

**CENTRAL PUGET SOUND
GROWTH MANAGEMENT HEARINGS BOARD**

STATE OF WASHINGTON

BURROW,)	
)	Case No. 99-3-0018
Petitioner,)	
v.)	
)	
KITSAP COUNTY,)	
)	
Respondent,)	
and)	
)	
POPE RESOURCES,)	
)	Coordinated with
Intervenor.)	
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)	Consolidated
ALPINE, et al.,)	Case No. 98-3-0032c
)	[Portion dealing with Compliance with
Petitioners,)	Remand Items 3.d and 3.f]
v.)	
)	
KITSAP COUNTY,)	ORDER ON COMPLIANCE IN A PORTION
)	OF <i>ALPINE</i> AND FINAL DECISION AND
Respondent,)	ORDER in <i>BURROW</i>
and)	
)	
PORT BLAKELY TREE)	
FARMS, et al.,)	
)	
Participants.)	
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i. Procedural Background

On February 8, 1999, the Central Puget Sound Growth Management Hearings Board (the **Board**) issued its “Order Rescinding Invalidity in *Bremerton* and Final Decision and Order in *Alpine*” (the ***Alpine* FDO**) in Coordinated Cases 95-3-0039c and 98-3-0032c. In the *Alpine* FDO, the Board found the Kitsap County (the **County**) comprehensive plan (the **1998 Plan**) and development regulations in noncompliance with the requirements of the Growth Management

Act (**GMA** or the **Act**). The Board directed the County to take action on a number of items. The FDO provided in part:

In order for the County to achieve compliance with the GMA, as set forth in this Order Rescinding Invalidity 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:

3.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.

...

3.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.

Alpine FDO, at 86-88.

On August 17, 1999, the Board received "Kitsap County's Notice of Actions Taken to Comply with Remand Order on Port Gamble and Capital Facilities Plan" (the **NATC**). Attached to the NATC was Ordinance No. 236-1999 which adopted amendments to both the County's comprehensive plan and its zoning code.

On October 1, 1999, the Board received a Petition for Review (the **PFR**) from Kitsap Citizens for Rural Preservation, Linda Cazin and Charlie Burrow (collectively, **Burrow**). The Burrow PFR challenges adoption by the County of Ordinances Nos. 230-1999 and 236-1999. The Board assigned case No. 99-3-0018 and the caption *Burrow v. Kitsap County* (short title is *Burrow*).

On November 3, 1999, the Board conducted the prehearing conference in *Burrow* and a concurrent pre-compliance hearing in a portion of *Alpine*.

On November 8, 1999, the Board issued a “Prehearing Order and Order on Motion to Intervene in *Burrow* and Pre-Compliance Hearing Order in Portion of *Alpine*” (the **PHO**). The PHO granted intervenor status to Pope Resources (**Pope**).

On November 12, 1999, the Board received “Kitsap County’s Motion for Clarification/Correction” (the **County’s Motion for Clarification/Correction**).

On November 22, 1999, the Board issued an “Order Correcting and Clarifying Prehearing Order.”

On December 30, 1999, in response to pleadings from the parties, the Board issued an “Order on Motions to Supplement the Record.”

On January 21, 2000, the Board received “Burrow’s Opening Brief” (the **Burrow Opening Brief**).

On February 4, 2000, the Board issued “Notice of Time and Location for Hearing on the Merits and Compliance Hearing.”

On February 11, 2000, the Board received “Opening Brief of Intervenor Pope Resources in Support of County’s Action on Remand” (the **Pope Brief**). Within the Pope Brief was a motion to strike the entire Burrow Opening Brief, or portions of it (the **Pope Motion to Strike**) based upon an allegation that certain of the issues presented were beyond the scope of the PFR and the PHO and that others were briefed in such a fashion as to constitute abandonment.

On February 17, 2000, the Board received “Kitsap County’s Responsive Brief” (the **County Brief**). Within the County’s brief was a motion to dismiss the Petitioners’ petition with prejudice (the **County’s Motion to Dismiss**) based upon an allegation that the briefing presented in the Burrow Opening Brief constituted an abandonment of all Petitioners’ legal issues. County Brief, at 2-3. Also within the County’s Brief was a motion to strike (the **County’s Motion to Strike**) portions of the Burrow Opening Brief regarding arguments relative to SEPA, additional goals and shoreline issues not raised in the PHO. County Brief, at 3-4.

On February 22, 2000, the Board received “Burrow’s Reply Brief” (the **Burrow Reply**).

The concurrent compliance hearing on remand items 3.d and 3.f of *Alpine* and the hearing on the merits in *Burrow* took place on February 24, 2000, at the Bainbridge Island Fire Station. Present for the Board were members Lois H. North, Edward G. McGuire and Joseph W. Tovar, presiding officer. Also present was the Board’s contract law clerk, Andrew Lane. Representing the County was Sue Tanner, representing Pope was Katherine Kramer Laird. Petitioners Linda Cazin and

Charlie Burrow represented themselves *pro se*. Court reporting services were provided by Jean Ericksen, CCR, of Robert Lewis and Associates of Tacoma, Washington. No witnesses testified.

II. FINDINGS OF FACT

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 20(3) of ESB 6094 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).
4. The Kitsap County Board of County Commissioners (**BOCC**), on July 21, 1999, adopted Ordinance 236-1999, (the **1999 Plan**). The caption of Ordinance 236-1999 was "Amending the Comprehensive Plan, Land Use Map and Zoning Ordinance and Map Pursuant to an Order of the Central Puget Sound Growth Management Hearings Board in Alpine v. Kitsap County, CPSGMHB Case No. 98-3-0032c, to redesignate and rezone Port Gamble and update the six year financing plan in the Capital Facilities Element of the Plan."
5. Section 2 of Ordinance 236-1999 provided that the BOCC "[1] adopts the attached amendments to the Kitsap County Comprehensive Plan updating the Capital Facilities Plan to cover the six-year period 1998-2004; [2] adopts the attached amendments to the Plan and Land Use Map deleting the UGA and Urban designations for Port Gamble and designating Port Gamble as a Rural Historic Town; and [3] adopts the attached amendments to the Zoning Ordinance and Map, adding a new chapter entitled "Rural Historic Town" to the Zoning Ordinance and applying the Rural Historic Town designation to the Zoning Map."

III. dispositive motions

Most of the issues to which Pope and the County objected as outside the scope of the PFR and the PHO have been abandoned.

Pope's Motion to Strike is **denied**.

The County's Motion to Dismiss is **denied**.

The County's Motion to Strike is **denied**.

IV. presumption of validity, burden and standard of proof

Pursuant to RCW 36.70A.320, comprehensive plans and development regulations, and amendments thereto, adopted pursuant to the Act, are **presumed valid** upon adoption. The **burden is on the petitioner** to demonstrate that any action taken by the respondent jurisdiction is not in compliance with the Act.

