

**CENTRAL PUGET SOUND
GROWTH MANAGEMENT HEARINGS BOARD
STATE OF WASHINGTON**

BREMERTON, et al.,)	Case No. 95-3-0039c
Petitioners,)	coordinated with
v.)	Case No. 98-3-0032c
KITSAP COUNTY,)	ORDER RESCINDING
Respondent.)	INVALIDITY IN <i>BREMERTON</i>
_____)	AND
ALPINE, et al.,)	FINAL DECISION AND ORDER
Petitioners,)	IN <i>ALPINE</i>
v.)	
KITSAP COUNTY,)))))))))	
Respondent.)	

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I. prefaCE

In 1994, Kitsap County (the **County**) adopted its comprehensive plan (the **1994 Plan**) under the authority of, and subject to the goals and requirements of, the Growth Management Act (**GMA** or the **Act**), Chapter 36.70A RCW.A number of petitions for review (**PFRs**) challenging the 1994 Plan were filed and subsequently consolidated as a case captioned *Bremerton, et al., v. Kitsap County*, CPSGMHB Case No. 95-3-0039c (the short case title is **Bremerton**).After a finding that the 1994 Plan and its implementing development regulations would substantially interfere with the goals of the Act, the Central Puget Sound Growth Management Hearings Board (the **Board**) invalidated the entire 1994 Plan and all its implementing development regulations. Upon remand, the County adopted a second GMA comprehensive plan (the **1996 Plan**), which was also

[\[1\]](#)

subjected to numerous PFRs. The Board determined the 1996 Plan to be an improvement over the 1994 Plan, but still found significant noncompliance and subjected the 1996 Plan to a limited finding of invalidity, in its “Finding of Noncompliance and Determination of Invalidity in *Bremerton* and Order Dismissing *Port*

[\[2\]](#)

Gamble” (the **1997 Order**).

Upon remand, on May 7, 1998, the County adopted its third attempt at a GMA-compliant comprehensive plan (the **1998 Plan** or **Plan**) together with a zoning ordinance, critical areas regulations, transportation facilities concurrency requirements and a shoreline master program (collectively, **development regulations**).A number of PFRs challenging the 1998 Plan and development regulations were filed and subsequently consolidated as a case captioned *Alpine, et al., v. Kitsap County*, CPSGMHB Case 98-3-0032c (the short case title is **Alpine**). The Board also had several compliance issues still pending from the *Bremerton* case.These issues are referred to in this Order under the heading **1997 Order**.However, most of the compliance or remand issues overlap with the issues raised in *Alpine*.Thus, references in this Order to the **1998 Challenge** will note whether the *Alpine* case, *Bremerton* case, or both are addressed in the discussion of the issue.

In any event, it is the 1998 Plan and development regulations that are before the Board at present.Section II is a Procedural History of the case.The Board rules on a number of Motions to Strike, Motions to Supplement the Record and a Motion to Reconsider in Section III.Section IV sets forth the Findings of Fact.Section V addresses the matter of the invalidity imposed on the Land Use and Rural Elements of the 1996 Plan.In Section VI, the Board identifies dismissed and/or abandoned PFRs and legal issues.In Section VII, the Board addresses compliance with the Board’s 1997 Order (*Bremerton*) or new (*Alpine*) challenges to the 1998 Plan and development regulations.The Board has grouped its discussions and conclusions by topical area.Section VIII contains the Board’s Order.Appendix A is a detailed chronology of prehearing briefs, motions and other pleadings received by the Board between August 24 and December 3, 1998.Appendix B lists the full text of every legal issue, as originally set forth in the prehearing order, with appropriate notation of those that were either amended or dismissed by subsequent order.Appendix C lists the abbreviated and complete name of each of the parties who participated in this matter.The abbreviated forms are used throughout the body of this Order. The proceedings before the Board in this case were unparalleled in their magnitude and complexity.Twenty-six

parties and participants presented arguments on more than seventy legal issues, and submitted thousands of pages of briefs and exhibits. The voluminous record and briefing makes it evident that both the County and its citizens care passionately about the future of their community and take seriously their rights and responsibilities under the law. While the Board directs further work for completion in the coming six months, it is worthy of note that the 1998 Plan and development regulations represent a significant milestone, and evidence of the vigorous, good-faith efforts by the County and its citizens to achieve compliance with the Act.

II. Procedural history

A. BREMERTON CASE

On September 8, 1997, the Board issued its 1997 Order.

On January 9, 1998, the Board received “The County’s Compliance Status Report.”

On April 7, 1998, the Board received “The County’s Second Compliance Report and Motion for Continuation” (the **County’s Motion for Continuance**).

On April 8, 1998, the Board issued an “Order Granting Extension” which granted the County’s Motion for Continuance to submit its next statement of actions taken to comply by May 15, 1998.

On May 19, 1998, the Board received from the County a “Statement of Actions Taken to Comply with the Board’s September 8, 1997 Order” (**Statement of Actions Taken to Comply**) and “Kitsap County’s Motion for Compliance Hearing Pursuant to RCW 36.70A.330” (the **County’s Motion for Compliance Hearing**); “Submittal of Index to the Record” and an accompanying box of exhibits, including:

- Kitsap County Comprehensive Plan, including 3 volumes: the Plan (5/7/98), Vol. I: Land Use, redline edition; the Plan (5/7/98), Vol. II: Capital Facilities; the Plan (5/7/98), Vol. III: Figures
- certain Development Regulations, including: Kitsap County Stormwater Management; Kitsap County Critical Areas Ordinance (**CAO**, 5/7/98); Kitsap County Zoning Ordinance (5/7/98); Kitsap County Resolution No. 094-1998, May 7, 1998; Kitsap County Ordinance No. 215-1998, May 7, 1998; Kitsap County Ordinance No. 216-1998, May 7, 1998; Kitsap County Ordinance No. 217-1998, May 7, 1998; Kitsap County Ordinance No. 218-1998, May 13, 1998;
- “Revenue Sources for Capital Facilities, 1995-2000, Kitsap County, Washington,” Capital Facilities Plan Support Document of 2/29/96, by Henderson, Young & Company;
- 11 rolled maps, some of which were large-scale versions of maps in the Plan, Part III.

On May 22, 1998, the Board issued an “Order Denying County’s Motion [for Compliance Hearing] and Notice of Invalidity Hearing” (the **May 22, 1998 Notice**). Section VI of the May 22, 1998 Notice set the Invalidity Hearing for July 23, 1998. May 22, 1998 Notice, at 7.

On May 28, 1998, the Board received “The County’s Motion to Consolidate Schedules for Invalidity and Compliance Phases, Change Case Schedule, and for Correction of Order” (the **County’s Motion to Consolidate and Correct**).

On June 3, 1998, the Board received “Notice of Participation for Port Gamble S’ Klallam Tribe.”

On June 5, 1998, the Board received the “City of Bremerton’s Notice of Participation.”

On June 8, 1998, the Board received Notices of Participation from Gerald David (**David**) and Appletree Point Partnership and its partners Betty Bosanko, Katy Fortune, Barbara and Bill Tarbill (collectively, **Appletree**); Robert H. Lewis (**Lewis**); Helen E. Havens-Saunders, individually and representing Association to Protect Anderson Creek and Elaine Manheimer, individually and representing Union River Basin Protection Association (collectively **APAC**); Peter E. Overton, Overton & Associates and Alpine Evergreen, Inc. (collectively, **Alpine**); and Robert and Janet Screen (**Screen**).

On June 11, 1998, the Board received a letter from counsel for Port Blakely Tree Farms and Pope Resources indicating that both wished to participate in the invalidity and compliance hearings.

On June 15, 1998, the Board issued an “Order Partially Granting County’s Motion for Consolidated Schedules for Invalidity and Compliance Phases, Changing Case Schedule, and Order Listing Parties and Participants” (the **Order Consolidating Schedules for Invalidity and Compliance and Changing Case Schedule**). The Order Consolidating Schedules for Invalidity and Compliance and Changing Case Schedule set forth the schedule for the filing of briefs and motions, specifically listing June 26, 1998 as the deadline for the submittal of Motions to Supplement the Record.

On June 22, 1998, the Board received from the County and the State of Washington (**State**) a “Motion to Extend Time for Supplementing the Record.”

On July 6, 1998, the Board issued an “Order Denying Motion to Extend Time for Supplementing the Record.”

On July 23, 1998, the Board issued an “Order on Motions to Supplement the Record.”

On July 24, 1998, the Board issued a “Notice of Pre-Compliance Hearing Conference” in the *Bremerton* case.

B. ALPINE CASE

On July 13, 1998, the Board received a PFR from Philip J. Swenson and Eugene Cook (collectively **Swenson**). The Board assigned Case No. 98-3-0013. Swenson alleged that portions of the County Plan, zoning ordinance and critical areas ordinance, should be found non-compliant and invalid on the basis that they substantially frustrate achieving the goals of the GMA.

On July 16, 1998, the Board received a PFR from Alpine alleging that the County’s Plan fails to comply with the GMA and the State Environmental Policy Act (**SEPA**). The Board assigned Case No. 98-3-0016.

On July 22, 1998, the Board received a PFR from Matt Ryan (**Ryan**) alleging that the County’s 1998 Plan fails to comply with the GMA. The Board assigned Case No. 98-3-0017. On this same date, the Board received a PFR from Mr. and Mrs. Warren E. Posten Sr. (**Posten**) alleging that the County’s 1998 Plan and development regulations fail to comply with the GMA. The Board assigned Case No. 98-3-0018. On this same date, the Board received a PFR from Manke Lumber Company, Inc., (**Manke**), alleging that the County’s 1998 Plan and development regulations do not comply with the GMA. The Board assigned Case No. 98-3-0019.

On July 23, 1998, the Board issued an Order of Consolidation and Notice of Hearing (the **First Alpine Order of Consolidation**) in response to the five PFRs filed by Swenson, Alpine, Ryan, Posten and Manke. The First Order of Consolidation captioned this consolidated case *Alpine, et al., v. Kitsap County*, assigned the number of the last petition filed, CPSGMHB No. 98-3-0019c, and set the prehearing conference for August 12, 1998.

On July 27, 1998, the Board received a PFR from the South Sidney Business Park & Commercial Land Owners, including the following petitioners: Lester E. and Betty L. Krueger, Ray and Ruth Birdwell, Richard A. Brown, Jim Tallman d/b/a/ Talmo, Inc., Ronald G. Rice, Thelma L. Hovde, Charles and Dorothy Bell, Harvey and Terry Cousins, Carolyn Frankhouser, Terry Y. Yamamoto, Blackjack Valley Associates, LLC, John B. Sundahl, Dean Carter, and Gordon Radovich (collectively **South Sidney**). The Board assigned Case No. 98-3-0021.

On July 28, 1998, the Board received a PFR from APAC. The Board assigned Case No. 98-3-0022. On this same date, the Board received a PFR from Linda Cazin, Charlie Burrow and Kitsap Citizens for Rural Preservation (collectively **Cazin**). The Board assigned Case No. 98-3-0023. On this same date, the Board received a PFR from Robert and Janet Screen (**Screen**). The Board assigned Case No. 98-3-0024. On the same date the Board received a PFR from the North Kitsap Coordinating Council (**NKCC**). The Board assigned Case No. 98-3-0026.

On July 29, 1998, the Board received a PFR from the State of Washington Department of Natural Resources and Commissioner of Public Lands of the State of Washington (**DNR**). The Board assigned Case No. 98-3-0025. On

this same date, the Board received a PFR from Kitsap Citizens for Rural Preservation (**KCRP**). The Board assigned Case No. 98-3-0027. On this same date, the Board received a PFR from the Port Gamble S'Klallam Tribe (**S'Klallam**). The Board assigned Case No. 98-3-0028. On this same date, the Board received a PFR from the Suquamish Indian Tribe (**Suquamish**). The Board assigned Case No. 98-3-0029.

On July 30, 1998, the Board received a Notice of Association of Counsel regarding the PFR filed by KCRP.

On July 31, 1998, the Board issued its "Second Order of Consolidation and Notice of Hearing" (the **Second Alpine Order of Consolidation**, under Case No. 98-3-0029c) as to the adoption of the County's 1998 Plan and companion development regulations.

On August 8, 1998, the Board received "The County's Amended Index to the Record."

On August 10, 1998, the Board received a PFR from Washington Cedar and Supply Co., Inc. (**Washington Cedar**).

On August 14, 1998, the Board received "Kitsap Citizens for Rural Preservation's Amended Petition for Review."

On the following dates, the Board received motions to intervene ^[4] from the following: on August 11, 1998 from Pope Resources (later renamed Olympic Resource Management/Pope) and Port Blakely Tree Farms (**Pope & Port Blakely**); on August 17, 1998 from McCormick Land Company (**McCormick**); on August 25, 1998 from the City of Port Orchard (**Port Orchard**), the Economic Development Council of Kitsap County (**EDCKC**), the Port of Bremerton (**Port of Bremerton**), and Suquamish; on August 27, 1998 from Ronald R. Ross (**Ross**); on August 28, 1998 from the City of Port Orchard (**Port Orchard**); and on September 25, 1998, from the City of Poulsbo (**Poulsbo**).

On September 28, 1998, the Board received from Posten a "Motion for Declaratory Ruling."

C. COORDINATED BREMERTON AND ALPINE CASES

On August 18, 1998, the Board issued the "Third Order of Consolidation and Order on Motions to Intervene in the *Alpine* Case and Notice of Amended Concurrent Schedules for Briefing and Hearing in *Bremerton* and *Alpine* Cases" (the **Third Alpine Order of Consolidation and Prehearing Order**), which set forth a schedule and legal issues for both cases.

On August 20, 1998, the Board received "Amendment for Petition for Review" from Posten.

On August 21, 1998, the Board received from Ryan "Matt Ryan's Amendment to Petition."

On August 24, 1998, the Board received from the County "Kitsap County's Submittal of Index to the Record."

On September 4, 1998, the Board issued an "Order on Motions to Intervene in *Alpine* and Order Correcting *Alpine* and *Bremerton* Legal Issues set forth in the *Third Alpine* Order of Consolidation and Prehearing Order" (the **Order on Intervention and Order Correcting *Alpine* and *Bremerton* Legal Issues**).

On September 10, 1998, the Board issued an "Order Striking Hearing on Dispositive Motions."

On October 13, 1998, the Board issued a "Declaration of Additional Service for Orders on Dispositive Motion and on Motions to Supplement and Intervention [to Poulsbo and its attorney]."

On October 29, 1998, the Board issued an "Order Establishing Date for the Submittal of Response Briefs to the County's Motion to Strike and Notice of Withdrawal of WSDOT."

On November 10, 1998, the Board issued an "Order on Kitsap County's Motion to Strike and Order on Posten's Motion to Amend Pre-Hearing Brief."

On November 24, 1998, the Board entered an "Order on Motions and Order Establishing Schedule for Oral Argument."

D. Dispositive Motions, motions to supplement and declaratory ruling

On October 7, 1998, the Board issued a “Notice of Decision not to Issue Declaratory Ruling” which denied the request by Posten filed on September 21, 1998. On this same date, the Board issued an “Order on Motions to Supplement the Record and Order Granting Intervention to the City of Poulsbo.” On this same date, the Board issued an “Order on Dispositive Motions” (the **Order on Dispositive Motions**). Among other things the Order on Dispositive Motions dismissed with prejudice the Petition for Review by Washington Cedar and dismissed Legal Issues S-3, 22, 31, 65, and 67.

E. PREHEARING BRIEFS AND MOTIONS IN *BREMERTON* AND *ALPINE*

Between August 24 and December 3, 1998, the Board received a number of pleadings and other filings. These are listed in Appendix A.

f. INVALIDITY/COMPLIANCE HEARING IN *BREMERTON* AND HEARING ON THE MERITS IN *ALPINE*

On December 3, 1998, the Board convened at the Community Center in Silverdale, Washington two simultaneous hearing proceedings: (1) the invalidity and compliance hearing as to the *Bremerton* case and (2) the hearing on the merits as to the *Alpine* case. Present for the Board were Edward G. McGuire, Chris Smith Towne and Joseph W. Tovar, presiding officer. Also present was the Board’s contract law clerk Andrew Lane. Present representing the County were Sue Tanner, Samuel W. Plauche and Amy Kosterlitz. Appearing on behalf of the parties and participants in *Bremerton* and *Alpine* were: Alan Copsey for the State; Ray Bock and Vivian Hiatt-Bock for NKCC; Scott Wheat for Suquamish; David Mann for KCRP; Elaine Manheimer for URBPA and Helen Havens-Saunders for APAC *pro se*; Douglas B. Fortner for the City of Bremerton; James Tracy for Ross; James Klauser for Appletree and David; William T. Lynn for Manke; Katherine Kramer Laird for Pope Resources & Port Blakely and for the EDCKC; Elaine Spencer for Alpine; Robert Johns for McCormick; Philip Swenson and Eugene F. Cook *pro se* for Swenson; Linda Cazin and Charlie Burrow *pro se* for Cazin; Jeanne A. Cushman for DNR; Kathryn J. Nelson for S’Klallam; Warren E. Posten Sr. *pro se* for Posten; Matt Ryan *pro se* for Ryan; Courtney Kaylor for Screen; William Palmer for South Sidney; and David Weibel for the City of Port Orchard and the Port of Bremerton. Court reporting services were provided by Cynthia J. LaRose, Robert H. Lewis and Associates, Tacoma. No witnesses testified.

As a preliminary matter, the Board heard oral arguments regarding a number of motions, including several that were included in the prehearing briefs from various parties. The presiding officer orally ruled on several of these, as follows: Posten’s Motion to Supplement the Record with several photographs was granted; the County’s Motion to Supplement the Record with documents related to forest lands was denied; Posten’s Motion for Reconsideration of the Board’s earlier denial of his proposed Amendment to Prehearing brief was denied; the Alpine Motion to Strike documents 18527, 18525, 18526 and 18528 attached to the County’s brief and all reference to them in the County’s brief was granted; the KCRP Motion to strike all attachments to the County’s Response Brief II that regard actions taken after adoption of the 1998 Plan was granted.

At the beginning of his opening argument, Mr. Swenson submitted to the presiding officer a brief titled “Swenson and Cook Rebuttal to Kitsap County’s Responsive Brief” (the **Swenson Rebuttal**). The County moved to strike the Swenson Rebuttal because it was not timely, and the presiding officer granted the motion. The presiding officer announced that he was not prepared to rule on the following motions: the County Motion to Strike the KCRP Response Brief to Kitsap County’s Brief on Invalidity; the County’s Motion to Strike Suquamish’s Response to Kitsap County’s Brief on Invalidity; the County Motion to Strike the portion of the NKCC Prehearing Brief that contained a table regarding travel; the County’s Motion to Strike the APAC Brief on agricultural issues; the Pope & Port Blakely Motion to Strike Attachments 7A and 7B to the Cazin Reply Brief and references in the brief to Port Gamble acreage information obtained from Jerry Harless; and the Cazin Motion to Strike Exhibit E to the Opening Brief of Pope & Port Blakely.

The balance of the first day of hearings was devoted to opening arguments from the parties and participants in opposition to the County's compliance. The hearings were recessed for the day at approximately 4:00 p.m. The combined hearings continued on Friday, December 4, 1998. As a preliminary matter, the County moved for the Board to take official notice of the adoption the previous evening of Ordinance 228-1998. After allowing comment from parties in opposition to the County's motion, the presiding officer granted the motion to take official notice of Ordinance 228-1998, after which a copy was submitted to the presiding officer. In response to a Board request, the County submitted minutes of the Kitsap County Planning Commission meeting of February 17, 1998, bearing Index #16556. The balance of the day was devoted to the response arguments from the County and intervenors in support of the County's compliance, then the closing arguments from petitioners and participants in opposition to the County's compliance. The Board adjourned the hearings at approximately 3:30 p.m.

g. FILINGS RECEIVED AFTER THE HEARINGS

On December 8, 1998, the Board received a letter from Kathryn J. Nelson, attorney for S'Klallam, containing a case citation in *Muckleshoot v. Hall*.

On December 9, 1998, the Board received a "Notice of Withdrawal" from Jane Koler, withdrawing as counsel for the City of Bremerton.

iii. RULINGS ON outstanding MOTIONS ^[5]

A. MOTION TO RECONSIDER

Posten's Motion for Reconsideration of the Board's earlier denial of his proposed Amendment to Prehearing brief is **denied**.

b. MOTIONS TO SUPPLEMENT

1. The portion of Posten's Motion to Supplement the Record with photographs P-8 through P-15 is **granted**.
2. The County Motion to Supplement the Record with documents related to forest lands is **denied**.
3. The County Motion for the Board to take official notice of Ordinance 228-1998 is **granted**.

C. MOTIONS TO STRIKE

1. The Alpine Motion to Strike documents 18527, 18525, 18526 and 18528 attached to Kitsap County's Responsive Brief, Part II (the **County Response, Part II**) and all reference to them in the County Response, Part II is **granted**.
2. The KCRP Motion to Strike all attachments to the County Response, Part II, that regard actions taken after adoption of the 1998 Plan is **granted**.
3. The County Motion to Strike the Swenson Rebuttal is **granted**.
4. The County Motion to Strike the KCRP, et al., Response to Kitsap County's Brief on Invalidity is **granted**.
5. The County Motion to Strike the Suquamish Tribe's Response to Kitsap County's Brief on Invalidity is **granted**.
6. The County Motion to Strike the portion of the NKCC Prehearing Brief that contained a table regarding travel is **denied**.
7. The County Motion to Strike the APAC Brief on agricultural issues is **granted**.

- 8.The County Motion to Strike Sections I and II of the City of Bremerton PHB is **denied**.
- 9.The Pope & Port Blakely’s Motion to Strike Attachments 7A and 7B to the Cazin Reply Brief and references in the brief that refer to Port Gamble acreage information obtained from Jerry Harless is **denied**.
- 10.The Cazin Motion to Strike Exhibit E to the Opening Brief of Olympic/Pope Resources is **denied**.
- 11.Any motion not specifically addressed is **denied**.

iv. findings of fact

A. 1997 Washington state Legislature’s Action [6]

- 1.The Washington State Senate and House of Representatives passed Engrossed Senate Bill 6094 (**ESB 6094**) on April 27, 1997.This bill was approved by the Governor and took effect on July 27, 1997.
- 2.Section 7 of ESB 6094 amended the provisions of the Rural Element of county comprehensive plans.This amendment was codified at RCW 36.70A.070(5).
- 3.Section 14 (3)(b) of ESB 6094 authorized the Board to specify a compliance date beyond 180 days in cases of unusual scope or complexity.This amendment is codified at RCW 36.70A.300(3)(b).
- 4.Section 20(3) changed the Board’s standard of review from a preponderance of the evidence to clearly erroneous.This amendment was codified at RCW 36.70A.320(3).
- 5.Section 20(4) established that, when subject to a determination of invalidity, a county or city has the burden of demonstrating that the action taken in response to the determination of invalidity will no longer substantially interfere with the fulfillment of the Act’s goals.This amendment was codified at RCW 36.70A.320(4).

B. Kitsap County’s legislative Actions

- 6.Ordinance 215-1998, captioned “Repealing Ordinances 203-1996 and 169-1994, which adopted comprehensive plans, and adopting a revised comprehensive plan pursuant to the Growth Management Act,” was adopted by the Kitsap County Board of County Commissioners on May 7, 1998.Section 4 of Ordinance 215-1998 adopted by reference the attached Kitsap County Comprehensive Plan, Part I - Land Use Plan, Part II - Capital Facilities Plan, Part III - Figure Book, Part IV - Stormwater Ordinance and Design Manual (Ordinance 199-1996), the Land Use Map dated May 7, 1998 and the Urban Growth Area/Joint Planning Area (**UGA/JPA**) Map dated May 7, 1998.
- 7.Ordinance 216-1998, captioned “Repealing an Interim Zoning Ordinance and Map and Adopting a new Zoning Ordinance and Map Pursuant to the Growth Management Act,” was adopted by the Kitsap County Board of County Commissioners on May 7, 1998.
- 8.Ordinance 217-1998, captioned “Relating to Growth Management Regarding the Kitsap County Interim Critical Areas Ordinances and Adopting Development Regulations to Protect Critical Areas,” was adopted by the Kitsap County Board of County Commissioners on May 7, 1998.
- 9.Ordinance 218-1998, captioned “Adopting an Ordinance for Kitsap County Transportation Facilities Concurrency Requirements,” was adopted by the Kitsap County Board of County Commissioners on May 7, 1998.
- 10.Ordinance 220-1998, titled “Relating to Growth Management Repealing Existing Interim Urban Growth Areas, and Adopting Revised Interim Urban Growth Areas.”

11. Ordinance 228-1998 titled “Adopting Criteria for Designating Forest Lands pursuant to the Growth Management Act was adopted by the Kitsap County Board of County Commissioners on December 3, 1998.

12. Resolution 094-1998, captioned “A RESOLUTION Approving Shoreline Regulations Constituting the Kitsap County Shoreline Management Master Program to Regulate the Development of Kitsap County Shorelines in a Manner Consistent with the Shoreline Management Act of 1971, and Transmitting the Master Program to the Washington State Department of Ecology for Formal Review and Approval,” was approved by the Kitsap County Board of County Commissioners on May 7, 1998.

C. board’s findings

13. The County issued a Final Environmental Impact Statement (**EIS**) for its comprehensive plan on August 23, 1994. Addenda to the EIS were issued on January 8, 1996, and May 3, 1996. A Supplemental EIS was issued on October 7, 1996. Another addendum was issued in March 1998. Plan, Part I, at 9-10.

14. The Plan lists the cities of Bainbridge Island, Bremerton, Poulsbo and Port Orchard as UGAs pursuant to RCW 36.70A.110. Plan, Part I, at A-41.

15. The Plan lists criteria for siting UGAs, then applies the criteria to identify three priorities for designation of unincorporated areas as UGAs. Plan, Part I, at A-41.

16. Using the siting criteria, the Plan designated the following unincorporated UGAs: Kingston, Silverdale, Central Kitsap, Bremerton, Port Orchard, Port Gamble, McCormick Woods and Gorst. Plan, Part I, at A-41 to A-42.

17. The following Joint Planning Area (**JPA**) Overlays were designated: City of Poulsbo, South Kitsap, City of Bremerton, South Kitsap Industrial Area, Silverdale Unincorporated UGA and Joint Planning Area. Plan, Part I, at 20-23.

18. The JPA policies state that these areas are provisionally recognized as UGAs, subject to completion of interlocal agreements which will determine how the areas will be planned and serviced and, in some cases, how issues of governance and revenue sharing will be resolved. Plan, Part I, at 18.

19. The UGAs, Industrial Reserve Areas, JPAs and a Joint Study Area are depicted on a UGA/JPA Map. Plan, Part III (Figure Book).

20. Based on OFM figures, the April 1, 1997, population of Kitsap County was 229,400. The OFM 2012 population range went from a low of 271,982 to a high of 317,654; the mid-range is 297,462. Plan, Part I, at A-32.

21. County-wide Planning Policies (**CPPs**) established the County’s population target for the year 2012 at 292,224, and established that two-thirds of the 20-year forecast should be located in the UGA, and one-third in the rural area. Plan, Part I, at A-32 and A-33.

22. The forecasted 1997-2012 population increase is 62,824 county-wide. Table 2, Plan, Part I, at A-33.

23. The Plan allocates 29,258 of the 1997-2012 population increase to the four cities, with sub-allocations as follows: Bainbridge Island 5,360; Bremerton 19,152; Port Orchard 610; and Poulsbo 4,136. Table 2, Plan, Part I, at A-33.

24. The Plan allocates 23,495 of the 1997-2012 population increase to the unincorporated UGAs. Table 2, Plan, Part I at A-33.

