

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

KITSAP CITIZENS for RURAL)	
PRESERVATION and SUQUAMISH)	Consolidated Case No. 00-3-0019c
TRIBE,)	
)	
Petitioners,)	<i>(Kitsap Citizens)</i>
)	
v.)	
)	
KITSAP COUNTY,)	ORDER ON dispositive MOTIONS
)	and MOTIONS TO SUPPLEMENT
Respondent)	THE RECORD
)	
and)	
)	
PORT BLAKELY TREE FARMS L.P.)	
)	
Intervenor.)	
)	

I. PREFATORY NOTE

Three of the four parties to this proceeding have moved to supplement the record. The County and Intervenor have moved to dismiss the consolidated petitions for review. Some of the proposed exhibits that accompany the motions to supplement the record are offered to support or refute the motion to dismiss, while others go to the case in chief. The Board will first address the motions to supplement as they may relate to the motion to dismiss (Section III, below); next, the Board will address the motions to dismiss (Section IV, below); finally, the Board addresses the remainder of the items in the motions to supplement the record (Section V, below).

II. Procedural history

On November 22, 2000, the Central Puget Sound Growth Management Hearings Board (the **Board**) received a Petition for Review (**PFR**) from Kitsap Citizens for Rural Preservation (**Petitioner** or **Kitsap Citizens**). The matter was assigned Case No. 00-3-0018, and is referred to as *Kitsap Citizens v. Kitsap County*. Board member Edward G. McGuire is the Presiding Officer

(PO) in this matter. Petitioner challenges Kitsap County’s (the **County**) adoption of Ordinance No 249-2000, adopting the Port Blakely Subarea Plan (**Subarea Plan**). The basis for the challenge is noncompliance with several sections of the Growth Management Act (the **GMA** or **Act**).

On November 27, 2000, the Board received a PFR from the Suquamish Tribe (**Petitioner** or **Suquamish Tribe**). The matter was assigned Case No. 00-3-0019, and is hereafter referred to as *Suquamish Tribe v. Kitsap County*. Petitioner also challenges the County’s adoption of Ordinance No 249-2000, adopting the Subarea Plan. The basis for the challenge is noncompliance with several sections of the Growth Management Act (the **GMA** or **Act**).

On December 1, 2000, the Board issued an “Order of Consolidation and Notice of Hearing.” The Board consolidated the two PFRs into Consolidated Case No. 00-3-0019c, captioned *Kitsap Citizens v. Kitsap County*. The Order set a date for a prehearing conference (**PHC**) and established a tentative schedule for the case. [Kitsap Citizens and the Suquamish Tribe may be jointly referred to as Petitioners.]

On December 15, 2000, the Board received “Motion to Intervene by Port Blakely Tree Farms, L. P.”

On December 18, 2000, the Board conducted the PHC at its Seattle offices. Board member Edward G. McGuire conducted the conference. Board member Lois H. North and Board intern Brian Norkus also attended the conference. Charlie Burrow and Tom Donnelly represented Petitioner Kitsap Citizens for Rural Preservation, and Scott Wheat represented Petitioner Suquamish Tribe. Sue Tanner appeared for Respondent Kitsap County. Thomas A. Goeltz was in attendance for potential Intervenor Port Blakely Tree Farms. Robert Alire also attended.

On December 21, 2000, the Board issued a “Prehearing Order and Order on Intervention” (**PHO**), **granting** Intervention for Port Blakely, establishing the final schedule and stating the Legal Issues.

On December 27, 2000, the Board received “Kitsap County’s Submittal of Index to the Record” (**Index**). The Index consists of 52 pages and lists between five and nine items per page.

A. Motions to Supplement the Record

On January 12, 2001, the Board received: 1) Intervenor Port Blakely’s “Motion to Supplement Record and Memorandum in Support,” including 11 items in two attachments (**Port Blakely Motion – Supp.**); 2) “Kitsap County’s Motion to Supplement the Record,” including four items (**County Motion – Supp.**); and 3) the Suquamish Tribe’s “Motion to Supplement the Record and Memorandum in Support,” including five items (**Suquamish Tribe Motion - Supp.**).

