

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

|                              |   |                                 |
|------------------------------|---|---------------------------------|
| KITSAP CITIZENS for RURAL    | ) | <b>Consolidated</b>             |
| PRESERVATION and SUQUAMISH   | ) | <b>Case No. 00-3-0019c</b>      |
| TRIBE,                       | ) |                                 |
|                              | ) |                                 |
| Petitioners,                 | ) | <i>(Kitsap Citizens)</i>        |
|                              | ) |                                 |
| v.                           | ) |                                 |
|                              | ) |                                 |
| KITSAP COUNTY,               | ) | <b>FINAL DECISION and ORDER</b> |
|                              | ) |                                 |
| Respondent,                  | ) |                                 |
|                              | ) |                                 |
| and                          | ) |                                 |
|                              | ) |                                 |
| PORT BLAKELY TREE FARMS L.P. | ) |                                 |
|                              | ) |                                 |
| Intervenor.                  | ) |                                 |
| _____                        | ) |                                 |

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**I. Procedural Background**

**A. General**

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 hereafter referred to as *Kitsap Citizens v. Kitsap County*. Board member Edward G. McGuire will serve as the Presiding Officer (**PO**) in this matter. Petitioner challenges Kitsap County’s (**Respondent** or the **County**) adoption of Ordinance No 249-2000, adopting the Port Blakely Subarea Plan (**PB 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 **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 PB Subarea Plan. The basis for the challenge is noncompliance with several sections of the 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.

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 Prehearing Conference.

On December 21, 2000, the Board issued a “Prehearing Order and Order on Intervention” (**PHO**). The PHO set the final schedule for the case and stated the Legal Issues to be resolved. It also **granted** intervention to Port Blakely Tree Farms, L.P.

### **B. Motions to Supplement And amend index**

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.

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; 2) “Kitsap County’s Motion to Supplement the Record,” including four items; and 3) the Suquamish Tribe’s “Motion to Supplement the Record and Memorandum in Support,” including five items.

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

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

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

On February 16, 2001, the Board issued an “Order on Dispositive Motions and Motions to

Supplement the Record.” The Order **granted** and **denied** the inclusion of various items and summarized the items comprising the Record for the case.

This Order, under III B. Preliminary Matters, also addresses some additional record items.

### **C. Dispositive Motions**

On January 12, 2001, the Board received Intervenor Port Blakely Tree Farms “Motion to Dismiss Petitions and Memorandum in Support” and “Kitsap County’s Dispositive Motion to Dismiss Petitions.” The basis for the Motions to Dismiss was that the PFRs were moot since the area in question had been annexed by the City of Bremerton.

On January 26, 2001, the Board received “Kitsap Citizens Response to Kitsap County’s and Port Blakely’s Dispositive Motions to Dismiss Petition” and “Response to Motions of Port Blakely and Kitsap County to Dismiss and Supplement the Record.”

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

The Board did not hold a hearing on the dispositive motions.

On February 16, 2001, the Board issued an “Order on Dispositive Motions and Motions to Supplement the Record.” The Order **denied** the County’s and Port Blakely’s Motion to Dismiss the PFRs as moot. However, the parties were given notice that the Board may reconsider the Motions to Dismiss in the Final Decision and Order in the case.

### **D. Briefing and Hearing on the Merits**

On March 20, 2001, at the request of the parties, the Board issued an “Order Changing the Briefing Schedule.” The Order allowed the Suquamish Tribe to file their prehearing brief at a later date than contained in the PHO.

On March 13, 2001, the Board received “KCRP’s Prehearing Brief” (**Kitsap Citizens PHB**). The Kitsap Citizens PHB attached ten numbered and eight lettered exhibits.

On March 20, 2001, the Board received “Suquamish Tribe’s Prehearing Brief” (**Suquamish PHB**). The Suquamish PHB attached four numbered exhibits.

On April 16, 2001, the Board received “Kitsap County’s Responsive Brief”(County Response). The County Response included a request for the Board to take official notice of three attached

exhibits – C-1 through C-3. Also on this date, the Board received “Intervenor Port Blakely’s Prehearing Brief” (**PB Response**). The PB Response attached two appendices and five numbered exhibits.

On April 23, 2001, the Board received “KCRP’s Reply Brief” (**Kitsap Citizens Reply**), and “Suquamish Tribe’s Reply Brief” (**Suquamish Reply**).

On April 26, 2001, the Board held a hearing on the merits (**HOM**) in Suite 1022 of the Financial Center, 1215 4th Avenue, Seattle, Washington. Board members Edward G. McGuire, Presiding Officer, Lois H. North and Joseph W. Tovar were present for the Board. Tom Donnelly and Charlie Burrow, for Petitioners, appeared *pro se*. Scott Wheat represented petitioner Suquamish Tribe. Sue Tanner represented Respondent Kitsap County and Hall Baetz represented Intervenor Port Blakely. Court reporting services were provided by Duane W. Lodell from Robert H. Lewis & Associates, Tacoma. The hearing convened at 10:30 a.m., recessed at 12:15 p.m., reconvened at 1:15 p.m. and adjourned at approximately 2:30 p.m. A transcript (**Transcript**) of the proceeding was ordered.

During the HOM, the Board requested the County to provide missing attachments to the challenged ordinance (Volume II of the Port Blakely Subarea Plan, plan amendments and zoning code amendments – *i.e.* core documents). Board member North requested that the County provide a copy of exhibit not previously submitted (CTED e-mail). At the close of the HOM, Board Member Tovar asked the parties to respond to two questions relating to *compliance with RCW 36.70A.110*. The questions were transcribed and faxed to the parties on April 26, 2001. On April 27, 2001, the Board issued an “Order Requesting Briefing.” The Order reiterated and clarified the two questions posed by Mr. Tovar and gave the parties until 4:00 May 4, 2001 to respond.

## **E. POST HEARING MATERIALS**

Following the HOM, the Board received Volume II of the Port Blakely Subarea Plan and additional copies of Volume I.

On April 27, 2001, the Board received the plan amendment and zoning code amendment attachments to the challenged ordinance, and a copy of the exhibit requested by Board Member North [CTED e-mail - Index No. 21856].

On May 4, 2001, the Board received: 1) “KCRP’s Post Hearing Brief” (**Kitsap Citizens Answer**); 2) “Suquamish Tribe’s Supplemental Brief” (**Suquamish Answer**); 3) “Kitsap County’s Post Hearing Brief” (**County Answer**); and 4) “Port Blakely’s Post Hearing Brief” (**Port Blakely Answer**).

On May 1, 2001, the Board received the Transcript of the hearing.

On May 11, 2001, the Board received an “Objection to KCRP’s Post Hearing Brief.” The Board notes the objection and has considered the Kitsap Citizen’s Answer accordingly.

On May 15, 2001, the Board received “KCRP’s Reply to Port Blakely’s Objection to KCRP’s Post Hearing Brief.”

