

EXTERNAL CONSISTENCY OF PLAN.....

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I. Procedural Background

On July 7, 1995, the Central Puget Sound Growth Management Hearings Board (the **Board**) received a Petition for Review from the Association to Protect Anderson Creek, Michael E. McCuddin, Errol Dow, Susan Dow and Helen E. Havens (hereafter collectively referred to as **Anderson Creek I**) challenging the Comprehensive Plan and Critical Lands Ordinance adopted by the City of Bremerton (**Bremerton** or the **City**) as not complying with the requirements of the Growth Management Act (**GMA** or the **Act**). The Board also received a Petition for Review from the Association to Protect Anderson Creek, Helen E. Havens, Dave Della-Rovere, Cheryl Kinney, and Noel Travis (hereafter collectively referred to as **Anderson Creek II**) challenging Bremerton’s Comprehensive Plan for failing to comply with the GMA, Chapter 82.02 RCW, Chapter 35.13 RCW, the Kitsap County County-wide Planning Policies, and the State Environmental Policy Act (**SEPA**).

On July 10, 1995, the Board received a Petition for Review from Kitsap County (the **County**) challenging the City’s Comprehensive Plan as failing to comply with the GMA and SEPA.

On July 13, 1995, the Board issued an Order of Consolidation and Amended Notice of Hearing in the above-captioned case.

On August 7, 1995, the Board received three “cross petitions” from the City of Bremerton seeking dismissal of the three petitions for review described above. The Board also received the City’s “Index of Documents” on that date. The following day, the Board received the City’s “Complete Index of Documents Submitted August 7, 1995.”

A prehearing conference was held on August 14, 1995 and a Prehearing Order entered that established deadlines for filing dispositive motions and set forth a statement of legal issues to be determined by the Board.

On September 8, 1995, the Board received the “Respondent’s Motion to Dismiss Issues Set Forth in Anderson Creek I and II Appeals and the Kitsap County Appeal” (**City’s Motion to Dismiss**).

On September 18, 1995 the Board granted Ron Sciepko and Ellen Lunde’s (hereafter collectively referred to as **Sciepko**) Motion to Request Status as Intervenor.

On October 18, 1995, the Board entered an Order on Bremerton’s Dispositive Motions that

granted a portion of the City's Motion to Dismiss, thereby resulting in several legal issues or portions of certain legal issues being dismissed.

On November 1, 1995, the Board entered an Order Dismissing Kitsap County's Petition for Review after the County voluntarily withdrew from the case.

On November 1, 1995, the Board received "Anderson Creek I's Brief on the Merits on Legal Issues #10, 11, 12, 13, 15 & 17" (**ACI Brief**) and Anderson Creek II's Brief on the Merits Issues #11, 13, 14, 17, 18, 19 & 20" (**ACII Brief**). Exhibits were attached to each brief and referenced by exhibit numbers as designated in the City's Index of the record below.

On November 20, 1995, the Board received the "Response Brief of the City of Bremerton" (**City's Response**) and attached exhibits, and the "Response of Sciepko and Lunde to Anderson Creek I's Brief on the Merits on Legal Issues #10, 11, 12, 13, 15 & 17 and Anderson Creek II's Brief on the Merits on Issues #11, 13, 14, 17, 18, 19 & 20" (**Sciepko's Response**). No exhibits were attached to this brief.

On November 27, 1995, the Board received "Anderson Creek I's Reply Brief" and "Anderson Creek II's Reply Brief."

On November 28, 1995, the Board held a hearing on the merits of the remaining legal issues raised by the parties at the Poulsbo City Council Chambers in Poulsbo, Washington. M. Peter Philley, presiding officer in this case, appeared for the Board. Michael E. McCuddin represented Anderson Creek I; Helen E. Havens represented Anderson Creek II; Jane Ryan Koler represented Bremerton; Kay W. Wilson, Senior Planner, and Ron W. Hough, Planning Manager, participated on behalf of the City as well; and G. Perrin Walker and Greg W. Haffner represented Sciepko. Court reporting services were provided by Robert H. Lewis of Tacoma. No witnesses testified.

II. RULINGS ON MOTIONS TO SUPPLEMENT THE RECORD

Approximately the first hour of the hearing was spent on preliminary procedural matters regarding the record before the Board. The presiding officer distinguished several exhibits as follows:

Ex. 522DSEIS for Revised Bremerton Comprehensive Plan

Ex. 522A April 5, 1995 Dept. of Fisheries letter from John Boettner

Ex. 838 April 3, 1995 Dept. of Community, Trade and Economic Development letter to Bremerton Mayor Horton

Ex. 838A March 27, 1995, Dept. of Fish and Wildlife letter

Furthermore, the presiding officer numbered and ruled on the following offered exhibits:

Ex. 945 Admitted Request for comment

- Ex. 946 Admitted MDNS
- Ex. 947 Denied Status report
- Ex. 948 Admitted SEPA appeal
- Ex. 949 Denied November 21, 1993 County Department of Community Development letter from Ron Perkerewicz
- Ex. 950 Denied “Gorst Neighborhood Meeting”
- Ex. 951 Denied “Transportation Issues in Kitsap County”
- Ex. 952 Denied Bremerton Transportation Access Project
- Ex. 953 Denied “Anderson Creek Site Visit — April 7, 1995”
- Ex. 954 Admitted Citizen petitions
- Ex. 955 Admitted January 26, 1995, letter from Mayor Weatherill, City of Port Orchard to Mayor Horton, City of Bremerton
- Ex. 956 Admitted Aerial photo of Anderson Creek area
- Ex. 957 Admitted Declaration of Delbert W. Knauss, attached to AC’s Joint Response to City’s Motion to Dismiss

III. FINDINGS OF FACT

1. In October 1985 the City prepared a Draft Environmental Impact Statement (**DEIS**) for the pre-GMA Bremerton Comprehensive Plan. Exhibit 522-3 to City’s Motion to Dismiss.
2. In January 1986 the City prepared a Final Environmental Impact Statement (**FEIS**) for the its pre-GMA comprehensive plan. Exhibit 522-3 to City’s Motion to Dismiss.
3. In 1986 the City adopted its pre-GMA comprehensive land use plan. Declaration of Ron W. Hough attached to City’s Motion to Dismiss, at 2, ¶2.
4. On October 21, 1987, the Bremerton City Council passed Ordinance No. 4119 that annexed an area of land known as the “Utility Lands Annexation” which included a 340-acre property in the Anderson Creek area. Declaration of Ron W. Hough attached to City’s Motion to Dismiss, at 3, ¶6; Exhibit A to Hough Declaration. It is this property and how the City would treat it that is the subject of this appeal.
5. It is undisputed by the parties that the City owned the 340-acre parcel of property. *See also* Ex. 2 to City’s Response.
6. On August 13, 1992, Bremerton’s Responsible Official issued a Determination of Nonsignificance regarding the environmental impacts of a proposed critical areas ordinance. *See* Ex. F-1 attached to City’s Motion to Dismiss.
7. On March 1, 1993, the Bremerton City Council passed Ordinance No. 4422, the City’s Critical Lands Ordinance (**CLO**) to meet the requirements of the GMA. ^[1] Ex. 9 to City’s

Response Brief.

8. Notice of adoption of the CLO was published on July 17, 1993. Exhibit F to City's Motion to Dismiss. The CLO was not subsequently appealed to the Board.

9. On July 13, 1994, the Bremerton City Council passed Ordinance No. 4476 which amended the City's CLO. Ex. 9 to City's Response Brief.

10. Notice of adoption of the July 13, 1994 amendment to the CLO was published on August 7, 1994. Declaration of Ron W. Hough, at 5.

11. No appeals were filed with the Board within 60 days of publication of the notice of adoption of Ordinance No. 4476.

12. On August 1, 1994, the City presented a preliminary draft of the Land Use Element of its proposed GMA-required comprehensive plan to the Citizens Advisory Committee (CAC) of the Bremerton Planning Commission. This draft: "... referred to the possibility that portions of the Anderson Creek drainage might be suitable for higher and better uses, suggesting that residential development might be allowed. This reference was the only use the CAC discussed for this parcel." Declaration of Delbert W. Knauss attached to Anderson Creek I and II's combined Response to City's Motion to Dismiss, at 1, ¶2. Compare this Finding with Findings of Fact No. 18 and 19 below.

13. On December 1, 1994, Petitioner Helen Havens received notice from the City, addressed to her father, that it would be surplusizing its Anderson Creek property. Ex. 8 to City's Response, at 26.

