CENTRAL PUGET SOUND
GROWTH MANAGEMENT HEARINGS BOARD
STATE OF WASHINGTON

DOREEN JOHNSON, CHRISTY ELLINGSON, DANIEL PALMER, GIL and MARLENE BORTLESON, and FRIENDS OF THE GREEN, a non-profit corporation,	)	**Case No. 97-3-0002**
	)	**[Johnson II]**
Petitioners,	)	**FINAL DECISION AND ORDER**
v.	)	
KING COUNTY,	)	
Respondent,	)	
and	)	
PLUM CREEK TIMBER COMPANY, L. P., PALMER COKING COAL COMPANY, and CITY OF BLACK DIAMOND,	)	
Intervenors.	)	

I. <u>introduction</u>

On, January 24, 1997, the Central Puget Sound Growth Management Hearings Board (the **Board**) received a Petition for Review (**PFR**) from Doreen Johnson, Christy Ellingson, Daniel Palmer, Gil and Marlene Bortleson, and Friends of the Green, a non-profit corporation. The matter was assigned Case No. 97-3-0002, and will be referred to hereafter as ***Johnson v. King County*** or ***Johnson II.*** Petitioners challenge King County's (the **County**) adoption of Ordinance Nos. 12533 and 12534, (the **Ordinances**), dated November 25, 1996. Ordinance No. 12533 amends the County's Comprehensive Plan (the **County Plan** or **KCCP**) and zoning code to establish an unincorporated Urban Growth Area (**UGA**) for the City of Black Diamond. Ordinance No. 12534 approves and authorizes the execution of the Black Diamond Urban Growth Area Agreement (the **Agreement**). The basis for the challenge is that the Ordinances are inconsistent with, or otherwise not in compliance with, the Growth Management Act (the **GMA** or the **Act**).

Ii. procedural history

The Procedural History is attached as Appendix I.

iII. findings of fact

The Findings of Fact are attached as Appendix II.

Iv. standard of review

Amendments to comprehensive plans and development regulations are presumed valid upon adoption. This presumption can be overcome by a preponderance of the evidence demonstrating that a local government erroneously interpreted or applied the Growth Management Act. RCW 36.70A.320(1). In the present case, Ordinance No. 12533 and Ordinance No. 12534 are presumed valid. To overcome this presumption, Petitioners must show, by a preponderance of the evidence, that the County erroneously interpreted or applied Chapter 36.70A RCW.

v. county's motion to Dismiss

On May 2, 1997, the Board received "Response of King County to Petitioner's Opening Brief." In this brief, the County moved to dismiss the petitioners' challenge as untimely, arguing that the issues raised in the challenge to Ordinance No. 12533 should have been raised in a challenge to the County's adoption of Ordinance No. 12065.[1] County PHB, at 8. Ordinance No. 12065 was adopted December 18, 1995. The County's request is dispositive in nature, since if granted, the Petition for Review (**PFR**) is dismissed in its entirety.

The County adopted Ordinance No. 12533 on November 25, 1996. The Ordinance adopted the Black Diamond Urban Growth Area (**UGA**).[2] Petitioners filed their petition for review challenging Ordinance No. 12533 on January 24, 1997. Clearly, Petitioners' challenge to Ordinance No. 12533 is timely.[3]

However, the County moved to dismiss the PFR as untimely, asserting that in December 1995, the County adopted the Black Diamond UGA in Ordinance No. 12065, which was not challenged. Therefore, the Black Diamond UGA, as adopted by Ordinance No. 12065, is irrefutably valid. Consequently, the County argues, the present challenge to the Black Diamond UGA is untimely and should be dismissed. Alternatively, the County asserts that since Ordinance No. 12533 merely shrinks the UGA as approved in Ordinance No. 12065, Petitioners can only challenge the shrinkage in the UGA. County PHB, at 8-17.

When the County adopted its Comprehensive Plan in 1994 it also designated a UGA for Black Diamond. "The Boundary Review Board-approved annexation area (783 acres) together with *the current city limits constitute the Urban Growth Area for Black Diamond in the 1994 King County*

Comprehensive Plan." Ex. 10, at 220 (emphasis supplied). Ordinance No. 12065 clearly added these 783 acres, annexed in 1994, to Black Diamond's *permanent* UGA. Ex. 1, at 1.

Ordinance No. 12065 also adopted a 1,927 acre "New Rural City" UGA, not specifically a "Black Diamond" UGA. However, even assuming the NRCUGA was intended to be the Black Diamond UGA, Ordinance No. 12065, by its own terms, made the UGA *conditional* and *temporary*. Ex. 1, at 1-5. The Ordinance went into great detail on how the county, city and affected property owners were to commence a planning process, to resolve the ongoing conflicts related to the UGA and other issues related to Black Diamond and its environs.[4] Ex. 1, at 3-5.

Section 2.D of Ordinance No. 12065 provided:

> On or before December 31, 1996, the Council *shall* designate 915-acres of the lands within the New Rural City Urban Growth Area for future urban development and the remainder of the New Rural City Urban Growth Area, excluding the Lake 12 Neighborhood, *shall* be designated Open Space or Natural Resource land. These land use map designations *shall* be consistent with the provisions of Section 3 and 4 of this ordinance. If these designations are not made and the provisions of Sections 3 and 4 of this ordinance are not met by December 31, 1996, the New Rural City Urban Growth Area designation shall expire and shall automatically, revert to a Rural designation under the King County Comprehensive Plan. Ex. 1, at 2 (emphasis supplied).

Although the County argues that Ordinance No. 12065 established Black Diamond's UGA, the City of Black Diamond apparently did not agree. The August 8, 1996 City of Black Diamond Comprehensive Plan provides:

> In the future the City wants to include an Urban Growth Area. The Comprehensive Plan identifies *a future potential Urban Growth Area* that adds to the city and gives flexibility in future decisions. The Urban Growth Area is comprised of less land area than was designated as the "Joint Planning Area" (the 3,000 acres) in the King County Comprehensive Plan. *Conversion of the King County-Black Diamond Joint Planning Area to an Urban Growth Area is, by agreement with King County, conditioned upon certain actions. The King County Council will make the final determination of whether an Urban Growth Area will be granted for Black Diamond. The process for a Black Diamond UGA is outlined in King County Ordinance 12065*. Ex. 24, at 2-2 (Emphasis supplied).

The Black Diamond Plan continues:

> *A permanent Urban Growth Area has not been identified by King County*. The most recent revisions to the King County Comprehensive Plan provide for a "Conditional Urban Growth Area" for Black Diamond. *The conditions, contained in King County Ordinance 12065, for receiving a permanent UGA designation are included in Appendix M to this FEIS.*

> The Black Diamond City Council has reviewed the conditions identified by King County. *The City Council has decided to proceed with the adoption of a comprehensive plan without a defined UGA.* The city will continue to finalize the Conditional Urban Growth Area, a process that will not be complete until late 1996. Ex. 24, at 2-11 (emphasis supplied).

The County Executive also indicated that Ordinance No. 12533 *created* the Black Diamond UGA. The Executive's September 17, 1997 letter of transmittal for Ordinance Nos. 12533 and 12534 indicates:

> *The second proposed ordinance amends the 1994 King County Comprehensive Plan to establish the Black Diamond Urban Growth Area* and to designate appropriate land uses and zoning. Ex. 26, at 1 (emphasis supplied).

Additionally, the Metropolitan King County Council Notice of Public Hearing for Proposed Substitute Ordinance No. 96-710 (Ordinance No. 12533) provided:

> Proposed Substitute Ordinance No. 96-710 would:
>
> - Adopt a *final* Rural City Urban Growth Area for the City of Black Diamond consisting of approximately 782 acres of land. Ex. 29 (emphasis supplied).

It is within this context that the County adopted Ordinance No. 12533. Ordinance No. 12533 *did not designate* 915 acres for future urban development and designate the remainder of the area as open space as indicated in Ordinance No. 12065; Ordinance No. 12533 *did explicitly* adopt "The Black Diamond Urban Growth Area." Ex. 2, at 2. The Ordinance *did repeal* the planning process, procedures and provisions set forth in Ordinance No. 12065. Ex. 2, at 4-8. Petitioners challenge *this* action, the adoption of Ordinance No. 12533, which by its terms adopts the Black Diamond UGA.

The County's contention that the Petitioners may only challenge the shrinkage of the Black Diamond UGA, from that allegedly established by Ordinance No. 12065 to the Black Diamond UGA designated in Ordinance No. 12533, is without merit. As discussed above, Ordinance No. 12065 did not establish the Black Diamond UGA, Ordinance No. 12533 did; therefore, there could be no shrinkage. Additionally, even if the area established in Ordinance No. 12065 were considered an Interim UGA, this Board has never precluded the filing of a timely petition challenging the establishment of a Final UGA.

The Board holds that Ordinance No. 12533, not Ordinance No. 12065, established the Black Diamond Urban Growth Area and that Petitioners' challenge to Ordinance No. 12533 is timely. Therefore, the County's motion to dismiss is denied.

Vi. DISCUSSION AND CONCLUSIONS

Petitioners have challenged the County's adoption of two ordinances: Ordinance No. 12533 and

Ordinance No. 12534. Legal Issues 1 through 6 pertain to Ordinance No. 12533; Legal Issues 7, 7.1 and 7.2 pertain to Ordinance No. 12534. The Board will consider the Legal Issues in the following order: 1, 5, 2, 3, 6, 4 and 7.

LEGAL ISSUE NO. 1

Did King County fail to comply with RCW 36.70A.110(1)(2) and (3) and RCW 36.70A.020(1), (2), (3), (5), (8), (9), (10) and (12), when it adopted Ordinance No. 12533, because the Black Diamond Urban Growth Area is not based upon the population as allocated by King County to Black Diamond, does not follow the locational criteria, and does not achieve a transformation of local governance and compact urban development?

Discussion

Petitioners argue that the Black Diamond UGA is oversized. Their rationale is that, since the County's UGA as well as the UGA originally drawn at Black Diamond's city limits already have excess capacity, the Black Diamond UGA set in Ordinance No. 12533 allows additional unnecessary excess capacity without a corresponding reduction, or offset, of capacity elsewhere in the County's UGAs. Johnson PHB, at 9-14; Johnson Reply, at 12-16. Petitioners also argue that because the Black Diamond UGA fails to meet the locational criteria of RCW 36.70A.110 and includes land that does not have urban growth on it, it cannot be included in the UGA. Johnson PHB, at 14-18; Johnson Reply, at 16-19.

