

**CENTRAL PUGET SOUND  
GROWTH MANAGEMENT HEARINGS BOARD**

STATE OF WASHINGTON

SCREEN, et al., )  
)  
Petitioners, )  
v. )  
)  
KITSAP COUNTY, )  
)  
Respondent. )  
and )  
)  
McCORMICK LAND )  
COMPANY, et al., )  
)  
Intervenors. )  
\_\_\_\_\_ )

**Consolidated  
Case No. 99-3-0006c**

**coordinated with**

ALPINE, et al., )  
)  
Petitioners, )  
v. )  
)  
KITSAP COUNTY, )  
)  
Respondent. )  
and )  
)  
PORT BLAKELY TREE )  
FARMS AND OLYMPIC )  
RESOURCE MANAGEMENT/ )  
POPE RESOURCES, et al., )  
)  
Participants. )  
\_\_\_\_\_ )

**Consolidated  
Case No. 98-3-0032c**

**ORDER ON COMPLIANCE RE:  
FORESTRY ISSUES IN *ALPINE* and  
FINAL DECISION AND ORDER IN  
*SCREEN (SCREEN I)***

**i. Procedural Background**

On February 8, 1999, the Central Puget Sound Growth Management Hearings Board (the **Board**) issued its “Order Rescinding Invalidity in *Bremerton* and Final Decision and Order in

*Alpine*” (the **FDO**) in Coordinated Cases 95-3-0039c and 98-3-0032c. Among other matters, the FDO remanded to Kitsap County (the **County**) consideration of forestry issues.

On April 13, 1999, the Board received a Petition for Review (**PFR**) from Robert and Janet Screen (**Screen**). The Board assigned Case No. 99-3-0005.

On April 14, 1999, the Board received a PFR from Kitsap Citizens for Rural Preservation (**KCRP**). The Board assigned Case No. 99-3-0006.

On April 21, 1999, the Board issued an “Order of Consolidation and Notice of Hearing” which consolidated the Screen and KCRP cases into a single consolidated matter, assigning Case No. 99-3-0006c and the caption *Screen, et al., v. Kitsap County*.

On April 30, 1999, the Board received from Overton & Associates, Peter E. Overton and Alpine Evergreen Company, Inc., (collectively **Overton**) a “Motion to Intervene.” Also on this date, the Board issued a “Notice of Change of Location and Time for Prehearing Conference in *Screen* and Order Coordinating Screen with Forestry Portion of *Alpine*.”

On May 3, 1999, the Board received Kitsap County’s “Statement of Actions Taken to Comply with Forestry Issues on Remand.”

On May 6, 1999, the Board received “McCormick Land Company’s Motion to Intervene.”

On May 11, 1999, the Board received “Notice of Participation by Port Blakely Tree Farms and Olympic Resource Management/Pope Resources [collectively **Port Blakely**] in Compliance Hearing on Forest Matters.” Also on this date, the Board received “Suquamish Tribe’s Notice of Participation,” and “Suquamish Tribe’s Motion to Intervene in *Screen, et al.*”

On May 12, 1999, the Board received “Suquamish Tribe’s Amended Motion to Intervene in *Screen, et al.*”

On May 17, 1999, the Board received from Screen a “Notice of Participation,” asserting participation in the compliance proceedings [Forestry portion] in *Alpine*. Also on this date, the Board received “Suquamish’s Notice of Participation,” asserting participation in the forestry portion of *Alpine*; “Kitsap County’s Submittal of the Index to the Record”; and a letter from John C. McCullough to Ms. Tanner and Mr. Burrow informing them that the Screens are deemed to have intervened in the KCRP portions of *Screen, et al.*

On May 18, 1999, the Board Received the “Joint Motion for Settlement Extension (*Screen v. Kitsap Co.*)” from Screen and the County. Also on this date the Board received a pleading titled “Observations” from Matt Ryan.

On May 20, 1999, the Board received from Screen a “Response to Motions to Intervene and Motion to Strike.”

On May 21, 1999, the Board issued its “Prehearing Order, Order on Motions to Intervene and Order on Motion for Extension in *Screen* and Precompliance Hearing Order Re: Forestry Issues in *Alpine*.”

On July 12, 1999, the Board received “Screen’s Opening Brief on Compliance Issue 5” (**Screen PHB**) and “KCRP’s Prehearing Brief on Forestry Issues” (**KCRP PHB**).

On July 13, 1999, the Board received “Suquamish Tribe’s Prehearing Brief” (**Suquamish PHB**).

On August 10, 1999, the Board received “Kitsap County’s Responsive Brief” (**County Response**), including a motion to strike certain portions of Petitioners’ briefs; “Response Brief of Overton & Associates, Peter E. Overton and Alpine Evergreen Company, Inc.” and Overton’s “Motion to Strike” certain portions of Petitioners’ briefs; and “Response Brief of Intervenors Port Blakely Tree Farms and Pope Resources,” including a motion to strike certain portions of Suquamish’s brief.

On August 17, 1999, the Board received “Screen’s Reply Brief on Compliance Issue 5 and Response to Motion to Strike”; “KCRP’s Reply Brief on Forestry Issues” (**KCRP Reply**); and “Suquamish Tribe’s Reply Brief” (**Suquamish Reply**).

The Board held a hearing on the merits on August 19, 1999, at the Poulsbo Fire Station. Present for the Board were Joseph W. Tovar, Presiding Officer, and Edward G. McGuire. The County was represented by Sue Tanner; KCRP was represented by Charlie Burrow and Tom Donnelly; Suquamish was represented by Scott Wheat; Screen was represented by Courtney Kaylor; Overton was represented by Elaine Spencer; and Port Blakely was represented by Katherine Laird. Court reporting services were provided by Jean M. Ericksen, RPR, of Robert H. Lewis and Associates, Tacoma.

