



1997. The FDO provided:

The County's adoption of Ordinance No. 12533, designating the Black Diamond Urban Growth Area, as implemented by the Black Diamond Urban Growth Area Agreement, is **in compliance** with the provisions of the Growth Management Act challenged in Petition No. 97-3-0002 (*Johnson II*), as addressed in this Final Decision, **except**:

1. That portion of the Black Diamond Urban Growth Area defined as the Lake 12 Annexation Area in Ordinance No. 12533, as implemented by the Black Diamond Urban Growth Area Agreement, does **not comply** with RCW 36.70A.110. The County's Plan is **remanded** with direction to the County to take appropriate action to eliminate the Lake 12 Area's noncompliance with RCW 36.70A.110.

2. The King County Comprehensive Plan -- Technical Appendix D, does not list, label, or otherwise account for the acreage included in this unique, non-traditional Black Diamond UGA. The County's Plan is **remanded** to the County with direction to label, list, and otherwise account for the designation of this non-traditional UGA in the Plan's Technical Appendix D.

The FDO also directed the County to accomplish the remand actions by January 16, 1998. On September 12, 1997, the Board directed the City to provide to the Board and Petitioners, by January 23, 1998, a Statement of Compliance (**SOC**), indicating the steps taken to comply with the July 23, 1997 FDO.

On January 23, 1998, the Board received "King County's Statement of Compliance" indicating that it had adopted Motion No. 10369 to address the remand items.

On January 26, 1998, the Board issued a Notice of Compliance Hearing which established an optional pre-compliance hearing briefing schedule and set a Compliance Hearing for 10:00 a.m. Thursday, March 5, 1998. The Board noted that the scope of the compliance hearing would be to determine whether King County had complied, procedurally and substantively, with the two remand items, as set forth in the Board's July 23, 1997 FDO.

On February 2, 1998, the Board received a letter dated January 29, 1998, from Petitioner Doreen Johnson, indicating she believed it to be inappropriate to be actively involved in compliance procedures and stated that she "shall not participate in the compliance procedures, but will continue to follow the results of [the Board's] compliance efforts."

On February 9, 1998, the Board received a "Notice of Withdrawal of Counsel," indicating David A. Bricklin and Bricklin and Gendler, LLP had withdrawn their representation of Petitioners Doreen Johnson, Christy Ellingson, Daniel Palmer, Gil and Marlene Bortleson and Friends of the Green.

No Petitioner provided a pre-compliance hearing brief.

No Intervenor provided a pre-compliance hearing brief.

Respondent King County did not provide a pre-compliance hearing brief.

On March 5, 1998, the Board held its Compliance Hearing in Case No. 97-3-0002, in Suite 1022, at the Board's address. Present for the Board were Board members Joseph W. Tovar and Edward G. McGuire, Presiding Officer. None of the Petitioners participated in the hearing. Respondent was represented by Charles Maduell. Intervenor Palmer Coking Coal Company was represented by John McCullough. Intervenor Plum Creek Timber Company L.P. was represented by Brian Holtzclaw.

On March 13, 1998, the Board received copies of the approval statements received by Palmer Coking Coal Company from property owners in the Lake 12 Area. These statements were offered and discussed at the Compliance Hearing.

## **II. remand direction and applicable law**

The July 23, 1997 FDO found noncompliance on two items, which were remanded for the County to address:

1. *Lake 12 Area* -- The Board directed the County to take appropriate action to eliminate the Lake 12 Area's noncompliance with RCW 36.70A.110.

2. *Technical Appendix D to the King County Comprehensive Plan* -- The Board directed the County to label, list, and otherwise account for the designation of this non-traditional UGA in the Plan's Technical Appendix D.

The County was directed to accomplish the remand actions by January 16, 1998, and provide the Board and the parties with a Statement of Compliance by January 23, 1998.