The Board will first address the question of locational criteria of RCW 36.70A.110; next, the Board will discuss the issue of excess capacity and the allegation of "oversizing."

Petitioners challenge the Black Diamond UGA as not complying with the locational criteria of RCW 36.70A.110 and six exceptions as discussed in *Bremerton v. Kitsap County [**Bremerton**]*, CPSGMHB Case No. 95-3-0039, Final Decision and Order (1995), at 39.[5] In short, Petitioners assert that, but for the Lake 12 Area, the lands within the Black Diamond UGA do not have urban growth on them, and therefore they cannot be designated as part of the UGA.

Petitioners challenge the West, South, and East Annexation Areas, and suggest that they are forest lands that fall within several of the exceptions. Consequently, the Board must apply a higher level of scrutiny to determine whether their inclusion in the UGA is warranted. As part of the Board's analysis, it must consider whether two of the fundamental purposes of the GMA, compact urban development and transformation of local governance, are being thwarted.

As the Atlas maps (at Tabs 2, 6, 7 and 8) illustrate, the West, South and East Annexation Areas are adjacent to the existing city limits of Black Diamond. The GMA requires all cities to be within a UGA; cities by definition are urban. Therefore, the areas included in the Black Diamond UGA are

adjacent to urban growth whether or not those parcels have development on them at this time. Selecting lands that abut city limits clearly furthers the Act's purposes to achieve compact urban development and the transformation of local governance. *See City of Tacoma v. Pierce County [**Tacoma**]*, CPSGMHB Case No. 94-3-0001, Final Decision and Order (1994), at 12. These purposes are also furthered by the fact that the Black Diamond UGA, as adopted in Ordinance No. 12533, is far smaller and more selective than the original proposal of Black Diamond that *surrounded* the City limits with 3,400 acres of potential UGA. **The Board holds that, as to the location of the Black Diamond UGA, it is adjacent to the existing city limits, thereby fostering compact urban development and the transformation of local governance. Therefore, the Board holds that the Black Diamond UGA, as designated in Ordinance No. 12533, complies with the locational criteria of RCW 36.70A.110.**

Petitioners' second challenge to the Black Diamond UGA, as adopted by Ordinance No. 12533, is that it is oversized or contains excess capacity. This challenge relies on two premises: 1) even before the adoption of Ordinance No. 12533, the County's unincorporated UGAs, in the aggregate, were oversized and contained excess capacity; and 2) the City's existing incorporated area contains excess capacity. Petitioners' first premise relies on the capacity analysis for the 1994 County Plan for the conclusion that the County's unincorporated UGAs were oversized even before the Black Diamond UGA was designated. Johnson PHB, at 10-12. However, the Board has previously held the County's unincorporated UGAs, including their excess capacity, to be in compliance with the GMA.[6] Therefore, this fact (excess capacity) alone is not sufficient to persuade the Board that the UGA adopted in Ordinance No. 12533 is oversized to such a degree as to violate the GMA.

Petitioners' second premise is that within Black Diamond's present city limits there is more than adequate capacity to accommodate substantially more growth than that allocated by the County. The CPPs established a residential allocation for Black Diamond of 1,033 new households. The adopted 1996 Black Diamond Comprehensive Plan indicates that it could accommodate an *additional* 4,716 new dwelling units within its existing City limits. Johnson PHB, at 13; Ex. 24, Appendix D, at A-75. Therefore, this fact alone is not sufficient to persuade the Board that the UGA adopted in Ordinance No. 12533 is oversized to such a degree as to violate the GMA.

Petitioners next attack the November 25, 1996 County staff analysis of the capacity of the Black Diamond UGA established by Ordinance No. 12533. In particular, the employment capacity and job allocations are questioned. Johnson Reply, at 15. The sizing of the UGA must accommodate the population projected for the county by OFM; there is no mention in RCW 36.70A.110 of sizing the UGA to accommodate employment projections for a work force that may or may not reside within the county. As Intervenor Plum Creek notes, local jurisdictions have discretion to make UGA policy decisions, including a jobs-based economy, and such choices may be used as a factor in sizing and configuring a UGA. Plum Creek PHB, at 27 (citing *Tacoma*).

In summary, Petitioners argue that the demonstrated existing excess capacity within Black Diamond negates the need for excess capacity outside Black Diamond, and the excess capacity in King County's

UGA precludes further expansion without a corresponding offset. Johnson Reply, at 12-13.

In response, the County first suggests that any excess capacity is *de minimis*. County PHB, at 20. The County's November 25, 1996 analysis of the carrying capacity of the Black Diamond UGA indicates that of the 772-acre[7] unincorporated UGA, only 259 acres will be available for residential development.[8] After subtracting sensitive areas and rights-of-way, and adjusting for market factor, the 259 acres is reduced to 159 developable acres. 636 new households could be accommodated in the UGA at 4 du/ac. Ex. 30, at 3. However, the County asserts that the four unit per acre density can be achieved only by transferring development rights from existing residential areas within the present city limits.[9] Two of the four units per acre will be transferred from the present city limits to the County's Black Diamond UGA. Because half of the density in the Black Diamond UGA already existed (within the city limits), the County argues that the net increase in new households is half of 636 – or 318 households.[10] Ex. 30, at 4. The County argues that a UGA sized to accommodate only 318 new households is a *de minimis* addition to capacity, considering that at a rural density of 1 du/5 acres, a theoretical residential capacity for the 782 acres would yield more than 150 new households. County PHB, at 20.

The Board disagrees. The County's capacity analysis indicates Lake 12 and the East Annexation Areas are subtracted from the developable acreage; however, the Agreement indicates that both the Lake 12 and the Eastern Areas are intended for annexation and future urban development. Ex. 3, Agreement, Secs. 3.1.3 and 3.1.4. Also, the transfer of density from existing residential neighborhoods within the Black Diamond city limits to the UGA seems to artificially reduce the UGA's capacity.[11] At any rate, the addition of 782 acres to a City of approximately 3,100 acres can hardly be characterized as *de minimis*. The Board cannot agree with the County that the designation of 782 acres as the Black Diamond UGA is a very small or trifling matter. The Board agrees with Petitioners. The **Board holds that the Black Diamond UGA contains more capacity than the OFM population projections alone warrant. However, as discussed below, this overcapacity is not fatal.**

The County asserts that capacity, while a consideration, is not the only consideration in sizing a UGA. The County refers to its Four-to-One Program which was upheld in *Vashon-Maury*. The Four-to-One Program allows one acre of urban residential land to be added to the County's UGA for every four acres of permanent open space dedicated to the County along the UGA. The County would allow up to 4,000 acres of expansion through June 30, 1997.[12] This program permits an expanded UGA, even though it is not based upon OFM's population projections. The County asserts that the Black Diamond UGA as implemented through the Agreement[13] is, like the Four-to-One Program, a unique and innovative land use technique authorized and encouraged by the GMA. County PHB, at 21-22.

The Board disagrees with the County's characterization of capacity as merely being a "consideration" in sizing UGAs. The OFM population projections are *the* basis for sizing UGAs. Before turning to the specifics of the present case, it is instructive to briefly summarize some of the Board's earlier conclusions about the nature, process and sizing of UGAs. The Board has earlier observed that UGAs are part of an important regional framework for both county and city comprehensive plans and are one of the Act's primary tools for combatting sprawl. *See Bremerton*, at 31. The process of sizing UGAs has been described in prior cases as an accounting exercise with both objective and subjective components. The Board affirms its prior decisions regarding the nature of UGAs, the process for their creation, and the appropriate exercise of local discretion in sizing them.[14] When the Board has recognized exceptions in the UGA sizing process (e.g., the County's Four-to-One Program) it has done so with great care, with good cause and subject to necessary limitation. The Board will not find an exception that threatens the viability of UGAs, what they are or how they are created; nor should local governments construe the Board's willingness to acknowledge reasonable exceptions as license to undermine this important hallmark of planning under the GMA. Accordingly, this Board has earlier recognized an *exception* to the OFM population basis requirement for sizing UGAs in upholding the County's Four-to-One Program.

In the present case, the question for the Board is whether the Black Diamond UGA, as implemented by the Agreement, merits a similar exception. Is the UGA, as implemented by the Agreement, unique or innovative; and, like the Four-to-One Program, does it provide adequate restraints to curb abuse, and thwart sprawl and inefficient unplanned growth?[15]

Clearly, the UGA and Agreement are being applied to a unique situation. Black Diamond began as a company town supporting the coal industry. Coal mines underlie approximately two-thirds of the city.[16] It is a rural city with less than 2,000 people, less than 650 households and less than 230 jobs. Ex. 24, at 3.1-3.13. **The Board holds that Black Diamond is a unique small resource-based rural city in the rural area of King County.**

The UGA and Agreement are unique in that the City's UGA, as designated in Ordinance No. 12533, is not a traditional UGA. Designation of a traditional UGA means several things of relative certainty to citizens: the development of the land within it will be urban in nature; this urban land will ultimately be provided with adequate urban facilities and services within the planning horizon; the land will eventually be developed at urban densities and intensities; and annexation, although encouraged, is not a condition precedent to urban development. However, the Black Diamond UGA, as designated by the County and implemented by the Agreement, does not have any of these attributes.