## **II. motions**

### **A. Motions to Strike**

Suquamish attached to its prehearing brief several maps attached to a declaration of Thomas Curley, Suquamish Tribe GIS Program Manager. The maps were purportedly derived from the County’s GIS database by manipulation of GIS data by Mr. Curley. KCRP incorporated by reference the whole of Suquamish’s prehearing brief and attachments. The County and

Intervenors <sup>[1]</sup> moved to strike these maps and declaration, arguing that the maps were not part of the record that was before the County Commissioners and the maps are not properly part of the

record before this Board. In addition, they argue that the maps and declaration were offered to the Board long after the time set for filing motions to supplement the record before this Board.

Although the GIS database upon which these maps were purportedly derived is part of the record, the maps created by Suquamish are not part of the record. The deadline for filing motions to supplement the record was June 2, 1999. Suquamish did not file a motion to supplement the record with these maps; instead, they attached the maps to their prehearing brief. At the hearing on the merits, the Board **granted** the motions to strike the declaration of Thomas Curley and the maps attached thereto, and all references to these materials in the prehearing briefs of Suquamish and KCRP.

Screen attached to its brief a photocopy of the Kitsap County Comprehensive Plan Open Space and Timberlands Map (Index No. 19711). Screen had drawn a number of circles on this map in an effort to show that some forested lands were not designated Interim Rural Forest (**IRF**). Intervenor Overton moved to strike this map, making the same arguments offered as for the Suquamish GIS-derived maps. However, unlike the Suquamish maps, the map on which Screen drew circles was part of the record before the Commissioners. The Screen map was not the result of creating a new map through the manipulation of electronically stored data; the Screen map was the result of highlighting portions of a record document. At the hearing on the merits, the Board allowed the map for illustrative purposes and **denied** Overton's motion.

KCRP's prehearing brief included a citation to a June 16, 1999 newspaper article in support of a statement petitioner made regarding activity at the Bremerton airport. The County moved to strike KCRP's statement and the citation to the newspaper article, arguing the article constituted hearsay and was published after the County's challenged action. At the hearing on the merits, the Board **denied** the County's motion to strike.

KCRP's prehearing brief also contained paraphrased excerpts of a December 3, 1998 hearing of the County Commissioners. The County and Intervenor moved to strike "KCRP's paraphrased versions of parts of that hearing." County Response, at 4. KCRP's reply brief included portions of the County's verbatim transcript prepared from the audio tapes of the December 3, 1998 Commissioners' hearing. *See* Index No. 19156 (County's R-19156) (Verbatim Report of Proceedings Before the Kitsap County Board of Commissioners, December 3, 1998). At the hearing on the merits, the Board **granted** the motions to strike the paraphrased excerpts, substituting the excerpts from the verbatim transcript.

## **B. Motion to Supplement**

The County moved to supplement the record with a certification of the Land Use Map (dated May 12, 1999) and excerpts from a 1998 Kitsap County statement of assessments. These materials were offered in response to arguments made in KCRP's prehearing brief regarding

certification of the County's Plan maps. At the hearing on the merits, the Board **granted** the County's motion to supplement.

### **ii. findings of fact**

1. The 1994 and 1996 County comprehensive plans stated that there were no forest lands of long-term commercial significance (**GMA forest lands**) within the County. Although both Plans were appealed to the Board, the Board did not directly address the appropriateness of the County's GMA forest lands determination.
2. The 1998 Plan stated that the County had not yet determined whether there were GMA forest lands within the County. The Board remanded this Plan and directed the County to decide whether or not there were GMA forest lands within the County.
3. On December 3, 1998, the County Commissioners adopted Ordinance 228-1998, adopting criteria and directing staff to apply the criteria to determine whether there were any lands within the County that satisfied the criteria and could be mapped as GMA forest lands. Ordinance 228-1998 did not amend the County's Plan or development regulations.
4. Application of the criteria confirmed that approximately 2,700 acres within the County could be mapped as GMA forest lands. Based on the results of staff's application of this criteria, the County Commissioners determined that it was appropriate to amend the GMA forest lands designation criteria in the County's Plan. On February 8, 1999, the same day the Board issued the FDO, the County Commissioners adopted Ordinances 229-1999 and 230-1999, incorporating the designation criteria of 228-1998 into the Plan and designating GMA forest lands. Notice of adoption of these ordinances was published as required by the GMA.
5. Ordinance 229-1999 provides seven GMA forest lands criteria, four of which are challenged in this case.

Criterion 2 excludes from GMA forest lands designation properties within "a special purpose sewer or local (not countywide) water district" and properties that "have access (hook-up rights) to such services as of November 1, 1998."

Criterion 3 excludes from designation as GMA forest lands those properties located within one mile of (A) property with a density of at least 3 du/acre that are also within a sewer district boundary; (B) existing commercial or industrial property; (C) property with a vested commercial or industrial development, or property with a vested residential development with a net density of at least 3 du/acre; and (D) the Belfair UGA in Mason County. In addition, criterion 3 excludes those properties located within one-half mile of certain specified areas of "compact rural development" with lots of no more than 1 du/acre. Finally, to be designated GMA forest lands, more than half of the linear frontage of each candidate parcel within a

block must abut parcels larger than 5 acres.

Criterion 4 establishes minimum block size requirements for GMA forest lands designation. For blocks covered by 75 percent or more of land grade 1 and 2, the nominal minimum block size is 640 acres. For blocks covered by 75 percent or more of land grade 3, the nominal minimum block size is 1,280 acres.