25. The Plan allocates 10,070 of the 1997-2012 population increase to the rural area. Table 2, Plan, Part I at A-33.

26. To accommodate the 23,495 population increase allocated to the unincorporated UGA (*see* Table 2) for 1997-2012, the Plan uses a coefficient of 2.5 people/dwelling unit, to estimate that 9,398 dwelling units will be needed. Table 3, Plan, Part I, at A-34.
27. Using the 9,398 dwelling units derived from Table 3, the Plan estimates that the net developable acres needed for unincorporated UGAs is 1,800 acres, based upon an average density of 5 dwelling units per acre (**du/acre**). Table 4, Plan, Part I, at A-35. Net acres are the remainder after discounting for critical areas, public facilities, unavailable land, and rights-of-way, and before adding a market factor. *Id.*
28. The County utilized a residential market factor of 25 percent. Plan, Part I, at A-43.
29. The County utilized a commercial market factor of 25 percent and an industrial market factor of 50 percent. Plan, Part I, at A-182, 183.
30. The density assumptions in the County's 1998 Plan are based on actual planned densities within the County's UGAs. Plan, Part I, at A-34; and Ordinance No. 215-1998, Finding 27.
31. The County's land capacity analysis deducts for the redevelopment and unavailable lands factors cumulatively, and for roads, public facilities and critical areas the deductions are sequential (from the same gross total), thereby avoiding double counting. Plan, Part I, at 37; and Ordinance No. 215-1998, Finding 28.
32. The UGAs in the 1998 Plan are about one-half the size of the UGAs invalidated in the 1996 Plan. Compare: Plan Land Use Maps and Tables, 1998 Plan and 1996 Plan.
33. The Grandfathering Clause in the 1996 Plan was repealed and is not contained in the 1998 Plan. Plan, Part I, at 1-58; and Ordinance No. 215-1998, Section 3 and Finding 38.
34. The Rural Infill provisions of the 1996 Plan were repealed and are not contained in the 1998 Plan. Plan, Part I, at 59-78; and Ordinance No. 215-1998, Section 3 and Findings 39-41.
35. The Rural Density designations of the 1996 Plan that permitted densities of 1 du/2.5 acres and 1 du/acre were repealed and are not contained in the 1998 Plan. Plan, Part I, at 64 and Land Use Map; and Ordinance No. 215-1998, Section 3, Findings 39-41.
36. The County's 1996 Plan did not designate forest lands of long-term commercial significance. 1996 Plan, Part I, at 34.
37. The County repealed the 1996 Plan. Ordinance No. 215-1998, Section 3.
38. The 1998 Plan neither designates forest lands of long-term commercial significance nor declares that no such lands exist in Kitsap County. Plan, Part I, at 73-74.
39. Based upon the requirements of RCW 36.70A.110, the County established siting criteria for UGAs. For unincorporated areas there are First, Second and Third Priority areas. Plan, Part I, at 41.
40. The County defined the terms and phrases used in its UGA siting criteria. Plan, Part I, Population Appendix, at 40.
41. To be designated a UGA, Port Gamble must meet the First Priority criteria. Plan, Part I, at A-42.
42. The Port Gamble area is not adjacent to a city, nor does it presently contain a major employment or commercial area. Plan, Part I, at A-42; and Land Use Map.
43. The Plan states that "The Port Gamble [UGA] meets the criteria for a tier one area with existing urban character and urban services." Plan, Part I, at A-42.
44. In calculating the residential land capacity for Port Gamble (net available land area) the County did not

include any acreage as underutilized land. Plan, Part I, Table 10, at A-50.

45. The gross land area of the Port Gamble UGA is disputed (143 acres v. 100 acres) and the Plan does not indicate the size of this UGA. Cazin PHB, at 6 and 12; S'Klallam PHB, at 6 and 17; Pope PHB, at 3; and Plan, Part I, Table 10, at A-50.

46. Without accurate figures for the net available land area and gross land area, determining whether the net available land area is less than 30% of the gross land area is problematic.

47. The density of existing residential development in the Port Gamble area is less than 3 du/acre. Cazin PHB, at 12-13; S'Klallam PHB, at 16; and Pope PHB, at 4.

48. Port Gamble has existing water and sanitary sewer facilities. Plan, Part II: Capital Facilities Element, at 100, 220 and 228.

49. The Capital Facility Element Table indicates there are no new or expanded service needs in the Port Gamble area. *Id.*

50. Based upon the County's UGA siting criteria (First Priority), the Port Gamble area is not an area characterized by urban growth that has adequate existing public facilities and service capabilities.

51. DNR manages the area known as the Illahee Trust property in Kitsap County. DNR PHB, at 1.

52. The Illahee Trust property is designated as an Urban Study Area (**USA**) in the 1998 Plan and as Urban Reserve (**UR**) on the Zoning Map. Plan, Part I, at 27-29 and 35; and Land Use Map and Zoning Map.

53. USA lands may be appropriate for inclusion in a UGA; inclusion in the UGA will require a Plan/UGA amendment. Plan, Part I, at 27-29.

54. USA lands that are not to be included in a UGA will be designated Rural; designation as Rural will require a Plan amendment. Plan, Part I, at 35.

55. In the 1998 Plan, the County has not determined whether the Illahee property is or is not to be within the UGA. This determination will be made at the conclusion of the USA process. Plan, Part I, at 27-29 and 35.

56. The GMA requires that the Capital Facilities Element include "at least a six-year plan that will finance such capital facilities within projected funding capabilities and clearly identifies sources of public money for such purposes." RCW 36.70A.070(3)(d)

57. The "at least six-year plan" language that appears in RCW 36.70A.070(3)(d) means that the six-year period begins with the date of the adopted plan. *Infra*, at VII. F.

58. The 1998 Plan's Capital Facility Element includes a six-year plan that addresses the period from 1995-2000. Plan, Part II, at 2-4, 15-18, 48, 61-66, 72, 79-85, 113-116, 122, 127, 131, 136, 143, 158-165, 176-202, 222-228 and Revenue Sources for Capital Facilities, 1995-2000 - CFE Support Document.

59. The traffic forecasting and financing methodologies, including assumptions, that the County has used in the 1998 Plan are explicitly set out in the Plan. Plan, Part I, at 143-166 and at A-253 to A-320; and Plan Part II, at 166-202.

60. The 1998 Plan includes a review of the drainage, flooding and storm water run-off in Kitsap County. Plan, Part I, at 52-58.

V. INVALIDITY AS TO BREMERTON

Applicable Law and Discussion

RCW 36.70A.302(7) provides in relevant part:

(a) If a determination of invalidity has been made and the county . . . has enacted an ordinance . . . amending the invalidated part or parts of the plan . . . affected by the order of invalidity, after a compliance hearing, the board shall modify or rescind the determination of invalidity if it determines . . . that the plan . . . as amended, . . . will no longer substantially interfere with the fulfillment of the goals of this chapter.

(b) If the board determines that part or parts of the plan . . . are no longer invalid as provided in this subsection, but does not find that the plan . . . is in compliance with all of the requirements of this chapter, the board, in its order, may require periodic reports to the board on the progress the jurisdiction is making towards compliance.

RCW 36.70A.320(4) provides in relevant part:

A county. . . subject to a determination of invalidity made under RCW 36.70A.300 or 36.70A.302 has the burden of demonstrating that the ordinance. . . it has enacted in response to the determination of invalidity will no longer substantially interfere with the fulfillment of the goals of this chapter under the standards in RCW 36.70A.302(1).

1997 Order

In its 1997 Order, regarding the County's Urban Growth Areas and Land Use Map, the Board stated:

[T]he deficiencies in the density assumptions and land capacity analysis yield UGAs that are excessively oversized and, therefore, do not comply with the requirements of RCW 36.70A.110.

. . .

[T]he land use map does not comply with the GMA (RCW 36.70A.110(6)) and the County will be directed to depict the revised UGAs on a new land use map and, on that map, reference the location of maps of appropriate scale to discern the actual location of the UGA boundaries.

Conclusion No. 1

Because of the deficiencies in the density assumptions and land capacity analysis used by the County, the UGAs have been excessively oversized, and do not comply with the requirements of RCW 36.70A.110. Since the UGAs are oversized, the land use map, which depicts the UGAs, does not comply with the requirements of RCW 36.70A.110.

1997 Order, at 17-18.

Also in that Order, regarding the County's Land Use and Rural Elements, the Board stated:

[C]ertain provisions of the County's Rural Element, specifically the Rural Infill Provisions, and the provisions in the Wooded Rural, Rural Low-Density and Rural Medium Density that permit 2.5 acre and 1 acre lots, and the Grandfathering Clause provisions of the Land Use Element, and the Comprehensive Plan Map do not comply with requirements of the Act and fail to be guided by its goals. . . .

Conclusion Nos. 3 and 5

The Rural Element provisions, specifically the Rural Infill, Wooded Rural, Rural Low-Density and Rural Medium-Density provisions that permit 2.5-acre and 1-acre lots, together with the

Grandfathering Clause provision in the Land Use Element, and the Comprehensive Plan Map, perpetuate a pattern of urban growth outside of designated UGAs, and permit densities and uses that are incompatible with the rural character of such lands, contrary to the requirements of RCW 36.70A.070(5) and RCW 36.70A.110(1). In addition, these Plan provisions fail to be guided by the goals of RCW 36.70A.020. . . .

1997 Order, at 26-27.

Having found these provisions of low-density's Plan to be noncompliant, the Board further determined that these provisions substantially interfered with Goals 1 and 2 of the GMA and issued an Order of Invalidity. The Board stated:

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

As the Board's discussion regarding the sizing of UGAs indicates, the Land Use Element and map are defective since the UGA analysis and designations artificially inflate the amount of land needed to serve the projected population.

In the Rural Element, outside the designated UGAs, the Plan permits 2.5-acre zoning and 1-acre zoning in the rural low-density and rural medium-density areas. In addition, the Rural Infill and Grandfathering Clause add additional excess capacity to the rural area. These Land Use and Rural Element provisions perpetuate a pattern of urban growth in the [rural] area and cumulatively direct a disproportionate share of the County's projected growth away from UGAs.

These flaws increase the inappropriate conversion of undeveloped land into sprawling low-density development, and rather than reducing it, fail to encourage development in urban areas.

Therefore, the Land Use Element, including the UGAs, land use map, and the Grandfathering Clause, and the Rural Element substantially interfere with Goal 1 and 2 of the GMA.

Conclusion of Law

During the period of remand . . . , the continued validity of the Land Use Element, including the UGAs, the land use map, and Rural Element of the Kitsap County Comprehensive Plan adopted by Ordinance 203-1996 on December 23, 1996 will substantially interfere with the fulfillment of Planning Goals 1 and 2 found at RCW 36.70A.020. Therefore, having found that the Land Use Element, including UGAs and land use map, the Grandfathering Clause, and the Rural Element, including rural residential densities, the "Grandfathering Clause" and "Rural Infill" provisions, do not comply with the requirements of RCW 36.70A.020, .070(preamble), .070(1), .070(5) and .110; **the Board concludes and determines that the 1996 Kitsap County Plan's Land Use Element—including UGAs, the land use map and the "Grandfathering Clause"—and Rural Element—including rural density designations and the "Rural Infill" provisions—are invalid.**

1997 Order, at 50-51 (emphasis in original).

Finally, in its Order, the Board stated:

1. The Board issues a **Determination of Invalidity** as to the Rural and Land Use Elements, including the UGAs and land use map of the Plan, rural residential densities, the "Grandfathering Clause" and "Rural Infill" provisions. 1997 Order, at 51 (emphasis in original).

The County's Response to Invalidity

In response to the Board's 1997 Order, the County enacted Ordinance No. 215-1998 (**Ordinance**), on May 7, 1998. Section 1 of the Ordinance sets forth 55 findings made by the Board of the County Commissioners. These findings briefly recite the County's previous GMA efforts and recounts the process and decisions made to support the adoption of the 1998 Plan. Section 2 of the Ordinance *repeals* the County's 1996 Plan, adopted on December 23, 1996 (Ordinance No. 203-1996). Section 3 of the Ordinance *repeals* the County's 1994 Plan, adopted on December 29, 1994 (Ordinance No. 169-1994). Section 4 of the Ordinance adopts the County's 1998 Comprehensive Plan. The County's 1998 Comprehensive Plan includes the following: 1) Part I - Land Use Plan; 2) Part II - Capital Facilities Plan; 3) Part III - Figure Book [maps]; 4) Part IV - Stormwater Ordinance and Design Manual (Ordinance 199-1996), the Land Use Map dated May 7, 1998, and the Urban Growth Area/Joint Planning Area Map dated May 7, 1998.

The County's repeal of Ordinance No. 203-1996, which repealed the entire 1996 Plan, arguably removes the substantial interference the Board found as the basis for its determination of invalidity. In fact, repeal of some of the offending provisions, if not reenacted in the 1998 Plan, may cure the invalidity. Nonetheless, since the County enacted an entirely new Plan in adopting Ordinance No. 215-1998, the Board must inquire as to the effect of the County's latest action on the matters addressed in the Board's Invalidity Order. On December 3 and 4, 1998, the Board held a compliance hearing/hearing on the merits on these matters.

The Board's review of the 1998 Plan, regarding the invalidated provisions, reveals the following:

1. The density assumptions in the County's 1998 Comprehensive Plan are no longer based upon historic low-density patterns but are instead based on actual planned densities within the County's UGAs. Plan, Part I, at 34; Ordinance 215-1998, Finding 27, at 4, and Plan, Part I, at A-25 to A-54.

2. The County's land capacity analysis deducts for the redevelopment and unavailable lands factors cumulatively, and for roads, public facilities and critical areas the deductions are sequential (from the same gross total). This analysis reorders and refines the application of the reduction factors to avoid double-counting. Plan, Part I, at A-37; Ordinance No. 215-1998, Finding 28, at 4, and Plan, Part I, at A-25 to A-54.

3. In the 1996 Plan, the land area within the UGAs was approximately 13,100 acres; ^[7] the land area included within UGAs of the 1998 Plan is approximately 6,700 acres. ^[8] The UGAs in the County are now about half the size of those invalidated in the 1996 Plan. Compare 1996 and 1998 Land Use Maps.

4. The Grandfathering Clause in the 1996 Plan was repealed and does not appear again in the 1998 Plan. Comprehensive Plan, at 1-58; Ordinance No. 215-1998, Finding 38, at 6. Likewise, the Rural Infill provisions have been removed from the 1998 Plan. Plan, Part I, at 59-78; Ordinance No. 215-1998. Findings 39-41, at 6. Also the Rural Density designations that permitted densities of 1 du/2.5 ac and 1 du/acre have been removed. There are now four designations in the rural area: Urban Reserve (1 du/10 ac); Rural Residential (1 du/5 ac); Rural Protection (1 du/10 ac); and Interim Rural Forest (1 du/20 ac). Plan, Part I, at 64; Ordinance No. 215-1998, Finding 39-41, at 6; and Land Use Map.

Conclusion

The Board concludes that, regarding the matters set forth in the Board's 1997 Order, the County's Comprehensive Plan, as repealed, amended and adopted by Ordinance No. 215-1998, no longer substantially interferes with the Goals 1 and 2 (RCW 36.70A.020(1) and (2)). Therefore, the Board **rescinds** its Determination of Invalidity, as set forth in the 1997 Order.

Although in this Section of the Board's Order, the Board finds that previously invalid portions of the Plan are no

longer invalid, the Board has not yet addressed whether these provisions ^[9] *comply* with the goals and requirements of the Act. The question of whether the 1998 Plan complies with the GMA is discussed in Part VII of this Order.

Vi. DISMISSED AND ABANDONED PFRs AND ISSUES ^[10]

A. Dismissed PFR

Washington Cedar and Supply Co. (**Washington Cedar**) filed a PFR more than 60 days after publication of the County action it wished to challenge. This PFR was dismissed by the Board as untimely. *See* Order on Dispositive Motions.

B. Dismissed Issues

Legal Issues S-3, 22, 31, 65 and 67 ^[11] were dismissed by the Board for Petitioners' lack of standing on those issues. *See* Order on Dispositive Motions.

C. Abandoned Issues

Legal Issues R-2.B, 12 (CPP portion), 13, 14, 15, 16, and 17 ^[12] are deemed abandoned and are dismissed because these issues were not briefed by petitioners. The Board's Rules of Practice and Procedure provide that "[f]ailure by . . . a party to brief an issue shall constitute abandonment of the unbriefed issue." WAC 242-02-570 (1).

The County asserted that Legal Issues R-2.B, 13, 14, 15, 16, and 17 were abandoned because no petitioner argued these issues in a prehearing brief. Kitsap County's Response Brief, Part I, at 6. Review of the prehearing briefs supports the County's assertion: Legal Issue R-2.B was not briefed by any petitioner and Legal Issues 13, 14, 15, 16, and 17 were not briefed by South Sidney. These Legal Issues are therefore abandoned. In addition, South Sidney's prehearing brief did not include argument on the CPP portion of Legal Issue 12. The CPP portion of issue 12 is therefore abandoned.

Vii. compliance as to *bremerton* and ALPINE LEGAL ISSUES

In Part V of this Order, the Board determined that those provisions of the 1996 Plan that had resulted in a finding of invalidity are absent in the 1998 Plan. The Board now turns to the question of whether the provisions of the 1998 Plan, including those elements for which the Board has rescinded invalidity, *comply* with the goals and requirements of the GMA. Here the County's actions are presumed valid (RCW 36.70A.320(1)) and the burden of proof is upon petitioners. To carry its burden, a petitioner must demonstrate that the County's actions regarding the 1998 Plan or development regulations are not in compliance with the Act (RCW 36.70A.320(2)). The Board "shall find compliance unless it determines that [Kitsap County's] action is 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 action 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). The specific legal issues addressed in this Section are set forth in Appendix B. A listing of which of those legal issues is addressed by each of the subsections appears in a footnote referenced in the heading.

^[13]

A. PUBLIC PARTICIPATION

Applicable Law and Discussion

The County's public participation process that accompanied the development and adoption of the County's Plan and Development Regulations is presumed valid; it is Petitioners' burden to demonstrate noncompliance with the GMA.

1998 Challenges - Alpine

A number of petitioners argued that the County failed to comply with the public participation requirements of the GMA. The GMA requires counties to establish a public participation program that provides for "early and continuous public participation in the development and amendment of comprehensive land use plans and development regulations implementing such plans." RCW 36.70A.140. Those procedures established by a county "shall provide for broad dissemination of proposals and alternatives, opportunity for written comments, public meetings after effective notice, provision for open discussion, communication programs, information services, and consideration of and response to public comments." *Id.* In addition, when actions are taken in response to a Board's determination of invalidity, "the county or city shall provide for public participation that is appropriate and effective under the circumstances presented by the board's order." *Id.*

Petitioners' public participation arguments can be grouped into four categories. First, Petitioner KCRP argued that the County adopted a proposed ordinance that had been altered without sufficient public review. Second, several petitioners argued that the GMA requires the County to respond to public comments by specifically answering individual citizens' questions or by providing an explanation of how the County responded to individual citizens' comments. Third, Petitioner Cazin argued that the County's public participation process related to designation of the Port Gamble UGA was faulty. Fourth, several petitioners presented more general public participation arguments.

1. Alteration of Zoning Ordinance

The County deleted Section 455.020 of the proposed zoning code ordinance on the day of adoption. Ordinance 216-1998. This Section was entitled "Exception to Lot Sizes." The County agrees with KCRP that the deletion of this provision did not receive sufficient public review. The County requested that the Board remand this action to the County for further proceedings. County Response, Part II, at 36, footnote 19. Since the parties are in agreement on this issue, and the County has admitted that it erred, the Board will remand the issue to the County for further public participation. The County will be directed to provide notice, pursuant to RCW 36.70A.035, and conduct a public hearing on the zoning code section entitled "Exception to Lot Sizes" that was deleted from the zoning code adopted by Ordinance No. 216-1998.

2. Response to Citizens' Comments

Many citizens wrote to or orally testified before the County regarding the adoption of the County's Plan and development regulations. Several petitioners argued that the County failed to comply with the GMA public participation requirements because the County did not specifically answer petitioners' individual questions or provide them with an explanation of how the County responded to petitioners' comments. In other words, when a citizen presents a question to the County during the adoption process of a GMA Plan or development regulation, petitioners assert that the County is obligated by the GMA to provide a specific, personal answer or explanation to that citizen. Petitioners rely on the Act's requirement that counties and cities consider and respond to public comment. *See* RCW 36.70A.140. The Board disagrees with Petitioners' interpretation of RCW 36.70A.140. The Board has previously determined that "respond to," as used in RCW 36.70A.140, does not entitle citizens "to a face-to-face confrontation and verbal exchange with elected officials" about a proposed GMA plan or development regulations. *See Robison v. City of Bainbridge Island*, CPSGMHB Case No. 94-3-0025, Final Decision and Order (May 3, 1995), at 29. Such a requirement would be far too onerous. *Id.* It would also be far

too onerous a burden on local governments to interpret RCW 36.70A.140 to require the type of personal responses favored by petitioners. Although the most common definition of “respond” is “to say something in return,” the most appropriate definition of “respond” within the context of RCW 36.70A.140 is “to react in response.” Merriam Webster’s Collegiate Dictionary 998 (10th ed. 1993). Applying this definition does not mean that counties and cities must react in response to all citizen questions or comments; applying this definition means only that citizen comments and questions must be considered and, where appropriate, counties and cities must take action in response to those comments and questions. **The Board holds that response may, but need not, take the form of an action, either a modification to the proposal under consideration, or an oral or written response to the comment or question.** Based on this interpretation, petitioners’ arguments fail.

3. Public Participation Related to the Designation of the Port Gamble UGA

Petitioner Cazin argued that “[c]itizens could not intelligently participate in the decision-making process regarding Port Gamble due to a lack of adequate information regarding Port Gamble’s size and details of its capital facilities” and that the County failed to “show its work.” Cazin PHB, at 22. Although the record fails to support the UGA designation of Port Gamble, as discussed elsewhere in this Order, the record does contain adequate information to have allowed members of the public to voice their concerns. Cazin relied on the record extensively to support its arguments that Port Gamble does not qualify as a UGA. *See* Cazin PHB and Cazin Reply. Cazin has not shown that the County’s public participation process relating to the designation of the Port Gamble UGA did not comply with RCW 36.70A.140.

4. General Arguments on Public Participation

The general arguments on public participation concern the organization of the County’s Index; the cost of copies of documents; limitations on speaking at public hearings; the utilization of advisory groups; timeliness of allowing public participation; changes made by the County Commissioners to draft documents; and public impression of the County’s process.

First, petitioners complained that the County’s Index was difficult to use because it is not organized topically. The record in this case is voluminous and the County’s Index is large. The County assigns a unique number to each document submitted in the record and documents are listed by that number in the Index. The County points out that many documents address several topics and to create a topical Index would require a great deal of duplication. Although the Board agrees with petitioners (and the County) that the Index in this case is not particularly user-friendly, the Board is convinced that the Index and record in this case satisfy the public participation requirements of the GMA. The County’s action regarding the Index was not clearly erroneous. Next, petitioners objected to having to pay for copies of documents from the record. The GMA does not require

[14]

local governments to provide copies of documents to the public free of charge. Petitioners’ argument is without merit; the County’s action, charging a fee for providing copies of documents, was not clearly erroneous. Several petitioners argued that the County limited testimony at public hearings by restricting speakers to specific topics and by limiting the time allowed for testimony. The County confirms petitioners’ statements:

At some public hearings, particularly those on the issue papers, testimony was limited to the topic at hand. . . . At some public hearings, the County limited the length of testimony However, written comments and testimony were accepted and made a part of the record throughout the entire process, up until the close of the Commissioners’ hearing on the Plan and regulations. County Response, Part II, at 28.

In *Twin Falls v. Snohomish County (Twin Falls)* CPSGPHB Case No. 93-3-0003, Final Decision and Order (Sept. 7, 1993), Snohomish County limited the length of oral testimony at certain public hearings while allowing written testimony through the close of the County Council’s public hearing. This Board observed:

The record shows that the County Council announced the limitation on length of oral testimony for individuals, that a group representative would have more time, and that written testimony was welcome up until the time oral testimony was closed. . . . These seem like fair and reasonable ground rules for a public hearing in view of the volume of people who wish to express an opinion and the limitations of the hearing format. A saving grace is that written testimony was specifically solicited and is typically afforded equal weight with oral testimony. *Twin Falls*, at 75.

Like Snohomish County in *Twin Falls*, Kitsap County limited the length of oral testimony, but accepted written testimony throughout the entire process. Also, the County's limitation on the subject of oral testimony allowed at public hearings is fair and reasonable, given that written testimony was accepted throughout the County's process. The County's limitations on oral testimony was not clearly erroneous.

Next, APAC argued that the County did not consult advisory groups it had formed during the adoption process of previous plans and regulations. The County responded that, although it did not convene these advisory groups during its actions on remand, the County considered the work produced by these groups during the formulation of previous plans and regulations. In addition, "[t]o deal with issues which had not been addressed earlier, the County formed new advisory committees." County Response, Part II, at 31. The County considered the comments of the advisory groups consistent with the requirements of the GMA. See *Twin Falls*, at 77-79. The County's actions were not clearly erroneous.

South Sidney argued that the County invited participation by cities before initiating public participation by citizens, inconsistent with the GMA's "early and continuous" public participation requirements. The Board remanded the County's Plan and development regulations on September 8, 1997. The first public hearing at which citizens could participate was October 6, 1997. Index 18124, at 400-02. Between the remand and the first public hearing, the County invited the cities to discuss UGA boundaries. The County explained:

The issues which the County must address with cities, and the process for doing so, are prescribed by statute. RCW 36.70A.110(2) establishes the process which must be followed for designating UGAs. The County must consult with each city located within the county. Each city proposes an urban growth area. The County then responds to each city's proposal and attempts to reach agreement with the cities. If there is no agreement, the County must provide the city with written justification for designating an urban growth area that differs from that proposed by the city. A city can object to the state over the designation, and the state may attempt to resolve the conflict. The county/city negotiation process over UGAs is often a lengthy one due to county and city meeting schedules, staff resources, genuine disagreement over issues, etc. It was essential that the County make the initial overture to the cities as early in the remand process as possible so that discussions could be completed during the allotted remand time. County Response, Part II, at 26-27.

South Sidney did not reply to the County's explanation. The County's effort to engage the cities in UGA boundary discussions before initiating citizen participation on the remand issues was a reasonable response to the planning requirements of the GMA and was not clearly erroneous.

Some petitioners objected to changes to the Plan made by the County Commissioners at or near the time the County adopted the Plan. Public participation requirements regarding changes made by the legislative body are contained in RCW 36.70A.035, which provides in relevant part:

(2)(a) Except as otherwise provided in (b) of this subsection, if the legislative body for a county or city chooses to consider a change to an amendment to a comprehensive plan or development regulation, and the change is proposed after the opportunity for review and comment has passed under the county's or city's procedures, an opportunity for review and comment on the proposed change shall be provided before the local legislative body votes on the proposed change.

(b) An additional opportunity for public review and comment is not required under (a) of this

subsection if:

- (i) An environmental impact statement has been prepared under chapter 43.21C RCW for the pending resolution or ordinance and the proposed change is within the range of alternatives considered in the environmental impact statement;
- (ii) The proposed change is within the scope of the alternatives available for public comment;
- (iii) The proposed change only corrects typographical errors, corrects cross-references, makes address or name changes, or clarifies language of a proposed ordinance or resolution without changing its effect;

The County Commissioners amended the Land Use Plan map at the time of adoption by adding 650 acres to the UGAs shown on the draft Plan map. Petitioners allege that the public had no time to comment on this last-minute amendment. The County responds that this amendment was in response to errors made at the staff level and the Planning Commission level. *See* County Response, Part II, at 37-38. Whatever the reason for this amendment, it is uncontested that the map change was “within the range of alternatives considered in the [EIS].” RCW 36.70A.035(2)(b)(i). In addition, the map change was “within the scope of alternatives available for public comment.” RCW 36.70A.035(2)(b)(ii). Consequently, additional opportunity for public notice and comment is not required by the GMA. The County’s action in amending the Plan map was not clearly erroneous. Petitioner South Sidney argues that changes made in staff memoranda of April 20 and April 28, 1998, fail to satisfy public participation requirements. As discussed above, as long as the amendments adopted by the legislative body are within the scope of alternatives available for public comment, additional opportunity for public notice and comment is not required. *See* RCW 36.70A.035(2)(b)(ii). South Sidney claimed only that the Planning Commission did not review these proposed amendments; South Sidney did not claim that the amendments were not within the scope of alternatives available for public comment. The County’s action in adopting amendments proposed in the April 20 and April 28 staff memoranda was not clearly erroneous. Finally, petitioner APAC stated that “the discussions and exclusions [during public hearings] gave members of the public the impression that the outcome of the hearings was a foregone conclusion” and that “[m]any citizens felt that the final Plan represented a triumph of special interests.” APAC PHB, at 72-73. Although these statements reveal APAC’s displeasure with the County’s public participation process, they do not amount to a justiciable GMA challenge.