14. On December 7, 1994, the City Council held a public hearing on the proposal to surplus its Anderson Creek property; subsequently, the City declared a portion of the Anderson Creek utility lands east of Gorst and south of Sinclair Inlet (approximately 340 acres) to be surplus utility land. Plan, at 40 of Land Use Element; Ex. 8 to City's Response, Testimony of Helen Havens, at 26. See also Ex. 8 to City's Response, at 39 and 40.

15. On December 22, 1994, the Mayor of Bremerton, on behalf of the City, entered into an agreement with Ronald S. Sciepko and Ellen B. Lunde, an "Option to Purchase Unimproved Property." Ex. 2 to City's Response Brief.

16. On January 19, 1995, Ronald Sciepko submitted an "Application for Comprehensive Plan Amendment" to the Bremerton Department of Community Development, asking that the Anderson Creek property be redesignated to "industrial/business park area." Ex. 929. An "Application for Zone Reclassification (Rezone)" was also filed on the same date for the undeveloped property. Ex. 929.

17. On January 20, 1995, the City issued a Draft Supplemental Environmental Impact Statement (**DSEIS**) for the “Revised Bremerton Comprehensive Plan.” The DSEIS supplemented the DEIS and FEIS prepared for the pre-GMA comprehensive plan. The comprehensive plan revisions were prepared to bring the plan into compliance with the GMA. Exhibit 522-1 - 3 to City’s Motion to Dismiss; Declaration of Ron W. Hough attached to City’s Motion to Dismiss, at 2, ¶2.

18. On January 24, 1995, the CAC met with Delbert Knauss, its chair, present. Ron W. Hough, the City’s Planning Manager, provided the CAC with copies of a new “Utility Lands Map” at this meeting due to the City Council decision to surplus the Anderson Creek property. “... The City Council’s agreement to sell the Anderson Creek property necessitates a map change. The major change is to designate the Anderson Creek property Industrial (IP) south of Hiway 16...” Exhibit 5 to City’s Response Brief, at 1, 2 and 4.

19. The first official knowledge that the chairman of the CAC had concerning the Anderson Creek redesignation occurred “early” in 1995 via a “note from the Bremerton Department of Community Development...” Declaration of Delbert W. Knauss attached to Anderson Creek I and II’s combined Response to City’s Motion to Dismiss, at 1, ¶3.

20. The period for commenting on the DSEIS ended on February 21, 1995. The City did not receive any comments during that period. Exhibit 523-3 and -4 to City’s Motion to Dismiss.

21. On February 28, 1995, the City issued a Final Supplemental Environmental Impact Statement (**FSEIS**) for the Revised Bremerton Comprehensive Plan. Exhibit 523-1 to City’s Motion to Dismiss; Declaration of Ron W. Hough attached to City’s Motion to Dismiss, at 2, ¶2.

22. On March 1, 1995, the City issued a Mitigated Determination of Nonsignificance (**MDNS**) for Sciepko’s proposal to amend the Bremerton Comprehensive Plan Map for a 340 acre site from “forest management” to “industrial/business park” and rezone from “forest management” to a mixture of zoning classifications consisting of 70% “general industry,” 15% “mixed use” and 15% “general business.” Ex. 946.

23. On March 2, 1995, a Notice of Issuance of the FSEIS was published in *The Sun*. Exhibit 525-1 to City’s Motion to Dismiss.

24. On March 22, 1995, the Bremerton City Council held a second public hearing on the land use and transportation elements of the proposed comprehensive plan. Exhibit 6 to City’s Response Brief. *See also* Ex. 828. Petitioners Helen E. Havens, Dave Della-Rovere, Mike McCuddin, and Susan Dow testified regarding the proposed use of the Anderson Creek watershed, asking the land use designation not be changed to industrial. Exhibit 6 to City’s

Response Brief, at 22-24.

25. On March 29, 1995, the Bremerton City Council held a third public hearing on the proposed comprehensive plan. It voted to leave the proposed industrial designation of the Anderson Creek property intact until the next meeting. Ex. 7 to City's Response, Brief, at 7; *see also* Ex. 133.

26. On April 5, 1995, the Bremerton City Council held a fourth public hearing on the proposed comprehensive plan. Helen Havens, Mike McCuddin and Ron Sciepko were among those testifying at the hearing. Following close of public testimony, the City Council adopted the Bremerton Comprehensive Plan (the **Plan**) in order to comply with the requirements of the

[\[2\]](#)
GMA. Exhibit 8 to City's Response Brief. The Anderson Creek property was designated "Industrial Park" in the Plan.

27. On April 5, 1995, the Bremerton City Council passed Resolution No. 2508, adopting the Revised Bremerton Comprehensive Plan. Plan, at (unnumbered) 3.

28. On May 9, 1995, the City published notice of adoption of its Plan. Declaration of Ron W. Hough attached to City's Motion to Dismiss, at 2, ¶1; *see also* Anderson Creek I Petition for Review, at 2, ¶2 and Anderson Creek II Petition for Review, at 2, II.

29. On July 5, 1995, a 76-acre parcel of property adjacent to the City's Anderson Creek area utility lands and owned by Ron Sciepko was annexed into the City. Declaration of Ron W. Hough attached to City's Motion to Dismiss, at 3, ¶6.

Anderson Creek Property

30. Located on the south side of Sinclair Inlet, the area is physically separated from other lands within the City of Bremerton but is within the Urban Growth Area (UGA). It has direct City water service and can be served by sewer. The property has convenient highway access, is undeveloped, and is considered to be suitable for industrial development. It is also adjacent to lands already so designated by Kitsap County. Ex. 522 (DSEIS), at 7, §3(d); *see also* Ex. 929, Ex. 8 to the City's Response, at 35, and Ex. 955.

31. The City of Bremerton protected the Anderson Creek Watershed since 1915 and owned approximately 340-acres within that watershed. Ex. I-5 and I-6 attached to City's Motion to Dismiss.

32. The Anderson Creek watershed was used for surface water as late as 1985. It contains eleven wells of which four are being used. It is listed by the Department of Health as an emergency water supply. Ex. 8 to City's Response Brief, Testimony of C. R. "Tiny" Collins, at 23.

33. Prior to being designated as “industrial” in the Plan, the Anderson Creek property was designated “utility land” and zoned “forest management.” Ex. 572.

34. The Anderson Creek “Industrial Park” district southeast of Gorst was found to be more suitable for industrial uses than for continued forestry and watershed uses. The City will retain its wells on the property but allow it to be sold and converted to much-needed industrial development sites. Plan, at 47 of Land Use Element. A map of the area is shown in the Plan, at 48 and 76 of the Land Use Element.

35. According to a March 20, 1995 letter from Phyllis Meyers of the Suquamish Tribe (Ex. 931):

Anderson Creek is a salmon stream and is one which the tribe surveys annually for adult returns. The Suquamish Tribe reserved the right to the salmon in Anderson Creek and the entire U & A [Usual and Accustomed Area] with the Treaty of Point Elliott....

...

There is a well documented history of unstable soils along the highway immediately down-gradient from the site for this proposal and in the Ross Creek basin immediately to the east. In addition, there is the steep and environmentally sensitive Anderson Creek ravine, which would have to have road crossings for development. The site is above a mapped aquifer and ground water recharge and/or contamination issues are likely to arise. Soil instability is characteristic of sites with surface and ground water interactions.

36. According to a March 27, 1995 Washington State Department of Fish and Wildlife memorandum (Ex. 838A, at 2):

... [The] Anderson Creek watershed [is] a fairly good producer of chum and coho salmon and cutthroat trout. This watershed has extremely erodible soils and a history of sedimentation problems in and stormwater problems in the upper watershed. Further development will have to be very sensitive to instream habitat.

37. According to the April 5, 1995 testimony of Allen L. Hart, an engineering geologist:

... The soils on the property are all competent and suitable for support of structures be it commercial, residential, or any industrial designation.... The designation of “unstable” or the presence of land slides on a parcel should not deem an entire project area as undevelopable.... Ex. 8 to City’s Response, at 36.

38. John Rose, a civil engineer, testified on April 5, 1995, that the site contains steep slopes but indicated that such slopes do not cover the entire site, only a portion of it. Ex. 8 to City’s Response, at 37.