On January 26, 2001, the Board received: 1) “Kitsap Citizens Response to Kitsap County’s and Port Blakely’s Motions to Supplement the Record” (**Kitsap Citizens Response – Supp.**); 2) the Suquamish Tribe’s “Response to Motions of Port Blakely and Kitsap County to Dismiss and Supplement the Record” (**Suquamish Tribe Response – Supp.**); 3) “Port Blakely’s Response to Tribe’s Motion to Supplement” (**Port Blakely Response – Supp.**); and “Kitsap County’s Response to Motions to Supplement” (**County Response - Supp.**).

On February 9, 2001, the Board received “Port Blakely’s Reply to Petitioner’s Responses to Motion to Dismiss and to Supplement the Record” (**Port Blakely Reply – Supp.**), and “Suquamish Tribes Reply in Support of Motion to Supplement the Record” (**Suquamish Tribe Reply – Supp.**).

All motions, responses and replies were timely filed. The Board did not hold a hearing on the motions to supplement the record.

B. Motions to Dismiss

On January 12, 2001, the Board received Intervenor Port Blakely Tree Farms “Motion to Dismiss Petitions and Memorandum in Support” (**Port Blakely Motion - Dismiss**); the Board also received “Kitsap County’s Dispositive Motion to Dismiss Petitions” (**County Motion – Dismiss**).

On January 26, 2001, the Board received “Kitsap Citizens Response to Kitsap County’s and Port Blakely’s Dispositive Motions to Dismiss Petition” (**Kitsap Citizens Response - Dismiss**); the Board also received “Response to Motions of Port Blakely and Kitsap County to Dismiss and Supplement the Record” (**Suquamish Tribe Response - Dismiss**).

On February 9, 2001, the Board received “Port Blakely’s Reply to Petitioner’s Responses to Motion to Dismiss and to Supplement the Record” (**Port Blakely Reply - Dismiss**); the Board also received “Kitsap County’s Rebuttal on Motion to Dismiss Petitions” (**County Reply – Dismiss**).

All motions, responses and replies were timely filed. The Board did not hold a hearing on the motions to dismiss.

III. MOTIONS TO SUPPLEMENT [Re: Dismissal]

Port Blakely offers six items in its motion to supplement the record as part of its motion to dismiss. Four of the items are ordinances adopted by the City of Bremerton, one item is a development agreement for the Port Blakely Subarea, and the last item is a copy of Boundary Review Board (**BRB**) letter regarding a recent annexation proposal. Port Blakely Motion –

Supp., at 1,2 and Attachment B. The County moves to supplement the record with three of the same Ordinances adopted by the City of Bremerton and the same BRB letter. County Motion – Supp., at 1-2.

Kitsap Citizens objects to these items being included in the record stating, “the documents [apparently all six] in question only serve a specious argument and the Board does not need them to rule on the issue [of jurisdiction]. Kitsap Citizens Response – Supp., at 1-2. Likewise, the Suquamish Tribe objects to including [apparently] two of Bremerton’s Ordinances and the development agreement, asserting, “the validity of these ordinances will ultimately be determined by the Kitsap County Superior Court.” Suquamish Tribe Response – Supp., at 4.

In reply, Port Blakely acknowledges that the six items are not part of the record below, but argues that these items are offered as evidence that an annexation occurred and the development agreement has been adopted. Consequently, Port Blakely contends, they are necessary for the Board’s consideration of the motion to dismiss. Port Blakely Reply – Supp., at 6. The County did not reply.

The Suquamish Tribe offers five items as part of its motion to supplement the record. The first item is a copy of the Application for Writ of Certiorari and Complaint for Declaratory Judgment and Injunction filed by the Tribe in Kitsap County Superior Court. Three of the items are letters to the City of Bremerton; the last item is a declaration supporting the motion to supplement. Suquamish Tribe Motion – Supp., at 1-3, and Attachments.

Port Blakely objects to all five items offered by the Suquamish Tribe. Port Blakely argues that the Application for the Writ is irrelevant to this Board’s proceedings since it challenges a decision of the BRB. Next, Port Blakely asserts that the other items purport “to establish that the Tribe may have legal challenges to certain decisions of the City.” Port Blakely Response – Supp., at 1-4. The County, like Port Blakely, acknowledges that the Suquamish Tribe has filed an action in Superior Court challenging the BRB’s process and annexation decision; and also like Port Blakely, argues that the Application for the Writ is irrelevant. The County also notes that the Superior Court has not issued a stay or injunction to stop the effectiveness of the annexation. The County also argues that the remaining four items in the Suquamish Tribe’s motion are directed at the City of Bremerton and its agreement with Port Blakely, as such, they are irrelevant to this Board’s proceedings. County Response – Supp., at 1-4.