Public Participation Conclusions

As used in RCW 36.70A.140 the term “respond to” means that the jurisdiction’s response may, but need not, take the form of an action, either a modification to the proposal under consideration, or an oral or written response to the comment or question.

A response to a Board Order requiring public participation may, but need not, take the form of an action, either a modification to the proposal under consideration, or an oral or written response to the comment or question. With the exception of the County’s admitted error on a provision of the Zoning Code, Petitioners have **failed to meet their burden of proof** in showing how the County’s public participation process failed to comply with RCW 36.70A.140, .020(11) and .035 – Issue S-2. The County’s actions were not clearly erroneous.

Regarding the deletion of Section 455.020 (Exception to Lot Sizes) from the Zoning Code (Ordinance No. 216-1998), the County’s admitted lack of public participation does **not comply** with RCW 36.70A.140, .020(11) and .035. After considering the matter, the Board is left with a firm and definite conviction that a mistake has been made; therefore, the County’s actions were clearly erroneous. The Board will **remand** the issue to the County for further public participation.

B. Critical Areas

Applicable Law

The Board did not invalidate the County's CAO. Therefore, pursuant to RCW 36.70A.320(1), Kitsap County's Plan, as it relates to critical areas, and CAO are presumed valid. Petitioners bear the burden of proof to demonstrate that the County's actions regarding critical areas are not in compliance with the requirements of the Act.

1997 Order

In its 1997 Order, the Board stated:

The Board recognizes that the County is operating on a cycle substantially beyond the statutorily imposed deadlines. Nonetheless, the County has readopted an interim critical areas ordinance. See Finding of Fact 3. The County's 1994 Plan was invalidated and now the County is pursuing compliance with the present effort. It is not clear from the record whether the County reviewed its interim critical areas ordinance in adopting the 1996 Plan, but it appears that the County still has interim regulations protecting critical areas. These regulations, or some variation of them will, ultimately, have to become permanent.

Because the Board is remanding the County's Plan for revisions, the County will, by necessity, have to review, possibly modify, and adopt a permanent critical areas ordinance as the County adopts its revised Plan to comply with the GMA. However, since the County has an interim critical areas ordinance that will continue to be in effect until the County adopts the permanent critical areas ordinance, the Board will answer Legal Issue 10 in the affirmative. Nonetheless, the County will be directed on remand to comply with RCW 36.70A.060 by adopting permanent regulations to protect its critical areas when it adopts its revised Plan.

Conclusion Nos. 10 and 2

Presently, the County is protecting critical areas through its interim critical areas regulations. Therefore, on remand, the County is directed to adopt permanent critical area protections as it adopts its revised Plan.

1997 Order, at 35,36.

The Board's Order provided:

4. The County is instructed to fully comply with RCW 36.70A.060 by adopting permanent regulations to protect its critical areas when it adopts its revised Plan. 1997 Order, at 52.

County Response on Remand

The County responded to the Board's 1997 Order in several ways. First, on January 5, 1998, the County adopted Ordinance No. 212-1998 renewing the interim development regulations to protect critical areas (Interim CAO).

[16]

Second, on February 9, 1998, the County amended and revised the Interim CAO by adopting Ordinance No.

181-B1998. ^[17] Finally, on May 7, 1998, the County adopted Ordinance No. 217-1998, which repealed the Interim CAO and adopted final development regulations to protect critical areas. ^[18]

The County included the following findings of fact in Ordinance No. 217-1998:

[Finding of Fact I]Through the implementation of the Interim CAO and the public process, the Board finds that portions of the Interim CAO should be changed to provide more effective implementation of the Final Critical Areas Ordinance as well as providing more protection of Critical Areas. The Final CAO considered the best available science in developing regulations to protect the functions and values of Critical Areas pursuant to RCW 36.70A.172.

[Finding of Fact K]Pursuant to RCW 36.70A.060 and RCW 36.70A.170, the CAO designates Critical Areas, which include wetlands, areas with critical recharging effect on aquifers used for potable water, fish and wildlife habitat conservation areas, frequently flooded areas and geologically hazardous areas. The CAO incorporates by reference the Critical Areas Maps which delineate those critical areas that are currently mapped.

Ordinance No. 217-1998, Sec. 1, at 2.

As noted above, adoption of this ordinance is presumed valid; it is Petitioners' burden to demonstrate otherwise.

1998 Challenge - *Alpine/Bremerton Compliance*

The GMA requires counties and cities to "designate where appropriate . . . critical areas. RCW 36.70A.170(1)(d). The GMA also requires counties and cities to "adopt development regulations that protect critical areas that are required to be designated under RCW 36.70A.170." RCW 36.70A.060(2). In addition, RCW 36.70A.172 provides:

(1) In designating and protecting critical areas under this chapter, counties and cities shall include the best available science in developing policies and development regulations to protect the functions and values of critical areas. In addition, counties and cities shall give special consideration to conservation or protection measures necessary to preserve or enhance anadromous fisheries.

The County has replaced its interim CAO with a final CAO, Ordinance 217-1998. The only challenges to the CAO are made by Petitioners APAC and Suquamish.

As a threshold matter, the Board notes that all of Suquamish's arguments and many of APAC's arguments are predicated on the following premise: The best available science provision of the GMA requires the County to impose a 10 percent limit on impervious surfaces. Since this premise is erroneous, all of Suquamish's arguments and many of APAC's arguments fail.

This Board has stated that the best available science provision of the GMA requires that "counties and cities include the best available science in their process of developing critical areas regulations, so that this information can be considered before any legislative action is taken." *HEAL v. City of Seattle*, CPSGMHB Case No. 96-3-0012, Final Decision and Order (Aug. 21, 1996), at 20. Although *HEAL* characterized the best available science requirement as "procedural," the record before the Board in this case reveals that the County went beyond the .170 requirements stated by this board in *HEAL*. Here, the County included the best available science in a substantive way and utilized it to guide its decision-making.

Petitioners rely on several documents in the record, authored or co-authored by Derek Booth, relating to the impacts of urbanization on aquatic systems. See Index 12742, 13757, 14570, and 16441. Suquamish characterizes Booth's thesis as follows:

[M]aintaining riparian corridors (i.e., stream buffers), while a necessary component of salmonid protection, will not prevent habitat degradation and loss of system function. Additionally, jurisdictions must regulate land uses within watersheds so that the 7-10 percent impervious surface threshold is not exceeded. Otherwise, substantial loss of aquatic system function, including loss of salmonid habitat and decline of fish populations, is certain. Suquamish PHB, at 11.

The County argues that:

Petitioners' citations to the record here show that the scientific studies they rely on as the best available science were submitted to the County and became part of the record. The County considered these studies; it also considered other scientific and technical information of its own regarding CAO issues. For example, it had wetland and stream buffer studies and reports. [Index] #8778. It also had considerable technical information from its Public Works Department, agencies and citizen committees. County Response, Part II, at 86.

The Board rejects Suquamish's characterization of Booth's studies. Although the Booth studies document the

basin-wide 10 percent ^[19] impervious surface threshold for damage to aquatic systems, the studies also identify measures to mitigate the effects of impervious surfaces. In one study, Booth discusses detention storage (suggesting modification of existing methods), the use of buffers, and basin-wide zoning protections. Index 14570 (*Urbanization and the Natural Drainage System*, at 110-13). Regardless of the scientific information illuminated by Booth's research, Suquamish has not established that the Booth studies in this record constitute best available science to the exclusion of other science in the record.

Rather than adopting a maximum limit on impervious surfaces as urged by Petitioners, the County, utilizing best available science in a substantive way, adopted a system for critical areas protection that includes buffers, building setbacks, mitigation, and stormwater drainage controls. See County Response, Part II, at 111. Petitioners have made no effort to explain why the County's system of protection will not protect critical areas as required by RCW 36.70A.060(2). Nor have Petitioners argued that the documents and studies that support the County's system of critical areas protection do not constitute "best available science."

The record contains much scientific and technical information. The County had to make choices based on the scientific information before it. Petitioners have not met their burden of proof to show that the County's decision to not set a maximum limit on impervious surfaces was clearly erroneous.

Even if the Board agreed with Suquamish's characterization of Booth's thesis, Suquamish has not met its burden of proof. Petitioner has not shown that the County's development regulations (CAO, Zoning Ordinance, Stormwater Drainage Ordinance and Design Manual, Surface and Stormwater Management Program, Flood Damage Prevention Ordinance, Shoreline Management Program) allow more than 10 percent basin-wide impervious surfaces. Nor has Suquamish shown that the County's critical areas protection regime allows more than 10 percent basin-wide impervious surfaces in the 19 fish habitat conservation areas in Kitsap County.

Suquamish also argues that the Plan is inconsistent with the CAO and the Zoning Ordinance. However, the examples provided by Suquamish do not reveal inconsistency. As with the other critical areas issues, the

“inconsistencies” identified by Suquamish are predicated on the premise that the County’s development regulations must impose a 10 percent basin-wide limit on impervious surfaces.

In addition to the impervious surface issue, Petitioner APAC raises a number of more specific challenges. APAC challenges, among other things, the CAO’s buffer widths, variances and exemptions from CAO requirements, the CAO’s construction requirements, lack of a critical areas database, the CAO’s consideration of cumulative impacts, and the CAO’s consideration of habitats of local importance. APAC’s arguments on these issues consist

[20]

solely of conclusory statements followed by extensive quotation from, or merely citations to, the record; APAC provides no argument explaining how the quoted and referenced material demonstrates that the County has failed to comply with the requirements of the GMA. Consequently, the Board concludes that APAC has failed to meet its burden of proof in showing how the County’s Plan and CAO failed to comply with the critical areas requirements of the GMA.

Nevertheless, the Board notes that the record relied on by APAC reveals that the County’s actions were not inappropriate. For example, the County reviewed “the science of buffers and information from other local jurisdictions.” County Response, Part I, at 89 (citing Index 8778, 17035, 14570). This record shows that the County’s selected buffers are within the range of buffers used by other jurisdictions and recommended in scientific literature.

With regards to a critical areas database, APAC appears to be asserting that the County must map each and every critical area immediately to comply with the GMA. APAC PHB, at 54. However, mapping critical areas is not the only means of complying with the GMA’s requirement to designate and protect critical areas. Known critical areas may be mapped, but compliance may also be attained “by adopting a process to designate or map them as information becomes available.” *Pilchuck v. Snohomish County*, CPSGMHB Case No. 95-3-0047, Final Decision and Order (Dec. 6, 1995), at 19. In fact, the CAO requires the updating of maps as critical areas information becomes available. *See* KCC 18.16.160.

APAC has failed to meet its burden of proof in showing how the County’s Plan and CAO failed to comply with the critical areas requirements of the GMA.

Critical Areas Conclusion

Suquamish and APAC have **failed to meet their burden of proof** in showing how the County’s Plan and CAO failed to comply with the critical areas requirements of the GMA – Issues R-4, S-5, S-6, 23, 24, 27, 28, 29, 30, 58, 59, 60, 61, 62, 63, and 64.

[21]

c. forest lands

Applicable Law and Discussion

The Board neither invalidated nor found noncompliance with the County’s forest land decisions in its 1996 Plan. The Board’s Order is silent regarding forest lands. Order, at 51 - 53. However, as part of its internal consistency review (RCW 36.70A.070) the County was required to evaluate whether its forest land decisions were consistent with the remand Plan (1998 Plan). Nonetheless, the County’s adoption of Ordinance No. 215-1998 is presumed valid upon adoption, and Petitioners bear the burden of proof to demonstrate that the County’s action regarding forest lands is not in compliance with the Act. RCW 36.70A.320(1) and (2).

1997 Order

In its 1997 Order, the Board stated:

Conclusion No. 9

The Board makes no finding that the Plan failed to comply with the duty to designate forest lands . . . pursuant to RCW 36.70A.170 and RCW 36.70A.020(8). The forest lands designation criteria contained in the Plan are within the range that the Act permits the County and the Board renders no judgment now about the application of those criteria to the circumstances in Kitsap County. However, because the Plan has been remanded for further work by the County, many of the premises upon which the County may have based its judgments regarding forest lands are now called into question. At the very least, the County is required by RCW 36.70A.070 to evaluate whether its forest land decisions will be consistent with the Plan it brings back on remand. 1997 Order, at 34-35.

1998 Challenge -*Alpine/Bremerton Compliance*

RCW 36.70A.170 provides in relevant part:

(1) On or before September 1, 1991, each county . . . shall 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.

RCW 36.70A.060 provides in relevant part:

(3) Such counties [those required to plan under the Act, including Kitsap] . . . shall review these designations [e.g., forest land designations undertaken pursuant to .170] . . . when adopting their comprehensive plans . . . and may alter such designations . . . to insure consistency.

Petitioners Alpine, APAC, KCRP, Manke, S'Klallam and Suquamish all challenge the County's compliance with RCW 36.70A.060 and .170. Alpine PHB, at 2-24; APAC PHB, at 60-62; KCRP PHB, at 13-21; Manke PHB, at 5-9; S'Klallam PHB, at 18-19. None of these Petitioners accepts the County's treatment of forest lands in the 1998 Plan.

It is undisputed that the County's 1996 Plan did not designate forest lands; in fact the 1996 Plan explicitly stated: "The County conclude[s] that it does not presently have "forest land" within the meaning of the Growth Management Act. . . . Therefore, the plan does not propose a designation for long-term commercially significant forest lands. . ." 1996 Plan, Part I, at 34. Also, the County's adoption of Ordinance No. 215-1998 repealed both the 1994 and 1996 Plans. Ordinance No. 215-1998, Sections 2 and 3, at 8. Finally, the 1998 Plan, adopted by Ordinance No. 215-1998, after evaluating its interim forest lands, neither designates forest lands of long-term commercial significance nor declares that no such lands exist in Kitsap County. Plan, Part I, at 73-74.

RCW 36.70A.170 is unequivocal: the County has a duty to designate, where appropriate, forest lands of long-term commercial significance. Kitsap County is compelled to decide whether it has such lands and if so, to designate them. If the County determines that it does not have such forest lands, it must likewise declare that none exists within the County. The County's present Plan shuns the designation duty of .170 and neither designates commercially significant forest lands nor declares that no such lands exist in the County. The County's action regarding forest lands does not comply with the requirements of RCW 36.70A.170 and RCW 36.70A.060(3). The County's action regarding forest lands was clearly erroneous. The Board will remand the

Resource Lands section of the 1998 Plan to the County with direction to finally decide whether it does or does not have forest lands of long-term significance, consistent with the requirements of the Act, and record its decision in the Plan through designation of forest lands or a declaration that none exists.

Under the sequencing scheme of the GMA, the land does speak first; but, on the rare occasion, as is the case here, where the land may speak late — it will be heard. Thus, if the County finds forest lands appropriate for designation, prior conflicting “Rural” or “Urban” designations must be amended if necessary to accommodate any such forest land designation.

Forest Lands Conclusion

The County’s lack of a decision regarding the presence, or absence, of forest lands of long-term commercial significance does not comply with RCW 36.70A.170 and .060(3) – Issues S-1, 3, 4, 23, 25, 48, 54 and 57. After considering the matter, the Board is left with a firm and definite conviction that a mistake has been made; therefore, the County’s actions were clearly erroneous. The Board will remand the Resource Lands Chapter of the Plan for amendment.

[22]

d. UGA issues

As detailed in Section V, the Board has concluded that the Land Use Element, including the UGAs designated in the Plan, no longer substantially interfere with the goals of the GMA. [23] The Board now examines the arguments by various petitioners that the UGAs designated in the Plan do not comply with the Act or that certain lands not designated as UGA should have been. The arguments, and the Board’s analysis and conclusions, are grouped into two headings: residential and commercial/industrial. Within each of the two headings, there is first a review of the factors, assumptions, and methodology utilized by the County to designate the UGAs county-wide; then a review of allegations concerning specific designations.

1998 Challenge - *Alpine/Bremerton Compliance* [24]

1. Residential Land Capacity Analysis

a. Factors, Assumptions and Methodology County-wide

Applicable Law and Discussion

[25]

The GMA’s direction regarding the designation of UGAs appears at RCW 36.70A.110. The County has observed that:

In adopting its UGAs, the County has acknowledged, as have other jurisdictions, that the calculation of land capacity is not an exact science and relies upon assumptions that need to be periodically revisited to insure their validity. County Response, Part I, at 8.

Intervenor McCormick echoed this sentiment:

. . . it is imperative that the Board apply a standard of reasonableness, recognizing that long range planning is not an exact science and that the GMA grants local jurisdictions considerable latitude in preparing a Comprehensive Plan. McCormick Response, at 2.

[26]

The sizing of the UGA must be supported by an analytical rigor and an explicit accounting, yet the County

correctly characterizes it as an inexact science. The specificity and precision important to the rigor and accounting are tempered by the imprecise nature of long-range population projections, and indeed

[27] comprehensive planning itself. The Board cannot adopt the “rule of reason” suggested by the County and McCormick (i.e., was the County’s choice a *reasonable* one?), because the GMA prescribes the clearly erroneous standard (i.e., was the County’s choice *clearly an error*?) RCW 36.70A.320(3). In order to prevail in its claim regarding the factors, assumptions and methodology utilized, a petitioner’s argument must demonstrate noncompliance with the Act and leave the Board with the firm and definite conviction that a mistake has been made.

(1) Population projections

Ross argues that the County erred by using the 1992 to 2012 population projection, and then reducing the amount to account for the growth that the county experienced between 1992 and 1997. Ross argues that County instead should either have used a twenty-year projection from 1997 to 2017 or, alternatively, based its UGAs on the 1992-2012 projections. Petitioner’s/Intervenor’s [Ross] Invalidity/Prehearing Brief, 2-4. Ryan argues that the population projections are not “in touch with reality.” Ryan’ PHB, at 6.

The County argues that the population target that it utilized was within the range approved by OFM, and, at any rate, is required by virtue of the fact that it was specifically adopted as a County-wide Planning Policy. County Response, Part I, at 12. It argues that to size the UGA to accommodate the entire 1992 to 2012 population growth would have required planning for five years of growth that the County has already experienced and would have resulted in oversized UGAs. County Response, Part I, at 11. The County claims that the issues raised by Ross can be addressed by updates to the population projections for the 2013-2017 period, a procedure which is directed

[28] by Plan Policy UGA-3. The County argues that if such update identifies the need for additional capacity, the County is directed by UGA-3 to address any appropriate expansions of UGAs and/or redesignation of urban reserve lands. *Id.*

The Board agrees with the County. The Act requires that the County’s 2012 population target fall within the range forecast by OFM. *See* RCW 36.70A.110, RCW 43.62.035 and Finding of Fact 21, *supra*, at 14. The County’s selected 2012 population target falls within the OFM range forecast. The Board concurs that the CPPs can have a directive effect, and they may direct the allocation of the 2012 population targets for urban, rural, incorporated and unincorporated lands. However, notwithstanding the CPPs, the County’s selection of the 2012 population target is a discretionary choice of the County’s, so long as it is within the OFM range and encourages development in urban areas. The Petitioners have failed to meet their burden of proof in showing how the County’s 2012 population target does not comply with the Act. The County’s action was not clearly erroneous.

(2) Allocation to cities

Petitioner Ross argues that the County allocated too much population to the cities, whereas Cazin and the City of Bremerton argue that not enough population has been allocated to the cities.

The allocations to the cities comply with the requirements of the CPPs and petitioners have not shown how the allocations are not “otherwise consistent with the relevant provisions of the GMA.” The allocation and process utilized by the County was within the sound discretion of the County Commissioners. The Petitioners have failed to meet their burden of proof in showing how the County’s population allocations to the cities does not comply with the Act. The Board concludes that the County’s action was not clearly erroneous.

(3) Average density assumption

KCRP attacks many aspects of the County’s capacity analysis, including average density assumptions. KCRP PHB, at 2-5. Comparing the current Plan with the 1996 Plan, KCRP asserts:

While the County's new land capacity analysis is a slight improvement, careful review demonstrates that the County has expanded its analysis only from 4 du/net developable acre to 4.55 du/net developable acre. While the County purports to be basing its calculations on the actual available zoning, the County's analysis still relies on using the minimum possible densities. Considering the already significant reductions from gross acreage available to net acreage available, the County's further reliance on the minimum development densities is unreasonable. KCRP PHB, at 5 (footnote omitted).

The County responds that the Plan's 5 du/acre average density assumption (used for the residential unincorporated UGAs) is approximately equal to the most dense urban areas in the County and represents a doubling of the County's current average densities. County Response, Part I, at 15. The County argues that: [T]he County had the option of taking the course it took here - adopt zoning designations within the UGA that allow a range of densities but require a minimum density. Thus, the County will insure that it attains, at a minimum, an increase in urban density in each zone (5 du/acre, 10 du/acre or 19 du/acre), but also provides property owners with the flexibility to further increase the density on their property without going through an additional regulatory process. County Response, Part I, at 19.

The Board agrees that the County's average density assumption was not inappropriate. The 5 du/acre assumption is an appropriate urban density. See *Bremerton*, Final Decision and Order, at 51. As the County points out, the average density assumption exceeds the present existing densities in three of the County's incorporated cities, [\[29\]](#) and approximates that of the fourth. The Petitioner has failed to meet its burden of proof in showing how the County's use of a 5 du/acre average density assumption does not comply with the Act. The Board concludes that the County's action was not clearly erroneous.

(4) Accessory dwelling units

KCRP and APAC argue that the County's residential land capacity analysis was flawed because it failed to account for the potential for accessory dwelling units (ADUs). Arguing that permitting detached accessory dwelling units and accessory living quarters effectively doubles allowable densities, KCRP postulates:

Nowhere in the County's land capacity analysis does the County take into account the additional population that will be absorbed by the permitted use of ADUs. Even if only one person in ten utilizes an ADU, the result would be a further ten percent oversizing of the UGA. KCRP PHB, at 11.

The County responds that petitioners have not cited to any authority or record evidence in support of their allegation. Instead, the County argues that the record before the County suggests that the use of ADUs will likely have no statistical significance, citing to a 1995 report by the Municipal Research & Service Center of Washington:

. . . One national survey involving 47 communities suggests that communities with "favorable" zoning can expect to get approximately one ADU per 1,000 single family homes per year. [Accessory Units: An Increasing Source of Affordable Housing, pp. 5-6] quoted in County Response, Part I, at 22.

The Board agrees with the County that the only record evidence indicates that the effect of ADUs on housing capacity is *de minimis*. The Petitioner has failed to meet its burden of proof in showing how the County's failure to factor ADUs in its residential land capacity analysis does not comply with the Act. The Board concludes that the County's action was not clearly erroneous.

(5) Residential development in commercial zones

KCRP argues that because the Plan calls for mixed uses ^[30] (i.e., including residential) developments in commercial zones and the zoning ordinance allows them, ^[31] the County erred by not factoring this component into its residential land capacity analysis.

The County makes two responses to this allegation. First, it argues that KCRP did not raise this issue to the County in the proceedings that led to adoption of the Plan and argues that KCRP lacks standing to challenge that issue before the Board. County Response, Part I, at 23. Second, the County states that because KCRP did not raise this issue, there is no evidence in the record to refute the claim. It goes on to speculate that, had the issue been appropriately raised by KCRP or others, the record might demonstrate that developers in Kitsap have not traditionally availed themselves of the mixed use option; that there is not much market for residential development in commercial zones outside of metropolitan areas; that the bulk of the commercial zoning in Kitsap is poorly located to be utilized for commercial development; and that there is such a large supply of multifamily zoned land in Kitsap that it is unlikely that there would be a great deal of mixed use development in commercial zones. County Response, Part I, at 24.

In evaluating KCRP's arguments, the Board determines that it fails to carry its burden of proof. The Plan provision cited by KCRP simply states that the zoning ordinance should "allow" for mixed use within commercial centers, a suggestion that is carried out in the zoning ordinance's permissive language. There is no specific or directive Plan provision, such as an acreage, dwelling unit, population target, or housing policy to suggest that the likely effect of these permissive provisions will be more than *de minimis*.

The Petitioner has failed to meet its burden of proof in showing how the County's failure to include a residential mixed use component in its residential land capacity analysis does not comply with the Act. The Board concludes that the County's action was not clearly erroneous.

(6) Net vs. gross acreage

KCRP argues that the land capacity analysis is flawed because it relies on net available acreage, while the zoning ordinance relies on gross available acreage. By using the zoning ordinance gross acreage provisions, rather than net, a greater number of units could be accommodated on each acre and a smaller number of acres would be needed in the UGA. KCRP argues that because the zoning ordinance has no minimum lot size in three of its four zoning districts, a property developer could still achieve the higher densities by simply reducing the lot size(s). KCRP PHB, at 6.

The County responds that the minimum lot size requirement was removed in some residential zones in order to allow property owners to reduce lot sizes when the market supports that. However, the necessity to account for critical areas and roads obligated it to calculate actual capacity on net rather than gross acreage.

The County cited to record evidence, including experiences in both Kitsap and Snohomish County, indicating that permissive zoning notwithstanding, most property owners do not develop at densities approaching the theoretical gross allowed by the zoning ordinance. County Response, Part I, at 21.

The Petitioner has failed to meet its burden of proof in showing how the County's actions using net rather than gross acreage do not comply with the Act. The Board concludes that the County's action was not clearly erroneous.

(7) Reduction factors

Petitioner Ross argues that the County's 15 percent reduction factor for critical areas is too small and is not applied sequentially, resulting in UGAs that are not large enough to accommodate the projected growth. Ross PHB, at 6. KCRP argues that the percentage is too large and complains that the County erred by "lumping critical areas in the same category as roads and public facilities." KCRP PHB, at 10.

The County responds that it chose a middle path between the two extremes:

. . . [t]he County is caught between development advocates who want the largest possible reduction factors and the citizen/environmental groups that want the smallest possible reduction factor. County Response, Part I, at 24.

The County argues that KCRP's suggested methodology for applying reduction factors ignores the fact that reduction factors are applied to the entire UGA, not to each individual parcel. It argues that:

. . . these factors assume that a certain amount of the County's overall available acreage will be encumbered by critical areas (15 percent), used for public facilities (15 percent) and used for roads (17 percent). Each of these percentages is therefore deducted separately from the gross acreage available for development. County Response, Part I, at 27.

The County also argues that the 15 percent critical areas factor was an appropriate choice in view of a number of facts in the record and the County's desire to use a conservative factor, rather than one as large as the 50 percent that KCRP suggested actually exists in the county. *Id.*

The Board agrees with the County. Neither the factors used, nor the methods of applying them, were outside the range of appropriate choices available to the County. The Petitioners have **failed to meet their burden of proof** in showing how the County's actions regarding reduction factors do not comply with the Act. The Board concludes that the County's action was not clearly erroneous.

(8) Urban Reserve areas

The Urban Reserve designation in the Plan provides:

Urban Reserve: The Urban Reserve designation is used on the Comprehensive Plan Map to indicate areas that are potentially suitable for inclusion in the Urban Growth Area. Urban Reserve areas are intended to recognize:

- (a) designated Urban Joint Planning Areas, to reflect areas proposed by the Cities for designation as an Urban Growth Area and which are subject to a joint planning process;
- (b) designated Urban Study Areas, which are intended to resolve issues regarding potential land uses; and
- (c) lands contiguous or adjacent to designated Urban Growth Areas which are deemed necessary to hold in reserve for potential future inclusion within an Urban Growth Area in response to future needs as reflected in revised or updated population or employment forecasts or allocations.

