total of 670 acres, are included within the industrial land use category. Plan, Part II, at 141.

32. Groundwater, constituting 80 percent of the County's water supply, is withdrawn primarily by means of major production wells in principal aquifers, located from 100 feet above to 800 feet below sea level. Almost all of the surface area of the County contributes to groundwater recharge. Plan, Part II, at 27-8; Figure NR-7, at 29.

33. Shallow aquifers (defined as less than 100 feet below surface elevation) are especially susceptible to surface contamination. Shallow wells located near the saltwater shoreline have experienced saltwater intrusion. Plan, Part II, at 125.

34. The aquifers' water quality is generally good, although saltwater intrusion, high concentrations of metals, and chemical contamination have been identified, specifically in four North Kitsap aquifers. Water quantity is expected to be adequate for projected demand until 2010. Plan, Part II, at 28.

35. The County and Kitsap Public Utility District are preparing a Groundwater Management Plan for the County, including a more complete inventory and designation of aquifer recharge areas. Information and data resulting from the planning process will be incorporated into the Comprehensive Plan. Plan, Part II, at 27.

36. The Plan uses two categories to classify aquifers for purposes of the Plan and subsequent regulations: Critical Aquifer Recharge Areas, and Aquifer Recharge Areas of Concern, shown on Figure NR-13. One Critical Area, Hansville, is shown; general areas of concern are illustrated, and will be delineated more specifically after evaluation of surface soil types, depth

to aquifer, areas needed for wellhead protection, and clusters of small wells. In the policy section, the County commits to implementation of the future recommendations of the Groundwater Management Plan. Plan, Part II, at 103-7.

37. The Plan recognizes that stream habitat and water quality are degraded by development and increased runoff, reducing the value and functions of a stream system, and cites the [Washington State] Department of Fish and Wildlife estimate that the hydraulic properties of a stream are affected when 12 percent of a watershed is developed. Plan, Part II, at 37.

38. The ICAO defines Critical Areas as including: wetlands, areas with a critical recharging effect on aquifers used for potable water, fish and wildlife habitat conservation areas, geologically hazardous areas, and frequently flooded areas, and includes sections on each of these areas. CD 7.

39. The ICAO's definition of "aquifer recharge" and "aquifer recharge area" notes that "In Kitsap County, most areas are aquifer recharge areas." "Areas with a critical recharging effect on aquifers used for potable water," a part of the GMA's definition of "Critical areas" (RCW 36.70A.030(5)), are not defined or discussed. CD 7 at 9.

40. The Critical Aquifer Recharge Areas section of the ICAO, at Section 610, notes that: "Although an accurate, highly detailed map of Critical Aquifer Recharge Areas does not yet exist, the following designations have been mapped from information that is currently available." The section then lists high recharge potential areas, in three categories: (1) Hansville Critical Aquifer Recharge Area, as mapped on a Kitsap County Public Utility District No. 1 Aquifer Recharge Areas map in the Comprehensive Plan; (2) Recharge Areas of Concern, delineated on the same map; and (3) Aquifers with Contamination Potential (Hansville and Poulsbo), shown on Exhibit II-8 of the Draft Kitsap County Groundwater Management Plan (Groundwater Plan), April, 1991, Part I. CD 7, at 64-5.

41. The Draft Environmental Impact Statement (**EIS**) provides a map showing the locations of the County's principal aquifers, with the notation that the boundaries are shown "very approximately." CD 8, at III-27.

42. The Final EIS provides a map showing the locations of principal aquifers, indicating above sea-level and below sea-level aquifers. CD 9, Figure 8, Corrections and Changes, opposite II-8.

43. The ICAO, at section 615, provides standards for development in High Aquifer Recharge Areas:

A hydrogeologist report may be required on sites that have been identified as having soil types with high infiltration rates, or having high aquifer recharge or infiltration potential for land uses identified in exhibit titled "Operations with Potential Threat to Ground

water” (See Appendix F)... The report will address the impact the proposed land use will have on both the quality and quantity of the water transmitted to the aquifer. The report will recommend mitigation for impacts that have the potential to decrease quantity or quality of water transmitted to the aquifer....

Appendix F is a list of 32 “Operations with Potential Threat to Ground Water,” e.g., auto repair/body shops, laundromats, research laboratories, machine shops and metal platers, subdivisions using private wastewater disposal, single-family septic systems, and heating oil storage. CD 7, following 76.

44. The County began development of the Plan’s Land Use Element with an inventory of existing land use (development, density, and acreage) and ownership. The inventory used records of the County Assessor, validated with, and adjusted as necessary after, a field survey. Plan, Part II, at 119.

45. The County’s 1977 Comprehensive Plan (**1977 Plan**), a pre-GMA enactment, allowed residential densities of two units per acre for waterfront property in rural areas, and semi-rural densities which exceed rural (one to three units per acre) in certain areas not planned for future urban use, served by public water systems and not served by public sewer facilities. Semi-urban densities (three to six units per acre, with 30 units possible through use of a planned unit development process) were allowed on or near the waterfront. Plan, Part II, at 122-3. The 1977 Plan was repealed by Ordinance No. 169-1994 when the Plan was adopted.

46. In a final EIS response to a letter commenting on the Draft EIS, the County noted that:

In general, rural is land that is not designated urban, or resource lands. Generally, suburban is characterized by land adjacent to urban areas that have public water exists [sic] and may transition to higher densities if a demonstrated need for additional urban lands exists. CD 9, Response to Letter No. 10.

47. The Plan describes “vacant land” as including:

... Open, wooded and undeveloped land in parcels less than ten acres in size that do not contain a dwelling unit at this time. These lands have apparently been segregated into parcels of various sizes, all less than ten acres in size, to be used or sold as building sites. Some parcels are simply left vacant for economic reasons. On the other hand, vacant lands are usually the easiest to develop because of no active use and the size of the parcel. Land in this category accounts for 19.8 percent of the land. Plan, Part II, at 129.

48. Land uses prior to adoption of the Plan are shown on Figure LU-1. Forty-eight and one-half percent (102,256 acres) were in the wooded and open land category; 19.8 percent in vacant

land (parcels less than ten acres, without a dwelling unit [**du**]); 24 percent in residential use; 1.4 percent commercial and industrial uses; 3.1 percent public land; and 3.2 percent military. The discussion notes that vacant lands “have apparently been segregated into parcels of various sizes, all less than ten acres in size, to be used or sold as building sites.” Plan, Part II, at 127-8, 130.

49. The Plan notes that:

In Kitsap County there are three distinct types of residential development patterns besides urban and rural, and the plan has identified these three patterns as suburban, waterfront and Village Residential. These designations reflect the existing trends and/or historical development patterns. Plan, Part II, at 152.

50. Gross residential density is described as “the total number of dwelling units divided by the total land area of the site including land used for public purposes such as roads, parks and utilities.” Plan, Part II, at 131.

51. Suburban lots, or one to 2.5 dwelling units (**du**) per acre, are characterized as “the most difficult to divide into smaller parcels. At this density septic tanks and wells on the same lot can be a problem and further development is constrained by the location of existing structures.” Plan, Part II, at 131-2.

52. “Urban Low” lots, 12,500 square feet (**s.f.**) to one acre per dwelling unit, are described as suitable for sewer and water services, although existing development at this density may not have those services, with the caution that without those services, septic systems and wells are often a problem due to site constraints. Plan, Part II, at 132.

The total number of residential dwelling units at the time of Plan adoption was 47,805, with 3.4 percent on lots of five acres or more; 23.7 percent on lots of one to five acres; 33.8 percent at densities of one to 3.5 per acre; and 39.1 percent at densities above 3.5 per acre. Plan, Part II, Table LU-3 at 134.

53. The Plan notes that the Land Use Element classifies forest, agricultural and mineral resource lands as resource lands, to help keep those lands available for resource production. However:

... in the case of agriculture and forest lands, the element recognizes that in Kitsap County long-term commercially significant resource lands have been lost to competing demands, i.e., residential development or poor forest production compared to other areas. The element does include a forest designation, labeled as Rural Wooded, and agriculture is encouraged throughout the rural areas of the county.

...

The plan does not propose lands for designation as prime agricultural lands since there does not appear to be a significant amount of commercial farming in the county at this time. This issue may be revisited should additional data indicate that it would be appropriate. Farming is encouraged and permitted in the rural areas of the county. Plan, Part II, at 155-6, 161.

54. The County, through its Rural Policy Roundtable and subarea planning efforts, sought to reach a consensus definition of “rural character.” While that goal was not reached, a list of rural characteristics was developed:

Two-lane roads with gravel shoulders; driveways disappearing into the forest with no house visible; trees as a backdrop to open fields and meadows; mountain or water vistas; agricultural lands including rolling pastures and meadows; farm buildings including original farmhouses; clusters of housing at the water’s edge; sense of community; quietness; stream corridors, wetlands and floodplains; and forested areas. Plan, Part II, at 190.

55. The Plan notes that:

It is the intent of the plan to designate certain forest lands which are most suitable for forest production in a manner which encourages the use of land for tree growing while keeping future options open. The Rural Wooded designations should be reviewed no later than the five year anniversary of the plan to determine whether the lands should be designated for alternative uses or designated as long-term commercial forest lands as provided for by the Growth Management Act.

...

The county has designated land as Rural Wooded as an alternative to long-term commercial forest land based upon the “bottom-up” feature of the Growth Management Act. It is the county’s position that the density provisions and development guidelines of the Rural Wooded designation are appropriate for protection of the land as a resource as well as being appropriate given the local setting and existing development patterns.

...

The plan encourages the practice of forestry as an important element of rural character and designates many areas as Rural Wooded even though the currently wooded areas are not designated forest lands of long-term commercial significance.

...

... [L]and designated as Rural Wooded will generally be characterized by: good forest soils and/or natural limitations for development, large open parcels, possibly in tree production. In addition, these areas are generally not needed for non-resource use at this time.

Minimum lot size is 2.5 acres per dwelling. As an alternative, cluster development may be approved. Maximum cluster development density is one dwelling per one acre. Lot sizes in cluster developments should range from 1/4 to 1-1/2 acres with a minimum project size of 20 acres. Plan, Part II, at 157-8.

The Rural Low Density Residential designation is applied to areas with a development pattern of five-to ten-acre parcels. The intended minimum lot size is 2.5 acres, except that with clustering, on sites of at least ten acres, the density may be increased to one unit per acre, with lot sizes of 1/2 to 1-1/2 acres. Plan, Part II, at 161-2.

The Rural Medium Density Residential designation is applied to areas with a development pattern of 2.5- to five-acre parcels, and with few development limitations. The permitted density is 2.5 acres, except that clustering, on parcels of at least ten acres, will allow densities of one unit per acre with lot sizes from 1/2 to 1-1/2 acres. Plan, Part II, at 162.

The Rural High Density Residential designation is intended for areas with similar current zoning to provide additional areas for suburban development near or adjacent to urban growth areas. The areas may have public water supplies, but are usually not sewered. Plan, Part II, at 163.

56. There are 54 sites zoned for manufacturing and light manufacturing uses in unincorporated portions of the County. The sites are generally small-scale and widely dispersed. The majority of developed sites are used for storage and warehousing; other sites have low intensity uses not requiring industrial zoning. The South Kitsap subarea has 17 sites with 2,250 acres; Central has 19 sites totaling 62 acres; and North has five sites from 30 to 60 acres in size. Most sites are outside urban areas and lack urban services. Twelve hundred acres are unimproved and available for new development. Two large sites in the Central subarea, operated by the Port of Bremerton, are improved, serviced and have transportation access. The Plan concludes that:

... there appears to be more than adequate land zoned for manufacturing and light manufacturing uses that require larger sites. It may be that more of this land needs to be improved in order to accommodate or attract businesses that need or want land that is ready to be built on. Another consideration is to determine if there are other general locations with appropriate site criteria in Kitsap County that could meet a need that is not being served by existing sites. It could be that new sites that can provide better access and urban type services need to be identified. Plan, Part II, at 138-40.

57. The Plan recognizes that:

Since there are already significant industrial lands in the rural areas of the county, the hope is to recognize these lands and encourage and support the retention and expansion

of these lands where appropriate. Plan, Part II, at 175.

58. The Plan identifies areas for industrial use, due to topography, highway access and existing land use. Current access to public water, sewer and utilities was not a selection criterion. Industrial development on such sites would require a rezoning action, but not a Plan amendment. Plan, Part II, at 176.

59. The Plan policies for industrial lands specify that: “[I]ndustrial development may be allowed when sewers are not required for the protection of natural systems, in particular the protection of the quality and quantity of both surface and ground water.” Plan, Part II, at 177.

60. Residential land uses are permitted on Mineral Resource sites, with 2.5-acre minimum lot sizes, unless a cluster development is used; then, the lots in a development of at least 20 acres may range from 1/4 to 1-1/2 acres. Plan, Part II, at 159.

In the Plan, the County withdrew a portion of the 20 year population projection previously allocated to urban growth areas, 3,500 people, for allocation to fully contained communities, and stated that such population reservation cannot be made more often than every five years. The Plan Map identifies areas with potential for development of fully contained communities, depicted with the FCC symbol. Development of such a site would require only a master plan and rezoning action, with no change to the Plan Map. Plan, Part II, at 184-6.

61. The Plan is based a population increase of 90,260 from 1994 through 2014, reflecting the Kitsap Regional Planning Council 2014 Population Forecast and Subarea Allocation. In accordance with the direction of the CPPs, it assigns two-thirds of that growth to UGAs and, optionally, fully contained communities. The UGAs “reflect the goals and policies of the Land Use Element [of the Plan.]” That Element also assigns density to certain historic settlements, while retaining their village character. The UGAs designated in the Plan included the County’s four incorporated cities: Bremerton, Port Orchard, Bainbridge Island and Poulsbo. Urbanized areas adjacent or near to these cities were included within UGAs. Finally, the Kingston area was designated a UGA. Plan, Part II, at 199-201.

62. The Plan describes urban growth areas depicted on the land use plan map as including lands characterized by urban growth, and notes that:

...[b]ecause intervening vacant or underdeveloped land was captured by the urban growth boundary encompassing these patches of urban development, the total acreage contained within urban growth areas may exceed the acreage needed to accommodate the twenty year forecast. Plan, Part II, at 199.

63. The initial allocations to each of the five UGAs were adjusted downward by a total of 3,500 to account for an allocation to one future FCC. The adjusted net population forecasts for

each UGA are: Bainbridge Island — 6,450; Kingston — 3,190; Poulsbo — 6,800; Central Kitsap (including Bremerton and Silverdale) — 35,555; and Port Orchard — 8,080. Plan, Part II, at 202.

64. The Board of Commissioners' Minutes of October 17 and 19, 1994, records the passage of a motion "establishing an urban growth area in the Port Gamble area to include the town of Port Gamble previously designated village residential and the industrial designation." It was noted that the Planning Commission agreed with the recommendation to establish that UGA. Ex. 9610, at 259. The Plan's narrative contains no indication that the Port Gamble area was a designated a UGA.

65. In describing existing urban development within UGAs, the Plan observes that: Generally, single family residential development on lots less than one acre in size is considered as urban development. Of course, multi-family residential development at densities greater than one unit per acre are also considered as urban development. In addition, many commercial and other nonresidential uses are considered urban in nature. The plan also considers vacant platted land which contains lots less than one acre in size to be characterized by urban growth because these plats represent a commitment to urban development. Plan, Part II, at 200.

66. To determine whether the amount of land designated within the UGAs would be sufficient to accommodate the projected population growth, the County undertook a land capacity analysis, generally following the direction of the CPPs. The process: (1) tabulated vacant and underutilized land; (2) applied an efficiency factor; [3] and (3) applied a reduction factor. [4] The remaining acreage was considered to be net developable acreage for residential purposes. Table UG-3 shows total acreage and net developable acreage for each UGA: Bainbridge Island [5] — 15,835 and 5,830; Kingston — 1,620 and 745; Poulsbo — 3,880 and 1,525; Central Kitsap — 23,400 and 6,990; and Port Orchard — 6,230 and 1,800. The totals, excluding Bainbridge Island, are 35,130 acres and 11,060 acres. Plan, Part II, at 202-3.

67. In a discussion of population density within the UGAs, the Plan assumes a range of densities from one to more than 40 dwellings per acre, with an average of six. The average number of persons per dwelling is assumed to be 2.42, as reported for urban areas in the 1990 census. [6] The average density per acre is 14.52. Plan, Part II, at 204.

68. Applying the average population density to the adjusted population allocations to each UGA, the acreage needed for residential development in each is: Bainbridge Island — 445; Kingston — 220; Poulsbo — 470; Central Kitsap — 2,450; and Port Orchard — 560. The total acreage needed is 4,145. Plan, Part II, at 204.

69. The Plan then applies a market factor to the acreage needed to accommodate the allocated growth, explaining that use of that factor “... is appropriate because an urban growth area which is too ‘tight’ will have an undue adverse impact on the land market.” The Plan assumes an additional .75 acres will be needed for each acre initially determined to be needed, “... to keep urban land prices from rising dramatically due to speculation.” After application of the factor, the total acreage within each UGA is: Bainbridge Island — 780; Kingston — 385; Poulsbo — 825; Central Kitsap — 4,290; Port Orchard — 980, for a total of 7,260 acres. Plan, Part II, at 204-5.

70. Finally, the Plan compares for each UGA the projected land needed, with market factor, and the net developable acreage designated for urban growth in each UGA: Bainbridge Island — 5,830<sup>[7]</sup>; Kingston — 745; Poulsbo — 1,525; Central Kitsap — 6,990; and Port Orchard — 1,800. The total acreage, excluding Bainbridge Island, is 11,060 acres. Plan, Part II, at 206.

### **III. GENERAL DISCUSSION**

This is the first decision entered by the Board to address the alleged noncompliance of a county comprehensive plan, including a Final Urban Growth Area (**FUGA**), with the requirements of the GMA. In such matters of first impression, it is important to begin the analysis with a description of the statutory and case law context for the specific legal issues. Accordingly, the Board sets forth below the pertinent provisions of GMA case law and the statute itself, including the 1995 legislative amendments.

In discerning the Act’s requirements for county comprehensive plans, FUGAs, and implementing regulations, the Board has the benefit of the facts and arguments in not only the present case, but two other pending cases: *Vashon-Maury, et al., v. King County* (CPSGMHB Case No. 95-3-0008) (***Vashon-Maury***) and *Gig Harbor, et al., v. Pierce County* (CPSGMHB Case No. 95-3-0016) (***Gig Harbor***). While the facts and allegations vary in these three counties, the 49 parties (16 in *Vashon-Maury*, 30 in *Bremerton* and three in *Gig Harbor*) arguing the 160 issues (64 in *Vashon*, 86 in *Bremerton* and ten in *Gig Harbor*) in these cases have thoroughly illuminated the GMA’s statutory landscape, seemingly from every conceivable perspective.

While the Final Decisions and Orders in the *Vashon-Maury* and *Gig Harbor* cases are not due until later this month,<sup>[8]</sup> the resolution of common issues in each of these cases must be based on an analysis of the GMA’s requirements regarding county comprehensive plans, FUGAs and implementing regulations. It is the purpose of this general discussion to set forth both the statutory and case law foundation for the resolution of the specific legal issues in these three cases. After providing this overview and adopting several new holdings, the Board proceeds in Part IV below to answer selected legal issues regarding Kitsap County’s alleged noncompliance with the requirements of the Act.

## A. summary of PRIOR BOARD HOLDINGS

Prior Board holdings generally address either the Act's *procedural* requirements or its *substantive* requirements, or both. These holdings clarify the Act's procedural requirements, the hierarchy and sequence of required actions, where the authority to take action resides, the breadth of local discretion, and indeed the very nature and structure of decision-making under GMA. [9] Allegations of noncompliance with the procedural requirements of the Act usually focus on *if*, *when* and *by what process* a local government did or did not do something. In such instances, the record below is critical because it describes not only what the final enactment was, but documents the sequence of actions that led up to adoption.

By contrast, allegations of noncompliance with a substantive requirement focus on the specific legal content of the local government enactment and how the real-world outcome required or enabled by that enactment squares with the outcome that is either explicitly described or

necessarily implicit in the Act. [10] If a local government adopts a comprehensive plan or development regulation that does not meet a substantive requirement mandated by the Act, or if its outcome thwarts a substantive requirement of the Act, the enactment is not cured by the mere fact of procedural compliance.

Following is a sequential summary of Board holdings that provide the GMA case law context for evaluating the alleged noncompliance in the county comprehensive plan/FUGA cases presently under review. Where the Board makes specific reference to one of these holdings in the body of this Order, more specific citation or quotation is provided.

*Snoqualmie v. King County, CPSGPHB Case No. 92-3-0004 (1993) (Snoqualmie)*

- Policy documents are now mandatory and directive, not voluntary and advisory.
- GMA is a hierarchy of directive policy.
- Cities are primary providers of urban services and counties are to be regional policy makers and rural service providers. GMA intends a "transformation of local governance."

*Twin Falls, et al., v. Snohomish County, CPSGPHB Case No. 93-3-0003 (1993) (Twin Falls)*

- Local governments enjoy substantial deference from the Board; however, under GMA, that deference is diminished when the presumption of validity is overcome by a preponderance of the evidence.

*Edmonds and Lynnwood v. Snohomish County, CPSGPHB Case No. 93-3-0005 (1993) (Edmonds)*

- Counties may allocate population and employment to cities.
- A long-term purpose of county-wide planning policies is to direct urban development to urban areas and to reduce sprawl.

*Association of Rural Residents v. Kitsap County, CPSGPHB Case No. 93-3-0010 (1994) (Rural Residents)*

- A county may draw a UGA beyond the boundaries of cities only under certain circumstances.

- A county must use exclusively the OFM population forecast in sizing UGAs.
- UGAs must include land uses and densities sufficient to permit the projected growth, and must include open spaces and greenbelts.
- A county must “show its work” in accounting for the sizing of the UGA.
- The Act has resource lands designated before IUGAs for a reason. This is why IUGAs are a “minimum sprawl hypothesis.”
- That which is urban should be municipal.
- “Compact urban development” is the antithesis of sprawl.

*Tacoma, et al., v. Pierce County, CPSGMHB Case No. 94-3-0001 (1994) (Tacoma)*

- A county may include subjective considerations, including a “market factor” in the sizing and configuration of its UGA, but must explicitly “show its work” to describe both the objective and subjective factors used.
- Ten-acre lots are clearly rural..
- The largest portion of unincorporated UGAs should be assigned to respective cities, not to a generic metropolitan UGA.
- While development standards in city and county plans for unincorporated UGAs will require coordination in the near term, over the long term, there will be a shift to standards that are consistent with city standards.

*Kitsap Citizens for Rural Preservation v. Kitsap County, CPSGMHB Case No. 94-3-0005 (1994) (KCRP I)*

- Urban growth is not permitted in a rural area.
- The Board can conceive of well designed, well furnished compact rural development.

*Aagaard, et al., v. City of Bothell, CPSGMHB Case No. 94-3-0011 (1995) (Aagaard)*

- Cities have broad discretion in the specific location, density and servicing of growth; however, this discretion is subject to practical and legal limitations, including specific provisions of the Act.
- City plans may provide more capacity for population and employment than is allocated to them by the County, absent a county CPP to the contrary.

*Kitsap County v. OFM, CPSGMHB Case No. 94-3-0014 (1995) (Kitsap v. OFM)*

- Proposed population projection adjustments must be supported by more objective data, credible assumptions and analytical methods than the OFM projection and must not thwart the goals and requirements of the Act.
- The nature of population projections is that they are technical rather than policy. They represent the likely, as opposed to the desired, future population.
- OFM population projections are more a star by which to navigate than a milestone to be reached.