The Suquamish Tribe counters that the five items are relevant and that the Board can, and should, take judicial notice of documents filed in another forum to establish the fact of the litigation. Suquamish Tribe Reply – Supp., at 2-5.

Port Blakely and Kitsap County - Proposed Exhibits

Ordinances: Pursuant to WAC 242-02-660(4), the Board may officially notice the ordinances enacted by Washington cities. Therefore, the **Board takes notice** of City of Bremerton Ordinance Nos. 4722, 4723, 4739 and 4740.

Development Agreement: On December 15, 2000, the City of Bremerton adopted Ordinance No. 4740, which adopted Exhibit C [the Initial Development Agreement as it relates to the Port Blakely property]. Port Blakely offers a signed copy of the “Initial Development Agreement between Port Blakely and the City of Bremerton,” dated January 5, 2001. This item is approved as an attachment to an Ordinance adopted by the City of Bremerton. **The Board takes notice.**

BRB Letter: This letter from the Kitsap County Boundary Review Board to the City of Bremerton establishes the BRB has rendered a decision regarding the Port Blakely area. The Board has determined that this document may be necessary and of substantial assistance to the Board in reaching its decision. **Admitted.**

Suquamish Tribe - Proposed Exhibits

Application for Writ: The Suquamish Tribe’s Application for Writ of Certiorari and Complaint for Declaratory Judgment and Injunction establishes that the Suquamish Tribe has commenced litigation regarding the BRB process and decision. The Board has determined that this document may be necessary and of substantial assistance to the Board in reaching its decision. **Admitted.**

Letters to City of Bremerton: The three letters are all directed to the City of Bremerton regarding its consideration of the draft, or proposed, Initial Development Agreement Between Port Blakely and the City of Bremerton. Although these letters articulate the Tribe’s concern with the Development Agreement, the letters are directed at an action ultimately taken by the City that has not been appealed before the Board.^[1] The Board has determined that these documents are not necessary, nor would they be of substantial assistance to the Board in reaching its decision. **Denied.**

Declaration Supporting Supplementation: The declaration is offered in support of one of the letters regarding the Initial Development Agreement Between Port Blakely and the City of Bremerton. The Board has denied the motion to supplement the record with the letters to the City. The Board has determined that this declaration is not necessary, nor would it be of substantial assistance to the Board in reaching its decision. **Denied.**

The Board has determined that the items included in the Record, as discussed above and noted in the summary table below, may be necessary or of substantial assistance to the

Board in reaching its decision.

In the summary tables below:

- “Admitted” means the proposed exhibit becomes a supplemental exhibit. Each new exhibit is assigned an Index No.
- Exhibits “Admitted as part of record” are exhibits from the record below that were inadvertently omitted from the Index. Each is assigned an Index No.
- “Board takes notice” means that the Board recognizes the existence of a decision, order, statute, ordinance, resolution or document adopted by such instrument. Each is assigned an Index No. However, since the Board may not have access to a copy of such documents, the party offering the exhibit shall provide a complete copy to the Board.
- “Already in Record” means that the exhibit is already listed on the Index and therefore is automatically admitted and need not be the subject of a motion to supplement. No Index No. is assigned.
- Exhibits that “May be offered” are not admitted at this time; they may be offered again at the hearing on the merits, at which time the Presiding Officer will rule on their admissibility.
- Exhibits that indicate “Denied” do not become supplemental exhibits to the Record. No Index number is assigned.