These areas are given an interim low-density designation of 1 dwelling unit per 10 acres as a means of preventing establishment of land uses or land use patterns that could foreclose planning options and eventual development or redevelopment at higher urban densities. Designated Urban Reserve lands that are determined to not be needed or appropriate for urban development pursuant to a defined planning process will be re-designated as Rural through the Comprehensive Plan amendment process.

Plan, Part I, at 35.

KCRP and APAC complain that the County has violated the Act by designating 1,000 acres as Urban Reserve without establishing standards to govern when these Urban Reserve lands can be moved into the UGA. It argues that these areas:

. . . can be converted to UGAs at virtually any time. There are no requirements to fill the original urban areas, let alone the already inflated undeveloped UGA lands, before dipping into the Urban

Reserve.KCRP PHB, at 9.

APAC raises similar objections, characterizing the Joint Planning Area process as a “shoo-in for the developers.” APAC PHB, at 20.

The County responds that use of an urban reserve concept has previously been approved by the Board and that any future action to move lands from urban reserve into the UGA would be subject to the requirements of the Act:

. . . [the County] has provided multiple assurances that Urban Reserve lands cannot be developed with urban densities unless and until it is demonstrated that they are required to accommodate the County’s projected population increase.

. . .

If, in the future, KCRP disagrees with the inclusion of some particular Urban Reserve area in the County’s UGA, KCRP can challenge either the City’s amendment of its Plan to include the area, or the County’s amendment to its Plan to include the area, or both. County Response, Part I, at 30.

Intervenor McCormick states:

Like APAC, KCRP ignores the fact that Policy UGA-14 . . . specifically recognizes that land within a JPA may, following the joint planning area study process, be designated as Rural, Urban or retained as Urban Reserve. Contrary to the claims raised by KCRP there is no pre-arranged commitment that these areas will become Urban Growth Areas. McCormick PHB, at 18.

The essence of the concern expressed by petitioners is that the ultimate inclusion of Urban Reserve lands in the UGA is a foregone conclusion. They also contend that no Urban Reserve lands can be added to the UGA until the present UGA is “filled up.”

As the County correctly pointed out, this Board has previously determined that counties may choose to designate future urban reserve areas outside of the UGA. When such a tool is utilized, the Board has cautioned that care must be taken to protect the long-term flexibility to expand UGAs. See *Gig Harbor, et al., v. Pierce County*, CPSGMHB Case No. 95-3-0016, Final Decision and Order (October 31, 1995), at 58. The County has incorporated this direction in its Urban Reserve provisions by requiring minimum ten-acre lot sizes as “a means of preventing establishment of land uses or land use patterns that could foreclose planning options and eventual development or redevelopment at higher urban densities.” Plan, Part I, at 35. The County acted within its discretion to use urban reserves.

As to the matter of when the County may consider “converting” Urban Reserve lands to UGA, the Board finds no requirement in the Act obligating the County to set forth a phasing schedule, *per se*. In fact, both the Plan

and the GMA itself, [33] obligate the County to monitor the rate at which lands within the UGA are being utilized and to take appropriate action, which could include expansion of the UGA, if circumstances so warrant. If, at such time, the petitioners believe that provisions of the Plan or the Act preclude the conversion of non-UGA land to UGA, they are free to challenge that action. The petitioners have failed to meet their burden of proof in showing how the County’s actions regarding Urban Reserve do not comply with RCW 36.70A.110. The Board concludes that the County’s action was not clearly erroneous.

(9) Joint planning issues [34]

The City of Bremerton addresses its arguments to Remand Issue No. 1, which provides:

Do the Rural and Land Use Elements, including the UGAs and land use map of the Plan and rural

residential densities, fail to be guided by RCW 36.70A.70.020 and fail to comply with the requirements of RCW 36.70A.070(1), (5) and RCW 36.70A.110?

Bremerton expresses concerns with the Plan's Joint Planning Area (**JPA**) provisions, particularly regarding where they overlay UGAs. The City states:

While policy UGA-7b seems to indicate that there is a difference between JPAs and JPA overlays [of UGAs], no distinction is made in the implementing Policy UGA-13. The City and County must agree to a Joint Plan for the area, and modify their Comprehensive Plans as necessary before a JPA is fully included within a UGA. . . . In particular, UGA-13 b, e and g go beyond the scope of joint planning, and impinge on Bremerton's land use powers. Bremerton PHB, at 2 (emphasis added).

Bremerton attacks the Plan on two fronts. First, it argues that UGA-4, UGA-8 and UGA-13 are inconsistent with the CPPs. Second, it argues that portions of UGA-13 ^[35] do not comply with RCW 36.70A.070 and .110. Bremerton PHB, at 2-5.

As to the charge of inconsistency with CPPs, Bremerton focuses on the fact that the CPPs and the challenged Plan provisions have different timing requirements for the consummation of interlocal agreements between the county and cities. The City argues that the Plan's requirement that Joint Planning Agreements within JPAs be adopted prior to UGA designation is inconsistent with CPPs that mandate adoption of "urban growth management agreements" (UGMAs) after the designation of the UGA. Bremerton PHB, at 2. Further, Bremerton argues that the inconsistent Plan provisions must yield to the CPP provisions because of the directive effect of

^[36] CPPs. Bremerton PHB, at 3. The City contends that "To the extent Plan policies are inconsistent with CPP policies, the Plan policies are inconsistent with RCW 36.70A.070." Bremerton PHB, at 4.

The County responds by moving to strike Sections I and II of Bremerton's Prehearing Brief, arguing that the matter of the Plan's compliance with the CPPs is not included in issue R-1 or any other Prehearing Order remand issue. County Response, Part I, at 31. The County then argues that:

The Plan envisions resolution of substantive issues through a cooperative planning process, using Memoranda of Agreement to define the issues and development of joint plans to address the issues. . . . UJPAs designated on the Comprehensive Plan Land Use Map correspond to the extraterritorial UGA proposed by each city. County Response, Part I, at 31-37.

The County also states that:

The County does not dispute that the CPPs address the designation of UGAs. However, it does not follow that inconsistency with the CPPs results in noncompliance with RCW 36.70A.020, RCW 36.70A.070(1) or RCW 36.70A.110. . . . If the County chooses to adopt procedures or requirements in addition to the requirements of GMA in its CPPs, actions inconsistent with those additional requirements would result in violation of those CPPs, and may even result in a violation of RCW 36.70A.210. However, such an inconsistency does not result in a violation of other GMA provisions. County Response, Part I, at 32.

In defense of UGA-13 specifically, the County states:

The City's argument that subsections (b), (e) and (f) [*sic*: g] of UGA-13 go beyond the scope of their concept of joint planning and impinge on cities' land use powers is without merit. The framework provided by UGA-13 is voluntary and consensual. . . . Planned annexation of unincorporated urban areas by cities is encouraged by GMA. The County does not have the authority to veto proposed annexations it does not like. But neither is it compelled to offer its support for hasty annexations that are inconsistent with well considered regional planning. County Response, Part I, at

The Board denies the County's motion to strike portions of Bremerton's brief. *See* Section III.C of this Order. As to the substantive arguments, the Board rejects Bremerton's contention that inconsistency between a Plan provision and a CPP constitutes noncompliance with RCW 36.70A.070 or .110. Rather, inconsistency between a Plan provision and a CPP constitutes noncompliance with RCW 36.70A.210. Because noncompliance with RCW 36.70A.210 was not an issue contained within Remand Issue 1, Bremerton cannot now challenge the Plan's consistency with the CPPs, nor will the Board permit it to frame such a claim as an .070 challenge. Thus, the Board will not address Bremerton's contention that UGA-4 and UGA-8 are inconsistent with the CPPs and thereby noncompliant with RCW 36.70A.070.

As to Bremerton's complaints about the Plan's noncompliance with RCW 36.70A.110, the Board reaches a different conclusion. Despite the County's acknowledgment that it "does not have the power to veto annexations that it does not like," and description of the framework of UGA-13 as "voluntary and consensual" (County Response, Part I, at 35), the Board must discern the compliance of the challenged provisions based on the plain

meaning of the language used. UGA-13 and narrative text on pages 19-26 of the Plan ^[37] contain unequivocal and directive language that, on its face, imposes conditions precedent to city annexation in urban growth areas. The Board concludes that these provisions fail to comply with RCW 36.70A.110.

The City correctly contends that some very fundamental issues have been resolved by virtue of the UGA

designation: (1) the land use will be urban (RCW 36.70A.110(1)); ^[38] (2) the land use designations reflect population and employment allocations made by the County; and (3) urban services provided within the UGA

should be primarily provided by cities. RCW 36.70A.210(1). ^[39] The Board has discerned key policy objectives shared by CPPs adopted pursuant to RCW 36.70A.210 and UGAs designated pursuant to RCW 36.70A.110. In an early case, the Board observed:

UGAs are a part of the GMA's hierarchy of directive policy. UGAs take direction from the Act's planning goals at RCW 36.70A.020 and from CPPs. UGAs therefore also serve the three purposes of CPPs: (1) to achieve consistency between plans as required by RCW 36.70A.100; (2) to achieve a transformation of local governance within the UGA; and (3) to direct urban development to urban areas and to reduce sprawl. *Association of Rural Residents*, at 14 (original emphasis omitted; new emphasis added).

Because the challenged Plan provisions establish conditions precedent to a city's annexation of lands within a UGA, they are in conflict with some of the most fundamental purposes of UGAs adopted pursuant to RCW

36.70A.110. ^[40] **The Board holds that, once a UGA has been designated, the provisions of a county plan may not condition or limit the exercise of a city's annexation land use power.**

The Act strongly encourages collaborative and cooperative joint planning efforts. However, Policy UGA-13 and the accompanying Plan text appear non-negotiable and directive. If the County intends the provisions of Policy UGA-13 and associated text on pages 19-23 to be "voluntary and consensual" when applied within a UGA, as

stated in its brief, then the language of the Plan must clearly say so. ^[41] The Board will remand Policy UGA-13 and the associated Plan text for the County to clarify its intent.

(10) Other general UGA issues

APAC, S'Klallam and Cazin all assert that the UGAs are oversized for a variety of reasons. APAC PHB at 4; S'Klallam PHB at 17. Cazin articulates the shared argument:

...[T]he land use capacity analysis methodology countywide is flawed. The net available acreage is much greater than the county has assumed. Some reduction factors are counted twice. Parcels greater than 10 acres (pg. A-62, Plan) have not been included in urban vacant land calculations. Due to underestimating the urban land capacity, too many acres have been appropriated as urban growth areas. Cazin PHB, at 14.

The County argues that the petitioners are wrong about the “vacant lands” not being appropriately factored into the sizing of the UGA. It states:

Petitioners’ claim is based on their failure to read the statement on page A-62 of the County’s Plan relating to vacant land in context. That statement simply explains what is included in the definition of “Vacant Land” by the County Assessor; it is not the same “vacant land” definition used by the County in its land capacity analysis. The County’s land capacity calculations include all vacant (meaning land without structures) and underutilized land in the County’s UGA regardless of parcel size. CP at A-36 (“Vacant land does not contain any structures. Underutilized land is land that is zoned at a higher density than its current use. . . .”) County Response, Part I, at 37.

As to the many issues that APAC raises on pages 25-26 of its Brief, the County contends that argument about post-Plan adoption ordinances is not germane to the present proceedings. The post-Plan adoption letter from Charlie Burrow that is quoted extensively by APAC in its brief, is similarly irrelevant. *Id.*

The Board agrees with the County. The petitioners have failed to meet their burden of proof in showing how the County’s treatment of vacant lands in its land capacity analysis does not comply with RCW 36.70A.110. The Board concludes that the County’s action was not clearly erroneous.

b. Challenges to Specific UGA Designations

Applicable Law and Discussion

The Board now turns to the specific challenges made by the petitioners. Several of these were challenges to UGA designations that the County made for certain unincorporated areas (Port Gamble and South Kitsap). Others were challenges to the County’s decision not to designate certain areas as UGAs (Keyport, Manchester, Suquamish, Illahee, and land west of Poulsbo). In reviewing the challenges, the Board is governed not only by the goals and requirements of the GMA, but also by the specific provisions of the County’s Plan setting forth criteria for identifying and designating lands as UGAs.

As is required by RCW 36.70A.110, all the cities in Kitsap County are included within UGAs. For unincorporated areas, the County explicitly established the following siting criteria for designating UGAs:

1. Cities

The cities of Bainbridge Island, Bremerton, Poulsbo and Port Orchard must be included in Urban Growth Areas: “Each city that is located in such a county shall be included within an urban growth area.”

2. Unincorporated Areas

a. First Priority

“Urban growth should be located first in *areas already characterized by urban growth* that have *adequate existing public facility and service capacities* to serve such development...” These areas are adjacent to incorporated cities, or are adjacent to or contain major employment or commercial areas. Kingston and Silverdale are typical First Priority areas.

b. Second Priority

“Urban growth should be located . . . second, in *areas already characterized by urban growth that will be served adequately by a combination of both existing public facilities and services and any additional needed public facilities and services that are provided . . .*”In Kitsap County, these areas are adjacent to incorporated cities, or First Priority areas, or adjacent to or contain major employment or commercial areas. Gorst is typical of Second Priority areas.

c. Third Priority

“Urban growth should be located . . . third in the remaining portions of the Urban Growth Areas.” These areas are adjacent to incorporated cities, or First Priority or Second Priority areas.

Plan, Part I, at A-41 (emphasis added).

To further clarify the UGA siting criteria, the County provided the following definitions:

Gross land area means the total land area including street rights-of-way.

Net available land means the result of the Residential Land Capacity Analysis formula as applied to the *gross land area*.

Areas already characterized by urban growth means areas where the *net available land area* is less than 30% of the *gross land area* AND the predominant density of existing residential development is at least three (3) dwelling units per acre (net).

Adequate existing public facility and service capacity means areas with existing water and sanitary sewer capacity to serve planned urban densities.

Areas that will be served by a combination of both existing public facilities and services and any additional needed public facilities and services that are provided means areas where water and sanitary sewer capacity to serve planned urban densities is planned (contained within a capital facility plan).

Plan, Part I, at A-40 (emphasis in original).

1998 Challenge -Alpine/Bremerton Compliance

Using these criteria, the County designated various unincorporated UGAs. The Plan’s designation of the challenged areas, together with the Board’s analysis, follows:

[\[42\]](#)

(1) Port Gamble UGA designation

Petitioners Cazin and S’Klallam Tribe offer numerous arguments to support their assertion that the County’s designation of the Port Gamble UGA does not comply with the requirements of RCW 36.70A.110. Among their arguments, Petitioners assert that: Port Gamble is not urban; it does not fit the County’s own definition of urban; the land capacity calculations are inaccurate; Port Gamble’s capital facilities cannot support urban growth or expansion; and it is an Island UGA. Cazin PHB, at 5-30; S’Klallam PHB, at 2-22.

The County does not specifically respond to these allegations. Instead, the County “adopts by reference the Brief submitted by Pope Resources in relation to all Port Gamble issues.” County Response, Part I, at 38. Intervenor Pope counters that Port Gamble is urban, has adequate public facilities, can support urban growth and expansion; and is not an unlawful Island UGA. Pope PHB, at 2-18.

The Plan provides:

From its initial settlement in 1853, Port Gamble has been a *relatively urban* place. The townsite has served as support for the adjoining mill and shipping enterprises for over 140 years. Throughout its

history, Port Gamble has been one of Puget Sound's unique, small centers of industrial, residential and commercial activity. It was designated a National Historic District in 1966. It is the intent of the current owner to continue and maintain the historical character of the remaining townsite. *This UGA meets the criteria for a tier one area with existing urban character and urban services.*

The Port Gamble area has major historic significance for Kitsap County. The County places great importance on preserving the historic nature and integrity of Port Gamble and will work to ensure that any new development respects and enhances the character of this area. Port Gamble Bay is also an important natural resource for the Port S'Klallam Tribe, and the County will work with the Tribe and property owners of Port Gamble to protect this resource.

Plan, Part I, at A-42 (emphasis added).

Thus, according to the County's Plan, the Port Gamble UGA meets the criteria for tier one or First Priority areas. [\[43\]](#)

Using the County's definitions, the criteria for First Priority areas read as follows:

Urban growth should be located first in areas where the results of the Residential Land Capacity Analysis (net available land area) is less than 30% of the total land area including rights-of-way (gross land area) AND the predominant density of existing residential development is at least three (3) dwelling units per acre (net) and have existing water and sanitary sewer to serve planned urban densities. These areas are adjacent to incorporated cities, or are adjacent to or contain major employment or commercial areas. Kingston and Silverdale are typical First Priority areas. (Emphasis added.)

The second sentence does not describe the Port Gamble UGA. It is undisputed that it is not adjacent to a city, nor is it adjacent to, nor does it at present contain, a major employment or commercial area. [\[44\]](#) Therefore, Port Gamble's UGA designation must turn on the first sentence of the First Priority area siting criteria. The first sentence contains three separate criteria: a land area criterion, an existing density criterion and a capital facilities criterion. The Port Gamble area fails to meet each of the three criteria.

The Plan's land area criterion:

The net available land area is uncertain. The results of the County's Residential Land Capacity Analysis for the Port Gamble UGA indicate that there are 14 net developable acres. Plan, Part I, Table 10, at A-50. However, Petitioners assert that the Port Gamble analysis, unlike all the others, did not include any acreage as "underutilized" land. Cazin PHB, at 12; S'Klallam PHB, at 15. Intervenor Pope agrees that "both Petitioners are correct that the County did not include any underutilized lands." Pope PHB, at 12. Therefore, it is undisputed that the County clearly erred in this phase of its analysis for designating Port Gamble as a UGA.

Additionally, the gross land area of the UGA is disputed. Cazin and S'Klallam contend that the UGA is 143 acres. Cazin PHB, at 6 and 12; S'Klallam PHB, at 6 and 17. Intervenor states: "The Port Gamble UGA is 100 acres in size." Pope PHB, at 3. The County's Plan does not indicate the size of this UGA. It does indicate, in Table 10, that the "gross acreage" (not gross land area) is 30 vacant acres in Port Gamble. Therefore, determining whether the net available land area is less than 30 percent of the gross land area is problematic and a flaw in the County's Port Gamble UGA designation process. The Port Gamble area fails to meet this criterion; therefore, the County erred in this phase of its analysis.

The Plan's existing density criterion:

Assuming that the net available land area is less than 30 percent of the gross land area, the UGA criteria also require that the predominant density of *existing residential development* must be at least three dwelling units per

acre. It is undisputed that there are 37 existing residential units within this UGA. Cazin PHB, at 5; S'Klallam PHB, at 3; Pope PHB, at 4. Petitioners calculate various existing residential densities that yield either 1 du./2.45 acres, 1 du/.71 acres, 1 du/1.3 acres or 1 du/.90 acres, depending upon residential acreage assumptions. Cazin PHB, at 12-13; S'Klallam, at 16.

In response, Intervenor Pope states: "Port Gamble is a developed town. The existing residential densities at Port Gamble are urban with a gross density of 1 du/1.45 acres (37 du on 55 acres)." Pope PHB, at 4. Pope then asserts: "In reality, the developed portion of the residential zone, exclusive of road rights of way, is approximately 4 du/acre, which is readily apparent when one drives through town." *Id.* None of the calculations offered by the parties indicates that the existing residential development is at least 3 du/ac. Pope's conclusory statement is inadequate to overcome Petitioners' offer of proof. The Port Gamble area fails to meet this criterion; therefore, again the County erred in this phase of UGA designation analysis.

The Plan's capital facilities criterion:

Finally, assuming that the net available land area is less than 30 percent of the gross land area AND the existing residential densities are at least 3 du/ac, the capital facilities criterion requires *existing* water and sanitary sewer to serve *planned* urban densities. It is undisputed that Port Gamble has existing water and sanitary sewer facilities. Cazin PHB, at 8, 16-20; S'Klallam PHB, at 5, 8-13; Pope PHB, at 7, 9-13. These facilities are noted in the County's Plan, Part II, at 100 (Table SS-2 – Sanitary Sewer); at 220 and 228 (Table WF-2 and Table WF-20 – Water Facilities). However, none of these Plan Tables indicates that there are any existing capacity deficits *or surpluses*. Also, none of these Plan Tables indicates there are any new or expanded service needs – i.e., no *planned* urban densities requiring such services. These Plan Tables raise the question of the need for, and undermine the rationale for, designation of the Port Gamble area as a UGA. Again, the Port Gamble area fails to meet this criterion; therefore, the County erred in this UGA designation.

The County's action regarding the designation of a UGA for Port Gamble is clearly erroneous. The Board will remand the portions of the Plan, including maps, relating to the Port Gamble UGA to the County with direction to delete this UGA designation.

(2) South Kitsap/McCormick Woods UGA designation

The Plan provides:

The South Kitsap Urban Joint Planning Area consists of approximately 4,490 acres of land west of the City of Port Orchard. This Joint Planning Area consists of three separate areas: (1) the McCormick Woods development (a partly developed, vested golf course/residential PUD), and Campus Station (a vested mixed-use area north of McCormick Woods); (2) the 620 property, a vacant section of land west of McCormick Woods; and (3) an intervening area between the City's current boundaries and McCormick Woods. . . . At this time, the McCormick Woods and Campus Station ... are included in an Urban Growth Area. Plan, Part I, at 20-21 (emphasis added).

The Comprehensive Plan Land Use Map shows the South Kitsap UGA with a land use designation of "Urban Low Residential (5 - 9 du/acre)." The South Kitsap UGA is bordered on the east, south, west and a portion of the north by unincorporated areas designated either Urban Reserve or Rural. Approximately 3/4 of a mile of the northern boundary of the South Kitsap UGA abuts the southerly city limits of the City of Bremerton. Petitioner APAC makes several arguments challenging the South Kitsap Urban Joint Planning Area. The arguments made against the Urban Reserve areas and the County's land capacity analysis are addressed elsewhere in this Order. On the specific subject of the South Kitsap UGA, APAC argues the County should have designated the land as Rural. It argues that:

The McCormick [South Kitsap UGA] and South Kitsap Industrial Urban Growth Areas are, like

Port Gamble, isolated from urban growth in neighboring sectors, therefore characterized as “Island” UGAs. Although McCormick’s UGA is contiguous to incorporated City of Bremerton land on the north end of the undeveloped PUD “Campus Station”, the land adjoining it has been watershed utility land for decades and is not suitable for intensive development.” APAC PHB, at 22.

[47]

Intervenor McCormick responds that the South Kitsap UGA presently has urban services, including existing water and sewer service owned and operated by the City of Port Orchard. McCormick PHB, at 9. It also argues that:

While APAC argues that the area should not be a UGA, the argument is largely moot. Even if the County designated the entire area as Rural and assigned it a theoretical minimum lot size of 10 or 20 acre lots, the vested status of the 1162 lots would allow them to be developed. The Plan simply recognizes a reality - the South Kitsap UGA is already in the process of being developed at an urban density pursuant to vested approvals. The existing houses in the South Kitsap UGA have been built at a density of about 3.25 du/acre and the unbuilt units are designed at the same density. *Id.*

As to the allegation that the South Kitsap UGA is an island, McCormick responds that:

The entire north boundary of the South Kitsap UGA abuts the south boundary of the City of Bremerton. The area within the City immediately adjacent to the UGA is zoned for a combination of an industrial park, high density residential and related open space. McCormick PHB, at 11 (footnote omitted).

The Board agrees with McCormick. As APAC admits, the South Kitsap UGA is “contiguous” to the City of Bremerton. All cities are UGAs. RCW 36.70A.110(1). Therefore, the South Kitsap UGA is contiguous to the City of Bremerton UGA. It is not an island UGA, and APAC has presented no information to persuade the Board that the County lacked authority to designate the South Kitsap UGA.

(3) Manchester, Suquamish, Kingston and Keyport

Petitioner Ross argues that the County erred by failing to designate Manchester as a UGA. Ross argues:

Manchester is a community of dense, urban sized residential and commercial lots, which are currently served by a public water system and a sewage treatment plant... Each of these systems is shown, either at present or when expansion is completed, to have excess capacity. Yet, Kitsap County has designated this area as Rural while designating UGAs and UJPAs that are not supported by adequate existing facilities. Ross PHB, at 5.

Petitioner Ryan argues that Manchester’s proximity to the Southworth ferry slip should compel the County to assign a UGA designation. Ryan PHB, at 6. In addition, Ryan argues that, due to their urbanized character and location in eastern Kitsap County, Suquamish should have been designated as a UGA and the Kingston UGA should have been larger. *Id.* Ryan points to substantial ferry transportation investments as a rationale for concentrating UGAs in the eastern portion of the county, and states:

Kitsap’s future growth, by necessity, must focus on the private sector and be tied to East Sound. As much as strong economic diversification will boost the underlying zeitgeist of managing growth in a manner than (sic) reduces commutes, the truth is that the opportunity for Kitsap to take part in the past decade of economic expansion has been squandered... Whether we like it or not, commuters will make up a significant portion of our future growth. Ryan PHB, at 10-11.

Petitioner Posten argues *inter alia* that:

Keyport is an Urban area where adequate public facilities and services exist... [and] pre-existing and

orderly developed and regulated Urban area is evidenced. ... the 1996 Plan UGA map, (see Exhibit P-4) shows Keyport was previously [determined] to meet the Act criteria for a UGA and the 1998 Plan ... has deleted the Keyport UGA and designated the Urban area a Rural area thereby deleting the existence (on the map) of Keyport. Posten PHB, at 10-11.

The County responds to the arguments from Ross, Ryan and Posten by stating:

Manchester, Keyport and Suquamish were not included in the first or second priority because they are not incorporated cities, are not adjacent to incorporated cities, and are not adjacent to and do not contain major employment or commercial areas. Since all of the County's projected population can be accommodated in first or second priority areas, Manchester Suquamish and Keyport were not included as UGAs. County Response, Part I, at 40.

The County addresses its decision not to include Keyport as a UGA by stating:

Posten argues that Keyport should have been designated as a UGA because it contains dense development and various governmental services. Again, many areas in Kitsap County have fairly dense development and available urban services. Had the County designated all such areas as UGAs, its UGAs would have been oversized. . . . The County simply had to make difficult choices that resulted in excluding some such areas, including Keyport, from designation as UGAs. County Response, Part I, at 41.

The County further argues:

... although Posten claims that the County's refusal to rezone his property to commercial fails to comply with many sections of the GMA, his claims are really unrelated to the Act... His current uses of the property are unaffected. The remand process with its substantial work program and Board-imposed deadline, was not the process for the County to use to address site specific rezone requests. That type of request is more appropriately addressed in a yearly review of the Plan and related ordinance provisions. County Response, Part II, at 17-18.

In addressing Ryan's arguments about Suquamish and Manchester, the County asserts:

Ryan does not argue that Manchester or Suquamish meets the criteria for designation as UGAs. Rather, Ryan argues that the County should have adopted a paradigm for growth that planned for additional commuters and a decrease in county employment growth. Under that paradigm, Ryan argues, the UGAs in the center of the County should be smaller, and large UGAs should be designated in the eastern portion of the County, at Kingston, Suquamish and Manchester. County Response, Part I, at 40 (footnote omitted).

The County responds that its Plan priorities and the application of those priorities, were consistent with the requirements of the GMA.

Having complied with GMA's sizing requirements, Kitsap County has discretion in deciding what unincorporated areas of the County should be included in UGAs. RCW 36.70A.3201. *See also Tacoma v. Pierce County*, CPSGMHB #94-3-0001 (Final Decision and Order, 7/5/94) at 471 ("Local jurisdictions have great discretion in deciding how to accommodate these projections in light of local circumstances and traditions.") County Response, Part I, at 38-39.

As noted in Section VII.D.1 above, the Board concludes that the County correctly sized its UGAs. Having sized the aggregate UGA acreage to meet the forecasted growth, the County then allocated the UGA acreage based on the requirements of the Act and the siting criteria in its own Plan. The Board rejects the arguments advanced by Ross and Posten that the fact that an area is urbanized compels the County to designate it as a UGA. The Board

[48]

affirms its prior holdings to that effect. Likewise, the mere fact that the 1996 version of the Plan designated as UGAs Manchester, Keyport and a larger portion of Kingston, does not mandate the same outcome in the 1998 Plan.