Criterion 6 excludes from GMA forest lands designation properties that, as of November 1, 1998, were not enrolled in the Open Space Timber or Designated Forest or Classified Forest Property tax classification program pursuant to Chapter 84.33 or 84.34 RCW. Properties owned by a state or local governmental body need not be enrolled in these tax classifications to be designated GMA forest lands.

6. Regarding criterion 3 and the required buffers between GMA forest lands and other uses, the record reveals that the County had a range of buffers to consider, from one-quarter mile to four miles from urban growth boundaries. The record is not limited to conflicts between commercial forestry and residential uses.

7. Regarding criterion 3 and the required buffer between GMA forest lands and the Belfair UGA in Mason County, the Western Washington GMHB found the Belfair UGA out of compliance; it did not find the Belfair UGA invalid.

8. Regarding criterion 4 and GMA forest lands block sizes, the record reveals that the County had a range of block sizes to consider.

9. Regarding criterion 6 and the date of enrollment in the Open Space Timber or Designated Forest or Classified Forest Property tax classification program, KCRP did not allege a failure to comply with a GMA requirement.

10. Ordinance 229-1999 also amended the Plan's IRF land use designation. IRF is a rural lands, not a resource lands, designation. The text of the IRF designation was amended in the Plan, changing application of the IRF criteria from the conjunctive (A, B, and C) to the alternative (A, B, or C).

#### **Iv. standard of review**

This case does not involve an existing determination of invalidity. Therefore, the County's actions in adopting Ordinances 229-1999 and 230-1999 are presumed valid. RCW 36.70A.320 (1). The burden of proof is on Petitioners to demonstrate that the County's actions are not in compliance with the GMA. RCW 36.70A.320(2). The Board "shall find compliance unless it determines that [the County's] action[s are] clearly erroneous in view of the entire record before the board and in light of the goals and requirements of [the GMA]." RCW 36.70A.320(3). For

the Board to find the County's actions clearly erroneous, the Board must be "left with the firm and definite conviction that a mistake has been made." *Dep't of Ecology v. PUD 1*, 121 Wn.2d 179, 201 (1993).

## **V. discussion and conclusions**

### **A. Forest Lands of Long-Term Commercial Significance**

***Compliance Issue 1: Did the County comply with remand paragraph 3.b of the Board's Final Decision and Order in the Alpine case?***

*Remand paragraph 3.b: The Forest Lands Section of the Resource Lands Chapter of the Plan is remanded. Regarding the lack of decision on forest lands of long-term commercial significance, the County is directed to decide, consistent with the goals and requirements of the GMA and this Order, whether it does, or does not, have forest lands of long-term commercial significance within its borders. The County shall record its decision through a Plan amendment that either designates such lands and depicts them on a map, or declares that no such lands are present in Kitsap County.*

***Legal Issue 2: Did the County, in its adoption of Ordinances 229-1999 and 230-1999, fail to comply with the requirements of RCW 36.70A.170 by failing to designate and map all appropriate forest lands that are not already characterized by urban growth and have long-term significance for the commercial production of timber?***

***Legal Issue 3: Did the County, in its adoption of Ordinances 229-1999 and 230-1999, fail to comply with the requirements of RCW 36.70A.060 by prohibiting designation of any forest resource land in the area located between developed land and designated forest land?***

***Legal Issue 4: Did the County, in its adoption of Ordinances 229-1999 and 230-1999, fail to be guided by RCW 36.70A.020(1) and (2) by facilitating the inappropriate conversion of land into sprawling low density development and also fail to be guided by RCW 36.70A.020(8) by discouraging the conservation of productive forest lands and encouraging incompatible uses?***

One goal of the GMA is to maintain and enhance the timber industry by encouraging the conservation of productive forest lands. RCW 36.70A.020(8). To achieve this goal, the GMA requires counties and cities to:

(1) . . . designate where appropriate: . . . (b) Forest lands that are not already characterized by urban growth and that have long-term significance for the commercial production of timber; . . . .

(2) In making the designations required by this section, counties and cities shall consider the guidelines established pursuant to RCW 36.70A.050.

RCW 36.70A.170. The guidelines provide:

In classifying forest land, counties and cities should use the private forest land grades of the department of revenue (WAC 458-40-530). This system incorporates consideration of growing capacity, productivity and soil composition of the land. Forest land of long-term commercial significance will generally have a predominance of the higher private forest land grades. However, the presence of lower private forest land grades within the areas of predominantly higher grades need not preclude designation as forest land.

Each county and city shall determine which land grade constitutes forest land of long-term commercial significance, based on local and regional physical, biological, economic, and land use considerations.

Counties and cities shall also consider the effects of proximity to population areas and the possibility of more intense uses of the land as indicated by:

- (1) The availability of public services and facilities conducive to the conversion of forest land.
- (2) The proximity of forest land to urban and suburban areas and rural settlements: Forest lands of long-term commercial significance are located outside the urban and suburban areas and rural settlements.
- (3) The size of the parcels: Forest lands consist of predominantly large parcels.
- (4) The compatibility and intensity of adjacent and nearby land use and settlement patterns with forest lands of long-term commercial significance.
- (5) Property tax classification: Property is assessed as open space or forest land pursuant to chapter 84.33 or 84.34 RCW.
- (6) Local economic conditions which affect the ability to manage timberlands for long-term commercial production.
- (7) History of land development permits issued nearby.