Under the Agreement, the land within the UGA *may* be developed as urban, but not yet -- it must await annexation.[17] In many ways Black Diamond's UGA, as implemented by the Agreement, is the antithesis of a traditional UGA. In essence, the Black Diamond UGA does not function as a traditional UGA until many of the conditions of the Agreement are implemented. The designation of the Black

Diamond UGA provides none of the certainty that the traditional UGA is designed to establish. **The Board holds that the Black Diamond UGA is unique since it is a non-traditional UGA that does not provide the certainty that a traditional UGA is designed to establish.**

The Black Diamond UGA and Agreement are unique; they were developed, negotiated and executed by the City, the County and the two principal landowners of the UGA. Plum Creek owns the areas included in the West Area (328.6 acres) and the South Area (233.6 acres). Ex. 3, Agreement, at 3.1.1 and 3.1.2. Palmer owns the area included in the East Area (50 acres). Ex. 3, Agreement, at 3.1.3. It is clear that these landowners, as signers of the Agreement, are cognizant of the uncertainty, limitations and prohibitions imposed by the Agreement that otherwise would flow from a traditional UGA designation. However, there is no evidence in the record that all of the property owners in the Lake 12 Area joined in the Agreement; the Agreement does not contain signatures of the multiple property owners in the Lake 12 Area, nor is there any indication that they are cognizant of the uncertainty, limitations and prohibitions imposed by the Agreement. **The Board holds that the Black Diamond UGA and Agreement are unique since the landowners of the West, South and East Areas are cognizant of the uncertainty, limitations and prohibitions imposed by the Agreement.** The record does not indicate that the owners of the Lake 12 Area were party to the Agreement and are cognizant of the uncertainty, limitations and prohibitions imposed by the Agreement. Therefore, **the Board holds that including the Lake 12 Area in the Black Diamond UGA, as implemented by the Agreement, does not comply with the requirements of RCW 36.70A.110.**[18]

The GMA encourages the use of innovative land use management techniques.[19] As mentioned above, the County argues that the UGA, as implemented by the Agreement, is akin to the County's innovative Four-to-One Program. This Board has concluded that the Four-to-One Program "has sufficient constraints to preclude its abuse. Moreover, the program, on its face, strongly promotes the retention of open space (*See RCW* 36.70A.020(9)) and assists in complying with RCW 36.70A.160."[20] *Vashon-Maury*, at 45.

The County and Plum Creek suggest that the UGA and the Agreement further GMA goals (1), (2), (3), (4), (5), (6), (8), (9), (10), (12) and (13) of RCW 36.70A.020. County PHB, at 21; Plum Creek PHB, at 29. The Board does not dispute that the UGA and Agreement may further other goals of the GMA; however, the Board is more concerned with whether the Agreement contains sufficient constraints to efficiently manage growth in the UGA.

The County and Plum Creek argue that the UGA and Agreement have built-in constraints to avoid unplanned and inefficient growth. The UGA is zoned Urban Reserve, 1 du/5 acres, with a P-suffix condition. Ex. 3, Agreement, Sec. 4.1. On December 31, 1996, the effective date of the Agreement, Plum Creek and Palmer were to convey conservation easements to the County and City restricting the use of the UGA. Ex. 3, Agreement, Secs. 4.2 and 4.3. Annexation is a condition precedent to urban development and each annexation area lists the conditions, including City infrastructure planning, that must be met prior to annexation. Ex. 3, Agreement, Secs. 5 and 6. Annexations are also phased:

West, then East, then South. Ex. 3. Agreement, Sec. 5. Also, if the annexations do not occur consistent with the provisions of the Agreement by the end of the twenty-year term of the Agreement, the County will consider designating the area rural at 1995 densities and redesignating the UGA at the City's corporate limits. Ex. 3, Agreement, Sec. 9. The Board concurs with the County. **The Board holds that the Agreement, in implementing the Black Diamond UGA, has adequate restraints to curb abuse while thwarting sprawl and inefficient, unplanned growth.**

Finally, Petitioners argue that the County could not expand the UGA for Black Diamond without a corresponding offset. While this might be persuasive in the case of a traditional UGA, the Board does not find an immediate offset, or adjustment to the County's UGA, to be required. However, **the Board holds that the County must account for the acreage in this unique and non-traditional UGA and the Board will direct the County, on remand, to label, list, and otherwise account for this non-traditional UGA in its Technical Appendix D - Growth Targets and Urban Growth Areas.**

Based upon the foregoing discussion and analysis, **the Board holds that in these circumstances, with the exception of the Lake 12 Area, the Black Diamond UGA and Agreement are unique and afford adequate restraints to curb abuse while thwarting sprawl and inefficient, unplanned growth. With the exclusion of the Lake 12 Area, the Black Diamond UGA, as adopted by Ordinance No. 12533 and as implemented by the Black Diamond UGA Agreement, complies with the requirements of RCW 36.70A.110 and the goals of RCW 36. 70A.020.**

Conclusion No. 1

The Black Diamond UGA is adjacent to the existing city limits, thereby fostering compact urban development and the transformation of local governance. Therefore, the Black Diamond UGA, as designated in Ordinance No. 12533, **complies** with the locational criteria of RCW 36.70A.110.

The County must account for the acreage in this unique and non-traditional UGA. The Board will direct the County, on **remand**, to label, list, and otherwise account for this non-traditional UGA in its Technical Appendix D - Growth Targets and Urban Growth Areas.

Excluding the Lake 12 Area, the Black Diamond UGA and Agreement are unique and afford adequate restraints to curb abuse while thwarting sprawl and inefficient, unplanned growth. Therefore, **excluding the Lake 12 Area**, the Black Diamond Urban Growth Area, as adopted by Ordinance No. 12533 and as implemented by the Black Diamond Urban Growth Area Agreement, **complies** with the requirements of RCW 36.70A.110 and the goals of RCW 36. 70A.020.

legal issue no. 5

Did King County fail to comply with RCW 36.70A.210 when it adopted Ordinance No. 12533, because the Black Diamond UGA is inconsistent with King County Countywide Planning Policies

No. FW-1, LU-2, LU-7, FW-11, FW-12, LU-26 and LU-38?

Discussion

Petitioners assert that the Black Diamond UGA, as implemented by the Agreement, fails to comply with certain CPPs. Each challenged policy is addressed below.

The bulk of the present dispute regarding the CPPs centers on CPP FW-1, specifically Step 8b, which provides in relevant part:

> The Urban Growth Areas of the following cities which are in dispute as of May 25, 1994 and illustrated on the attached maps, are now acknowledged as Joint Planning Areas (See Appendix 1). *By December 31, 1995*, King County, the cities, citizens and property owners will have *completed a planning process* to determine land uses and the Urban Growth Area for each city. The King County Executive will recommend amendments to the Urban Growth Area for each city for adoption by the Metropolitan King County Council. The Urban Growth Area for each city will be amended in a separate Council ordinance. These amendments are not subject to ratification under this policy. Ex. 11, at 7 (Emphasis supplied).

In short, Petitioners contend that the planning process to determine land uses and a UGA for Black Diamond was not complete by December 31, 1995. Johnson PHB, at 5-8; Johnson Reply, at 7-12. The County contends that the Step 8b process was completed when Ordinance No. 12065 was adopted on December 18, 1995. County PHB, at 8-17 and 24. (Adoption of Ordinance No. 12065 was the basis for the County's Motion to Dismiss, as discussed above.)

The Board does not read CPP FW-1, Step 8b as requiring the County, City and property owners to complete a planning process *and* to designate and adopt a Final UGA, *and* to adopt land use classifications and implementing regulations, *all by the December 31, 1995 deadline*. The Board accepts that a planning process was completed by December 31, 1995, and that Ordinance No. 12065 set forth proposed actions to bring the Black Diamond UGA issues to closure by December 31, 1996. Ordinance No. 12533, adopted in November 1996, ultimately designated the Black Diamond UGA and adopted land use classifications and zoning designations. **The Board holds that the adoption of Ordinance No. 12533 is consistent with CPP, FW-1, Step 8.**

Petitioners' next challenge addresses FW-11, FW-12, and LU-26. FW-11 provides in part: "The land use pattern for King County shall protect the natural environment by reducing the consumption of land and concentrating development." FW-12 provides in part: "The Urban Growth Area shall provide enough land to accommodate future urban development." LU-26 provides in part: "The lands within Urban Growth Areas shall be characterized by urban development. The Urban Growth Area shall accommodate the 20-year projection of household and employment growth with a full range of phased urban governmental services."

The Board addressed the issues raised by FW-11, FW-12 and LU-26 in Legal Issue 1; therefore, the Board will not discuss them further here. **The Board holds that the adoption of Ordinance No.**

12533 is consistent with CPPs FW-11, FW-12 and LU-26.

Petitioners next contend that adoption of the Black Diamond UGA violates CPP LU-7. This policy provides in part: "Designated Rural Areas are considered to be permanent and shall not be redesignated to an Urban Growth Area until reviewed pursuant to the Growth Management Act (RCW 36.70A.130(3)) and FW-1."

RCW 36.70A.130(3) provides in part:

> Each county that designates urban growth areas under RCW 36.70A.110 shall review, at least every ten years, its designated urban growth area or areas, and the densities permitted within both the incorporated and unincorporated portions of each urban growth area. In conjunction with this review by the county, each city located within an urban growth area shall review the densities permitted within its boundaries, and the extent to which the urban growth occurring within the county has located within each city and the unincorporated portions of the urban growth areas.

The record suggests[21] that the County reviewed the Black Diamond UGA numerous times and evaluated the densities permitted within various UGAs; the Board fails to see how CPP LU-7 has been violated. **The Board holds that Petitioners have failed to show, by a preponderance of the evidence, that Ordinance No. 12533 is inconsistent with CPP LU-7.**

CPP LU-2 provides:

> All jurisdictions shall protect existing resource lands within their boundaries that have long term commercial significance for resource production. Any designated agricultural and forestry lands shall not be considered for urban development. Jurisdictions are required to enact a program authorizing the transfer or purchase of development rights for designated forest or agricultural areas within Urban Growth Areas. At the request of any city, King County will work to reinstate the King County Purchase of Development Rights Program and/or establish an interjurisdictional transfer of development rights program to protect these resource lands in accordance with the Growth Management Act.

The sum and substance of Petitioners' challenge to LU-2 is: "The Black Diamond UGA . . . is not consistent with CPP LU-2 because this policy prohibits Forestry land from becoming UGA as proposed for the East Annexation Area." Johnson PHB, at 28. The Board reads LU-2 as prohibiting urban development in areas designated Forestry; LU-2 does not prohibit the redesignation of Forestry lands, as urged by Petitioners. **Therefore, pertaining to the East Annexation Area, the Board holds that Petitioners have failed to show, by a preponderance of the evidence, that Ordinance No. 12533 is inconsistent with CPP LU-2.**

Petitioners' last challenge to the CPPs questions consistency with LU-38. LU-38 provides in relevant part: "The Urban Growth Area for cities in the Rural Area shall: . . . (c) Be contiguous to city limits;

(d) Have boundaries based on natural boundaries, such as watersheds, topographical features, and the edge of areas already characterized by urban growth." Petitioners argue that the Lake 12 Annexation Area is not contiguous to city limits and is, therefore, inconsistent with this policy. Johnson PHB, at 30; Johnson Reply, at 22-24. The County counters, arguing that the Lake 12 Annexation Area is contiguous, since it is connected to the existing Black Diamond city limits by the Green River Gorge Road. County PHB, at 27.