The Board “shall find compliance with the Act, unless it determines that the [County’s] action[s] are] **clearly erroneous** in view of the entire record before the Board and in light of the goals and requirements of the [GMA].” RCW 36.70A.320 (3). For the Board to find the County’s actions clearly erroneous, the Board must be “left with the firm and definite conviction that a mistake has been made.” *Dep’t of Ecology v. PUD 1*, 121 Wn.2d 179, 201 (1993).

The County correctly set forth RCW 36.70A.320(3) in its brief, then went on to state:

The legislature has expressly directed hearings boards to grant considerable deference to local government’s exercise of discretion in meeting the requirements of the Growth Management Act, . . . in consideration of local circumstances, . . . County Brief, at 7, (emphasis added).

To suggest that the legislature has “expressly directed” the granting of “considerable” deference is wrong. The word “considerable” does not appear in the statute, nor was it used by the *Manke* Court (*Manke Lumber Co., v. Diehl*, 91 Wn. App. 793, 804, 959 P.2d 1173 (1998)), cited by the County in its brief, *Id.* To characterize the degree of deference that attaches to the clearly erroneous standard codified in RCW 36.70A.320(2) the law simply uses the relative term “more”^[1] in reference to the earlier “preponderance of the evidence” standard of review.

V. ALPINE COMPLIANCE issues

A. The Board’s February 8, 1999 FDO – Remand Order

The Board’s February 8, 1999 Final Decision and Order provided, in relevant part:

3. In order for the County to achieve compliance with the GMA, as set forth in this Order Rescinding Invalidity 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:

...

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.

...

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.

Alpine FDO, at 86 – 87.

B. Applicable Law

RCW 36.70A.330 provides, in relevant part:

(1) After the time set for complying with the requirements of this chapter under RCW 36.70A.300(3)(b) has expired . . . the board shall set a hearing for the purpose of determining whether the . . . city is in compliance with the requirements of this chapter.

(2) The board shall conduct a hearing and issue a finding of compliance or noncompliance with the requirements of this chapter and with any compliance schedule established by the board in its final order. . . .

(3) If the board after a compliance hearing finds that the . . . city is not in compliance, the board shall transmit its findings to the governor. The board may recommend to the governor that the sanctions authorized by this chapter be imposed. The board shall take into consideration the . . . city's efforts to meet its compliance schedule in making the decision to recommend sanctions to the governor.

C. Discussion

“Kitsap County's Notice of Actions Taken to Comply with Remand Order on Port Gamble and Capital Facilities Plan” (*SATC*) filed by the County on August 17, 1999 states: “the Board of County Commissioners adopted Ordinance No. 236-1999 . . . This action completes the County's compliance with the Board's remand in this case.” *SATC*, at 1.

Section 2 of Ordinance No. 236-1999 provides in part:

[T]he Kitsap County Board of Commissioners adopts the attached amendments to the Kitsap County Comprehensive Plan updating the Capital Facilities Plan to cover the six-year period 1998-2004; adopts the attached amendments to the Plan and Land Use Map deleting the UGA and Urban designations for Port Gamble and designating Port Gamble as a Rural Historic Town; and adopts the attached amendments to the Zoning Ordinance and Map, adding a new chapter entitled “Rural Historic Town” to the Zoning Ordinance and applying the Rural Historic Town Designation to the Zoning Map.

Ordinance No. 236-1999, Section 2, at 2.

The Board notes that Petitioners do not dispute the County’s deletion of Port Gamble’s UGA, nor did they brief the County’s compliance with the remand provisions noted above (paragraph 3.d and 3.f) in the *Alpine* FDO. However, the Petitioners do challenge the County’s designation of Port Gamble as a Rural Historic Town. This is a principle issue in dispute in the *Burrow* case, discussed below. The Board finds that the County’s adoption of Ordinance 236-1999 addresses the remaining compliance issues noted in the Board’s February 8, 1999 FDO (paragraphs 3.d and 3.f).

D. Finding of Compliance

Having reviewed the *Alpine* FDO, the SATC and materials provided by the parties, the Board determines and finds that Kitsap County has complied with the goals and requirements of the GMA, as set forth in the Board’s February 8, 1999 FDO. Therefore, the Board issues this **finding of compliance** to Kitsap County in CPSGMHB Case No. 98-3-0032c (*Alpine Evergreen Co., Inc., et al. v. Kitsap County*). This action of the Board closes the *Alpine* case. The Board now addresses the substantive issues raised in the *Burrow* PFR.

VI. ABANDONED ISSUES

Petitioners explicitly abandoned those portions of Legal Issue No. 1 relating to GMA goals 5, 6, 7, 8, 9, and 10. *Burrow* Reply, at 8. Petitioners also explicitly abandoned Legal Issue No. 5 and No. 6 in their entirety. ^[2] *Burrow* Reply, at 35.

VII. burrow legal issues

Legal Issue No. 2

Did the county fail to comply with the requirements of RCW 36.70A.035(2) and RCW 36.70A.130(1) and (2) when it failed to provide opportunity for public comment for certain portions of Ordinance 236-1999?

Petitioners contend that the County failed to comply with the GMA public participation and notice requirements^[3] because “[t]he adopted map and Ordinance 236-1999 are significantly different from any County proposals presented to the public.” Burrow Opening Brief, at 19. Specifically, Petitioners argue that the County included the approximately twenty-acre Gamble Village area within the Port Gamble Rural Historic Town (**PGRHT**) and added residential uses to permitted uses in the waterfront zone without including these provisions in any County-produced proposal provided to the public prior to adoption of the challenged ordinance. Petitioners’ view is that, to satisfy GMA public participation and notice requirements, the County must have prepared a document for public inspection specifically proposing all elements of the amendments ultimately adopted by the County, notwithstanding the fact that the record before the County (and the public) included a range of potential amendments.

The GMA requires the County to provide reasonable notice of proposed amendments to comprehensive plans and development regulations. RCW 36.70A.035(1). If the County Commissioners choose “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.” RCW 36.70A.035(2)(a) (emphasis added).

These provisions require the opportunity for the public to review and comment on proposed amendments and changes to those proposed amendments. However, an additional opportunity for public review and comment is not required if the proposed change is within the scope of the alternatives available for public comment. RCW 36.70A.035(2)(b)(ii). In other words, if the public had the opportunity to review and comment on changes to the proposed amendments, then the County is not required to provide an additional opportunity for public participation. There is no GMA requirement that the County must have prepared a document for public inspection specifically proposing all elements of the amendments ultimately adopted by the County; it is enough that the changes to the County-proposed amendments were within the scope of alternatives available for public comment.