WAC 365-190-060. Once these forest lands of long term commercial significance are designated, they must be conserved. [\[2\]](#)

(1) Each county that is required or chooses to plan under RCW 36.70A.040, and each city within such county, shall adopt development regulations on or before September

1, 1991, to assure the conservation of agricultural, forest, and mineral resource lands designated under RCW 36.70A.170. Regulations adopted under this subsection may not prohibit uses legally existing on any parcel prior to their adoption and shall remain in effect until the county or city adopts development regulations pursuant to RCW 36.70A.040. Such regulations shall assure that the use of lands adjacent to agricultural, forest, or mineral resource lands shall not interfere with the continued use, in the accustomed manner and in accordance with best management practices, of these designated lands for the production of food, agricultural products, or timber, or for the extraction of minerals. Counties and cities shall require that all plats, short plats, development permits, and building permits issued for development activities on, or within five hundred feet of, lands designated as agricultural lands, forest lands, or mineral resource lands, contain a notice that the subject property is within or near designated agricultural lands, forest lands, or mineral resource lands on which a variety of commercial activities may occur that are not compatible with residential development for certain periods of limited duration. The notice for mineral resource lands shall also inform that an application might be made for mining-related activities, including mining, extraction, washing, crushing, stockpiling, blasting, transporting, and recycling of minerals.

#### RCW 36.70A.060.

The 1994 and 1996 County comprehensive plans stated that there were no forest lands of long-term commercial significance (**GMA forest lands**) within the County. Although both Plans were appealed to the Board, the Board did not directly address the appropriateness of the County's GMA forest lands determination. The 1998 Plan stated that the County had not yet determined whether there were GMA forest lands within the County. The Board remanded this Plan and directed the County to decide whether or not there were GMA forest lands within the County. In 1999, the County adopted new GMA forest lands designation criteria and designated approximately 2,700 acres of GMA forest lands. The criteria provide:

1. Property shall be in private forest land grades 1 through 3;
2. Property shall not be within a special purpose sewer or local (not countywide) water district and shall not have access (hook-up rights) to such services as of November 1, 1998;
3. Property shall not be within 1 mile of: A) property which has a density of 3 du/acre [i.e., dwelling units per acre] or greater and is within a sewer district boundary; B) existing commercial or industrial property; C) property with a vested commercial or industrial development, or a vested residential development at net density of 3 du/acre or greater; D) within [*sic*] the Belfair UGA in Mason County. Property shall not be within

1/2 mile from those portions of compact rural developments identified on p. A-303 of the 1998 Comprehensive Plan, a copy of which is attached hereto and incorporated herein, which comprise lots of 1 dwelling unit per acre or smaller. As of November 1, 1998, greater than fifty (50) percent of the linear frontage of each candidate parcel within a block shall abut parcels that are greater than 5 acres in size.

4. Each block shall be covered by 75% or more of the corresponding minimum land grade or above.

For land grade 1 – nominal minimum block size of 640 acres

For land grade 2 – nominal minimum block size of 640 acres

For land grade 3 – nominal minimum block size of 1280 acres

5. The County should follow the right to practice forestry guidelines as identified in the 1992 strategies document, page B-19, which is attached hereto and incorporated herein by reference.

6. Property shall be enrolled, as of November 1, 1998, in the Open Space Timber or Designated Forest or Classified Forest Property tax classification program pursuant to Chapter 84.33 or 84.34 RCW, or is owned by a state or local governmental body.

7. Economic conditions should be conducive to long-term commercial forestry management. The following economic conditions may affect the ability to manage timberlands for long term commercial production in Kitsap County:

Travel distance to mills and ports

Current timber prices/markets

Environmental regulations

Competing land uses

Size of tract

Quality of land

Public pressures

Favorable tax incentives (state)

Cost of doing business

Availability of work force

Terrain

Alternative products

The Commissioners have considered the history of land development permits issued nearby in the context of considering the criteria listed above.

Ordinance 229-1999, attached amendments to the Plan, at A-84-85. As is discussed more fully below, the County Commissioners first adopted the new criteria in Ordinance 228-1998 on

December 3, 1998. The Commissioners gave explicit instructions to staff regarding the application of the criteria. The County's GIS Manager applied the criteria, as described in his February 2, 1999 memo to the Commissioners. *See* Index No. 19003 (County Ex. R-19003). The Commissioners adopted Ordinances 229-1999 and 230-1999 on February 8, 1999.

By adopting Ordinances 229-1999 (a Plan amendment) and 230-1999 (a zoning code amendment), the County adopted new criteria for designating GMA forest lands and designated approximately 2,700 acres of GMA forest lands. Because the County has decided whether it did or did not have GMA forest lands and has recorded that decision through a Plan amendment, the County has **complied** with 3.b of the *Alpine* FDO. The next question is whether the County's actions comply with the goals and requirements of the GMA, specifically RCW 36.70A.170, .060, and .020.

KCRP challenges the County's failure to publish notice of adoption of Ordinance 228-1998. Both KCRP and Suquamish challenge criterion 3. Criteria 2, 4, and 6 are challenged to a lesser extent by KCRP. In addition, KCRP challenges the validity of the Future Land Use Map.

#### Ordinance 228-1998

The County adopted its GMA forest lands designation criteria in two steps. First, the County Commissioners adopted Ordinance 228-1998, adopting criteria and directing staff to apply the criteria to determine whether there were any lands within the County that satisfied the criteria and could be mapped as GMA forest lands. Ordinance 228-1998 did not amend the County's Plan or development regulations. Application of the criteria established that approximately 2,700 acres within the County could be mapped as GMA forest lands. Based on the results of staff's application of the adopted 228-1998 criteria, the County Commissioners determined that it was appropriate to amend the GMA forest lands designation criteria in the County's Plan.