IV. DISCUSSION AND CONCLUSIONS

RESOLUTION NO. 2508

Bremerton adopted its Plan by Resolution No. 2508 rather than by an ordinance. RCW 36.70A.290 (2) provides:

(2) All petitions relating to whether or not an adopted comprehensive plan, development regulation, or permanent amendment thereto, is in compliance with the goals and requirements of this chapter or chapter 43.21C RCW must be filed within 60 days after publication by the legislative bodies of the county or city. The date of publication for a city shall be the date the city publishes the ordinance, or summary of the ordinance, adopting the comprehensive plan or development regulations, or amendment thereto, as is required to be published. Promptly after adoption, a county shall publish a notice that it has adopted the comprehensive plan or development regulations, or amendment thereto. The date of publication for a county shall be the date the county publishes the notice that it has adopted the comprehensive plan or development regulations, or amendment thereto. (Emphasis added.)

Consequently, the Board has held that GMA comprehensive plans can only be adopted by ordinance. *Burlington Northern Railroad v. Auburn*, CPSGMHB Case No. 93-3-0050, Order of Dismissal, at 3; *South Bellevue Partners Limited Partnership et al. v. Bellevue et al.*, CPSGMHB Case No. 95-3-0055, Order of Dismissal, at 12 and 14. The Board's rationale, in addition to the language of the GMA itself quoted above, is set forth in these two dismissal orders.

Accordingly, the Board holds that Bremerton has failed to comply with the requirements of the Act by failing to adopt its comprehensive plan by ordinance as required by RCW 36.70A.290(2).

This holding is consistent with the Board's earlier decision in *Burlington Northern*, a case with similar facts. However, in *Burlington Northern*, it was determined very early in the process that Auburn had not adopted its comprehensive plan by ordinance. Accordingly, the parties were not required to expend time preparing the case, nor did the Board hear substantive arguments: the first order entered was the Order of Dismissal.

In contrast, in this case the Board first became aware that the City adopted its Plan by resolution when it was reviewing unnumbered page three of the Plan itself. By that time the parties had fully argued their respective positions before the Board. The Board must order the City to adopt its comprehensive plan by ordinance, as in *Burlington Northern* and *South Bellevue*; however, here the Board finds it appropriate to also answer the substantive questions before it.

[Note: Board Member Chris Smith Towne participated in this portion of the Final Decision and Order only; she did not participate in the Board's other holdings and conclusions regarding substantive legal issues].

Conclusion

RCW 36.70A.290(1) requires that cities adopt their comprehensive plans by ordinance. The City of Bremerton adopted its Plan by resolution. Therefore, the City did not comply with the requirements of the Act in adopting its comprehensive plan.

[3]

PUBLIC PARTICIPATION

RCW 36.70A.020(11), one of the Act's planning goals, provides:

Citizen participation and coordination. Encourage the involvement of citizens in the planning process and ensure coordination between communities and jurisdictions to reconcile conflicts.

In turn, RCW 36.70A.140 more specifically articulates the citizen participation prong of this goal. It is entitled “Comprehensive plans — Ensure public participation” and provides:

Each county and city that is required or chooses to plan under RCW 36.70A.040 shall establish and broadly disseminate to the public a public participation program identifying procedures providing for early and continuous public participation in the development and amendment of comprehensive land use plans and development regulations implementing such plans. The procedures shall provide for broad dissemination of proposals and alternatives, opportunity for written comments, public meetings after effective notice, provision for open discussion, communication programs, information services, and consideration of and response to public comments. In enacting legislation in response to the board's decision pursuant to RCW 36.70A.300 declaring part or all of a comprehensive plan or development regulation invalid, the county or city shall provide for public participation that is appropriate and effective under the circumstances presented by the board's order. Errors in exact compliance with the established program and procedures shall not render the comprehensive land use plan or development regulations invalid if the spirit of the program and procedures is observed.

Petitioners raise two contentions claiming that the City violated these provisions of the Act. First, they claim that because the Mayor had entered into a purchase option agreement with Sciepko (*see* Finding of Fact No. 15), it was a “done deal” that committed the City Council to redesignate the Anderson Creek property.

The Board’s jurisdiction is limited to matters set forth in RCW 36.70A.280(1).^[4] Consequently, it takes no position as to whether a purchase option agreement or the City’s decision to surplus property (*see* Finding of Fact No. 14) bound the City to redesignate the property in the Plan. As indicated in its Order on Bremerton’s Dispositive Motions previously entered in this case, the Board does not have jurisdiction to determine whether a city complied with statutes or regulations that govern efforts to surplus city property. Nor does the Board have jurisdiction to determine whether a mayor can enter into a purchase option agreement or, moreover, whether such an agreement was properly executed and is binding.

However, the Act does contain what the Board has referred to as “enhanced” public participation requirements. *See* RCW 36.70A.140 and *Tracy v. City of Mercer Island*, CPSGPHB 92-3-0001, Final Decision and Order (January 5, 1993) at 13-14. The Board will therefore address the Petitioners’ second complaint, that the City circumvented its own CAC process in redesignating the Anderson Creek property.

The Plan, in discussing “Growth Management Act Requirements,” provides:

A. Citizen Participation:

The Act required “early and continuous” citizen participation throughout the planning

process. Bremerton established the Citizens Advisory Committee (CAC) to work directly with staff and to provide ongoing opportunities for direct public involvement in drafting all Plan revisions before sending them on to the Planning Commission for public hearings and action. Plan, at 2 (emphasis in original).

Petitioners contend that since this part of the Plan indicates that the CAC would be involved in “all” Plan revisions, that the CAC should have been involved in the redesignation of the Anderson Creek property. They cite to the Declaration of Delbert W. Knauss as proving that the CAC was not involved in the Anderson Creek redesignation process. See Findings of Fact Nos. 12 and 19.

The record shows that in August 1994, the CAC was advised that the City might redesignate the Anderson Creek property, but not specifically how. Knauss Declaration. Rather, Knauss declares, there was a “suggestion” that residential development of unknown size and density might be permitted. Furthermore, he declares that as Chair of the CAC, he did not officially learn about the City’s decision to surplus the Anderson Creek property until sometime “early” in 1995. Finding of Fact No. 19. The decision to surplus the property was made in December 1994.

The record reveals that the CAC, with Mr. Knauss present, was advised officially on January 24, 1995, that the City had agreed to sell its Anderson Creek property and that this sale required a new “Utility Lands Map.” The record does not contain a copy of the January 24, 1995, map; however, the Plan’s “Watershed & Utility Lands Land Use Plan” map clearly shows the Anderson Creek property as designated “IP” — standing for “industrial park.” Plan, at unnumbered page 80 of Land Use Element.

The Board further notes that the City Council did hold four public hearings on the Plan, and that the Anderson Creek property redesignation was specifically addressed at least three times. See Findings of Fact Nos. 24, 25 and 26.

The Board cannot accept the Petitioners’ contention that the CAC was not given the opportunity to be involved in the redesignation process for the Anderson Creek property. Moreover, the last sentence of RCW 36.70A.140 indicates that errors in exact compliance will not make a comprehensive land use plan invalid if the spirit of the program and procedures is followed. The City did not violate its public participation procedures involving the CAC. It provided that body with information on January 24, 1995, that indicated that the Anderson Creek property had been surplused and sold, and that a new designation map was necessary as a result. The CAC could have placed the matter on its subsequent agendas.

Accordingly, the Board holds that the City did not violate RCW 36.70A.020(11) or .140 by redesignating the Anderson Creek property.

Conclusion

The City of Bremerton complied with the Act’s citizen participation provisions at RCW 36.70A.020(11) and .140 when it adopted its Plan.

[5]

OPEN SPACE

Anderson Creek II claims that the City violated the GMA since its Plan does not map, list or otherwise identify and retain publicly owned open space. ACII Brief, at 15.

RCW 36.70A.020 lists the Act's planning goals to guide the adoption of comprehensive plans and development regulations. Subsection (9) and (10) state:

(9) Open space and recreation. Encourage the retention of open space and development of recreational opportunities, conserve fish and wildlife habitat, increase access to natural resource lands and water, and develop parks. (10) Environment. Protect the environment and enhance the state's high quality of life, including air and water quality, and the availability of water.

RCW 36.70A.160, entitled "Identification of open space corridors — Purchase authorized," provides:

Each county and city that is required or chooses to prepare a comprehensive land use plan under RCW 36.70A.040 shall identify open space corridors within and between urban growth areas. They shall include lands useful for recreation, wildlife habitat, trails, and connection of critical areas as defined in RCW 36.70A.030. Identification of a corridor under this section by a county or city shall not restrict the use or management of lands within the corridor for agricultural or forest purposes. Restrictions on the use or management of such lands for agricultural or forest purposes imposed after identification solely to maintain or enhance the value of such lands as a corridor may occur only if the county or city acquires sufficient interest to prevent development of the lands or to control the resource development of the lands. The requirement for acquisition of sufficient interest does not include those corridors regulated by the interstate commerce commission, under provisions of 16 U.S.C. Sec. 1247(d), 16 U.S.C. Sec. 1248, or 43 U.S.C. Sec. 912. Nothing in this section shall be interpreted to alter the authority of the state, or a county or city, to regulate land use activities. The city or county may acquire by donation or purchase the fee simple or lesser interests in these open space corridors using funds authorized by RCW 84.34.230 or other sources. Emphasis added.