Proposed Exhibit: Documents [Re: Motion to Dismiss]	Ruling
Port Blakely and Kitsap County 6 Items [2]:	
1. City of Bremerton Ordinance No. 4722 - adopting Port Blakely Joint Planning Area Sub-Area Plan as an amendment to the Bremerton Comprehensive Plan (Passed by the City Council on September 20, 2000).	Board takes notice – Index No. 1-D
2. City of Bremerton Ordinance No. 4723 – amending the Bremerton City Code, adopting and adding a Mixed Use District (MXD) zone classification (Passed by the City Council on September 20, 2000).	Board takes notice – Index No. 2-D

3. City of Bremerton Ordinance No. 4739 – Annexing the Port Blakely Sub-Area into the City of Bremerton (Passed by the City Council on December 6, 2000).	Board takes notice – <i>Index No. 3-D</i>
4. City of Bremerton Ordinance No. 4740 – applying MXD zoning to the Port Blakely Sub-Area and adopting the Initial Development Agreement (Passed by the City Council on December 6, 2000).	Board takes notice – <i>Index No. 4-D</i>
5. Signed version of the Initial Development Agreement between Port Blakely and City of Bremerton (Adopted as Exhibit “C” to Ordinance No. 4740, signed January 5, 2001).	Board takes notice – <i>Index No. 5-D</i>
6. Boundary Review Board Letter to City of Bremerton Re: approval of annexation petitions (dated: December 8, 2000).	Admitted – <i>Index No. 6-D</i>
Suquamish Tribe Items:	
1. Application for Writ of Certiorari and Complaint for Declaratory Judgment and Injunction (filed in Kitsap County Superior Court on December 28, 2000).	Admitted – <i>Index No. 7-D</i>
2. Letter from Scott Wheat to Lee Wyatt, Re: Proposed Initial Development Agreement Between the City of Bremerton and Port Blakely – Inquiring as to its status (dated: December 29, 2000).	Denied
3. Letter from Scott Wheat to Bremerton Planning Commission and Department of Community Development, Re: Initial Development Agreement Between the City of Bremerton and Port Blakely – Opposing its approval (dated: November 14, 2000).	Denied

4. Letter from Scott Wheat to Mayor Lynn Horton and Bremerton City Council Members, Re: Draft Initial Development Agreement Between the City of Bremerton and Port Blakely – Opposing its approval (dated: December 5, 2000).	Denied
5. Declaration of Scott Wheat in Support of Motion to Supplement, specifically the December 29, 2000 letter to Lee Wyatt.	Denied

IV. MOTION TO DISMISS

Port Blakely moves to dismiss both PFRs as moot. The grounds for the motion are threefold: 1) the Port Blakely Sub-Area has been annexed into the City of Bremerton, it is therefore a UGA by definition, and the challenge is moot; 2) the Sub-Area has been zoned by Bremerton pursuant to a development agreement and is vested and therefore moot; and 3) Petitioners have failed to file a timely appeal of any of Bremerton’s actions [adoption of Sub-Area Plan, Plan amendment or development regulations] to the Board, consequently the Board cannot grant adequate relief. Port Blakely Motion – Dismiss, at 2 and 6-10.

The County joins Port Blakely’s motion to dismiss, adding that: 1) the Port Blakely Sub-Area Plan became part of the City of Bremerton, therefore it must be included in Bremerton’s UGA; 2) the County ceased to have jurisdiction over the area on December 6, 2000 [annexation date], therefore a Board Order directed at the County would be ineffective; 3) since Petitioner’s did not challenge the City, there is no party against whom the Board can grant effective relief; and 4) the issues raised in the PFRs are moot. County Motion – Dismiss, at 1-2.

Kitsap Citizens urge the Board to proceed in this matter and deny the motion to dismiss. Kitsap Citizens respond that they were precluded from challenging the annexation, which allowed a city to annex a designated UGA before a petition for review of that designation by the Board had run its course. Further, Ordinance No. 249-2000 designates the Port Blakely Sub-Area as part of Bremerton’s UGA, which is the “necessary and exclusive legal prerequisite for annexation. It is that [UGA] designation by Kitsap County that [Kitsap Citizens] challenges in this PFR.” Kitsap Citizen’s Response – Dismiss, at 2-3.