The Planning Commission held a public hearing on the proposed changes to the Plan and development regulations. The County Commissioners also held a public hearing on the proposed amendments. KCRP participated in these hearings. The County Commissioners adopted Ordinances 229-1999 and 230-1999, incorporating the designation criteria of 228-1998 into the Plan and designating GMA forest lands. Notice of adoption of these ordinances was published as required by the GMA.

KCRP's complaint is that, because the County did not publish notice of adoption of Ordinance 228-1998, Petitioners did not have the opportunity to appeal that ordinance. As noted above, Ordinance 228-1998 did not amend the County's Plan or development regulations and, consequently, was not subject to the GMA publication requirements. Clearly, the adoption of Ordinances 229-1999 and 230-1999, amending the County's Plan and development regulations, was subject to the GMA publication requirements and to appeal before this Board. KCRP's

challenge of Ordinance 228-1998 fails.

The Board next addresses challenges to specific criteria.

### Criterion 2:

Criterion 2 excludes from GMA forest lands designation properties within “a special purpose sewer or local (not countywide) water district” and properties that “have access (hook-up rights) to such services as of November 1, 1998.” KCRP objects to the date included in this criterion. The whole of KCRP’s argument provides: “To let the land speak first, the reference date should be the GMA date for designation, September 1, 1991.” KCRP PHB, at 12 (citing RCW 36.70A.170(1)).

The County responds that this difference had no impact on the designation of GMA forest lands because “[t]he GIS Manager did not use this criteria [*sic*] in mapping because the parcels which qualified for designation after other criteria were applied did not have hook-up rights to water and sewer.” County Response, at 26. KCRP did not reply to the County’s response on this issue.

KCRP’s spartan discussion fails to meet its burden of proof to show that criterion 2 does not comply with the requirements of the GMA.

### Criterion 3:

Criterion 3 excludes from designation as GMA forest lands those properties located within one mile of (A) property with a density of at least 3 du/acre that are also within a sewer district boundary; (B) existing commercial or industrial property; (C) property with a vested commercial or industrial development, or property with a vested residential development with a net density of at least 3 du/acre; and (D) the Belfair UGA in Mason County. In addition, criterion 3 excludes those properties located within one-half mile of certain specified areas of “compact rural development” with lots of no more than 1 du/acre. Finally, to be designated GMA forest lands, more than half of the linear frontage of each candidate parcel within a block must abut parcels larger than 5 acres.

KCRP objects to all of criterion 3. Suquamish challenges only 3(B) and 3(C). KCRP argues that the County should “replace the[se] categorical prohibitions with a site by site evaluation” to determine whether an actual conflict exists. KCRP PHB, at 31. Similarly, Suquamish asserts that the County “must engage in particularized inquiries to determine whether specific, existing commercial or industrial uses are compatible with commercial forestry. Only after it has been determined that such specific commercial and industrial uses are incompatible with commercial forestry can an exclusion zone be legitimately imposed.” Suquamish PHB, at 11. Although a site-by-site evaluation may be desirable, Petitioners identify no GMA requirement for a site-by-site evaluation in this case. In addition, the cases relied on by Petitioners are not on point.

Suquamish cites to *Vashon-Maury v. King County*, CPSGMHB Case No. 95-3-0008c, Final Decision and Order (May 24, 1996), at 49, for support. However, the cited discussion in *Vashon* pertains to uses meeting the GMA definition of “urban” being allowed in rural areas; GMA forest lands designation was not at issue. KCRP cites *Sky Valley v. Snohomish County*, CPSGMHB Case No. 95-3-0068c, Final Decision and Order (Mar. 12, 1996), *Olympic Environmental Council v. Jefferson County*, WWGMHB Case No. 94-2-0017, Final Decision and Order (Feb. 16, 1995), and *Ridge v. Kittitas County*, EWGMHB Case No. 94-1-0017, Order of Non-Compliance (Apr. 3, 1995).<sup>[3]</sup> *Sky Valley* addressed the appropriateness of “landowner intent” in controlling GMA forest lands designation; “landowner intent” is not at issue here. *Olympic Environmental Council* is likewise distinguishable from the present case.

*Olympic Environmental Council* addressed interim forest lands designation and a designation process that identified lands first, then developed criteria to designate these pre-selected lands. Here the County clearly first developed criteria, then applied them to identify GMA forest lands.

*Ridge* also addressed an interim forest lands designation. In *Ridge*, the Eastern Washington GMHB explained how the minimum guidelines affect the designation of GMA forest lands, stating: “The test is whether the influence of these factors or possible others preclude the land from being economically and practically managed for timber production.” *Ridge*, at 3. If *Ridge* were applied to the present case, Kitsap County would satisfy *Ridge*. Kitsap County’s criteria, including criterion 3, constitute the County’s determination, based on the record before it, of those factors that “preclude the land from being economically and practically managed for timber production.”

In addition to Petitioners’ general argument against criterion 3, KCRP states that “[t]here is nothing in the record to justify even a one-quarter mile wide buffer zone.” KCRP PHB, at 15. Similarly, Suquamish asserts that, “[w]hile there is much discussion of the incompatibility between commercial forestry, urban growth areas and residential development, there exists no discussion concerning incompatibility with any type of commercial or industrial property.” Suquamish PHB, at 12. Review of the record reveals the following documents:

- June 22, 1994 Statement of Peter Overton in which he states:  
Commercial forest production requires the ability to conduct slash burns and aerial spraying of herbicides and pesticides. That is virtually impossible within one half mile of urban uses, and quite risky within one and a half miles. It is also difficult within those distances of a heavily traveled road, such as Lake Flora Road. The presence of Bremerton International Airport further complicates slash burning and spraying. Both can interfere with air traffic and may not be permitted by the FAA at all.