*WSDF I v. City of Seattle, CPSGMHB Case No. 94-3-0025 (1995) (WSDF I)*

- The Act does not establish a minimum level of service for transportation; it only requires that a local government adopt a method of measuring the performance of transportation facilities.

- A localized concentration of growth requires a localized analysis of capital infrastructure and financing capacity.
- “Early and continuous public participation” per RCW 36.70.140 requires that, when adopting last-minute changes, the legislative body must ascertain if the changes would be substantial, and, if so, provide the public with a reasonable opportunity to comment.

*Children’s Alliance and Low Income Housing Institute v. City of Bellevue, CPSGMHB Case No. 95-3-0011 (1995) (Children’s Alliance)*

- Under GMA, residential land use regulations must cease to be exclusionary and instead must reflect that our population has changed with regard to age, ethnicity, culture, economic, physical and mental circumstances, household size and makeup.

### **b. compact urban development VS. sprawl**

The Act’s legislative findings set forth the threat of “uncoordinated and unplanned growth” and declare the purpose of the GMA to meet that threat with a “common set of goals” and “comprehensive planning.”RCW 36.70A.010 provides:

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

Further, the common goals referred to above were set forth in RCW 36.70A.020 as “Planning Goals.”The Board has previously held that:

... the substantive element of RCW 36.70A.020 is the heart of the GMA.All development regulations and comprehensive plans must comply with the Act's planning goals. Nonetheless, local jurisdictions have a broad array of mechanisms for achieving this result. In addition, the level of compliance with the planning goals will vary depending on the document being enacted.Comprehensive plans and implementing development regulations will be held to the highest standard of compliance; interim UGAs to a lower level of compliance; and interim critical areas and natural resource lands regulations the lowest standard of compliance.*Rural Residents*, at 29.(Emphasis added.)

RCW 36.70A.020 sets forth planning goals 1, 2 and 8, which state that urban growth should be directed to urban areas, and that natural resource areas, such as forest and agricultural areas, should be maintained.Planning Goal 2 explicitly names “sprawl” as a negative outcome that is to be minimized.RCW 36.70A.020 provides, in pertinent part:

(1)Urban growth.Encourage development in urban areas where adequate public facilities and services exist or can be provided in an efficient manner.

(2)Reduce sprawl.Reduce the inappropriate conversion of undeveloped land into sprawling, low-density development.

(8)Natural resource industries.Maintain and enhance natural resource-based industries, including productive timber, agricultural, and fisheries industries.Encourage the conservation of productive forest lands and productive agricultural lands, and discourage incompatible uses.(Emphasis added.)

While the preamble to RCW 36.70A.020 clarifies that the goals are not listed in any order of priority, a close examination of the 13 goals reveals that there are some important distinctions that can be drawn among them.Unlike the other ten, the three planning goals cited above operate as organizing principles at the county-wide level. Thus, they have not only a procedural dimension, but they also direct a tangible and measurable outcome.In contrast, Goal 6, regarding property rights, and Goal 11, regarding public participation, do not specifically or implicitly describe the physical form or configuration of the region that should evolve.Rather, they address *how* local government is obligated to undertake the comprehensive planning and implementing actions that will shape the region (i.e., without taking private property and with enhanced public participation).

The Board examines the origins and negative consequences of sprawl below.This is followed by a review of how the specific requirements of the GMA are designed to reduce sprawl and its negative consequences.

## 1. Sprawl

The technological capability has existed for 50 years for growth to sprawl across a vast landscape. In combination with powerful market forces, and absent an effective public policy to resist it, sprawl has resulted in the proliferation of low-density metropolitan regions such as Phoenix and Los Angeles.The rise of sprawl in the United States after the Second World War, and the public policy reasons why state and local governments across the country have chosen to combat it, is well documented in the literature of urban planning and real estate development.The Board takes official notice of this literature.

The seminal treatise on this subject was *The Costs of Sprawl:Executive Summary and Detailed Cost Analysis*, Real Estate Research Corporation, U.S. Government Printing Office, Washington, D.C. (1974).Prepared for the Council on Environmental Quality, Department of Housing and Urban Development and Environmental Protection Agency, this report developed a comprehensive and consistent set of quantitative and qualitative estimates of the environmental, economic, natural resource and other personal and community costs associated with alternative patterns of residential land development.It concluded that:

Stated in the most general form, the major conclusion of this study is that, for a fixed number of households, “sprawl” is the most expensive form of residential development in terms of economic costs, environmental costs, natural resource consumption, and many

types of personal costs.*The Costs of Sprawl*, at 7.

More recently, the negative environmental, economic and social consequences of sprawl were addressed in *Rural by Design*, Randall Arendt, American Planning Association, Chicago, Illinois (1994). Arendt observed that, given powerful market forces and current technology, suburban sprawl continues to be an inevitable consequence of a laissez-faire land use policy:

Although people generally do not yearn to live in a seamless web of sprawling subdivisions, shopping centers, and office parks, that is the ultimate future being provided for them and their children by the current planning system in almost every jurisdiction in the country, with assistance from engineers, developers, land-use lawyers, and realtors, most of whom uncritically accept the standard suburban approach to community growth.

*Rural by Design*, at 4.

In *Beyond Sprawl: New Patterns of Growth to Fit the New California*, Executive Summary, Bank of America, et al., San Francisco, California (1995), a coalition of banking, environmental, government and housing advocacy groups agree that sprawl is a continuing threat to the people of their state. They argue that the public and private sectors, acting together:

... must pursue growth and development that is sustainable. Unfettered sprawl will make the state less competitive, burden taxpayers with higher costs, degrade the environment, and lower the quality of life.

Although the word "sprawl" is not defined in the GMA, its meaning can be readily deduced not only from the above cited literature, but from the Act's legislative findings and planning goals (cited above as RCW 36.70A.010 and RCW 36.70A.020(2), respectively). The Board has previously held that these provisions of the GMA:

... provide(s) a number of clues as to what sprawl is and how steps can be taken to reduce or contain it. For example, it is easy to deduce that sprawl is the product of the "threat" portion of legislative findings, i.e., growth that is "uncoordinated" and "unplanned." One can readily deduce that sprawl consumes more land than is necessary to accommodate forecasted growth, that sprawl is a configuration and location of growth that makes urban service delivery inefficient, and that sprawl is both a cause and a result of the blurring of local government roles and responsibilities for service delivery.

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

The next question, then, is when and where such conversion is "inappropriate." There are a number of clues, such as the language of Planning Goal 1 which conveys that "efficient" development is desired and that it should therefore be encouraged where facilities either

exist or can be provided in an efficient manner. The principle of directing urban development first to areas within a UGA where capacity exists is reiterated in several places in the Act, most prominently at RCW 36.70A.110(3) which provides:

Urban growth should be located first in areas already characterized by urban growth that have existing public facility and service capacities to serve such development, and second in areas already characterized by urban growth that will be served by a combination of both existing public facilities and services and any additional needed public facilities and services that are provided by either public or private sources.

Further, it is appropriate that urban government services be provided by cities, and urban government services should not be provided in rural areas. (Emphasis added.)

The above language conveys that within a UGA urban development should locate first in areas that have already been committed to urban use and which have or can get capacity to serve that growth. The Act has a clear bias for efficiency and concurrency in the placement and financing of infrastructure and urban governmental services. See also Planning Goal 12 at RCW 36.70A.020(12). The urban form and land use pattern that is implicit in these legislative directions is one that is more compact and dense than what market forces alone have historically produced. The Board holds that *compact urban development* is the antithesis of sprawl. *Rural Residents*, at 18. (Footnotes omitted; emphasis in original.)

Others have agreed with this general description of the origins, nature and consequences of sprawl. The Board takes official notice of a publication issued by the Washington State Department of Community Development, (now the Department of Community, Trade and Economic Development (**DCTED**)) entitled *The Art and Science of Designating Urban Growth Areas — Part II*, March 1992. That document defines “urban sprawl” as:

Scattered, poorly planned urban development that occurs particularly in urban fringe and rural areas and frequently invades land important for environmental and natural resource protection. Urban sprawl typically manifests itself in one or more of the following patterns: (1) leapfrog development (when new development is sited away from an existing urban area, bypassing vacant parcels located in or closer to the urban area that are suitable for development; (2) strip development (when large amounts of commercial, retail, and often multifamily residential development are located in a linear pattern along both sides of a major arterial and, typically, accessing directly onto the arterial); and (3) large expanses of low-density, single-family dwelling development. *The Art and Science of Designating Urban Growth Areas — Part II*, at 35.

Citing the experiences in Oregon and Florida, each of which have over 20 years of experience with state-wide growth management systems, the DCTED document identifies special density considerations that should be given for future urban areas. It states:

If “sprawl” densities in between urban and rural densities are permitted, a development pattern can occur which will preclude future development at more efficient densities. The recent *Urban Growth Management Study: Case Studies Report*, prepared for Oregon’s

Department of Land Conservation and Development, concluded that low densities in the one to five-acre range presented major problems for future annexation, extension of urban services and, in general, conversion to more efficient urban patterns.

... The report recommends that Oregon communities establish a minimum lot size of at least ten to 20 acres for areas without urban services....Florida communities have experienced similar problems where sprawl patterns (which they define as two units per acre to one unit per ten acres) are established.*Ibid.*, at 31.(Emphasis added.)

From this literature review, and an analysis of the problems addressed by specific requirements of the Act, the Board concludes that there are at least eight major negative consequences of sprawl: (1) it needlessly destroys the economic, environmental and aesthetic value of resource lands; (2) it creates an inefficient land use pattern that is very expensive to serve with public funds; (3) it blurs local government roles, fueling competition, redundancy and conflict among those governments; (4) it threatens economic viability by diffusing rather than focusing needed public infrastructure investments; (5) it abandons established urban areas where substantial past investments, both public and private, have been made; (6) it encourages insular and parochial local policies that thwart the siting of needed regional facilities and the equitable accommodation of locally unpopular land uses; (7) it destroys the intrinsic visual character of the landscape; and (8) it erodes a sense of community, which, in turn, has dire social consequences.

## **2. Compact Urban Development within a Resource Land and Rural Landscape**

After reviewing the pertinent prior Board holdings and the Act, including the pertinent amendments made during the 1995 legislative session, the Board concludes that the GMA requires not only procedural and substantive compliance, but also a substantive outcome.The Act intends local governments to plan meaningfully for the future — to change the way land use planning has traditionally been done.Nowhere is this conclusion more apparent than with regard to the physical form of the Central Puget Sound region.

The regional physical form required by the Act is a compact urban landscape, well designed and

[\[11\]](#)  
well furnished with amenities, encompassed by natural resource lands and a rural landscape. Neither this vision nor this reality are new to Western civilization.It describes two millennia of European growth and most of the past two centuries of North American growth.As this country has moved from an agrarian economy to an industrial to a post-industrial economy, the technological reasons that development located in central places have been superseded in the latter half of this century by equally compelling environmental, societal and public finance rationales for compact urban development.

### **a. Compact Urban Development as an Adopted Strategy in Regional and County Plans**

The GMA's focus on regional diversity contemplates that the solutions that are necessary and appropriate for the Central Puget Sound region may not pertain to other parts of Washington.*See*

*Kitsap v. OFM*, at 5. This region's far greater population density,<sup>[12]</sup> physiography,<sup>[13]</sup> projected growth<sup>[14]</sup> and concentration of local governments,<sup>[15]</sup> set it apart from other regions of the state.

This region's unique circumstances make the compact urban development model even more compelling, as evidenced by its adopted regional growth management strategy.<sup>[16]</sup> In October

1990, the Puget Sound Council of Governments<sup>[17]</sup> adopted *Vision 2020 Growth and Transportation Strategy for the Central Puget Sound Region*, which provided:

Create a Regional System of Central Places Framed by Open Space, and provide ... a regional urban form characterized by compact, well defined communities....*Vision 2020*, at 12. (Emphasis added.)

It further provided:

The intent of the strategy is to promote a regional urban form characterized by compact, well defined communities framed by a network of open spaces and connected by new transit lines and ferries.*Vision 2020*, at 20.(Emphasis added.)

*Vision 2020* was updated in May 1995.It provides:

The Vision 2020 strategy for managing growth, the economy and transportation ... constitute[s] the Multicounty Policies for King, Kitsap, Pierce and Snohomish counties and meet the multicounty planning requirements of the Growth Management Act (RCW 36.70A.210).*Vision 2020 — 1995 Update*, at 3.

It also provides:

Building on the base provided by the Growth Management Act, countywide planning policies, and local comprehensive plans, the VISION 2020 strategy for urban growth areas includes three parts:(1) identify and maintain urban growth areas, (2) support compact communities, and (3) focus growth in centers.Taken together, these three parts encourage a more compact development pattern that conserves resources and creates additional transportation, housing and shopping choices.*Vision 2020 — 1995 Update*, at 12.(Emphasis added.)

This multi-county growth management strategy is reflected by Pierce County's Comprehensive Plan.The latter remarks that in a future without growth management:

Uncontrolled growth sprawls, engulfing rural fields and vistas.Building occurs "out" in rural areas where the property is cheaper.Because development is spread out, the resulting public costs of providing services like roads, transit, sewer, and police are extraordinarily high, and the taxpayer must fund the large projects.Pierce County Plan, at I-2.(Emphasis added.)

The King County Comprehensive Plan also explicitly adopts the Act's and *Vision 2020*'s desired regional form:

Within the Urban Growth Area, some cities are to contain "Urban Centers" within their

boundaries. These Urban Centers are envisioned as areas of concentrated employment and housing, with direct service by high-capacity transit. They are to contain a wide variety of land uses, including retail, rec-reational, cultural and public facilities, parks and open spaces. The notion is that well-designed, highly livable Urban Centers will encourage people to work and live there and thus contribute to achieving the growth management goal of concentrating infrastructure investments and preventing further urban sprawl. King County Plan, at 2. (Emphasis added.)

## **b. Specific GMA Tools to Combat Sprawl**

Two of the Act's most powerful organizing concepts to combat sprawl are the identification and conservation of resource lands and the protection of critical areas (*see* RCW 36.70A.060 and .170) and the subsequent setting of urban growth areas (UGAs) to accommodate urban growth (*see* RCW 36.70A.110). It is significant that the Act required cities and counties to identify and conserve resource lands and to identify and protect critical areas before the date that IUGAs had to be adopted. This sequence illustrates a fundamental axiom of growth

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management: "the land speaks first." Only after a county's agricultural, forestry and mineral resource lands have been identified and actions taken to conserve them, and its critical areas, including aquifers, are identified and

protected, is it then possible and appropriate to determine where, on the remaining land, urban growth should be directed pursuant to RCW 36.70A.110. A more specific discussion of the Act's requirements regarding county comprehensive plans and UGAs appears below, including the pertinent 1995 legislative amendments.

For purposes of this portion of the discussion, it suffices to say that one major rationale for the designation and conservation of resource lands is to prevent the needless loss of resource lands. Another reason is to help focus growth in order to achieve greater efficiencies with scarce public funds in servicing the urban area. Other sections of the Act equip local governments to attack other negative consequences of sprawl. For example, RCW 36.70A.100 and .210, which require consistency among and between comprehensive plans, serve to clarify appropriate long-term roles for counties and cities, reducing the inter-jurisdictional conflict and competition that wastes resources and paralyzes regional decision-making. *See Snoqualmie*, at 9.

RCW 36.70A.210 also provides the mechanisms to focus regional growth and link it to major regional capital investments, to assure that cities plan for sufficient population and employment to meet UGA objectives (*see Edmonds*, at 28) and, in combination with RCW 36.70A.200, enables the siting of essential public facilities for the good of the greater region. Finally, the destruction of visual character and local identity that results from undifferentiated suburban sprawl will be greatly lessened when clear land use distinctions are made between urban and rural areas. In addition, the Act provides authority for communities to adopt design policies to protect

the character of the rural landscape and enhance the character of the urban landscape. Such design policies can take the form of “innovative techniques” pursuant to RCW 36.70A.090 and/or an optional plan element pursuant to RCW 36.70A.080.

### **c. DETERMINING THE SIZE AND SHAPE OF UGAS**

#### **1. Rank Order for Including Lands in UGAs and Market Factors**

In IUGA cases decided previously, the Board interpreted the Act’s requirements regarding how to determine how large an IUGA must or may be, and which lands are to be included. The present three county comprehensive plan cases are concerned with the Act’s requirements for Final UGAs. Unlike IUGAs and CPPs, the Act requires that “Final Urban Growth Areas shall be adopted at the time of comprehensive plan adoption under this chapter” (*see* RCW 36.70A.110 (5)). “Each county shall include designations of urban growth areas in its comprehensive plan” (*see* RCW 36.70A.110(6)). Thus, Final Urban Growth Areas are inextricably linked to the content and quality of the comprehensive plans of counties and the cities within their boundaries. Further, the statute was amended by the 1995 legislature. It is necessary, therefore, to review the Board’s holdings in the earlier IUGA cases, what the Act now says, and what, if any, clarification or expansion of prior Board decisions is required. The following review of the Board’s prior cases, and of the pertinent 1995 legislative amendments, focuses on two related topics: (1) the rank order for including lands in FUGAs, which determines the configuration or shape of the FUGAs; and (2) the use of a “land supply cushion” or “market factor” which may greatly affect the size of the FUGAs.

#### **a. Prior Board Decisions**

The Board addressed the requirements of RCW 36.70A.110 in three 1994 IUGA cases: *Rural Residents*, *Tacoma* and *FOTL II*. These three decisions to some degree were the focus of amendments in the 1995 legislative session, the pertinent portions of which are discussed below. *Rural Residents*

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

Board (if a UGA is appealed) know how the county derived its UGAs and established the appropriate densities. *Rural Residents*, at 35. (Emphasis added.)

The Board also held that, as a general rule, cities were the only areas that the Act absolutely required be included in UGAs, and that in order to include unincorporated land, one of six exceptions had to be met. The six exceptions to the general rule are:

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

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

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

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

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

Sixth, UGAs may include territory outside existing city limits only if that additional territory is adjacent to territory already "... located in relationship to an area with urban growth on it as to be appropriate for urban growth." RCW 36.70A.110(1). *Rural Residents*, at 44.

The Board is aware that the *Rural Residents* decision evoked spirited debate on the question of the degree of discretion that RCW 36.70A.110 allows to counties to include unincorporated lands within the UGA. This debate culminated in legislative action to amend RCW 36.70A.110 as outlined in the following section. Here, it suffices to note that the focal point of this debate appears to be the Board's use of the conjunction "and", emphasized below:

Once a satisfactory showing has been made that existing cities cannot accommodate the projected population growth, and that the area meets the legal test of the third exception, counties will be permitted to extend IUGAs beyond existing incorporated areas into lands covered by the third exception. However, because the fourth, fifth and sixth exceptions permit UGAs to extend beyond existing city limits and areas covered by the third exception to lands where it would be more inconsistent with the Act's first two planning goals to permit urban growth, the Board will apply a much higher level of scrutiny to a county's actions in extending UGAs to such lands. Counties do not have carte blanche permission to include nonurban areas that fall within the fourth, fifth and sixth exceptions within UGAs. In those rare cases when exceptional circumstances so warranted, the counties will be required to convincingly demonstrate their rationale for drawing UGA boundaries to include lands within the fourth, fifth and sixth exceptions, specifically utilizing the statistical information that has been compiled. *Rural Residents*, at 48-49. (Emphasis added.)

## Tacoma

The Board expanded upon *Rural Residents* in the *Tacoma* case. This 1994 decision presaged the 1995 legislature's inclusion of a "reasonable market factor" in Sec. 2 of EHB 1305. The Board held that:

Local circumstances, traditions and identity will result in unique choices and solutions by each county and each city within it. Jurisdictions have broad discretion to make UGA policy decisions. For instance, emphasis on market factors, or a jobs-based economy, or urban village concepts are all policy choices. While such policy choices may be included in the sizing or configuration of the UGA, they must be made in a measurable way and with sufficient documentation as to the rationale. *Tacoma*, at 10. (Emphasis added.)

The Board observed further that:

... comprehensive plans, including FUGAs, must follow the direction provided by the three fundamental purposes of both UGAs and CPPs: (1) to achieve *consistency* among plans pursuant to RCW 36.70A.100; (2) to achieve the *transformation of local governance* within the UGA such that cities are the primary providers of urban governmental services; and (3) to achieve *compact urban development*. *Tacoma*, at 12. (Footnote omitted. Emphasis in the original.)

With regard to the requirements for coordinated and consistent planning between the cities and counties in the unincorporated portions of the UGA, the Board held:

The County asserts that neither the GMA nor state annexation law distinguishes between one city's UGA, and another city's UGA, and that it is therefore appropriate for the County to use a generic "metropolitan" appellation. County Prehearing Brief (County's PHB), at 49-50. While there is no explicit requirement to make such a distinction, the Board finds that it is a necessary implication of the Act. This implied requirement arises from RCW 36.70A.110(2) which provides that "each city shall propose the location of an UGA," and the necessity for a county to know, for each portion of the lands covered by the county's comprehensive plan, which city's comprehensive plan must be addressed to meet the consistency requirements of RCW 36.70A.100 and the joint planning requirements of RCW 36.70A.210(3)(f). *Tacoma*, at 13. (Emphasis added.)

The Board also held that the UGA sizing task is essentially "an accounting exercise":

As the Board held in *Rural Residents*, a county will have to "show its work" to justify the UGA, a part of which will require the definition, in numeric terms, of "urban" uses and densities and an inventory of land available to accommodate the growth. This is essentially a countywide accounting exercise which must show that the net land available for urban development will be sufficient to accommodate the forecasted growth. The integrity of the accounting and the validity of the UGA depend upon the actual utilization of land achieving the densities adopted in the comprehensive plans. It will no longer be sufficient for development permits to simply meet the minimum lot size specified in a zoning ordinance. RCW 36.70A.120 now requires that planning activities, such as permitting and

planning, be consistent with the comprehensive plans. *Tacoma*, at 13. (Footnote omitted).

## FOTL II

In the last IUGA case heard by this Board, *Friends of the Law and Bear Creek Citizens for Growth Management (FOTL II) v. King County*, CPSGMHB Case No. 94-3-0009 (1994), the Board stated:

Although instances clearly may exist where a FUGA should be drawn precisely at existing municipal boundaries, the Act does permit FUGAs to be extended beyond existing city limits. If the legislature intended FUGAs to be identical to corporate limits, it would have explicitly so stated. Instead, the legislature crafted the GMA to allow FUGAs to be designated in six additional areas. *See Rural Residents v. Kitsap County*, CPSGPHB Case No. 93-03-0010 and *Tacoma, et. al., v. Pierce County*, CPSGPHB Case No. 94-3-0001.

...

While the objective analysis is essential, counties also have the latitude to consider subjective factors, such as a land supply market factor and the preferred vision that each

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city expresses in its comprehensive plan. The explicit articulation and balancing of these factors has been described as the requirement to "show your work" when designating urban growth areas. *See Rural Residents*, at 20-21.

...

Although the County may conclude after conducting rigorous analysis (and as urged by FOTL) that it would be best to adopt FUGAs limited exclusively to existing incorporated areas or to encompass only those additional areas already characterized by urban growth that have existing public facility and service capacities to serve such development, the Act does not *per se* mandate such a conclusion. The County is entitled to exercise its discretion in applying the requirements of the Act for designating FUGAs. The appropriate exercise of that discretion may lead to FUGAs being drawn to include unincorporated lands and even non-urbanized lands. *FOTL II*, Order on Dispositive Motions, at 15. (Emphasis added.)