In Legal Issue 1, the Board held that including the Lake 12 Area in the Black Diamond UGA did not comply with the requirements of RCW 36.70A.110. Therefore, the Board need not address the Lake 12 Area here.

Conclusion No. 5

The adoption of Ordinance No. 12533 is **consistent** with CPP FW-1, Step 8, and CPPs FW-11, FW-12 and LU-26 and **complies** with the requirements of RCW 36.70A.210.

Petitioners have **failed** to show, by a preponderance of the evidence, that Ordinance No. 12533 is inconsistent with CPP LU-7.

Pertaining to the East Annexation Area -- The Petitioners have **failed** to show, by a preponderance of the evidence, that Ordinance No. 12533 is inconsistent with CPP LU-2.

Pertaining to the Lake 12 Are -- Legal Issue 1 excluded the Lake 12 Area from the Black Diamond UGA, therefore, consistency with LU -38 is irrelevant.

LEGAL ISSUE NO. 2

Did King County fail to comply with RCW 36.70A.040 and .070 when it adopted Ordinance No. 12533, because the designation of the Black Diamond UGA is inconsistent with King County Plan Policies U-303, U-507, R-103 (for southern element of West Annexation Area), RL-102 (for East Annexation Area) and F-205, and Plan pages 220 - 221d?

Discussion

Petitioners argue that the Black Diamond UGA, as implemented by the Agreement, is inconsistent with certain County Plan policies. Petitioners link certain areas of the UGA to different Plan policies. Except for Plan Policy F-205, which is addressed in Legal Issue 3, each challenged policy is addressed below.

Petitioners challenge Plan Policies U-303 and R-103, which provide:

> U-303. The Urban Growth Area line is considered long-term and can only be amended

> consistent with the Countywide Planning Policy FW-1 and Comprehensive Plan Policy I-207. Ex. 10b, at 31.
>
> R-103. King County's Rural Area is considered to be permanent and shall not be redesignated to an Urban Growth Area until reviewed pursuant to the Growth Management Act (RCW 36.70A.130(3)) and Countywide Planning Policy FW-1. Ex. 10b, at 60.

The Board addressed the issues raised by Plan Policies U-303 and R-103 in Legal Issues 1 and 5; therefore, the Board will not discuss them further here. **The Board holds that the adoption of Ordinance No. 12533 is consistent with Plan Policies U-303 and R-103.**

Petitioners further argue that the text on pages 220-221d of the Plan, particularly the provisions that required the planning process to be completed by December 31, 1995, have not been complied with. Johnson PHB, at 28. This issue was addressed and resolved in the Board's discussion of Legal Issue 5.

Petitioners contend that the Black Diamond UGA is inconsistent with Plan Policy U-507, which provides:

> U-507. Following the adoption and initial implementation of this Plan, King County should encourage innovative, quality infill and redevelopment in existing urban areas through a variety of regulatory, incentive and program strategies. Ex. 10 b, at 44.

Petitioners assert that Ordinance No. 12533 is inconsistent with this policy because it discourages rather than encourages appropriate infill in the existing urban areas in the incorporated Black Diamond UGA. Johnson PHB, at 20.

Petitioners' argument fails. The language "should encourage" in the Policy is far less directive than, for example, "shall conserve," and is therefore less likely to create an inconsistency. As the County points out, the policy encourages positive action; it does not prohibit the development envisioned by the Agreement. County PHB, at 30. For these reasons, **the Board holds that Ordinance No. 12533, as implemented by the Agreement, is consistent with Plan Policy U-507.**

Finally, Petitioners argue that the inclusion of the Eastern Annexation Area is inconsistent with Plan Policy RL-102, which provides:

> King County *shall conserve* farm lands, *forest lands* and mineral resource lands *for productive use through the use of Designated* Agriculture and *Forest Protection Districts* and Designated Mineral Resource Sites *where the principal and preferred land uses will be commercial resource management activities.* Ex. 10 b, at 96 (emphasis supplied).

It is undisputed that the East Annexation Area was designated Forestry on the 1995 King County Comprehensive Plan Land Use Map, and that the Plan, at 96, indicates that designated Forest

Protection Districts are shown as Forestry on the Land Use Map. Additionally, Plan Policy RL-102 clearly requires the County to conserve forest lands for productive use through the use of designated Forest Protection Districts where the principal and preferred land uses will be commercial resource management activities.

Petitioners argue that since the East Annexation Area, which is designated Forestry by the County, is included within the Black Diamond UGA, and pursuant to the Agreement which implements the UGA, the East Annexation Area is intended for urban development, inclusion of the area in the UGA is inconsistent with Plan Policy RL-102. Johnson PHB, at 21.

Intervenor Palmer contends that Ordinance No. 12065 expressly provided for adjustment of the City's east city limit line and the forest production district line on an acre-for-acre basis to better reflect land use capabilities. In other words, Ordinance No. 12065 acknowledged that approximately 50 acres of the forest production district east of the City is, in effect, not suitable for such designation (i.e., not suitable for long-term commercial timber uses), but instead would be more appropriately designated for urban uses. Palmer PHB, at 7.

In 1995, as Palmer points out, the County determined that a change in the land use designation from forestry to urban would be more appropriate, since the land was no longer suitable for long-term commercial timber use. Although Plan Policy RL-102 requires the conservation of forest lands where the principal and *preferred land uses* will be commercial resource management activities, it does not prohibit the County from changing resource land designations when the principal and preferred use changes from commercial resource management activities to other uses. In fact, contrary to Petitioners' claim, this is exactly what the County did in enacting Ordinance No. 12533. The Forestry land designation appeared on the County's 1995 Plan Land Use Map. However, the Ordinance, at Section 3.B.1, changes this designation on the King County Comprehensive Plan Land Use Map to Rural City Urban Growth Area. This designation (indicated as "nrx") is shown in Appendix A to Ordinance No. 12533 and Atlas, Tab 7. Additionally, the Ordinance, at Section 3.B.2, changes the zoning designation to Urban Reserve, with the p-suffix condition. This designation (indicated as "UR-P") is shown in Appendix B to Ordinance No. 12533 and Atlas, Tab 7. **Therefore, pertaining to the East Annexation Area, the Board holds that Ordinance No. 12533, as implemented by the Agreement, is consistent with Plan Policy RL-102.**

Conclusion No. 2

The adoption of Ordinance No. 12533, as implemented by the Agreement, is **consistent** with Plan Policies U-303, R-103, U-507 and RL-102 and **complies** with RCW 36.70A.040 and .070.

legal issue no. 3

Did King County fail to comply with RCW 36.70A.070(3) when it adopted Ordinance No. 12533, because the County did not provide localized analysis of capital facilities and financing capacity for the designated Black Diamond UGA?

legal issue no. 6

Did King County fail to comply with RCW 36.70A070(6) when it adopted Ordinance No. 12533, because the County's traffic analysis for the Black Diamond UGA is not consistent with the development capacity of the Black Diamond UGA Agreement?

discussion

Petitioners claim the County did not update its Capital Facilities Plan (**CFP**) or Transportation element to reflect the designation of the Black Diamond UGA; therefore, the County has not complied with the requirements of RCW 36.70A.070(3) and (6). Johnson PHB, at 23-27. Also, in challenging compliance with RCW 36.70A.070, Petitioners allege that the lack of an update is inconsistent with Plan Policy F-205, which provides:

> F-205. King County's capital facility plan should identify financing strategies to support the level and distribution of the adopted 20-year growth target, the land use plan and the service and finance strategy. Ex. 10b, at 141.

The County concedes that neither the capital facility element nor the transportation element has been updated to address the designation of the Black Diamond UGA. However, the County argues that it is not required to update its capital facilities or transportation element upon mere designation of a UGA; instead, a change in demand precipitates the need to amend these elements. The County suggests that this is especially true here, since no urban development can occur on the land until annexation and no annexation can occur until the City has completed the necessary infrastructure planning. Additionally, the County argues that such infrastructure planning is now the responsibility of Black Diamond. County PHB, at 31.

It is undisputed that neither the capital facility nor transportation elements of the County Plan have been amended to reflect the designation of the Black Diamond UGA. Therefore, the questions for the Board are: whether the UGA designation is required to be accompanied by supporting and current capital facility and transportation elements; and whether it is the County's duty to fulfill this responsibility.

The County severely discounts the importance of designating a UGA. As discussed in Legal Issue 1, above, the GMA requires a jurisdiction to accommodate urban development on lands within the UGA and to have adequate public facilities available and provided within the planning horizon. This infrastructure planning is to precede or occur concurrently with the UGA designation, not await demand. This infrastructure planning is an essential ingredient in designating a *traditional* UGA. However, as noted in Legal Issue 1, the Black Diamond UGA, as implemented by the Agreement, is not a traditional UGA; the Black Diamond UGA does not function as a traditional UGA until many of the conditions of the Agreement are implemented. The designation of the Black Diamond UGA provides none of the certainty that the traditional UGA is designed to establish.

The UGA remains rural until annexation occurs, and annexation can only occur after the infrastructure planning is completed. In essence, in this unique situation, the infrastructure planning for this non-traditional UGA is delayed, not ignored. More importantly, the infrastructure planning must be completed before the Black Diamond UGA takes on the attributes of a traditional UGA.

It is important to note that although the Agreement includes provisions for infrastructure planning within the UGA,[22] it is the requirements of the GMA, including RCW 36.70A.140 and specifically RCW 36.70A.070(3) and (6) that govern infrastructure planning in the Black Diamond UGA.

The Board can find no specific authorization for a delay in infrastructure planning after the designation of an UGA. Likewise, neither can the Board find a specific prohibition.

The Board holds that, notwithstanding the infrastructure planning requirements contained in the Black Diamond Urban Growth Area Agreement, the requirements of the GMA, including RCW 36.70A.070(3) and (6) govern infrastructure planning in the Black Diamond UGA. However, the Board holds that, in this unique and limited situation, the designation of the Black Diamond UGA as implemented by the Agreement, constitutes merely a delay in the required infrastructure planning for this non-traditional UGA, not an abandonment of that duty. Thus, it is not prohibited by the GMA.

The County asserts that it has no duty to complete the requisite infrastructure planning for the Black Diamond UGA, since the Agreement transfers or assigns that duty and responsibility to the City. The Board concurs with the County. **The Board holds that, pursuant to the terms of the Agreement, the City of Black Diamond, not the County, is responsible for including the required GMA infrastructure analysis in the capital facilities and transportation elements of its Comprehensive Plan.** However, the Board notes that if the City intends to rely upon King County to meet the infrastructure needs of any new urban development for the Black Diamond UGA, the County's Comprehensive Plan will likewise have to reflect this obligation.