The record demonstrates that the inclusion of Gamble Village within the PGRHT and residential uses in the waterfront zone were within the scope of alternatives available for public comment. At the June 29, 1999 Planning Commission meeting, inclusion of Gamble Village in the PGRHT was discussed at length. Index 20026 (June 29, 1999 Kitsap County Planning Commission Meeting Minutes), at 250-63. At the July 16, 1999 Planning Commission meeting, County staff

included Gamble Village in its recommendation to the Planning Commission. Index 20027 (July 6, 1999 Planning Commission Meeting Minutes), at 281. There is no question that the County publicly considered whether Gamble Village should be included in the PGRHT designation and the public had the opportunity to provide comments to the Planning Commission and County Council.

The record also demonstrates that the inclusion of residential uses in the waterfront zone were within the scope of alternatives available for public comment. Olympic Resource Management submitted a report to the Planning Commission regarding land use patterns, uses and boundaries. Index 19758 (Jun. 29, 1999), Attachment 1355. This report proposes residential uses in the waterfront zone. *Id.* at 5 (Table 321.B.040). This proposal was supported by the United States Department of the Interior. Index 19758 (National Park Service Statement on Draft Zoning Ordinance Amendment “New Chapter 321.6: Rural Historic Towns”), Attachment 1361, at 5. At the June 29, 1999 Planning Commission meeting, inclusion of residential uses along the waterfront was discussed. Index 20026 (June 29, 1999 Kitsap County Planning Commission Meeting Minutes), at 253. There is no question that the County publicly considered residential uses in the waterfront zone and the public had the opportunity to provide comments to the Planning Commission and County Council.

Petitioners failed to meet their burden of proof to show that the County’s public participation process was clearly erroneous.

Conclusion to Legal Issue No. 2

Petitioners failed to meet their burden of proof to show that the County failed to comply with the requirements of RCW 36.70A.035(2) and RCW 36.70A.130(1) and (2).

Legal Issue No. 3

Did the County fail to comply with the requirements of RCW 36.70A.070 (preamble), (1) and (5); and with the requirements of RCW 36.70A.110 (1),(3) and (4) in regard to land use and rural elements when it adopted Port Gamble Townsite as a Rural Historic Town?

The Petitioners have framed this legal issue to include alleged noncompliance with RCW 36.70A.110 (the Act’s urban growth areas requirements) and RCW 36.70A.070 (preamble) and RCW 36.70A.070 (1) (the consistency and land use element requirements of a comprehensive plan, respectively). These are essentially supporting arguments to the core of this legal issue – Petitioners’ allegation that the County’s designation for Port Gamble does not meet the requirements of RCW 36.70A.070(5) (the rural element requirements of a county comprehensive plan), specifically with regard to the provisions for “limited areas of more intensive rural

development” (**LAMIRDS**). Because the outcome to this legal issue turns on the question of the County’s compliance with RCW 36.70A.070(5), the provisions of that section will be the focus of the Board’s analysis.

A. Applicable Law

RCW 36.70A.070(5) provides in part:

(d) Limited areas of more intensive rural development. Subject to the requirements of this subsection and except as otherwise specifically provided in this subsection (5)(d), the rural element may allow for limited areas of more intensive rural development, including necessary public facilities and public services to serve the limited area as follows:

(i) Rural development consisting of the infill, development, or redevelopment of existing commercial, industrial, residential, or mixed-use areas, whether characterized as shoreline development, villages, hamlets, rural activity centers, or crossroads developments. A commercial, industrial, residential, shoreline, or mixed-use area shall be subject to the requirements of (d)(iv) of this subsection, but shall not be subject to the requirements of (c)(ii) and (iii) of this subsection. An industrial area is not required to be principally designed to serve the existing and projected rural population;

(ii) The intensification of development on lots containing, or new development of, small-scale recreational or tourist uses, including commercial facilities to serve those recreational or tourist uses, that rely on a rural location and setting, but that do not include new residential development. A small-scale recreation or tourist use is not required to be principally designed to serve the existing and projected rural population.

Public services and public facilities shall be limited to those necessary to serve the recreation or tourist use and shall be provided in a manner that does not permit low-density sprawl;

(iii) The intensification of development on lots containing isolated nonresidential uses or new development of isolated cottage industries and isolated small-scale businesses that are not principally designed to serve the existing and projected rural population and nonresidential uses, but do provide job opportunities for rural residents. Public services and public facilities shall be limited to those necessary to serve the isolated nonresidential use and shall be provided in a manner that does not permit low-density sprawl;

(iv) A county shall adopt measures to minimize and contain the existing areas or uses of more intensive rural development, as appropriate, authorized under this subsection. Lands included in such existing areas or uses shall not extend beyond the logical outer boundary of the existing area or use, thereby allowing a new pattern of low-density sprawl. Existing areas are those that are clearly identifiable and contained and where

there is a logical boundary delineated predominately by the built environment, but that may also include undeveloped lands if limited as provided in this subsection. The county shall establish the logical outer boundary of an area of more intensive rural development. In establishing the logical outer boundary the county shall address (A) the need to preserve the character of existing natural neighborhoods and communities, (B) physical boundaries such as bodies of water, streets and highways, and land forms and contours, (C) the prevention of abnormally irregular boundaries, and (D) the ability to provide public facilities and public services in a manner that does not permit low-density sprawl;

(v) For purposes of (d) of this subsection, an existing area or existing use is one that was in existence:

(A) On July 1, 1990, in a county that was initially required to plan under all of the provisions of this chapter;

(B) On the date the county adopted a resolution under RCW 36.70A.040(2), in a county that is planning under all of the provisions of this chapter under RCW 36.70A.040(2); or

(C) On the date the office of financial management certifies the county's population as provided in RCW 36.70A.040(5), in a county that is planning under all of the provisions of this chapter pursuant to RCW 36.70A.040(5).

(e) Exception. This subsection shall not be interpreted to permit in the rural area a major industrial development or a master planned resort unless otherwise specifically permitted under RCW 36.70A.360 and 36.70A.365.

B. The Two Fundamental Components of LAMIRDs

The two fundamental components of LAMIRDs are: (1) the land use intensity permitted within a LAMIRD and (2) the logical outer boundary of a LAMIRD. Arranged below under each of these two headings are: (a) a synopsis of the County's action, (b) the positions of the parties and (c) the Board's discussion and analysis.

1. LAMIRD uses and intensity (i.e., permitted uses and densities)

a. Synopsis of the County's Action

The 1999 Plan designation for Port Gamble utilizes the LAMIRD provisions of RCW 36.70A.070 (5). The 1999 Plan, including the implementing zoning, allows a variety of land uses, based upon those uses historically existing at Port Gamble. The 1999 Plan provides:

Uses to be allowed in the Town reflect historic uses and those in existence in July 1990. The commercial and industrial uses related to the sawmill operation ranged from local to international shipping, . . . port activities including boat storage, commercial and short term moorage, . . . and sawmill and port offices. Commercial and nonresidential uses included the general store, gas station, retail, restaurant or deli, food preparation and catering, general offices, places of worship, private club, private and home based schooling, performing arts and auditorium space, the post office and fire station.