### **b. GMA and Pertinent 1995 Legislative Amendments**

Section 2 of EHB 1305 (Chapter 400, Laws of 1995) amended RCW 36.70A.110 which establishes the requirements for UGAs. Language deleted by EHB 1305 is shown with strike-throughs, and new language is shown with underlining. That section provides:

(1) Each county that is required or chooses to plan under RCW 36.70A.040 shall designate an urban growth area or areas within which urban growth shall be encouraged and outside of which growth can occur only if it is not urban in nature. Each city that is located in such a county shall be included within an urban growth area. An urban growth area may include more than a single city. An urban growth area may include territory that is located outside of a city only if such territory already is characterized by urban growth whether or not the urban growth area includes a city, or is adjacent to territory already characterized by urban growth, or is a designated new fully contained community as defined by RCW 36.70A.350.

(2) Based upon the (~~population~~) growth management (~~planning~~) population projection made for the county by the office of financial management, the urban growth areas in the county shall include areas and densities sufficient to permit the urban growth that is projected to occur in the county for the succeeding twenty-year period. Each urban growth area shall permit urban densities and shall include greenbelt and open space areas. An urban growth area determination may include a reasonable land market supply factor and shall permit a range of urban densities and uses. In determining this market factor, cities and counties may consider local circumstances. Cities and counties have discretion in their comprehensive plans to make many choices about accommodating growth....

(3) Urban growth should be located first in areas already characterized by urban growth that have adequate existing public facility and service capacities to serve such development, (~~and~~) second in areas already characterized by urban growth that will be served adequately by a combination of both existing public facilities and services and any additional needed public facilities and services that are provided by either public or private sources, and third in the remaining portions of the urban growth areas. Urban growth may also be located in designated new fully contained communities as defined by RCW 36.70A.350. (~~Further, it is~~)

(4) In general, cities are the units of local government most appropriate (~~that~~) to provide urban (~~government~~) governmental services (~~be provided by cities, and~~). In general, it is not appropriate that urban (~~government~~) governmental services (~~should not~~) be (~~provided~~) extended to or expanded in rural areas except in those limited circumstances shown to be necessary to protect basic public health and safety and the environment and when such services are financially supportable at rural densities and do not permit urban development....

With regard to the use of the OFM population projections, the legislature adopted ESB 5876 (Chapter 162, Laws of 1995) which amended RCW 43.62.035. Language added by ESB 5876 is underlined, such that the section now reads as follows:

The office of financial management shall determine the population for each county of the state annually as of April 1st of each year and on or before July 1st of each year shall file a certificate with the secretary of state showing its determination of the population for each county. The office of financial management also shall determine the percentage increase in population for each county over the preceding ten-year period, as of April 1st, and shall file a certificate with the secretary of state by July 1st showing its determination. At least once every ten years the office of financial management shall prepare twenty-year growth management planning population projections required by RCW 36.70A.110 for each county that adopts a comprehensive plan under RCW 36.70A.040 and shall review these projections with such counties and the cities in those counties before final adoption. The county and its cities may provide to the office such information as they deem relevant to the office's projection, and the office shall consider and comment on such information before adoption. Each projection shall be expressed as a reasonable range developed within

the standard state high and low projection. The middle range shall represent the office's estimate of the most likely population projection for the county. If any city or county believes that a projection will not accurately reflect actual population growth in a county, it may petition the office to revise the projection accordingly. The office shall complete the first set of ranges for every county by December 31, 1995.

A comprehensive plan adopted or amended before December 31, 1995, shall not be considered to be in noncompliance with the twenty-year growth management planning population projection if the projection used in the comprehensive plan is in compliance with the range later adopted under this section.

### **c. New Holdings**

#### Rank Order for Inclusion of Lands in the UGA

EHB 1305 sheds some light on earlier Board holdings regarding the rank order in which lands may be included within a UGA and how the land supply included in a final UGA must relate to the OFM population projection. As detailed below, the rank order priority set forth in *Rural Residents* for including land within UGAs (cities must be included in a UGA and unincorporated areas may be included as one of six exceptions) remains essentially intact; however, its specific interpretation and application warrants clarification.

Subsection 1 of EHB 1305 appears to direct a “broadening” of the Board’s *Rural Residents* holdings. The text added to RCW 36.70A.110(1), “whether or not the urban growth area includes a city,” clarifies that it should now be easier for a county to include unincorporated urbanized area in an FUGA than it was prior to the amendments. The Board presaged this clarification in its *FOTL II* holding cited above. This new language also validates ongoing trends and the logic of other Board holdings. For example, since the June 3, 1994, adoption date of the *Rural Residents* decision, a number of significant actions have occurred and relevant new facts have become

[20] known. Many city comprehensive plans have been adopted. This gives a clearer indication of

[21] how much growth cities actually do have the capacity to accommodate. Also, the Board has held that city comprehensive plans are permitted to have more population capacity than is

[22] allocated by a county, absent a CPP to the contrary. Moreover, in keeping with the Act’s desired “transformation of local governance” (*see Snoqualmie*, at 9), there is a continuing trend

[23] for urbanized areas outside of cities to annex to existing cities or to incorporate. Finally, the Board has held in the present case that a central organizing principle of the GMA is compact urban development within a rural/resource lands landscape. These facts and Board decisions lead us to conclude that it is appropriate to respond to the amendments in EHB 1305 by revising and amplifying upon the application of the general rule and six exceptions from *Rural Residents*. Specifically, the Board now adopts a new holding to interpret and apply the general test and six

exceptions set forth in *Rural Residents*. For purposes of comparison, the Board repeats below language from *Rural Residents*, showing new language with underlining and deleted language with strike-throughs as follows:

~~Once~~ Regardless of whether a satisfactory showing has been made that existing cities ~~cannot~~can accommodate the projected population growth, ~~and that the area meets the legal test of the third exception,~~ counties will be permitted to extend ~~FUGAs~~ designate FUGAs beyond existing incorporated areas ~~into~~ on lands covered by the third exception. However, this does not give counties carte blanche permission to designate as UGAs all urbanized unincorporated lands, because to do so would violate two of the fundamental purposes that both UGAs and CPPs must serve: to achieve the transformation of local governance within the UGA such that cities are, in general, the primary providers of urban governmental services and to achieve compact urban development. See Tacoma, at 12. It must be remembered that much of the impetus to adopt the GMA was the sprawling urbanization of many of these unincorporated areas. It would be illogical to now blindly include within UGAs not only every unincorporated parcel urbanized within the past century, but non-urbanized intervening lands. The Board will give a higher degree of [\[24\]](#) scrutiny to UGA challenges that allege that these fundamental purposes are thwarted. ~~because~~ [T]he fourth, fifth and sixth exceptions would permit UGAs to extend not only beyond existing city limits but even beyond urbanized unincorporated ~~and~~ areas covered by the third exception. Because including such ~~to~~ lands ~~where it would be more inconsistent with the Act's first two planning goals regarding where to permit urban growth, the Board will apply a much higher level of scrutiny to a county's actions in extending UGAs to such lands. Counties do not have carte blanche permission to include nonurban areas that fall within the fourth, fifth and sixth exceptions within UGAs. In those rare cases when exceptional circumstances so warrant, the counties will be required to convincingly demonstrate their rationale for drawing UGA boundaries to include lands within the fourth, fifth and sixth exceptions, specifically utilizing the statistical information that has been compiled, and demonstrating how such lands serve the fundamental purposes of UGAs and CPPs cited above.~~

Turning to the other sections of the 1995 amendments to RCW 36.70A.110, the Board finds that Subsection (2) of RCW 36.70A.110 buttresses earlier Board holdings (e.g., it establishes a “reasonable land market supply factor” which parallels language in *Tacoma*, at 10).

Subsection (3) is somewhat incongruous in the context of the whole section, because rather than dealing with how to draw the UGA, it deals with where to locate growth once the UGA has been drawn. This conclusion is inescapable due to the legislature’s addition of the phrase “... and third in the remaining portions of the urban growth areas.” Had the subsection instead said “... the remaining portions of the county,” then this subsection would provide useful direction for drawing the UGA. *See also Rural Residents*, at 46, where the Board first noted the distinction between determining where to draw the UGA boundaries and, once having done so, where to

locate growth within the UGA.

Subsection (4) does two things. First, it says that “in general” cities are the units of local government most appropriate to provide urban governmental services. This buttresses the Board’s earlier holdings that cities are to be the primary providers of urban governmental services (*see Snoqualmie*, at 11 ) but that this primary role does not mean that cities will be the exclusive providers of urban governmental services (*see Poulsbo v. Kitsap County*, CPSGMHB Case No. 92-3-0009, [*Poulsbo*] Order Granting Kitsap County’s Petition for Reconsideration, at 13). Second, this subsection says that “in general” urban governmental services should not be extended to or expanded in rural areas, except in limited exceptional circumstances where environmental, public health and safety issues require it. It further clarifies that such exceptions are to be “supportable at rural densities and do not permit urban development” in rural areas. This

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buttresses the Board’s holdings that urban growth does not belong in rural areas.

### Market Factors in Sizing the UGA

We now turn from the question of which lands to include in the FUGA to the question of how large an FUGA must and may be. Two points bear making here. The first has to do with how the OFM population projection is to be used and the second has to do with the upper limit on the maximum size of a FUGA.

RCW 36.70A.110(2) reads, in pertinent part:

... the urban growth areas in the county shall include areas and sufficient to permit the urban growth that is projected to occur in the county for the succeeding twenty-year period.

(Emphasis added.)

In the *Rural Residents* case, the County argued that “sufficient to permit” equates with “at least,” and implied there was no upper limit on how much land a county could include in its UGA. The Board rejected this argument, pointing out that, if the OFM projection was not a “ceiling,” there would be no sense in requiring counties to “offset” the UGA when including fully contained communities or master planned resorts. “Sufficient” in this context is not synonymous with “enough” or “at least.” Rather, it conveys that the amount of land should be sufficiently (i.e., appropriately) sized in view of the demand. This logic is buttressed by the derivation of the word “sufficient” as found in *Webster’s II New Riverside University Dictionary*, 1988, at 1159.

“Sufficient” means: “from the Latin *sufficiens*, pr. part. of *sufficere*, to suffice. 1. That is enough: ADEQUATE. The derivative, “to suffice” is defined as: “from the Latin *sufficere*. 1. To meet present needs or requirements. be sufficient to. 2. To be equal to a specified task.” (Emphasis added.)

This conclusion has been buttressed by ESB 5876, which established that OFM is to adopt a population range for each county, rather than a single point. Thus, the legislature has simply moved the theoretical population ceiling from the midpoint of OFM’s projected range to the top of the range.

ESB 5876 did not amend the language in RCW 36.70A.110(2) regarding what the Board has

interpreted as the exclusive use of OFM's projections. This clearly indicates that the GMA still prohibits counties from using their own population figures, rather than OFM's, in sizing UGAs. It clarifies that counties are to consider the population projection as a finite quantity. This conclusion is further reinforced by the fact that the legislation did not amend the requirement for a county to "offset" the size of the UGA if it chooses to include in its comprehensive plans and implementing regulations provisions for fully contained communities or master planned resorts. The sizing of UGAs remains dependent upon an accounting exercise requiring a reasonable relationship between its selected size and the likely future population for each county.

With regard to the question of the permissible size of a "land supply cushion" or "market factor," several conclusions are in order. The Board has previously held that a county may size its UGA with more land than is required to meet the demands of 20 years of projected growth. *See Tacoma*, at 10. This "excess land supply" may be called a "market factor," as EHB 1305 does, or a "safety factor" or "cushion." What a county chooses to call such excess land supply does not matter so much as that such a factor is explicitly quantified and expressed as a percentage of land beyond the minimum necessary to accommodate the OFM projected growth, at the land use densities stated in each jurisdiction's land use map. Sec. 2 of EHB 1305 further establishes that such a market factor must be "reasonable." This legislative directive embodies the Board's prior holdings. Not only must the UGA be based on the OFM population projection, but at *some* point of excess capacity (i.e., with some added market factor), the size of the UGA is not reasonable.

**While it is difficult to draw an absolute limit beyond which a county may not go in using such a factor, the Board holds that a "market factor bright line" will be drawn at the 25 percent threshold.** The Board takes official notice of the DCTED publication, *Issues in Designating Urban Growth Areas — Part I — Providing Adequate Urban Area Land Supply*, March 1992. Citing several approaches in other growth management states, this publication discusses the concept of an excess land supply and the need to strike a balance in sizing UGAs so as to contribute neither to sprawl nor to increased housing costs. It reports the results of national research by F. Stuart Chapin and Edward J. Kaiser:

... a [safety factor] allows for unanticipated choices of individuals and firms who may acquire land in excess of the anticipated need, and it allows for land which may be held out of use because of personal preferences or whims of a few property owners or because of legal complications which make the land unavailable for immediate development. However, they caution that the excess should not be more than 25 percent... When community plans provide a residential land supply which is more than 25 percent of the area needed to accommodate projected growth, the Florida Department of Community Affairs reviews the plans more closely. *Issues in Designating Urban Growth Areas- Part I — Providing Adequate Urban Land Supply*, at 16-17.

The Board concludes that this is a prudent approach to implement the legislature's direction that a "reasonable" market factor may be included in sizing the UGA. Where counties adopt a land supply market factor between 1 and 1.25 (i.e., of 25 percent), the Board will presume that the factor is reasonable. In evaluating allegations that a county has used an unreasonable land supply

market factor, the Board will give increased scrutiny to those cases where the factor exceeds the 25 percent bright line. In determining whether the county's choice was reasonable, the Board shall consider three general questions:

*(1) What is the magnitude of the "land supply market factor" beyond the 25 percent bright line?* Exceeding the 25 percent threshold by ten percent (thus utilizing a factor of 35 percent) is a very different circumstance than exceeding it several-fold (for example, utilizing a 75 percent excess supply). At some point, the exception swallows the rule. The greater the degree the county's land supply exceeds the 25 percent bright line, the more closely the Board will scrutinize the record for the indicators described in (2) below and consider remanding the UGA with direction to include the approach described in (3) below.

*(2) Is there other evidence to suggest that the land supply market factor is not reasonable?* Various indicators might suggest that a large excess land supply (i.e., 25 percent+) was the cumulative or inadvertent consequence of failures to comply with other requirements of the Act, rather than the deliberate addition of a "market supply" increment beyond the land supply that is necessary for the projected growth. If the preponderance of the evidence in a record so indicates, the Board would find the "market" factor not reasonable.

For example, was the UGA sized using the criteria listed in RCW 36.70A.110? Did the County "show its work"? Were a variety of rural densities included? Has there been a showing that the cities within the county, as evidenced in their adopted GMA comprehensive plans, cannot accommodate more population and employment than was allocated by the county? Does the county's capital facilities element indicate that adequate services will be available for the type and density of uses designated both for the UGA and the rural area? Are the types and densities of land uses allocated to the rural areas violative of the Act's prohibition against urban growth in a rural area?

*(3) Has the county also availed itself of other approaches, such as continuously monitoring land supply and making necessary adjustments over the life of the plans for the county and its cities?*

The Act requires that counties adopt a UGA of sufficient size to accommodate 20 years of projected growth. However, the market factor is not the only device available to achieve a supply that is neither too large nor too small. The Act also requires review of UGAs at least every ten years (RCW 36.70A.130(3)); no more than annual reviews of comprehensive plans (RCW 36.70A.130(2)); and even more frequent amendments to the CPPs. Although the size of the UGA should not be increased in a frequent or cavalier manner, counties should consider the option of including a more modest land supply market factor at the beginning of the twenty-year period, and considering adjustments on a three- or five-year cycle.

If, in answering questions 1, 2 and 3, the Board concludes that the land supply market factor above 25 percent is not reasonable (i.e., it is too large), the UGA will be remanded.

## **2. Permitted Uses in Urban Areas and Rural Areas**

Apart from the rank order for inclusion of lands within the UGA and reasonable size for a land supply market factor, a series of related and fundamental questions remain. What *specifically*

does the Act permit in rural areas? Even more basically, what is rural, what is urban and what is growth? When does development constitute impermissible sprawl <sup>[26]</sup> and how does the concept of “suburban” fit into the GMA cosmology?

Part of the difficulty in answering these questions arises because the Act does not include a definition of “rural.” The Act establishes that urban growth should occur only in urban areas, but does not explicitly say what should be permitted in rural areas. Reading the Act’s definition of “urban growth,” the Board has held that the Act does not allow urban growth in rural areas, but more specific parameters are necessary to determine when, and under what circumstances, residential, commercial, industrial and public facilities growth may be permitted in a rural area, which is to say, when and under what circumstances do such uses constitute “rural growth”?

**We begin with a review of what prior Board Decisions and the Act have to say about “urban growth,” “rural,” and “suburban.” From this discussion will emerge a series of holdings that set forth the circumstances under which residential uses are permissible in the rural area. Future Board decisions in other cases will examine the parameters for commercial, industrial and public facility uses in rural areas.**

#### **a. Prior Board Decisions**

The Board has held that urban growth is prohibited in a rural area. In *Rural Residents*, the Board held:

RCW 36.70A.110(1) uses the somewhat equivocal word “encouraged” with respect to what is to happen inside the designated urban growth area. Significantly, however, it says something very different with regard to the land outside the urban growth area. The phrase “... outside of which growth can occur only if it is not urban in nature” is not equivocal. It does not say “reduce” or “discourage” urban growth outside the UGA. The use of the word “only” clearly means that urban growth is prohibited outside of the UGA. The only manner to achieve such a prohibition is for the IUGAs to have some immediate and controlling regulatory effect relative to what happens beyond the designated growth area. *Rural Residents*, at 20. (Emphasis added.)

RCW 36.70A.070(5) indicates that designated urban growth, agriculture, forest or mineral resource lands shall be excluded from the rural element of a comprehensive plan. Accordingly, WAC 365-195-210(19) basically comports with this provision by defining “rural lands” as:

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

The Board has adopted this definition:

The Board therefore has considered WAC 365-195-210(19) and adopts it as the proper definition of “rural” in a GMA context, with the caveat that the word “timber” refers to forest lands. See RCW 36.70A.030(8) and .170(1)(b). *Rural Residents*, at 41.

The Board also addressed the issue of what constitutes impermissible growth in a rural area in another 1994 Kitsap County case, *KCRP I*. There, the Board held:

The true test of whether the CEO results in urban growth is to ask the question — what does the CEO permit to be physically constructed on the ground, in the real world, and how does that potential outcome square with the Act's definition of urban growth?*KCRP*, at 16.

The specific enactment before the Board in the *KCRP* case was a Conservation Easement Ordinance (CEO), to be used in the rural area, but the same test would be applied to any GMA enactment, whether a policy document, such as a comprehensive plan, or an implementing development regulation, in order to determine whether it permits urban growth to occur in a rural area.

With regard to specific residential densities, to date the Board has held only that “a density of one unit per ten acres is a rural density.”*Tacoma*, at 21.

### **b. GMA and Pertinent 1995 Legislative Amendments**

In the previous section, the Board discussed the amendments to RCW 36.70A.110 regarding the rank order for inclusion of land inside urban growth areas, but the focus here is on what may be outside the UGA, in the rural area. The Board’s holding in *Rural Residents* that urban growth is prohibited in rural areas is validated both by what the legislature did and did not do in enacting EHB 1305. First, the final phrase in the new subsection (4) of RCW 36.70A.110 directs that limited urban governmental services in a rural area are to be “financially supportable at rural densities and [do] not permit urban development.” This comports with the Board’s holding cited above that urban growth is prohibited in a rural area.

Equally significant is that the statutory linchpins for this *Rural Residents* holding, cited above, were not amended by the legislature. The definitions of “urban growth” and “urban governmental

services” remain as they have been since 1990; <sup>[27]</sup> neither did the legislature amend the following critical phrase in subsection (1) of RCW 36.70A.110:

... each county ... shall designate an urban growth area or areas within which urban growth shall be encouraged and outside of which growth can occur only if it is not urban in nature. (Emphasis added.)

Section 3 of EHB 1305 did amend the portion of the GMA that discusses what is to be in the rural element of a county comprehensive plan. RCW 36.70A.070 (5) now provides:

Counties shall include a rural element including lands that are not designated for urban growth, agriculture, forest, or mineral resources. The rural element shall permit appropriate land uses that are compatible with the rural character of such lands and provide for a variety of rural densities and uses and may also provide for clustering, density transfer, design guidelines, conservation easements, and other innovative techniques that will accommodate appropriate rural uses not characterized by urban growth. (Language added by EHB 1305 is underlined).

The addition of the word “appropriate” reinforces the premise that not all types of growth should be permitted in the rural area. The phrase “and uses” underscores that uses other than residential are appropriate in a rural area. The reference to “clustering, density transfer, design guidelines,

conservation easements, and other innovative techniques” appears to encourage a kind of compact rural development. *See KCRP*, at 15.

### **c. New Holdings**

The GMA universe consists of three major land use types: (1) *resource lands* (designated forest, agricultural and mineral resource lands); (2) *urban lands*, which are within UGAs; and (3) *rural lands* which are entirely outside UGAs and exclude resource lands. [28] In order to discern the uses permitted in each of these types of lands, it is important to recognize that various provisions of the Act create a relationship between and among them. For example, the great majority of resource lands are outside the UGAs, and in fact, provide some of the rationale for the location of the UGAs. Also, forest lands and mineral resource lands are typically a part of the landscape that surrounds, but does not penetrate, the already urbanized areas of the region. Because such resource lands also typically abut, or are surrounded by, non-resource rural lands, they are sensitive to the patterns of development that occur in those nearby rural areas. This relationship has been characterized as:

One of the most important symbiotic relationships is the one between rural and resource lands. Properly planned rural areas provide necessary support of and buffering for resource lands. *Achen, et al., v. Clark County*, WWGMHB Case No. 95-2-0067, at 28.

Based upon a reading of the Act, prior Board decisions and the arguments in the present cases, we are now prepared to hold what residential densities are permitted in urban and rural areas.

#### Urban Areas

The Act does a good job of describing what is to be in urban areas. The definitions of urban growth and urban governmental services describe the form and intensity of development, services and infrastructure that are to be developed in urban areas. The Board has also clarified that critical areas exist wherever they are found, be it in or outside of urban areas.

Compact urban development was discussed at length earlier, but it bears repeating here that this is a central organizing principle, both at the county-wide level where the size and shape of UGAs are determined, and at the community and project level where growth is actually manifested on the ground. The Board pointed out in the *Tacoma* case that there is a relationship between these levels because the GMA accounting that justifies the size and shape of a UGA depends upon achieving efficient land use utilization at the plan and project level. *See Tacoma*, at 13.

#### **The Board again holds that new urban land uses may be located only within UGAs.**

Although there may be areas within UGAs that have historically been rural and presently look rural, these areas may not be platted or otherwise developed in a manner that thwarts their ultimate urban use. *See Robison v. Bainbridge Island*, CPSGMHB Case No. 94-3-0025 (1995) (*Robison*), at 32.

The language that the legislature added to RCW 36.70A.110(2) requires that UGAs “shall permit a range of urban densities and uses.” The range of densities to be selected may be very high at the upper end, for example, the residential density and non-residential intensity of downtown Seattle.

The Board has previously acknowledged that the specific location, density/intensity and development standards for accommodating growth within cities is subject to broad local discretion. *See Aagaard*, at 9.