Pertaining to Plan Policy F-205, since the responsibility to complete the required infrastructure planning in its capital facility and transportation element rests with Black Diamond, by the terms of the Agreement, **the Board holds that the adoption of the Black Diamond UGA, as implemented by the Agreement, is consistent with Plan Policy F-205.**

Conclusion Nos. 3 and 6

Notwithstanding the infrastructure planning requirements contained in the Agreement, **the requirements of the Growth Management Act, including RCW 36.70A.070(3) and (6) govern infrastructure planning in the Black Diamond UGA.** However, in this unique and limited situation, the designation of the Black Diamond UGA as implemented by the Agreement, the delay in the required infrastructure planning is not prohibited by the GMA.

Pursuant to the terms of the Agreement, the City of Black Diamond, not the County, is responsible for

including the required GMA infrastructure analysis in the capital facilities and transportation elements of its Comprehensive Plan. The City of Black Diamond must comply with the requirements of the GMA, including RCW 36.70A.070(3) and (6).

The adoption of the Black Diamond UGA, as implemented by the Agreement, is **consistent** with Plan Policy F-205.

legal issue no. 4

Did King County fail to comply with RCW 36.70A.100 when it adopted Ordinance No. 12533, because the Black Diamond UGA is not consistent with the City of Black Diamond's Comprehensive Plan regarding service capacity?

Discussion

RCW 36.70A.100 requires comprehensive plans of adjacent jurisdictions to be consistent. Petitioners assert that the designation of the Black Diamond UGA creates inconsistencies between the County Plan and the Black Diamond Plan. These inconsistencies involve the coordinated, logical and efficient extension of infrastructure services. Johnson PHB, at 28-29.

The County argues that without annexation there will be no new development; annexation is preconditioned by capital facilities planning, which will culminate in an update of the City's Comprehensive Plan. This update has not yet occurred. County PHB, at 35; Plum Creek PHB, at 37.

The *present* Black Diamond Comprehensive Plan addresses only its corporate limits. Ex. 24. Both Respondent and Intervenor indicate that Black Diamond, pursuant to the Agreement, will amend its comprehensive plan to address the designated UGA. It is not unreasonable for the jurisdictions to coordinate their adoption of plan amendments, and provide for them to be done sequentially. Nonetheless, Petitioners contend that the UGA designation is inconsistent with policies in the *present* Black Diamond Plan. Petitioners cite Black Diamond Plan Policies LU-15, CF-6, CF-18 and CF-28, which deal with provision of capital facilities and services to new development. Ex. 24, at 5-61, 8-74, 8-76, and 8-77. However, Petitioners make conclusory statements but never demonstrate how these policies are inconsistent with the adoption of the Black Diamond UGA or the implementing Agreement. **Therefore, the Board holds that Petitioners have failed to show, by a preponderance of the evidence, that Ordinance No. 12533 is inconsistent with Black Diamond Plan Policies LU-15, CF-5, CF-18 and CF-28.**

Conclusion No. 4

Petitioners have **failed** to show, by a preponderance of the evidence, that Ordinance No. 12533 is inconsistent with Black Diamond Plan Policies LU-15, CF-5, CF-18 and CF-28.

legal issue no. 7

(7) Does the Board have subject matter jurisdiction to decide whether the County is in compliance with the requirements of the Growth Management Act in adopting Ordinance No. 12534 and approving the Black Diamond UGA Agreement?

(7.1) If the answer to issue 7 is yes, does section 8.4 of the Black Diamond UGA Agreement, as adopted by Ordinance No. 12534, fail to comply with RCW 36.70A.040(3)?

(7.2) If the answer to issue 7 is yes, and if the answer to any of the issues 1-6, above is in the affirmative, do sections 1, 5.1 - 5.7, 6.2, 6.3, 6.5 and 7.6 of the Black Diamond UGA Agreement, as adopted by Ordinance No. 12534, fail to comply with RCW 36.70A.120?

Discussion

Ordinance No. 12534 does two things: it approves the Black Diamond Urban Growth Area Agreement; and it authorizes the King County Executive to enter into the Agreement. This Ordinance does not adopt or amend the King County Comprehensive Plan, Zoning Map or other development regulation.

The Agreement approved by Ordinance No. 12534 is relied upon to implement several provisions of Ordinance No. 12533.[23] In briefing Legal Issue 7, Petitioners merely assert that since Ordinance No. 12533 is not in compliance with the GMA, the Agreement, likewise, does not comply with the Act. Johnson PHB, at 31. Other than these conclusory statements, Petitioners offer no argument on Legal Issue 7. Consequently, the **Board holds that the Petitioners have abandoned Legal Issue 7 which relates to the Board's subject matter jurisdiction, Section 8.4 of the Agreement, and Sections 1, 5.1-5.7, 6.2,6.3,6.5 and 7.6 of the Agreement.**

Conclusion No. 7

Petitioners have not briefed Legal Issue 7 related to the Board's subject matter jurisdiction. Petitioners have therefore **abandoned** Legal Issue 7.

Petitioners have not briefed Legal Issue 7.1 related to Section 8.4 of the Agreement. Petitioners have therefore **abandoned** Legal Issue 7.1.

Petitioners have not briefed Legal Issue 7.2 related to Sections 1, 5.1 - 5.7, 6.2, 6.3, 6.5 and 7.6 of the Agreement. Petitioners have therefore **abandoned** Legal Issue 7.2.

Vii. ORDER

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

The County's motion to dismiss CPSGMHB Case No. 97-3-0002 (*Johnson II*) is **denied.**

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.

Pursuant to RCW 36.70A.300(1)(b), the Board directs the County to comply with this Final Decision and Order no later than 5:00 p.m. on Friday, January 16, 1998.

So ORDERED this 23rd day of July, 1997.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

_____

Edward G. McGuire, AICP
Board Member

_____

Joseph W. Tovar, AICP
Board Member

_____

Chris Smith Towne
Board Member

APPENDIX I.
PROCEDURAL HISTORY

A. General

On February 3, 1997, the Board issued a Notice of Hearing in the above-captioned case. The Order set a date for a prehearing conference and established a tentative schedule for the case.

On February 12, 1997, the Board issued an Order Amending the Notice of Hearing, setting a new the date for the prehearing conference.

On March 3, 1997, the Board held a prehearing conference at the Board's office.

On March 18, 1997, the Board received the County's "Notice of Withdrawal and Substitution of Attorneys."

On May 20, 1997, the Board held the Hearing on the Merits at 1718 One Union Square in Seattle. Board Members Chris Smith Towne, Joseph W. Tovar and Edward G. McGuire, Presiding Officer, were present for the Board. David A. Bricklin represented Petitioners; Charles Maduell and Janene Collins represented the County; John W. Hempelmann and Brian Holtzclaw represented Intervenor Plum Creek Timber Co. L.P.; and William Kombol represented Intervenor Palmer Coking Coal Company. Loren D. Combs was present for Intervenor City of Black Diamond. Court reporting services were provided by Cynthia J. LaRose of Robert H. Lewis & Associates, Tacoma.

B. Prehearing Motions

On February 14, 1997, the Board received "Plum Creek Timber Company, L.P.'s Petition to Intervene and Motion to Consolidate."

On February 27, 1997, the Board received "Declaration and Petition of Palmer Coking Coal Company to Intervene and Motion to Consolidate."

On March 10, 1997, the Board issued its "Order Granting Intervention, Denying Consolidation and Prehearing Order" (**PHO**). The intervenors are Plum Creek Timber Company, L.P. (**Plum Creek**), Palmer Coking Coal Company (**Palmer**), and the City of Black Diamond.

On March 17, 1997, the Board received "Plum Creek Timber Company, L.P.'s Identification of Legal Issues."[24]

C. Motions Regarding the Record

On February 24, 1997, the Board received the County's "Index of Record."

On March 17, 1997, the Board received Petitioners' "Motion to Add to Index." Five documents were listed in an attachment to the motion, including a staff report.

On March 24, 1997, the Board received "King County's Response to Petitioner's Motion to Add to Index" with attached "Declaration of Caroline Whalen."

On April 1, 1997, the Board issued its "Order on Motion to Add to the Index, Supplement the Record and Correcting Prehearing Order."[25]

D. Prehearing Briefs

On April 14, 1997, the Board received "Petitioner's Opening Brief."

On April 21, 1997, Petitioners' Attorney, by letter, informed the Board and all Counsel that there were errors in the "Petitioner's Opening Brief." Attached to this letter were corrected copies of the opening brief and exhibits (**Johnson PHB**). Also on this date, pursuant to request of the Petitioners, the Board ordered a change in the location and time of the Hearing on the Merits.

On May 2, 1997, the Board received "Response of King County to Petitioner's Opening Brief."

On May 5, 1997, Respondent's Attorney, by letter, informed the Board that, due to copy machine failure, several exhibits were not included in the County Response. Also several errors had been noted in the "Response of King County to Petitioner's Opening Brief." Attached to this letter were the missing exhibits and a corrected response brief (**County PHB**).[26]

On May 5, 1997, the Board received "Intervenor Plum Creek Timber Company, L.P.'s Prehearing Brief" (**Plum Creek PHB**).

Also on May 5, 1997, the Board received "Intervenor Palmer's Response Brief" (**Palmer PHB**).

On May 13, 1997, the Board received "Petitioner's Reply Brief" (**Johnson Reply**).

On June 12, 1997, the Board received copies of the various maps from the parties' exhibits arrayed in chronological order (the **Atlas**). At the request of the Board, the County provided the Atlas after consultation with the other parties.

E. Exhibits

The County submitted 37 exhibits with its prehearing brief and several corrected exhibits with its corrected prehearing brief. The County's exhibits included exhibits submitted by Petitioner. Therefore, references to exhibits in this final decision and order will be keyed to the County's exhibits, with the modifications and additions noted in the chart below.