Rural Historic Town Appendix, at A-315.

With respect to densities, zoning regulations governing lot sizes and other development requirements are based upon policies found in the 1999 Plan, which provides:

Although small lots and compact development is not a typical rural characteristic; it is appropriate at Port Gamble. The Town qualifies as a limited area [of more intensive rural development] based on the National Historic Landmark designation and the Town's historic development patterns . . . In Port Gamble, the zoning regulations establish a minimum lot size of 3,500 square feet and a maximum lot size of 7,500 square feet . . . A residential density limit of 2.5 units per acre was set for the town. Review of other non-urban communities such as Suquamish, Indianola, and Keyport disclosed existing densities between 2.9 and 4.7 units per acre. The historic record of Port Gamble reveals densities greater than this . . . [its] density and the range of uses and services in the Town, whether in 1990 or 1890, can be seen.

Rural Historic Town Appendix, at A-314.

b. Positions of the Parties

Burrow

Petitioners allege that the PGRHT development regulations and the policies upon which they are based, do not comply. Among its arguments, petitioner argues that the PGRHT designations allow an overly expansive range of uses and that the allowed land uses are too intensive, with a particular focus on residential density. Burrow states:

Respondents have ignored the GMA's clear direction that a LAMIRD approved pursuant to RCW 36.70A.070(5)(d)(iv) must not only be limited to the existing areas (1990's) of more intensive rural development, i.e., it must be contained within its proper logical outer

boundary, but it must also be limited to existing uses. Furthermore, those uses must be **minimized**, i.e., they must not exceed their existing level of intensity. But the PGRHT Plan allows many uses and far higher densities than existed in 1990.

Burrow Reply, at 30 (underlined and bold emphasis in original).

Petitioner contends that the 1990 threshold date listed at RCW 36.70A.070(5)(v)(A) not only limits which areas are candidates for LAMIRD designation (i.e., those lands that contained a settlement pattern more intensive than what surrounds it, or what might be typically expected in a rural area), but also prescribes the permitted uses as only those extant on July 1, 1990. Burrow focuses on the word "minimize" and cites to a dictionary definition of the word to support a position that RCW 36.70A.070(5)(d)(iv) cannot be read to permit:

... **any** increase in the intensity of existing uses beyond what existed in 1990, much less the open ended license suggested by the County. What the subsection does allow, in concert with subsection 5(d)(i), is infill, development and redevelopment of existing areas, so long as the uses are minimized, i.e., kept to their existing levels of intensity. Burrow Reply, at 16 (bold emphasis in original).

Applying this standard, Burrow proffers as evidence declarations [Ex. P-4, P-7], yellow pages [Ex. P-6] and State business licenses [Ex. P-8] and argues that, because the PGRHT designation allows businesses and uses beyond those documented by the Petitioners, it violates the GMA.

On the subject of residential density, Burrow offers an analysis of existing residential unit count and land area at Port Gamble to support its contention that the existing gross density of the site is 0.43 du/acre. Burrow Opening Brief at 10-11. This is far less than the 2.5 du/acre gross density permitted by PGRHT and is cited to support Petitioners' allegation that the LAMIRD is an impermissible "urban" density. Burrow disputes the County's characterization of the density in the PGRHT as "less than urban."^[4] Petitioners insist that the County has underestimated residential development potential permitted by the PGRHT designation and has made inappropriate comparisons to LAMIRDS elsewhere.

Both the County and Pope attempt to legitimize the urban densities allowed in the PGRHT Plan by arguing that LAMIRDS elsewhere permit urban densities. The County cites . . . a list of 41 RAIDS (LAMIRDS) in Island County, one of which allows densities greater than 3 du/ac.

Burrow Reply, at 27.

County

The County disagrees with the narrowness of Petitioners construction. Opining on the legislative purpose for the 1997 amendments, the County argues:

The drafters of the LAMIRD amendments to the GMA were very careful to distinguish between existing areas and existing uses. Although an existing area must be "clearly identifiable" and delineated "predominately" by the built environment, nothing in the statute requires that it be defined or identified only by the existing uses within it . . .

County Brief, at 16 (emphasis added).

The County further argues:

Petitioners express concern with the range and intensity of uses allowed in Port Gamble and contend that the existing uses within the Town dictate the type of uses which can be allowed in the future . . . [This is] contrary to the legislature's intent in adding the LAMIRD amendments to the GMA in 1997. Development, redevelopment, and infill within the boundaries of existing areas of more intensive rural development is not limited to the type and intensity of uses which already exist within the area.

County Brief, at 19 (emphasis added).

With respect to the residential density issues, the County points out:

... the County looked at the option of designating [Port Gamble] Rural Residential with a 1 du per 5 acre density, and allowing some type of clustered development . . . [H]owever, that approach was rejected . . . In responding to the Board's order, the County reviewed two options. One was to designate the town as Rural Residential with a maximum residential density of one dwelling unit per fire acres. The existing development in the town already exceed this density cap, and a Rural Residential designation would have made all existing commercial and industrial uses nonconforming. No infill, no new development, and little to no redevelopment can be expected to occur in the town under a Rural Residential designation.

County Brief, at 24 (citing the Historic Town Appendix at 310).

Intervenor Pope

Pope summarizes the essence of Petitioners' concerns:

The thrust of Petitioners' argument appears to be this: the densities at Port Gamble are urban; the boundaries of the RHT are too big; and the County's allowed uses are not the same as those existing in 1990. On each count, the Petitioners are wide of the mark.

Pope Brief, at 8.

In rejecting Burrow's documentation of the alleged "existing" uses in 1990, Pope describes a somewhat less expansive reading of RCW 36.70A.070(5) than does the County:

The GMA does not restrict the actual uses within the LAMIRD, it limits the types of uses. That is, if a LAMIRD in 1990 had only residential and commercial uses, then only those two uses would be permitted to continue within the logical outer boundaries of the LAMIRD identified and designated . . .

...

The record establishes that Port Gamble had a full range of uses in 1990: residential, mixed-use, commercial, industrial and a great variety of waterfront uses. What the County's RHT designation accomplishes is it allows those uses to continue, and to be infilled, developed and redeveloped, as permitted by RCW 36.70A.070(5)(d)(1).

Pope Brief, at 13 (emphasis in original).

With respect to residential densities, Pope argues that Petitioners greatly underestimate existing densities at Port Gamble and asserts that the PGRHT overall limit of 2.5 du/acre is consistent with the Act's requirements.