Some have contended that 1-acre and 2.5-acre lots are neither urban nor rural, but instead are “suburban” and are permitted by the Act. The Board rejects this argument. It flies in the face of the Act’s clear direction to protect all areas from “inappropriate conversion to sprawling low density development” (RCW 36.70A.020(2)), incorrectly presumes that roads are the only local government services required by such a land use pattern, and hangs its intellectual hat on the skimpiest of pegs — two oblique references that the Act makes to this term. [29]

**The Board holds that “suburban” is a subset of “urban.”** [30] A pattern of 1- and 2.5-acre lots meets the Act’s definition of urban growth, which is to say that it precludes “the primary use of such land for the production of food, other agricultural products, or fiber, or the extraction of mineral resources.” RCW 36.70A.030(14). To argue that the ability to grow berries on a 1- and 2.5-acre lots renders them “rural,” within the meaning and objectives of the GMA, is preposterous.

[31] The Board’s conclusion that suburban is a subset of urban comports not only with the definition in the Act itself and the earlier referenced experiences in other states, but with common sense. A pattern of such lot sizes is an extremely land-consumptive way to accommodate growth and is the antithesis of compact urban development.

However, a pattern of 1- or 2.5-acre lots is not an appropriate urban density either. **Absent a persuasive and well documented justification of a unique area-wide circumstance (e.g., a major equestrian facility surrounded by ‘horse-acre lots’ or large areas with very steep slopes or wetlands) the Board holds that an urban land use pattern of 1- or 2.5-acre parcels would constitute sprawl.**

At the low end of the range of permissible urban densities, it is difficult to draw a universally appropriate maximum urban lot size. Several sources in the literature and the experience of growth management in other states strongly suggest that anything less than seven dwelling units per acre is not supportive of transit objectives [32] and anything less than four per acre is sprawl.

[33] **As noted above, the Board holds that up to 2.5-acre lots are urban. However, rather than adopt a maximum urban lot size, the Board instead adopts as a general rule a “bright line” at four net dwelling units per acre.** Any residential pattern at that density, or higher, is clearly compact urban development and satisfies the low end of the range required by the Act. Any larger urban lots will be subject to increased scrutiny by the Board to determine if the number, locations, configurations and rationale for such lot sizes complies with the goals and requirements of the Act, and the jurisdiction’s ability to meet its obligations to accept any allocated share of county-wide population. Any new residential land use pattern within a UGA that is less dense is not a compact urban development pattern, constitutes urban sprawl, and is

prohibited. There are exceptions to this general rule. For example, 1- or 2.5-acre lots may be appropriate in an urban setting in order to avoid excessive development pressures on or near environmentally sensitive areas. However, this circumstance can be expected to be infrequent within the UGA and must not constitute a pattern over large areas.

### Rural Areas

In determining what residential uses are permitted in rural areas, it must first be remembered that growth is permitted in the rural area. RCW 36.70A.070(5), as amended by EHB 1305, permits “appropriate land uses that are compatible with the rural character of such lands and provide for a variety of rural densities and uses.” The definition of “urban growth” enables one to distinguish between “growth” generally and “urban growth.” Simply put, growth is urban growth if it:

Makes intensive use of the land ... to such a degree as to be incompatible with the primary use of such land for the production of food, other agricultural products, or fiber, or the extraction of mineral resources.

If growth does not make such intensive use of the land, then it is not urban growth.

Significantly, the definition of urban growth specifically focuses on the intensity of the use of land, specifically naming such physical improvements as “buildings, structures and impermeable surfaces.” Thus, the net intensity of physical improvements placed on rural land can, alone, be conclusive in determining if growth proposed for a rural area can be permitted or if it crosses the threshold into impermissible urban growth. Dimensions of development intensity traditionally include building height, setbacks, parking requirements, impervious surface coverage, the degree of grading and its consequent removal of existing vegetation.

The challenge then is to discern what are “appropriate land uses” in the rural area. What type of residential uses and activities does the Act contemplate will furnish a landscape that is rural in both character and nature?

The Puget Sound Regional Council’s 1994 Rural Workshop opined that:

Rural lands primarily contain a mix of low-density residential development, agriculture, forests, open space and natural areas, as well as recreation uses. Counties, small towns, cities and activity areas provide limited public services to rural residents. Rural lands are integrally linked to and support resource lands. They buffer large resource areas and accommodate small-scale farming, forestry, and cottage industries as well as other natural-resource based activities. *Vision 2020 — 1995 Update*, at 27.

**The Board holds that the above description of rural land accurately describes the intensity and character of new residential activity and development that the Act permits in rural areas (i.e., land outside the UGA, excluding resource lands). The Board held above that a predominant pattern of 1- and 2.5-acre lots within the urban area would also constitute *sprawl*. The Board now holds that such a development pattern within the rural area would also constitute *sprawl*. Continuation of sprawl in either area violates the Act (see RCW**

36.70A.020(2)).In addition, the Act requires a variety of rural densities within the rural area (*see* RCW 36.70A.070(5)) which will typically require a range from ten-, to 20-, 40- and 80-acre lot sizes.

The Board is aware that there are many 1- and 2.5-acre parcels throughout the region.These can be shown on a current land use map and continue with whatever rights are guaranteed by state and local law, such as the vested rights doctrine and continued use under alegal nonconforming status.However, the county’s future land use map and zoning regulations may not permit the future creation of such lot sizes. **The Board now holds that, as a general rule, new 1- and 2.5-acre lots are prohibited as a residential development pattern in rural areas.**

#### **d. summary**

In specifically rejecting the sprawl model for Washington State, the GMA asserts the importance of taking a balanced, long-term view and promoting and serving the broad public interest. When the GMA’s substantive requirements for county plans and FUGAs (i.e., the above holdings) are read together, what emerges is a sketch, in broad strokes, of a specific physical and functional regional outcome.The Act’s mandated outcome stands in sharp contrast to the undifferentiated suburban sprawl that, in many other parts of the country, has contributed to environmental degradation, economic stagnation and an eroded sense of community that, in turn, has dire social consequences.

Rather, the Act mandates that local governments in Central Puget Sound shape the next 20 years of growth into compact urban development surrounded by a landscape of rural and resource lands. In combination with the other requirements of the Act, the required substantive outcome of RCW 36.70A.070, .110 and .210 provides the best chance for this region to achieve sustainable economic development, protect the environment and assure a high quality of life for Washington residents.

### **IV. DISCUSSION OF SPECIFIC LEGAL ISSUES AND CONCLUSIONS**

Fifteen pages of the Board’s Prehearing Order list 86 legal issues to be determined in this case.

[34]

In an effort to save space, the Board incorporates by reference the Prehearing Order’s recitation of the legal issues and will not repeat them in the text of this document.The discussion headings will have footnote references to the issues that will be determined.

[35]

#### **A. OFM POPULATION PROJECTION ISSUES**

Certain petitioners contend that the County did not use the Office of Financial Management’s (OFM) population projections when it designated its final UGAs.The relevant part of RCW 36.70A.110(2) states:

Based upon the growth management population projection made for the county by the office of financial management, the urban growth areas in the county shall include areas and densities sufficient to permit the urban growth that is projected to occur in the county

for the succeeding twenty-year period....

In *Rural Residents*, the Board first held that when determining the population component of the formulation of UGAs, counties must use only OFM's population projections. *Rural Residents*, Final Decision and Order, at 33-34 and Order Denying Kitsap County's Petition for Reconsideration, at 2-3; *see also Tacoma*, Final Decision and Order, at 25. "Counties cannot add their own calculation to nor deduct from OFM's projections." *Rural Residents*, Final Decision and Order, at 34.

OFM is statutorily directed to prepare population projections to be used for growth management planning purposes, and to review these projections with counties prior to adopting them.

... At least once every ten years the office of financial management shall prepare twenty-year growth management planning population projections required by RCW 36.70A.110 for each county that adopts a comprehensive plan under RCW 36.70A.040 and shall review these projections with such counties and the cities in those counties before final adoption.... RCW 43.62.035.

On January 31, 1992, OFM published its "Washington State County Population Projections, 1990-2010, 2012." The year 2012 forecast for Kitsap County's population was 269,687. *Kitsap County v. OFM*, Final Decision and Order, Finding of Fact No. 6; Exhibit 3 to County's Brief, at 5c-2.

In March of 1992, the County, acting in conjunction with its four incorporated cities through the Kitsap Regional Planning Council, (**KRPC**), projected a Kitsap County total population of 280,985 in the year 2010. This figure is set forth on page 36 of Appendix E of the Kitsap County-wide Planning Policy. *Kitsap County v. OFM*, Final Decision and Order, Finding of Fact No. 7.

In May of 1994, KRPC updated the population allocations by subarea to extend to the year 2014. This action resulted in an estimate of 303,460 people by 2014. This is the amount adopted in the Plan which thus indicates that the county-wide total projection for Kitsap County is 303,460 people for the year 2014. Plan, Part I, at 11; *see also Kitsap County v. OFM*, Final Decision and Order, Finding of Fact No. 9.

On June 7, 1995, the KRPC "rolled back" its population projection from the year 2014 to the year 2012 in order to "coincide with the current OFM projection period." Exhibit 4 to County's Brief, at 4a-4. Consequently, the KRPC now plans on a year 2012 population of 292,224 persons.

Furthermore, on July 10, 1995, the Kitsap County Board of Commissioners passed a motion to "approve" the KRPC's recommendation regarding population projections. Exhibit 5 to County's Brief, at 8. The Board notes that the record contains no indication that the County Commissioners intended to amend the Plan, or that the Plan indeed was amended to correspond with this action (which would require publication of notice of adoption pursuant to RCW 36.70A.290(2)). In addition, the KRPC's 2012 projection is not the same as OFM's for that year.

The Plan explains the County's rationale for not using OFM's projections:

KRPC determined that the OFM forecasts did not reflect past population trends and realistic population growth in Kitsap County. This assertion was based on a number of significant reasons: first, Kitsap County's forecast by OFM was based on an average annual growth rate of 1.9 percent, which, compared to the average growth rate experienced

between 1980-90 of 2.89 percent, appeared deficient. Second, Kitsap County has experienced a strong economic and employment base, specifically with stability offered by the military presence. This security has softened recessions and high unemployment rates, thus presenting consistent employment opportunities. Third, Kitsap County has, and is currently, attracting residents who are military retirees, or commuters to Seattle or Tacoma. The county's proximity to metropolitan areas, paired with lower housing prices, has made Kitsap an attractive and affordable place to live. These significant reasons, as well as others [not identified here], indicated to the KRPC that Kitsap County would continue to experience a level of growth comparable to that in the last decade.

It was the consensus of KRPC to formulate population forecasts which accurately reflected the historical population trends of Kitsap County, as well as considering the economic future. The ensuing forecasts were higher than the original forecasts from OFM. It was these population forecasts which Kitsap County and the cities planned for when developing their comprehensive plans.... Plan, Part I, at 10.

In *Kitsap County v. OFM*, the Board rejected the County's request pursuant to RCW 36.70A.280 (4) to adjust OFM's 1992 population projection. Therefore, the Board has already concluded that the reasons described in the Plan are insufficient to cause an adjustment to OFM's projection.

One of the reasons for using OFM's projections exclusively is that:

... OFM is a state agency independent of local political considerations. If counties were free either to alter OFM's projections or derive their own projections, local biases could enter into the formula and ... enable counties to skew the forecasts to justify any size UGA.

Accordingly, by placing the sole responsibility on OFM for making countywide population projections, the legislature has accomplished an overriding purpose of the GMA: achieving consistency.... *Rural Residents*, Final Decision and Order, at 34.

Local politics are the backbone of American democracy and the Act gives local elected officials broad discretion in making a number of policy choices. Sizing UGAs to accommodate the projected growth is one such policy choice. However, projecting the size of the population to be accommodated is not. Instead, population forecasting is a technical exercise to determine the likely, as opposed to the desired, future population. *See Kitsap v. OFM*. The legislature has clearly indicated that population forecasting must remain solely in the purview of OFM, and OFM's projections are what a county's other policy determinations in sizing UGAs must be based upon. If the language of RCW 36.70A.110(2) is not crystal clear on that point, certainly the Board's decisions in *Rural Residents* and *Tacoma* are. The legislature is presumed to be aware of the interpretations given the GMA by the quasi-judicial bodies the legislature created to interpret the Act. *Rural Residents* was decided on February 16, 1994; the Final Decision and Order in the *Tacoma* case was entered on March 4, 1994.

As the general discussion in Part III of this document indicates, the 1995 legislature has subsequently amended RCW 36.70A.110. Importantly, however, the legislature did not amend the provisions of subsection (2) that indicate that the population component of designating UGA

boundaries must be based exclusively upon OFM's projections. In fact, the legislature rejected attempts to amend that subsection to make OFM's projections a minimum figure only (House Bill 1824 and Senate Bill 5620, Supplemental Exhibit B to State's Reply) or to grant counties the sole power to make projections (House Bill 1925 <sup>[36]</sup>).

Accordingly, OFM's 1992 projection for the County remains the exclusive population projection to be used in designating UGAs. **The Board holds that the County did not base its UGA on the proper projection.**

Before leaving this issue, the Board will further address legislative amendments to RCW 36.70A.110 that were passed in 1995. ESB 5876 (Chapter 162, Laws of 1995) took effect immediately on April 27, 1995. It amended RCW 43.62.035 to require OFM by December 31, 1995, to express its population projections "as a reasonable range developed within the standard state high and low projection." In addition, as was stated earlier in this decision, a new paragraph was added which states:

A comprehensive plan adopted or amended before December 31, 1995, shall not be considered to be in noncompliance with the twenty-year growth management planning population projection if the projection used in the comprehensive plan is in compliance with the range later adopted under this section.

The County points out that the KRPC's Director contacted OFM and ascertained that:

... OFM calculates a state high and low projection as a part of preparing population estimates. Presently, the "high" range is 9% higher than the official forecast while the "low" is 6.5% less. Exhibit 3 to County's Brief, at 5c-2.

OFM's 1992 population projection for Kitsap County in the year 2012 (269,687 people) plus nine percent equals 293,959 people. In comparison, the KRPC population allocation for the year 2012 is 292,224. Therefore, KRPC's population projection (but not the Plan's) falls within the upper range of OFM's *potential future* projection. Nonetheless, the County has not complied with requirements of the Act. The Plan was adopted on December 29, 1994. Therefore, at the time of adoption, the only relevant projection that existed was OFM's projection of 269,687 people in the year 2012. Pursuant to RCW 36.70A.110(4) and (5), UGA designations must be included within comprehensive plans. Pursuant to RCW 36.70A.110(2), the population projections used in designating UGAs must be based upon OFM's projections. The Plan did not use this projection. Moreover, the Plan still does not use this projection. Instead, it indicates a year 2014 projection of 303,460. Although the County may intend to use KRPC's 2012 projection, it has not formally amended its Plan to so indicate. Any person who reads the Plan will see only the year 2014 KRPC projection.

In addition, OFM has not derived new projections. It has until December 31, 1995, to do so. When OFM complies with the requirement of RCW 43.62.035 to establish new population projections expressed as a range, everyone will know whether the Plan falls within the appropriate range. At this time however, it is premature for the Board to guess what that range will be. According to the County, OFM has historically made an unpublished projection that extends nine percent higher

than the published projection. There is no confirmation from OFM of that fact in the record and, more importantly, no indication that OFM will use that same range when it issues its new projection for Kitsap County. Until OFM complies with the statute by providing a new population projection, the Board cannot ascertain whether the projected population used by the County to draw its FUGAs falls within the yet-to-be established range.

The Board reiterates that the Plan currently under review contains a year 2014 population projection of 303,460 persons. That is the wrong year, based upon the wrong entity's projections, and clearly well above even the nine percent higher range the County expects OFM to adopt. However, pursuant to the 1995 amendments to RCW 36.70A.110, at the time OFM announces its new range of projections, the County's Plan may no longer be construed to be in non-compliance with the Act's requirements to use OFM's projection.

### **Conclusion No. 1**

The Board concludes that the County failed to comply with the requirements of RCW 36.70A.110 (2). The Plan uses a population projection for the year 2014, compiled by the KRPC rather than OFM, that is well above the original OFM projection of 269,687 persons for the year 2012. Although the KRPC has subsequently "rolled back" its projection to the year 2012, and the County has passed a motion to accept the KRPC's 2012 projection, the County has not amended its Plan to incorporate that year 2012 projection of 292,224 persons.

[37]

## **B. URBAN GROWTH AREAS ISSUES**

### **Are Kitsap's UGAs Too Large?**

Several petitioners contend that the UGAs the County designated are too large. RCW 36.70A.110 now requires in relevant part:

(1) Each county that is required or chooses to plan under RCW 36.70A.040 shall designate an urban growth area or areas within which urban growth shall be encouraged and outside of which growth can occur only if it is not urban in nature. Each city that is located in such a county shall be included within an urban growth area. An urban growth area may include more than a single city. An urban growth area may include territory that is located outside of a city only if such territory already is characterized by urban growth whether or not the urban growth area includes a city, or is adjacent to territory already characterized by urban growth, or is a designated new fully contained community as defined by RCW 36.70A.350.

(2) Based upon the growth management population projection made for the county by the office of financial management, the urban growth areas in the county shall include areas and densities sufficient to permit the urban growth that is projected to occur in the county for the succeeding twenty-year period. Each urban growth area shall permit urban densities and shall include greenbelt and open space areas.... (Emphasis added.)

In *Rural Residents*, the Board pointed out that population density is closely related to population projections and allocations:

...In order to achieve sufficient urban densities, a county must determine the geographic size of a UGA. Accordingly, counties must specify how many acres (or some other common measurement of land) are within a UGA so that, in the event of an appeal, the Board can determine whether the selected UGA is indeed "sufficient." In undertaking this requirement, counties must distinguish between gross acres and net (or buildable) acres. For instance, undevelopable critical areas, open spaces, rights of way, etc. should be deducted from the gross acreage. *See also* WAC 365-195-335(3). Counties have a great deal of discretion in how they achieve this requirement. The Board only demands that counties "show their work" so that both the general public and the Board (if a UGA is appealed) know how the county derived its UGAs and established the appropriate densities. *Rural Residents*, Final Decision and Order, at 35.

The Board also held that:

... a major purpose of UGAs is to serve Planning Goal 1 and Planning Goal 2. *Rural Residents*, Final Decision and Order, at 17.

Contrary to the County's assertion that the Board "elevated the first two planning goals of RCW 36.70A.020 above the others" (County's Brief, at 13), the Board affirmed that Goals 1 and 2 are "particularly germane" to county-wide issues. The Board has repeatedly acknowledged that the preamble to RCW 36.70A.020 states that the goals are not listed in order of priority. That statement does not mean, however, that certain goals are not more important than others when placed in context of a specific GMA requirement listed elsewhere in Chapter 36.70A RCW. Implementation of most of the 13 planning goals is carried out by more specific requirements of the Act. For instance, Planning Goal 11, citizen participation, is implemented through the requirements of RCW 36.70A.140. Likewise, the Board concluded that Planning Goals 1 and 2 are primarily achieved by meeting the requirements of RCW 36.70A.110.

Here the County has admitted that its UGAs are too large:

There is no question that the urban growth areas designated in the Kitsap County Comprehensive Plan exceed the area necessary to accommodate the OFM population forecast, even when expressed as a range.... County's Brief, at 16.

However, the County nonetheless contends that it has complied with the GMA since its Plan "reflects important local choices about accommodating growth, as permitted by RCW 36.70A.110 (2)." County's Brief, at 17. In short, the County contends that the Act places no restrictions on designating UGAs. Accordingly, the County continues to reject what it refers to as the Board's "locational hierarchy."

The Board has always agreed with the County that literally read, no restrictions are imposed upon counties in designating UGAs by the language of RCW 36.70A.110(1). The problem with such a narrow, literal reading of the Act is that it makes Planning Goals 1 and 2 and the legislative intent of the Act at RCW 36.70A.010 meaningless. The Board must read the Act as a whole and give weight and meaning to each of its provisions. The fourth sentence of RCW 36.70A.110(1) (which provides that UGAs may include territory outside incorporated areas of cities if the land is "already characterized by urban growth" or "adjacent to territory already characterized by urban

growth”), coupled with the Act’s definition of “characterized by urban growth,” might lead a reader ignorant of the Act’s legislative findings (RCW 36.70A.010) and its Planning Goals 1 and 2 (RCW 36.70A.020(1) and (2)) to conclude that UGAs could be designated virtually anywhere, if not everywhere, in a county. That is because, simply put, virtually every parcel of land in the Central Puget Sound is either “already characterized by urban growth” or “adjacent” to property so characterized.

Such an interpretation would render the planning exercise of designating UGAs a useless activity and therefore an absurd result, particularly in view of the time and money that the legislature, state agencies, local governments and the general public have invested in growth management. The Board soundly rejected the County’s interpretation in *Rural Residents* and continues to conclude that the legislature requires more from local government. As the Board’s general discussion indicates, the general rule and six exceptions first discussed in *Rural Residents* stand. Despite this fact, the Board’s interpretation of how the third exception will be applied has been clarified. That portion of the general discussion in Part III of this decision is incorporated by reference here.

Having thus concluded that counties clearly have the authority to extend UGA boundaries beyond city limits, but that the restraints on how far the UGA boundaries can be extended beyond those limits continue to exist, the Board must now determine whether the area encompassed by the County’s UGAs is too large.

### **Designated UGAs**

The Plan indicates that the County’s designated UGAs include: the incorporated cities (Bainbridge Island, Bremerton, Port Orchard and Poulsbo); areas adjacent to or near the incorporated cities (Gorst and Silverdale); and an unincorporated area provided with urban services (Kingston). Plan, Part II, at 199.

In addition to the areas described above, the [Future] Land Use Element Map shows a UGA around Port Gamble, in the northern portion of the County near the Hood Canal Bridge. The Port

[\[38\]](#)

Gamble UGA is not referenced in the Plan’s UGA chapter text.

### **Land Capacity Analysis**

Kitsap County contains 251,520 acres. Plan, Part II, at 87. The unincorporated portion of Kitsap County equals 210,877 acres. Plan, Part II, at 128. By deducting unincorporated acreage from the County’s total acreage, the Board derived gross acreage of the County’s incorporated areas as being 40,643 acres.

[\[39\]](#)

251,520 acres = total acres in Kitsap County (Plan, Part II, at 87).

-210,877 acres=unincorporated acres in Kitsap County (Plan, Part II, at 128).

40,643 acres=incorporated acres in Kitsap County

Table UG-3 (Plan, Part II, at 203) lists the total amount of “Net Developable Acreage by Urban Growth Area” as 11,060 — excluding Bainbridge Island. Like the other tables showing UGA information, it does not list Port Gamble. **Therefore, the Board holds that the County has not “shown its work” at all regarding a Port Gamble UGA.** But for a line on the map, no indication in the Plan exists to indicate that the Port Gamble area has been designated as within a UGA. Nothing in the Plan indicates the size of this UGA either in population or acreage.

Table UG-3 also excludes Bainbridge Island from the calculation of total gross and net acreage.

**The Board holds that the County erred by excluding the City of Bainbridge Island from its acreage calculations.** The GMA indicates that cities must be included within UGAs. RCW

36.70A.110. Although it might have been appropriate for the legislature to place restrictions on that requirement, for instance based on population (only cities with over 10,000 persons must be included within UGAs) or population density (only cities with over 1,000 persons per square mile), the legislature did not do so. Therefore, despite Bainbridge Island’s unique characteristics (*see Robison*, at 5), that city must be included within the County’s calculations in determining the appropriate size of its UGAs. This does not mean, however, that simply because Bainbridge Island may have enough physical space (assuming it has sufficient water supplies) to accommodate all of the County’s projected 20 year population growth, that the County cannot extend its UGAs beyond existing city limits. To so hold would preclude legitimate County discretion.