## **II. presumption of validity, burden of proof**

### **and standard of review**

Petitioners challenge Kitsap County’s adoption of the PB Subarea Plan, as adopted by Ordinance No. 249-2000. Pursuant to RCW 36.70A.320(1), Kitsap County’s Ordinance No. 249-2000 is presumed valid upon adoption.

The burden is on Petitioners, Kitsap Citizens and Suquamish Tribe, to demonstrate that the actions taken by Kitsap County are not in compliance with the requirements of the GMA. RCW 36.70A.320(2).

Pursuant to RCW 36.70A.320(3), the Board “shall find compliance unless it determines that the action taken by [Kitsap County] is clearly erroneous in view of the entire record before the board and in light of the goals and requirements of [the GMA].” For the Board to find Kitsap 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).

### **iii. board jurisdiction, Preliminary matters and Prefatory**

#### **note**

#### **A. Board Jurisdiction**

The Board finds that both Petitioners’ PFRs were timely filed, pursuant to RCW 36.70A.290(2); both Petitioners have standing to appear before the Board, pursuant to RCW 36.70A.280(2); and the Board has subject matter jurisdiction to review the challenged ordinance, which amends Kitsap County’s Comprehensive Plan, pursuant to RCW 36.70A.280(1)(a).

#### **B. Preliminary matters**

Motions to Strike and Supplement:

At the HOM the Board heard argument pertaining to Motions to Strike and Motions to Supplement the Record. Petitioner Kitsap Citizens attached eight lettered exhibits to the prehearing brief that were objected to by both the County and Port Blakely. Kitsap Citizens PHB, attachments A – H; County Response, at 8; Port Blakely Response, at 18 and Appendix A. The Board ruling on attachments A – H as stated at the HOM is reflected in the summary table below. Likewise, the Board’s ruling on the County’s Motion to take official notice of three attachments to its Response brief are reflected in the summary table below. Also, during the HOM, the County provided the Board with a copy of its Comprehensive Plan amendment procedures. The Board takes notice of this document also. Those exhibits that the Board admitted or took notice of at the HOM were determined to be potentially necessary or of substantial assistance to the Board in reaching its decision. Also, at the HOM, the Board **denied** both the County and Port Blakely’s motion to strike allegedly unsupported statements in Kitsap Citizens PHB, but noted that such statements would be accorded the weight they deserve. The table below reflects these rulings and assigns Index Numbers where appropriate.

| <b>Proposed Exhibit: Documents</b>   | <b>Ruling</b>                                |
|--|--|
| <i>Kitsap Citizens items A – H:</i>  |  |
| A. Letter form Linzer to Best dated 4/23/96                                    | <b>Denied</b>                                |
| B. Letter from Best to Donnelly dated 5/1/96                                   | <b>Denied</b>                                |
| C. Letter from Donnelly to Horton dated 6/14/00                                | <b>Denied</b>                                |
| D. Letter from Malanca to Kitsap Citizens for Rural Preservation dated 6/22/00 | <b>Denied</b>                                |
| E. Letter from KCRP to Kitsap County Commissioners dated 6/11/00               | <b>Admitted</b> - Index No. 8- HOM           |
| F. Kitsap County Commission meeting minutes from 9/11/00                       | <b>Admitted</b> - Index No. 9-HOM            |
| G. KCRP Table of County Population   | <b>Board takes notice</b> - Index No. 10-HOM |
| H. KCRP Table of Wage and Salaried Employees – Bremerton PMSA                  | <b>Board takes notice</b> - Index No. 11-HOM |
| <i>Kitsap County items C-1 through C-3 and handout:</i>                        |  |

|  |  |
|--|--|
| C-1. Affidavit of publication for notice of 3/27/01 Planning Commission hearing on CPP revisions                   | <b>Board takes notice</b> – Index No. 12-HOM |
| C-2. Certified copy of unofficial minutes of Planning Commission 3/27/01 hearing on CPP revisions                  | <b>Board takes notice</b> – Index No. 13-HOM |
| C-3. Certified copy of staff report on Planning Commission recommendations on CPP revisions.                       | <b>Board takes notice</b> – Index No. 14-HOM |
| Handout. Kitsap County Citizen’s Guide to Comprehensive Plan Amendment Process – Kitsap County Code Chapter 21.08. | <b>Board takes notice</b> – Index No. 15-HOM |

Abandoned Issues:

The Board’s Rules of Practice and Procedure, at WAC 242-02-570(1), provide:

A petitioner, or a moving party when a motion has been filed, shall submit a brief on each legal issue it expects a board to determine. Failure by such a party to brief an issue shall constitute abandonment of the unbriefed issue. Briefs shall enumerate and set forth the legal issue(s) as specified in the prehearing order if one has been entered.

The Board’s December 21, 2000 PHO, Section X, provided as follows:

The parties are reminded that their briefs and arguments must be confined to the Legal Issues set forth below. Numerous arguments may be contained under a single Legal Issue. **Also, Legal Issues, portions of Legal Issue, not briefed will be deemed to have been abandoned and cannot be resurrected in Reply Briefs or in oral argument at the Hearing on the Merits.** (Emphasis in original.)

The Board notes that several of the Legal Issues posed by the Suquamish Tribe were not argued separately, but all seem to relate to the internal consistency issue. Consequently, they are addressed under the Internal Consistency heading noted below. However, the Board finds no argument or reference to Legal Issue No. 11<sup>[1]</sup> in the prehearing brief submitted by the Suquamish Tribe. Suquamish PHB, at 1-15. Pursuant to WAC 242-02-570, Legal Issue No. 11 is **abandoned**.

The Board also notes that some of Petitioners’ arguments grew and changed from opening briefs

to reply briefs. This limited the opportunity for the County and Intervenor to respond in writing. The Board considered disallowing arguments based on procedural grounds or allowing post-hearing briefing<sup>[2]</sup> by the County and Intervenor. However, the Board found the oral arguments, presentations and answers to Board questions at the HOM, to be very responsive and sufficient to allow the Board to resolve the issues presented.

### C. Prefatory Note

As briefing evolved, it became apparent that the focus of Petitioners' challenges related to the addition of a residential component to the PB Subarea Plan.<sup>[3]</sup> Therefore, the primary question for the Board to answer is whether the County's inclusion of a residential component in the PB Subarea Plan and its designation as part of Bremerton's UGA, complied with the requirements of the Act, primarily RCW 36.70A.110. If this designation was done in accordance with the UGA designation procedures of the GMA, the Board will then look to the internal inconsistency challenges related to the County's process for undertaking this designation. Following discussion of the remaining Legal Issues, the Board may reconsider the County and Port Blakely motions to dismiss.

The Board addresses the various Kitsap Citizens and Suquamish Tribe issues under the following topical headings: UGA Issues, Internal Consistency, Forestry, Transportation, and Interjurisdictional Coordination.