The Suquamish Tribe suggests “Respondents’ most recent attempt to evade substantive review of the County’s UGA designation for the subject property comes in the form of motions to dismiss the Tribe’s PFR.” Suquamish Tribe Response – Dismiss, at 1. The Tribe argues that the motions to dismiss the Tribe’s PFR should be denied. Petitioner indicates that it has appealed the BRB decision regarding Bremerton’s annexation of the Port Blakely area. Thus, Petitioner contends, “[I]t would be error for the Board to rule that Bremerton’s attempt to annex the property is legal, final and unappealable. Simply put, these issues are beyond the Board’s jurisdiction.” Suquamish Tribe Response – Dismiss, at 2-3. Additionally, the Tribe asserts that “Whether Bremerton’s attempts to annex and vest the subject property enjoy the force of law is a matter pending in Kitsap County Superior Court. At most, the Tribe’s PFR might be moot. Importantly, resolution of this issue is beyond the Board’s jurisdiction. Granting the motions would therefore be in error. Suquamish Tribe Response – Dismiss, at 5.

Port Blakely reiterates that pursuant to the GMA, “The City’s actions [annexation, Sub-Area Plan adoption, City Plan amendment and adoption of development agreement] have made moot any challenge to the County’s adoption of the Port Blakely Sub-Area Plan. . . . [T]he Board does not have jurisdiction to ‘coordinate’ the annexation and GMA proceedings set out by statute in the manner urged by Petitioners.” Port Blakely Reply – Dismiss, at 2. Port Blakely also adds “no court has issued a stay or other order affecting the annexation. The annexation is complete. The Development Agreement has been adopted. These actions are final. . . . The State Legislature has not required that jurisdictions delay or halt annexation proceedings when a GMA challenge is lodged. Only the legislature can modify the statutory procedures governing annexations and GMA appeals. Port Blakely Reply – Dismiss, at 5.

The County replies, “The annexation of the property means that the County has no further jurisdiction over the property, and that the issues raised in the petitions filed in this case are moot.” County Reply – Dismiss, at 1. The County also argues: the pendency of the Tribe’s suit has no impact on the annexation; the annexation has not been automatically stayed by any court; the annexation remains effective; and the Board has no jurisdiction to decide annexation issues. The County continues, “a Board decision refusing to dismiss this action merely because the Tribe has filed a lawsuit challenging the annexation would effectively be a decision on the potential merits of the Tribe’s suit. These matters are beyond the Board’s authority. County Reply – Dismiss, at 2.

Discussion and Applicable Law

It is clear that the Board has jurisdiction to hear and determine petitions alleging that a jurisdiction’s legislative action is not in compliance with the goals and requirements of the GMA. RCW 36.70A.280. The Act requires counties to designate urban growth areas and enables jurisdictions to adopt subarea plans. RCW 36.70A.110 and .080, respectively. Both

Petitioners in this case have filed a timely PFR challenging Kitsap County's adoption of Ordinance No. 249-2000. PFR 00-3-0018 (Kitsap Citizens) and PFR 00-3-0019 (Suquamish Tribe). This County Ordinance designates, for the first time,^[3] the Port Blakely area as a UGA and adopts the Port Blakely Sub-Area Plan. Ordinance 249-2000, at Section 2. The Board clearly has jurisdiction to hear and determine whether the County's adoption of the UGA and Sub-Area Plan complies with the goals and requirements of the Act.

However, Port Blakely and the County contend that these clear jurisdictional waters have been muddied by intervening events. The events involve annexation. Following the County's UGA designation in Ordinance 249-2000, apparently, Port Blakely and subsequently, the City of Bremerton, filed a notice of intent with the County's BRB, proposing to annex the Port Blakely area into the City of Bremerton. Since the BRB's review jurisdiction was not invoked during the 45-day statutory period, the proposed action (annexation) was deemed approved.^[4] The City subsequently adopted Ordinance No.4739 annexing the area into Bremerton.^[5] Therefore, as Port Blakely and the County assert, by definition the area is a UGA since it is part of the City and the County no longer has any regulatory jurisdiction over the area. Consequently, the relief sought by Petitioners is moot and any relief granted by the Board ineffective. Port Blakely Motion – Dismiss, at 1-10; County Motion – Dismiss, at 1-2.