Accordingly, by adding Bainbridge Island’s 15,835 acres of gross land to the total acreage in Table UG-3, the county-wide total gross acreage for the designated UGAs is 50,965 acres. In comparison, the Board calculated the total acreage of the incorporated areas within Kitsap County as 40,643 acres. Therefore, the County’s UGAs extend 10,322 acres outside existing incorporated city limits.

50,965 acres=total gross acreage of Kitsap County’s designated UGAs

-40,643 acres=total gross acreage of Kitsap County’s incorporated cities

10,322 acres=total gross acreage of Kitsap County’s designated UGAs  
outside cities

The Plan describes the County’s land capacity analysis to determine the appropriate size of its UGAs. First, the County tabulated the total amount of vacant and underutilized land within each urban growth area. By making these tabulations, the County in effect deducted for built and fully utilized lands. Then, the County made two other basic deductions from its total gross acreage to derive its net developable acreage for the UGAs.

A second deduction was for an “efficiency” factor which varies according to parcel size.

Generally, the smaller the existing parcel of property with an existing home located on the land, the larger the deduction. *See* Finding of Fact No. 66. A third deduction is what is referred to as a “reduction factor” to account for non-residential development, critical lands and street rights-of-way. Plan, Part II, at 202-203.

Applying these deductions, the County concluded that it had 11,060 net developable acres within its UGAs. For the same reason as discussed above, the Board adds the 5,830 acres of net developable land on Bainbridge Island to achieve a county-wide total of 16,890 net developable acres of land within the County's designated UGAs. *See* Plan, Part II, Table UG-3, at 203. Accordingly, by applying the three deduction procedures, the County removed 34,075 acres of land:

50,965 acres = total gross acreage of Kitsap County's designated UGAs

-34,075 acres = total acreage of non-developable land within UGAs

16,890 acres = total net acreage of Kitsap County's designated UGAs

Various petitioners challenge the County's procedures for reaching net developable acreage. The Board has reviewed the Plan's discussion of the County's land capacity analysis. The Board will not rule that counties are automatically precluded from developing and applying such procedures. For instance, the Board has already determined that counties must make deductions for critical areas and rights-of-way. *Rural Residents*, Final Decision and Order, at 35.

In addition, developing efficiency and reduction factors conceptually makes sound planning sense. Nonetheless, the Board's dilemma is two-fold: first, ensuring that the use of those factors does not allow a jurisdiction to "double-dip," as the State contends the County might have done here, by counting the same parcel twice. Second, ascertaining whether the precise amounts utilized are appropriate (50 percent, 25 percent, 20 percent and 0 percent efficiency factors [relating respectively to 1- to 2.5-acre, 2.5-acre to 5-acre, 5- to 10-acre and 10+-acre parcels of property respectively], and 40 percent for the reduction factor). **The Board holds that the Petitioners have not convinced the Board that the use of efficiency and reduction factors is inappropriate or fails to comply with the Act.** However, the Board must remand this portion of the County's land capacity analysis. In essence, the County failed to "show its work."

Accordingly, it makes it impossible to determine whether the County has made deductions from the same parcel of land more than once, and/or whether the chosen percentages are appropriate. For instance, the Plan is silent as to how many parcels fall within the four categories described in the efficiency factor. The Plan is also silent as to how many acres are accounted for by non-residential development, critical areas and street right-of-way for the 40 percent reduction factor. In addition, the Plan does not indicate how many acres of vacant and underutilized land were tabulated nor does it, for that matter, indicate what "vacant" or "underutilized" means. Does "vacant" mean a parcel is totally undeveloped or does it mean that a house exists on a parcel but is not occupied?

Moreover, the Plan does not differentiate between the City of Bremerton (an incorporated area) and Silverdale (an unincorporated area). *See* Plan, Part II, Tables UG-2, UG-3, UG-4, UG-5 and UG-6 at 202-206. Finally, the Plan does not indicate how much of the net developable acreage is within existing incorporated areas and how much falls outside of existing city limits. Without this information, neither the Board nor any reader of the Plan can fully understand or verify the County's analysis. Importantly, although a County has the discretion to include within a UGA areas outside incorporated cities that have urban growth, without knowing the capacity of the four

cities in Kitsap County, it is impossible to ascertain how far beyond city limits the UGAs should be drawn.

Despite this conclusion, that the Plan's land use capacity analysis is insufficient, the Board's analysis of the size of the County's designated UGAs will proceed in order to examine other analytical assumptions the County made. Solely for purposes of enabling the Board to continue its review of the County's analysis, the Board will assume that the net developable acreage is a total of the acreage listed in Table UG-3 plus the Bainbridge Island acreage.

The Board will also use the Plan's population projection (even though the Board concluded above that this projection is erroneous), for purposes of examining the County's analysis. The County projected that the population of Kitsap County would increase 90,260 persons between 1994 and 2014. Plan, Part I, Table PE-6, at 11; and Table UG-1, Part II, at 201.

Pursuant to Element A(1)(b) of the County's CPPs:

At least two-thirds of new growth shall be directed to designated urban growth areas and may include population reserves established for new fully contained communities. KCCPPs, at 4. (Emphasis added.)

Accordingly, applying the CPPs' population formula to the population projections shown in the Plan, the County and its cities must plan for at least two-thirds of the 90,260 persons projected to move to Kitsap County by 2014 to live inside the designated UGAs. The formula breaks down as follows, with the calculation for persons within UGAs constituting a minimum:

60,173 persons within designated UGAs

30,067 persons outside designated UGAs

90,260 additional persons projected to live in Kitsap County by 2014

Table UG-2 in the Plan indicates that the increase in population for Kitsap County inside UGAs will be 63,575 persons. Pursuant to the Kitsap County CPPs Element (A)(1)(b), the County then

deducted 3,500 persons for one anticipated new fully contained community, <sup>[40]</sup> bringing the net population forecast to 60,075 persons expected within the UGAs by the year 2014.

The County determined that the average residential density within the designated UGAs is six dwelling units per acre. Furthermore, the County determined that the average persons per dwelling within the designated UGAs is 2.42 persons. Therefore, the County calculated that, on average, there would be 14.52 persons per acre within the UGAs (2.42 persons/du times 6 dwellings/acre = 14.52 persons per acre).

The preamble to RCW 36.70A.070 requires that a comprehensive plan be internally consistent. The Board notes three internal inconsistencies in the Plan regarding the average number of persons per dwelling calculation. The Land Use Element assumes 2.42 persons per dwelling on average in 1990 (Plan, Part II, at 204) while the Housing Element assumes 2.64 persons in 1990 (Plan, Part III, at 2) and the Capital Facilities Element assumes 2.65 persons in 1990 (Plan, Part III, at 153 and 176): 2.65 persons per dwelling times 6 dwellings per acre equals 15.9 persons per acre compared with 14.52 persons per acre that the UGAs were based upon. This is a not a minor difference. For example, if one takes the population projection of 6,800 people for Poulsbo and

divides by 15.9 rather than 14.5, the result is that only 428 acres are needed for residential development in Poulsbo compared with 470 acres listed in Table UG-4 (Plan, Part II, at 204). County-wide, the difference is even more notable. Table UG-4 lists a total of 60,075 persons expected within the UGA by the year 2014. Dividing that number by 15.9 equals 3,778 acres. In comparison, dividing 60,075 by 14.5 persons per acre equals 4,143 acres needed, or 365 additional acres — nearly a ten percent increase. **The Board holds that these internal inconsistencies in the Plan violate the Act.**

Table UG-4 (Plan, Part II, at 204) represents the County's analysis of the amount of land within designated UGAs needed for residential development. Presumably, the County derived these figures by dividing the population allocation by 14.52 persons per acre. <sup>[41]</sup> As a result of these calculations, the County concluded that it needed 4,145 acres of land to accommodate the 60,075 persons anticipated to live within the UGAs.

### Market Factor

As detailed in the Board's general discussion, that part of the *Tacoma* decision that authorizes counties to incorporate a "market factor" has subsequently been codified in RCW 36.70A.110(2). Counties are now permitted to include a "reasonable land market supply factor" in determining the size of UGAs. This amendment confirms the Board's *Rural Residents* holding that the OFM projections are both a floor and ceiling. If the

legislature concluded that OFM projections were a minimum that any county could exceed, it would not have codified the provision permitting counties to incorporate a reasonable market supply factor, nor required a deduction for FCCs.

Pursuant to this authority, the County applied a market factor:

Unfortunately, there is not a universally accepted method of determining an appropriate market factor. Lacking a standard ratio of needed acreage to total acreage designated for market consideration, the plan assumes a 1.75 to 1 ratio. For every acre of land estimated to be needed to accommodate the population forecast, the plan assumes that an additional .75 acres should be added to keep urban land prices from rising dramatically due to speculation.... Plan, Part II, at 205.

Table UG-5 applies the 75 percent market factor quoted directly above and shows that, in addition to 4,145 acres of land needed without the market factor, 3,115 acres of additional land within the designated UGAs are needed to supply the anticipated population growth in Kitsap County by the year 2014. Plan, Part II, at 205. The following chart summarizes the Plan's various acreage calculations:

#### UGA ACREAGE

Additional Acreage Needed with

<u>UGA</u>	<u>Gross</u>	<u>Net</u>	<u>Needed</u>	<u>Market Factor</u>
Bainbridge Island	15,835	5,830	44,578	0.45
Kingston	1,620	745	220	0.385
Poulsbo	3,880	1,525	470	0.25
Central Kitsap	23,400	6,990	2,450	0.290
Port Orchard	6,230	1,800	560	0.980

TOTALS 50,965 16,890 4,145 7,260

Accordingly, by applying the market factor, the County increased the number of necessary acres by 75 percent <sup>[46]</sup> or 3,115 acres.

The question remains whether the 75 percent market factor is reasonable. **The Board holds that it will not declare a 75 percent market factor to be *per se* in violation of the Act.** However, any market factor above the 25 percent bright line test adopted above in the general discussion must contain an adequate justification for its usage. Because the County's 75 percent market factor is three times the recommendation, the Board will more closely scrutinize its record.

Particularly, the Board examines the following pursuant to step two of the test:

*(2) Is there other evidence to suggest that the land supply market factor is not reasonable?*

For example, was the UGA sized using the criteria listed in RCW 36.70A.110? Did the County "show its work"? Were a variety of rural densities included? Has there been a showing that the cities within the county, as evidenced in their adopted GMA comprehensive plans, cannot accommodate more population and employment than was allocated by the county? Does the county capital facilities element indicate that adequate services will be available for the type and density of uses designated both for the UGA and the rural area? Were the types and densities of land uses allocated to the rural areas violative of the Act's prohibition against urban growth in a rural area?

Here, the County has not adequately shown its work to substantiate the size of the UGAs or the market factor. Moreover, the Plan did not include any justification whatsoever for the 75 percent market factor, other than to indicate that no universally accepted method exists. This "justification" not only ignores the DCTED recommendation, but more importantly, it lacks any rationale why a smaller ratio was not adequate or why 75 percent was necessary. Although the Board does not reject the County's 75 percent market factor out of hand, it cannot conclude that it is reasonable without adequate justification. Accordingly, the 75 percent market factor is unreasonable and will be remanded with instructions for the County to justify or reduce it. Finally, the Board will briefly address the contention of several parties, but particularly Adams, that the County did not conduct "build out analysis" of the maximum population which can be accommodated by the land use and zoning designations to determine whether its UGAs would be too large or its capital facilities extended beyond capacity. The Board notes that "build out" analysis is not explicitly required by the Act. Nonetheless, it is a useful tool that serves as an excellent indicator of (theoretical) population capacity. The Board also notes that, although the

Plan itself does not contain such analysis, the County did conduct such analysis. In the County's Draft EIS for the Plan, four alternative scenarios were explored. Alternative 4 provided the most dispersed population and housing growth of the four alternatives analyzed. Under Alternative 4, the UGAs the County could designate would be sufficient to accommodate enough growth within them until the year 2100 or later (this is not a typographical error). The result of the build-out analysis under Alternative 4 was a total population county-wide of 773,640 people as compared to the 269,687 projected by OFM. CD 8, Table 17, at III-80. The Board notes that on remand, the County should be aware of its build-out capacity and remember that the Act requires UGAs to accommodate projected growth for the next 20 years only. This does not mean that the County cannot conduct long range planning beyond a 20 year horizon, for instance for economic development, water supply and sewage treatment capacity, and major transportation system improvements. It simply means that it cannot use such long range planning, or its build-out capacity, as a basis for sizing its UGAs. *See Kitsap v. OFM*, at 24.

### **Conclusion No. 2**

The County's designated UGAs do not comply with the requirements of RCW 36.70A.110. They are far too large to accommodate the urban portion of the necessary growth projected to occur in the next 20 years and also meet the Act's other requirements. They are based upon inflated population projections (*see* Conclusion No. 1). The City of Bainbridge Island is erroneously excluded from the calculations. The chapter on UGAs contains no discussion as to why the Port Gamble area is included within a UGA. In addition, there is no breakdown showing the difference between existing incorporated area capacity as opposed to unincorporated area capacity (*see* for instance the tables that combine information for Bremerton and Silverdale). In essence, the County has not shown its work or justified why its UGAs should extend beyond existing city limits.

Moreover, the Plan is internally inconsistent. Three different average household size figures are used throughout the Plan. By using the low household size figure in calculating UGAs, the County increased the needed size of its UGAs by nearly ten percent. The [Future] Land Use Element Map also shows Port Gamble as being included within a UGA while the Plan's UGA chapter does not mention the area, nor contain any justification for including it within a UGA boundary.

Furthermore, the County did not show its work regarding its efficiency and reduction factors nor articulate a definition for some of the key terms used in those factors such as "underutilized" and "vacant." Finally, the Plan contains absolutely no justification for using a 75 percent market factor which is triple the bright line test percentage. The County's market factor does not pass the three part test developed by the Board to determine reasonableness. The Plan does not comply with the requirements of RCW 36.70A.110. Accordingly, the Plan's UGA chapter, its land use and rural elements do not comply with the requirements of the Act.

[47]

## **C. RURAL LAND ISSUES**

Since its initial passage in 1990, the GMA has required that all counties planning under the Act develop a rural element in their comprehensive plan that includes:

... lands that are not designated for urban growth, agriculture, forest or mineral resources.

The rural element shall permit land uses that are compatible with the rural character of such lands and provide for a variety of rural densities.RCW 36.70A.070(5).(Emphasis added.)

In addressing this requirement of the Act, the Plan contains a chapter on rural lands, Chapter 3 of Part II.The Plan states:

It is the intent of the Rural Lands chapter to preserve and enhance the rural character of Kitsap County.Rural areas are meant to remain rural in nature over the long term.The Rural Lands chapter designates areas in Kitsap County appropriate for rural activities, both residential and non-residential.Further, it is the intent of this plan to preserve and protect the rural character by reducing the inappropriate conversion of undeveloped rural land.... Plan, Part II, at 189.

The Plan recites the County's history of rural development, noting that:

There is a variety of parcel sizes occurring in rural areas ranging from small, urban-sized lots in the villages (2,250 square feet — Suquamish and Indianola) to square miles (sections) of undivided land in forested areas (Holly area).In this range are lots and parcels of every imaginable size and shape.Subdivisions have occurred in both organized and disorganized fashion over the years.Some developments have occurred through the planned unit development (PUD) process allowing up to one dwelling unit per acre in an organized, planned and clustered fashion.Other divisions have occurred through the large lot platting process with very little County review, while still others have occurred through the short subdivision process with slightly more County oversight.This has resulted in a platting pattern in the rural areas of the county which are hard to serve with utilities and public services and also creates problems for future planning.Plan, Part II, at 189.

### **Current Land Use Inventory**

The County conducted an inventory of existing land use outside incorporated areas.Plan, Part II, at 119.Existing residential land use was classified into seven designations:rural; estate; suburban; and urban low, standard, medium and high.These uses comprise 24 percent of the unincorporated

[48] portion of the County.Plan, Part II, at 128 and 131. Wooded (defined for purposes of the inventory as land used or committed to forest use on ten-acre parcels or larger) and open land (which includes ten-acre parcels or larger of agricultural land and open or brush-covered land that cannot be used for seasonal or periodic grazing), together comprised 48.5 percent of unincorporated Kitsap County.Vacant land, parcels ten or less acres in size that did not contain a dwelling unit, comprised 19.8 percent of the unincorporated area. Plan, Part II, Table LU-1, at 128.

Rural lands were defined for purposes of the existing land use inventory as containing a gross density of 5.00 to 9.9 acres per dwelling unit.The Board notes that this is the lowest residential

density classification shown on Table LU-2 since that table does not designate residential parcels greater than ten acres. <sup>[49]</sup> Inventory results indicated that Kitsap County contains 9,436 acres of lands that fall within the “rural” (5.00 - 9.9 acre) category, or 18.7 percent of the County’s shown inventory of residential lands within the unincorporated area. “Estate” lands (2.5-5 acres/du) comprise 28 percent and “suburban” lands (defined as 1-2.5 acres/du) comprise 28.2 percent of the unincorporated residential lands. Plan, Part II, Table LU-2, at 133.

A summary of this information follows:

**RESIDENTIAL UNINCORPORATED KITSAP COUNTY**

<u>Land Use Classification</u>	<u>Acres</u>	<u>Dwelling Units</u>	<u>Density</u>
Rural	9,436	1,250	5-10 acres/du
Estate	14,154	3,591	2.5-5 acres/du
Suburban	14,268	7,431	1-2.5 acres/du
Urban Low	8,667	16,149	1-3.5 du/acre
Urban Standard	2,943	14,144	3.5-8.7 du/ac
Urban Medium	1,671	8,338	7-14.5 du/ac
Urban High	1,392	7,371	4.5+ du/acre
Mobile Home Parks	788	-----	<sup>[52]</sup> [3.5-8.7 du/ac]
Wooded/Open Land	102,256	358	10+ acres
<b>TOTAL</b>	<b>152,818</b>	<b>47,805</b>	<sup>[53]</sup>

47,805 dwelling units on 152,818 acres of land equals .31 dwelling units per acre or approximately one dwelling unit for every three acres of land.

**Future Land Use**

The Plan indicates on numerous occasions that the land use element, constituting a major component of the County’s land use planning for the future, is “to recognize the existing development pattern.” Plan, Part II, at 152-153. In fact, the Plan indicates that:

The failure to recognize these existing patterns of residential development will not allow effective planning for their future. Nor will these issues go away if they are not recognized by the plan. Plan, Part II, at 153.

The Plan (Part II, at 161-166; *see also* [Future] Land Use Element Map) contains eight residential classifications: <sup>[54]</sup>

<u>Category</u>	<u>Location</u>	<u>Zoning</u>	<u>Density</u>
1) Rural Low	Outside UGAs		1 du/2.5 acres
2) Rural Medium	Outside UGAs		1 du/2.5 acres
3) R-2	Outside UGAs		1-2 du/1 acre
4) Rural High	Outside UGAs		1 du/1 acre

5)Rural Village ResidentialOutside UGAs1-9 du/1 acre

1)Urban LowWithin UGAs1-9 du/1 acre

2)Urban MediumWithin UGAs10-19 du/1 acre

3)Urban HighWithin UGAs20-43 du/1 acre

In addition, the Plan (Part II, at 156-159; *see also* [Future] Land Use Element Map) permits residential development in two other land use classifications:

CategoryLocationZoning Density

1)Rural WoodedOutside UGAs1 du/2.5 acres

2)Mineral ResourceOutside UGAs1 du/2.5 acres

Two questions are before the Board: (1) whether the five classifications of rural lands constitute “rural densities” or conversely, whether these five classifications permit urban growth outside the UGAs; and (2) whether these five constitute a “variety of rural densities” as required by RCW 36.70A.070(5).

**Does the County Permit Urban Growth Outside the UGAs?**

First, the Board will determine whether the five classifications of rural land actually constitute rural densities.RCW 36.70A.110(1) provides:

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

As the Board held in *Rural Residents* when discussing this provision:

RCW 36.70A.110(1) uses the somewhat equivocal word "encouraged" with respect to what is to happen inside the designated urban growth area.Significantly, however, it says something very different with regard to the land outside the urban growth area.The phrase "... outside of which growth can occur only if it is not urban in nature" (emphasis added) is not equivocal.It does not say "reduce" or "discourage" urban growth outside the UGA.The use of the word "only" clearly means that urban growth is **prohibited**outside of the UGA....*Rural Residents*, Final Decision and Order, at 20-21.(Emphasis in original.)

Kitsap County has basically classified all lands outside UGAs as having either 1 du/ 2.5 acres or

[\[55\]](#)

denser. As the Board’s general holding in Part III of this document reveals, a predominate development pattern of 1 du/1- or 2.5-acre parcels constitutes sprawl, whether it occurs in an urban growth area (a subset of which is suburban areas) or in a rural area.In effect, all of Kitsap County has been made into one giant suburban growth area which the Act prohibits.This is particularly true when many 2.5-acre parcels could potentially be developed at 1-acre densities through the PUD process.Zoning county-wide at such levels does not constitute rural densities. **Although the County may be able to have 1 du/ 2.5-acre zoning in limited areas under certain specified circumstances, the Board holds that it cannot zone the entire unincorporated area of the county outside of UGAs at such levels.**

Permitting the entire county outside the designated UGAs to be subdivided into 2.5-acre lots not

only contributes to the fabulously inflated population capacity of Kitsap's Plan, it also constitutes urban growth in a rural area. **The Board holds that both the 1-acre and 2.5-acre lot sizes are an**

[\[56\]](#)

**urban development pattern, not a rural one. A pattern of new lots of these sizes is prohibited in rural areas.** Importantly, by classifying all lands outside UGAs in this density category, the County has violated the Plan's stated intent of "preserving" the rural character of Kitsap County. Plan, Part II, at 189. **The Board holds that this is an additional internal inconsistency in the Plan that violates RCW 36.70A.070.**

As indicated in Part III of this decision, new lot sizes in the 1- and 2.5-acre range even within urban growth areas can only be created in special, limited circumstances; they must be utilized as the rare exception (for reasons such as steep slopes or large wetland areas) rather than the general rule. When valid reasons exist for these lot sizes on an occasional site specific basis, they must be clearly articulated. More important, lots of this size should constitute only a small fraction of the lot pattern county-wide, certainly not the lion's share. When these lot sizes (too large to mow, too small to farm) become the dominant pattern, they constitute sprawl. Indeed, what the County insists on calling "suburban" is, in fact, nothing more than sprawl.

This does not mean that the County can or must ignore what has occurred in the past. Reality dictates that its past development patterns will certainly affect its future for many years to come. Those past development patterns cannot be easily undone. The landowners affected by those pre-GMA development activities are protected, for better or worse, by the fact that their uses, although nonconforming with future planning and zoning, are legal. They are also protected by the fact that their fully completed development permit applications are vested. Nonetheless, the County cannot base its *future planning for new growth* on its past development practices if those past practices, as here, do not comply with the GMA. What was once permissible is no longer so. The GMA was passed to stop repeating past mistakes in the future. In *Poulsbo*, Final Decision and Order, (April 6, 1992), the Board referred to a statement by the County about retaining the historical status quo. The Board stated:

It is an acknowledgment that Kitsap's status quo, which is the result of its unique history of urbanization, service delivery and governance, has been used as the template for crafting these CPPs. The county is saying, in effect, that Kitsap's present situation is the product of its past decisions and that in planning for the future, it essentially contemplates more of the same. The CPPs entitled "Provision of Urban Services" reveal at best a lack of a grasp of the legislature's clear direction on the subject, and at worst an attempt to circumvent that legislative direction. As adopted, the CPPs perpetuate, rather than transform, Kitsap's past pattern of urbanization and local government service delivery. The Board is persuaded by Bremerton's argument that such past practices have "created urban sprawl, abandonment of urban core areas and the need for growth management." The GMA contemplates quite a different future.... *Poulsbo*, at 35.