### IV. Findings of Fact

1. The Port Blakely parcel (approximately 440-acres) was designated as Urban Industrial Reserve and Joint Planning Area Overlay on the 1998 Kitsap County Future Land Use Map (FLUM). *See*: 1998 FLUM.
2. The Port Blakely parcel was not designated as being within any of the County's designated UGAs. *See*: 1998 FLUM.
3. The County's 1998 Comprehensive Plan, Part I, Land Use Element (**1998 Plan**), explains, "The Plan map [FLUM] designates several large industrial/business park sites as Urban (*sic*) Joint Planning Areas (with an Industrial/Urban Reserve Plan designation). These sites are considered provisionally suitable for inclusion in the Urban Growth Area and for non-residential development." 1998 Plan, at 102.
4. The 1998 Plan describes the Joint Planning Area and Urban Study Area designations for those designated *within* UGAs; and describes that Joint Planning Area designations are applied to sites *outside* UGAs but that are provisionally considered appropriate for inclusion in an UGA. Urban Industrial Reserves are not mentioned in this discussion. The Plan notes that for

these non-UGA areas numerous issues must still be resolved. Developing memoranda of agreements (**MOAs**) with various cities is noted as the first step for Joint Planning in these non-UGA areas. 1998 Plan, at 18-19.

5. Under the 1998 Plan's *Bremerton Urban Joint Planning Area* heading the Port Blakely area is briefly mentioned. "The approximately 500-acre Port Blakely Tree Farm property west of Kitsap Lake is designated as a Joint Planning Area; a dual land use designation – Industrial/Business Park and Urban Reserve – is applied to indicate the appropriateness of this land use and to ensure that the property is maintained in large parcels during the joint planning process." 1998 Plan, at 22.

6. In 1998, the same Petitioners, among others, challenged the County's 1998 Plan, including the designation of the Port Blakely property as Urban Industrial Reserve. In that case, the Board upheld the County's industrial/commercial land capacity analysis. *See: Bremerton/Alpine v. Kitsap County (Alpine)*, CPSGMHB Case Nos. 95-3-0039c/98-3-0032c, Order Rescinding Invalidity in Bremerton and Final Decision and Order in Alpine, (Feb. 8, 1999), at 61-64. However, in resolving the forestry issue in that case, the Board required the Port Blakely property be included in the County's remand review to determine whether it met the County's criteria for forestland designation. *Alpine*, at 65 and 33-35.

7. The County ultimately identified and designated forestlands, which the Board upheld as meeting the requirements of the Act. The Port Blakely property was not among those lands identified and designated as forestlands by the County. *See: Screen v. Kitsap County*, CPSGMHB Case No. 99-3-0006c, Order on Compliance Re: Forestry Issues in *Alpine* and Final Decision and Order in *Screen (Screen I)*, (Oct. 11, 1999), at 7-19. Consequently, since the area was not designated as forestland, the designation of the Port Blakely property remained as indicated in the 1998 Plan – Urban Industrial Reserve with a Joint Planning Overlay.

8. On May 10, 1999, the County adopted Ordinance No. 234-1999, which amended the County Plan (**1999 Plan Amendments**). Among the text changes made was a change in the discussion of Joint Planning Areas. It now included mention of Urban Industrial Reserves and Urban Reserves. "The Urban Joint Planning Areas designation is applied as an overlay to some areas designated as Urban Reserve and Urban Industrial Reserve which may be appropriate for inclusion in an UGA but for which numerous issues must still be resolved." The Plan still indicated that the County would be pursuing MOAs to schedule joint planning. "In the interim, these lands [Joint Planning Areas *outside* the UGAs] are designated and zoned as "urban reserve" as a means to preserve options during the planning process. 1999 Plan Amendments, at 19.

9. In August of 1998 the County and City of Bremerton executed an MOA that outlined the joint planning for the Port Blakely area. PB Response, at 3.

10. In July of 1999 the notion of mixed-use, adding a residential component to the PB Subarea, was introduced to the public. PB Subarea Plan, Volume II, Appendix 21, [Public Information Meeting].

11. The product of the joint planning process was adopted on September 11, 2000 when the County adopted Ordinance No. 249-2000. The Ordinance adopted a “Three Party Agreement” between the City of Bremerton, Kitsap County and Port Blakely Communities, adopted the PB Subarea Plan for 440-acres, designated the PB Subarea as part of Bremerton’s UGA, amended the County’s Plan text and FLUM to indicate the area as “Transitional”, and amended the zoning regulations and map to indicate “Transitional” (TR) zoning. Ordinance No. 249-2000, Section 2.

12. The residential component of the PB Blakely Subarea includes between 900 and 1200 mixed housing units. PB Subarea Plan, Volume I, at 5; Three Party Agreement, Section 6, at 7.

13. On September 20, 2000, the City of Bremerton adopted Ordinance Nos. 4722 and 4723, adopting the PB Subarea Plan, and amending the City’s Plan and Zoning regulations and map accordingly. Index No. 1-D and 2-D.

14. On December 6, 2000, the City of Bremerton adopted Ordinance No. 4739 that annexed the PB Subarea into the City of Bremerton. Index No. 3-D.

15. On December 8, 2000, a letter from the Kitsap County Boundary Review Board advised the City of Bremerton that the forty-five (45) day time period from filing [the application to annex] had expired and by operation of RCW 36.93.100(4) the petition [for annexation] had been approved. Index No. 6-D.

16. Approximately 300-acres of the 440-acre site are developable. The PB Subarea Plan indicates the developed area would include high technology, and light industrial, commercial enterprises integrated with a range of residential units and an interconnected open space and recreational element and internal circulation system. PB Subarea Plan, Volume I, at 23.

## **V. legal issues and discussion**

### **A. URBAN GROWTH AREA ISSUES**

Under this heading the Board considers Legal Issues 1, 6 and 8. The Board’s PHO set forth Legal Issue No. 1, 6 and 8, respectively, as follows:

- ***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? [Legal Issue 1]***
- ***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? [Legal Issue 6]***
- ***Whether, in adopting Ordinance No. 249-2000, the County failed to “show its work” in violation of the holdings in Association of Rural Residents v. Kitsap County, CPSGMHB Case No. 93-3-0010, Final Decision and Order, June 3, 1994, at 35 and Tacoma, et al., v. Pierce County, CPSGMHB Case No, 94-3-0001, Final Decision and***

### Applicable Law and Discussion

#### RCW 36.70A.020:

RCW 36.70A.020 contains the Goals of the GMA. Although the PFRs or the statement of the Legal Issues in the PHO do not cite specific goals, in their respective prehearing briefs Kitsap Citizens and the Suquamish Tribe reference RCW 36.70A.020(1), (2), (8), (9) and (10).<sup>[4]</sup>

Kitsap Citizens PHB, at 35, Suquamish PHB, at 6. The Board looks first to the requirements section of the Act to determine compliance. Review is done in light of the goals of the Act, not in lieu of the goals. If the Board finds noncompliance with a requirement of the Act, it then returns to review the goals to determine whether substantial interference has occurred and whether invalidity should be imposed. *See: Jody McVittie v. Snohomish County (McVittie)*, CPSGMHB Case No. 99-3-0016c, Final Decision and Order, (Feb. 9, 2000), at 22. Thus the Board will first address compliance with the requirements of RCW 36.70A.215, .210, .130, .110, including the “show your work” question. Then, if necessary, the Board will return to the goals.