While Ryan advocates a policy choice of assigning UGA acreage to urbanized lands close to the ferry slips in eastern Kitsap, the Board of County Commissioners made a choice that gave great weight to a different policy objective – namely, to diversify and strengthen the county’s economy by increasing in-county employment and decreasing the number of out-of-county commuters. Such a policy choice was clearly within the County’s sound discretion under the Act.

(4) Poulsbo

Petitioner Swenson raises a number of issues regarding the County’s decision designating his property west of Poulsbo as rural rather than including it in the Poulsbo UGA.

The County responds:

In designating UGAs and the Poulsbo Joint Planning Area, the County used the siting criteria outlined in the Population Appendix of the Plan at A-40 to 41. The Poulsbo Joint Planning Area immediately surrounding the City is composed of Tier 3 areas; they lack urban densities, defined by the Plan as 3 du/acre, net, and have no existing sewer service. Plan at A-41 and A-40. However, they have been identified by the City for expansion of its sewer services. The Swenson property is not adjacent to the City of Poulsbo. It is in an area which has a density of less than 3 du/acre, net. It has neither existing, nor proposed sewer service. The Swenson property does not qualify for inclusion in the Joint Planning Area. County Response, Part II, at 14-15 (emphasis in original).

In fact, there is no UGA adjacent to Poulsbo. Instead, the County designated an Urban Joint Planning Area. Plan, at 20. Swenson’s property was designated rural rather than UJPA or UGA. The Board construes Swenson’s argument to be that the County was obligated to include his property either in the Poulsbo UGA or in the UJPA. In either case, the Board agrees with the County that the Swenson property did not meet the Plan criteria, and the County was not compelled by RCW 36.70A.110 to include Swenson’s property in either a UGA or UJPA.

[49]

(5) Illahee Trust Lands

[50]

The Washington State Department of Natural Resources (DNR) framed three issues in challenging the

[51]

County’s designation of the Illahee property as Urban Study Area (USA) – Urban Reserve (UR). However, in its prehearing brief, DNR offered limited and combined argument for all three issues. Basically, DNR offers two arguments: 1) the USA designation raises numerous practical and jurisdictional problems regarding which jurisdiction’s standards will apply and which jurisdiction will provide services; and 2) the GMA has been

[52]

improperly used to put the property in a “twilight zone”. DNR PHB, at 5. The City of Bremerton asserts that the USA designation “creates the potential for [an] island of rural property in the midst of urban development. This is not consistent with RCW 36.70A.110. The Illahee property should be included within the Urban Growth Area.” Bremerton PHB, at 9-10.

The County responds by noting that DNR concedes the property is wooded and does not contain urban growth. The County also counters that DNR has not cited to any GMA provision that requires designation of the Illahee property as a UGA simply because it is adjacent to a designated UGA. County Response, Part I, at 41-42. In reply, DNR addresses all three issues with citations and further argument that the County designation inappropriately singles out the Illahee property “as an island in a sea of urban growth.” Significantly, DNR

“acknowledges the provisions of RCW 36.70A.110 regarding designation of urban growth areas is permissive.”DNR Reply, at 2 and 3.

In describing the Urban Study Areas, the County’s Plan provides:

An Urban Study Area designation is intended to recognize that a specific property or geographic sub-area may be appropriate for inclusion in an Urban Growth Area but that additional planning and discussion are necessary to determine a range of issues, including the most appropriate land uses.

The Comprehensive Plan map recognizes the Department of Natural Resources Illahee property as an Urban Study Area. . . .

[53]

The Study Area designation and process are intended to provide an opportunity to recognize and accommodate these multiple interests through a facilitated multi-party planning process. In the interim, to preserve planning options, Urban Study Area properties shall be zoned Urban Reserve.

[The date given in the Plan for completion of the Illahee USA study is] Target Date: 1998-1999.

Plan, Part I, at 27-29.

In describing the Urban Reserve designation, the Plan provides:

Urban Reserve: The Urban Reserve designation is used on the Comprehensive Plan Map to indicate areas that are potentially suitable for inclusion in the Urban Growth Area. Urban Reserve areas are intended to recognize:

. . .

(b) designated Urban Study Areas, which are intended to resolve issues regarding potential land uses.

. . .

These areas are given an interim low-density designation of 1 dwelling unit per 10 acres as a means of preventing establishment of land uses or land use patterns that could foreclose planning options and eventual development or redevelopment at higher urban densities. *Designated Urban Reserve lands that are determined to not be needed or appropriate for urban development pursuant to a defined planning process will be re-designated as Rural through the Comprehensive Plan amendment process.*

Plan, Part I, at 35 (emphasis added).

As DNR acknowledges, the provisions of RCW 36.70A.110 regarding designation of urban growth areas are permissive. Neither DNR nor Bremerton cite to, or argue, a GMA provision that compels the designation of the Illahee property as part of the UGA. DNR and Bremerton have failed to meet their burden of proof in showing how the County’s USA – UR designation failed to comply with RCW 36.70A.110. As described by the County, the USA – UR designation falls within the County’s discretion as an interim measure.

[54]

2. Industrial/Commercial Lands Analysis

a. Factors, Assumptions and Methodology County-wide

The Board’s 1997 Order did not address UGAs in the context of industrial and commercial lands.

The County is striving to increase economic diversity by reducing the County’s dependence on military

employment. To accomplish this, the County has determined to increase the proportion of light industrial and high technology jobs from its current level of 2.9 percent to 9 percent by 2015. In its industrial and commercial land capacity analysis, the County's general approach was to "identify forecast jobs; estimate land needs based on typical building configurations and use patterns; calculate appropriate deduction and market factors to compensate for land constraints and market effects; and compare demand to existing supply to identify any deficiency or surplus." Plan, Part I, at A-174, 175. The County reviewed the 1994 study by the EDCKC (Index 14833); approaches used by other jurisdictions in the Puget Sound region; the work of a public-private task force in King County; and a study by the National Association of Industrial and Office Parks (published in 1988 and updated in 1992). Plan, Part I, at A-175. After identifying industrial/commercial lands, the County designated the majority of its designated vacant industrial lands in "Urban Reserve," prohibiting subdivision of those parcels to lots smaller than 10 acres. Plan, Part I, at A-186 and 35.

One petitioner argues that the Plan does not provide for enough industrial and commercial lands; several other petitioners argue that the Plan provides for too much industrial and commercial land.

(1) Market factor

The County used a market factor of 50 percent for industrial lands and 25 percent for commercial lands. Plan, Part I, at A-182, 183. Petitioners argue that the 50 percent industrial lands market factor is too high. The record reveals market factors ranging from 25 to at least 250 percent (e.g., the EDCKC study recommended a 250 percent market factor; CTED recommended a 25 percent market factor; the Industrial/Commercial Issue Paper recommended a 25 percent market factor). Index 16649, Industrial and Commercial Land Supply and Demand Analysis Issue Paper, at 10. The County's selection was well within the range of market factors contained within the record. Petitioners have not met their burden to show that the County's adoption of a 50 percent industrial lands market factor did not comply with the Act. The Board concludes that the County's Actions were not clearly erroneous.

(2) Critical areas reduction factor

The County used a critical areas reduction factor of 32 percent for both industrial and commercial lands. Plan, Part I, at A-180-81. The Industrial/Commercial Issue Paper proposed a 15 percent reduction factor. Index 16649, at 9. Commenting on the Issue Paper, Petitioners KCRP and APAC objected to the 15 percent reduction factor, stating that it did not "adequately reflect[] what exists on a given piece of land" and that "many areas of the county are more than 50 percent critical areas." Index 16420, at 4 (typed page 2). KCRP argues that a standard discount factor for critical areas is inappropriate because of the variation among sites. In other words, "map the critical area – only as a last resort is a discount standard appropriate." KCRP Reply, at 29. However, the Board has previously rejected the argument that the requirement to designate critical areas means map critical areas. "The requirement to designate may be met by designating or mapping known critical areas now or by adopting a process to designate or map them as information becomes available." *Pilchuck v. Snohomish County*,

[\[55\]](#)

CPSGMHB Case No. 95-3-0047, Final Decision and Order (Dec. 6, 1995), at 19.

Based on the record, the County had information that appropriate critical areas reduction factors ranged at least from 15 to 50 percent. Petitioners have not met their burden to show that the County's adoption of a 32 percent critical areas reduction factor did not comply with the GMA. The Board concludes that the County's action was not clearly erroneous.

(3) Increased manufacturing employment assumption

KCRP also argues that “an increase in employment in the civilian-manufacturing sector of the forecast work force would have to be offset with decreased employment in other sectors” and that employees for these new jobs “must come from some combination of:(a) population growth in addition to OFM forecast growth; (b) immigrant commuters; and (c) the otherwise unemployed.”KCRP PHB, at 22-23.KCRP overlooks the possibility that some of these “new” workers will come from the approximately 19 percent of County residents that work outside of Kitsap County.Petitioners have not met their burden to show that the increased manufacturing employment assumption did not comply with the Act.The Board concludes that the County’s actions were not clearly erroneous.

(4) Consideration of alternative sites

KCRP argued that the Plan “does not allocate any of the targeted addition to employment . . . to existing labor intensive industrial activities at their current sites or jobs per acre density or to small in-home enterprises” and that “[i]t was unreasonable for the County to fail to discuss and consider redevelopment of both military lands and other under-utilized and/or abandoned commercial and industrial lands.”KCRP PHB, at 32-33.In other words, KCRP argued that the County should allocate a higher percentage of industrial land to the County’s cities and to as-yet-to-be-abandoned military facilities.KCRP offered no citation to the record to support its position that the cities could provide more industrial land and that military bases would become available for private use during the life of the Plan.

In contrast to KCRP’s proposition, the record supports the County’s action.The Industrial/Commercial Lands Issue Paper states that “[t]here are few if any large parcels existing within the contiguous urbanized area.”[\[56\]](#) Index 16649, at 2.As for the private use of military facilities, “the EDC has been trying to sit down with the Navy to discuss the possibility of using a portion of the Puget Sound Naval Station for industrial or business park opportunities.All efforts to have such a discussion have been unsuccessful to date.”EDCKC Response, at 5. The Board agrees with the EDCKC’s statement that “past history supports the County’s assumption that it is impossible to effectively plan for the joint use or redevelopment of military property.”*Id.*Petitioners have not met their burden to show that the County’s actions did not comply with the GMA and the Board concludes that the County’s actions were not clearly erroneous.

(5) Other reduction factors and assumptions

Petitioners’ arguments regarding the public facilities reduction factor, the County’s sequence of applying the reduction factors in its calculations, and the County’s assumptions regarding building area per employee do not leave this Board with the definite and firm conviction that the County made a mistake.Petitioners have not met their burden to show that the County’s actions did not comply with the GMA, and the Board concludes that the County’s actions were not clearly erroneous.

Regarding lot coverage calculations, the County identified a mistake in the text of the Plan.The Plan provides:“Lot coverage refers to the percentage of land that is covered by buildings, parking areas, outside storage and other impervious surfaces.”Plan, Part I, at A-179.The County’s response brief states that “upon further review it has become clear that the County’s lot coverage percentages include only building footprints and exclude other impervious surfaces.The County is more than willing to correct this mistaken characterization of what the 38 percent actually accounts for during its first annual Comprehensive Plan amendment process.”County Response, Part I, at 60.The Board agrees with the County – this text error has no bearing on the validity of the County’s Industrial/Commercial land capacity analysis.However, the Board will remand this narrative for the County to correct the Plan description of what “lot coverage” refers to.

(6) Industrial reserve

KCRP argued that the County calculated the amount of industrial/commercial lands it needed, and then “hedged by providing an industrial reserve.” KCRP PHB, at 36. This assertion is not supported by the record. After identifying lands as industrial/commercial, some of those lands were placed in reserve status. See Plan, Part I, at A-186. As the County responded, “[t]he Urban Reserve limitations were not used to designate industrial land in excess of that designated pursuant to the County’s land capacity analysis.” County Response, Part I, at 65-66. Petitioners have not met their burden to show that the County’s actions did not comply with the Act, and the Board concludes that the County’s actions were not clearly erroneous.

b. Specific Industrial/Commercial UGAs

(1) South Kitsap Industrial Area

APAC objects to UGA designation of the South Kitsap Industrial Area. APAC’s arguments regarding this industrial/commercial UGA consist only of several conclusory and unsupported statements:

- “This proposed land use element of the Plan is invalid. This type of Industrial and Commercial use planning interferes with the goals of RCW 36.70A.020(1) and (2).” APAC PHB, at 12.
- “The South Kitsap Industrial Area is discussed [in County Response, Part I] on page 66, at line 7, ‘. . . and to facilitate planning for capital facilities which best use the airport’s remaining undeveloped and underutilized areas . . .’ Why are we planning to add more acreage when much is already available? The County states on page 67 that ‘. . . some infrastructure is already in place in the area.’ In fact, there is very little.” APAC Reply, at 5.

APAC’s “arguments” on this issue demonstrate disagreement with the County’s decision. APAC has failed to convert into convincing arguments the cornucopia of quotations, complaints and conclusory statements included in its briefs. APAC has not met its burden to show that the County’s actions do not comply with the Act and the Board concludes that the County’s actions were not clearly erroneous.

(2) Port Blakely

Several Petitioners object to the industrial/commercial UGA designation of the Port Blakely Tree Farm property. The essence of Petitioners’ arguments is that the County should have determined the existence of forest lands of long-term commercial significance before designating the Port Blakely property as industrial/commercial UGA. This “Forest Lands” issue is addressed in Section VI.C of this Order and will not be addressed here.

(3) South Sidney Industrial Development

Petitioner South Sidney’s property was designated as industrial land in the 1996 Plan. The 1998 Plan does not designate this property as industrial. South Sidney challenges the County’s removal of its lands from industrial designation. South Sidney first claims that the County’s 1998 Plan should have adopted the industrial and commercial land capacity methodology in the 1996 Plan. Although the County relied on portions of the EDCKC study, the County determined that “review of the EDCKC study reveals that the factors used for determining a parcel’s potential for industrial use were highly subjective, including current land price, judgments relating to slopes or critical areas, potential for on-site contamination, access issues, the potential compatibility of uses of surrounding properties, etc.” County Response, Part I, at 47 (citing Index 833, at 4-2 through 4-8). Also, the 1996

Plan maintained industrial designation for parcels deemed inappropriate for such use, “and simply designated more industrial land.”*Id.* “The County’s adopted land capacity analysis is based on considerably more objective factors.”*Id.* (citing Plan, Part I, at A-175).

South Sidney claims that its parcel, which was included within an industrial/commercial UGA designation in previous plans, would be an appropriate location for a business park based on its proximity to sewers and the City of Port Orchard. “However, a review of the record demonstrates precisely why the County removed the Business Park designation from that property.” County Response, Part I, at 48. The County argued that there were environmentally “problematic” areas in the vicinity of the South Sidney properties. County Response, Part I, at 48 (quoting Rick Kimball, the County’s Environmental Coordinator, Index 16403). Again, South Sidney did not refute the County’s argument.

Once the County determined how much land was required to fulfill the County’s projected industrial/commercial employment needs, it drew the boundaries of its industrial/commercial UGAs. ^[57] It was within the County’s discretion to draw the industrial/commercial UGA boundaries of the 1998 Plan smaller than the boundaries of the 1996 Plan. Petitioner South Sidney has failed to meet its burden to show that the County’s action in excluding the South Sidney properties from UGA designation do not comply with the Act. The Board concludes that the County’s action was not clearly erroneous.

UGA Conclusions

Once a UGA has been designated, the provisions of a county plan may not condition or limit the exercise of a city’s annexation land use power.

The County’s adoption of the framework for joint planning for unincorporated areas within designated UGAs and its potential effect on city annexations **does not comply** with RCW 36.70A.110 -- Issue R-1. After considering the matter, the Board is left with a firm and definite conviction that a mistake has been made; therefore, the County’s action was clearly erroneous. The Board will **remand** Policy UGA-13 and the associated text (pp. 19-26) with direction to the County to clarify its intent.

The County’s designation of the Port Gamble UGA **does not comply** with RCW 36.70A.110 -- Issues S-5, 36-38, 51-53, 55 and 56. After considering the matter, the Board is left with a firm and definite conviction that a mistake has been made; therefore, the County’s action was clearly erroneous. The Board will **remand** the 1998 Plan, specifically the text, including maps and development regulations, relating to the Port Gamble UGA with direction to delete the UGA and amend the Plan and development regulations accordingly.

With the exception of the two items noted above, Petitioners have **failed to meet their burden of proof** in showing how the County’s actions regarding UGAs and the Land Use Element (i.e. Residential Lands issues: population projections, population allocation to cities, average density assumptions, accessory dwelling units, residential development in commercial areas, net v. gross acreage, reduction factors, urban reserve areas joint planning areas, other UGA issues, South Kitsap/McCormick Woods UGA designation, Manchester, Suquamish, Kingston, Keyport, Poulsbo, Illahee Trust Lands; and Industrial/Commercial Lands issues: market factor, critical areas reduction factor, increased manufacturing employment assumption, alternative sites, other reduction factors and assumptions, industrial reserves, South Kitsap Industrial Area, Port Blakely, South Sidney Industrial Development) fail to comply with various provisions of the Act. -- Issues R-1, 3 and 5, S-5, 1, 2, 6 - 10, 12, 18 - 20, 36 - 38, 41- 47, 49 - 56.

Through the County’s own admission, it incorrectly defined and applied the term lot coverage in its Economic Development Appendix. The County has committed to correct this error on remand. The County will be so directed to do so.

e. RURAL LANDS ^[58]

Applicable Law and Discussion

The Board has rescinded its Determination of Invalidity. *See* Section V, *supra*. The Board also remanded the Rural Element, directing the County to bring it into compliance with the GMA. Pursuant to RCW 36.70A.320(1), the new Rural Element adopted by the County is presumed valid. Consequently, pursuant to RCW 36.70A.320(2), Petitioners bear the burden of proof to show that the County's actions regarding Rural Lands are not in compliance with the requirements of the Act. Petitioners challenge the Plan's rural residential densities, application of the IRF designation, and failure to harmonize the rural element with the GMA planning goals.

1997 Order

The 1997 Order provided in relevant part:

The Board holds that certain provisions of the County's Rural Element, specifically the Rural Infill Provisions, and the provisions in the Wooded Rural, Rural Low-Density and Rural Medium-Density that permit 2.5 acre and 1 acre lots, and the Grandfathering Clause provisions of the Land Use Element, and the Comprehensive Plan Map do not comply with requirements of the Act and fail to be guided by its goals, as construed by the Board in the above cited cases and as clarified by recent legislative enactments.

Conclusion Nos. 3 and 5

The Board answers both Issues 3 and 5 in the affirmative. The Rural Element provisions, specifically the Rural Infill, Wooded Rural, Rural Low Density and Rural Medium Density provisions that permit 2.5-acre and 1 acre lots, together with the Grandfathering Clause provision in the Land Use Element, and the Comprehensive Plan map, perpetuate a **pattern** of urban growth outside designated UGAs, and permit densities and uses that are incompatible with the rural character of such lands, contrary to the requirements of RCW 36.70A.070(5) and RCW 36.70A.110(1). In addition, these Plan provisions fail to be guided by the goals of RCW 36.70A.020 set forth in Section VII of this Order.

1997 Order, at 26, 27 (emphasis in original).

The County's Response on Remand

As previously noted in this Order, the County responded to the Board's 1997 Order by enacting Ordinance No. 215-1998. The County noted in its Statement of Actions Taken to Comply that in adopting the Ordinance, it had included findings which detailed how the County complied with the Board's finding of noncompliance. Additionally, the Ordinance repealed the 1994 and 1996 Plans and adopted the 1998 Plan. Regarding the Rural Element, the Ordinance states:

[Finding 39] The County has removed all provisions in the Plan that allowed the creation of 2.5 and 1 acre lots in the rural areas. The 1998 Plan provides that the minimum lot size in rural areas is 1 dwelling unit per 5 acres, with no bonus provisions.

[Finding 40] The Rural Element of the Plan provides that the County will develop provisions to permit some clustering of residential development in the rural area while preserving environmentally sensitive areas; harmonizing topography and landscape features; maintaining and enhancing rural character, views and open space corridors; and encouraging compatibility between resource and residential land uses.

[Finding 41]The County has removed from the Plan provisions which allowed for density increases along shorelines in the rural area.The Commissioners intend that the County develop a program to preserve some undeveloped rural shoreline as open space.The program should preserve rural shorelines in an undeveloped state, including appropriate provision of public access to shorelines, and will address minimum parcel size and frontage requirements, protection of sensitive areas, transfer of development rights, clustering, reasonable density bonuses, compatibility of development to surroundings and a management plan for natural resource activities.

[Finding 42]The Rural Element includes provisions which establish basic criteria for defining limited areas of more intensive development pursuant to the GMA.

[Finding 43]The Land Use and Rural Element preserve the rural character within the county, do not allow a pattern of urban growth in the rural area and are guided by the planning goals of the GMA.

Ordinance No. 215-1998, at 6.

1998 Challenge -*Alpine/Bremerton* Compliance

1. Rural Residential Densities

Petitioners KCRP and APAC challenge the Plan's rural element in several ways.They argue that the Plan does not provide for a variety of rural densities; that the Plan does not protect rural character; and that the Plan permits urban growth in the rural areas.

First, Petitioners KCRP and APAC argue that the Plan's rural element fails to provide a variety of rural densities. The GMA requires that the rural element "shall provide for a variety of rural densities, uses, essential public facilities, and rural governmental services needed to serve the permitted densities and uses."RCW 36.70A.070(5)(b).The County's Plan has four rural land use designations:IRF, which permits 1 du/20 ac; UR, which permits 1 du/10 ac; RP, which permits 1 du/10 ac; and RR, which permits 1 du/5 ac.These four designations permit maximum densities of from 1 du/20 ac to 1 du/5 ac.

KCRP asserts that the Plan's four rural designations do not provide a variety of rural densities; its argument is that these designations permit residential development in the rural area far in excess of the population allocated to the rural area.*See* KCRP PHB, at 41 (stating that the RP and RR designations permit "460 percent of the allocated 10,070 1997 to 2012 rural total increase, and 138 percent of the allocated 33,566 person 1997 to 2012 total increase for the entire unincorporated County").Petitioner is not arguing for a greater variety of rural densities; Petitioner is arguing for lower rural development capacity.This is not sufficient to meet KCRP's burden of showing that the County's action, adopting a rural element providing four rural land use designations, was clearly erroneous as to the requirement of RCW 36.70A.070(5)(b).

APAC's argument on this issue consists solely of the conclusory statement that "Again the rural element fails under RCW 36.70A.070(5)(b) because there is not a variety of densities . . ."APAC PHB, at 5.This fails to meet APAC's burden of showing that the County's action was clearly erroneous.

KCRP next argues that the Plan's rural element "fails to include measures for controlling rural development, reducing the inappropriate conversion of undeveloped land into sprawling low-density development in a rural area, protecting critical areas and surface waters and groundwater resources, and protecting against conflicts with the use of forest resource lands."KCRP PHB, at 43-44.This conclusory statement constitutes the whole of KCRP's argument on this issue and fails to overcome the County's presumption of validity.KCRP has failed to meet its burden of showing that the County's action was clearly erroneous.

Finally, KCRP argues that the County's Plan permits impermissible urban growth in rural areas. Petitioner's argument is premised on a finding that the County's UGAs are too large and that "the oversized urban growth residential and industrial commercial areas extend well into areas that would be rural with properly sized UGAs. To the extent the Plan permits growth that is urban in nature to occur in rural areas, it violates RCW 36.70A.110 (1)." KCRP PHB, at 44. KCRP's premise fails because the Board has found that the great majority of the County's UGAs comply with the requirements of the Act; land within the UGA is urban. Therefore, KCRP has failed to meet its burden of showing that the County's action was clearly erroneous.

Petitioner APAC's argument is similarly conclusory and unpersuasive: "Again the rural element fails under RCW 36.70A.070[5](b) because . . . incorrect land uses allow urban growth inconsistent with rural character." APAC PHB, at 5. APAC has failed to meet its burden of proof.

2. IRF Designation

a. Screen Property

Petitioner Screen argues that the County erred when it applied the IRF designation to a portion of its property, thus creating an internal inconsistency between the Plan and the land use map. The Plan defines the IRF designation as "applied to 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." Plan, Part I, at 64 (emphasis added). Although the County responded that this language "was never intended to be 'criteria' for designation," the plain language of the Plan provides otherwise. *See* County Response, Part II, at 13. The "Rural Area Designations" section of the Rural and Resource Lands Chapter "establishes the criteria for designation of rural lands." Plan, Part I, at 59.

"When the words in a [comprehensive plan] are clear and unequivocal, this [Board] is required to assume the [legislative body] meant exactly what it said and apply the [plan] as written." ^[59] *Duke v. Boyd*, 133 Wn.2d 80, 87 (1997). The language of the Plan is clear – the IRF definition contained in the Plan provides the criteria to be applied by the County in designating lands as IRF. In addition, the language of the Plan provides that all of the stated criteria must be met to apply the IRF designation.

Petitioner Screen presented uncontested evidence that its property "has not been actively managed for forestry . . . and is not currently taxed as timber land." Screen PHB, at 6-8 (citing Index Nos. 17101 and 17911). By designating land as IRF that does not satisfy the criteria of the IRF designation, the Plan text is inconsistent with the Plan land use map.

The County's action regarding the designation of the Screen property is clearly erroneous. The Board will remand the portions of the Plan, including maps, relating to the Screen property to the County with direction to delete the IRF designation and redesignate the property for an appropriate "Rural" or other non-Urban land use designation.

b. Shoreline Properties

Petitioner Manke asserts that shoreline properties should not be included in the IRF designation. Manke argues that the IRF designation, allowing only 1 du/20 ac, leaves owners of IRF-designated shoreline properties "with no reasonable use of their property." Manke PHB, at 18-19. The County responds that the residential densities permitted in IRF designations are reasonable rural densities and that the Plan "calls for reconsideration of the issue of shoreline properties." County Response, Part II, at 11 (citing R-11, Plan, Part I, at 66).

Manke is correct that the GMA distinguished shorelines as one area where higher density is allowed in a rural setting. The Act states that “the rural element *may* allow for limited areas of more intensive development [such as shoreline development].” RCW 36.70A.070(5)(d) (emphasis added). However, the Act does not *require* that the rural element allow areas of more intensive development.

Unlike Petitioner Screen, Manke does not argue that the County misapplied the IRF designation to its properties. Petitioner Manke has not shown that the County’s action, designating its properties (including shoreline properties) IRF, failed to comply with the Act.

3. Harmonization of Rural Element with GMA Planning Goals

Petitioner KCRP argues that the County has failed to develop a written record “explaining how the rural element harmonizes the planning goals in RCW 36.70A.020.” KCRP PHB, at 37. RCW 36.70A.070(5)(a) provides:

Because circumstances vary from county to county, in establishing patterns of rural densities and uses, a county may consider local circumstances, but shall develop a written record explaining how the rural element harmonizes the planning goals in RCW 36.70A.020 and meets the requirements of this chapter.

The Board recently addressed this provision of the Act. In *Sky Valley v. Snohomish County*, the county retained a rural residential density previously found noncompliant by the Board, arguing that the noncompliant density was justified by local circumstances and authorized by RCW 36.70A.070(5)(a). CPSGMHB Case No. 95-3-0068c, Second Order on Compliance (Sept. 8, 1998), at 11. The Board stated that “[w]hen considering local circumstances, there must be ‘a written record explaining how the rural element harmonizes the planning goals in RCW 36.70A.020 and meets the requirements of (the GMA).’” *Id.* at 12. The Board reviewed the county’s explanation of how the rural element harmonized the planning goals, because the county’s rural element contained a pattern of “more intensive rural development” in the form of rural residential densities of 2.3-acre lots. *Id.* at 10; *see also*, RCW 36.70A.070(5)(d). There is no such pattern of “more intensive rural development” in Kitsap County’s Plan. The most dense rural residential development permitted by the Plan is 1 du/5 ac.