Thus, what was once the norm in Kitsap County is now an anomaly under the GMA. Although past practices cannot be ignored, they also cannot be the template for the future. As a

consequence, the future land use map must show land use as anticipated because of GMA goals and requirements rather than an illustration and continuation of pre-existing development.

**Do the Rural Element's Residential Classifications  
Constitute a Variety of Rural Densities?**

**The Board also holds that the five classifications of rural residential land use do not constitute a variety of appropriate rural densities.** The word “variety” is not defined in the Act. Therefore, the Board resorts to the common meaning found in *Webster's II New Riverside Dictionary*, at 1277. “Variety” means:

- 1.the quality or state of being various or varied; diversity.
- 2.a number of varied things, esp. of a particular group: assortment.
- 3.a group set off from other groups by a particular characteristic or set of characteristics..

The Board held above that the five rural classifications above do not constitute “rural” land use. Even if they did, the Board must nonetheless conclude that they do not constitute a variety of rural densities. In essence, the County has zoned the majority of its unincorporated lands outside UGAs at 1 du/2.5 acres. The literal exception to this is 1 du/acre or 1-9 du/acre in areas that even the Plan acknowledges are limited. *See* Plan, Part II, at 163. Even if the five classifications were more evenly distributed throughout the County than they are, these five do not constitute a variety. Of the five, two have identical densities of 1 du/2.5 acres, Rural Low and Rural Medium. Two others are virtually the same, R-2 and Rural High. Only Rural Village Residential is potentially different and, at 1-9 du/1 acre, is absolutely not a rural density. Instead, the Board expects to see a true variety of rural densities such as, for example, 1 du/10 acres, 1 du/20 acres, 1 du/40 acres and 1 du/80 acres.

Finally, the County's two other classifications that allow residential use are “Rural Wooded” and “Mineral Resource.” These also have 1 du/2.5-acre limits. Pursuant to RCW 36.70A.070(5), rural lands must exclude designated agricultural, forest and mineral resource lands. **Yet the County has designated “Mineral Resource” lands within its rural element, which the Board holds is a violation of the Act. Furthermore, the Board holds that permitting new residences on mineral resource lands at densities of 1 du/2.5 acres is fundamentally incompatible with the use of that land for mineral resource purposes.** *See also* RCW 36.70A.060(1).

**Conclusion No. 3**

The Plan's rural element does not comply with RCW 36.70A.070(5) and RCW 36.70A.110(1). It permits urban rather than rural growth outside UGAs by designating the entire unincorporated portion of the county outside UGAs at 1 du/2.5 acres minimum density with potential 1 du/acre densities through use of the PUD process. It does not contain a variety of rural densities. Finally, the rural element contains mineral resource land which are not to be included. Accordingly, the Plan's rural element does not comply with the requirements of the Act.

[\[57\]](#)

**D. CAPITAL FACILITIES ISSUES**

RCW 36.70A.070(3) mandates that a county's comprehensive plan contain a capital facilities plan element. Chapter 4 of Part III is the Plan's capital facilities element. Numerous petitioners contend that this chapter does not comply with the requirements of the GMA for various reasons. RCW 36.70A.070(3) requires that the capital facilities plan element of a comprehensive plan contain:

- (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 owned by public entities;
- (c) the proposed locations and capacities of expanded or new capital facilities;
- (d) at least a six year plan that will finance such expanded or new capital facilities within projected funding capacities and clearly identifies sources of public money for such purposes; and
- (e) a reassessment of the comprehensive plan's land use element if probable funding falls short of meeting existing needs.

Significantly, RCW 36.70A.070(3) also mandates that the land use element, capital facilities plan element and the financing plan within the capital facilities plan element be coordinated and consistent.

The second and third paragraphs of the capital facilities chapter acknowledge that the capital facilities element is incomplete:

The Capital Facilities element of the plan focuses on the first 6 years of the planning period and specific 6 year capital improvement programs are included for most of the facilities dealt with in the plan. The exceptions are water systems, storm drainage and solid waste facilities. There are 32 independent water systems in the county included in this plan. Indications of existing and probable deficiencies expressed as water connections are included but have not been translated into capital cost estimates. The County is now in the process of preparing a comprehensive plan for stormwater and water quality programs. Solid waste facilities and services are provided by private contractors. Longer term facility projections for 12 and 20 years have been made to indicate anticipated deficiencies, if any. The Land Use Plan proposes land uses for 20 years and public facilities must be available to serve these uses at the time of development. However, long-term capital cost estimates are questionable and in most cases were not made. The system deficiencies indicated for each system serve to signify long-term problems, and can function as a guide for future capital facility planning. Plan, Part III, at 128. (Emphasis added.)

Furthermore, the Plan indicates that:

... a detailed financial plan will be prepared to ensure there is reasonable assurance of availability of services when development is constructed in the first six years of the planning period. Plan, Part III, at 129. (Emphasis added.)

According to the County's Brief:

The Capital Facilities Element of the Comprehensive Plan is clearly not yet finished. The element currently has good background information, complete inventories and nearly complete level of service standards. Attached as Exhibit 30 is the County's comprehensive work plan for the remainder of the element and an accompanying work schedule.... County's Brief, at 44.

Exhibit 30 to the County's Brief is an undated document entitled "Capital Facilities Element — Assessment of Needed Revisions." It provides:

The Capital Facilities section of the Comprehensive Plan consists of nine sections, an introduction section and eight individual facilities sections. Five of the nine sections are relatively complete, requiring only minor modifications or updating of information. The completed sections are the Introduction, Schools, Fire Protection, Sheriff, and Parks and Recreation. Four sections need substantial modification and/or creation of new subsections to be considered complete sections. These sections are Sewer, Water, Solid Waste, and Storm Drainage. Exhibit 30 to County's Brief, at 1. (Emphasis added.)

The document explains that all sections of the capital facilities plan will need to be revised once OFM's range of population projections is made. **The Board holds that because the Plan as adopted uses projections for the wrong year made by the wrong entity, all sections of the capital facilities element will have to be revised to correspond to OFM's projections.**

Exhibit 30 also indicates that the Plan's sewer and its water facilities sections are only 50 percent complete and are missing a six year capital improvement program (CIP) and a financing plan. This incompleteness by itself is a fatal violation of the Act. The significance of having an incomplete capital facilities plan element in the Plan is magnified in light of recognized problems caused by so-called "suburban" type land use. The Plan's land use element inventory of existing development patterns describes "suburban" land use as having 1 to 2.5 acres/du densities. Plan, Part II, at 132-133. As the Board's discussion above indicates, the Plan's predominant (and minimum) residential density outside the UGAs is 1 du/2.5 acres. This density falls squarely within the existing "suburban" density of 1 to 2.5 acres/du. According to the Plan, this is a problem:

Suburban lots are the most difficult to divide into smaller parcels. At this density septic tanks and wells on the same lot can be a problem and further development is constrained by [\[58\]](#) the location of existing structures. Plan, Part II, at 132.

In addition:

... Most soils in Kitsap County are rated severe for conventionally designed on-site sewage disposal fields due to cemented pan, soil saturation, flooding, ponding, slow percolation, poor filtering and slope. Cathcart soils, which comprise about 1,690 acres of Kitsap County, are the only soil not rated severe for conventional septic design. Plan, Part II, at 24.

Furthermore:

Groundwater constitutes over 80 percent of the water used by Kitsap County residents. It originates in aquifers — saturated geologic formations located beneath the ground's surface.

Aquifers are recharged from precipitation that slowly infiltrates the ground and eventually reaches the aquifer. Places where water passes through the ground to replenish aquifers are known as “aquifer recharge areas.” [\[59\]](#)

...

27 principal aquifers have been identified in Kitsap County. The aquifers are typically composed of glacially derived deposits of sand and gravel which are encountered from about 100 feet above to 800 feet below sea level... Most major production wells in the county tap water from the principal aquifers, which are relatively deep. Some production wells and numerous private domestic wells withdraw water from principal aquifers which are relatively shallow, or from localized perched water tables....

...

As the county becomes more urbanized, the changing quality and quantity of the water recharging aquifers will play a greater role in determining the quality, quantity and cost of the water source available to county residents and businesses. Plan, Part II, at 27-28.

When the Plan was written, approximately 50,000 homes in Kitsap County were on septic systems, of which approximately five percent are failing. Plan, Part II, at 126.

... A failing system is one which the chemical and biological processes that treat the effluent before it reaches groundwater, or a restrictive layer, do not occur. Bacteria, viruses and/or hazardous chemicals reach the surface or groundwater.

...

Development of shoreline areas at densities greater than one unit per acre has particular implications for on-site sewage disposal. Although it is possible to install a system on less than half an acre, the impact of a number of small lots concentrated near the shoreline is significant if soil conditions are poor or there is a high seasonal water table. Drainfields are more likely to fail in these conditions, threatening water quality and public health. Plan, Part II, at 126.

Thus, according to the Plan, septic systems and wells on parcels 2.5 acres or smaller are a problem. Yet this is the Plan’s predominant residential classification outside UGAs. Even assuming that the Plan otherwise complied with the Act’s requirements, it must fail here. For example, assume that the County’s allegedly “rural” minimum density of 1 du/2.5 acres complied with the Act. In order to avoid the environmental problems that the Plan itself acknowledges are caused by such densities, the County will have to require the use of a combination of innovative technological advances and a major expansion of public facilities throughout the entire “rural” area. The Act first requires counties to do capital facilities analysis to determine what the capacity and status of existing facilities are, what facilities will be needed in the future to accommodate projected growth at the chosen density levels, what regulatory programs will be needed, and how the jurisdiction assumes this will be financed.

The County has yet to complete its sewer, water and stormwater facilities subsections of the

capital facilities plan element. None of these has a six year CIP or a financing plan. Just as troublesome is the fact that the storm drainage facilities subsection of the capital facilities element plan is “the least complete section.” Exhibit 30 to County’s Brief, at 4. The storm drainage facilities subsection does not contain a projected needs section nor does it contain population projections. Finally, the solid waste facilities subsection is only 30 percent complete in the adopted Plan. The County acknowledges that it does not contain a level of service standard, properly formatted population projections, a six year CIP or a financing plan. Exhibit 30 to County’s Brief, at 6.

By the County’s own admission, its Plan does not include a complete capital facilities element. The County asks that it be directed to adopt one on remand and, in the interim, be permitted to allow the balance of the Plan to survive and function. This request indicates a fundamental lack of understanding of the necessity for a capital facilities element and, indeed, all of the mandatory plan elements listed at RCW 36.70A.070, to be adopted simultaneously with the land use element in order to have a comprehensive plan.

Although not defined by the Act, the word “comprehensive” is given GMA context by the definition of “comprehensive plan” at RCW 36.70A.030(4) [\[60\]](#) and by the mandatory elements required in a comprehensive plan at RCW 36.70A.070. The County’s Plan is not comprehensive, in the GMA meaning of the term, because it is not complete. All of the mandatory requirements of a comprehensive plan must be fully complete at the time of plan adoption. *WSDP I*, Final Decision and Order, at 14. A comprehensive plan’s capital facilities element is inextricably linked to the land use element. The two must be consistent. RCW 36.70A.070(3). The linkage between the two elements is what makes planning under the GMA truly comprehensive (i.e., complete, inclusive; connected) as compared to pre-GMA planning.

Jurisdictions cannot set land use policy without completing the necessary capital facilities analysis. **The Board holds that the lack of a fully completed capital facilities plan is more than a conceptual shortcoming — it is a fatal legal defect in the County’s plan.** It alone is sufficient cause for the Board to find that the land use element and every other component of the County’s Plan violates the requirements of the Act.

#### **Conclusion No. 4**

The capital facilities element of the County’s Plan is incomplete. As such, the Plan does not include all of the analysis required by RCW 36.70A.070(3). In addition, because the

capital facilities plan and the financing plan within it are incomplete, it cannot be found consistent with the land use element of the Plan. Therefore, the Plan’s capital facilities element does not comply with the Act, nor can the Plan’s land use element since the two elements are inextricably linked.

[\[61\]](#)

#### **E. SITING ESSENTIAL PUBLIC FACILITIES**

RCW 36.70A.200(1) requires cities and counties planning under the Act to include in their comprehensive plans a process for identifying and siting essential public facilities. RCW 36.70A.200(2) mandates that no comprehensive plan or development regulation can preclude the siting of essential public facilities.

The County acknowledges that its Plan does not contain a process for identifying and siting essential public facilities.

### **Conclusion No. 5**

The Plan does not comply with RCW 36.70A.200 since it does not contain a process for identifying and siting essential public facilities.

[62]

### **F. FOREST LAND ISSUES**

RCW 36.70A.170 required cities and counties to designate forest lands not already characterized by urban growth and that have long-term significance for the commercial production of timber by September 1, 1991. In turn, RCW 36.70A.060(1) requires that:

(1) Each county that is required or chooses to plan under RCW 36.70A.040, and each city within such county, shall adopt development regulations on or before September 1, 1991, to assure the conservation of agricultural, forest, and mineral resource lands designated under RCW 36.70A.170. Regulations adopted under this subsection may not prohibit uses legally existing on any parcel prior to their adoption and shall remain in effect until the county or city adopts development regulations pursuant to RCW 36.70A.120....

On April 20, 1992, the County adopted a document entitled “Strategies for Resource Lands Designations and Interim Development Regulations” (the **Strategies Document**) to fulfill the requirements of the GMA at RCW 36.70A.170 and .060. Although the Strategies Document was subsequently appealed to the Board for not complying with those statutory provisions, the Board dismissed the petition for review because its filing was not timely. *See Kitsap Citizens for Rural Preservation et al. v. Kitsap County*,

CPSGMHB Case No. 94-3-0005, Order on Kitsap County's Dispositive Motion, July 27, 1994. Therefore, the Strategies Document became irrefutably valid.

The preface to Chapter Two of the Strategies Document, addressing forest resource lands, notes that 50,354 acres of privately owned land is considered forest land for tax purposes under Chapters 84.33 and 84.34 RCW. Table One, Acreage of Private Lands Taxed as Forest Lands, indicates that 131 parcels of privately owned lands, totaling 37,500 acres, exceed 80 acres in size. Major non-private ownerships are: DNR — 16,000 acres; City of Bremerton — 8,600 acres; Port Madison Indian reservation — 2,204 acres; and Port Gamble S-Klallam Indian Reservation — 1000 acres. CD 10, at B3-4.

Chapter Two, Section Six of the Strategies Document, “Recommendations to Designate Forest Resource Lands and Implement Policies,” notes that the following lands, totaling 27,100 acres, will likely remain in long-term forestry: Bremerton Watershed — 4,000 acres; Tribal Lands —

3,200 acres; Bangor — 4,700 acres; and Pope Resources/DNR — 15,200 acres. CD 10, at B17. Consequently, although no document in the record presently before the Board indicates precisely how many acres were designated forest land pursuant to the GMA's requirements, it appears that at least 27,100 acres were designated as forest lands.

Pursuant to RCW 36.70A.060, upon adopting its Plan, the County was required to do the following regarding its forest land designations:

(3) Such counties and cities shall review these designations and development regulations when adopting their comprehensive plans under RCW 36.70A.040 and implementing development regulations under RCW 36.70A.120 and may alter such designations and development regulations to insure consistency. (Emphasis added.)

Rather than simply review the Strategies Document, the County decided it would significantly alter it by repealing it. *See* Finding of Fact No. 6. The County elected not to designate any lands as forest lands pursuant to the requirements of RCW 36.70A.170 and the definition of such lands at RCW 36.70A.030(9) when it adopted its Plan. Instead, it designated land as "Rural Wooded" as an "alternative" to long-term commercial forest land "based upon the 'bottom-up' feature of the Growth Management Act." Plan, Part II, at 155 and 157. Because the Board is remanding the Plan and finding it invalid in its entirety, it will not resolve the legal issues regarding forest land designations at this time. However, the Board notes with interest that according to the Plan itself:

... Most Kitsap County soils, and indeed most soils in western Washington, meet this national standard for prime timberland.

...

... Table NR-4 lists the most productive soil types, those with a site index greater than 100. The 180,000 acres of productive soils listed in the tables includes lands not available to forestry due to development or other conflicting uses.

According to Figure NR-5, the most productive timberlands lie in the north part of the county and the least productive soils are found in the southwest corner of the county. Despite the lower site index, this area is actively managed for timber production and remains one of the few areas with large contiguous tracts of forest land.

...

... It is important to note that even the lowest site indexes in Kitsap County are considered highly productive when compared to other forestry soils throughout the nation, indicating the significance of the county's forest reserve. Plan, Part II, at 20-21 (Emphasis added.)

The Plan's existing inventory of land use indicates that 102,256 acres of unincorporated Kitsap County are wooded and open land, or 48 percent of that area. Plan, Part II, Table LU-1, at 128.

Furthermore:

Most large wooded parcels in Kitsap County are devoted to forestry and Christmas tree farming, many of which are under the Current Use Tax Exemption program for forest and timber land.... Plan, Part II, at 128.

...

Wooded land is important to Kitsap County for many reasons. Commercial forestry

provides lumber, firewood, Christmas trees and other forestry related products for local use and export outside the county....Plan, Part II, at 129.

Within Kitsap County, 49,014 acres are taxed as forest land or open space timber. "These lands are used for long-term commercial production, reforestation or forest habitat." Plan, Part II, at 87. Pursuant to Table NR-17 (Plan, Part II, at 88) there were 76,818 acres of forest land in Kitsap County when the Plan was adopted. Of that amount, 49,014 acres are in private ownership while the remaining 27,804 acres are owned by the City of Bremerton, Port Madison and Port Gamble S'Klallam Indian Tribes, and the State of Washington Department of Natural Resources. Plan, Part II, at 87-88.

The majority of the large parcels of forest land (tracts greater than 80 acres) are owned by a few landowners. Table NR-17 shows the number of acres of forest lands owned by the largest landowners in Kitsap County. These lands have large stands of unharvested timber or future commercial crops... Plan, Part II, at 87. (Emphasis added.)

Although Kitsap County appears to be heavily forested, in reality only a few major timber owners harvest, log or cultivate their lands for commercial forest production... Plan, Part II, at 89. (Emphasis added.)

The Board finds it surprising that, given the County's Strategies Document and the information quoted above from the Plan itself, that the County could possibly conclude that it has no forest lands of long-term commercial significance. Because of the significant nature of the flaws in the Plan otherwise addressed by this decision, the Board will not rule on the specific forest land issues presently before it. However, the Board expects the County to closely and seriously re-examine its forest land policy during the remand period. The close scrutiny is imperative given the Plan's clearly erroneous statement that:

The Rural Wooded designations should be reviewed no later than the five year anniversary of the plan to determine whether the lands should be designated for alternative uses or designated as long-term commercial forest lands as provided by the Growth Management Act. Plan, Part II, at 156. (Emphasis added.)

The legislature clearly and unequivocally declared its intention that forest lands be designated and conserved by 1991. The legislature made this a top priority of the Act by requiring that this be done before comprehensive plans or even county-wide planning policies were due. Accordingly, counties and cities were required to designate forest lands and adopt development regulations to assure the conservation of these designated lands by September 1, 1991, — not "no later than the five year anniversary of the plan" which would be December 29, 1999 at the latest. The time to conserve forest lands was 1991, not the turn of the century.

### **Conclusion No. 6**

Due to the significant flaws contained in the Plan, the Board will not determine the specific legal issues before it regarding forest lands. However, the Board will order the County to re-examine its forest land policy decisions to ascertain the extent to which Kitsap County indeed has any forest lands of long-term commercial significance as defined by the Act.

## G. IMPLEMENTING DEVELOPMENT REGULATIONS

Several petitioners have challenged the development regulations that the County adopted to implement its Plan, specifically, the Zoning Ordinance and the ICAO.

RCW 36.70A.040(3) requires counties and cities to adopt development regulations that implement and are consistent with an adopted comprehensive plan. In the Board's second West Seattle Defense Fund case, *WSDF II v. Seattle*, CPSGMHB Case No. 95-3-0040 (*WSDF II*), the Board first dealt with the question whether such implementing development regulations could stand if only a portion of the underlying comprehensive plan had been found not to comply with the Act. The Board concluded:

... that when portions of a comprehensive plan have been remanded with instructions to bring those provisions into compliance with the Act, and when other portions of the plan have been found to comply with the Act, the Board must determine on a case-by-case basis whether the contested portions of implementing development regulations comply with the GMA. In such a circumstance, the Board will not automatically conclude that, simply because portions of a comprehensive plan do not comply with the Act, all implementing development regulations necessarily also do not comply. *WSDF II*, Order Denying WSDF's Dispositive Motion ( June 16, 1995), at 6.

In *WSDF II*, the Board addressed the scenario before it here:

...If the Board concludes that a jurisdiction's comprehensive plan fundamentally fails to comply with the Act, the Board will remand the entire comprehensive plan. Furthermore, because the comprehensive plan itself does not comply with the Act, the Board could automatically conclude that any development regulations adopted to implement a completely noncomplying comprehensive plan do not *per se* comply with the Act. *WSDF II*, Order Denying WSDF's Dispositive Motion, at 5.

Here, the Board has concluded that the County's Plan fundamentally fails to comply with the requirements of the Act and that it substantially interferes with fulfillment of the GMA's goals (*see* Part V below). **The Board holds that any development regulations that attempt to implement such a fully noncomplying comprehensive plan cannot stand as a matter of law during the period that the plan fails to comply with the Act.** Regulations that attempt to implement and be consistent with a fatally flawed comprehensive plan are in turn poisoned by the plan's defects.

### CONCLUSION NO. 7

Any and all development regulations adopted by the County to implement its Plan, whether specifically challenged by Petitioners or not, cannot comply with the requirements of the Act as a matter of law. These regulations were adopted to implement and be consistent with a comprehensive plan that the Board has by this time concluded must be entirely remanded and that must be declared fully invalid.

## **H. OTHER LEGAL ISSUES**

Petitioners have raised numerous other legal issues challenging the County's Plan or implementing development regulations. These include all legal issues the Board has not addressed above, such as the alleged inconsistencies between the County's and Poulsbo's comprehensive plans (Legal Issue No. 6), fully contained communities (Legal Issues Nos. 16 through 22), economic development and industrial land use outside the UGAs (Legal Issue No. 26), water (Legal Issue No. 27), mineral resource land (Legal Issues Nos. 31 and 32), critical areas (Legal Issues Nos. 33 through 36), transportation (Legal Issues Nos. 45 through 55, excluding No. 53 which Bremerton abandoned), SEPA (Legal Issues Nos. 62 through 71 to the extent they were not already abandoned by the petitioners), public participation (Legal Issues Nos. 74 through 76), affordable housing (Legal Issue No. 79) and the Bucklin Ridge Community Plan (Legal Issue No. 81). Due to the Board's conclusions reached above, the Board will not address these issues at this time but instead will declare the entire Plan and implementing development regulations invalid (*see below*) and remand the Plan and its implementing development regulations to the County.