#### RCW 36.70A.210 and .215:

RCW 36.70A.215 and .210 are related. RCW 36.70A.210 required Kitsap County to adopt County-wide Planning Policies (CPPs) to provide the framework from which the County and its cities' comprehensive plans would be developed. This was to be done by late 1992. It is not disputed that Kitsap County adopted the CPPs required by .210.

The “*buildable lands program*” requirement of .215 requires certain jurisdictions, including Kitsap County, “to adopt, in consultation with its cities, county-wide planning policies [i.e. a CPP per .210] to establish a review and evaluation program.”<sup>[5]</sup> This program shall be in addition to the requirements of RCW 36.70A.110, .130 and .210.” RCW 36.70A.215(1). “The first [review and] evaluation shall be completed not later than September 1, 2002.” RCW 36.70A.215(2)(b).

Kitsap Citizens cite the relevant RCW sections for these two statutory challenges, but offer no discernable argument as to how the County failed to comply with these provisions.<sup>[6]</sup> Kitsap Citizens PHB, at 24-36. Likewise, the Tribe suggests that the County has not adopted the required .215 processes. Suquamish PHB, at 7. The County noted that Petitioners had not raised a “failure to act” challenge, and acknowledged that it has not yet completed adoption of the .215 review and evaluation CPP or process, but noted that the first review and evaluation is not required to be completed until September 1, 2002. County Response, at 9. To show its progress, the County offered, and the Board took notice of, three items, Index Nos. 12 – HOM, 13- HOM

and 14 - HOM.

If the gist of Petitioners argument is that the County's adoption of the Port Blakely Subarea Plan was *required to occur in the context of the County's .215 review and evaluation process*, the argument is ill founded and unsupported in briefing. Nothing in .215 compels such a conclusion at this time. Once the County adopts its ".215" CPP and completes the review and evaluation process (by September 1, 2002) a different conclusion might result. **Petitioners have failed to carry the burden of proof in demonstrating the County's noncompliance with RCW 36.70A.210 and .215.**

RCW 36.70A.130:

Petitioners' Legal Issues next assert noncompliance with RCW 36.70A.130. Among other things, this section of the Act requires jurisdictions to have a review and evaluation program. As part of this program, jurisdictions are to establish a public participation and annual review process for considering plan amendments. Kitsap County has such a process. *See: Kitsap County Citizen's Guide to Comprehensive Plan Amendment Process – Kitsap County Code (KCC) Chapter 21.08 [including, KCC 21.08.040], Index No. 15 - HOM.*

Plan amendments can be considered "no more frequently than once every year" this allows "all proposals [to] be considered concurrently by the governing body so the cumulative effect of the various proposals can be ascertained." RCW 36.70A.130(2)(a) and (b). However, the "initial adoption of a subarea plan" is explicitly excepted from this annual concurrent review process. RCW 36.70A.130(2)(a)(i). It is undisputed that Ordinance No. 249-2000 adopted the "initial" Port Blakely Subarea Plan.

Again, if the gist of Petitioners argument is that the County's adoption of the Port Blakely Subarea Plan was *required to occur in the context of the County's .130 annual review and concurrent amendment process*, the argument is in error. As a matter of law, the annual concurrent review requirements of RCW 36.70A.130 are not applicable to the initial adoption of subarea plans. Additionally, although Petitioners' Legal Issues reference and assert the County's noncompliance with the requirements of RCW 36.70A.130, neither party demonstrates noncompliance with this requirement in their briefing. Kitsap Citizens PHB, at 24-36, and Suquamish PHB, at 1-15. **Petitioners have failed to carry the burden of proof to demonstrate the County's noncompliance with RCW 36.70A.130.**

RCW 36.70A.110:

As Kitsap Citizens explain in its reply brief "[We] intended to argue that none of the adjacent territory [to the Port Blakely Subarea], including that part of Bremerton, was characterized by

urban growth.” However, “recent advice has convinced [Kitsap Citizens] that any part of adjacent territory that is in a city is characterized by urban growth. [Kitsap Citizens] abandons the argument that Section .110 prohibits the addition of a residential component to the project.” Kitsap Citizens PHB, at 5. Kitsap Citizens has **abandoned** its challenge that the inclusion of the Port Blakely Subarea Plan area (including the residential component) in the UGA fails to comply with the locational criteria of RCW 36.70A.110. <sup>[7]</sup>

The Suquamish Tribe does not challenge the locational criteria of .110(1), but rather challenges whether the County has “shown its work” to support the designation of the Subarea as part of Bremerton’s UGA and whether growth could have been accommodated in tier one or tier two of the existing UGA. Suquamish PHB, at 11-12. At the HOM, the argument was couched in terms of compliance with .110(3) – “three tiers” as characterized by the Suquamish Tribe. Transcript, at 50-56. Port Blakely responded to the Tribe’s .110(3) arguments at the HOM. Transcript, at 102-105.

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Show Your Work:

The Tribe is correct in asserting that “The Board, in interpreting RCW 36.70A.110 in conjunction with the remainder of the GMA, has concluded that counties must “show their work” when designating UGAs.” Suquamish PHB, at 11. Port Blakely is correct that the actions of the local jurisdiction are presumed valid; however, when challenged the record must provide support for the actions the jurisdiction has taken; otherwise the action may be determined to have been taken in error – clearly erroneous. <sup>[8]</sup> **The Board will continue to adhere to the requirement that counties must “show their work” when designating UGAs and affirms its prior decisions on this question.** <sup>[9]</sup>

The Tribe argues:

The County did not even attempt to demonstrate “in a measurable way and with sufficient documentation as to the rationale” that the amount of residential mixed-use development so coveted by the City could not be accommodated within existing city limits, or within “tier one” or “tier two” UGAs contiguous to the City. [T]here is *no evidence* that the County even attempted to do so.

Suquamish PHB, at 12 (emphasis supplied).

In response, Port Blakely asserts:

Multiple reports in the Record establish that the County and the City thoroughly analyzed and described the land capacity for the targeted mixed-use housing in the CBD and the possible relocation of approximately 1000 of the 3,500 mixed-use housing units from the City to the Port Blakely site. *See, e.g.*, Port Blakely Subarea Plan, Vol. II, [\[10\]](#) Appendices 30 [City Department of Economic Development letter]; 39 [Shapiro Report]; 40 [other mixed-use projects]; 49 [public notice and meeting materials]; 50 [Madrona Research Report]; 51 [Trottier Report]; 52 [Calthorpe letter]; 54 [Madrona Analysis]; 55 [Mayor's Report]; and 57 [Mayor's Response to Comment Letters].

Port Blakely Response, at 59. The County adopted the response of Intervenor Port Blakely in its prehearing brief. County Response, at 12. Thus, to counter the Tribe's claim that there is no evidence to support the County's UGA designation, the County and Intervenor point to record documents contained in Volume II of the Subarea Plan that "shows the County's work." If the documents cited from Volume II are where the County has "shown its work," this is where the Board will look to continue its review to determine whether the County's decision was clearly erroneous.