Document	County Index Reference	Exhibit #
King County Countywide Planning Policies June 1992	---	4

King County Countywide Planning Policies as amended August 1994	---	6 and 11
1994 King County Comprehensive Plan - excerpts	1774	10 a
1994 King County Comprehensive Plan as amended in 1995 - excerpts	1772	10 b
King County Comprehensive Plan - Technical Appendix C (Transportation)-from Petitioner's exhibits	----	32 a
King County Comprehensive Plan - Technical Appendix D (UGAs)-from County's exhibits	----	32 b
Black Diamond Urban Growth Area and Open Space Study Area Map	5089	38
11/14/95 Memo - To: Derrick/Chan; From: Hempelmann	1247	39
11/5/96 Letter - To: King County Council; From: Kombol	2088	40 a
2/5/96 Memo - To: Kirn; From: McCullough	2088	40 b
3/13/96 Letter - To: Kirn; From Kombol	2088	40 c
Map attached to 3/13/96 letter *supra*	2088	40 d
11/22/96 Letter - To: Cox; From: Stevens and attached Crisp Creek report	5105	41

APPENDIX II.
FINDINGS OF FACT

1. The City of Black Diamond is one of King County's seven "rural cities." These rural cities are generally not contiguous to the large UGA located in the western portion of the County that includes Seattle and the adjacent suburban cities. County PHB, at 2.

2. The City of Black Diamond, although initially a non-contiguous rural city, became contiguous to the larger County UGA upon adoption of the County Plan in 1994. Exhibit (**Ex.**) 37.

3. The City of Black Diamond is approximately 3,100 acres. A 783-acre annexation, in late 1994, increased the size of the City from 2,317 acres to its present size. Ex. 7, at 8.

4. Ordinance No. 10450, enacted July 6, 1992, adopted "Phase I" of the County's Countywide Planning Policies (**CPPs**). Ex. 4.

5. The Phase I CPPs Framework Policy-1 (**FW-1**), established five steps for the countywide growth management process; each step included actions to be undertaken by jurisdictions and target dates for completion of each step. Ex. 4, CPPs, FW-1, at 7-8.

6. The Phase I CPPs did not include a UGA designation for Black Diamond beyond its existing 1992 city limits. County PHB, at 2.

7. Ordinance No. 10450 recognized the need for additional work on the CPPs and anticipated adoption of "Phase II" CPPs, including adjustments to UGAs. Ex. 4, at 1.

8. Following adoption of the Phase I CPPs, Black Diamond proposed a 3,400-acre unincorporated UGA around the City; County staff recommended an 850-acre UGA *north* of the City. Ex. 5, Attachment B, at 1.

9. On August 23, 1993, the County enacted Ordinance No. 11110, which designated interim urban growth areas (**IUGAs**) for the County. Ex. 5.

10. Ordinance No. 11110 designated about 420 acres *east* of the city limits as Black Diamond's IUGA. The rationale for this designation was to recognize the City's long-standing vision to expand to the east to protect water quality and the drainage basin. Ex. 5, at 3 and Attachment A-2.

11. In April 1994, the County published "Rural Cities Urban Growth Areas," a report that recommended final UGAs for the rural cities. Prior to the County's adoption of a Final UGA in 1994, five of the rural cities reached agreement with the County on UGAs; Black Diamond and North Bend did not. Ex. 7, County PHB, at 3.

12. The Rural Cities UGA report indicated that Black Diamond continued to propose a 3,400-acre UGA surrounding the City. The County recommended that approximately 640 acres be designated as unincorporated UGA; this included the interim unincorporated UGA (**IUGA**) (*east* of the City) and approximately 220 acres *west* of the City limits. However, the recommendation was contingent upon pending action of the Washington State Boundary Review Board (**BRB**) that was reviewing a proposed annexation of approximately 783 acres *south* of the City. If the annexation of 783 acres were approved, the recommended 640-acre UGA would be excluded from the UGA. The County concluded that if both areas were included within the UGA, the UGA would be larger than necessary to accommodate projected growth. Ex. 7, at 8.

13. On August 15, 1994, the County enacted Ordinance No. 11446, which amended the CPPs - Phase II Amendments to the CPPs. Ex. 6.

14. The Phase II CPPs amended FW-1 by making the countywide growth management process an eight-step process. Several of the original five steps were deleted or modified; the actions and target dates were eliminated; and several new steps were added, including the four-to-one program (Step 7), amending the UGAs (Step 8), and amending the CPPs (Step 9). Ex. 6, CPP FW-1, at 5-13.

15. Ordinance No. 11446 acknowledged that the UGAs for certain cities were in dispute; therefore, Joint Planning Areas (**JPAs**) were designated. Black Diamond's JPA was indicated as a maximum of 3,000 acres, which surrounded the City. No UGA was designated for Black Diamond. Ex. 6, CPP FW-1, Step 8b, at 12 and Appendix 1 map.

16. Step 8b also provided: "By December 31, 1995, King County, the cities, citizens, and property owners will have completed a planning process to determine land uses, and the Urban Growth Area for each city. The King County Executive will recommend amendments to the Urban Growth Area for each city for adoption by the Metropolitan King County Council. The Urban Growth Area for each city will be amended by separate Council ordinance. These amendments are not subject to ratification under this policy." Ex. 6, CPP FW-1, Step 8b, at 12.

17. In September 1994, the County prepared the "Joint Planning Areas Report." The report indicated that, although agreement had been reached with several cities regarding final UGAs, the County would continue meeting with Black Diamond, and "No recommendations [*sic*] for Black Diamond is included in this report." Ex. 9, at 1.

18. On November 18, 1994, the County enacted Ordinance No. 11575, which adopted the 1994 County Plan. County PHB, at 4; and *Vashon-Maury v. King County (**Vashon-Maury**)*, CPSGMHB Case No. 95-3-0008, Final Decision and Order (1995), at 9.

19. The County Plan acknowledged that where agreement on UGAs had not been reached between a city and the County, the County would designate a JPA. The Plan also acknowledged Step 8b from the CPPs by including: "By December 31, 1995, King County, the cities, citizens, and property owners will have completed a planning process to determine land uses, and the Urban Growth Area for each city. The King County Executive will recommend amendments to the Urban Growth Area for each city for adoption by the Metropolitan King County Council." Ex. 10 a, KCCP, at 220.

20. The County Plan designated a JPA for Black Diamond of 3,000 acres. However, the County Plan recognized the BRB had approved a 783-acre annexation for Black Diamond, and that the 783-acre annexation area would be immediately annexed to the City. Thus, the remaining JPA for Black Diamond would be 2,216 [*sic*] acres. The County Plan also acknowledged that "[t]he BRB-approved annexation area (783 acres) together with the current city limits constitute the Urban Growth Area for Black Diamond in the 1994 King County Comprehensive Plan." Ex. 10 a, KCCP, at 220.

21. The 1994 County Plan confirmed that a Final UGA (**FUGA**) had not been designated for Black

Diamond. Designation of the FUGA for Black Diamond would be guided by a proposed JPA overlay ordinance that would be proposed by the Executive and adopted by the Council to comply with Step 8 of FW-1. The JPA ordinance was to include 1) an open space plan for the JPA (2,216 acres) and annexation area (783 acres) which would designate 50 percent of the area as open space and include a transfer of development rights (**TDR**) program; 2) a natural resource management plan; 3) a sufficient job/housing mix for a fiscally viable city; 4) net residential densities on land to be developed ranging from two to eighteen dwelling units per acre (**du/ac**) through clustering or TDRs; and 5) a phasing plan for the JPA conditioned upon development occurring within the existing city limits prior to new annexations. Ex. 10 a, KCCP, at 221.

22. The 1994 County Plan also anticipated the completion of Black Diamond's Comprehensive Plan in early 1995, and indicated that after review of Black Diamond's Plan, the Executive would recommend a UGA in the form of a JPA ordinance to the Council, by July 1, 1995. Ex. 10 a, KCCP, at 221.

23. An August 1995 "Joint Planning Areas" report indicated the status of JPA negotiations. The report stated: "Black Diamond has been unable to provide King County with the information requested in the Comprehensive Plan (County Plan, at 220-221) by July 1995. The City estimates it may complete this information by October or November 1995, with drafts available in mid-August." Ex. 13.

24. In August 1995, Black Diamond had prepared its Draft Comprehensive Plan (**Draft City Plan**) and Draft Environmental Impact Statement (**DEIS**). Ex. 14.

25. The Draft City Plan and DEIS acknowledged that the City and County had agreed to five criteria (JPA overlay ordinance criteria)[27] for designating a UGA for Black Diamond. Ex. 14, Draft City Plan, at 1-6.

26. The DEIS analyzed four Plan/UGA alternatives; two included the entire JPA of 2,217 acres (city limits + 783-acre annexation area = 3,048 acres; 3,048 acres + 2,217-acre JPA = 5,265-acre area); two alternatives used part of the JPA,[28] 4,048 acres (less than the JPA, but 1,000 acres more than the 3,048 acres within the existing city limits). Ex. 14, DEIS, at 2-2, 2-4, 2-6 and 2-8.

27. The City described the 2,217-acre JPA by area and size, as follows: West = 326 acres; South = 214 acres; East = 460 acres; John Henry = 437 acres; and North = 780 acres. Ex. 14, Draft City Plan, at 10-6.

28. On October 9, 1995, in response to the policy direction of CPP, FW-1, Step 8b and the direction of the County Plan, at 220, the King County Executive transmitted a report on JPA negotiations, with recommended amendments to the County's Plan, to the County Council. The report is contained within KCCP - 1995 Amendment - Executive Transmittal II. Ex. 15, at 3-2.

29. The Executive's report indicated that the County had received the City's Draft Plan and DEIS

on September 15, 1995, and that it was under review by staff. The Executive recommended: 1) a completed recommendation on Black Diamond's JPA by October 30, 1995; 2) inclusion of the 783-acre annexation in the City of Black Diamond city limits, and removal of designations for it from the County's Plan; and 3) removal of the JPA designation for the 783-acre area from the Growth Pattern map. Ex. 15, at 3-2.

30. There is no evidence in the record indicating that the County Executive made a recommendation on Black Diamond's JPA by October 30, 1995. Review of Exs. 1-41.

31. On October 23, 1995, the Board issued its Final Decision and Order (**FDO**) in *Vashon-Maury*.

32. Generally, in *Vashon-Maury*, the Board found that the County's Plan was in compliance with the GMA and concluded that: 1) the County's UGA was based upon the Office of Financial Management's (**OFM**) population projections for the year 2012; 2) the Plan used a 25 percent land supply market factor; 3) rural city UGAs could include identified expansion areas; 4) the County did not justify extending its rural city unincorporated UGAs beyond city limits into areas beyond their expansion areas; and 5) the Plan's Four-to-One Program was an innovative technique permitted by the GMA. *Vashon-Maury*, UGA conclusions, at 13, 22, 37, and 46.