The Board reminds all parties and the County that it has not reached a substantive determination on any of these other legal issues. In most instances, however, the various petitioners have clearly placed the County on notice as to what complaints they have with the Plan, enabling the County to take corrective action, if necessary. Whether those issues remain ripe for subsequent review will to a great extent depend on what actions the County takes on remand to bring the Plan and implementing development regulations into compliance. The County is reminded that it must ensure that any amendments it makes to the Plan to bring it into compliance with the Board's order and the GMA are also consistent with the KCCPPs and are internally consistent. Furthermore, all development regulations adopted to implement the Plan or any amendments to those regulations must be consistent with the Plan.

## **V. DETERMINATION OF INVALIDITY**

### **A. Petitioners' Joint Statement of Proposed Invalidity Finding**

On August 14, 1995, the "Petitioners' Joint Statement of Proposed Invalidity Finding" was filed with the Board. Footnote No. 1 on this document indicates that all petitioners had consented to the request contained in this document. Subsequently, "Petitioner's Reply in Support of Invalidity Finding" was filed on September 1, 1995. In the two documents the Petitioners request, pursuant to RCW 36.70A.300, that the Board find invalid part or parts of the County's Plan, Zoning Ordinance and Critical Areas Ordinance:

1. Those portions of the Comprehensive Plan and implementing regulations which allow subdivision of land into parcels smaller than ten acres outside of the area that was served by sewer and water lines as of December 29, 1994.
2. Those portions of the Comprehensive Plan and implementing regulations which allow non-

residential, non-resource based development to occur outside of the area that was served by sewer and water lines as of December 29, 1994.

3. Those portions of the Comprehensive Plan and implementing regulations which allow properties to be subdivided into parcels smaller than 80 acres on lands in a timber taxation status as of December 29, 1994 or lands designated Rural Wooded status by the County's Comprehensive Plan and/or Zoning Ordinance as adopted on December 29, 1994. (Underlined phrases were added by "Petitioners Reply in Support of Invalidity Finding," at 13).

4. Those portions of the Comprehensive Plan and implementing regulations which allow development to occur on that portion of a parcel ~~on land~~ (a) mapped or defined by the County as a critical area or critical area buffer; or (b) determined by the County during the development review process to be a critical area or critical area buffer. To the extent there is a variation between the County's (a) generalized map or definition and (b) the determination made by the County during the development process as a result of a site specific evaluation, the latter determination shall govern. (Underlined phrases and words shown in strike-throughs were revisions proposed by "Petitioners' Reply in Support of Invalidity Finding," at 14).

5. Those portions of the Comprehensive Plan or map or Zoning Code map which reflect changes authorizing more intense uses which changes were made by the County Commissioners without the benefit of adequate public participation (i.e., those changes for which no property-specific public notice of the contemplated change was provided).

6. Those portions of the Comprehensive Plan and implementing regulations which allow New Fully Contained Communities, particularly the three "FCC" symbols on the Comprehensive Plan map.

7. Those portions of the Comprehensive Plan and implementing regulations that apply to any lands and/or resources within the Port Madison Indian Reservation.

8. Those portions of the Comprehensive Plan and implementing regulations which allow the Director discretion to modify critical area protection requirements.

Petitioners also stated they had no objection to the Board including in an invalidity determination a "reasonable use" exception worded as follows:

If the effect of this invalidity determination is to deprive a property owner of all reasonable use of its property, the County may employ a reasonable use exception process if it is narrowly tailored to allow the minimum reasonable use necessary, avoids impact to critical areas to the maximum extent possible, and provides for full mitigation to the extent that any impacts occur. Petitioners' Reply in Support of Invalidity Finding, at 15.

## B. County's/Respondent Intervenors' Response regarding Invalidity

Between August 22 and 24, 1995, responses from the County and following Intervenors were filed with the Board in opposition to the Petitioners' specific request: Pope Resources and Port Blakely Tree Farms, McCormick Land Company, Economic Development Council of Kitsap County, Overton & Associates, Peter E. Overton and Alpine Evergreen, Inc., and Harvey B. Hubert.

## C. Statutory Authority

Section 110 of ESHB 1724 (Chapter 347, Laws of 1995) creates new statutory authority for the Board to find certain enactments adopted pursuant to the GMA invalid. It amends RCW 36.70A.300 by adding new subsections (2), (3) and (4) as follows:

(2) A finding of noncompliance and an order of remand shall not affect the validity of comprehensive plans and development regulations during the period of remand, unless the board's final order also:

(a) Includes a determination, supported by findings of fact and conclusions of law, that the continued validity of the plan or regulation would substantially interfere with the fulfillment of the goals of this chapter; and

(b) Specifies the particular part or parts of the plan or regulation that are determined to be invalid, and the reasons for their invalidity.

(3) A determination of invalidity shall:

(a) Be prospective in effect and shall not extinguish rights that vested under state or local law before the date of the board's order; and

(b) Subject any development application that would otherwise vest after the date of the board's order to the local ordinance or resolution that both is enacted in response to the order of remand and determined by the board pursuant to RCW 36.70A.330 to comply with the requirements of this chapter.

(4) If the ordinance that adopts a plan or development regulation under this chapter includes a savings clause intended to revive prior policies or regulations in the event the new plan or regulations are determined to be invalid, the board shall determine under subsection (2) of this section whether the prior policies or regulations are valid during the period of remand.

Section 110 of ESHB 1724 took effect on July 23, 1995. Accordingly, this is the first case in which parties have requested that the Central Puget Sound Board issue a determination of invalidity. However, the Western Washington Growth Management Hearings Board (**Western Board**) has issued a decision entering a determination of invalidity. *In Olympic Environmental Council, Washington Environmental Council and State of Washington Department of Natural Resources v. Jefferson County (Olympic Environmental Council)*, WWGMHB Case No. 94-2-0017, Compliance Hearing Order (August 17, 1995), the Western Board examined the declaration of invalidity for the first time. Initially, the Western Board concluded that Sections 110 and 112 of ESHB 1724 were "... clearly remedial in nature. The entire scheme is designed to

provide a supplemental remedy for non-compliance.” *Olympic Environmental Council*, Compliance Hearing Order, at 12. As a result, the Western Board imposed a determination of invalidity at the post-remand compliance hearing even though its earlier Final Decision and Order had been entered prior to the effective date of ESHB 1724. The Central Board concurs with the Western Board’s analysis of RCW 37.70A.300.

However, the Central Board is not faced with such a dilemma since this Board’s Final Decision and Order is being entered after ESHB 1724 took effect. Consequently, the Board must determine whether the continued validity of the Plan and development regulations that implement it will substantially interfere with the fulfillment of the GMA’s goals.

#### **D. Findings OF FACT, REASONS FOR INVALIDITY, Conclusions OF LAW AND DETERMINATION OF INVALIDITY**

The Board concludes that the continued validity of the entire Plan and all development regulations that implement it (whether specifically appealed to the Board or not) will substantially interfere with the fulfillment of the Act’s goals. Therefore, the Board issues a determination of invalidity finding the entire Plan and all its implementing development regulations **invalid**.

#### **Findings of Fact**

Part II of this decision contains the Board’s findings of fact for general as required by RCW 36.70A.270(6). Part IV of this document discusses in detail several serious flaws contained in the County’s Plan that are in violation of the GMA. The Board incorporates by reference those findings in Part II and its discussion, holdings and conclusions in Part IV, in addition to the following findings:

1. The Plan indicates that the County based its FUGA on the wrong entities’ twenty year population projections (the KRPC instead of OFM), for the wrong year (2014 instead of 2012) and in the wrong amount (303,460 people rather than 269,687).
2. The Plan’s [Future] Land Use map indicates that the Port Gamble area has been designated a UGA while the Plan’s narrative and accompanying support data contain no reference whatsoever to the Port Gamble area.
3. In determining the size of its UGAs, the County deducted the gross and net acreage for the City of Bainbridge Island.
4. The Plan’s UGAs chapter fails to disclose the information and calculations necessary to determine how many acres of land the County deducted for its “efficiency” and “reduction” factors and whether the County deducted the same parcel more than once.
5. The Plan’s UGAs chapter fails to show the capacity of existing incorporated areas to accommodate projection population growth.
6. The Plan utilizes three different figures for its average person per dwelling calculations (2.42, 2.64 and 2.65 persons per dwelling), making it internally inconsistent.
7. The Plan’s 75 percent market factor is totally unsubstantiated and unjustified, three times the

Board's adopted 25 percent bright line standard and therefore is unreasonable.

8.The Plan's one and 2.5 acre lot sizes outside the designated UGAs throughout the county do not constitute rural residential densities.This development pattern constitutes impermissible urban growth in rural areas.It also constitutes sprawl.

9.The Plan's five rural residential land use classifications (Rural Low, Medium and High; R-2 and Rural Village Residential) establish a minimum density of 1 du/2.5 acres.These classifications do not constitute a variety of appropriate rural densities.

10.The Plan includes designated mineral resource lands within its rural land element.

11.The Plan permits new residential structures at densities of 1 du/2.5 acres or greater on lands designated as mineral resource lands, which is fundamentally incompatible with the use of those lands for mineral resource purposes.

12.The Plan's Capital Facilities Plan Element has not been completed, including six year capital improvement programs, projected needs sections and financing plans.

13.The Plan does not contain a process for identifying and siting essential public facilities.

14.Neither the Plan nor Ordinance No. 169-1994, which adopted it, contains a savings clause that would revive prior policies or regulations in the event that the Plan is determined invalid.

### **Reasons for Invalidity**

As revealed by the Board's general discussion in Part III, its discussion of specific legal issues in Part IV of this decision and the Findings of Facts above, the County's Plan is deeply and pervasively flawed.The cumulative impact of the Plan's noncompliance with the Act is that the Plan substantially interferes with the fulfillment of the GMA's goals.In particular, the adopted Plan substantially interferes with Planning Goals 1, 2, 3, 4, 5, the second sentence of 6 and 12, each of which is discussed below.

### **Planning Goals 1 and 2**

RCW 36.70A.020(1) encourages development in urban areas where adequate public facilities and services exist or can be provided in an efficient manner.RCW 36.70A.020(2) seeks a reduction in the inappropriate conversion of undeveloped land into sprawling, low-density development.

As the Board's discussion regarding the sizing of the UGAs indicates, the Plan is defective since it uses the incorrect planning projections made by the wrong forecasting entity for the wrong year. In addition, the UGAs were designated by excluding the City of Bainbridge Island from the relevant calculations and by failing to indicate why Port Gamble should be included. Three deduction factors, besides the 75 percent market factor, were applied without indicating whether lands have been deducted more than once and for what purposes.In addition, the 75 percent market factor is totally unsubstantiated and therefore not reasonable.

Outside the designated UGAs, the Plan permits only 2.5 acre zoning (at a minimum density). These are not rural but rather urban densities.In addition, the Plan does not permit a true variety of rural densities.Furthermore, the Plan's capital facilities element is woefully incomplete. Finally, the Plan relied to heavily on Kitsap County's historic land use patterns rather than concentrating on the future development of presently undeveloped parcels.

These facts, coupled together, increase the inappropriate conversion of undeveloped land into sprawling, low-density development, rather than reducing it. Furthermore, these cumulative facts fail to encourage development in urban areas. Moreover, the Plan was adopted without knowing whether adequate public facilities and services exist or can be provided in an efficient manner.

### **Planning Goal 3**

Some Petitioners challenged the Plan's transportation element as failing to comply with the GMA. Because of the seriousness of the other defects that the Board found with the Plan, it has not determined whether the Plan's transportation element complies with the Act. However, the Board did examine the Plan's land use, rural and capital facilities plan elements and concluded that they did not comply with the Act. RCW 36.70A.070(6) requires that a transportation element be included within a comprehensive plan and that it be consistent with the land use element. The Board has concluded that the land use element of the Plan does not comply with the Act. RCW 36.70A.020(3) requires the encouragement of efficient multimodal transportation systems that are coordinated with county and city comprehensive plans. Since the Plan's land use element does not comply with the Act and since the transportation element must be consistent with that land use element, Planning Goal 3 cannot be achieved until the Plan is amended to comply with the Act.

### **Planning Goal 4**

RCW 36.70A.020(4) encourages a variety of residential densities. The Plan's five classifications of rural residential densities, because they are essentially identical, do not constitute such a variety. Therefore, the Plan substantially interferes with achieving this goal.

### **Planning Goal 5**

RCW 36.70A.020(5) encourages economic development in areas experiencing insufficient economic growth but within the capacity of natural resources, public services and public facilities. The Plan's capital facilities plan element is incomplete. Therefore, until that element of the Plan is complete, the County cannot achieve Planning Goal 5's intent of encouraging economic development within the capacity of public services and facilities.

### **Planning Goal 6**

The second sentence of RCW 36.70A.020(6) requires that the property rights of landowners shall be protected from arbitrary and discriminatory actions. The County has designated UGAs without "showing its work" regarding acreage and population breakdowns, without showing the capacity of existing cities to accommodate future population growth and without any justification whatsoever for applying a 75 percent market factor. This constitutes arbitrary action.

### **Planning Goal 12**

RCW 36.70A.020(12) requires counties and cities to ensure that those public facilities and services necessary to support development shall be adequate to serve the development at the time

development is available for occupancy and use without decreasing current service levels below locally established minimum standards. By failing to have completed the Plan's capital facilities plan element, the County is unable at this time to achieve this goal.

Finally, RCW 36.70A.040 requires that development regulations adopted to implement comprehensive plans be consistent with those plans. Because the Board has determined that the Plan itself does not comply with the Act's requirements and substantially interferes with the fulfillment of the Act's goals, thus making it invalid, the Board also concludes that development regulations adopted to implement such a plan also cannot comply with the Act nor remain valid as a matter of law.

### **Conclusions of Law**

During the period of remand (*see* below), the continued validity of the Kitsap County Comprehensive Plan adopted on December 29, 1994, and any and all development regulations adopted to implement the Plan — whether specifically appealed to the Board or not — will substantially interfere with the fulfillment of Planning Goals 1, 2, 3, 4, 5, the second sentence of 6, and 12 found at RCW 36.70A.020. **Therefore, pursuant to the authority conferred by RCW 36.70A.300(2) as amended by ESHB 1724, the Board declares the entire Plan and all its implementing development regulations invalid.**

### **Vi. ORDER**

#### **A. Finding of Noncompliance**

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 finds that the Kitsap County Comprehensive Plan is **not in compliance** with the requirements of the Growth Management Act. Furthermore, as a matter of law, all development regulations adopted to implement the Plan are **not in compliance** with the Act since the Plan itself does not comply and is invalid. The Board therefore remands the Plan and its implementing development regulations to the County and orders it to take actions necessary to bring the Plan and implementing development regulations into compliance with the GMA, as interpreted by the Board. Specifically, the County shall do the following:

1. Explicitly show how the size of the UGAs designated in the Plan will meet the OFM twenty year population projection for Kitsap County for the year 2012 (or any subsequent population projection adopted by OFM).
2. Explicitly show how and why the Plan's UGAs were designated. The Plan or documents specifically incorporated by reference in it, must indicate the capacity of all existing incorporated areas (including the City of Bainbridge Island) to accommodate future growth, the definition of terms used in various factors that are used to obtain "net" acreage (i.e., the Plan's deduction factors in addition to its "market factor"), and a rationale for utilizing in sizing the UGAs. any "market factor" or "cushion" above the Board's 25 percent bright line standard.

3. Amend its land use, housing and the capital facilities plan elements to contain a consistent figure for the average number of persons per household.
4. Amend its rural element to include a variety of rural, as opposed to urban, densities as required by RCW 36.70A.070(5).
5. Review its determination as to whether Kitsap County has any forest lands of long-term commercial significance; and to designate such forest lands if it concludes that such lands do exist, and amend the Plan and implementing development regulations accordingly.
6. Amend its rural element to not include designated natural resource lands (agricultural, mineral and forest) as required by RCW 36.70A.070(5).
7. Amend the Plan so as not to permit new residences on designated mineral resource lands at incompatible densities such as 1 du/2.5 acres.
8. Include a complete capital facilities plan element as required by RCW 36.70A.070(3).
9. Include a process for identifying and siting essential public facilities as required by RCW 36.70A.200.
10. Review the other legal issues raised by Petitioners that the Board has not addressed in this decision to determine whether Petitioners' claims are legitimate, thus requiring a modification of the Plan.
11. Conduct any necessary SEPA analysis as a result of actions taken to bring the Plan and its implementing regulations into compliance.
12. Review the Plan and amend it as necessary to ensure that it is internally consistent as required by the preamble to RCW 36.70A.070. In particular, attention should be paid to ensure that the land use, capital facilities and transportation elements are consistent.
13. Review and amend as necessary all development regulations that implement the Plan to ensure that these regulations are consistent with the Plan as required by RCW 36.70A.040 and .130(1).
14. Not adopt any amendments to the Plan, or its implementing development regulations, without early and continuous public participation as required by RCW 36.70A.140.

Pursuant to RCW 36.70A.300(1)(b), the County is given until **5:00 p.m. on Wednesday, April 3, 1996** to adopt a comprehensive plan, including final urban growth areas, and development regulations to implement the comprehensive plan, as are necessary to achieve compliance with the Board's Final Decision and Order and the requirements of the Act.

Although the Board has ordered major revisions to the adopted Plan and indeed, determined that the Plan is invalid, this does not mean that the County must start from scratch when adopting a new comprehensive plan. The Plan and the record indicate that much useful data has been assembled, professionally competent technical analysis performed, and the costs and consequences of various choices disclosed. Also, a considerable amount of public and Planning Commission input provide a broad range of community sentiment and thoughtful recommendations for the legislative body to consider. All of this record remains available for the County Commissioners' benefit as they set about the task of making the difficult policy decisions needed to adopt a comprehensive plan that complies with the requirements and goals of the

Growth Management Act.

The County shall file by **5:00 p.m. on Friday, April 12, 1996** one original and three copies with the Board and serve a copy on each of the other parties of a statement of actions taken to comply with the Final Decision and Order. The Board will then promptly schedule a compliance hearing to determine whether the County has procedurally complied with this Order. Substantive compliance will not be determined until and unless new petitions for review are filed within sixty days of publication of notice of adoption of a new comprehensive plan and/or implementing development regulations.

**B. DETERMINATION of Invalidity**

Based upon the Board’s findings of fact, reasons for invalidity, and conclusions of law listed above, and pursuant to the authority conferred by RCW 36.70A.300(2) as amended by ESHB 1724, the Board declares the entire Plan and all its implementing development regulations **invalid**.

So ORDERED this 6th day of October, 1995.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

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M. Peter Philley  
Board Member

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Joseph W. Tovar, AICP  
Board Member

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Chris Smith Towne  
Board Member

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

**APPENDIX A: glossary of abbreviations**

<b>1000 Friends</b> .....	petitioner 1000 Friends of Washington in Case No. 95-3-002, now consolidated herein
<b>1977 Plan</b> .....	Kitsap County’s 1977 Comprehensive Plan
<b>Aagaard</b> .....	Aagaard et al. v. Bothell, CPSGMHB Case No. 94-3-0011 (1995)
<b>Act</b> .....	State of Washington’s Growth Management Act
<b>Adams</b> .....	petitioner Case No. 95-3-0024; Case No. 95-3-0026; Sandra M. Adams and Nobi Kawaski now consolidated herein
<b>ARR</b> .....	Association of Rural Residents

<b>ARR &amp; KCRP</b> .....	petitioners Association of Rural Residents and Kitsap Citizens for Rural Preservation in Case No. 95-3-0010, now consolidated herein
<b>Banigan I</b> .....	petitioners Leslie Banigan and Nyle Hartley in Case No. 95-3-0022, now consolidated herein
<b>Banigan II</b> .....	petitioners Leslie Banigan and Charlie Burrow in Case No. 95-3-0026, now consolidated herein
<b>Board</b> .....	Central Puget Sound Growth Management Hearings Board
<b>Bremerton</b> .....	petitioner City of Bremerton in Case No. 95-3-0019, now consolidated herein
<b>Bremerton</b> .....	Bremerton, et al., v. Kitsap County, CPSGMHB Case No. 95-3-0039 (this case)
<b>CD</b> .....	Core Document, submitted by Kitsap County
<b>Central Board</b> .....	Central Puget Sound Growth Management Hearings Board
<b>Children’s Alliance</b> .....	Children’s Alliance and Low Income Housing Institute v. City of Bellevue, CPSGMHB Case No. 95-3-0011 (1995)
<b>Council</b> .....	North Kitsap Coordinating Council
<b>Council I</b> .....	petitioners North Kitsap Coordinating Counsel, Zane Thomas, Linda Cazin, Ray Bock, and Vivian Hiatt-Bock in, Case No. 95-3-0025, now consolidated herein
<b>Council II</b> .....	petitioners North Kitsap Coordinating Council, Zane Thomas, Leslie Banigan, Tom Donnelly, and Olalla Community Council in Case No. 95-3-0034, now consolidated herein
<b>Council III</b> .....	petitioners North Kitsap Coordinating Council, Rural Residents, Zane Thomas, Leslie Banigan, and Moira Kane in, Case No. 95-3-0035, now consolidated herein
<b>County</b> .....	Kitsap County
<b>CPPs</b> .....	County-wide Planning Policies
<b>DCTED</b> .....	Washington State Dept. Of Community, Trade and Economic Development
<b>DNR</b> .....	Washington State Department of Natural Resources
<b>du</b> .....	dwelling unit
<b>EDC</b> .....	intervenor Economic Development Council of Kitsap County
<b>Edmonds</b> .....	Edmonds and Lynnwood v. Snohomish County, CPSGPHB Case No. 93-3-0005 (1993)
<b>EHB 1305</b> .....	Washington State Senate and House of Representatives passed Engrossed House Bill 1305 on April 14, 1995, and April 20, 1995, respectively; with exception of Section 5, approved by the Governor on May 16, 1995.
<b>EIS</b> .....	Economic Impact Statement

<b>ESHB1724</b> .....	Washington State Senate and House of Representatives passed Engrossed Substitute House Bill 1724 on April 11, 1995, and April 23, 1995, respectively. With the exception of Sections 103, 302, and 903; approved by the Governor on May 15, 1995.
<b>ESHB 5876</b> .....	Washington State Senate and House of Representatives passed Engrossed Substitute House Bill 5876 on March 15, 1995, and April 13, 1995, respectively.; approved by the Governor on April 27, 1995.
<b>FCCs</b> .....	fully contained communities
<b>FUGA</b> .....	Final Urban Growth Area
<b>Garrido</b> .....	petitioner Charlotte Garrido in, Case No. 95-3-002, now consolidated herein
<b>Gig Harbor</b> .....	Gig Harbor et al.v. Pierce County, CPSGMHB Case No. 95-3-0016 (pending)
<b>GMA</b> .....	State of Washington’s Growth Management Act
<b>Hubert</b> .....	intervenor Harvey B. Hubert
<b>ICAO</b> .....	Kitsap County’s Interim Critical Areas Ordinance Ordinance No. 170-1994, adopted on December 29, 1994
<b>IUGA</b> .....	Interim Urban Growth Area
<b>KCRP</b> .....	Kitsap Citizens for Rural Preservation
<b>KCRP I</b> .....	petitioners Kitsap Citizens for Rural Preservation, Zane Thomas, Tom Donnelly, and Beth Wilson in, Case No. 95-3-0032, now consolidated herein
<b>KCRP I</b> .....	Kitsap Citizens for Rural Preservation v. Kitsap County, CPSGMHB Case No. 94-3-0005 (1994)
<b>KCRP II</b> .....	petitioners Kitsap Citizens for Rural Preservation and Association of Rural Residents in, Case No. 95-3-0038, now consolidated herein
<b>Kitsap v. OFM</b> .....	Kitsap County v. Office of Financial Management, CPSGMHB Case No. 94-3-0014 (1995)
<b>KRPC</b> .....	Kitsap Regional Planning Council
<b>Manke</b> .....	intervenor Manke Lumber Co.
<b>McCormick</b> .....	intervenor McCormick Land Company
<b>OFM</b> .....	Washington State Office of Financial Management
<b>Olalla</b> .....	petitioners Olalla Community Council and Beth Wilson in, Case No. 95-3-002, now consolidated herein
<b>Olympic Environmental Council</b>	Olympic Environmental Council, Washington Environmental Council and State of Washington Department of Natural Resources v. Jefferson County WWGMHB Case No. 94-2-0017
<b>Overton</b> .....	intervenor Overton and Associates, Overton, and Alpine Evergreen Co., Inc.