At the outset, the Board recognizes that the City of Bremerton is one of the few cities within the Puget Sound area that has actually lost population over the past decade. Index No. 21512 and Index No. 21521 Volume II, Appendix 30. The Board also recognizes that both the City of Bremerton and Kitsap County have placed a high priority on identifying land for future economic development. PB Subarea Plan, at 8.

Review of the record developed during the County's decision-making process, its "shown work," indicates that:

- The City lacks a sufficient supply of industrial/business park land to support mixed-use development and that both the City and County are striving to attract jobs. PB Subarea Plan, Volume I, at 8; and Index No. 21521 Volume II, Appendix 30 and 48.
- Mixed-use developments provide unique opportunities for economic development. PB Subarea Plan, at 10; and Index No. 21521 Volume II, Appendix 37, 40, 49, 50, 51 and 52.
- Mixed-use development within the City of Bremerton is not occurring at the desired rate. Much of the targeted mixed-use area in the City consists of smaller lots in multiple ownerships. Index No. 21521 Volume II, Appendix 37, 54 and 57.
- The City of Bremerton has undertaken substantial effort to pursue downtown redevelopment and encourage mixed-use in targeted areas. Index No. 21521 Volume II, Appendix 55.

- No new allocation of County (OFM) population was necessary the City's allocation was redirected to the PB Subarea. PB Subarea Plan, at 3, 11-14; Index No. 21521 Volume II, Appendix 54.
- To accommodate a portion of the City's existing population allocation [approximately 20,000], approximately 3500 units were designated for targeted mixed-use areas. Build-out projections for these areas indicate a probable shortfall of approximately 1000 units. PB Subarea Plan, at 11 - 14; and Index No. 21521 Volume II, Appendix 37 and 55.
- The population analysis supports the notion of shifting approximately 1000 units from the mixed-use shortfall in the existing Bremerton urban area to the PB Subarea to foster economic development, while not requiring a new allocation of population. PB Subarea Plan, Volume I, at 3, 5, 11 – 14; and Index No. 21521 Volume II, Appendix 30, 54 and 57.
- The City and County provided ample notice and opportunity to comment on the introduction of a residential component, and its impacts, to the PB Subarea and responded to comments offered. Index No. 21521 Volume II, Appendix 36, 44, 45, 46 and 47.

The written record documents, and shows, the County's work throughout the joint planning process.

At the HOM, the Suquamish Tribe elaborated on its argument asserting that the County did not sufficiently go through the three-tier analysis set forth in .110(3) for sizing the UGA in relation to the residential component. In other words, according to the Tribe, the residential population should be accommodated within existing city limits first, then its existing UGA before considering an expansion of the UGA. Transcript, at 50-56. Generally, the three-tiers argued in this case were: Tier One – existing city limits of Bremerton; Tier Two – previously designated, but unincorporated, Bremerton UGA; and Tier Three – unincorporated non-UGA area [PB Subarea].

Port Blakely responded that: 1) the documents noted in Volume II demonstrate the City and County analysis concluding that mixed-use residential could not be accommodated within the City of Bremerton [Tier One] - Transcript, at 90-102; 2) to accommodate a residential population in a mixed-use setting requires a “mix” of residential, *commercial and light industrial* uses, the latter of which is not available within the existing unincorporated Bremerton UGA [Tier Two]; and 3) therefore it was appropriate for the County to look to the PB Subarea – previously designated as an “Industrial Reserve” outside the UGA, to accommodate the residential component [Tier Three]. Transcript, at 102-105. The Board agrees with Port Blakely. Volume II of the record demonstrates, and the Board is persuaded by argument, that it was not clearly erroneous for the County to include the residential component in the PB Subarea Plan and

designate the area as UGA.

After reviewing the substance of the noted documents from Volume II of the PB Subarea Plan, and deliberating on the arguments made in the briefing and at the HOM, **the Board is *not left with the firm and definite conviction that it was a mistake for the County to include the residential component in the PB Subarea Plan and designate the area UGA.* The County's action of designating the PB Subarea as a UGA was not clearly erroneous.** The Board will now consider whether the procedures used by the County to carry out this action were internally consistent with the joint planning and amendment procedures set forth in its Plan.

Having found compliance by the County in relation to the requirements of RCW 36.70A.110 and that Petitioners' have failed to meet their burden of proof regarding RCW 36.70A.130, .210 and .215, the Board need not address whether there has been substantial interference with goals (1), (2), (8), (9) and (10). However, the Board notes that the PB Subarea Plan specifically addresses how it has been guided by each of these goals and the other goals of the Act. *See: PB Subarea Plan, at 14 – 17.* The Board concurs with the County's assessment of how the goals have guided the PB Subarea Plan.

### **Conclusion**

Petitioners have **failed to carry the burden of proof** in demonstrating the County's noncompliance with RCW 36.70A.130, .210 and .215. Regarding the County's compliance with RCW 36.70A.110 and its "show your work" requirements, the Board is *not left with the firm and definite conviction that it was a mistake for the County to include the residential component in the PB Subarea Plan and designate the area UGA – the County's action of including a residential component in the PB Subarea Plan and designating the PB Subarea as a UGA was not clearly erroneous.*

#### **b. internal consistency**

Under this heading the Board considers Legal Issues 5, 7, 9 and 10. The Board's PHO set forth Legal Issue No. 5, 7, 9 and 10, respectively, as follows:

- ***Did the County violate RCW 36.70A.080 by adopting the Port Blakely Subarea Plan that is inconsistent with the Kitsap County Comprehensive Plan, specifically, Urban Joint Planning Area Policies (UGA-7 and UGA-12), Comprehensive Plan Amendment Policies (CP-3, CP-4 and CP-5), Urban residential land capacity analysis, and Employment land capacity analysis? [Legal Issue 5]***
- ***Whether Ordinance No. 249-2000 fails to comply with RCW 36.70A.070***

*(preamble) and .070(1)? [Legal Issue 7]*

- *Whether Ordinance No. 249-2000 is inconsistent with “Urban Joint Planning Area Policies” set forth within the Land Use Element of the County’s Comprehensive Plan (pp. 23-29 [UGA-7 through 17]), and thus fails to comply with RCW 36.70A.070 (preamble)? [Legal Issue 9]*
- *Whether Ordinance No. 249-2000 is inconsistent with the requirement set forth within the “Comprehensive Plan Amendment Process” of the Kitsap County Comprehensive Plan, Land Use Element (pp. 30-32 [CP-1 through 9]), and thus fails to comply with RCW 36.70A.070(preamble)? [Legal Issue 10]*

### **Applicable Law and Discussion**

The Kitsap County Plan Policies that have been challenged by Kitsap Citizens and the Suquamish Tribe provide as follows:

#### **Urban Joint Planning Areas Policies:**

##### UGA -7

The purpose of designating Urban Joint Planning Areas and defining a cooperative inter-jurisdictional planning process are to:

- Ensure that the region’s cities have sufficient land for future expansion, consistent with agreed upon population and employment allocations and forecasts, the availability of public services and facilities, and the requirements of the Growth Management Act;
- Identify areas that may be considered potentially suitable for urban development and inclusion within an Urban Growth Area subject to further planning and resolution of outstanding issues;
- Develop plans cooperatively with cities and service providers to facilitate annexation of these unincorporated areas over time, if appropriate, or to provide equitable service arrangements, consistent with inter-local agreements;
- Establish procedures for resolving issues affecting decisions on such areas – including but not limited to population and employment forecasts and allocations and arrangements for service provision – that are regional in nature and require resolution through a regional forum such as the Kitsap Regional Coordinating Council (KRCC);
- Provide a collaborative framework, within a regional perspective, for

examining and resolving issues relating to population and land use/density, land capacity, services and facilities, financing and governance for currently unincorporated areas that may be suitable for eventual annexation to cities, if appropriate;

- Promote adoption of plans and execution of inter-local agreements that affected jurisdictions will implement; and
- Facilitate County support for proposed annexations consistent with the adopted plan and Interlocal agreements.

1999 Plan Amendment, at 22.

## UGA – 12:

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

- a. the plan shall address the City's expected boundary for future expansion, which shall include the area anticipated to be annexed and/or provided with urban services over the next 20 years;
- b. the plan shall be based on agreed upon, authorized City population and employment projections and allocations supporting the need for such expansion, including a demonstration that projected growth cannot be reasonably accommodated within the city's existing corporate boundaries;
- c. the plan shall identify the types density/intensity and location of land uses anticipated within the planning area. Planned uses are expected to be urban in character and density, and should include provision for open space and/or urban separators;
- d. the plan shall identify responsibilities for providing services and facilities and associated levels of service within the Urban Joint Planning area, and shall include an agreement for appropriate cost sharing for new or upgraded services and facilities during a period specified in the agreement. This element shall include a schedule (which may be phased) and financing plan for providing services and facilities to the area and shall address necessary coordination with any special purpose districts;
- e. the plan shall adequately protect critical areas, pursuant to mutually agreed upon standards, including wetlands, streams, geologically hazardous areas, wildlife and habitat conservation areas, flood prone areas, and critical aquifer recharge areas;
- f. the plan shall provide for reciprocal notification of development proposals within the Urban Joint Planning area, along with opportunities to

review such proposals to propose mitigation measures for adverse environmental impacts on City, County or independently provided services and/or facilities to adjacent land uses; and

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

1999 Plan Amendment, at 23 –24.

### **Comprehensive Plan Amendment Policies:**

#### CP – 2:

Amendments to the Comprehensive Plan Land Use Map or policies will be considered once per year. A schedule for submitting and considering proposed amendments and necessary application forms will be developed by and available from the Department of Community Development. The process for proposing Comprehensive Plan amendments shall consist of submittal of a complete application to docket the proposed amendment for consideration, review of the proposal by staff, completion of environmental review to address direct and cumulative impacts of proposed amendments, and public hearings and consideration by the Planning Commission and Board of County Commissioners.

1998 Plan, at 30-31.

#### CP – 3:

Kitsap County’s Urban Growth Area designations must be reviewed at least every ten years. The Urban Growth Area will be considered more frequently pursuant to benchmarks, monitoring and evaluation program described in this Plan. Proposed amendments will be considered periodically by Kitsap County through a public process. Any amendments must be justified based on the following criteria:

- a. a change in population forecasts or allocations that cannot be accommodated within the existing Urban Growth Area; or
- b. a significant change in conditions, circumstances or assumptions that was not anticipated at the time the Urban Growth Area was calculated or defined; or
- c. data, based on established benchmarks and monitoring programs,

indicating that Kitsap County and/or the cities is not meeting established targets for the types or densities or intensities of development.

1998 Plan, at 31.

CP - 4:

A proposed Comprehensive Plan amendment must consider alternatives for responding to the change or new data, document why expansion of the Urban Growth Area or change to Comprehensive Plan policies or land use map is necessary and appropriate under the circumstances, and evaluate the environmental impacts of the proposed change. Any amendments must be consistent with the Growth Management Act, County-wide Planning Policy, applicable Comprehensive Plan policies or other requirements of federal, state and/or local laws.

1998 Plan, at 31.

CP – 5:

Any amendments to Comprehensive Plan policies or the Urban Growth Area should be accompanied by necessary changes to adopted development regulations required to maintain consistency, along with any necessary changes adopted capital facility programs, transportation improvement programs or other adopted County plans or programs.

1998 Plan, at 31.

Kitsap Citizens argues that there is plenty of land within the existing Bremerton UGA that can accommodate all population and employment allocations. Therefore, the action is inconsistent with UGA – 7. Kitsap Citizens, at 28. However, Kitsap Citizens fail to support this contention with any documentation from the record. The County addresses UGA-7 specifically in the PB Subarea Plan, at 3-4. As discussed above [UGA Issues], the record, including the PB Subarea Plan and Volume II Appendices, indicates otherwise.

The Tribe and Kitsap Citizens both contend that the County’s adoption of the PB Subarea Plan is inconsistent with UGA – 12(b) because it was not demonstrated that the residential component could not be reasonably accommodated within Bremerton’s corporate boundaries. Suquamish PHB, at 7; Kitsap Citizens PHB, at 28-31. The County addresses UGA-12(b) specifically in the PB Subarea Plan, at 5-7. This argument is without merit. As discussed above [UGA Issues], the PB Subarea Plan and Volume II Appendices adequately document the basis for allowing the

residential component within the PB Subarea Plan.

The Tribe challenges consistency with CP-2, asserting that the County did not consider the direct and cumulative impacts of the proposal. This argument is misplaced. CP – 2 relates to the County’s annual review process. As discussed above, initial adoption of Subarea plans are explicitly excepted from the annual review process requirements. Therefore, this argument must fail.

Kitsap Citizens argue that since Bremerton is losing population there is no need to expand the UGA. They assert that there is no monitoring program as required by CP – 3. Kitsap Citizens PHB, at 31. These arguments fail. Again, as discussed above, documentation of the basis for population shift to the PB Subarea is amply demonstrated in the record. Also, the County has demonstrated that it is in the process of adopting a review and evaluation procedure per .215; it has already adopted an annual plan review process per .130. *See*: Index Nos. 12, 13, 14 and 15 – HOM. Further, as discussed above, the initial adoption of a Subarea plan may proceed outside the established annual review cycle.

The Tribe’s and Kitsap Citizens’ alleged inconsistency with CP- 4, that alternatives to UGA expansion must be considered and documented first, before the UGA can be expanded, is without merit. No record evidence is offered to support this contention. Suquamish PHB, at 7, 9 and 10; Kitsap Citizens PHB, at 32. Again, as discussed above [UGA Issues], there is adequate documentation in the PB Subarea Plan and Volume II Appendices that support the decision to include the residential component and allow UGA expansion.