The [record] testimony [by Pope] was that Port Gamble platted lots and existing developed lots were at a density between 3 and 4 dwelling units per acre . . . What the County did to ensure that densities and development were compatible with the surrounding rural area is limit the overall densities to 2.5 du/acre and required smaller lot sizes with abundant open space.

Pope Brief, at 15.

Pope argued that the permitted density of each LAMIRD is determined by whatever density existed in 1990, and that in some situations, that density might appear to be more urban than rural. Intervenor cites to a Western Washington Growth Management Hearings Board case ^[5] wherein LAMIRD densities of up to 6 du/acre survived scrutiny for GMA compliance. Pope Brief, at 16.

c. Board Discussion of LAMIRD uses and intensity

Although the Board has reviewed the rural element of the County’s comprehensive plan on three prior occasions,^[6] this is the first time this Board has reviewed any county plan for compliance with the rural element provisions of ESB 6094, specifically the “limited areas of more intensive rural development” codified at RCW 36.70A.070(5)(d). Because this is a case of first impression, it is appropriate to begin with a brief review of the context for the creation of LAMIRDs.

Since the GMA’s initial adoption in 1990, one of its bedrock principles has been to direct urban development into urban growth areas and to protect the rural area from sprawl.^[7] The Act’s lengthy definitions and requirements regarding urban growth areas and natural resource lands also date to 1990. However, the Act’s initial description of future rural uses and development patterns was spare.^[8] While the 1997 rural amendments make accommodation for “infill, development or redevelopment” of “existing” areas of “more intensive rural development,” such a pattern of such growth must be “minimized” and “contained” within a “logical outer boundary.” This cautionary and restrictive language evidences a continuing legislative intent to protect rural areas from low-density sprawl.^[9]

So what are LAMIRDs? They are neither urban growth,^[10] nor are they to be the predominant pattern of future rural development. The Board agrees with the County that LAMIRDs are “not quite urban, but not quite rural.” County Brief, at 21. LAMIRDs are settlements that existed on July 1, 1990 in some land use pattern or form more intensive than what might typically be found in a rural area. RCW 36.70A.070(5)(d)(v). LAMIRDs are “characterized as shoreline development, villages, hamlets, rural activity centers, or crossroads developments.” RCW 36.70A.070(5)(d)(i). In essence, they are *compact forms of rural development*.

For Petitioners to complain that Port Gamble is, in effect, “too urban” reveals a fundamental misunderstanding of the very nature of such settlements. Port Gamble’s challenged densities manifest a physical form that *appears* urban-like, because such is the visual character of compact rural settlements. While these ‘more intensive’ rural settlements are in the rural area, they are different from the surrounding rural area in the intensity and range of uses. It is logical that they would also be different in *visual character*.^[11] The broad range of uses, private and public spaces, scale and character of structures at Port Gamble evoke the small New England towns that Pope and Talbot used as templates for their company town (*See Ex. 19125- Historic American Engineering Record for Port Gamble*).^[12] The Board finds that Port Gamble’s mix of uses and physical form clearly qualify it as a “village,” a “hamlet” or a “rural activity center” within the

meaning of RCW 36.70A.070(5)(d)(i).^[13]

With respect to the dwelling unit count, the Board is not persuaded by Burrow's arguments that the County incorrectly calculated the achievable densities at Port Gamble as 2.5 du/acre. Even if the 2.5 du/acre density is accurately described as more an urban than a rural density, that is of no consequence. As noted above, the Act's definitions (RCW 36.70A.030(17)) expressly state that development within LAMIRDs is **not** urban. The Act does not put an explicit limit on the absolute residential density permitted in LAMIRDs. The limit is unique to each LAMIRD and is established by the conditions that existed on July 1, 1990.

As to the question of range of permitted uses, again the Board concurs with the view expressed by Pope - that the GMA's focus is on the *types* of uses in existence on July 1, 1990, rather than the specific businesses. Therefore, the limitations imposed are upon the types of uses (i.e., office, or residential, or commercial) that existed on July 1, 1990, not on the specific businesses that can be documented. This conclusion is particularly compelling in this specific instance where the range of uses, including mixed use itself, is intrinsic to the concept of a town. In future cases, with a smaller scale settlement and a narrower range of historical uses, the Board may be compelled to more closely examine the actual businesses or uses to determine what the appropriate range of uses might be. However, such is not necessary here.

2. Logical Outer Boundary of a LAMIRD

a. Synopsis of the County's Action

The 1999 Plan states that the logical outer boundary of a LAMIRD "is a permanent boundary, not subject to the review and revision procedures applicable to UGAs." Rural Historic Town Appendix, at A-311. The 1999 Plan addresses the four criteria enumerated at RCW 36.70A.070(5)(d)(iv) (shown in bold below) as follows:

(A) The need to preserve the character of existing natural neighborhoods and communities: Preserving the character of the existing community is an essential consideration for Port Gamble. The town is a rare example of an early northwest company town . . . Although many of the old homes and buildings have been moved or destroyed, the town area has been maintained . . . Historic records, including maps showing platted lots, streets and alleys disclose that the natural boundary of the community has not changed for many years. The area existed in July 1990 in much the same character as it has existed for the past one hundred years or more.

(B) Physical boundaries such as bodies of water, streets and highways, and land forms and contours: The Hood Canal and Gamble Bay shorelines form the east and north boundaries of the town. ~~A ravine with a seasonal stream~~ The 1961

Gamble Village plat marks the ~~north~~*south*west edge . . . [and] electric power transmission lines delineate the southern and southeast boundaries. The tree line visible from the central town areas approximates the power line easement. These physical boundaries and the maintained grassy areas reflect the original size of the town . . .

(C) **The prevention of abnormally irregular boundaries:** The town boundaries follow lines set by the built or natural environment (shoreline or power lines), except along the western edge. On the western boundary, parcel lines running in a north/south direction mark the town boundary. ~~Areas to the west and across the ravine, such as the nursery and the 1961 Gamble Village plat, which were *was* included in the original UGA designation for Port Gamble have~~ *has* been deleted.

(D) **The ability to provide public facilities and services in a manner that does not permit low-density sprawl:** The town is currently served by private sewer and water facilities . . . A water distribution system exists, with 38 residential and commercial connections . . . [it] serves the entire town area, but would need to be expanded and upgraded to serve any substantial new development. A secondary sewage treatment system exists and serves the town area . . . it too] would need to be upgraded and expanded to support any substantial new development . . . The Act does not require that these types of infrastructure systems be already in place to serve a limited area. Rather, the concern is whether providing infrastructure would result in low-density sprawl or true urban development. For Port Gamble, it does not appear that providing upgraded infrastructure would result in low-density sprawl because the town boundaries are permanently set . . .