Index No. 6655 (Overton Ex. 28).

- February 27, 1996 letter from Laura Overton and Peter Overton to the Kitsap County Commissioners arguing that evidence submitted along with this letter supports a finding that:

Urban and suburban density development has been permitted in close proximity to the lands, so that virtually none of the land is more than [sic] one and a half miles from urban or suburban density development. That development makes normal commercial forestry operations such as aerial spraying and slash burns virtually impossible.

Index No. 18210 (Overton Ex. 29), at 1.

- A June 3, 1996 letter from Mason, Bruce & Girard to Peter Overton discussing a review of forest land designations around eleven towns and cities in Oregon that the authors considered comparable to towns and cities in Mason and Kitsap counties. The buffer sizes range from one-quarter mile to four miles from urban growth boundaries. Index No. 18208 (County Ex. R-18208) (summarized in Index No. 18527 (Environment International's Final Report), at 23).

- A November 10, 1998 letter from David Nunes to the Kitsap County Commissioners discussing criteria considered by timberlands investors. The letter explains that, to reduce the risk of being unable to harvest timber in the future, timberland investors look "for large tracts of timberlands which are away from population centers and away from the movement of population growth." Index No. 18957 (Overton Ex. 4), at 3.

- The Environment International Final Report summarizes comments made by Manke Lumber Company and Pope Resources:

Manke noted that a significant portion of land managed for timber production is adjacent to existing urban, suburban and rural settlements. Manke asserted that traditional commercial timber management practices are significantly restricted by the degree of proximity to non-resource uses and inhabitants. Yet, throughout Kitsap County, very little timberland is more than a few miles from existing urban communities, suburban areas, and rural settlements. Pope Resources states that DNR has commented that residential settlement patterns in Kitsap County make the practice of commercial forestry exceedingly difficult due to use conflicts.

Index No. 18527 (County Ex. R-18527), at 22.

The record reveals that the County had a range of buffers to consider; therefore, KCRP's statement is incorrect. Also, the evidence in the record is not limited to conflicts between commercial forestry and residential uses; therefore, Suquamish's statement is also incorrect. The one-mile and one-half mile buffers established in criterion 3 are within the County's discretion as

contemplated by RCW 36.70A.170 and WAC 365-190-060.

Suquamish also argues that the County's application of sub-criteria 3(B) and 3(C) resulted in a refusal to "mix-zone" parcels. Where any portion of a parcel was within the one-mile or one-half mile buffer, the County excluded the entire parcel from consideration as GMA forest lands. Index No. 19003 (County Ex. R-19003). The County responds that to proceed in another manner would inappropriately delegate discretion to County staff. *See* County Ex. R-3 (Partial Transcript of R-19156, Tapes of Board of County Commissioner Hearings, December 3, 1998), at 45-51.

Petitioners assert that the County should have "mix-zoned" the parcel, excluding from GMA forest lands designation only that portion of the parcel within the buffer. However, Petitioners cite to no GMA requirement to support its position. The County's decision, after consideration of the practical difficulties of utilizing Petitioners preferred methodology, falls within the discretion permitted the County by the GMA.

Next, KCRP argues that the County cannot consider the Belfair UGA in Mason County in designating GMA forest lands in Kitsap County because the Western Washington GMHB found the Belfair UGA out of compliance with the GMA. *See Dawes v. Mason County*, WWGMHB Case No. 96-2-0023, Order Finding Invalidity, Partial Compliance, Continued Noncompliance, and Continued Invalidity (Jan. 14, 1999). The Western Washington GMHB found the Belfair UGA out of compliance; it did not find the Belfair UGA invalid. Therefore, the Belfair UGA, though noncompliant, is "valid" and continues to exist.

Criterion 3 is within the County's discretion as contemplated by RCW 36.70A.170 and WAC 365-190-060.

#### Criterion 4:

Criterion 4 establishes minimum block size requirements for GMA forest lands designation. For blocks covered by 75 percent or more of land grade 1 and 2, the nominal minimum block size is 640 acres. For blocks covered by 75 percent or more of land grade 3, the nominal minimum block size is 1,280 acres. KCRP states that "[t]here is no basis in the record to demonstrate that it takes 75% coverage of forest land grades 1-3 to turn a profit. Rather the record shows that existing coverage of otherwise qualifying forest resource land is more than enough for profitability." KCRP PHB, at 26. The County responds that the evidence in the record indicates that "large block sizes are required both for economic viability and to reduce conflicts with surrounding developments." County Response, at 15. The record supports the County.

- One study, dated November 20, 1993, states:  
Criteria used by [DNR] and private holding companies for consideration of forest land purchases generally include a minimum size of 100 to 120 acres

when the parcel adjoins present ownership, and at least 640 acres when isolated

In work for another client in Clallam County [the authors of the study] found that forest management could be economically feasible on as little as 20 acres. That analysis, however, was applicable only to land with much higher timber growth capacity than any of the soils in southwest Kitsap County. It also assumed upscale residential development on the property with site value appropriate to ocean and mountain views. A preliminary run of the same model for Kitsap County conditions yielded economic returns so low that any further investigation of the subject seemed pointless.

Index No. 52 (County Ex. R-52) (Review and Analysis, Kitsap County Resource Zone Proposal, prepared by International Forestry Consultants for Alpine Evergreen Company), at 4.