The final consistency argument is offered by Kitsap Citizens, arguing that the PB Subarea Plan does not address transportation improvements to maintain LOS and funding. Kitsap Citizens, at 32. The PB Subarea Plan at 51–59 and 67-78 address transportation and capital facilities requirements. Additionally, the Three-Party Agreement addresses transportation and funding for the area. Three-Party Agreement, Section 3.

### Conclusions

Petitioners have **failed to carry their burden of proof** to demonstrate that the County’s adoption of the PB Subarea Plan and UGA designation was inconsistent with Kitsap County Plan Policies UGA-7, UGA-12, C-2, C-3, C-4 or CP-5.

### **C. FORESTRY**

Under this heading the Board considers Legal Issue 2. The Board’s PHO set forth Legal Issue No. 2 as follows:

**2. Did the County violate RCW 36.70A.020, .060, and .170 by designating the Port Blakely Subarea, which encroaches into the exclusion zone surrounding designated forest resource land?**

**Applicable Law and Discussion**

The relevant RCW sections cited pertain to the identification and designation of forest lands and adoption of development regulations to assure the conservation of such lands. It is undisputed that the County has identified and designated its forest lands. *See: Screen v. Kitsap County*, CPSGMHB Case No. 99-3-0006c, Order on Compliance Re: Forestry Issues in *Alpine* and Final Decision and Order in *Screen (Screen I)*, (Oct. 11, 1999). Nor does Petitioner challenge the existence of County development regulations to assure the conservation of such lands. *Kitsap Citizens, PHB*, at 36-37. Instead, Petitioner asserts that a criterion used for identifying and designating forest lands creates an exclusion zone and a *de facto* regulation prohibiting the adoption of the PB Subarea Plan. *Kitsap Citizens*, at 36-37.

In identifying forest lands for Kitsap County, one of the “exclusion” criterion used was a one-mile radius from existing commercial or industrial property. Thus, potential forest lands that were located within a mile of commercial or industrial uses were eliminated from designation. The County designated forest lands using this criterion, among others. One of the designated Forest Resource Land boundaries is within one-mile of the PB Subarea Plan boundary, which coincides with the County’s original Urban Industrial Reserve/Joint Planning Area designation for the Port Blakely Property. Index No. 1-S. Petitioners contend that due to the forest boundary, the area must be excluded from commercial, industrial and residential development. *Kitsap Citizens*, at 36-37.

The County counters that the County Commissioners were aware of the Urban Industrial Reserve when they designated the County’s forest lands and could have explicitly included proximity to an Urban Industrial Reserve as part of the forest land identification and designation criterion. However, they did not, since their Urban Industrial Reserve designation encouraged and anticipated the development of the Port Blakely area. Also it was not intended that the forest land designations would operate as a *de facto* regulation governing adjacent property. In their briefing or argument, Petitioner fails to identify any evidence in the record supporting this novel interpretation. Further, the County adopted development regulations to conserve forest lands that do not contain any such exclusionary provisions. “The only regulations governing designated forest lands are contained in the County’s zoning code.” County Response, at 12-14. *Citing* Ordinance No. 230-1999 and Kitsap County Code § 17.320.020 and Chapter 17. The Board agrees with the County. The one-mile criterion was used for the initial identification and designation of forest lands only. It has no applicability beyond the initial designation of such

lands; it is not a *de facto* exclusion zone. Petitioners have **failed to carry their burden of proof** to demonstrate that the County’s forest lands preclude the adoption of the PB Subarea Plan and UGA designation.

### Conclusions

Petitioners have **failed to carry their burden of proof** to demonstrate that the County’s forest lands preclude the adoption of the PB Subarea Plan and UGA designation.

### **D. transportation**

Under this heading the Board considers Legal Issue 3. The Board’s PHO set forth Legal Issue No. 3 as follows:

*3. Did the County violate RCW 36.70A.020, and .070, .420 and .430 by failing to provide for adequate transportation facilities to serve the Port Blakely Subarea?*

### Applicable Law and Discussion

At the HOM Kitsap Citizens conceded, “most of the arguments we make [regarding] transportation are kind of too early. We are arguing that the County designated the UGA before the County was ready to do it.” Transcript, at 34. “The access to the site should have been determined before UGA designation. The accesses to the site run through land that would remain in the County, and there’s not enough money in the program to build accesses. That’s the one point we want you to take away. The rest of what we argued under transportation is kind of ahead of itself. There’s no way that could have been done.” Transcript, at 35.

The Board agrees. The arguments made by Petitioner would be more appropriate in the context of the master plan development and permitting process, as details are more defined. However, the Board notes that the PB Subarea Plan at 51–59 and 76-77 address transportation, including access alternatives and costs. Additionally, the Three-Party Agreement addresses transportation and funding for the area. Three-Party Agreement, Section 3. These documents provide a basis for moving forward on the PB Subarea Plan and UGA designation. Petitioners have largely **abandoned** this issue, and where it was not abandoned, Petitioners **failed to carry their burden of proof** to demonstrate the County’s adoption of the PB Subarea Plan and UGA designation did not comply with the transportation requirements of the Act.

### Conclusions

Petitioners have largely **abandoned** this issue, and where it was not abandoned, Petitioners **failed to carry their burden of proof** to demonstrate the County’s adoption of the PB Subarea Plan and UGA designation did not comply with the transportation requirements of the Act.

### **e. interjurisdictional coordination**

Under this heading the Board considers Legal Issue 4. The Board's PHO set forth Legal Issue No. 4 as follows:

#### ***4. Did the County violate RCW 36.70A.100 by failing to coordinate the Port Blakely Subarea Plan with other jurisdictions?***

#### **Applicable Law and Discussion**

RCW 36.70A.100 provides:

The comprehensive plan of each county . . . shall be coordinated with, and consistent with, the comprehensive plans . . . of other county or cities with which the county or city has, in part, common borders or related regional issues.

Petitioner argues, “[t]here is no documentation that designation of the [PB Subarea] as a UGA was coordinated with Bainbridge Island, Poulsbo or Port Orchard.” Each of these cities has common borders with the County and according to Petitioner, “issues related to the PB Subarea.” Kitsap Citizens PHB, at 51. The County questions Petitioner’s broad reading of RCW 36.70A.100 that would require the County to coordinate its planning on the PB Subarea with every city in the County. Instead, the County contends it has coordinated extensively with Bremerton on the PB Subarea and continues to coordinate planning issues in the County through the Kitsap Regional Coordinating Council (KRCC). The County followed the requirements in its 1998 Plan for joint planning for PB Subarea; no other extraordinary coordination was required. Kitsap Response, at 15-16.

In one of its earliest cases the Board stated: “*The CPP [County-wide Planning Policy] “framework” of [RCW 36.70A.210(1)] is to ensure the consistency (required by .100) of the comprehensive plans of cities and counties that have common borders or related regional issues.*” *City of Snoqualmie and City of Issaquah v. King County (Snoqualmie)*, CPSGPHB Case No. 92-3-004c, Final Decision and Order, (Mar. 1, 1993), at 8, (emphasis supplied). In other words, the CPPs are the primary benchmark for ensuring and determining consistency among comprehensive plans.