33. A December 12, 1995 report prepared by the County, "City of Black Diamond Urban Growth Area Summary," outlined the status of work related to Black Diamond. The report includes a chronology of JPA work done by each jurisdiction; a summary of the JPA ordinance to guide the work for 1996; and an evaluation of previous and proposed work on Black Diamond's UGA for consistency with the CPPs and the County Plan. Ex. 16.

34. The December 12, 1995 report indicates that in October 1995, following the Executive's review of Black Diamond's Draft Plan, DEIS and proposed UGA, several meetings occurred between affected property owners and representatives of the City and County. From these discussions, an alternative option was developed for delineating a new UGA for Black Diamond. "The new UGA is created by applying the principles of the county's Four-to-One Program. 915 acres of land may be created as the New Rural City Urban Growth Area, around the City's existing corporate boundaries, in conjunction with 3,660 acres set aside as permanent Open Space or Natural Resource Use lands." The report also outlined a work program for 1996 of issues to be resolved regarding Black Diamond's UGA. Creation of the 915-acre new UGA and 3,660-acre Open Space/Resource Use lands was contingent upon resolution of the identified issues and unanimous agreement of the affected parties by the end of 1996. If agreement was not reached at that time, the City's UGA would be limited to its 1995 incorporated boundaries. Ex. 16, at 2.

35. The 915-acre developable area was from lands owned by Plum Creek (646 acres) and Palmer (269 acres). Ex. 16, at 9.

36. The 3,660 acres of Open Space/Natural Resource Use land were to come from properties owned by Plum Creek (2,584 acres) and Palmer (1,076 acres). Of the Open Space allocation, the location of the approximate acreage would be 1,219 acres within the City; 974 acres in the UGA; and 1,454

from the JPA.[29] (The combined totals for open space credits are short 13 acres when compared to 3,660 acres of open space needed.) Ex. 16, at 9.

37. The December 12, 1995 report explained what the proposed JPA ordinance would do and outlined the future actions to be taken. The report states: "The proposed ordinance [JPA ordinance] represents the work of King County, the City of Black Diamond, the citizens and property owners and establishes the framework for finalizing an Urban Growth Area for the City." Ex. 16, at 8.

38. On December 18, 1995, Ordinance No. 12065, the JPA ordinance, was adopted. The findings indicate that the ordinance is intended to comply with the provisions of CPP FW-1 and Plan policy I-206. Ex. 1.

39. Ordinance No. 12065 deleted the Black Diamond JPA. Ex. 1, Ord. 12065, Sec. 1, at 1.

40. Ordinance No. 12065 amended the County Plan and zoning map to include the 783-acre Black Diamond annexation in Black Diamond's permanent UGA, i.e., its city limits. Ex. 1, Ord. 12065, Sec. 2.A, at 1.

41. Ordinance No. 12065 amended the County Plan and zoning map to designate 1,927 acres as the "New Rural City Urban Growth Area" (**NRCUGA**). The area included the 160-acre Lake 12 Area, and 1,767 acres from the North, West, South and John Henry areas from the prior JPA. The East area (460 acres) was not included. Of this 1,927-acre area, no more than 915 acres, excluding Lake 12, could be designated for future urban development. The remainder (852 acres) would be designated Open Space or Natural Resource Use lands. Ex. 1, Ord. 12065, Sec. 2.B, at 1-2.

42. Ordinance No. 12065 required that any amendments to the County Plan relative to the Black Diamond interlocal agreement be included in the Executive's transmittal of Plan amendments to the Council on or before June 3, 1996. Ex. 1, Ord. 12065, Sec. 2.C, at 2.

43. Ordinance No. 12065 further provided: "On or before December 31, 1996, the Council shall designate 915 acres of the lands within the New Rural City Urban Growth Area for future urban development and the remainder of the New Rural City Urban Growth Area, excluding the Lake 12 Neighborhood shall be designated Open Space or Natural Resource Use land. These land use map designations shall be consistent with the provisions of Sections 3 and 4 of this ordinance. If these designations are not made and the provisions of Sections 3 and 4 of this ordinance are not met by December 31, 1996, the New Rural City Urban Growth Area designation shall expire and shall automatically revert to a Rural designation under the King County Comprehensive Plan. Ex. 1, Ord. 12065, Sec. 2.D, at 2.

44. Ordinance No. 12065 zoned the NRCUGA, except for the John Henry area, Urban Reserve, 1 du/5 acres with conditions (UR-P). The John Henry area was zoned as Mining, with conditions (M-P). This zoning in the NRCUGA was to remain in place until annexations occurred within the

NRCUGA. Ex. 1, Ord.12065, Sec. 2.E, at 2.

45. Ordinance No. 12065 amended the KCCP by deleting language from the Plan's text on page 221 and replacing it with the text from Section 2.A-E and G and Sections 3 and 4 of Ordinance No. 12065. Ex. 1, Ord. 12065, Sec. 2.F, at 2.

46. Ordinance No. 12065 prohibited annexations, extension of utilities or commitments to extend utilities until the provisions of Section 2 B-E, 3 and 4 were satisfied in an interlocal agreement on or before December 31, 1996. Ex. 1, Ord. 12065, Sec. 2.G, at 3.

47. Section 3 of Ordinance No. 12065 listed fourteen separate issues to be addressed and resolved in the interlocal agreement required by Section 4. The interlocal agreement had to be unanimously agreed upon and executed by the County, the City, Plum Creek and Palmer by December 31, 1996. Ex. 1, Ord. 12065, Secs. 3 and 4, at 2-5.

48. Section 7 of Ordinance 12065 excluded the Lake 12 Area (160 acres) from the UGA until its inclusion was ratified by the Growth Management Planning Council (**GMPC**). Ex. 1, Ord. 12065, Sec. 7, at 6.

49. There is no evidence in the record indicating that the GMPC ratified the inclusion of the Lake 12 Area in the NRCUGA. Review of Exs. 1-41.

50. Ordinance No. 12065 added 783 acres to Black Diamond's *permanent* UGA, i.e., its corporate limits; it also created a *temporary and conditional* New Rural City UGA that would be permanently established only upon completion of certain conditions within a certain time frame. If those conditions were not met within that time frame, the temporary NRCUGA expired and the city limits remained the permanent UGA. Ex. 1, Ord. 12065, Secs. 2, 3 and 4, at 1-5.

51. During early 1996, the County, the City, Plum Creek and Palmer began negotiations on an interlocal agreement as prescribed in Ordinance No. 12065. Ex. 19, 20 and 21.

52. On June 3, 1996, a proposed amendment to the 1994 County Plan was transmitted by the Executive to the Council. The recommendation was to *redesignate* the NRCUGA for the City of Black Diamond to a Rural City Urban Growth Area (**RCUGA**), after approval by the Council of the anticipated interlocal agreement. The transmittal document recognized that negotiations had not been completed and that the recommendation was contingent upon successful negotiation and execution of the interlocal agreement. Ex. 22.

53. The City of Black Diamond Comprehensive Plan was adopted in August 1996. Ex. 24.

54. On September 17, 1996, the County Executive transmitted two proposed ordinances related to Black Diamond to the County Council. Ordinance No. 12533 amends the KCCP to establish the Black Diamond UGA (approximately 625 acres) and designates land uses and zoning. Ordinance No. 12534 approves and adopts the Black Diamond UGA agreement. Ex. 26.

55. On November 25, 1996, the County adopted Ordinance No. 12533. The findings of Ordinance No. 12533 indicate that it is intended to comply with the GMA, CPPs and the County Plan. Ex. 2, at 1.

56. Ordinance No. 12533 amended the County Plan and zoning map, designating 782.2 acres as RCUGA, provided that no more than 597.2 acres shall be designated for future urban development and the remainder shall be designated open space, consistent with the terms of the Agreement to be adopted by Ordinance No. 12534. Ex. 2, Ord. 12533, Sec. 1, at 2; Sec. 3.B.1, at 4.

57. Five parcels comprise the 782.2-acre Black Diamond UGA: West = 328.6 acres zoned urban reserve, 1 du/5 acres (265 acres as urban development, 63 acres as open space); South = 233 acres zoned urban reserve, 1 du/5 acres (152 acres as urban development, 81 acres as open space); East = 50 acres zoned urban reserve with a density limitation of 1 du/80 acres, as applies to the forestry zone, (50 acres as urban development); Lake 12 = 160 acres zoned urban reserve, 1 du/5 acres (as possible annexation and urban development); and West Boundary Adjustment = 10 acres zoned urban reserve, 1 du/5 acres (transportation corridor alignment). Ex. 3, Agreement , at 3.1.

58. The Black Diamond UGA designated in Ordinance No. 12533 is approximately 1,155 acres smaller than the temporary and conditional NRCUGA designated by Ordinance No. 12065, but includes approximately 60 acres (50 acres east of the City, and 8.5 acres west and south of the City) not included in the NRCUGA. Also, approximately 10 acres (the 8.5-acre west/south parcel) were not included in the original JPA adopted by Ordinance No. 11446. Atlas, Tabs 2 and 3.

59. Ordinance No. 12533 repeals Sections 2A, C, D, F and G; Sections 3A-N; and Section 7 of Ordinance No. 12065, which set forth the process for negotiating a UGA for Black Diamond (Section 2), and the issues to be addressed and resolved in the interlocal agreement to be unanimously agreed upon (Section 3). Ex. 2, Ord 12533, Sec. 3, at 4-8.

60. While Ordinance No. 12533 repealed the provisions of Sections 2 and 3 of Ordinance No. 12065, it did not remove or amend the identical text from the County Plan that appears at 221a - 221d. Ex. 11, at 221a-221d.

61. Ordinance No. 12533 also incorporated the Agreement as an implementing regulation to govern the UGA. Ex. 2, Ord. 12533, Sec. 3.B.1, 2 and 3, at 4-6.

62. On November 25, 1996, Ordinance No. 12534 was also adopted by the County. This Ordinance approved the Agreement and authorized the County Executive to enter into the Agreement. Ex. 3.

63. The Agreement was executed by the parties on December 31, 1996. Ex. 3, Agreement, at 20.

64. The Agreement provides that the Black Diamond UGA (a.k.a. RCUGA) or Potential Annexation Area (**PAA**), shall be zoned Urban Reserve, 1du/5ac, with P-suffix conditions until the various annexations occur. The West and South Annexation Areas are further limited by restrictions on uses as contained in conservation easements. The zoning for the East Annexation

Area shall be Forestry (F), 1 du/80 acres. Ex. 3, Agreement, Sec. 4.1, at 5.