The Plan defines "open space" as follows:

Any area which provides physical or visual relief from the developing environment. It may consist of lands that are improved or unimproved, and public or private. Within the urban environment, open space may include linear streetscapes, view corridors, shoreline areas, mini-parks, pedestrian corridors, and areas reserved or used for stormwater retention, drainage, wetland protection, etc. Plan, Glossary, at 7.

The Plan addresses "Parks" in its Capital Facilities Program (CFP) provisions. Bremerton provides a system of parks broken down into categories and subcategories as follows: local parks (neighborhood and community parks), regional parks, and open space parks. A specific section on "open space" provides as follows:

An open space park consists of undeveloped land primarily left in its natural environment, with recreation uses as a secondary objective. It is usually owned or managed by a governmental agency and may or may not have public access. This type of land often

includes steep hillsides, wetlands, large forested areas or other similar spaces. In some cases, environmentally sensitive areas are considered as open space and include wildlife habitats, stream and creek corridors, forested areas, or unique or endangered plant species. The City's open space lands are often heavily wooded, and development, if any, is usually limited to trails.

The second table on the next page includes an inventory of Bremerton open space park lands. (Table PK-3). Plan, CFP, at 30.

Table PK-3 in turn reveals that in 1994, Bremerton had a total of 58.4 acres of open space. Plan, CFP, at 31.

In addition, Table PK-1 (Plan, CFP, at 29) indicates that Bremerton has 55.1 acres of local parks and Table PK-2 (Plan, CFP, at 31) indicates that the City has 406 acres of regional parks.

Furthermore, a map shows Bremerton's parks. Plan, CFP, at 39.

The Plan also contains maps of the City by neighborhood: East, Central, West and Watershed & Utility. Plan, Land Use Element, following page 76. These maps indicate with a "P" or "OS", parks and open space areas respectively. The Watershed & Utility map shows a "P" at the very northeast portion of the Anderson Creek property, on the water side of State Route 16.

Given these references in the Plan to open space, the Board holds that the Petitioners have failed to meet their burden of showing that the Plan fails to comply with RCW 36.70A.160.

The Board also makes a similar holding regarding the conservation of fish and wildlife habitat referenced in RCW 36.70A.020(9).

RCW 36.70A.170(1)(d) required Bremerton to designate critical areas by September 1, 1991; RCW 36.70A.060(2) required the City to adopt development regulations to protect those designated areas by the same date. RCW 36.70A.020(5) (c) includes "fish and wildlife habitat conservation areas" within the definition of "critical areas." The City adopted its CLO on March 1, 1993. Finding of Fact No. 7. Since the CLO was not appealed, it is now irrefutably valid. *See Twin Falls, Inc. et al. v. Snohomish County*, CPSGPHB

[6]
93-3-0003, Final Decision and Order (September 7, 1993), at 55.

Conclusion

The Plan complies with the Act's open space goal at RCW 36.70A.020(9), its requirements at RCW 36.70A.160, and its fish and wildlife habitat goal at RCW 36.70A.020(10).

CAPITAL FACILITIES DEVELOPMENT IN ANDERSON CREEK AREA [7]

Anderson Creek II contends that the redesignation of the Anderson Creek property to industrial violates the GMA since the City failed to conduct adequate capital facilities analysis for such a drastic land use change. ACII Brief, at 5. Specifically, Anderson Creek II alleges that the Plan's capital facilities plan (CFP) sewer provisions do not address the Anderson Creek area and that the stormwater provisions are incomplete. ACII Brief, at 6. Petitioners also claim that the CFP provisions on fire and emergency services and water supply are inadequate. ACII Brief, at 8-11. Anderson Creek II's phrasing of Legal Issue No. 11 and its actual argument do not coincide. The

Board will focus first on the statement of the legal issue before it which involves the allegation of a violation of RCW 36.70A.110 (the UGA provisions of the Act). In contrast, written and oral argument focused on the inadequate capital facilities planning for the Anderson Creek area.

The Board holds that Anderson Creek II has not shown how the City violated RCW

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36.70A.110(1). It is Kitsap County's ultimate duty, and not the City of Bremerton's, to designate final UGA boundaries. Moreover, because the Anderson Creek property is a part of the incorporated area of the City of Bremerton, it automatically falls within a UGA.

The Board also holds that Anderson Creek II has not shown how the City violated RCW

36.70A.110(3). The record is clear that the Anderson Creek property is currently undeveloped land and that the area is served by existing public facilities and services — or can be served by such facilities and services that will be provided by either private or public sources. *See* Finding of Fact No. 30. *See also* *Cities of Tacoma, Milton, Puyallup and Sumner v. Pierce County*,

[\[9\]](#)

CPSGPHB No. 94-3-0001, Final Decision and Order (July 5, 1994), at 33-34.

Likewise, the Board holds that Anderson Creek II has not shown how the City violated

RCW 36.70A.020(12). That planning goal provides:

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

The record does not indicate that any development application has yet been filed for the Anderson Creek area. Once one is submitted and approved, the City will be required to ensure that the public facilities and services necessary to support the development are adequate by the time of occupancy.

The Board's Order on Bremerton's Dispositive Motions (at 10) granted the City's motion to dismiss those legal issues claiming that the City had violated Chapter 82.02 RCW.

Anderson Creek II's Legal Issue No. 11 specifies RCW 36.70A.020 and .110 as the provisions of the Act that have been violated. The issue does not allege a violation of RCW 36.70A.070, and so the Board will not address this allegation despite the Petitioner's briefing. Petitioners must craft their legal issues so that the provisions of the Act allegedly violated are cited and reviewed by the

[\[10\]](#)

Board.

Conclusion

The Plan complies with RCW 36.70A.020 and RCW 36.70A.110. The Board has no jurisdiction to determine whether the City complied with Chapter 82.02 RCW. The Board has not reviewed Plan compliance with RCW 36.70A.070(3) because Petitioners did not cite that section in their statement of legal issues.

[\[11\]](#)

PROTECTION OF CRITICAL AREAS

Anderson Creek II contends that the Plan fails to designate and “conserve” critical areas in violation of RCW 36.70A.170 and .180(1)(a) and (b). The Board will first address RCW 36.70A.170 which requires all cities and counties to designate critical areas by September 1, 1991. Closely related to this provision of the Act is RCW 36.70A.060(2) which directs cities and towns to adopt development regulations to protect designated critical areas by September 1, 1991. Bremerton’s CLO is the City’s enactment intended to comply with these requirements of the Act. Finding of Fact No. 7. The CLO was not appealed and therefore it is irrefutably valid. The fact that the City did not adopt the CLO until well after the Act’s deadline is now irrelevant. **The Board holds that the Petitioners have not met their burden of showing how the Plan, which is the only enactment by Bremerton before it, violates the GMA.**

RCW 36.70A.180, “Report on planning progress,” states:

(1) It is the intent of the legislature that counties and cities required to adopt a comprehensive plan under RCW 36.70A.040(1) begin implementing this chapter on or before July 1, 1990, including but not limited to: (a) Inventorying, designating, and conserving agricultural, forest, and mineral resource lands, and critical areas; and (b) considering the modification or adoption of comprehensive land use plans and development regulations implementing the comprehensive land use plans. It is also the intent of the legislature that funds be made available to counties and cities beginning July 1, 1990, to assist them in meeting the requirements of this chapter.

(2) Each county and city that adopts a plan under RCW 36.70A.040(1) or (2) shall report to the department annually for a period of five years, beginning on January 1, 1991, and each five years thereafter, on the progress made by that county or city in implementing this chapter.

The Board holds that Petitioners have also not shown how the City violated RCW 36.70A.180(1). Petitioners could have brought a “failure to act” petition for review any time after September 1, 1991, up to the time the City actually adopted its CLO. However, once adopted, the CLO is valid if not appealed. It was not appealed. Findings of Fact Nos. 8 and 11.

Conclusion

The Act’s requirements to designate critical areas and to adopt development regulations that protect those designated areas are found at RCW 36.70A.170 and .060, respectively. The City complied with those requirements by the adoption of its CLO. The CLO and subsequent amendments were not appealed within the statute of limitations for bringing such appeals, and so are now irrefutably valid. Any development application received for the Anderson Creek property will have to comply with the CLO.