Petitioner KCRP’s real complaint is that the County did not adopt one of the alternatives offered by KCRP that, in Petitioner’s words, “would have provided a high probability of achieving the goals of the Act.” KCRP PHB, at 38. KCRP’s burden is to show that the County’s adopted alternative fails to comply with the requirements of the Act; it is not sufficient for KCRP to allege that one of its proposed alternatives would be more likely to achieve the goals of the Act.

Rural Lands Conclusions

Petitioners have **failed to meet their burden of proof** in showing how the County’s actions regarding Rural Lands, i.e. rural residential densities, shoreline properties and harmonized goals, do not comply with RCW 36.70A.070(5), .110 and .020 – Issues R-1, 5, 11, 20, 21 and 44

The County’s designation of the Screen property as IRF does **not comply** with RCW 36.70A.070(preamble) – Issues R-3, 39 and 40. After considering the matter, the Board is left with a firm and definite conviction that a mistake has been made; therefore, the County’s actions were clearly erroneous. The Board will **remand** those portions of the Plan, including maps, relating to the IRF designation of the Screen property to the County with direction to delete this designation and redesignate the property with an appropriate “Rural” designation.

f. capital facilities

Applicable Law and Discussion

The Board did not invalidate the Capital Facilities Element of Kitsap County's Plan. Therefore, pursuant to RCW 36.70A.320(1), Kitsap County's adoption of Ordinance No. 215-1998, as it relates to the County's Capital Facilities Element, is presumed valid upon adoption. Consequently, pursuant to RCW 36.70A.320(2), Petitioners bear the burden of proof to demonstrate that the County's action regarding capital facilities is not in compliance with the requirements of the Act.

1997 Order

In its 1997 Order, the Board stated:

The Board holds that the separate and limited domestic water supply system inventories and needs assessments prepared by the County, do not comply with the requirements of RCW 36.70A.070(3)(a) and (b), and the Capital Facilities Element will be remanded with directions to bring the domestic water system inventories and needs assessments into compliance.

...

[T]he Board holds that the County's CFP does not comply with RCW 36.70A.070(3)(e), since it has not included a commitment or implementation strategy to address this requirement.

...

[T]he Board holds that the Capital Facility Element is deemed to be internally inconsistent with other Plan elements and therefore not in compliance with the requirements of RCW 36.70A.070(preamble).

...

Conclusion Nos. 13 and 16

Regarding the specific components required for a Capital Facilities Element, the Kitsap County's capital facility plan **complies** with the requirements of RCW 36.70A.070(3) **except** that:

- the water supply system inventories and needs assessment **do not comply** with RCW 36.70A.070(3)(a) and (b).
- the capital facility plan element **does not comply** with RCW 36.70A.070(3)(e).

Regarding internal consistency of the capital facility plan with other elements and the land use map, Kitsap County's capital facility plan is deemed to **not comply** with RCW 36.70A.070.

The Capital Facilities Element will therefore be **remanded** with direction to bring it into compliance with RCW 36.70A.070(3)(a)(b) and (e), as noted above; and to bring it into compliance with RCW 36.70A.070's direction to achieve internal consistency with the other Plan elements and the land use map as required by the Act and this Order.

1997 Order, at 40-43, *passim* (emphasis in original).

The Board's Order provided, in relevant part:

The Board finds the Capital Facilities Element of the Plan **does not comply** with the internal consistency requirements of RCW 36.70A.070(preamble). Further, the Capital Facilities Element does not comply with the requirements of RCW 36.70A.070(3)(e); and the water systems portion of

the Element does not comply with the requirements of RCW 36.70A.070(3)(a) and (b). . . [This element is] remanded with instructions to bring the Capital Facilities Element. . . into compliance with the requirements of the GMA, as set forth and decided in this Order. Order, at 51-52 (emphasis in original).

The County's Response on Remand

As noted previously in this Order, the County responded to the Board's 1997 Order by enacting Ordinance No. 215-1998. The County noted in its Statement of Actions Taken to Comply that in adopting the Ordinance, it had included findings which detailed how the County complied with the Board's Order. Additionally, the Ordinance repealed the 1994 and 1996 Plans and adopted the 1998 Plan. Regarding the Capital Facilities Element, the Ordinance states:

[Finding] 49. The Capital Facilities Plan includes an inventory for, and provides a needs assessment of the County's public water systems as required in the FDO.

[Finding] 50. The Capital Facilities Plan includes in Policy 2.7, and in several other statements throughout the Plan, a commitment by the County that if projected funding is inadequate to finance needed capital facilities based on adopted levels of service and forecasted growth, the County will adjust the level of service, the Land Use Element, the sources of revenue, or any combination thereof, in order to achieve a balance between available revenue and needed capital facilities.

[Finding] 51. The Capital Facilities Element and Plan meet all requirements of the GMA for capital facilities.

Ordinance No. 215, at 7. ^[61]

The County's adoption of the Ordinance, including the Capital Facilities Element/Plan (Part II), is presumed valid; it is Petitioners' burden to demonstrate otherwise.

1998 Challenge -Alpine/Bremerton Compliance

In their respective 1998 PFRs, Petitioners ^[62] challenge anew the provisions of Kitsap County's Capital Facilities Element. Although the Prehearing Order indicated that KCRP raised, and would brief, the shared capital facility issue (S-4), ^[63] it failed to do so. KCRP PHB, at 1-47. Issues not briefed are abandoned. WAC 242-02-570(1). Likewise, APAC failed to brief APAC's individual issues 32 and 35; consequently, these issues are also abandoned. APAC PHB, at 28-34. ^[64] Additionally, on the shared capital facilities issue (S-4), APAC's brief adopts KCRP's brief by reference. APAC PHB, at 34. However, as noted above, KCRP abandoned this issue. Therefore, APAC's capital facilities issue challenges are abandoned.

NKCC contends that the County's distribution of the OFM population forecast is "front-end loaded." NKCC argues that instead of the population being evenly distributed over the planning period, the County has distributed a higher and disproportionate share of the population to the period ending in 2000 and less during the 2001-2012 timeframe. The consequences of this front-end loading of population is that if the planned-for new capital facilities are constructed and the planned-for new residents do not arrive, the current residents must pay for the constructed capital facilities. To support its position, NKCC indicates that recent OFM projections show

that the County lost population in 1997. NKCC PHB, at 5. NKCC concludes: “The County has not changed the Capital Facilities Plan to lower revenues and requirements for new capital facilities because of the lower population growth. Therefore, the 1998 CFE does not comply with RCW 36.70A.070(3)(e) and the internal consistency requirements of .070(preamble).” NKCC PHB, at 8.

The County counters that its CFE population planning is fully consistent with the GMA. It asserts that the County’s population increased from 1990 through 1997 at a rate higher than a straight-line annual increase, and the CFE is “front-end loaded” because the County’s population increase has been “front-end loaded.” County Response, Part I, at 135-136. Nonetheless, the County acknowledges that necessary adjustments to the CFE “will be made as part of the County’s buildable land monitoring and evaluation program. However, at this point, the County has determined that an excessive population increase in the first few years of its planning period does not necessarily mean that the . . . projections are inaccurate.” County Response, Part I, at 136.

While the Board understands NKCC’s argument and concern, it must agree with the County’s general conclusion — “front-end loading” of population is not a GMA violation. The GMA requires the County to accommodate the urban growth projected for it by OFM. RCW 36.70A.110(2). This same section of the GMA also provides: “[C]ounties have discretion in their comprehensive plans to make many choices about accommodating growth.” Neither the GMA nor the Procedural Criteria (Chapter 365-195 WAC) requires or suggests that the OFM population be evenly distributed over the planning period. The County clearly has discretion to distribute the population over the planning horizon as it sees fit, so long as the urban growth is accommodated. The “we will pay for building it, even if they do not come” scenario, described by NKCC,

[65]

however, is conceivable.

Contrary to NKCC’s assertion, RCW 36.70A.070(3)(e) does not require immediate adjustment to the CFE if the actual and projected population are out of synch for a given year. The provisions of RCW 36.70A.070(3)(e), which requires a reassessment of the land use element if probable funding falls short of meeting existing needs, would trigger an evaluation of the various options available to the County to maintain consistency among

[66]

elements of the Plan. The County’s current CFE Policy 2.7 clearly recognizes this option. The County has also committed to evaluating and adjusting its CFE in the context of the “buildable lands study.” County Response, Part I, at 136. This type of management is what the Act requires. NKCC has failed to meet its burden of proof in showing how the County failed to comply with RCW 36.70A.070(3) or .070(preamble) – Issues R-2, A, R-3 and S-4.

The County’s six-year financing plan, contained in the CFE of its 1998 Plan, spans the time period from 1994 through 2000. Alpine argues that the six-year financing plan required by RCW 36.70A.070(3)(d) means that the six-year period begins with the date of the adopted Plan (1998-2004). To include any other six-year period would thwart the GMA goal of ensuring that public facilities and services are adequate to serve the growth anticipated in that period. Alpine PHB, at 29-30. In response, the County alleges that Alpine does not have standing to challenge CFE issues raised before the Board, since Alpine never raised any CFE concerns in their comments before the County. The County cites to this Board’s October 7, 1998, Order on Dispositive Motions to support its position. The County also asserts that the GMA does not designate a specific six-year period for CFE planning, and requiring planning for the period from 1998-2004 finds no support in the language of the GMA. Therefore, the County’s choice of the 1995-2000 timeframe is appropriate. County Response, Part I, at 132-133. The County’s view is in error on both issues.

In the October 7, 1998, Order on Dispositive Motions, this Board stated:

To have meaningful public participation and avoid “blind-siding” local governments, members of the public must explain their land use planning concerns to local government in sufficient detail to give the government the opportunity to consider these concerns as it weighs and balances its priorities and options under the GMA. Order on Dispositive Motions, at 7, 8.

RCW 36.70A.070 is explicit; it states: “Each comprehensive plan shall include a plan, scheme, or design for each of the following: . . . (3) A capital facilities plan element consisting of: . . . (d) at least a six year plan that will finance such capital facilities within projected funding capabilities and clearly identifies sources of public money for such purposes.” Having a six-year financing plan is not an option or a priority to be balanced, nor should the County allege it was “blind-sided” by this explicit statutory GMA requirement being raised by Alpine. Alpine has standing to argue its position regarding the six-year financing plan.

While the County is correct that the GMA does not designate a specific six-year period for CFE planning, it is illogical, and contrary to one of the bedrock purposes of the GMA—*planning* to manage *future* growth—to suggest that the CFE’s six-year financing *plan* can be, in whole or in part, an historical report of capital facility financing for prior years. To clarify the intent of RCW 36.70A.070(3)(d), **the Board holds that “at least a six-year plan” period begins with the date of the adopted Plan.**

The Board acknowledges that through the 2012 planning horizon, the County has committed that the “CFE of [its] 1998 Comprehensive Plan insure[s] that adequate facilities will be available at the time of development in Kitsap County.” County Response, at 2. However, the six-year financing plans, within the County’s CFE, address only the period from 1995-2000 ^[67]; this time period does not comply with RCW 36.70A.070(3)(d) – Issue S-4. The County’s action regarding RCW 36.70A.070(3)(d) was clearly erroneous. Consequently, the Board will remand the CFE with direction to the County to update the financing plan to cover at least the six-year period corresponding with the adoption date of the Plan (1998-2004).

Capital Facilities Conclusions

KCRP’s and APAC’s challenges to Kitsap County’s Capital Facility Element were not briefed, and are therefore **abandoned** -Issues R-2.B, S-4, 32 and 35.

NKCC has **failed to meet its burden of proof** in showing how the County failed to comply with RCW 36.70A.070(3) or .070(preamble) – Issues R-2.A, R-2.B, R-3 and S-4.

The “at least six-year plan” language that appears in RCW 36.70A.070(3)(d) means that the six-year period begins with the date of the adopted plan.

The six-year financing plan, within the County’s CFE, addresses only the period from 1995-2000; this time period **does not comply** with RCW 36.70A.070(3)(d) – Issue S-4. After considering the matter, the Board is left with a firm and definite conviction that a mistake has been made; therefore the County’s action regarding RCW 36.70A.070(3)(d) was **clearly erroneous**. Consequently, the Board will **remand** the CFE with direction to update the County’s six-year financing plan to cover at least the six-year period commencing with the adoption date of the Plan (1998).

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g. TRANSPORTATION

Applicable Law and Discussion

The Board did not invalidate the Transportation Element of Kitsap County's Plan. Therefore, pursuant to RCW 36.70A.320(1), Kitsap County's adoption of Ordinance No. 215-1998, as it relates to the County's Transportation Element, is presumed valid upon adoption. Consequently, pursuant to RCW 36.70A.320(2), Petitioners bear the burden of proof to demonstrate that the County's action regarding the Transportation Element is not in compliance with the requirements of the Act.

1997 Order

In its 1997 Order, the Board stated:

[T]he Board holds that the Transportation Element is deemed to be internally inconsistent with other Plan elements and therefore not in compliance with the requirements of RCW 36.70A.070 preamble and (6).

Conclusions Nos. 14 and 16

Regarding the internal consistency of the Transportation Element with the other Plan elements and the land use map, Kitsap County's Transportation Element is deemed to **not comply** with RCW 36.70A.070(preamble) and (6).

1997 Order, at 45 (emphasis in original).

The Board's Order provided in relevant part:

. . . The Board further finds that the Transportation Element does not comply with the internal consistency requirements of RCW 36.70A.070(preamble) and (6). 1997 Order, at 51-52.

The County's Response on Remand

As noted previously in this Order, the County responded to the Board's 1997 Order by enacting Ordinance No. 215-1998. The County noted in its Statement of Actions Taken to Comply that in adopting the Ordinance it had included findings which detailed how the County complied with the Board's finding of noncompliance. Additionally, the Ordinance repealed the 1994 and 1996 Plans and adopted the 1998 Plan. Regarding the Transportation Element, the Ordinance states:

[Finding 53] The Transportation Element has been reviewed for consistency with the rest of the revised Plan. It is consistent with, and implements the Land Use Element and continues to meet all requirements of the GMA for transportation, as determined by the Hearings Board in the FDO.

Ordinance No. 215-1998, at 8. ^[69]

The County's adoption of the Ordinance, including the Plan's Transportation Element, is presumed valid; it is Petitioners' burden to demonstrate otherwise.

1998 Challenge -*Alpine/Bremerton* Compliance

In their 1998 PFRs, Petitioners ^[70] challenge anew the provisions of Kitsap County's Transportation Element.

[71]

The Prehearing Order indicated that KCRP raised, and would brief, the shared transportation issue (S-7); however, KCRP's brief is silent on this issue. KCRP PHB, at 1-47. Issues not briefed are abandoned. WAC 242-02-570(1). Also, regarding Issue 33, APAC adopted by reference the "Ray Bock and Linda Cazin brief." APAC PHB, at 31. Based upon the Prehearing Order, neither Bock, Cazin nor NKCC [72] was entitled to brief, nor did they specifically brief, Issue 33. APAC has abandoned Issue 33. [73]

APAC questions the County's population distribution, traffic modeling techniques and interjurisdictional coordination of transportation planning. APAC PHB, at 29-31. Citing to memoranda, newspaper articles and comment letters, APAC also asserts that the County's financing plan is unrealistic. APAC claims the six-year timeframe is inaccurate, the financing assumptions are erroneous, the methodology inappropriate and the inclusion of certain projects unexplained. APAC PHB, at 31-34. The County argues that APAC fails to identify any aspect of the Transportation Element that is internally inconsistent or inconsistent with the GMA. County Response, Part I, at 141.

[74]

In its brief, the County correctly notes that the County's population distribution is set forth in the Kitsap County County-wide Planning Policies, which are not before the Board. APAC's argument on interjurisdictional coordination falls within the scope of Issue 22 which was dismissed in this Board's October 7, 1998, Order on Dispositive Motions; the Board will not consider it further. Finally, APAC's concern about the timeframe for financial planning is addressed in the Board's discussion of Capital Facilities, *supra*. Consequently, the issue will not be reiterated here.

APAC fails to cite to any GMA requirement mandating the use of specific traffic modeling or financing methodologies (*see Cazin, infra*). These choices, as well as the selection of specific road projects, are firmly within the discretion of the local government decisionmakers. Further, these decisionmakers are not required to

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obey or agree with every suggestion or option offered for their consideration. The Board concludes that APAC has failed to meet its burden of proof in showing how the County's Transportation Element failed to comply with RCW 36.70A.070(6) – Issues R-2.C and 34 (financing plan).

Petitioner Cazin argues that "Table [Figure] TR-29 1996-2014 Estimated Construction Revenue Versus Capital

[76]

Project Costs, contains an internal statistical methodology inconsistency." The alleged statistical deficiency undermines the County's ability to make sure transportation corridors will be ready at the time of development, as required by RCW 36.70A.070(6). Cazin PHB, at 30-31. The County contends that none of Cazin's transportation issues falls within the scope of Shared Issue S-7, which is confined to compliance with RCW 36.70A.070(6). County Response, at 137. In reply, Cazin offers no argument, but merely references RCW 36.70A.070(6)(b), (c) and (e). Cazin Reply, at 21.

Cazin points to no requirement in the GMA or the Procedural Criteria that specifies a particular methodology for conducting such fiscal analyses. The choice of methodology used for its capital improvement fiscal analyses is within the County's discretion. Cazin makes no argument regarding whether the County's concurrency ordinance (Ordinance No. 218-1998) complies with RCW 36.70A.070(6). The Board concludes that Cazin has failed to meet its burden of proof in showing how the County's Transportation Element failed to comply with RCW 36.70A.070(6) – Issue S-7.

NKCC offers the same arguments in its prehearing brief on Issue R-2.C and Issue 66.NKCC PHB, at 6-8, 14-17. In its briefing, NKCC challenges the County’s forecasts for internal and external traffic patterns.NKCC PHB, at 7 and 15.In the Board’s October 7, 1998 Order on Dispositive Motions, the Board dismissed Issue 65 of NKCC, since NKCC did not have standing to raise it.The Board will not address it further.

The focus of NKCC’s challenge to Issue R-2.C appears to address the assumptions underlying the County’s transportation analysis methodology and decisions.NKCC questions the County’s revenue streams, population, costs, traffic congestion figures, estimates of employment and basis for a specific project.NKCC PHB, at 6-8, 14-17.As the County points out, NKCC’s concern is that the County did not explain, justify or support its methodology or decisions.“Under the GMA, NKCC cannot meet its burden of proof by simply challenging the County to come before the Board and prove that its plan is valid.[T]he County’s Plan is presumed valid upon adoption.NKCC has the burden of coming before this Board and proving that the County’s Plan is inconsistent with the requirements of GMA.”County Response, Part I, at 138.In reply, NKCC essentially argues that if the County is going to go to the taxpayers to fund the projects it has included in its transportation plan, the taxpayers demand (at least NKCC demands) an explanation from the County for its decisions.NKCC Reply, at 3-10.

With the exception of the County’s Plan Figure TR-29, ^[77] which the County admits is incorrect and inconsistent with the associated text in the Plan, ^[78] the Board concurs with the County; NKCC has failed to meet its burden of proof in showing how the County’s Transportation Element failed to comply with RCW 36.70A.070(6) (Issue S-7 and 66).

As discussed above (APAC and Cazin), the methodology, including the assumptions, the County chooses and the projects included within the County’s Plan are within the County’s discretion.However, the success of the County’s efforts to implement its Plan will depend upon the support of the citizens of Kitsap County; thus, it behooves the County to provide outreach to its citizens for support of its Plan, prior to going to the ballot for funding for the projects within it.

The essence of Petitioner Ryan’s argument is that ferry commuters will be a significant portion of the County’s future growth and that such growth should be accommodated near the ferry terminals on the Sound, ^[79] not in Central Kitsap County around Bremerton, as is anticipated in the present Plan.Failure to provide for the influx of ferry commuters near the ferry terminals fosters sprawl. ^[80] Further, the 1998 Plan will not accommodate the foot passenger population that the state expects and relies upon in funding for East Sound docks, and thus threatens the financial feasibility of the projects.Ryan PHB, at 9-13.

While these assertions and scenario may have been options for the County, the County, acting within its discretion, chose otherwise.Further, there is no reference in Petitioner’s brief either setting forth provisions of RCW 36.70A.070(6) that have been violated, or citation to, and explanation of, plan elements that are internally inconsistent or inconsistent with specific provisions of Vision 2020.Consequently, Petitioner Ryan has failed to meet his burden of proof in showing how the County’s Transportation Element failed to comply with RCW 36.70A.020(2), .070(preamble), .070(6) and .210(7) ^[81] – Issue 6.

Transportation Conclusions

The challenge to Kitsap County’s Transportation Element raised by KCRP was not briefed, and is therefore

abandoned—Issue S-7. Also, APAC **abandoned** Issue 33.

The County acknowledges that Figure TR-29, entitled “1996-2014 Estimated Construction Revenue Versus Capital Project Costs”, at A-313, is incorrect and inconsistent with the associated Plan text, at 312.

Consequently, the Plan is internally inconsistent and **does not comply** with RCW 36.70A.070 (preamble) – Issue R-3. Figure TR-29 will be **remanded** for the County for correction.

With the exception of Plan Figure TR-29, which is inconsistent with the text of the Plan, Petitioners have **failed to meet their burden of proof** in showing how the County’s Transportation Element failed to comply with RCW 36.70A.070(6), .020(2), .070 or .210(7) – Issues R-2.C, S-7, 6, 34 (financing plan) and 66.

[82]

h. other issues

Applicable Law and Discussion

Pursuant to RCW 36.70A.320(1), Kitsap County’s adoption of Ordinance No. 215-1998, as it relates to the County’s drainage, flooding and stormwater run-off provisions of the Land Use Element, is presumed valid upon adoption. Consequently, pursuant to RCW 36.70A.320(2), Petitioners bear the burden of proof to demonstrate that the County’s action regarding the drainage, flooding and storm water run-off provisions of the Land Use Element is not in compliance with the requirements of the Act.

RCW 36.70A.070(1) provides in relevant part:

Where applicable, the land use element shall review drainage, flooding, and storm water run-off in the area and nearby jurisdictions and provide guidance for corrective actions to mitigate or cleanse those discharges that pollute waters of the state, including Puget Sound or waters entering Puget Sound. (Emphasis added).

1997 Order

In its 1997 Order, the Board stated:

[T]he Plan’s Land Use Element does not contain the required review of drainage, flooding, and storm water run-off, or make reference to such review in other documents.

Conclusion No. 6.

Regarding the Act’s requirement to include in the Land Use Element of the Plan a review of the drainage, flooding and storm water run-off, the County’s Plan does not comply with RCW 36.70A.070(1).

1997 Order, at 29, 30.

The Board’s Order provided, in relevant part:

. . . [The Land Use Element is] remanded with instructions to the County to adopt[a] new Land Use Element, including. . . drainage, flooding and storm water run-off provisions, that comply with the goals and requirements of the Act, as set forth and decided in this Order. 1997 Order, at 51-52.

The County's Response on Remand

The County noted in its Statement of Actions Taken to Comply that in adopting Ordinance No. 215-1998, it had included findings which detailed how the County complied with the Board's finding of noncompliance. Regarding the drainage, flooding and storm water run-off provisions, the Ordinance states:

[Finding 37]The Land Use Element provides for protection of the quality and quantity of ground water, includes a review of drainage, flooding and stormwater runoff in the area and nearby jurisdictions and provides guidance for corrective actions.The County's Stormwater Ordinance and Design Manual have been incorporated by reference into the Land Use Element and are set forth as Part IV of the 1998 Plan.Ordinance No. 215-1998, at 6.

The County's adoption of the Ordinance, including the drainage, flooding and storm water run-off provisions, is presumed valid, it is Petitioner's burden to demonstrate otherwise.

1998 Challenge -Alpine/Bremerton Compliance

The basis for the Board's remand was that the County's Land Use Element did not contain the required review of drainage, flooding, and storm water run-off, or make reference to such review in other documents.The County has included the required review and included the Stormwater Ordinance and Design Manual by reference.Plan, Part I, at 52-58.

APAC asserts that the Plan fails to provide *protections*, such as avoiding development in floodplains, maintaining native vegetation, minimizing impervious surfaces, limiting grading and updating maps.APAC PHB, at 68.However, APAC does not dispute that the County included the required review of drainage, flooding and stormwater run-off in its Plan.In fact, APAC notes that "the Plan provides an excellent review of stormwater and flooding issues."APAC PHB, at 67.APAC quotes the Plan's Goal#18 and Policies NS-50 and 54. ^[83] RCW 36.70A.070(1) requires the Plan to provide guidance for corrective action; the Goal and Policies quoted by APAC provide the *guidance* the Act requires.APAC has failed to meet its burden of proof in showing how the County's provisions for drainage, flooding and stormwater run-off in the Land Use Element failed to comply with RCW 36.70A.070(1)– Issues 26 and 27.

Other Issues Conclusions

APAC has **failed to meet its burden of proof** in showing how the County's provisions for drainage, flooding and stormwater run-off in the Land Use Element failed to comply with RCW 36.70A.070(1)– Issues 26 and 27. The County's action was not clearly erroneous.

I. invalidity

Legal Issue R-6 provides:

R-6.Should the Plan be held invalid as to the Rural and Land Use Elements, including the UGAs and land use map of the Plan and rural residential densities?

RCW 36.70A.302 provides in relevant part:

(1) A board may determine that part or all of a comprehensive plan or development regulations are invalid if the board:

(a)Makes a finding of noncompliance and issues an order of remand under RCW 36.70A.300;

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

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

Conclusion of Law

As noted in the following Order, the Board has found that several provisions of the County's 1998 Plan and implementing Development Regulations **do not comply** with various provisions of the Growth Management Act. However, the Board finds that for the limited areas of noncompliance, the continued validity of the County's Plan and Development Regulations during the remand period will not substantially interfere with the fulfillment of the goals of the Act. Consequently, at this time, the Board will not enter a new or continuing determination of invalidity. While the Board will advise the Governor of Kitsap County's substantial progress in its GMA planning and that invalidity has been rescinded, it will also advise him that the County is still short of achieving full compliance with all the provisions of the Act.

Viii. ORDER

Based upon the review of its prior orders in the *Bremerton* case, the County's statements of compliance, Petitions for Review, the exhibits and briefs of the parties and participants in the coordinated *Bremerton* and *Alpine* cases, having considered the arguments of the parties and participants, and having deliberated on the matter, the Board ORDERS:

1. The County has **complied** with the Board's September 8, 1997 Order Finding Noncompliance and Determination of Invalidity. The Board hereby **rescinds** its Determination of Invalidity in the *Bremerton* case, and closes the *Bremerton* case (CPSGMHB Case No. 95-3-0039c).

2. The challenged provisions of the County's Comprehensive Plan and Development regulations raised in the 1998 challenge (the coordinated *Bremerton* and *Alpine* cases, hereafter referred to as *Alpine*) **comply** with the goals and requirements of the GMA, **except** for the following:

a) The County's lack of public participation regarding deletion of Section 455.020 of the Zoning Code adopted by Ordinance No. 216-1998 was clearly erroneous. The County did **not comply** with RCW 36.70A.140, .020(11) and .035.

b) The County's lack of a decision regarding the presence, or absence, of forest lands of long-term commercial significance was clearly erroneous. The County did **not comply** with RCW 36.70A.170 and .060(3).

c) The County's adoption of the framework for joint planning for unincorporated areas within designated UGAs and its potential effect on city annexations was clearly erroneous. The County **did not** [\[84\]](#) **comply** with RCW 36.70A.110.

d) The County's designation of the Port Gamble UGA was clearly erroneous. The County **did not** **comply** with RCW 36.70A.110.

e) The County's designation of the Screen Property as IRF was clearly erroneous. The County **did not** **comply** with RCW 36.70A.070(preamble) regarding this designation.

f)The County’s selection of the six-year financing plan period as 1994 - 2000 was clearly erroneous. The County **did not comply** with RCW 36.70A.070(3)(d), regarding the Capital Facility Element’s six-year financing plan.

g)The County’s admitted inconsistency in its Transportation Appendix, between Figure TR-29 and the text of the Plan, is a clear error. The County **did not comply** with RCW 36.70A.070(preamble) regarding this Plan Figure.