65. The Agreement defines the West Annexation Area as approximately 328.6 acres owned by Plum Creek. Of this area, 265.3 acres are intended for urban development and 63.3 are to be set aside as permanent open space upon annexation. Ex. 3, Agreement, Sec. 3.1.1.

66. Of the 265.5 acres intended for urban development in the West Annexation Area, approximately 107.5 acres are slated as residential, 124.7 acres as commercial, and 33.1 acres as mixed use. Ex. 3, Agreement, Appendix B.

67. The Agreement defines the South Annexation Area as approximately 233.6 acres owned by Plum Creek. Of this area, 151.9 acres are intended for urban development and 81.7 acres are to be set aside as permanent open space upon annexation. Ex. 3, Agreement, Sec. 3.1.2.

68. All of the 151.9 acres intended for urban development in the South Annexation Area is intended for residential use. Ex. 3, Agreement, Appendix B.

69. The Agreement defines the East Annexation Area as approximately 50 acres owned by Palmer. This area is intended for urban development upon annexation. Ex. 3, Agreement, Sec. 3.1.3.

70. The Agreement defines the Lake 12 Annexation Area as approximately 160 acres of existing residential development, which is intended for possible annexation into the City for future urban development. Ex. 3, Agreement, Sec. 3.1.4.

71. The Agreement defines the West Boundary Adjustment as approximately 10 acres along the existing City limits intended for annexation into the City to facilitate the proper alignment of the transportation and utility corridor to serve future urban development. Ex. 3, Agreement, Sec. 3.1.5.

72. The Agreement anticipates phased annexations of the areas within the UGA. West is first, then East and Lake 12, followed by South. Each annexation area contains specific conditions that must occur before the annexation can occur. Although the annexations are expected to be phased, the Agreement allows for simultaneous annexation if all other conditions precedent are met. Ex. 3, Agreement, Sec. 5, at 7-10.

73. The Agreement is to remain in effect for twenty years. Any lands not annexed by the City within the twenty-year term of the Agreement (1997-2017) shall be considered for redesignation to non-urban lands by the County Council during its next comprehensive plan amendment cycle after 2017. Ex. 3, Agreement, Sec. 9.2, at 16.

74. If the Agreement is terminated, the non-annexed lands shall be considered by the County Council for redesignation to non-urban lands. If the West and South areas are not annexed, and are reclassified to non-urban designations, they will retain the original rural zoning that existed as of December 18, 1995. Ex. 3, Agreement, Sec. 9.3.3.2, at 17 - 18.

[1] WAC 242-02-532(2) provides: "no written motion may be filed after the date specified in the [prehearing] order without the written permission of the board or presiding officer." The Board's Prehearing Order, at 5, established March 17, 1997, as the deadline for filing motions. At the prehearing conference, the parties and intervenors indicated no intention to seek dispositive motions. PHO, at 5. Based upon WAC 242-02-532(2) and WAC 242-02-720(4), the Board could deny the motion to dismiss since it was filed beyond the filing deadline established in the Order and without the written permission of the Board. However, due to the complexity of the facts surrounding the issues in this case, and notwithstanding the untimeliness of the County's motion to dismiss, the Board will consider the merits of the County's motion.

[2] Section 1. E. of Ordinance 12533 provides:

> "E. The Black Diamond Urban Growth Area attached as Appendix A to this ordinance is hereby adopted as an amendment to the King County Comprehensive Plan." Ex. 2, at 2.

[3] RCW 36.70A.290 requires PFRs be filed within sixty days of publication of the action; it is undisputed that the PFR challenging Ordinance No. 12533 was filed within the required sixty-day time frame.

[4] A December 12, 1995 report entitled "City of Black Diamond Urban Growth Area Summary" indicates that, following review of Black Diamond's Draft Plan and DEIS, an alternative approach was developed for delineating Black Diamond' s UGA which involved applying the principles of the County's Four-to-One Program. *See* Findings of Fact 33 - 38. The application of this four-to-one approach is not found in Ordinance No. 12065, but is addressed in the two enactments at issue -- Ordinance Nos. 12533 and 12534.

[5] The six exceptions, or circumstances, where UGAs can be designated beyond city limits were originally articulated in *Association of Rural Residents v. Kitsap County (**Rural Residents**)*, CPSGPHB Case No 93-3-0010, Final Decision and Order (1994), at 44. The exceptions were slightly modified in *Bremerton v. Kitsap County [**Bremerton**]*, CPSGMHB Case No. 95-3-0039, Final Decision and Order (1995). The exceptions relevant here are:

> Third, UGAs <u>may</u> include territory outside existing city limits <u>only</u> if that additional territory is already "land having urban growth located on it." *Rural Residents*, at 44.
>
> [T]he fourth, fifth and sixth exceptions would permit UGAs to extend not only beyond existing city limits but even beyond urbanized unincorporated areas covered by the third exception. Because including such lands 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. *Bremerton*, at 40.

[6] *See Vashon-Maury v. King County [**Vashon-Maury**]*, CPSGMHB Case No. 95-3-0008, Final Decision and Order (1995), UGA conclusions, at 13, 22,37 and 46.

[7] Apparently, this analysis does not include the 10 acre West Boundary Adjustment.

[8] According to the analysis, the gross acreage figure of 259 is reached by subtracting 145 acres (open space), 160 acres (Lake 12), 50 acres (East Annexation), and 158 acres (commercial and industrial).

[9] Although the County does not reference the record or otherwise explain this assertion, the Board notes that much of the vacant land within the city may not be developable due to coal mines underlying the City. The record suggests up to two-thirds of the existing city limits is underlain by coal mines. *See* Ex. 5, at 1; Ex. 7, at 11; and Ex. 24, at 1.2-1.5.

[10] The analysis also concludes that for commercial and industrial development the gross acreage available is 158 acres; the net acreage for commercial and industrial development within the UGA is indicated as 97 acres.

[11] At 4 du/acre the capacity **of the UGA** *remains* 636, while the capacity **within the City limits** is *reduced* by 318.

[12] CPP FW-1, step 7; and KCCP Policy I-204, at 218.

[13] The four-to-one principle is used in calculating open space for the West and South Annexation Areas. In those areas, 417 acres are slated for urban development while 1,668 acres are earmarked for open space. *See* Ex. 3. Agreement, Appendix B. The table in the Appendix to the Agreement indicates that the East and Lake 12 Annexation Areas are not subject to the four-to-one open space requirements.

[14] In an early UGA case, the Board observed:

> Although the Act does not confer unbridled discretion upon counties in determining where to locate final urban growth areas [FUGAs], counties do have discretion to make the FUGA decisions they deem appropriate under the circumstances, based upon a thorough review and rigorous analysis of an array of objective factors to determine actual capacity. . .
>
> 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 city expresses in its comprehensive plan. *Friends of the Law and Bear Creek Citizens for Growth Management v. King County*, CPSGMHB Case No. 94-3-0009, Order Granting Dispositive Motions, November 8, 1994, at 15

In another UGA case, the Board held that a county's discretion to include subjective factors carries the duty to make such rationales explicit in the plan or the record:

> While such . . .[subjective 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.

[15] *Vashon-Maury*, at 45.

[16] *See* Footnote 9 for citations to the record.

[17] The Agreement establishes conditions precedent for annexation. *See* Ex. 3, Sec. 5, at 7-10.

[18] The Board notes that RCW 36.70A.110(4) permits the extension of urban governmental services into rural areas in limited circumstances where it can be shown as necessary to protect basic public health and safety and environment.

[19] "A comprehensive plan should provide for innovative land use management techniques, including, but not limited to, density bonuses, cluster housing, planned unit developments, and the transfer of development rights." RCW 36.70A.090. Each of these innovative techniques is typically implemented through development regulations.

[20] RCW 36. 70A.160 requires the identification and provision of open space corridors within and between UGAs.

[21] *See* citations throughout discussion of Legal Issue 1 and the Findings of Fact.

[22] *See, e.g.*, Agreement, at Sections 5 and 6.

[23] Ordinance No. 12533, Section 3.B provides:

> Comprehensive Plan Land Use Map and Zoning Map Amended. The King County Comprehensive Plan Land Use Map . . . and Zoning Map shall be amended as follows:
>
> > 1. 782.2 acres shall be designated "Rural City Urban Growth Area" on the King County Comprehensive Plan Land Use Map as shown on Appendix A provided that no more than 597.2 acres, shall be designated for future urban development and the remainder shall be designated Open Space Lands *consistent with the terms of the Black Diamond Urban Growth Area (UGA) Agreement adopted by Proposed Substitute Ordinance 96-*

711. (Ordinance No. 12534)

2. Until annexation the Rural City Urban Growth Area shall be zoned UR-P Urban Reserve, with the p-suffix condition *that requires development to be consistent with the terms of the Black Diamond UGA Agreement. Appendix B*

3. The County in proposed substitute ordinance 96-711 (Ordinance No. 12534) has adopted the *Black Diamond UGA Agreement which when executed by the parties shall govern annexation of the Black Diamond UGA.* (Emphasis supplied.)

[24] Intervenors were to specify the Legal Issues upon which intervention was intended. Due to an error by the legal messenger, the Board received, and accepted, Plum Creek's submittal on March 17, 1997, in lieu of the March 14, 1997 date noted in the Prehearing Order. The Board never received a reply from Palmer or Black Diamond that indicated the issues upon which intervention was intended. Plum Creek and Palmer submitted briefs and participated in the Hearing on the Merits, Black Diamond did not.

[25] The staff report was the only item not included in the record. This Order also corrected a typographical error in Legal Issue No. 4 and clarified that Legal Issue No. 6 was inadvertently combined with Legal Issue No. 5 in the Prehearing Order. Issues 5 and 6 are separate and discrete Legal Issues.

[26] At the Hearing on the Merits, the County provided the Board with additional exhibit and brief corrections.

[27] Finding of Fact 21 lists the components to be included in the proposed JPA overlay ordinance.

[28] These alternatives included only the John Henry area (437 acres) and the Eastern area (460 acres).

[29] The JPA maximum acreage was set at 3,000 acres. This figure assumes an additional 660 acres in the JPA to yield a 3,660-acre JPA.