[12]

DESTRUCTION OF AQUIFER

The gist of Anderson Creek I’s argument is that the Plan violates the Act because it redesignates a critical area containing aquifers from “forest management” to “industrial park” and because the

City will allow urban sprawl in an otherwise rural area.

The limited record before the Board makes it apparent that the Anderson Creek property contains certain critical areas. *See* Findings of Fact Nos. 30-38. Nonetheless, the fact that a portion of a parcel of land contains critical areas does not preclude any development whatsoever on the parcel. Instead, the Act requires that critical areas be *protected*. As long as that mandate is met, other, non-critical portions of land can be developed as appropriate under the applicable land use designation and zoning requirements. Furthermore, development of critical areas is not absolutely prohibited as long as those areas are adequately protected. *Pilchuck Audubon v. Snohomish County*, CPSGMHB Case No. 95-3-0047, Final Decision and Order (December 6, 1995), at 19; *see also Aagaard et al. v. City of Bothell*, CPSGMHB No. 94-3-0011 Final Decision and Order (February 21, 1995), at 9, 29-30.

As indicated above, Bremerton's CLO is designed to protect critical areas. The Board must assume that the unappealed CLO, when applied to the Anderson Creek area, will indeed protect

[13]

its critical areas. Applicants seeking to develop the property will have to comply with the CLO.

Next, the Board examines WAC 365-190-020, the "purpose" provision in the Washington State Department of Trade, Community and Economic Development's (CTED) "Minimum Guidelines," adopted pursuant to the requirements of RCW 36.70A.050. Anderson Creek I contends that the following provision in this section of the Minimum Guidelines is controlling:

...In recognition of these common concerns, classification and designation of natural resource lands and critical areas is intended to assure the long-term conservation of natural resource lands and to preclude land uses and developments which are incompatible with critical areas....

The Board holds that Anderson Creek has failed to show how the City violated WAC 365-190-020. As indicated in prior cases, the Minimum Guidelines are advisory and must only be considered. *Tracy v. City of Mercer Island*, CPSGPHB 92-3-0001, Final Decision and Order, (January 5, 1993), at 22. Secondly, as indicated above, the fact that land may contain critical areas does not mean that no development can occur.

Finally, the Board examines the question of industrial development constituting urban sprawl. The Act directs that all cities be included within a UGA. RCW 36.70A.110(1):

... Each city that is located in such a county [planning under the Act] shall be included within an urban growth area. RCW 36.70A.110(1).

No restrictions are placed on this mandate. Thus, for instance, cities of large and small populations, high and low population densities, and large and small geographic limits must be included within UGAs. In a prior case, the Board has construed the plain meaning of RCW 36.70A.110(1) to require that "island" watersheds that are within the corporate boundaries of cities must be included within a UGA. *Black Diamond v. King County*, CPSGMHB Case No. 94-

[14]

3-0004, Order on Dispositive Motion (June 9, 1994), at 11

Accordingly, the Anderson Creek property is automatically within a UGA. What is relevant about

property within a UGA is not its current use status (or historic land use designation), but its future use. *See also Aagaard*. Lands within UGAs are to accommodate anticipated future population growth. Thus, the fact that the Anderson Creek property today is basically undeveloped property that has a “rural” character, does not mean that future planning efforts must maintain that flavor. Instead, because the property is within a UGA, it must be planned for future *urban* development. **As a general rule, the Board holds that designating property within a UGA for industrial uses is consistent with the Act.**

One can readily understand the disappointment of property owners living adjacent to the Anderson Creek properties but outside the UGA boundary. These residents are now faced with the prospect of seeing what they thought had been entirely critical area and watershed being turned largely into an industrial park — the antithesis of the present situation. Nonetheless, the City is within its legal rights in designating the area “industrial” — as long as it also enforces its CLO when development applications are made that impinge on critical lands within it. **The Board further holds that Petitioners have not met their burden of showing how the Plan’s designation of the Anderson Creek lands within a UGA as industrial, coupled with knowledge that the CLO to protect critical areas has been adopted and is now irrefutably valid, violates RCW 36.70A.020(2), (9), and (10).**

Conclusion

Bremerton’s Plan does not violate RCW 36.70A.020(2), (9) and (10), or WAC 365-190-020. The fact that certain lands contain critical areas does not prohibit development on other, non-critical area portions of the land nor does it absolutely preclude development on critical areas as long as those areas are adequately protected.

[15]

COUNTY-WIDE PLANNING POLICIES

Petitioners claim that the specified provisions of the Plan listed in the statement of legal issues are inconsistent with the Kitsap County County-wide Planning Policies (**KCCPPs**) A, C and D. RCW 36.70A.210(1) provides:

The legislature recognizes that counties are regional governments within their boundaries, and cities are primary providers of urban governmental services within urban growth areas. For the purposes of this section, a “county-wide planning policy” is a written policy statement or statements used solely for establishing a county-wide framework from which county and city comprehensive plans are developed and adopted pursuant to this chapter. This framework shall ensure that city and county comprehensive plans are consistent as required in RCW 36.70A.100. Nothing in this section shall be construed to alter the land-use powers of cities. Emphasis added.

In turn, RCW 36.70A.100, entitled “Comprehensive plans — Must be coordinated,” provides:

The comprehensive plan of each county or city that is adopted pursuant to RCW 36.70A.040 shall be coordinated with, and consistent with, the comprehensive plans adopted pursuant to RCW 36.70A.040 of other counties or cities with which the county or

city has, in part, common borders or related regional issues.

Accordingly, the Board has held that comprehensive plans of cities and counties must be consistent with adopted CPPs. *See generally City of Snoqualmie v. King County*, CPSGPHB 92-3-0004, Final Decision and Order, (March 1, 1993); *see also Happy Valley Assoc. et al. v. King County*, CPSGPHB 93-3-0008, Motion to Dismiss, (October 25, 1993); *City of Poulsbo et al. v. Kitsap County*, CPSGPHB 92-3-0009, Final Decision and Order, (April 6, 1993), at 21-23; *Aagaard*, at 6.

Although Anderson Creek II quoted this issue in its brief (ACII Brief, at 17), it did not discuss it. The Board considers issues that are not discussed in writing as abandoned and will not review them further. *Twin Falls, Inc. et al. v. Snohomish County*, CPSGPHB 93-3-0003, Final Decision and Order (September 7, 1993), at 18.

Conclusion

Anderson Creek II Legal Issue No. 19 is abandoned and will not be considered further.

[16]

INTERNAL CONSISTENCY OF PLAN

Anderson Creek II contends that the Plan is internally inconsistent in several places. The preamble to RCW 36.70A.070 provides:

The comprehensive plan of a county or city that is required or chooses to plan under RCW 36.70A.040 shall consist of a map or maps, and descriptive text covering objectives, principles, and standards used to develop the comprehensive plan. The plan shall be an internally consistent document and all elements shall be consistent with the future land use map. A comprehensive plan shall be adopted and amended with public participation as provided in RCW 36.70A.140. Emphasis added.

[17]

First, Anderson Creek II contends that Element E(3)(F)(1) [Plan, Land Use Element, at 11] is

[18]

inconsistent with Element E(3)(F)(3) and (5) [Plan, Land Use Element, at 11]. Petitioners make absolutely no argument why these provisions are inconsistent nor does the Board ascertain any apparent facial inconsistency. **The Board therefore holds that these provisions are not internally inconsistent.**

Second, Petitioners claim that those portions of the Plan designating the Anderson Creek property as “industrial” are inconsistent with the following language in part 4 of the Land Use Element, “Economic Development Considerations,” subsection (A), “Economy of the State and Region”:

...Protection of old growth forests, air quality, water quality and quantity, natural resources management, waste disposal, salmon runs, and preservation of other threatened wildlife species and sensitive areas are sure to grow in importance as they are placed in the path of growth and new development.

These obstacles will, in many cases, increase the costs of business and are likely to affect our overall economy. Thus, it is critical that the Comprehensive Plan, and particularly the

Land Use Element, provide the most suitable sites for economic growth in locations that have the least potential for environmental conflict. Plan, Land Use Element, at 15.

Anderson Creek II paraphrases the following language from the Plan's DSEIS to contend that the redesignation of the property is inconsistent with the above-quoted provisions:

(d)The single most significant new proposal is for City Utility lands in the vicinity of Anderson Creek, on the south side of Sinclair Inlet. This area is physically separated from other lands within the City limits, but is within the Urban Growth Area. It has direct City water service and can be served with sewer. The property has convenient highway access, is undeveloped, and is considered to be suitable for industrial development. It is also adjacent to lands already so designated by Kitsap County. Because of these advantages, this area has been considered for "industrial" use. Ex. 522, at 7 (emphasis added).