- Environmental International's Final Report summarized forest land block size in several other Washington counties. Block sizes in these counties ranged from 320 acres to 5,000 acres. Index No. 18527 (County Ex. R-18527), at 39.
- A November 12, 1998 letter from Holly Manke White of Manke Lumber to the Chair of the Kitsap County Planning Commission states that "the industry standard block size is 5,000 to 10,000 acres," and lists several reasons for these block sizes. Index No. 18701 (County Ex. R-18701), at 2-3.
- A November 12, 1998 letter from the Kitsap Land Owners Coalition to the Kitsap County Planning Commission recommends a 4,000 to 5,000 acre minimum block size. Index No. 18707 (County Ex. R-18707), Att. 808, at 2-3. *See also*, Index No. 18769 (County Ex. R-18769) (December 3, 1998 memorandum from the Kitsap Land Owners Coalition to the Board of County Commissioners).
- KCRP's January 7, 1999 letter to the Kitsap County Planning Commission recommended a nominal minimum block size of 80 acres. Index No. 19052 (KCRP Ex. I).

The record shows that KCRP's statement is incorrect. The record reveals that the County had a range of block sizes to consider. The 640-acre and 1,280-acre block sizes established in criterion 4 are within the County's discretion as contemplated by RCW 36.70A.170 and WAC 365-190-060.

#### Criterion 6:

Criterion 6 excludes from GMA forest lands designation properties that, as of November 1, 1998, were not enrolled in the Open Space Timber or Designated Forest or Classified Forest Property

tax classification program pursuant to Chapter 84.33 or 84.34 RCW. Properties owned by a state or local governmental body need not be enrolled in these tax classifications to be designated GMA forest lands.

“[KCRP] recommended September 1, 1991, the designation date required by the Act but would not oppose January 1, 1993 as in the 1992 Strategies Document.” KCRP PHB, at 27. This is the whole of KCRP’s argument. In their reply brief, KCRP explains that they “do not contend that the County’s choice was clearly erroneous, but that it amounts to one more missed opportunity to let the land speak first.” KCRP Reply, at 15. Therefore, it is clear that KCRP is utilizing this date as an aid to illustrate its views of the County’s actions; KCRP is not arguing that the County’s decision to use November 1, 1998, was a failure to comply with a GMA requirement. Therefore, the Board need not, and will not, rule on this issue.

Next, the Board addresses KCRP’s challenge to the County’s Future Land Use Map and text in the Plan it alleges is confusing.

#### Future Land Use Map:

KCRP argues that the County failed to comply with the requirements of the GMA because no County Commissioners, senior staff, or private citizens observed the making of the Land Use Map. KCRP asks the Board “to find that the amended Map is not in compliance [with the requirements of the GMA] because it was clearly erroneous for the County to fail to certify that the attached amendment to the Land Use Map is consistent with the forest resource land sections of the Plan.” KCRP PHB, at 32. KCRP offers no authority to support its assertion and the Board is unaware of any GMA requirement for local governments to provide some form of “certification” of the work of staff in the administration of the directives of the elected officials.

#### “Confusing” Plan text

KCRP asserts that a specific paragraph in the Plan is confusing. This paragraph is in the Rural and Resource Lands chapter of the Plan and states:

The Plan establishes an interim rural forestry designation that recognizes existing and potential forestry activities and acknowledges that forestry uses are appropriate in rural areas of the county. The interim designation recognizes that Kitsap County needs additional time to resolve the forest resource land and related rural land use issue. The delay in the Superior Court decision, coupled with the accelerated work program for the Comprehensive Plan, resulted in insufficient time available to address the issue adequately. The interim designation will preserve the County’s options during this review.

Ordinance 229-1999, attached amendments to the Plan, at 73-74. The County agreed to amend

this paragraph as follows:

The Plan establishes an interim rural forestry designation that recognizes existing and potential forestry activities and acknowledges that forestry uses are appropriate in rural areas of the county. The interim designation recognizes that Kitsap County needs additional time to resolve the forest resource land and related rural land use issue. ~~The delay in the Superior Court decision, coupled with the accelerated work program for the Comprehensive Plan, resulted in insufficient time available to address the issue adequately.~~ The interim designation will preserve the County's options during this review.

County Response, at 25 (deleted language shown in strikethrough).

### Conclusions

Because the County has decided whether it did or did not have GMA forest lands and has recorded that decision through a Plan amendment, the County has complied with remand paragraph 3.b of the *Alpine* FDO.

Ordinance 228-1998 did not amend the County's Plan or development regulations and, consequently, was not subject to the GMA publication requirements. KCRP's challenge of Ordinance 228-1998 fails.

KCRP failed to meet its burden of proof to show that criterion 2 does not comply with the requirements of the GMA.

Criterion 3 is within the County's discretion as contemplated by RCW 36.70A.170 and WAC 365-190-060.

The 640-acre and 1,280-acre block sizes established in criterion 4 are within the County's discretion as contemplated by RCW 36.70A.170 and WAC 365-190-060.

KCRP did not challenge criterion 6. KCRP argued criterion 6 as an aid to illustrate its views of the County's actions. Therefore, the Board need not, and will not, rule on this issue.

There is no GMA requirement for local governments to provide "certification" of the work of staff in the administration of the directives of the elected officials, in this case in the preparation of the Future Land Use Map.

The County has agreed to amend "confusing" language at pages 73-74 in its Plan.