Rural Historic Town Appendix, at A-312-313. [\[14\]](#)

b. Positions of the Parties

Burrow

The focus of Burrow's attack on the PGRHT boundaries is narrowly focused on the BOCC revisions highlighted above, arguing:

The boundaries of the PGRHT are not logical. The County indicates that the bases for the town's approval is its historic nature. Yet the Plan's inclusion of the 20-acre Gamble Village are on the west side of the ravine and town does not follow the county's own rationale for logical Outer Boundaries. The Gamble Village plat that was established in 1961 (July 21, 1999 Plan, Pg. A-312) and vacated in 1982 is not part of the historic town and its homes are not historic landmarks, being contemporary in style.

Burrow Opening Brief, at 16.

Petitioners contend that inclusion of the Gamble Village area does not meet criterion RCW 36.70A.070(5)(d)(iv)(B) because it does not follow physical boundaries. Burrow argues:

The last-minute addition of the Gamble Village area resulted in the inclusion of portions of the creek and the ravine, well within the town, rather than the more logical result of forming the town's western boundary . . . The Plan's Gamble Village outer boundary is only defined by vacant lot lines which don't represent the "built environment."

Burrow Reply, at 14.

The existing improvements in the Gamble Village area, Burrow argues, are far less "intense" than the balance of the Town, and therefore do not justify inclusion in the LAMIRD:

The built environment at Gamble Village is a twenty acre vacated plat including five contemporary homes. The overall density is 1 du/4 acres (20/5), significantly less than the overall density in the residential zone east of Gamble Village of 1 du/1.8 acre (49 acres/27 historic homes). *Id.*

Petitioners also complain that inclusion of Gamble Village does not meet criterion RCW 36.70A.070(5)(d)(iv)(D) because it would extend infrastructure into an area with low densities.

County

The County contends that PGRHT meets the logical outer boundaries criteria. It states:

The boundaries also follow physical boundaries, such as Hood Canal, Gamble Bay and a tree line which approximates a power line easement, and the built environment, defined by the edge of the platted area of Gamble Village, which includes roads and structures and is served with power, sewer and water.

County Brief, at 18.

The County defends the decision to include Gamble Village:

[A]erial photos show it to have been part of the historic town; it is a platted area, with full infrastructure, directly adjacent to the Town boundary; there would inevitably be pressure to expand the Town into such a developed area; and, as it presently exists, the area does not provide a truly rural environment . . . The town's outer boundary is logical and secure into

the future . . . *Id.*

Intervenor Pope

Pope echoes the County's arguments, but adds:

The RHT boundaries are co-extensive with the ability to provide public facilities and services in a manner that does not permit low-density sprawl. RCW 36.70A.070(5)(d)(iv). Since the utilities already in existence at Port Gamble extend to the west boundary as established, sprawl is not being permitted. None of the rural residential area beyond the RHT will have access to the facilities.

Pope Brief, at 12.

c. Board Discussion of Boundaries

RCW 36.70A.070(5)(d)(iv) requires existing areas (LAMIRDs) to be minimized and contained. The physical constraints on the eastern, northern and most of the western boundary provide a logical "physical" boundary for the PGRHT. Petitioners do not dispute these boundaries or the southern boundary that follows the tree line and power line easement. These logical physical boundaries minimize and contain the PGRHT on all sides, except for one corner. Petitioners take exception to drawing the southwest corner boundary at the edge of the 20-acre Gamble Village plat, rather than stopping it at the ravine/stream. While a ravine or a stream makes an excellent physical boundary, nothing in the Act mandates the use of such features.

Also unpersuasive was the argument that the five homes in Gamble Village warranted exclusion from the LAMIRD because they were contemporary rather than historic. While the County has taken laudable efforts to protect a valuable historic resource at Port Gamble, nothing in the statutory criteria requires it, nor does the statute provide a basis for limiting a LAMIRD to structures of a similar vintage. The County's decision to utilize the extent of existing infrastructure and service, to and including the Gamble Village plat as the south-western corner boundary, is within its discretion and finishes a logical outer boundary that contains and minimizes the PGRHT.

Conclusion to Legal Issue No. 3

The Board concludes that the County's action in designating Port Gamble as a LAMIRD meets the requirements of RCW 36.70A.070(5). The Petitioners argued that the PGRHT designation permits urban growth in the rural area in contravention of RCW 36.70A.110. Because the Board concludes that the PGRHT designation is compliant with the Act's provisions for LAMIRDs in

the rural area, the petitioners' urban growth area arguments are misplaced. The Petitioners' arguments regarding internal consistency consist of conclusory statements, and, to the extent they rely upon a finding of non-compliance with RCW 36.70A.070(5), are unsupported. Petitioners have **failed to meet their burden of proof** regarding the County's compliance with RCW 36.70A.070(preamble), RCW 36.70A.070(5) and RCW 36.70A.110.

Legal Issue No. 4

Did the County fail to comply with the requirements of RCW 36.70A.070 (1) and (3); RCW 36.70A.110 (4); and RCW 36.70A.200 when it adopted amendments to the capital facilities plan which did not adequately provide for the existing and future capital facilities for the Port Gamble Rural Historic Town?

Although Petitioners cite RCW 36.70A.070(1) in their Opening Brief, Petitioners fail to argue how the County has failed to comply with this provision. Burrow Opening Brief, at 21-23; Burrow Reply, at 30-35. Issues that are not briefed are deemed abandoned. WAC 242-02-570 (1). Petitioners also acknowledge that references to RCW 36.70A.200 should be stricken. Burrow Reply, at 30. Petitioners have **abandoned** their challenges regarding the County's compliance with RCW 36.70A.200 and RCW 36.70A.070(1).

Petitioners' sole argument regarding noncompliance with RCW 36.70A.110(4) is that "Pope has openly admitted that the town must be significantly developed in order to support infrastructure costs. In contrast to RCW 36.70A.110(4) . . . Port Gamble, which was determined to be non-urban by the Board, is being developed at Urban levels to support its infrastructure. . . ." Burrow Opening Brief, at 21. Petitioners misunderstand the provisions of RCW 36.70A.070(5)(d), as discussed in Legal Issue 3. A pattern of more intensive rural development, as allowed within a valid LAMIRD, does not constitute "urban" development. Petitioners have **failed to meet their burden of proof** regarding their challenge to the County's compliance with RCW 36.70A.110(4).

Petitioners argue that the County has failed to comply with RCW 36.70A.070(3) since it "has failed to explore the feasibility of a waste water plant and water system other than alternatives submitted by Pope." Burrow Opening Brief, at 22. Additionally, relying on a provision of a Department of Ecology (DOE) permit, Petitioners contend: "[a] public entity must assume ownership of the wastewater treatment plant upon improvement, expansion or new construction. (See DOE Permit, PR#19758)." Burrow Reply, at 31. Petitioners also refer to an August 18, 1999 letter from the Department of Community, Trade and Economic Development (CTED), indicating that, because of the DOE permit provisions, the County will need to consider whether it will be willing to commit to providing or guaranteeing [sewer and water] services and to reflect that decision in its capital facility plan. Burrow Opening Brief, at 30.