3. In order for the County to achieve compliance with the GMA, as set forth in this Order Rescinding Invalidation in *Bremerton* and Final Decision and Order in *Alpine*, the Board **remands** specified provisions of Kitsap County’s Plan and Development Regulations, with the following directions:

a)Regarding the lack of public participation surrounding the deletion of Section 455.020 (Exception to Lot Sizes) from the Zoning Code (Ordinance No. 216-1998), the County is directed to provide public participation on this issue. The County shall provide notice, pursuant to RCW 36.70A.035, and conduct a public hearing on the proposed Zoning Code Section 455.020, entitled “Exception to Lot Sizes.” Following the public hearing, the County may, or may not, choose to take legislative action on the substance and merits of the issue. In its Statement of Compliance, the County shall provide the Board with a copy of the published public notice and the minutes of the meeting(s) where public participation was provided on the issue. The Board is only directing the County to address procedural deficiencies in adoption of its Zoning Code; no substantive amendment is required by this remand action. If the County chooses to amend its Zoning Code as a result of this public process, the Zoning Code shall be deemed remanded for appropriate action.

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.

c)The County’s Land Use Element, specifically UGA-13 and associated text on pp. 19-26 are remanded. Regarding the County’s joint planning framework for unincorporated areas within designated UGAs and its potential effect on city annexations, the County is directed to clarify its stated intent, that such joint planning within designated UGAs is voluntary and consensual. The County shall accomplish this revision through Plan amendment.

d)The 1998 Plan, specifically text, including maps and development regulations relating to the Port Gamble UGA, is remanded. Regarding the designation of the Port Gamble UGA, the County is directed to delete the UGA and subsequent “Urban” designations where they appear in the Plan and Plan maps, and redesignate the area with an appropriate “Rural” or other non-Urban land use designation. The Zoning Code map and any development regulations affected by the redesignation shall also be amended to maintain consistency with the Plan. The County shall accomplish these corrections through a Plan amendment and amendments to the appropriate development regulations.

e)The 1998 Plan, specifically text, maps and development regulations as they relate to the Screen property, is remanded. Regarding the designation of the Screen property as IRF, the County is directed to delete the IRF designation and redesignate the property with an appropriate “Rural” or other non-Urban land use designation. The Zoning Code map and any other development regulation affected by the redesignation shall also be amended to maintain consistency with the Plan. The County shall accomplish these corrections through a Plan amendment and amendments to the appropriate

development regulations.

f)The County's Capital Facilities Element's six-year financing plan is remanded.Regarding the County's selection of a six-year financing plan period, the County is directed to update the County's six-year financing plan to cover at least the six-year period corresponding with the adoption date of the Plan (1998-2004).The County shall accomplish this correction and update through a Plan amendment.

g)The Transportation Appendix's Figure TR-29 is remanded.The Board directs the County to correct the inconsistency between the correct cost estimates in the Plan text at A-312 and the cost estimates depicted in Figure TR-29.The County shall accomplish this through Plan amendment.

h)The County's Economic Development Appendix is remanded.Regarding the County's admission that it incorrectly defined "lot coverage," the County will correct and clarify its definition.

4.The Board directs Kitsap County to comply with the goals and requirements of the Act, as set forth in this Order, by no later than **August 6, 1999**.The County is instructed to submit to the Board a "Statement of Compliance" (SOC).The SOC shall include: 1) a description of the procedures (Item 3a, above) and legislative actions (Items 3b-3h, above) taken to comply with the Act, as directed in this Order; and 2) copies of all legislative enactments adopted to achieve compliance.Kitsap County shall provide four copies of the SOC to the Board by no later than **4:00 p.m., August 20, 1999**.At the same time, the County shall notify the parties in *Alpine, et al., v. Kitsap County*, CPSGMHB Case No. 98-3-0032c, that the SOC is available.The County shall furnish a copy upon request to any party to this case.

So ORDERED this 8th day of February, 1999.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

Edward G. McGuire, AICP
Board Member

Joseph W. Tovar, AICP
Board Member

Chris Smith Towne
Board Member

NOTICE:This is a final order for purposes of appeal.Pursuant to WAC 242-02-832, a Motion for Reconsideration may be filed within ten days of service of this final order.

APPENDIX a - FILings, AUGUST 24, 1998 - DECEMBER 3, 1998

Received	Title of Pleading	Filed by:
8/24/98	Response to Motions to Intervene in Alpine	Posten
8/24/98	McCormick Land Company's Amended Motion to Intervene	McCormick
8/25/98	Objection/Request for Clarification of August 18, 1998 Prehearing Order	Kitsap Co.
8/25/98	Ron Ross, dba Cascade Evergreen's Motion to Intervene	Ross
8/25/98	Port of Bremerton's Motion to Intervene; with Declaration of Richard N. Brandenburg	Port of Bremerton

8/25/98	Motion to Intervene by the Suquamish Tribe; with Declaration of John Sledd	Suquamish
8/25/98	City of Port Orchard's Motion to Intervene; with Declaration of Lawrence J. Curles	Port Orchard
8/25/98	Revised Motion to Intervene by Pope Resources and Port Blakely Tree Farms	Pope and Port Blakely
8/25/98	Motion to Intervene by Economic Development Council of Kitsap; with Declaration of Warren Olson Support of Motion to Intervene	EDCKC
8/25/98	Letter dated August 14, 1998 from Philip J. Swenson	Swenson
8/25/98	Motion to Supplement Record; with Affidavit Supporting Motion for Final Decision; a draft Order Supplementing the Record; a Motion for Final Decision and Order; and a draft Final Decision and Order	Washington Cedar
8/31/98	Posten's Response to Revised and EDC Motions to Intervene	Posten
9/8/98	Kitsap County's Partial Motion to Dismiss for Lack of Standing; with Declaration of J. Rice in Support of Partial Motion to Dismiss; and Notice of Association of Counsel	Kitsap Co.
9/9/98	Kitsap County's Motion to Dismiss Petitions Filed by NKCC and Washington Cedar	Kitsap Co.
9/16/98	North Kitsap Coordinating Council's Request to Deny Kitsap County's Motion to Dismiss Our Petition	NKCC
9/17/98	Washington Cedar's Memorandum Opposing Kitsap County's Motion to Dismiss	Washington Cedar
9/18/98	Overton & Associates and P.E. Overton in Opposition to Kitsap County's Motion to Dismiss for Lack of Standing; with Declaration of P.E. Overton in Opposition	Overton
9/18/98	Preliminary List of Exhibits; and Stipulation of Relevant Facts	Posten
9/18/98	North Kitsap Coordinating Council's Request To Deny Kitsap County's Motion to Dismiss Our Petition	NKCC
9/21/98	Posten's Response to Kitsap's Motion to Dismiss Posten's Second Amendment for Petition for Review; Posten's Motion for Extension; [Posten's] Petition For Declaratory Ruling [in 8332c]; and Posten's Response to Kitsap County's Partial Motion to Dismiss for Lack of Standing	Posten
9/21/98	KCRP's Response to Kitsap County's Partial Motion to Dismiss for Lack of Standing	KCRP
9/21/98	Suquamish Tribe's Response to Kitsap County's Motion to Dismiss for Lack of Standing	Suquamish
9/21/98	S'Klallam Tribe's Response to Kitsap County's Partial Motion to Dismiss for Lack of Standing; with Declaration of Philip J. Dorn	S'Klallam
9/21/98	Declaration of Rick Kimball; Declaration of John P. Vodopich in Opposition of Washington Cedar's Motion for Final Decision; and Kitsap County's Response to Washington Cedar's Motion for Final Decision and Order	Kitsap Co.

9/22/98	Association to Protect Anderson Creek and Union River Basin Protection Association's Response to County's Motion to Dismiss	APAC
9/23/98	Washington Cedar's Reply	Washington Cedar
9/25/98	Kitsap County's Reply in Support of its Partial Motion to Dismiss for Lack of Standing; Kitsap County's Reply Memorandum on Motion to Dismiss Petition by North Kitsap Coordinating Council; Kitsap County's Motion to Strike Posten's Stipulation of Relevant Facts; Kitsap County's Reply Memorandum on Motion to Dismiss Petition Filed by Washington Cedar and Supply Company; and Kitsap County's Reply on Motion to Dismiss Posten's Second Amendment for Petition for Review, and Response to Petition for Declaratory Ruling	Kitsap Co.
9/25/98	Posten's Rebuttal to Kitsap County Response	Posten
10/6/98	Postens' Rebuttal to Kitsap County Dispositive Motions	Posten
10/8/98	Washington Cedar's Opening Brief	Washington Cedar
10/13/98	Opening Brief of Alpine Evergreen Co., Inc., Overton & Associates, and P.E. Overton; with Index to Exhibits to Opening Brief	Alpine
10/13/98	Petitioner North Kitsap Coordinating Council Prehearing Brief	NKCC
10/14/98	Association to Protect Anderson Creek and Union River Basin Protection Association's Brief on the Merits	APAC
10/14/98	City of Bremerton's Opening Compliance Brief	Bremerton
10/14/98	Petitioner's/Intervenor's Invalidity/Prehearing Brief; with Notice of Availability of Pleading	Ross
10/14/98	Cazin Prehearing Brief; with Notice of Availability	Cazin
10/14/98	Prehearing Brief of Alpine Petitioner Department of Natural Resources; and Notice of Availability [received 10/19/98]	DNR
10/14/98	Opening Brief of KCRP; with Notice of Availability	KCRP
10/14/98	Kitsap County's Brief on Invalidity	Kitsap Co.
10/14/98	Manke Lumber Company's Prehearing Brief; with Notice of Availability	Manke
10/14/98	Opening Brief of McCormick Land Company Regarding Invalidity	McCormick
10/14/98	Port Gamble S'Klallam Tribe's Prehearing Brief; with Notice of Availability; and Port Gamble S'Klallam Tribe's Preliminary Exhibit List; with Notice of Availability	S'Klallam
10/14/98	Mr. & Mrs. Warren E. Posten, Sr.'s Pre-Hearing Brief, with Posten's Notice of Availability	Posten
10/14/98	Matt Ryan's Pre-Hearing Brief	Ryan
10/14/98	Prehearing Brief of R. and J. Screen, with Declaration of C.A Kaylor; and Notice of Availability of Pleading	Screen
10/14/98	Pre-Hearing Brief of William M. Palmer - South Sidney, with Notice of Availability	South Sidney
10/14/98	State's Opening Compliance Brief in Bremerton v. Kitsap County	State

10/14/98	Suquamish Tribe's Prehearing Brief, Opening Compliance Brief, and Opening Validity Brief; with Notice of Availability	Suquamish
10/14/98	Petitioners P.J. Swenson and E.F. Cook Prehearing Brief; with Notice of Availability	Swenson
10/16/98	Kitsap County's Motion to Strike	Kitsap Co.
10/16/98	Motion for Amendment to Posten's Pre-hearing Brief; with Notice of Availability	Posten
10/20/98	Notice of Availability of Brief	Alpine
10/21/98	Bremerton attorney's letter to Mr. Tovar	Bremerton
10/21/98	Kitsap Co. attorney's letter to Mr. Tovar intending Motion to Strike	Kitsap Co.
10/22/98	Havens-Saunders letter to Board re Kitsap's proposed motion to strike	APAC
10/22/98	Fortner/Bremerton letter to Mr. Tovar re. Kitsap's intended motion to strike	Bremerton
10/23/98	DOT letter to Board re. withdrawal of DOT	DOT
10/23/98	Kosterlitz/Kitsap letter to Mr. Tovar re. intended motion to strike	Kitsap Co.
10/27/98	Ryan letter to Mr. Tovar re. Motion to Strike letter	Ryan
10/29/98	Kitsap County's Response to Postens' Motion to Amend Prehearing Brief	Kitsap Co.
10/29/98	Motion for Amendment to Posten's Pre-Hearing Brief; with Corrections to Amended Brief	Posten
11/2/98	North Kitsap Coordinating Council's Response Brief to Kitsap County's Motion to Strike Sections of NKCC's Prehearing Brief	NKCC
11/3/98	Posten's Rebuttal to Kitsap County's Response to Posten's Motion for Amendment to Pre-Hearing Brief; with Notice of Availability	Posten
11/4/98	Association to Protect Anderson Creek and Union River Basin Protection Association's Brief in Response to Kitsap County's Motion to Strike	APAC
11/4/98	City of Bremerton's Response to Motion to Strike	Bremerton
11/4/98	Port Gamble S'Klallam Tribe's Opposition to the County's Motion to Strike	S'Klallam
11/4/98	Response to County's Motion to Strike	Ryan
11/9/98	Notice of Availability of City of Bremerton's Response to Motion to Strike	Bremerton
11/17/98	City of Bremerton's Response Re: Invalidity	Bremerton
11/18/98	Brief of Participants Appletree and David Supporting Kitsap County, with G. David's and Appletree Point's Notice of Availability of Supporting Brief	Appletree and David
11/18/98	Port of Bremerton's Prehearing Brief in Response	Bremerton
11/18/98	Opening Brief of the Economic Development Council of Kitsap County	EDCKC
11/18/98	KCRP et al. Response to Kitsap County's Brief on Invalidity, with Notice of Availability	KCRP

11/18/98	Suquamish Tribe's Response to Matt Ryan's Prehearing Brief	KCRP
11/18/98	Kitsap County's Response Brief - Part I; with Declaration of S.W. Plauche in Support Thereof	Kitsap Co.
11/18/98	Declaration of J.M. Rice in Support of Kitsap County's Motion to Strike APAC/URBPA's Brief on Agricultural Lands	Kitsap Co.
11/18/98	Kitsap County's Responsive Brief, Part II [including Motion to Strike; Motion to Supplement the Record]	Kitsap Co.
11/18/98	Kitsap County's Second Supplemental Index to the Record	Kitsap Co.
11/18/98	Manke Lumber Company's Response Brief Re: Compliance Issues	Manke
11/18/98	Response Brief of Intervenor McCormick Land Company	McCormick
11/18/98	Opening Brief of Olympic Resource Management/Pope Resources	Pope Resources
11/18/98	Notice of Availability [of Pope, Port Blakely, and EDCKC response briefs]	Pope & Port Blakely, and EDCKC
11/18/98	Opening Brief of Port Blakely Tree Farms	Pope & Port Blakely:Port Blakely
11/18/98	Notice of Availability of City of Port Orchard's Prehearing Brief in Response	Port Orchard
11/18/98	City of Port Orchard's Prehearing Brief in Response	Port Orchard
11/18/98	City of Poulsbo's Pre-Hearing Brief; with Declaration of J.E. Haney Re. Service of Briefs; and Notice of Availability of City of Poulsbo's Pre-Hearing Brief	Poulsbo
11/18/98	Matt Ryan's Response to Suquamish Tribe's Opening Brief of 14 October 19989	Ryan
11/19/98	Notice of Availability of Port of Bremerton's Prehearing Brief in Response	Bremerton
11/19/98	Exhibits to Bremerton's Prehearing Brief in Response	Bremerton
11/20/98	Reply Brief of Olympic Resource Management/Pope Resources in Response to KCRP et al. Invalidity Response; with Notice of Availability	Pope & Port Blakely:Pope
11/20/98	S'Klallam Tribe's Reply Brief; with Notice of Availability	S'Klallam
11/20/98	Postens Motion for Reconsideration and Motion to Strike; with Notice of Availability	Posten
11/23/98	Notice of Availability and original signature page to KCRP et al. Response to Kitsap County's Invalidity Brief	Kitsap Co.
11/24/98	list of appendices to County's Responsive Brief, Part II	County
11/24/98	"Summary Sheet" appearing to be a DOS, signed by B. Ray	unknown
11/24/98	"Summary Sheet" appearing to be a DOS, signed by Paul Morse	unknown
11/25/98	Reply of Alpine Evergreen and Overton and Motion to Strike	Alpine
11/25/98	Reply Brief of Alpine Petitioner Department of Natural Resources; with Notice of Availability	DNR
11/25/98	replacement page 14 for Kitsap Co. Response Brief Part II	Kitsap Co.
11/25/98	State's Reply Compliance Brief in Bremerton v. Kitsap County	State
11/25/98	Petitioners P.J. Swenson and E.F. Cook Reply Compliance Brief	Swenson

11/30/98	Association to Protect Anderson Creek and Union River Basin Protection Association's Opposition to McCormick Land Company's Motion to Intervene	APAC
11/30/98	Association to Protect Anderson Creek and Union River Basin Protection Association's Reply Brief, with Notice of Availability	APAC
11/30/98	City of Bremerton's Reply Brief	Bremerton
11/30/98	Cazin Reply Brief; with Notice of Availability	Cazin
11/30/98	Department of Natural Resources' Notice of Availability	DNR
11/30/98	Reply Brief of Kitsap Citizens for Rural Preservation; with Notice of Availability	KCRP
11/30/98	Kitsap County's Response to Posten's Motion for Reconsideration	Kitsap Co.
11/30/98	Kitsap County's Reply Brief on Invalidity; with Declaration of Samuel W. Plauche	Kitsap Co.
11/30/98	Petitioner Manke Lumber Company's Reply to Kitsap County's Responsive Brief, Part II	Manke
11/30/98	Brief of McCormick Land Company in Reply to KCRP, et al.'s Response to Kitsap County's Brief on Invalidity	McCormick
11/30/98	North Kitsap Coordinating Council's Reply Brief to Kitsap County's Responsive Brief Part I and Part II	NKCC
11/30/98	Posten Rebuttal to Kitsap County's Responsive Brief to Posten's Pre-Hearing Brief; with Notice of Availability	Posten
11/30/98	Screen's Reply Brief; with Notice of Availability	Screen
11/30/98	Suquamish Tribe's Reply to Kitsap County's Response Brief (Parts I & II) and Port Blakely's "Opening" Brief	Suquamish and Port Blakely
12/1/98	Plauche letter to Board, with corrections to Comp Plan	Kitsap Co.
12/1/98	Philip J. Swenson and Eugene F. Cook Reply Compliance Brief	Swenson
12/1/98	Swenson letter to Board, with corrections to brief	Swenson
12/2/98	Tanner letter to Board, re.:County Commissioners continuing hearing until Dec. 3, 3 p.m.	Kitsap Co.
12/3/98	Haney letter to Board, re. Poulsbo ceding time	Poulsbo

APPENDIX b - LEGAL ISSUES

On August 18, 1998, the Board issued the "Third Order of Consolidation and Order on Motions to Intervene in the *Alpine* Case and Notice of Amended Concurrent Schedules for Briefing and Hearing in *Bremerton* and *Alpine* Cases" (the **Prehearing Order**) which set forth Compliance Issues R.1 through R.6 (to be briefed by the County, petitioners, respondent intervenors and participants in the *Bremerton* case); Individual Issues 1 through 67 (to be briefed by specifically identified petitioners in the *Alpine* case) and Shared Issues S-1 through S-7 (to be briefed by two or more of the *Alpine* petitioners.)The issues as they were listed in the Prehearing Order appear in table form below.

Compliance Issues	
R 1	Do the Rural and Land Use Elements, including the UGAs and land use map of the Plan and rural residential densities, fail to guided by RCW 36.70.020 and fail to comply with the requirements of RCW 36.70A.070(1),(5) and .110?

R 2.A	Does the Capital Facilities Element comply with RCW 36.70A.070(3)(e) and the internal consistency requirements of .070(preamble)?
R 2.B	Does the water systems portion of the CFE comply with RCW 36.70A.070(3)(a) and (b)?
R 2.C	Does the Transportation Element comply with RCW 36.70A.070(6) and the internal consistency requirements of RCW 36.70A.070(preamble)?
R 3	Are the Plan Elements internally consistent, in compliance with RCW 36.70A.070 (preamble)?
R 4	Has the County fully complied with RCW 36.70A.060 by adopting permanent regulations to protect critical areas?
R 5	Has the County re-adopted interim development regulations as necessary until the adoption of GMA-compliant plan and implementing development regulations?
R 6	Should the Plan be held invalid as to the Rural and Land Use Elements, including the UGAs and land use map of the Plan and rural residential densities, or any of the other remanded items? [Strikethroughs indicate how this issue was corrected since the Prehearing Order. See Order on Intervention and Order Correcting <i>Alpine</i> and <i>Bremerton</i> Legal Issues, at 3.]

Shared Legal Issues

S-1	With respect to forest lands, did the County fail to be guided by RCW 36.70A.020(8) and fail to comply with the requirements of RCW 36.70A.060 and 170? [ALPINE] [MANKE] [S'KLALLAM] [KCRP]
S-2	With respect to public participation, did the County fail to be guided by RCW 36.70A.020 (11) and fail to comply with the requirements of RCW 36.70A.035 and 140? [SWENSON] [SOUTH SIDNEY] [KCRP I] [APAC] [NKCC]
S-3	Did the County fail to meet the requirements of Chapter 43.21C RCW and, if so, which specific sections of the statute or WAC 197-11, as identified in the respective Petitions for Review? [ALPINE] [SOUTH SIDNEY] [S'KLALLAM] [Underlining indicates how this issue was corrected relative to the Prehearing Order. See Order on Intervention and Order Correcting <i>Alpine</i> and <i>Bremerton</i> Legal Issues, at 3.] After corrected, this Legal Issue was dismissed by the Board. See Order on Dispositive Motions, at 12.
S-4	Did the County's Capital Facilities Element fail to comply with the requirements of RCW 36.70A.070(3)? [ALPINE] [APAC] [NKCC] [KCRP I]
S-5	Did the County fail to be guided by RCW 36.70A.020(1),(2),(3),(4),(5),(7),(8),(9), (10) and (12) and fail to comply with RCW 36.70A.110 when it designated UGAs in the Plan and adopted related development regulations? [APAC] [CAZIN] [KCRP I]
S-6	Is the Land Use Element of the Plan internally inconsistent with the goals and Policies of the Fish and Wildlife sections and the critical areas maps, and therefore fail to comply with RCW 36.70A.060, .070, .130(1), and .172? [APAC] [CAZIN]
S-7	Did the County fail to comply with RCW 36.70A.070(6) when it adopted the Plan and the transportation concurrency ordinance 218-1998? [CAZIN] [KCRP I]

Individual Legal Issues

1.	SWEN	Did the County's adoption of its comprehensive plan, Zoning Ordinance and Critical Areas Ordinance, specifically those portions which prohibit subdivisions of land into parcels less than ten acres inside of the area that was served by water and/or sewer lines as of December 29, 1994, fail to be guided by RCW 36.70A.020(1) through (13) and fail to comply with RCW 36.70A.110(3) and .370(2)?
2.	SWEN	Did the County's adoption of its Plan and development regulations, specifically those portions which forbid residential, non-resource based development to occur inside of the area that was served by water and/or sewer lines as of December 29, 1994, fail to be guided by RCW 36.70A.020(1) through (13) and fail to comply with RCW 36.70A.110(3) and .370(2)?
3.	ALP	Was the County clearly in erroneous in failing to hold, once and for all, that the remaining forest lands in The County are not forest lands of long-term commercial significance under RCW 36.70A.170?
4.	ALP	Was the County not in compliance with the GMA in proposing to consider through some subsequent process the issue of whether it has forest lands under RCW 36.70A.170, after it has completed the remainder of its Plan?
5.	ALP	Did the deletion of the Rural Wooded Incentive Program, without replacing it with any similar means of providing flexibility to non-industrial private landowners, fail to be guided by RCW 36.70A.020(8)?
6.	RYAN	Do the Plan's Transportation and Land Use Elements fail to be guided by RCW 36.70A.020 (2) and fail to comply with RCW 36.70A.070(1) through (6) and are those Elements inconsistent with Vision 2020 Goals RT-8.17, RT 8.20, RT 8.36?
7.	RYAN	Do Plan Policy UGA-6 and the designation of Suquamish, Kingston and Manchester as rural rather than as Urban Growth Areas fail to comply with RCW 36.70A.110 ?
8.	POST	Do the Plan, part I, Chapter 2 - UGA, and Part III Maps, and Zoning Ordinance Maps, and the UGA Map permitting the deletion of Keyport as an Urban Growth Area fail to be guided by RCW 36.70A.020(1),(5) and (6); and fail to comply with RCW 36.70A.040(3)(c); .110(1) and (3); and .070(5)(b)(c) and (d)?
9.	POST	Do the Plan, Part I and Part III Land Use Map and Zoning Ordinance Land Use Map permitting the redesignation of the town of Keyport fail to be guided by RCW 36.70A.020(1),(5) and (6); and fail to comply with RCW 36.70A.040(3)(c); and .070(5)(b)(c) and (d)(iv); and .110?
10.	POST	Do the Plan and Zoning Ordinance 216-1998 Map fail to comply with Chapter 90.58 RCW (the Shoreline Management Act), Chapter 43.21C RCW (the State Environmental Policy Act), and the Growth Management Act, specifically RCW 36.70A.020(5),(6),(8), (9)&(10); .035, .070(5)(d)(iv)&(v); .110(3); .370(2); and .480?
11.	MANK	Does the County's designation of properties as Interim Rural Forestry under the Plan and Interim Rural Forest under the Zoning Code fail to be guided by RCW 36.70A.020 and specifically Planning Goals 4, 5, and 6?
12.	SSID	Does the Plan fail to be guided by RCW 36.70A.020(1),(4),(5),(6) and (11) and fail to comply with RCW 36.70A.110 because the commercial and industrial land allocations are not sufficient to support existing and projected population and are inconsistent with county wide policy UGA-2, Economic Development and Diversity Goals 1,2,3,5,6 and 8, policies ED 1,2,3,4,6 and 9, Industrial Land Capacity Goals 9 and 10 and policies ED 10,11,12,14,16 and 18?

13.	SSID	Does the Plan fail to be guided by RCW 36.70A.020(1),(4),(5),(6) and (11) and fail to comply with RCW 36.70A.110 because it does not provide for an adequate tax base to support County services over the life of the plan?
14.	SSID	Does the Plan fail to comply with RCW 36.70A.070(1) through (6) and .110(2) because its UGA provisions are not adequate in size to accommodate the forecasted population growth?
15.	SSID	Does the Plan fail to comply with RCW 36.70A.110 (2) & (3) because it identifies and allocates a portion of the 20 year population forecast to the “Joint Study Areas” when such areas may not be able to accept the population?
16.	SSID	Do the Plan and Interim Zoning Ordinance fail to comply with RCW 36.70A.070(2) because they do not make adequate provision for housing which is affordable to all economic segments of the population and fail to promote a variety of residential densities and housing types?
17.	SSID	Does the Plan fail to comply with RCW 36.70A.070(5) because it has not adequately addressed the rural portions of the County and provided for a variety of rural densities?
18.	APAC	Do the County’s UGAs and “Joint Planning Areas,” including but not limited to Gorst, South Kitsap and Port of Bremerton UGAs, fail to comply with RCW 36.70A.040 because they are based on a flawed land use capacity analysis, and are much greater in size than necessary?
19.	APAC	Do the County’s UGAs fail to comply with the locational criteria of the GMA set forth at RCW 36.70A.110(3)?
20.	APAC	Do the County’s “island” UGAs extend or expand urban government services in rural areas, contrary to the requirements of RCW 36.70A.110(4)?
21.	APAC	Does the Plan allow urban growth outside of designated urban growth areas, contrary to the requirements of RCW 36.70A.110(4)?
22.	APAC	Is the Plan inconsistent with the plans of Mason and Jefferson Counties and the Cities of Port Orchard and Bremerton, with which the County has common borders or related regional issues, contrary to the requirements of RCW 36.70A.100? [This Legal Issue was dismissed by the Board. <i>See</i> Order on Dispositive Motions, at 12.]
23.	APAC	Do the Plan’s UGAs fail to comply with GMA because the Plan did not designate and protect natural resource lands and critical areas as provided by RCW 36.70A.060, .170, and .180(1)?
24.	APAC	Has the County failed to adequately identify and protect critical areas as required by RCW 36.70A.020, .030(5), (17); .040(3)(b); .060; .070(1); .170(1)(d); and .172?
25.	APAC	Does the Plan fail to include appropriate designations of agricultural and forest resource lands as required by RCW 36.70A.020(1),(2),(8), 050, .060, 070(1) and .170?
26.	APAC	Does the Plan fail to provide for the protection of the quality and quantity of groundwater uses for public water supplies including the protection of aquifer recharge areas and therefore fail to be guided by RCW 36.70A.020(5),(6), and (10) and fail to comply with .070(1)?
27.	APAC	Does the Plan fail to adequately review drainage, flooding and storm water run-off and provide guidance for corrective actions to mitigate or cleanse those discharges that pollute waters of the State as required by RCW 36.70A.070(1)?
28.	APAC	Does the Plan fail to be guided by planning goals RCW 36.70A.020 (6), (8), (9), (10) and (13) by not designating adequate protective corridors and forest land to protect water quality and preserve habitat for wildlife and salmon production?