### **B. Interim Rural Forest Designation**

***Legal Issue 5: Did the County, in its adoption of Ordinances 229-1999 and 230-1999, fail to comply with the requirements of RCW 36.70A.070 by amending the Plan's criteria for designation of interim rural forest lands while failing to properly designate certain such lands on its future land use and zoning maps?***

The County amended the Plan description of its IRF land use designation.<sup>[4]</sup> See Ordinance 229-1999 (Plan amendment) and Ordinance 230-1999 (Zoning amendment). The Plan describes the IRF designation as follows:

This designation is applied to larger parcels of land in contiguous blocks that are forested in character, that have been actively managed for forestry and harvested, and or that are currently taxed as timber lands pursuant to state and county programs. These lands have been considered for designation as long-term commercial forestry and are subject to ongoing litigation regarding their status. Lands not meeting the criteria for Forest Resource Lands designation will remain in the Interim Rural Forest designation until completion of Phase II of the forestry review process. This designation permits timber harvesting and management, along with resource-supporting commercial or industrial activities, and residential uses at a density of 1 dwelling unit per 20 acres.

Ordinance 229-1999, attached amendments to the Plan, at 64-65 (deleted language shown in strikethrough; added language underlined). The County explained:

[IRF lands were originally] mapped using the criteria in the alternative (“larger parcels of land in contiguous blocks that are forested in character, that have been actively managed for forestry and harvested, **or** that are currently taxed as timber lands pursuant to state and county programs”), but the language of the criteria in the Plan had mistakenly been left in the conjunctive (larger parcels of land in contiguous blocks that are forested in character, that have been actively managed for forestry and harvested, **and** that are currently taxed as timber lands pursuant to state and county programs”). To resolve the inconsistency between the Plan and the land use and zoning maps, the proposed plan amendments which ultimately were adopted in Ordinance 229-1999 changed the “and” in the criteria to “or.”

County Response, at 29-30 (emphasis in original). Because the County was correcting the Plan text to correspond to the actual mapping of the IRF lands, the County did not re-apply the amended IRF designation by another mapping effort.

Although both KCRP and Screen assert that the amended IRF definition includes more lands than are actually mapped as IRF lands, creating an inconsistency between the text of the Plan and the

Land Use Map and Zoning Map, their proposed remedies are diametrically opposed. KCRP urges the Board “to remand the Map to the County with instructions to designate all of the lands that match the criteria for IRF designation as Interim Rural Forest.” KCRP PHB, at 37. In contrast, Screen asks the Board to “remand the matter to the County with directions to rescind that portion of Ordinance 229-1999 adopting the new IRF designation criteria.” Screen Reply, at 7.

KCRP states:

The . . . amendments to the 1998 Zoning Map do not classify all of the forested lands that match the criteria for designation as Interim Rural Forest. The DNR managed Ilahee, Banner, and Olalla forests, 125.3 contiguous acres in Indianola, hundreds of acres of forest lands owned by Pope Resources and many other parcels are not classified Interim Rural Forest on the map. . . .

KCRP PHB, at 32. However, KCRP does not show which IRF criterion these identified lands satisfy. KCRP also identified areas on an excerpt of the Plan’s Open Space and Timberlands Map. KCRP PHB, Ex. N (Plan Figure Book, Map 3). Screen also identified areas on this map. Most of the areas KCRP and Screen identified on the excerpted map appear to be designated Urban Restricted, with one area designated Urban Study Area. KCRP and Screen do not argue that these areas do not meet the criteria for Urban Restricted or Urban Study Area designation; instead, KCRP and Screen argue that they meet at least one criterion for IRF designation. Where land meets the criteria for more than one land use designation, the County has the discretion to determine the designation to be applied to that land. Neither KCRP nor Screen has met their burden to show that the County’s decision was clearly erroneous.

### **Conclusion**

Where land meets the criteria for more than one land use designation, the County has the discretion to determine the designation to be applied to that land. Neither KCRP nor Screen has met their burden to show that the County’s decision to not designate certain lands IRF was clearly erroneous.

### **vi. order**

Based upon review of the Petition for Review, the briefs and exhibits submitted by the parties, having considered the arguments of the parties, and having deliberated on the matter, the Board ORDERS:

In its next annual Plan amendment cycle, the County shall clarify the Plan language at pages 73-74, as indicated in Section V.A of this Order.

The County's actions and the challenged portions of Ordinances 229-1999 and 230-1999 comply with the Final Decision and Order in *Alpine* and with the goals and requirements of the Growth Management Act, Chapter 36.70A RCW.

So ORDERED this 11<sup>th</sup> day of October, 1999.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

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Joseph W. Tovar, AICP  
Board Member  
(Board Member Tovar filed a concurring opinion)

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Edward G. McGuire, AICP  
Board Member

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

### **Board Member Tovar's Concurrence**

In evaluating the GMA compliance of the forestry exclusions wrought by Criterion 3, I remain troubled by the allegations and hypothetical scenarios raised by Petitioners. Given the facts presented here, and the lack of conclusive evidence, I must reluctantly concur that Petitioners failed to carry their burden of proof. I would caution observers not to assign precedential significance to this outcome.

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[1] Overton & Associates, Peter E. Overton and Alpine Evergreen are petitioners in 98-3-0032c. They are intervenors in 99-3-0006c. Port Blakely Tree Farms and Pope Resources are intervenors in 98-3-0032c and 99-3-0006c. For convenience, all of these parties will be referred to as "Intervenors" in this order.

[2] Forestry activities may be permitted on lands not designated as GMA forest lands. See RCW 36.70A.070(5)(b) ("The rural element shall permit rural development, forestry, and agriculture in rural areas").

[3] The Board notes that the cases relied on by Petitioners were decided under the "preponderance of the evidence"

standard of review, not the “clearly erroneous” standard of review applicable in this case.

[\[4\]](#) IRF is a rural lands, not a resource lands, designation pursuant to RCW 36.70A.170.