The Board holds that the Petitioners have not met their burden of showing that the redesignation of the Anderson Creek property is internally inconsistent with the policy.

Their citation to the DSEIS is a two-edged sword since the term "significant" may refer either to the size of the project or its potential environmental impact, while the DSEIS clearly indicates that the site is "considered to be suitable for industrial development." Furthermore, the Plan indicates that industrial uses in other parts of the City may not be appropriate. For instance, the East Bremerton portion of the Land Use Element provides in part:

... there is very little land remaining that is clearly suitable for industrial use. Truck access, proximity to markets, utilities, and other factors tend to discourage the establishment of new industries or an industrial park in the East Bremerton area.... Plan, Land Use Element, at 30.

The Plan's discussion of Central Bremerton also indicates that:

... Other than PSNS [Puget Sound Naval Shipyard] expansion into the Charleston area, there are no plans to increase the industrial presence in the Central Area. In fact, the City has taken steps to reduce industrial opportunities by reducing some industrial zoning to "Business Park" zoning... Plan, Land Use Element, at 38.

The West Bremerton portion of the Land Use Element states this about industrial uses:

...
It's apparent that all lands presently zoned for industrial use are not necessarily **most** suitable for non-resource type industrial uses. Some have physical, locational or other limitations.... Plan, Land Use Element, at 43 (emphasis in original).

Although the record indicates that Anderson Creek has important environmental constraints, the Board is unable to conclude from the record before it that the Anderson Creek property is not a property with "the least potential for environmental conflict." Therefore, the Board holds that the Plan's provisions at page 15 of the Land Use Element are not inconsistent with the portions designating the property as "industrial park."

Anderson Creek II next contends that the following language from the Land Use Element's Economic Development Considerations provisions are inconsistent with the fact that the

Anderson Creek designation involves 340 acres of land (*see* Findings of Fact Nos. 4 and 31):

As part of Bremerton's Land Use Inventory process, an Industrial Lands Inventory was completed in March 1993. It reviewed the character and degree of existing and potential development for all industrially-zoned areas in the City. Of the 474 acres of industrial zoning, 217 acres (46%) are currently developed and used for industrial or commercial purposes. The remaining 54 percent (257 acres) will provide opportunities for new development.... Plan, Land Use Element, at 16.

The Board agrees that this language may mislead, since it does not include the Anderson Creek property. However, the passage does refer to the March 1993 inventory when the property in question had yet to be designated "industrial park." **Therefore, the Board holds that it is not inconsistent.** On review, the City certainly should re-word and update this portion of the Plan to include the Anderson Creek property, but the original language was not false and cannot be presumed intentionally misleading.

Petitioners also claim that a table on page 25 of the Land Use Element is inconsistent for the same reason since it does not include the Anderson Creek property. **The Board also holds that this table is not inconsistent.** The table itself clearly indicates that it was based on a "1992 APA Survey" and a "1993 Bremerton Inventory" of industrial lands uses. Furthermore, the narrative introduction to the table indicates that: "[T]hese figures do not include the thousands of acres of watershed and other Utility-owned lands." Plan, Land Use Element, at 25. At the time, the Anderson Creek property was not designated as an industrial park; it was within a watershed or utility-owned land.

Next, Anderson Creek II claims that the following sentence is inconsistent:

Bremerton's growth focus is within its current City boundaries.... Plan, Land Use Element, at 25 §(8)(d).

The Board holds that designating the Anderson Creek property as "industrial park" is not inconsistent with this sentence since that property is within the current Bremerton city limits.

Anderson Creek II also points out that the West Bremerton portion of the Plan specifies that the Anderson Creek property contains approximately 340 acres. Plan, Land Use Element, at 40. Yet a table on the next page of the Plan indicates that the West Bremerton area has only 142.9 acres of "industrial" lands. Plan, Land Use Element, at 41. **The Board holds that the table is inconsistent with the information on the preceding page.** Nothing in the narrative preceding the table indicates that the table's information was based on information obtained before the Anderson Creek property was designated industrial park.

The Board holds that the Petitioners have not met their burden of showing how the following quotation from the Plan is inconsistent:

Infill Capacity: The City's watershed and utility lands are important to the City's water source and forest resources and are not being considered for residential development....
Emphasis in original.

Although the Anderson Creek property was once utility lands, it was sold. *See* Findings of Fact

No. 14 and 15. More important, the land was designated “industrial park” in this Plan and not “residential.” Therefore, the Plan’s statement that lands designated “watershed or utility” lands under the Plan will not be considered for residential development is not internally inconsistent as it applies to the Anderson Creek property, which is no longer watershed or utility.

The Board holds that the following sentence is inconsistent with the narrative in the second paragraph of the West Bremerton Plan portion of the Plan at 40:

Most of the area’s 143 acres of industry are located within the Auto Center District, which is zoned for “General Industry”, the City’s “heavy industrial” zone. Plan, Land Use Element, at 43.

As noted above, the Anderson Creek property itself contains approximately 340 acres of land zoned “industrial park.” Therefore, this sentence must be corrected to indicate the correct acreage. The next alleged inconsistency is in part 10 of the Land Use Element, “Watershed/ Utility Lands.” Section (10)(A)(1) provides:

Water Resources. Bremerton has a plan for the management of thousands of acres owned by the Bremerton Water Utility. These lands include the Union River, Anderson Creek, Gorst Creek, and Heins Creek watersheds as well as other Utility owned lands. Plan, Land Use Element, at 45. Emphasis in original.

The Board holds that this statement as it relates to Anderson Creek is inconsistent with other provisions of the Plan that indicate that the Anderson Creek watershed is no longer owned by the City and has been surplused. See Plan, Land Use Element, at 11, 40, 47 and 76.

Petitioners also cite to policy statements in the Plan at pages 3 and 5 of the Land Use Element.

The Board has reviewed these statements and holds that they are not internally inconsistent.

The statements in question refer to the City’s Union River Watershed (Plan, Land Use Element, at 6, Planning Goal #10 Policy Statement (2)) or to the City’s watershed and utility lands generally (Plan, Land Use Element, at 5, Planning Goal # 8 Policy Statement (2)). As indicated above, the Anderson Creek property is no longer designated watershed or utility land; therefore these policies do not apply to it.

Anderson Creek claims that the map on page 46 of the Plan’s Land Use Element is inconsistent because it does not show the Anderson Creek property, including the recently annexed Sciepkolunde property, as city watershed/utility lands. As indicated above, these lands are designated “industrial park” in the Plan; they are no longer city watershed or utility lands. **Therefore, the Board holds that the map in question is not inconsistent.**

Anderson Creek II claims that the Anderson Creek property designation is internally inconsistent

with specified policies of the Capital Facilities Plan Element of the Plan. ^[19] **The Board holds that the Petitioners have failed to meet their burden of proving that the designation of the property is inconsistent with these policies.** The land in question has already been annexed; therefore it is automatically within the UGA.

Finally, Anderson Creek II lists Strategy #E-1 ^[20] and Strategy #G-1 ^[21] of the Capital Facilities Plan Element as being inconsistent. Petitioners have made absolutely no showing why these

policies are inconsistent; **therefore, the Board holds that Anderson Creek II has not met its burden of proof.**

Conclusion

Certain provisions specified by the Petitioners in the Plan are internally inconsistent due to the fact that the Anderson Creek property, although historically City-owned watershed or utility lands, has been designated as “industrial park.” These internal inconsistencies do not comply with the requirement of RCW 36.70A.070 (preamble) that a comprehensive plan be internally consistent.

[22]

EXTERNAL CONSISTENCY OF PLAN

Anderson Creek I maintains that because the City of Bremerton Parks and Recreation Department’s 1995 Comprehensive Plan, adopted in January 1995, indicates that critical areas must be protected (Ex. 624, at 33) and shows the Anderson Creek property as having “Sensitive

[23]

Environmental Areas — Geological Hazards” (Ex. 624, map at 34), that:

Any land use designation for the Anderson Creek Utility Land which permits development on that land is inconsistent with the GMA.ACI Brief, at 8-9.

Furthermore, Anderson Creek I alleges that because the property contains a critical area shown on the Parks and Recreation Department Plan, the Plan’s designation of the property as industrial park is “internally inconsistent.”