This Board has never claimed to have jurisdiction to hear annexation issues. Its jurisdiction is limited to determining compliance with the GMA – Chapter 36.70A RCW. The Board has specifically said it does not have jurisdiction to address annexation issues. (“The Board does not have jurisdiction over annexation issues in Title 35 RCW.” *Bremerton, et al., v. Kitsap County*, CPSGMHB Case No. 90-3-39c, Order on Poulsbo's Request for Clarification (Nov. 6, 1995), at 2. “The Board does not have jurisdiction over Title 35 as it relates to annexation.” *Association to Protect Anderson Creek, et al., v. City of Bremerton*, CPSGMHB Case No. 95-3-0053c, Order on Bremerton's Dispositive Motions, (Oct. 18, 1995), at 7.)^[6]

However, the Board as and the parties recognize the interplay between the GMA's UGA provisions and the statutes governing annexation. Counties must designate UGAs, pursuant to the GMA. RCW 36.70A.110(1). The Growth Boards have jurisdiction to determine compliance with the GMA, including UGA designations. RCW 36.70A.280(1). UGA designation enables city annexations, since cities are prohibited from annexing areas beyond designated UGAs. RCW 35.13.005 and 35A.14.005. BRB decisions must be consistent with provisions of the GMA, including the UGA provisions. RCW 36.93.157. While this system appears consistent and coordinated, it has yielded a conflict in the present situation.

Here, following the County's adoption of Ordinance No. 249-2000, the parties proceeded down

two separate paths. The path taken by Kitsap Citizens and the Suquamish Tribe, pursuant to the GMA, led to the challenge of Ordinance No. 249-2000's compliance with the GMA. This course of action is clearly within the scope of the GMA. The path taken by Port Blakely, the City of Bremerton, and Kitsap County, pursuant to state annexation law, led towards the annexation of the Port Blakely area into the City of Bremerton. This path, while apparently consistent with annexation law and arguably some provisions of the GMA, nonetheless, conflicts with the Board's review authority pursuant to the GMA. This is because an annexation apparently was completed before the Board could review challenges presented in the PFRs to determine whether a challenged UGA complies with the Act.

As discussed above, the parties argue: 1) that the PFRs are moot, since the area has been annexed. Port Blakely and County Motions – Dismiss; and 2) that a UGA designation is a necessary and exclusive legal prerequisite for annexation and the County cannot evade substantive review by the Board. Kitsap Citizens Response – Dismiss, at 3. All parties speculate on the outcome of the Tribe's litigation and the effectiveness, or ineffectiveness, of a decision by this Board on the PFRs. In this case, the Board cannot speak to whether the chicken or egg came first, nor will it speculate on the outcome of pending litigation. However, the Board must carry out its responsibilities.

Petitioners have filed a timely challenge to the County's designation of a UGA and adoption of a Sub-Area Plan, as accomplished by Ordinance No. 249-2000. This is the action that precedes and is common to the diverging paths taken by all the parties. Petitioner's challenge, among other things, whether the UGA designation complies with the requirements of the GMA. ^[7] Determining compliance with the goals and requirements of the GMA is the primary responsibility of the Board; it cannot shirk this duty. Consequently, this case will proceed to the hearing on the merits and the Board **denies** Port Blakely's and Kitsap County's Motions to Dismiss. However, the parties are hereby given notice, that Board may reconsider the motions to dismiss in its deliberations regarding the UGA issue.

V. MOTIONS TO SUPPLEMENT [Re: case in chief]

Port Blakely moves to supplement the record with five items. Port Blakely Motion – Supp., at 2. The County agrees that four of the items submitted by Port Blakely are part of the record in this case. The County will give them individual numbers and include them in the Index. The County does not object to the fifth item, the proposed illustrative map. County Response – Supp., at 1-2. Kitsap Citizens object to including items 5, the illustrative map, in the record. Kitsap Citizens Response – Supp., at 2. The Suquamish Tribe also objects to the inclusion of the illustrative map in the record. Suquamish Tribe Response – Supp., at 4-5. In reply, Port Blakely argues that while the illustrative map is not part of the record below, it is base on documents of the record. Port Blakely Reply – Supp., at 6.