In response, the County and Pope note that the water and sewer system presently serving Port Gamble are privately, not publicly owned. They also cite to this Board's decision in *Bremerton v. Kitsap County*, CPSGMHB Case No. 95-3-0039c, Finding of Noncompliance and Determination of Invalidity (Sep. 8, 1997), at 38, where the Board stated that if a county does not own or operate a facility, it is not required to include the locational or financing information for such facilities in its capital facilities plan element since those decisions are beyond the county's authority. Regarding the CTED letter, the County responds that the GMA contains no such requirement that the County include in its capital facilities plan a discussion of potential costs of the county taking over the sewer system at some time in the future. This, the County contends, is purely speculation. County Brief, at 29.

It is undisputed that the water and sewer system for Port Gamble are privately owned. Therefore, the County is not obligated to include future locational and financing information regarding the systems in its capital facility plan element. The Board notes however, that the County has included the required inventory and needs assessment information for the water and sewer system in its capital facility plan element. *See* Part II, Capital Facilities Plan, at 93, 100, 107, 206 and 212. Further, the Board notes that the County has clearly indicated that there will be no development within the Port Gamble Historic Town until the issue of sewer and water service for the area is resolved. County Brief, at 30.

Additionally, the Board finds nothing in RCW 36.70A.070(3) that requires the County to include a speculative discussion of the potential costs to the County if it were to take over the sewer system. However, if the County does decide to assume responsibility for the Port Gamble sewer system, then the County must comply with all the provisions of RCW 36.70A.070(3)(a)-(e). Petitioners have **failed to meet their burden of proof** regarding the County's compliance with RCW 36.70A.070(3).

Legal Issue No. 1

Did the county fail to be guided by RCW 36.70A.020(1), (2), ~~(5)~~, ~~(6)~~, ~~(7)~~, ~~(8)~~, ~~(9)~~, ~~(10)~~, (11), and (12) when it designated the Port Gamble Townsite as a Rural Historic Town? ^[15]

Petitioners assert that the County was not guided by GMA Goals 1 (urban growth), 2 (reduce sprawl), 11 (citizen participation and coordination), and 12 (public facilities and services). The GMA Goals are to be "used exclusively for the purpose of guiding the development of comprehensive plans and development regulations." RCW 36.70A.020. Goal 1 guides the County to "[e]ncourage development in urban areas where adequate public facilities and services exist or can be provided in an efficient manner. RCW 36.70A.020(1). Goal 2 guides the County to "[r]educe the inappropriate conversion of undeveloped land into sprawling, low-density development." RCW 36.70A.020(2). Goal 11 guides the County to "[e]ncourage the involvement of citizens in the planning process and ensure coordination between communities

and jurisdictions to reconcile conflicts.” RCW 36.70A.020(11). Goal 12 guides the County to “[e]nsure that those public facilities and services necessary to support development shall be adequate to serve the development at the time the development is available for occupancy and use without decreasing current service levels below locally established minimum standards.” RCW 36.70A.020(12).

Petitioners’ statements supporting their assertion that the County was not guided by these Goals offer only conclusory statements. Moreover, their arguments are premised on the Board finding that the PGRHT designation amounts to urban growth and that the County’s public participation process was faulty. As set out above, these are unsupported premises. Consequently, Petitioners **failed to meet their burden of proof** to show that the County failed to be guided by RCW 36.70A.020(1), (2), (11), and (12).

Conclusion to Legal Issue No. 1

The Petitioners **failed to meet their burden of proof** regarding the County’s alleged failure to be guided by RCW 36.70A.020 (1), (2), (11), and (12).

VIII. ORDER

Based upon the review of its prior orders in the *Alpine* case, the County’s statement of compliance, the Burrow Petition for Review, the exhibits and briefs of the parties in the coordinated *Alpine* and *Burrow* cases, having considered the arguments of the parties, and having deliberated on the matter, the Board ORDERS:

1. The County has **complied** with Remand Items 3.d and 3.f of the Board’s February 8, 1999 Order Rescinding Invalidity in *Bremerton* and Final Decision and Order in *Alpine*. Therefore, the Board issues a **Finding of Compliance** to Kitsap County and hereby **closes** the *Alpine* case (CPSGMHB Case No. 98-3-0032c).
2. The provisions of the County’s Comprehensive Plan and Development regulations raised in the challenge to the 1999 Plan from petitioner Burrow **comply** with the goals and requirements of the GMA.

So ORDERED this 29th day of March, 2000.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

Joseph W. Tovar, AICP

Board Member

Edward G. McGuire, AICP
Board Member

Lois H. North
Board Member

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

[1] RCW 36.70A.3201 provides:

In amending RCW 36.70A.320(3) . . . the legislature intends that the board apply a more deferential standard of review . . . than the preponderance of the evidence standard . . . (emphasis added).

[2] The abandoned issues were listed in the PHO as follows: Legal Issue No 5 - Did the County fail to comply with the requirements of RCW 36.70A.172 and .175 when it adopted Port Gamble Rural Historic Town? Legal Issue No. 6 - Did the County fail to comply with the requirements of RCW 36.70A.070 (preamble) and RCW 36.70A.480 when it adopted Port Gamble as a Rural Historic Town without amending Port Gamble's Master Shoreline Map, and Plan designation?

[3] RCW 36.70A.035 provides:

(1) The public participation requirements of this chapter shall include notice procedures that are reasonably calculated to provide notice to property owners and other affected and interested individuals, tribes, government agencies, businesses, school districts, and organizations of proposed amendments to comprehensive plans and development regulation. Examples of reasonable notice provisions include:

- (a) Posting the property for site-specific proposals;
- (b) Publishing notice in a newspaper of general circulation in the county, city, or general area where the proposal is located or that will be affected by the proposal;
- (c) Notifying public or private groups with known interest in a certain proposal or in the type of proposal being considered;
- (d) Placing notices in appropriate regional, neighborhood, ethnic, or trade journals; and
- (e) Publishing notice in agency newsletters or sending notice to agency mailing lists, including general lists or lists for specific proposals or subject areas.

(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;

(iv) The proposed change is to a resolution or ordinance making a capital budget decision as provided in RCW 36.70A.120; or

(v) The proposed change is to a resolution or ordinance enacting a moratorium or interim control adopted under RCW 36.70A.390.

(3) This section is prospective in effect and does not apply to a comprehensive plan, development regulation, or amendment adopted before July 27, 1997.