The Board rejects both of Petitioners’ contentions. As indicated above, little doubt exists that the Anderson Creek property contains critical areas. Nonetheless, this in itself does not preclude development so long as the critical areas are protected. Furthermore, the fact that the Parks and Recreation Department map shows critical areas on or near the site, and the Plan designates the property an industrial park, is not internally consistent. Internal consistency involves the consistency of the provisions *within* one document rather than *between* the provisions of two different documents. Petitioners’ allegation of “internal” inconsistency is really one of external consistency. **Nonetheless, the Board finds no such inconsistency simply because one plan acknowledges critical areas on or near a property, and another plan authorizes industrial uses of that property.**

Conclusion

The Plan is not inconsistent with the Bremerton Parks and Recreation Department 1995 Comprehensive Plan.

V. ORDER

Having reviewed and considered the above-referenced documents, having considered the arguments of the parties, and having deliberated on the matter, the Board enters the following orders:

1.The Bremerton Comprehensive Plan is **in compliance** with the requirements of the Growth Management Act except for:

- A.Resolution No. 2508.GMA comprehensive plans must be adopted by an ordinance.
- B.The table on page 41 of the Land Use Element of the Plan is internally inconsistent.
- C.A sentence in the Land Use Element of the Plan, at page 43, describing the West Bremerton planning area as containing only 143 acres of property designated as “industrial.”
- D.The “Water Resources” paragraph of the Plan’s Land Use Element, at page 45, that indicates that the Anderson Creek property is still a watershed and/or owned by the Bremerton Water Utility.

2.The Bremerton Comprehensive Plan is **remanded** and the City is directed to adopt it by ordinance to bring it into compliance with the GMA, as interpreted by the Board in this and prior decisions.The process used to adopt the City’s Plan by ordinance must meet the requirements of RCW 36.70A.020(11) and RCW 36.70A.140, as well as any City adopted local public participation and notice procedures.

3.Those portions of the Plan that are internally inconsistent are **remanded** with instructions for the City to either update them with appropriate information for the Anderson Creek property as currently designated, add narrative explaining that the depicted information was compiled before the Anderson Creek property was designated as “industrial park,” or otherwise make the Plan internally consistent.

4.Anderson Creek II Legal Issue No. 19 has been abandoned and is therefore **dismissed with prejudice**.

5.Pursuant to RCW 36.70A.300(1)(b), the Board directs the City to comply with this Final Decision and Order no later than **4:00 p.m. on Monday, February 26, 1996**.

6.The City shall file by **4:00 p.m. on Monday, March 4, 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 City has procedurally complied with this Order.

So ordered this 26th day of December, 1995.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

M. Peter Philley
Board Member

Joseph W. Tovar, AICP
Board Member

[\[24\]](#)

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 of terms

Anderson Creek I	Association to Protect Anderson Creek, Michael E. McCuddin, Errol Dow, Susan Dow and Helen E. Havens
Anderson Creek II	Association to Protect Anderson Creek, Helen E. Havens, Dave Della-Rovere, Cheryl Kinney, and Noel Travis
CAC	Citizens Advisory Committee
CFP	Capital Facilities Program or capital facilities plan
CLO	Critical Lands Ordinance
DSEIS	Draft Supplemental Environmental Impact Statement
FEIS	Final Environmental Impact Statement
GMA or the Act	Growth Management Act
KCCPPs	Kitsap County County-wide Planning Policies
the Plan	Bremerton Comprehensive Plan
UGA	Urban Growth Area

<i>Petitioners 1, Represented By</i> Michael E. McCuddin 6605 Wexford Ave., SW Port Orchard, WA 98366 Tel. (360) 876-0254; Fax. Unknown	<i>Attorney for Respondent,</i> Jane Ryan Koler:Casey & Pruzan 18th Floor Pacific Building:720 Third Avenue Seattle, WA 98104-1866 Tel. (206) 623-3577;Fax. (206) 623-3649
<i>Petitioners 2, Represented By</i> Helen E. Havens 3353 Anderson Hill Rd. SW Port Orchard, WA 98366 Tel: (360) 876-8904; Fax: Unknown	<i>Intervenors, Ron Sciepko and Ellen Lunde</i> G. Perrin Walker:Vandeberg Johnson & Gandara 1201 Pacific Avenue - Ste. 1900: POB 1315 Tacoma, WA 98401-1315
DECLARATION OF SERVICE:I certify that I mailed a copy of this document to the persons and addresses listed thereon, postage prepaid, in a receptacle for United States mail at Seattle, Washington, on August 17, 1999.	_____

[1] Although the actual date of adoption of the CLO is irrelevant at this point, Exhibit F to the City’s Motion to Dismiss indicates that Ordinance No. 4422 was passed on July 14, 1993.

[2] The parties did not give the Plan an exhibit number; however, it is the largest document in the record before the Board and therefore easily discernible.

[3]

This discussion addresses Anderson Creek II Legal Issue No. 13 which provides:

In the process of adopting the Anderson Creek utility lands provisions of Bremerton's Plan, did the City of Bremerton comply with the citizen participation requirements of the Act at RCW 36.70A.020(11) and .140?

[4]

RCW36.70A.280Matters subject to board review.

(1) A growth management hearings board shall hear and determine only those petitions alleging either:

(a) That a state agency, county, or city planning under this chapter is not in compliance with the requirements of this chapter, chapter 90.58 RCW as it relates to the adoption of shoreline master programs or amendments thereto, or chapter 43.21C RCW as it relates to plans, development regulations, or amendments, adopted under RCW 36.70A.040 or chapter 90.58 RCW; or

(b) That the twenty-year growth management planning population projections adopted by the office of financial management pursuant to RCW 43.62.035 should be adjusted.

[5]

This discussion addresses Anderson Creek II Legal Issue No. 14 which provides:

Does Bremerton's Plan, in Elements E (Land Use) and J (Environmental Management), violate RCW 36.70A.020 (9), (10) and .160 by failing to identify and retain publicly owned open space and to conserve publicly owned fish and wildlife habitat?

[6]

During oral argument, Petitioners complained that the CLO did not specifically designate critical areas since it utilized a performance standard method. The Board has previously found the use of performance standards valid. *See Pilchuck Audubon Society v. Snohomish County*, CPSGMHB Case No. 95-3-0047, Final Decision and Order (December 6, 1995), at 41-42.

[7]

This discussion addresses Anderson Creek II Legal Issue No. 11 which provides:

Does Bremerton's Plan in Element E (Land Use): 3.F, 9, 10 & 11.S-1, including maps called "Union River Watershed and Utility Land Map", p. 48, and "Watershed and Utility Lands Land Use Plan"; Element F (Transportation); and Element H (Capital Facilities Program) violate RCW 36.70A.110(1) and (3), RCW 36.70A.020(1) and (12) and RCW 82.02.050(1)(a), (b), and (4) by allowing the annexation of county land within a final urban growth area and the siting of industrial zoning in an undeveloped watershed without existing public facilities and service capacities to serve such development and without a system of impact fees to pay for such facilities and services?

[8]

RCW 36.70A.110(1) and (3) provide:

(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.

...

(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, 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.

[9]

In that decision, the Board stated:

Unlike the mandatory requirements of RCW 36.70A.110(1) and (2), subsection (3) is discretionary: “urban growth should be located...” Thus, although this subsection of the Act encourages tiering, it does not absolutely require phasing. In examining subsection (3), the Board recently pointed out that a distinction exists between determining where to locate UGAs (subsection (1)) and having done that, deciding where to direct new development within the UGAs. Regarding the latter:

The Board rules that subsection (3) of RCW 36.70A.110 addresses this matter as it relates to planning for the allocation of public resources to provide urban governmental services. Cities are the primary providers of urban governmental services within UGAs. *See also* RCW 36.70A.210(1). Subsection (3) provides that first, additional urban growth should be located in areas already characterized by urban growth that have existing public facility and service capacities. Second, when these areas reach capacity, only then should growth be located in areas which will be served by a combination of both existing public facilities and services and any additional needed public facilities and services. The exact timing of this process will depend on local conditions. [Petitioners] Rural Residents agrees that the Act creates the first two “tiers” discussed above but also argues that a third, implied tier exists for areas adjacent to territory already characterized by urban growth. Accordingly, Rural Residents contends that urban growth should not be permitted there until the first two tiers have been fully developed. The Board agrees with Rural Residents' contention that subsection (3) does create a third tier by necessary implication.... However, the Board reiterates that subsection (3) only addresses how local governments should plan to allocate public resources in anticipation of additional projected growth. The Board holds that the Act neither mandates nor prohibits temporal phasing of development within a UGA as urged by Rural Residents. Subsection (3) alone does not prohibit development within UGAs of the limited areas that have no existing public facilities and service capacities. Instead, if a private developer is willing and able to provide adequate facilities and services in lieu of the government doing so, nothing in the Act prevents this from happening, subject to the local government's exercise of its discretion. The concurrency planning goal is integral in reaching this determination. Using mandatory language, planning goal twelve, entitled “Public facilities and services,” provides that counties and cities must:

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

In addition, the Act's requirement that comprehensive plans contain a capital facilities plan element is crucial. RCW 36.70A.070(3). Thus, planning goal twelve and the capital facilities plan element of a comprehensive plan are critical factors that legally and practically will dictate phased growth rather than permitting growth to occur anywhere within a UGA at any time. *Rural Residents*, at 46-47 (footnote omitted).