The Board has determined that the illustrative map may be necessary and of substantial assistance to the Board in reaching its decision. **Admitted.**

Proposed Exhibit: Documents [Re: case in chief]	Ruling
Port Blakely 5 Items:	
1. Memorandum of Agreement for Joint Planning and Interlocal Agreement for the Port Blakely Property (dated: August 24, 1998)	Admitted as part of record – County to assign Index No.
2. Smart Growth Bibliography: Industrial Location- www.smartgrowth.org . (dated: August 8, 2000)	Admitted as part of record – County to assign Index No.
3. Aerial photographs: Photos 104 and 204 of SR 303 Transportation Corridor Study – WSDOT (dated: August 29, 2000)	Admitted as part of record – County to assign Index No.
4. Tape recordings of all public hearings by City, County or joint hearings, including March 14, April 11, 24, August 14, 29 and Sept. 11, 2000 ^[8]	Admitted as part of record – County to assign Index No.
5. Illustrative Map showing forest resource land boundaries in relation to Port Blakely Sub-Area Plan boundaries.	Admitted - <i>Index No. 1-S</i>

VI. ORDER

Based upon review of the Petitions for Review, the briefs and materials submitted by the parties, the Act, statute and case law cited, the Board’s Rules of Practice and Procedure, and prior decisions of this Board and other Growth Management Hearings Boards, the Board enters the following ORDER:

1. The various motions to supplement the record are **granted** and **denied** as indicted in the two summary tables above.

2. Port Blakely's Motion to Dismiss Petitions and Kitsap County's Motion to Dismiss Petitions are **denied**. The parties are hereby given notice, that Board may reconsider the Respondent's and Intervenor's Motions to Dismiss in the Final Decision and Order in this case.

So ORDERED this 16th day of February, 2001.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

G. McGuire, AICP

Edward

Board Member

Lois H. North
Board Member

Joseph W. Tovar, AICP
Board Member

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

[1] The Board merely notes that the City's action of adopting the agreement has not been appealed. The Board is not suggesting that it does, or does not, have jurisdiction to review such an agreement.

[2] The Board notes that the County moved to supplement the record with only items 1,3,4 and 6 as noted in the Summary Table. County Motion – Supp., at 1-2.

[3] Prior to adoption of Ordinance No. 249-2000, the Port Blakely property was designated “*Urban Industrial Reserve*.” “The final UGA designation of the Port Blakely Sub-Area implements the “Urban Industrial Reserve” designation approved in the 1998 Kitsap County Comprehensive Plan. . .” Port Blakely Motion –Dismiss, at 2; and County Motion – Dismiss, at 1 – “Kitsap County joins in Intervenor Port Blakely’s Motion to Dismiss Petitions and Memorandum in Support. . .” The “Urban Reserve” designation in the 1998 County 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.

1998 Kitsap County Comprehensive Plan, Part I, at 35, as *cited* in *Alpine v. Kitsap County*, CPSGMHB Coordinated Cases 98-3-0032c and 95-3-0039c, Order Rescinding Invalidity in Bremerton and Final Decision and Order in Alpine (Feb. 8, 1999), at 43. (Emphasis supplied).

[4] The Board notes that the Suquamish Tribe attempted to invoke the BRB’s jurisdiction, but the BRB denied the Tribes request. Ex. 6-D, BRB letter of December 8, 2000. The Board also notes that the Tribe has initiated litigation regarding the BRB decision. Ex. 7-D, Application for Writ of Certiorari and Complaint for Declaratory Judgment and Injunction. Finally, the Board is unaware of any stay or injunction, regarding the BRB’s action, being issued by Kitsap County Superior Court.

[5] The City also adopted other Ordinances that zoned the property and adopted the Development Agreement which provide the basis for Port Blakely’s vesting argument. *See: Exs. 1-D through 5-D.*

[6] See also: Under “SMJ-Subject Matter Jurisdiction” Washington State Growth Management Hearings Boards Digest of Decisions, First Edition, Published 1999; and Supplement 1999 Digest of Decisions, Published February 2000.

[7] Legal Issues 1 and 6, in the December 21, 2000 PHO, at 8 and 9 respectively, provide:

1. Did the County violate RCW 36.70A.020, .110, .130, .210 and .215 when it designated the Port Blakely Subarea as an Urban Growth Area?
6. Whether Ordinance No. 249-2000 fails to be guided by RCW 36.70A.020, and fails to comply with the requirements of RCW 36.70A.110, .130, and .215?

[8] The Board requires certified transcripts of the entire meeting or excerpts from the proceedings. The County should be contacted regarding availability and costs of transcription.