RCW 36.70A.130 provides:

(1) Each comprehensive land use plan and development regulations shall be subject to continuing review and evaluation by the county or city that adopted them. Not later than September 1, 2002, and at least every five years thereafter, a county or city shall take action to review and, if needed, revise its comprehensive land use plan and development regulations to ensure that the plan and regulations are complying with the requirements of this chapter. The review and evaluation required by this subsection may be combined with the review required by subsection (3) of this section.

Any amendment or revision to a comprehensive land use plan shall conform to this chapter, and any change to development regulations shall be consistent with and implement the comprehensive plan.

(2)(a) Each county and city shall establish and broadly disseminate to the public a public participation program identifying procedures whereby proposed amendments or revisions of the comprehensive plan are considered by the governing body of the county or city no more frequently than once every year except that amendments may be considered more frequently under the following circumstances:

(i) The initial adoption of a subarea plan;

(ii) The adoption or amendment of a shoreline master program under the procedures set forth in chapter 90.58 RCW; and

(iii) The amendment of the capital facilities element of a comprehensive plan that occurs concurrently with the adoption or amendment of a county or city budget.

(b) Except as otherwise provided in (a) of this subsection, all proposals shall be considered by the governing body concurrently so the cumulative effect of the various proposals can be ascertained. However, after appropriate public participation a county or city may adopt amendments or revisions to its comprehensive plan that conform with this chapter whenever an emergency exists or to resolve an appeal of a comprehensive plan filed with a growth management hearings board or with the court.

(3) Each county that designates urban growth areas under RCW 36.70A.110 shall review, at least every ten years, its designated urban growth area or areas, and the densities permitted within both the incorporated and unincorporated portions of each urban growth area. In conjunction with this review by the county, each city

located within an urban growth area shall review the densities permitted within its boundaries, and the extent to which the urban growth occurring within the county has located within each city and the unincorporated portions of the urban growth areas. The county comprehensive plan designating urban growth areas, and the densities permitted in the urban growth areas by the comprehensive plans of the county and each city located within the urban growth areas, shall be revised to accommodate the urban growth projected to occur in the county for the succeeding twenty-year period. The review required by this subsection may be combined with the review and evaluation required by RCW 36.70A.215.

[4] The full Plan citation in Burrow's brief is:

A restrictive density of 2.5 dwelling units per acre, applicable only in the residential and commercial or mixed-use areas, will preclude the Town from ever reaching (regaining) its urban density. By using the limited area provisions of the Act, the strict requirement for "protecting rural character" may be modified. In the case of Port Gamble, recognition of the historic Town, **which is less than urban**, yet different from a classic rural situation, can be accomplished through the RHT designation. (Bold emphasis by Burrow, citing PGRHT Plan Appendix at A-315.)

[5] *Island County Citizens' Growth Management Coalition v. Island County, et al.*, WWGMHB Case No. 98-2-0023c (Final Decision and Order, Jun. 2, 1999).

[6] *Bremerton, et al. v. Kitsap County*, CPSGMHB Case No. 95-3-0039c, Final Decision and Order, Oct. 6, 1995; *Port Gamble, et al. v. Kitsap County*, CPSGMHB Case No. 97-3-0024c, Finding of Non-Compliance, Sep. 8, 1997; and *Alpine, et al. v. Kitsap County*, CPSGMHB Case No. 98-3-0001, Final Decision and Order, Feb. 8, 1999.

[7] The GMA's first two planning goals set the key policy framework. RCW 36.70A.020 provides:

- (1) Urban growth. Encourage development in urban areas where adequate public facilities and services exist or can be provided in an efficient manner.
- (2) Reduce sprawl. Reduce the inappropriate conversion of undeveloped land into sprawling, low-density development.

[8] In an early GMA case, the Western Washington Growth Management Hearings Board (WWGMHB) commented on this relative lack of statutory definition. The Western Board referred to the GMA's pre-1997 rural provisions as the "leftover meatloaf in the GMA refrigerator." *City of Port Townsend, et al. v. Jefferson County*, WWGMHB Case No. 94-2-0006, Final Decision and Order (Aug. 6, 1994).

[9] This language echoes provisions that the GMA uses regarding two other forms of more intensive development in the rural area: (1) Fully Contained Communities are permitted pursuant to criteria and limitations, including RCW 36.70A.350(1)(g) which provides that "Development regulations are established to ensure urban growth will not occur in adjacent nonurban areas"; and (2) Master Planned Resorts are permitted subject to criteria and limitations, including RCW 36.70A.360(4)(b) which provides that "the comprehensive plan and development regulations [must] include restrictions that preclude new urban or suburban land uses in the vicinity of the master planned resort . . ." (Emphasis added.)

[10] RCW 36.70A.030(17) provides:

"Urban growth" refers to growth that makes intensive use of land for the location of buildings, structures, and impermeable surfaces . . . A pattern of more intensive rural development, as provided in RCW 36.70A.070(5)(d), is not urban growth.... Emphasis added.

[11] For example, "rural character" is defined as a pattern of use and development "in which open space, the natural landscape, and vegetation predominate over the built environment." RCW 36.70A.030(14). No one argues that Port Gamble can or must meet this definition. Historic rural towns of the Port Gamble style (i.e., human-scaled, pedestrian-oriented clusters of structures located in relatively close proximity to one another, some oriented to public

spaces) by their very nature will exhibit a compact, relatively dense (i.e., urban-like) form.

[12]

An excerpt from this document describes the New England lineage of Port Gamble's physical form:

Port Gamble's steeple-topped church, its Masonic Lodge, and narrow front-gabled houses and picket fences are reminiscent of nineteenth century New England villages.. Whether Puget Sound settlers emigrated directly from New England or from the Midwest, where the New England village had become the model for newly established towns, they could easily and inexpensively replicate the New England architectural style..."

Ex. 19125, at 1.

[13]

While not determinative in this case, the Board notes that the literature of town planning and landscape architecture details many examples of the elements of village form and hamlet design in both a historical and a present day setting. See Vermont Townscape, Williams, Kellogg and Lavigne, Rutgers U. Center for Urban Policy Research, New Brunswick, N.J., 1987; and Rural by Design: Maintaining Small Town Character, Randall Arendt, American Planning Association Planners Press, Chicago, 1994.

[14]

The original text by the County used underlining to highlight both the statutory text as well as revision text added by the Board of County Commissioners. To avoid confusion, the text in bold above highlights the statutory language, while the usual convention of strikethroughs and underlining is used to highlight the revisions made by the Board of County Commissioners by motion on December 6, 1999. These revisions are the focus of Petitioners' attack regarding the logical outer boundaries.

[15]

Petitioners abandoned argument relating to Goals 5, 6, 7, 8, 9, and 10. Burrow Reply, at 8. The abandoned portions of this legal issue are shown with strikethrough.