[10]

The City acknowledged during oral argument that it intends to conduct more capital facilities analysis for the Anderson Creek area.

[11]

This discussion addresses Anderson Creek II Legal Issue No. 17 which provides:

Does Bremerton's Plan designate and conserve critical areas as required by RCW 36.70A.170(1)(d) and .180(1)(a) and (b)?

[12]

This discussion addresses Anderson Creek I Legal Issues Nos. 10, 11, 12 and 13 which provide:

10. Does Bremerton's Plan in Element E (Land Use): 3.A, C, F; 9; 10: A & B; 11: S-1 (page 76); Watershed and Utility Lands Land Use Plan (page 80); and Element J (Environmental Management): 2.4, comply with the requirements of RCW 36.70A.020 [precise subsections to be specified] and WAC 365-190-020 by allowing sprawl and the unwise development of natural resource lands or areas susceptible to natural hazards, and leading to the inefficient use of limited public resources?

11. Do Bremerton's Plan allow land uses and developments which are incompatible with critical areas, and do these enactments fail to prohibit inappropriate actions in violation of WAC 365-190-020 and -080, and RCW 36.70A.020 and .070?

12. Does Bremerton's Plan violate RCW 36.70A.020(10), .060, and WAC 365-190-020, -030, 040 and -080 by allowing urban growth and incompatible development in areas with a critical recharging effect on aquifers used for potable water, wetlands, geologically hazardous areas, and fish and wildlife habitat areas of species of local importance, and by not adequately protecting those areas?

13. Does Bremerton's Plan fail to protect the quality and quantity of ground water used for public water supplies as required by RCW 36.70A.070(1)?

It also addresses Anderson Creek II Legal Issue No. 18 which provides:

Does Bremerton's Plan comply with RCW 36.70A.020(10) if it encourages a potentially destructive development within an area containing a aquifer recharge areas, a salmon stream and a public water source?

[13]

The Board has not reviewed the City's CLO because it was not timely appealed. Findings of Fact Nos. 8 and 11. The CLO apparently relies upon the use of performance standards to identify certain critical areas.

[14]

It is not the Board's role to question the legislature's policy choices. When, as here, the GMA clearly specifies an outcome, the Board is bound to follow it unless it creates an unintended absurd result. The legislature may never have contemplated including islands of incorporated watershed within a UGA. However, no such exception was created.

[15]

This discussion addresses Anderson Creek II Legal Issue No. 19 which provides:

Is Bremerton's Plan in Element E (Land Use): 3.F, 9, 10 & 11.S-1, including maps called "Union River Watershed and Utility Land Map", p. 48, and "Watershed and Utility Lands Land Use Plan"; Element F (Transportation); and Element H (Capital Facilities Program) consistent with the Kitsap County County-wide Planning Policies A, C, and D as required by RCW 36.70A.210 and WAC 365-195-300, -305, -510 and -520?

[16]

This discussion addresses Anderson Creek I Legal Issue No. 17 which provides:

Are the land use sections of Bremerton's Plan in Element E consistent with the Plan's analysis of the environmental impacts of development [Element J: 2 & 4] as required by RCW 36.70A.070 (preamble), and will the application of these land use sections jeopardize environmental resource functions and values in violation of RCW 36.70A.060 and WAC 365-190-020 and -040?

This portion of the decision also addresses Anderson Creek II Legal Issue No. 20 which provides:

Are the following provisions of Bremerton's Plan: [Land Use Element E 3: A, B, C, E & F; 4: A & B; 6: A-8; 9: A & C; & 10: preamble, A, & "Union River Watershed and Utility Lands" map on p. 48; Element F (Transportation); Element H (Capital Facilities); Element J (Environmental Management) 2: D, E, J, K, L, M, N, P, & Q; & 4: D; 5: A & B; & 6] internally consistent with these provisions of the Plan [Element E (Land Use) 3: F; 9: A, B & E; 10: A & B; 11: S-1 & "Watershed & Utility Lands Land Use Plan" map] as required by RCW

36.70A.070 (preamble)?

[17]

Land Use Element E, Section 3, Subsection F is entitled “Development Constraints.” Subsection (F)(1) provides:

Environmentally Sensitive Areas: Bremerton has adopted a Critical Lands Ordinance that defines, addresses and regulates aquifer recharge areas, fish and wildlife habitat conservation areas, flood hazard areas, geologically hazardous areas, wetlands, and stream corridors. This ordinance is intended to ensure that the City’s remaining critical areas are preserved and protected and that new development in and adjacent to these areas will be carefully managed to avoid further degradation. While viewed as development constraints, these regulations will ultimately enhance new development and reduce long-term problems. Their influence will be felt at least in the already developed portions of Bremerton. The greatest opportunities for impact will be on larger sites in less-urbanized West Bremerton locations. Even there, development can be planned and adjusted to shift densities away from sensitive areas without losing development potential. Emphasis in original.

[18]

Subsections (3) and (5) provide:

(3) Utility owned Lands: Adjacent to the City watershed in southwest Bremerton are approximately 5,000 acres of mostly forested lands owned by the City’s Utility. With the exception of lands in the vicinity of Anderson Creek that have been “surplused” and designated for industrial use, these lands are not available for urban development at this time and are currently managed as forest resource land....

(5) Steep Slopes and Hillsides: Bremerton has very little flat land. It was built on hilly terrain surrounded by waterways and, in some locations, steep marine bluffs and hillsides. Again, since most of the urban area has already been developed, these constraints are not expected to seriously affect new or infill development. Most areas have street access and utilities and, since the hills and slopes provide excellent and highly desirable view sites, they tend to be considered valuable resources rather than development obstacles. Emphasis in original.

[19]

Specifically, Anderson Creek II cites the following policies:

3. Concurrent Provision of Services: Approve development only if adequate public facilities or services needed to serve the development are available at the time the demand for the facility or service is created or within a reasonable time as approved by the City.

6. Needs for Annexation Areas: Anticipate utility and other public service needs of possible future annexation areas through long-range planning, and when feasible develop utility capacities to meet these needs.

7. Growth Rate: Foster orderly, desirable growth in appropriate locations at a rate consistent with citizen desires and the provision of adequate services and facilities.

8. Concentrated Development: Promote the development of compact concentrated areas throughout the urban growth area to discourage sprawl, facilitate economical and efficient provision of utilities, public facilities and services, and expand transportation options to the public.

9. Sanitary Sewer Service Area: Extend the sanitary sewer service area only if the new area pays the costs of added capacity.

14. Reassessment of Land Use Element: Periodically reassess the Land Use Element and other plan elements in light of the evolving capital facilities plan... Plan, Capital Facilities Plan Element, at 16-17 (emphasis in original).

[20]

Strategy #E-1 provides:

Strengthen the link between capital facilities and services planning and economic development planning. Plan, Capital Facilities Plan Element, at 30.

[21]

Strategy #G-1 provides:

Conduct joint planning with Kitsap County and other jurisdictions within the county.

Activity 3 under Strategy #G-1 provides:

Coordinate with Kitsap County and other jurisdictions on the identification of lands for public purposes including prioritizing the need for such lands. Plan, Capital Facilities Plan Element, at 31.

[22]

This discussion addresses Anderson Creek I Legal Issue No. 15 which provides:

Is the Land Use Map for the Anderson Creek utility lands in Bremerton's Plan consistent with the environmentally sensitive areas mapped in the City of Bremerton Parks and Recreation Comprehensive Plan adopted in January 1995 (pages 33-34) and the County's GIS mapping system, as required by RCW 36.70A.070 (preamble)?

[23]

The map in question may have been generated by Kitsap County's GIS system. Although that fact is unclear, the Board will assume that Kitsap County's GIS maps also indicate certain critical areas on or near the Anderson Creek property.

[24]

Board Member Chris Smith Towne participated in the Resolution portion of the Final Decision and Order only.