<b>Plan</b> .....	Kitsap County 1995 comprehensive plan
<b>Pope</b> .....	intervenor Pope Resources
<b>Port Blakely</b> .....	intervenor in Case No. 95-3-0022, now consolidated herein
<b>Poulsbo</b> .....	petitioner City of Poulsbo in, Case No. 95-3-002, now consolidated herein
<b><i>Poulsbo</i></b> .....	Poulsbo v. Kitsap County, CPSGMHB Case No. 92-3-0009 (1993)
<b>Rainier</b> .....	intervenor Rainier Evergreen .now consolidated herein
<b>Ross</b> .....	intervenor now consolidated herein
<b><i>Rural Residents</i></b> .....	Association of Rural Residents v. Kitsap County, CPSGMHB Case No. 93-3-0010 (1994)
<b>SCS</b> .....	U.S. Soil Conservation Service
<b>s.f.</b>	single family
<b><i>Snoqualmie</i></b> .....	Snoqualmie v. King County, CPSGPHB Case No. 92-3-0004 (1993)
<b>State</b> .....	petitioners State of Washington by and through the Director of Community, Trade and Economic Development, on behalf of the Commissioner of Public Lands, the Director of the Department of Fish and Wildlife, the Director of the Department of Ecology and the Secretary of the Department of Transportation in Case No. 95-3-0037, now consolidated herein
<b>Strategies Document (CD 10)</b> ....	Kitsap County’s document entitled “Strategies for Resource Lands Designations and Interim Development Regulations,” adopted April 20, 1992
<b>Suquamish</b> .....	petitioner Suquamish Tribe, Case No. 95-3-0018, now consolidated herein
<b><i>Tacoma</i></b> .....	Tacoma, et al., v. Pierce County, CPSGMHB Case No. 94-3-0001 (1994)
<b>Thomas I</b> .....	petitioners Zane Thomas, North Kitsap Coordinating Council, Nyle Hartley, Central Kitsap Coordinating Council, Case No. 95-3-0033, now consolidated herein
<b>Thomas II</b> .....	petitioners Zane Thomas, North Kitsap Coordinating Council, Nyle Hartley, Central Kitsap Coordinating Council, Moira Kane, Rural Residents, Leslie Banigan, and Tom Donnelly Case No. 95-3-0036, now consolidated herein
<b><i>Twin Falls</i></b> .....	<i>Twin Falls, et al., v. Snohomish County</i> , CPSGPHB Case No. 93-3-0003 (1993)
<b>UGAs</b> .....	Urban Growth Areas
<b><i>Vashon-Maury</i></b> .....	<i>Vashon-Maury, et al., v. King County</i> , CPSGMHB Case No. 95-3-0008 (pending)
<b>Western Board (WWGMHB)</b> ....	Western Washington Growth Management Hearings Board
<b><i>WSDF I</i></b> .....	<i>WSDF I v. City of Seattle</i> , CPSGMHB Case No. 94-3-0025 (1995)
<b><i>WSDF II</i></b> .....	<i>WSDF II v. Seattle</i> , CPSGMHB Case No. 95-3-0040

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- [1] Cities and counties were required to adopt comprehensive plans by July 1, 1994, pursuant to RCW 36.70A.040.
- [2] In 1992, the County Treasurer's Office listed 48,604.7 acres as designated forest land. Plan, Part II, at 91.
- [3] The Plan describes the factor as recognizing that smaller parcels, especially with residences, may be difficult to redevelop. The reductions vary with size: 1 to 2.5 acres — 50 percent; 2.5 to 5 acres — 25 percent; 5 to 10 acres — 20 percent; and for any acreage, with or without a residence, in excess of 10 acres — no reduction. Plan, Part II, at 202-3.
- [4] A 40 percent reduction factor accounts for non-residential development, critical lands and street rights-of-way. Plan, Part II, at 203.
- [5] A footnote to Table UG-3 notes:
- Bainbridge Island is incorporated and therefore the entire island is considered to be an urban growth area under the provisions of GMA. Therefore, it is excluded from the total since it is not comparable to the other growth areas in terms of matching land need to population forecast.
- [6] Part III of the Plan notes that the average household size was 2.64 persons in 1990. Plan, Part II, at 2.
- [7] Again, the Plan distinguishes Bainbridge Island from the other UGAs, noting that:
- Bainbridge Island is unique in that the entire island is by definition an urban growth area. The City may need to phase growth or use other techniques to reconcile apparent differences in need versus available land.
- [8] The Final Decision and Order in the *Vashon-Maury* case is due October 23, 1995. The Final Decision and Order in the *Gig Harbor* case is due October 31, 1995.
- [9] The Board on several occasions has described the decision-making regime under GMA. In its first IUGA case, the Board noted:
- The Board has held that the GMA consists of a *hierarchy of policy* that provides direction to implementing actions by state and local governments. Planning under GMA is an *iterative* and *interactive* process. The legislative bodies of counties and cities enjoy broad discretion; however, choices are now made within the framework of GMA mandates and are subject to diminished deference. The foundation for planning and decision-making under the GMA are the local comprehensive plans adopted by counties and cities; however, it is inaccurate to describe this as an entirely bottom-up process. The Act's requirements for consistency and coordination oblige cities and counties to balance local interests with regional and state interests when implementing the GMA. See *Happy Valley Associates, et al., v King County*, CPSGPHB 93-3-0008 (1993), at 19. Th[is] ... synopsis applies to all planning, including UGA planning, under the Act. *Rural Residents*, at 13, 14. (Footnotes omitted.)

More recently, the Board has held that the GMA is:

... a cascading hierarchy of substantive and directive policy, flowing first from the planning goals to the policy

documents of counties and cities (such as CPPs, IUGAs and comprehensive plans), then between certain policy documents (such as from CPPs to IUGAs and from CPPs and IUGAs to comprehensive plans), and finally from comprehensive plans to development regulations, capital budget decisions and other activities of cities and counties. *See* RCW 36.70A.120. *Aagaard, et al., v. Bothell*, CPSGMHB Case No. 94-3-0011 (1995), at 6.

[10]

The Board held that such an outcome-based evaluation for GMA compliance was required in *KCRP v. Kitsap County*, CPSGMHB Case No. 94-3-0005 (1994):

The Board agrees that, under the terms of the CEO itself, it is necessary to consider the gross acreage and zoning of all properties involved in an agreement for the purpose of calculating total UNIT COUNT. Thus, one needs to consider acreage and zoning of both the sending and receiving properties to make this density calculation. But gross acreage, gross unit count or even gross density are mere abstractions. The true test of whether the CEO results in urban growth is to ask the question — what does the CEO permit to be physically constructed on the ground, in the real world, and how does that potential outcome square with the Act's definition of urban growth? *KCRP*, at 16. (Emphasis added.)

[11]

The Board has previously observed that:

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

Further, the planning goals require comprehensive plans and implementing actions to include important urban amenities, such as parks, waterfront access, historic areas and artifacts. *See* RCW 36.70A.020, Planning Goals (9) Open Space and Recreation, (10) Environment and (13) Historic Preservation. Such amenities and other public facilities and services, are most appropriately addressed in the land use and capital facilities elements of comprehensive plans. *See* RCW 36.70A.070 (1) and (3). Cities may also choose to adopt policies articulating community character and design pursuant to RCW 36.70A.080. *See Snoqualmie*, at 30, fn. 20. (Footnote omitted.) *Rural Residents*, at 19.

[12]

The population density of the Central Puget Sound region is 12 times that of the balance of the state. The Board takes official notice of the *July 6, 1995, Correction Release of the Washington State Office of Financial Management's April 1, 1995, Populations of Cities, Towns and Counties used for the Allocation of State Revenues*. According to these counts, the four counties of the Central Puget Sound Region contain 3,020,000 people (approximately 56 percent of the state's population) in 6,287 square miles (approximately 9.4 percent of the total area of the state) for a regional population density of 480 people per square mile. The balance of the population (2,409,900 people) on the remaining land area of the state (60,295 square miles) equals a population density of 40 people per square mile.

[13]

The Central Puget Sound region's unique geography is a function of a geological history unlike that of Eastern Washington and even most of Western Washington. It is a glaciated north-south landform, framed by the Olympics to the west and the Cascades to the east. Its dominant physiographic features are north-south bodies of water including Puget Sound and its various arms (such as Hood Canal and Dyes Inlet), lakes (Goodwin, Sammamish, Sawyer, Stevens, Tapps and Washington), islands (Blake, Bainbridge, Maury, Mercer, Vashon and, in effect, Kitsap), forested ridgelines and river valleys.

[14]

The projected regional population growth during the forecast period is over 563,000. 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 2012 population as 3,653,653.

[15]

There are at present four counties and 75 incorporated cities within the Central Puget Sound region. This does not include the cities of Lakewood, Edgewood and University Place where incorporation has been approved by the voters, but the effective date of incorporation has not yet arrived. Every city and county in this region is required to prepare a comprehensive plan and implementing regulations pursuant to the GMA. See RCW 36.70A.040(3)(d).

[16]

The four counties in the Central Puget Sound region are King, Kitsap, Pierce and Snohomish. See RCW 36.70A.250. These are also the four county members of the Puget Sound Regional Council.

[17]

The Puget Sound Council of Governments was the predecessor regional planning agency to the current Puget Sound Regional Council.

[18]

The Board has previously held that:

The interactive and iterative sequence under GMA is: (1) Designate and adopt interim critical areas and resource land regulations (RCW 36.70A.170, .060); (2) Adopt CPPs with at least **procedural** fiscal analysis (per *Snoqualmie*); (3) Adopt *Interim* Urban Growth Areas (RCW 36.70A.110(4)); (4) Adopt final phases of CPPs and/or **substantive** fiscal analysis as needed (per *Snoqualmie*); (5) Adopt comprehensive plans, including Final Urban Growth Areas (RCW 36.70A.110(4)); (6) Perform activities and make capital budget decisions in conformity with the adopted comprehensive plan (RCW 36.70A.120) *Edmonds*, at page 26, fn. 10. (Emphasis is underlined.)

[19]

The history and theory of North American regional development runs from extremes of low to high density. The Board takes official notice of *The Elusive City: Five Centuries of Design, Ambition and Miscalculation*, Jonathan Barnett, Harper & Rowe, New York, 1986. On the one hand, Frank Lloyd Wright's design for Broadacre City, described on pages 84, 85, is an accurate prediction of post-World War II suburban sprawl ... On the other hand, the extreme concentration of Manhattan, described by the Regional Plan for New York, at page 147, is the model for maximum density. Obtaining such extreme densities could result from relying solely on objective criteria, such as theoretical land capacity of existing cities. Presumably, few Washingtonians would be satisfied living with Manhattan's extreme densities. This is why the GMA leaves discretion to local legislative bodies to balance objective factors with subjective factors.

[20]

The Board takes official notice that, according to a DCTED Growth Management Services Status Report dated September 19, 1995, 50 of the 75 cities in the Central Puget Sound region have adopted comprehensive plans.

[21]

The Board finds that, as more decisions are made and better information becomes available, earlier policy decisions will be reviewed and appropriate adjustments made. In *Edmonds* the Board held:

...[t]he nature of growth management planning under GMA is similarly interactive and iterative in nature, with specific steps along the way specifically noted for future review and adjustments. *Edmonds*, at 26.

[22]

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 conclusion is based on the Act's requirement that "cities are [the] primary providers of urban governmental services within an urban growth area" (RCW 36.70A.210(1)) and the fact that OFM's population projections are to be used for designating UGAs (RCW 36.70A.110(2), not necessarily for planning once the boundaries of UGAs have been established. *WSDF I*, at 55.

[23]

The Board takes official notice of the incorporation petitions currently pending before the King County Boundary Review Board for the proposed cities of Maple Valley, Covington and Briarwood, and the successful incorporation votes for the cities of Lakewood (1995), Edgewood (1995) and University Place (1994) in Pierce County, and Burien (1993), Newport Hills (1993), Woodinville (1993) and Shoreline (1994) in King County.

[24]

The Board has noted that the long term future of unincorporated urbanized communities is to have their urban governmental services primarily provided by existing or *future* cities. *See Tacoma*, at 37.

[25]

The use of the phrase "in general" twice within subsection (4) comports with the notion that these are 'general rules,' each of which has some articulated exceptions. In the first case, the general rule is that cities will be the primary providers of urban governmental services, but that there are some appropriate, unnamed exceptions. In the second case, the general rule is that urban governmental services are not to be provided in the rural area, unless appropriate, explicitly defined exceptions exist.

[26]

The Board notes that the GMA does not use the terms "urban sprawl," "rural sprawl" or "suburban sprawl." It uses the term generically, which suggests that it is an apt description of an inappropriate land use pattern either within the UGA or outside it.

[27]

The following definitions appear at RCW 36.70A.030:

(14) "Urban growth" refers to growth that makes intensive use of land for the location of buildings, structures, and impermeable surfaces to such a degree as to be incompatible with the primary use of such land for the production of food, other agricultural products, or fiber, or the extraction of mineral resources. When allowed to spread over wide areas, urban growth typically requires urban governmental services. "Characterized by urban growth" refers to land having urban growth located on it, or to land located in relationship to an area with urban growth on it as to be appropriate for urban growth.

....

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

[28]

Critical areas are found throughout all three major land use types because they describe attributes of the land rather than uses to which land is put. Certain large scale critical areas such as aquifer recharge, and may be a factor in determining location of UGAs.

[29]

A review of the two GMA references where the word "suburban" appears indicates that it is being used to describe a historical development pattern not to be repeated. The first reference is in a definition at RCW 36.70A.030 (9):

"Forest land" means land primarily devoted to growing trees for long-term commercial timber production on land that can be economically and practically managed for such production, including Christmas trees subject to the excise tax imposed under RCW 84.33.100 through 84.33.140, and that has long-term commercial significance. In determining whether forest land is primarily devoted to growing trees for long-term commercial timber production on land that can be economically and practically managed for such production, the following factors shall be considered: (a) The proximity of the land to urban, suburban, and rural settlements; (b) surrounding parcel size and the compatibility and intensity of adjacent and nearby land uses; (c) long-term local economic conditions that affect the ability to manage for timber production; and (d) the availability of public facilities and services conducive to conversion of forest land to other uses. (Emphasis added.)

The second reference occurs in RCW 36.70A.360 dealing with Master Planned Resorts (which by definition are outside a UGA) and which reads in pertinent part:

A master planned resort may be authorized by a county only if:

- (1) The comprehensive plan specifically identifies policies to guide the development of master planned resorts;
- (2) The comprehensive plan and development regulations include restrictions that preclude new urban or suburban land uses in the vicinity of the master planned resort, except in areas otherwise designated for urban growth under RCW 36.70A.110;... (Emphasis added.)

[30]

Many other possible definitions of "suburban" exist. Most apt here is the self-description by its 33 member cities of the "Suburban Cities Association of King County." Inasmuch as many of these cities (e.g., Bellevue, Federal Way, Renton, Redmond) have ratified the King County County-wide Planning Policies, in which they are designated as urban centers, it is clear that they recognize "suburban" as a subset of "urban."

[31]

The primary purpose of such small lot sizes is for residential use, rather than the production of food, agricultural products, fiber or mining. Such ersatz rural estates are known in Florida as "martini ranches" and in Oregon as "McMansions."

[32]

The Board takes official notice of *Public Transportation and Land Use Policy*, Boris Pushkarev and Jeffrey Zupan, Indiana University Press, Bloomington, Indiana, 1977. This work concludes that public transit usage is minimal below a net residential density of seven dwelling units an acre.

[33]

The State of Florida defines densities between one unit per ten acres and two units per acre as "sprawl" development." Florida Department of Community Affairs, Technical Memo (1989), Vol. 4, No. 4, at 11. Also, "Oregon's Land Conservation and Development Commission has rejected low-density provisions in many local plans, prompting density increases from about four units per gross buildable acre to six or more units in most urban areas." *The Art and Science of Designating Urban Growth Areas, Part II*, DCTED, 1992, at 17, 18.

[34]

In addition, the Board's Order on Dispositive Motions reworded Legal Issue No. 64.

[35]

This discussion addresses Legal Issue Nos. 1, 2, 3 and 56.

[36]

House Bill 1925, had it passed, would have amended RCW 36.70A.110(2) as follows (underlining denotes proposed new language; strike-through indicates language proposed to be deleted):

- (2) (~~Based upon the population growth management planning population projection made for the county by the office of financial management, the urban growth areas in the county shall include areas and densities sufficient~~

~~to permit the urban growth that is projected to occur in the county for the succeeding twenty-year period. ))~~The office of financial management may be a source for which counties base their population forecasts. Counties may add their own calculations or deduct from the office of financial management's forecasts. Each urban growth area shall permit urban densities and shall include greenbelt and open space areas. Within one year of July 1, 1990, each county that as of June 1, 1991, was required or chose to plan under RCW 36.70A.040, shall begin consulting with each city located within its boundaries and each city shall propose the location of an urban growth area. Within sixty days of the date the county legislative authority of a county adopts its resolution of intention or of certification by the office of financial management, all other counties that are required or choose to plan under RCW 36.70A.040 shall begin this consultation with each city located within its boundaries. The county shall attempt to reach agreement with each city on the location of an urban growth area within which the city is located. If such an agreement is not reached with each city located within the urban growth area, the county shall justify in writing why it so designated the area an urban growth area. A city may object formally with the department over the designation of the urban growth area within which it is located. Where appropriate, the department shall attempt to resolve the conflicts, including the use of mediation services. This section is intended to establish only a minimum standard for the size of urban growth areas. This section neither limits the discretion of counties to include an ample land supply within urban growth areas nor compels counties to limit or disregard existing property rights.

[37] This discussion addresses Legal Issues Nos. 3, 4, 5, 14 and 15.

[38] Port Gamble is described as a small commercial center, i.e., typically having a grocery store and gas pumps. Plan, Part II, at 134. It was designated "Semi-Urban" in the County's 1977 Plan. Plan, Part II, at 153.

[39] According to the Draft EIS, Kitsap County is comprised of 256,000 acres. CD 8, at III-61.

[40] New fully contained communities are described in the Act at RCW 36.70A.350. By definition, they are located outside a designated UGA, and become a UGA upon development approval.

[41] The Board notes that in performing these calculations, the actual results are somewhat different. The difference is presumably due to rounding off the 14.52 figure to 14.5.

[42] Total Gross Acreage as shown on Table UG-3 (Plan, Part II, at 203).

[43] Total Net Acreage as shown on Table UG-3 (Plan, Part II, at 203).

[44] Total Net Acreage Needed for Urban Residential Development as shown on Table UG-4 (Plan, Part II, at 204).

[45] Total Net Acreage Needed for Urban Residential Development with Market Factor added as shown on Table UG-5 (Plan, Part II, at 205).

[46]  $3,115 \div 4,145 = 75\%$

[47] This section addresses Legal Issue Nos. 4, 24, 25 and 27.

[48] Unincorporated Kitsap County = 210,877 acres. (Plan, Part II, at 128). Total residential land within

unincorporated Kitsap County = 50,565 acres (Table LU-2, at 133).  $50,565 \div 210,877 = 24$  percent.

[49] Wooded Land, which, with Open Land, comprised 48.5 percent of the unincorporated portion of the County, “may or may not contain a dwelling.” Plan, Vol., II, at 128. Since the primary purpose of wooded land is forest use, it was not listed under the residential category. However, pursuant to Table LU-3 (Plan, Part II, at 134), 358 dwelling units were located on the 102,256 acres (*see* Plan, Part II, Table LU-1, at 128) of Wooded and Open Land.

[50] Acreage for all but Wooded/Open Land obtained from Table LU-2 (Plan, Part II, at 133). Acreage for Wooded and Open Land obtained from Table LU-1 (Plan, Part II, at 128).

[51] Number of dwelling units obtained from Table LU-3 (Plan, Part II, at 134).

[52] The unincorporated portion of Kitsap County has 788 acres of mobile home parks (*see* Plan, Part II, Table LU-2, at 133) that were not broken down into separate dwelling units in Table LU-3 but which “commonly fall within the Urban Standard classification.” Plan, Part II, at 132.

[53] Kitsap County’s total unincorporated area comprises 210,877 acres. Plan, Part II, at 128. In addition to the 152,030 accounted for by this summary, unincorporated Kitsap County contains 41,669 acres of vacant land, 1,076 acres of commercial land, 1,926 acres of industrial land, 6,533 acres of public land (not including roads), and 6,582 acres of military land — none of which contain residential dwelling units. *See* Plan, Part II, Table LU-1, at 128. 152,818 acres plus the acreage of the lands identified in this footnote equals 210,874 acres, a difference of only three acres from the published county-wide total. Table LU-1 shows the acreage of non-residential unincorporated lands:

NON-RESIDENTIAL UNINCORPORATED KITSAP COUNTY

Land Use Classification Acres Dwelling Units

Vacant Land 41,6690

Commercial 1,0760

Industrial 1,9260

Public 6,5330

Military 6,8520

Total 58,0560

[54] The Plan does not contain tables or narrative indicating how many acres are in these ten classifications, or how much population or the number of dwelling units that will go into each category during the next twenty years. *See* both the land use chapter (Plan, Part II, at 155-167) and the rural lands chapter (Plan, Part II, at 189-198).

[55] This is the minimum density since greater densities are permitted through clustering or a Planned Unit Development.

[56] The County itself concedes that “... the areas of the county which are designated R-2 along the shoreline are not now rural.” County’s Brief, at 44.

[57] This section addresses Legal Issue Nos. 37 through 44 and 57.

[58] In comparison, the Plan indicates that on “estates” of 2.5 to 5 acres/du:

... Lots in this category may or may not be a problem for septic systems depending on soil type and the presence of environmentally sensitive areas. Developments in this category do not have the density to support municipal sewer system services. Plan, Part II, at 131.

If soil conditions are good, rural lands, defined as 5 to 10 acres/du:

... are often not a problem for septic tank systems and are generally not served by public sewer and water systems. There is adequate room to have both on-site septic and a private well on the same parcel with little health risks. Plan, Part II, at 131.

[59] According to the Plan, “[T]he majority of Kitsap County is considered a potential aquifer recharge area.” Plan, Part II, at 30.

[60] "Comprehensive land use plan," "comprehensive plan," or "plan" means a generalized coordinated land use policy statement of the governing body of a county or city that is adopted pursuant to this chapter.

[61] This discussion addresses Legal Issue No. 78.

[62] This discussion addresses Legal Issues Nos. 28, 29 and 30.

[63] This discussion in part addresses Legal Issues Nos. 5, 14, 28, 30 through 33, and 81 to the extent that those issues involve development regulations that implement the Plan.