29.	APAC	Does the plan fail to comply with RCW 36.70A.110 and .160 because it fails to identify open space corridors within and between urban growth areas including lands useful for recreation, wildlife habitat, trails, and connection of critical areas?
30.	APAC	Does the Plan fail to protect critical areas and their related values, as required by RCW 36.70A.020, .070(1), and WAC 365-190-020, because it does not include sufficient protective guidance, thus project reviews continue to be site specific and do not review cumulative impacts?
31.	APAC	Does the plan fail to be guided by the economic development planning goal RCW 36.70A.020 (5) because it fails to take into account the economic value of the extensive natural aquatic resources surrounding The County and the economic importance of maintaining and enhancing water quality in these areas of national significance? [This Legal Issue was dismissed by the Board. <i>See</i> Order on Dispositive Motions, at 12.]
32.	APAC	Is the Capital Facilities Plan inconsistent with other elements of this Plan, including, but not limited to, the Land Use Element, the Transportation Element, the Zoning Ordinance, the Critical Areas Ordinance, and the provisions for shoreline areas, as required by RCW 36.70A.070(6)?
33.	APAC	Is the Transportation Element of this Comprehensive Plan inconsistent with the land use element, contrary to RCW 36.70A.070(6)?
34.	APAC	Does the Transportation Element of the Plan fail to comply with RCW 36.70A.070(6) because it does not include a realistic financing plan?
35.	APAC	Do the Plan and its implementing ordinances fail to ensure that those public facilities and services necessary to support development shall be adequate and not decrease current service levels below minimum acceptable standards as required by RCW 36.70A.020 (12) and .070(3)?
36.	CAZN	Did the County fail to be guided by RCW 36.70A.020 and fail to comply with RCW 36.70A.040, .070(3) and .110 when it adopted its plan, zoning regulations and zoning and land use maps?
37.	CAZN	Did the County fail to be guided by RCW 36.70A.020 and fail to comply with RCW 36.70A.040, .060, .110, .160, and .170 when it designated the Port Gamble UGA without first adequately considering the existence of natural resource lands and critical areas in the UGA and vicinity?
38.	CAZN	Did the County fail to comply with RCW 36.70A.160 when it failed to identify and provide for open space corridors, parks and greenbelts at Port Gamble?
39.	SCRE	For the Screen property, are the Plan text and land use map inconsistent, in violation of RCW 36.70A.070?
40.	SCRE	For the Screen property, are the Implementing Development Regulations inconsistent with Plan provisions, in violation of RCW 36.70A.040(3) and .120?
41.	DNR	Does the Plan's exclusion of the Illahee property from an Urban Growth Area fail to be guided by RCW 36.70A.110?
42.	DNR	Does the rural density zoning designation of the Illahee property fail to comply with RCW 36.70A.070(5), .110, and .020(1) and (2)?
43.	DNR	Do the Plan and Zoning Ordinance fail to comply with RCW 36.70A.160 by excluding the Illahee property from a UGA and applying a rural density?
44.	KCRP	Does the Plan fail to comply with RCW 36.70A.110(1) and .070(1) and (5), and does it fail to be guided by .020(1), (2), (3), (4),(5), (7), (8), (9), (10) and (12), because it fails to preclude urban growth outside of UGAs?

45.	KCRP	Does the Plan fail to be guided by RCW 36.70A.020(1),(2),(3),(4),(5),(7),(8),(9),(10), and (12) and fail to comply with RCW 36.70A.070(1) and .110 because it designates excessive amounts of land for industrial and commercial uses?
46.	KCRP	Do the zoning regulations, by using a different basis for calculating residential density than the Plan, fail to be guided by RCW 36.70A.040(3)(d)?
47.	KCRP	Do the zoning regulations, by permitting a pattern of more intensive urban development in rural areas, fail to comply with RCW 36.70A.040(3)(d) and .070(5)?
48.	KCRP	Does the County's failure to designate and protect forest lands and undertake a consistency review fail to comply with RCW 36.70A.060, .070, .170(1) and the Board's Order, and fail to be guided by RCW 36.70A.020(1), (2) and (8)?
49.	KCRP	Did the County fail to be guided by RCW 36.70A.020(1),(2),(4),(5),(7),(8),(9), (10) and (12) and fail to comply with RCW 36.70A.110(2) and (5) when it adopted UGAs in Ordinance 220-1998 because the UGAs are oversized, failed to use the Act's locational criteria and are based on a flawed land capacity analysis?
50.	S'KLA	Do the Urban Growth Areas fail to comply with RCW 36.70A.110 because the Port Gamble UGAs areas and densities fail to include greenbelt and open space areas, permits a range of urban densities and uses, lacks adequate existing public facility and service capacity, and fails to consider fiscal impact and/or capital facilities?
51.	S'KLA	Did the County fail to be guided by RCW 36.70A.020(1), (2), (3), (4), (5), (8), (9), (10), (11) and (12) when it established UGAs and adopted a zoning ordinance and related land use and zoning maps?
52.	S'KLA	Did adoption of the Plan, implementing development regulations and zoning maps fail to be guided by RCW 36.70A.020(1),(2),(3),(4),(5),(8),(9),(10) and (12) and fail to comply with RCW 36.70A.110 and .040?
53.	S'KLA	Did designation of the Port Gamble UGA fail to be guided by RCW 36.70A.020(1),(2), (3),(4),(5),(8),(9),(10) and (12) and fail to comply with RCW 36.70A.040, .060, .110, .170, .160 and .172 by failing to adequately consider natural resource land and critical areas in the area of designation?
54.	S'KLA	Did the County, when it failed to designate and protect forest lands as required by RCW 36.70A.060 and .170, fail to be guided by RCW 36.70A.020(1),(2),(3),(4),(5),(8),(9),(10) and (12) and fail to comply with RCW 36.70A.040 and .110 ?
55.	S'KLA	Did creation of a new zone in the zoning code, without certain limitations on its application, fail to comply with RCW 36.70A.110?
56.	S'KLA	Do the requirements of RCW 36.70A.070 and .130 apply when a county adopts a UGA after the deadline for adopting a Plan, and if so, does the Port Gamble UGA fail to comply with these requirements?
57.	SUQU	Do the Interim Rural Forest and Urban Reserve designations in the Plan and Zoning Ordinance fail to be guided by RCW 36.70A.020(8) and fail to comply with RCW 36.70A.040(3), .060, .070(1), .070(5)(c)(v), .170(1)(b) and .180(1) by undermining necessary conditions for subsequent designation?
58.	SUQU	Do the Plan, Zoning Ordinance, Figure Book and Critical Areas Ordinance fail to be guided by RCW 36.70A.020(8), (9) and (10), and fail to comply with RCW 36.70A.040 (3), .060(2), .070(5)(c)(iv), .160, .170 and .172 because they fail to designate and protect critical areas?

59.	SUQU	Does the Critical Areas Ordinance fail to be guided by RCW 36.70A.020(8),(9) and (10) and fail to comply with RCW 36.70A.060, .070(5)(c)(iv), .160, .170 and .172 by failing to ensure that the value and functions of such areas will be protected from “net loss” in the context of watersheds as a whole?
60.	SUQU	Do the Critical Areas Ordinance and Zoning Ordinance fail to be guided by RCW 36.70A.020(8), (9) and (10), and fail to comply with RCW 36.70A.040(3), .060(2), .070 (5)(c)(iv), .160, .170 and .172 because they do not sufficiently consider the effect of impervious surface areas on fish habitat?
61.	SUQU	Do the Plan, Critical Areas Ordinance and Figure Book fail to be guided by RCW 36.70A.020(8), (9) and (10), and fail to comply with RCW 36.70A.040(3), .060(2), .070 (5)(c)(iv), .160, .170 and .172 because they fail to designate and protect Critical Aquifer Recharge areas?
62.	SUQU	Do the Plan, Critical Areas Ordinance and Zoning Ordinance fail to be guided by RCW 36.70A.020(8), (9) and (10) and fail to comply with RCW 36.70A.172(1), specifically resulting in the failure to maintain and enhance the fisheries industry?
63.	SUQU	Is the Plan internally inconsistent between the natural systems policies of the Plan and the Land Use Element, and does it thereby fail to comply with RCW 36.70A.070 (preamble) and are the critical areas ordinance and zoning inconsistent with the Plan’s natural systems policies and do they thereby fail to comply with RCW 36.70A.040(3)?
64.	SUQU	Do the Plan, Critical Areas Ordinance, Figure Book and Zoning Ordinance fail to be guided by RCW 36.70A.020(9) and (10) and fail to comply with RCW 36.70A.070(1) and .070(5)(c)(iv) by failing to ensure the availability of water?
65.	NKCC	Does the Transportation Element of the Plan fail to comply with the requirements of RCW 36.70A.070(6) by failing to accurately forecast internal and external traffic for the 20-year planning period? [This Legal Issue was dismissed by the Board. <i>See</i> Order on Dispositive Motions, at 12.]
66.	NKCC	Is the Plan internally inconsistent (between and among the various Plan elements) and therefore in violation of RCW 36.70A.070(preamble),(1) and (6) because it fails to coordinate the Transportation Element with the Land Use Element?
67.	NKCC	Did the County fail to be guided by RCW 36.70A.020(3) by failing to adequately plan for multimodal transportation? [This Legal Issue was dismissed by the Board. <i>See</i> Order on Dispositive Motions, at 12.]

appendix c - abbreviations for parties

Party Abbreviation	Whole Party Name	Party Role
1000 Friends	1000 Friends of Washington	Petitioner
Adams, et al.	S. M. Adams and Nobi Kawaski	Petitioner
Alpine	Alpine Evergreen Company, Overton & Assoc. and Peter E Overton	Petitioner
Alpine Evergreen	Alpine Evergreen Company	Intervenor for Respondent

APAC	Association to Protect Anderson Creek, Helen Havens-Saunders and Elaine Manheimer	Petitioner
Appletree	Appletree Point Partnership and its partners Betty Bosanko, Katy Fortune, Barbara and Bill Tarbill	Participant
Bremerton	City of Bremerton	Petitioner
Cazin	Kitsap Citizens for Rural Preservation, Linda Cazin and Charlie Burrow	Petitioner
David	Gerald David	Participant
DNR	State of Washington Department of Natural Resources and Commissioner of Public Lands of the State of Washington	Petitioner
EDCKC	Economic Development Council of Kitsap County	Intervenor for Respondent
KCRP	Kitsap Citizens for Rural Preservation	Petitioner
Kitsap Co.	Kitsap County	Respondent
Lewis	Robert H. Lewis	Participant
Manke	Manke Lumber Co., Inc.	Petitioner
McCormick	McCormick Land Company	Intervenor for Respondent
NKCC	North Kitsap Coordinating Council	Petitioner
Overton	Peter Overton and Overton & Associates	Intervenor for Respondent
Pope and Port Blakely	Pope Resources and Port Blakely Tree Farms	Intervenor for Respondent
Port of Bremerton	Port of Bremerton	Intervenor for Respondent
Port Orchard	City of Port Orchard	Intervenor for Respondent
Posten	Warren E. Posten Sr.	Petitioner
Poulsbo	City of Poulsbo	Intervenor for Respondent
Ross	Ronald R. Ross	Intervenor for Respondent
Ryan	Matt Ryan	Petitioner
S'Klallam	Port Gamble S'Klallam Tribe	Petitioner
Screen	Robert and Janet Screen	Petitioner
South Sidney	South Sidney Business Park and Commercial Land Owners	Petitioner
State	State of Washington, by and through the Director of the Dept. of Fish and Wildlife, the Director of the Dept. of CTED, the Director of the Dept. of Ecology	Petitioner
Suquamish	Suquamish Indian Tribe	Petitioner

Swenson	Philip J. Swenson and Eugene F. Cook	Petitioner
URBPA	Union River Basin Protection Association and Elaine Manheimer	Petitioner
Washington Cedar	Washington Cedar & Supply Co., Inc.	Petitioner

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- [1] The title of the consolidated 1997 case was *Port Gamble, et al., v. Kitsap County*, CPSGMHB Case No. 97-3-0024c (the short case title is ***Port Gamble***).
- [2] *Bremerton, et al., v. Kitsap County* (CPSGMHB Consolidated Case No. 95-3-0039c) coordinated with *Port Gamble, et al., v. Kitsap County* (CPSGMHB Consolidated Case No. 97-3-0024c), issued September 8, 1997.
- [3] Several groups and individuals participated pursuant to RCW 36.70A.330(2).
- [4] The Board subsequently granted all of the motions to intervene.
- [5] Several of these motions were made as part of a pleading or at the hearing on the merits.
- [6] Unlike the County's 1994 Plan and 1996 Plan, the 1998 Plan and related actions are subject to the GMA as amended by ESB 6094.
- [7] 1997Order, at 15.
- [8] The County's Brief on Invalidity, at 8-9 [footnote 7, citing to various Tables in the Plan].
- [9] The density assumptions, land capacity analysis and land use map (UGA/JPA Map) are discussed in Section VII.D on Urban Growth Areas; rural densities are also discussed in Section VII.E under the section on Rural Lands.
- [10] Many issues were argued by more than one petitioner; however, some petitioners abandoned issues in their briefing. These petitioners are noted in the discussion of the topical areas.
- [11] See Appendix B.
- [12] See Appendix B.
- [13] Issue S-2. See Appendix B.
- [14] See Chapter 42.17 RCW.
- [15] Issues R-4, S-5, S-6, 23, 24, 27, 28, 29, 30, 58, 59, 60, 61, 62, 63, and 64. See Appendix B.
- [16] Ordinance No. 217-1998, Sec. 1, Finding of Fact F, at 1.
- [17] *Id.*, Finding of Fact G, at 1.
- [18] *Id.*, Secs. 2 and 3, at 2.
- [19] The studies reveal a range of thresholds from 7 to 12 percent.

[20]

Among the material quoted by APAC is a letter from the Washington Department of Fish and Wildlife dated June 25, 1998 – after the County’s challenged action. *See* Index 18127.

[21]

Issues S-1, 3, 4, 23, 25, 48, 54 and 57. Issues challenging the Interim Rural Forest (IRF) designation are discussed under VII.E Rural Lands.

[22]

This discussion addresses Issues R-1, R-3, R-5, S-5, 1, 2, 6, 7, 8, 9, 10, 12, 18, 19, 20, 36, 37, 38, 41, 42, 43, 44, 45, 46, 47, 49, 50, 51, 52, 53, 54, 55 and 56. *See* Appendix B.

[23]

The provisions of the 1997 Order regarding UGAs are set forth in Section V, Invalidity as to *Bremerton, supra*, at 18-20.

[24]

Industrial/commercial lands were not addressed in the *Bremerton* case. Therefore, the discussion of these lands stems from the *Alpine* challenge.

[25]

RCW 36.70A.110 provides in relevant part:

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

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

...

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

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

...

(6) Each county shall include designations of urban growth areas in its comprehensive plan.

[26]

The Board has previously held that counties must “show their work” when making UGA decisions. *See Association of Rural Residents v. Kitsap County*, CPSGMHB Case No. 93-3-0010, Final Decision and Order, June 3, 1994, at 35. While subjective factors may be included in the UGA decision, such policy choices must be made in a measurable way and with sufficient documentation as to the rationale. *Tacoma, et al., v. Pierce County*, CPSGMHB Case No. 94-3-0001, Final Decision and Order, July 5, 1994, at 10.

[27]

Long range policy objectives and population projections alike are targets to aim for, rather than guaranteed outcomes. The Board has observed that “a twenty year population target for a city comprehensive plan is just that - a target that expresses intent and aspiration - but which recognizes that many variables can result in a somewhat higher or somewhat lower actual population.” *Aagaard v. Bothell*, CPSGMHB Case No. 94-3-0011, Final Decision and Order, February 21, 1995, at 9.

[28]

UGA-3 provides: The County will work with the Cities and Tribes, using the KRCC as a forum, to establish updated population forecasts and allocations to reflect the 2013-2017 and subsequent planning periods. Updated regional employment forecasts may also

be considered as appropriate. The first annual Comprehensive Plan review process should address any appropriate expansions of designated UGAs and/or rezoning of lands designated for Urban Reserve, to reflect the updated forecasts. Plan, Part I, at 16.

[29]

The current residential densities of the cities are as follows: Bremerton (5.16 du/ac); Poulsbo (3.79 du/ac); Port Orchard (3.11 du/ac); and Bainbridge Island (.92 du/ac). Plan, at A-34.

[30]

The Plan, at Land Use Goal 18, provides:

The zoning ordinance should allow for attractive, integrated, mixed use development within planned commercial centers to provide affordable housing and reduce auto trips. Plan, Part I, at 42, quoted in KCRP PHB, at 11.

[31]

Medium and high density residential uses are permitted in mixed use commercial zones, subject to site plan review. Zoning Ordinance, at 50.

[32]

UGA-3 provides in relevant part:

The first annual Comprehensive Plan review process should address any appropriate expansions of designated UGAs and/or rezoning of lands designated for Urban Reserve, to reflect the updated forecasts. Plan, Part I, at 16.

[33]

See RCW 36.70A.215.

[34]

Issue R-1, Appendix B.

[35]

UGA-13 provides in relevant part:

Urban Joint Plans shall, in general, address the following elements and criteria and meet the following conditions:

a. the plan shall address the City's expected boundary for future expansion, which shall include the area anticipated to be annexed and/or provided with urban services over the next 20 years;

b. the plan shall be based on agreed upon, authorized City population and employment projections and allocations supporting the need for such expansion, including a demonstration that projected growth cannot be reasonably accommodated within the city's existing corporate boundaries;

...

e. the plan shall adequately protect critical areas, pursuant to mutually agreed upon standards, including wetlands, streams, geologically hazardous areas, wildlife and critical aquifer recharge areas;

...

g. the plan shall provide for the protection of and restoration of salmon habitat and be required to meet the requirements of the state salmonid policies and the Endangered Species Act. No action will be taken without public involvement and participation of interested property owners, Tribes, and appropriate agencies and groups. Plan, Part I, at 25, 26.

[36]

In support of the proposition that CPPs have a directive effect on plans, Bremerton cites to a 1998 decision by the Court of Appeals:

A CPP may provide substantive direction to city and county comprehensive plans if it: (1) meets a legitimate regional objective, (2) is limited to providing substantive direction to the provisions of the comprehensive plan without directly affecting the provisions of an implementing regulation or other exercise of land use power, and (3) is consistent with other relevant provisions in the GMA. *King County v. Central Puget Sound Growth Hearings Board*, 91 Wn. App. 1, 14 (1998).

[37]

In addition to the UGA policies, the Plan includes associated text on pages 19 through 23. Included in this associated text are statements that "no annexations will occur until the joint plans and interlocal agreements are adopted and the city or cities have amended their comprehensive plans in accordance with the interlocal agreements," Plan, at 19; "No annexations of Urban Joint Planning Areas will occur until completion of the joint plan and interlocal agreement..," Plan, at 20; "No annexations may occur until the issues identified in a memorandum of Agreement, which is currently being pursued, are resolved and the City's [of Bremerton] comprehensive plan is amended in accordance with the agreement." Plan, at 22 (Emphasis added.)

[38]

RCW 36.70A.110(2) provides in part:

Based upon the growth management population projection made for the county by the office of financial management, the county

and each city within the county shall include areas and densities sufficient to permit the urban growth that is projected to occur in the county or city for the succeeding twenty-year period. Each urban growth area shall permit urban densities and shall include greenbelt and open space areas. (Emphasis added.)

[39] RCW 36.70A.210(1) provides:

The legislature recognizes that counties are regional governments within their boundaries, and cities are primary providers of urban governmental services within urban growth areas. (Emphasis added.)

[40] The only GMA mechanism that the County may utilize to prevent an annexation is its designation of the UGA pursuant to RCW 36.70A.110. A city may not annex land that is not within the UGA. RCW 35.13.005.

[41] The Board agrees with the County that the GMA does not require a county to actively support a city's annexation effort. *Kelly, et al., v. Snohomish County*, CPSGMHB Case No. 97-3-0012, Final Decision and Order, July 30, 1997, at 14.

[42] Issues S-5, 36-38, 51-53, 55 and 56.

[43] The Board concludes that tier one and First Priority areas are referring to the same criteria. While the descriptive explanations for the UGAs use the term "tiers," the term "priorities" is used for the UGA siting criteria. Nonetheless, these terms must be equivalent since Kingston and Silverdale are given as examples of first priority areas in the siting criteria; and in the descriptive explanation, both areas are also noted as meeting the criteria for tier one areas. Compare: Plan, Part I, at A-41 and A-42.

[44] The County description of the Port Gamble area states: "Throughout its history, Port Gamble has been one of Puget Sound's unique, small centers of industrial, residential and commercial activity." Plan, Part I, at A-42.

[45] In order to meet the County's 3 du/acre criterion, these existing residential units would have to be located within no more than 12.3 acres (net) of the UGA.

[46] McCormick and APAC use the terms "McCormick Woods UGA" and "South Kitsap UGA" interchangeably. "The McCormick Woods and Campus Station PUD's, [which] constitute the entire South Kitsap UGA. . . ." Brief of McCormick Land Company in Reply to KCRP, et al.'s Response to Kitsap County's Brief on Invalidity, at 7.

[47] The County adopted by reference the Brief submitted by McCormick on all McCormick Woods issues. County Response, Part I, at 38.

[48] The Board has observed:

[T]he Act does not require that all lands that are presently . . . be included within a UGA. *Vashon-Maury, et al., v. King County*, CPSGMHB Case No. 95-3-0008, Order on Motions to Correct, December 1, 1995, at 9.

[49] Issues 41-43 in Appendix B.

[50] DNR manages State trust lands for the benefit of common schools and other trust beneficiaries.

[51] The Illahee property consists of 355 acres of DNR trust lands. The property is wooded and 320 of these acres are designated as Urban Study Area -- Urban Reserve. DNR PHB, at 3.

[52] DNR implies that the effect of the "twilight zone" will be to affect property values, if it is acquired by the County.

[53] Plan Policies UGA-15, UGA-16 and UGA-17 set out the study area process for the Illahee property.

[54] This discussion addresses Legal Issues R-1, R-3, 12, 18, 20, and 45.

[55] KCRP also argued: "Rather than reducing the available land for critical areas by a number as large as 32 percent, it would have

been more reasonable for the County to assume that the critical areas within a parcel would make up part of that parcel's uncovered space."KCRP PHB, at 27.KCRP made a similar argument regarding the reduction factor for road rights-of-way.

[56] "[L]arge parcel sizes (10 acres or more) are typically most important for large manufacturing, warehouse, or distribution facilities, as well as business parks."Index 17960, at 25.

[57] It also designated Joint Planning Areas for industrial uses outside the UGA.

[58] Issues R-1, R-3, 5, 11, 20, 21, 39, 40 and 44.

[59] As Petitioner Screen points out, "[c]ourts view locally adopted plans as they would a statute."Screen Reply, at 2 (citing *Nisqually Delta Association v. City of DuPont*, 103 Wn.2d 720, 730 (1985)).

[60] This discussion addresses issues R-2.A, R-2.B, R-3, S-4, 32 and 35 as set forth in Appendix B.

[61] See also, Plan, Part II, 11, 31 and 206-228.

[62] Alpine, APAC, KCRP and NKCC.

[63] Issue S-4 is broader than, but encompasses, Issues R-2.A and R-2.B.

[64] The Board also notes that APAC did not address Capital Facilities in its Reply Brief.APAC Reply, at 1-20.

[65] The Board notes that Act's concurrency provisions (RCW 36.70A.070(6)(b) and RCW 36.70A.020(12)) demonstrate a predilection that facilities and services be available prior to, or concurrent with, development, not lag behind it.

[66] Policy 2.7 provides:

Available Revenue and Capital Facilities to Support Land Use.Finance the six-year Capital Facilities Plan within the County's financial capacity.If the projected funding is inadequate to finance needed capital facilities based on adopted levels of service and forecasted growth, make adjustments to the level of service, the land use element, the sources of revenue, or any combination, to achieve balance between available revenue and needed capital facilities.This policy constitutes Kitsap County's response to the requirement of RCW 36.70A.030(3)e [*sic*:RCW 36.70A.070(3)(e)].

[67] See Plan, Part II, at 2-4, 15-18, 48, 61-66, 72, 79-85, 113-116, 122, 127, 131, 136, 143, 158-165, 176-202, 222-228; and "Revenue Sources for Capital Facilities, 1995-2000, Kitsap County, Washington -- Capital Facilities Plan Support Document.

[68] Includes Issues R-2.C, R-3, S-7, 6, 33, 34 and 66 as set forth in the Prehearing Order.Each of these Issue Statements, to varying degrees of specificity, involves compliance with RCW 36.70A.070(6), including internal consistency among elements.

[69] See also, Plan, Part II, at 143-166, Transportation Appendix, at A-253 to A-320, and Plan, Part II, at 166-202.

[70] APAC, Cazin, KCRP, NKCC, Ryan.

[71] Issue S-7 encompasses Issue R-2.C.

[72] NKCC's PHB was signed by both Bock and Cazin.NKCC PHB, at 18.

[73] The Board notes that in its brief (APAC PHB, at 31), APAC does refer to the financing methodology discussed by Cazin.This matter is addressed in the discussion of Cazin's arguments *infra*.

[74] The CPPs for Kitsap County direct that the County's population be allocated 1/3 to rural, 2/3 to urban areas.County Response, Part I, at 143.

[75] See discussion of public participation, *supra*, at VI. A.

[76] Costs are illustrated as flat (average), ignoring inflation or changed costs over time, thus suggesting that more revenue will be available for construction in later years.

[77] Plan, Part I, at A-313.

[78] NKCC points to this discrepancy and inconsistency in its brief. NKCC PHB, at 6. The County “acknowledges that it neglected to change Figure TR-29 (at A-313) to reflect the increase in cost of improvements from \$3.8 to \$5.1 million as indicated in the text of the Plan (at 312). County Response, Part I, at 139.

[79] Currently there are ferry terminals at Kingston, Bainbridge Island (Winslow), Bremerton and Southworth. With the exception of Southworth, each is within the UGAs designated by the County.

[80] Petitioner urged the County to include Manchester and Suquamish within the UGAs.

[81] Issue 6 also asserted the Transportation Element’s inconsistency with Vision 2020, a Growth Management, Economic and Transportation Strategy for the Central Puget Sound Region (King, Pierce, Snohomish and Kitsap Counties).

[82] Issues 26 and 27. See Appendix B.

[83] APAC PHB, at 67. **Goal #18** Prevent development on floodplains that might have the potential to damage property or increase height, flow or velocity of the floodwater. **Policy NS-50** The natural vegetation in floodplains should be maintained, where feasible, to minimize runoff into streams and reduce the risk of increased streamflow, stream velocity and coastal flooding. **Policy NS-54** Development regulations should require site design that minimizes impervious surfaces, limits grading and protects areas of undisturbed vegetation in order to decrease stormwater runoff and hydrologic changes in drainage basins. Plan, Part I, at 87-88.

[84] See also RCW 35.13.005.