The Board's July 23, 1997 FDO did not subject the County to a determination of invalidity on any portion of its plan. Therefore, pursuant to RCW 36.70A.320(2), the burden is on the Petitioners to demonstrate that the County's actions to respond to the remand are not in compliance with the requirements of the GMA as set forth in the FDO.

## **III. FINDINGS OF FACT**

1. Motion No. 10369 was adopted by the Metropolitan King County Council on December 15, 1997. [Motion No. 10369, at 2]

2. The County's SOC was received by the Board on January 23, 1997. [Procedural Background, *supra*]

3. The SOC attached copies of Motion No. 10369 with Attachments A and B, a letter sent to Lake 12 Property Owners, and a Staff Report summarizing the actions taken to address the remand of the Lake 12 Area. [SOC, at Tabs A, B and C]

4. To address the Lake 12 Area remand, the County sent letters, via certified mail, to all Lake  
[\[1\]](#)  
12 property owners. The letter attached the Black Diamond Urban Growth Area Agreement

and asked for the owners' concurrence/non-concurrence with the Agreement. The letter advised owners "that the UGA for the City of Black Diamond is a nontraditional urban growth area that does not provide the certainty that a traditional urban growth area is designed to establish." Owners were also made aware of "the UGA's uncertainty, limitations and prohibitions imposed by the Agreement." Property owners could then declare their concurrence or non-concurrence with the terms established by the Agreement and governing the Lake 12 Area. [SOC, at Tab B, and Tab A -- Attachment A]

5. A note has been attached to the Comprehensive Plan Technical Appendix D, which provides:

*NOTE: Appendix D has been revised in accordance with the Final Decision and Order of the Central Puget Sound Growth Management Hearings Board, Case No. 97-3-0002. King County was directed to account for the designation of the Black Diamond Urban Growth Area [D-19 to D22]. The Black Diamond capacity calculations have been added as an attachment to this Appendix. The capacity calculations contained within the body of Appendix D have not been updated. Appendix D does not reflect any amendments made to the Urban Growth Area since the adoption of the King County Comprehensive Plan in November, 1994.* [SOC, at Tab A -- Attachment B]

6. Motion No. 10369 attaches the statements signed by Lake 12 property owners and a list of signatories [Attachment A] and Technical Appendix D [Attachment B]. [SOC, Tab A]

7. None of the Petitioners participated in the compliance process or hearing nor offered any information or argument regarding the County's compliance. [Procedural Background, *supra*]

#### **IV. conclusions of law**

1. Since Petitioners have not participated in the compliance procedure, they have abandoned their opportunity to carry their burden of proof.

2. The actions taken by the County to address the Lake 12 Area were appropriate to eliminate the Lake 12 Area's noncompliance with RCW 36.70A.110. Therefore, on this remand item, King County has **complied** with the requirements of the GMA, as set forth in the FDO.

3. The County's Attachment to Technical Appendix D lists and accounts for the designation of the nontraditional Black Diamond UGA. Therefore, on this remand item, King County has **complied** with the requirements of the GMA, as set forth in the FDO.

#### **V. FINDING OF COMPLIANCE**

The Board, having reviewed its July 23, 1997 FDO, the SOC, and based upon the Findings and Conclusions entered in Sections III and IV, above, finds that King County has **complied** with the requirements of the GMA, as set forth in the Board's FDO. Therefore, the Board issues a **Finding of Compliance** to King County in CPSGMHB Case No. 97-3-0002.

So ORDERED this 23rd day of March, 1998.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

---

Edward G. McGuire, AICP

Board Member

---

Chris Smith Towne

Board Member

---

Joseph W. Tovar, AICP

Board Member

NOTICE: This Order constitutes a final order as specified by RCW 36.70A.300 unless a party files a petition for reconsideration pursuant to WAC 242-02-832.

---

[\[1\]](#)

The Lake 12 Area was included within the Black Diamond Urban Growth Area, and was to be governed by the Black Diamond UGA Agreement.