Petitioners offer no argument or evidence to suggest that there is inconsistency between the plans of Kitsap County [including the PB Subarea], Bremerton, Poulsbo, Bainbridge Island or Port

Orchard and the CPPs or among each other. Nor are any of Kitsap County's cities parties to this case. The County's plan specifically outlines joint planning procedures for resolving regional issues with Poulsbo, Port Orchard and Bremerton. 1998 Plan, at 19-21. Also as the County suggests, the KRCC provides a forum for discussion and coordination of regional issues. The Petitioners **have failed to carry their burden of proof** in demonstrating the County's noncompliance with RCW 36.70A.100.

### Conclusions

The Petitioners **have failed to carry their burden of proof** in demonstrating the County's noncompliance with RCW 36.70A.100.

### **F. Reconsideration of Motions to Dismiss as MOOT**

Having conducted the necessary GMA compliance review, and reached its conclusions noted in the ORDER below, the Board **declines to reconsider** its February 16, 2000 Order on Dispositive Motions and Motions to Supplement the Record.

### **VI. ORDER**

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

The consolidated petitions for review filed by Kitsap Citizens for Rural Preservation and the Suquamish Tribe, CPSGMHB Case No. 00-3-0019c, is **dismissed with prejudice**.

So ORDERED this 29<sup>th</sup> day of May 2001.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

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Edward G. McGuire, AICP  
Board Member

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Lois H. North  
Board Member

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Joseph W. Tovar, AICP  
Board Member (Board Member Tovar also files a separate  
concurring opinion)

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.

**Concurring Opinion of Board Member Tovar**

I concur with my colleagues that the Petitioners have failed to show clear error with respect to the County's compliance with RCW 36.70A.110. I also agree that the County has no duty to meet the requirements of RCW 36.70A.215 until September 1, 2001. Nevertheless, in my opinion, the general subject of UGA expansion, and the specific question of the Board's authority to substantively review such actions upon appeal, warrant further comment.

While it does not question the premise that the Board may require a county to "show its work," Port Blakely argues that the Board lacks authority to determine whether the work shown is adequate to support the County's action in designating a UGA pursuant to .110. Port Blakely Post-Hearing Brief, at 1-2. Port Blakely points to the "clearly erroneous" standard of review, and seems to suggest that in applying this standard the Board is somehow barred from a critical review of a county's work. The Tribe disagrees, citing to *Diehl v. Mason County*, 94 Wn. App. 645 (1999) for the proposition that the courts have recognized that the scope of the Boards' authority is sufficiently broad to fashion tests or doctrines such as "show your work." Suquamish Tribe's Supplemental Brief, at 3.

A review of the *Diehl* decision is illuminating. In discussing the "Scope of the Board's Authority," the Court of Appeals stated:

The GMA clearly allows the Board to consider both the goals and the specific requirements of the GMA when considering a petition alleging noncompliance. . . . Administrative bodies like the Growth Management Hearings Boards may exercise powers conferred by statute, either expressly or by necessary implication. See *Skagit Surveyors and Eng'rs, LLC v. Friends of Skagit County*, 135 Wash. 2d 542, 558, 958

P.2d 962 (1998). **By necessary implication, the GMA allows the Board to exercise some independent judgment** regarding whether a county’s CP [comprehensive plan] and DRs [development regulations] comply with the requirements of the GMA or substantially interfere with its goals. (Bold emphasis added).

When defending a GMA action, it has been typical for a respondent local government to challenge the Board’s exercise of that “independent judgment.” Local governments cite RCW 36.70A.3201, calling particular attention to the phrases “broad range of discretion” and “grant deference to counties and cities.” In rejecting a narrow argument by King County (i.e., the Board’s decision must be overturned because it does not defer to local discretion) the Supreme Court put that discretion and deference in the proper framework of the “requirements and goals” of the GMA. In *King County v. Central Puget Sound Growth Management Hearings Board*, 142 Wn.2d 543, 14 P.3d 133, 2000 Wash. the Court held:

The [Growth Management Hearings] Board is charged with adjudicating GMA compliance, and, when necessary, with invalidating noncompliant comprehensive plans and development regulations. . . . “Local governments have broad discretion in developing [comprehensive plans] and [development regulations] tailored to local circumstances.” *Diehl*, 94 Wn. App. 645 at 651, 972 P.2d 543. Local discretion is bounded, however, by the goals and requirements of the GMA. In reviewing the planning decisions of local governments, the Board is instructed to recognize “the broad range of discretion that may be exercised by counties and cities **consistent with the requirements of this chapter**” and to “grant deference to counties and cities in how they plan for growth, **consistent with the requirements and goals of this chapter**.” RCW 36.70A.3201. (Bold emphasis supplied *by the Supreme Court*.)\_

In the context of these judicial holdings, the Board has affirmed that counties will be required to “show their work” when a UGA change is made under the authority of RCW 36.70A.110. The Board has concluded that this is a necessary implication of the **GMA requirements** of .110 as well as the urban growth and anti-sprawl **GMA goals** set forth in RCW 36.70A.020(1) and (2). I believe that it is also a logical and necessary implication of .110 that the Board has the authority to substantively review whether the “shown work” supports the action taken. In evaluating such substantive challenges, the Board is to apply the standard of review set forth at RCW 36.70A.320 (3).

While not directly on point in this case, a review of the “buildable lands” provisions of RCW 36.70A.215 buttresses this conclusion. Counties and cities are to expand the urban growth area only as a last resort, <sup>[11]</sup> only after many other steps have been taken to accommodate the

forecasted growth and only after those other steps are judged to be insufficient. This strongly suggests that such a momentous decision (i.e., to expand the UGA) must be supported by a thorough and rigorous analysis, one which by necessary implication requires a “showing of the work” and the opportunity for the Board to weigh substantive challenges to the adequacy of that work. If the analysis in the record does not support the action taken, a county would have committed “clear error” within the meaning of RCW 36.70A.320(3).

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[1] The PHO stated Legal Issue 11 as:

Whether the Subarea Plan, which allows for up to 675 dwelling units to be constructed without requiring a demonstration of mean-wage jobs being created as a result of the commercial/light industrial designation, is consistent with the purported economic goal of the Subarea Plan, and if so, whether such inconsistency fails to comply with RCW 36.70A.070(preamble)?

[2] The Post-hearing briefing the Board requested dealt specifically with the two questions posed by the Board; the parties were not asked to provide any additional briefing.

[3] See: PB Response, at 18; Kitsap Citizens Reply, at 4; Suquamish Reply, at 2-6.

[4] These goals are related to (1) Urban Growth, (2) Sprawl, (8) Natural Resource Industries, (9) Open space and recreation, and (10) Environment.

[5] The purpose of the review and evaluation program shall be to:

- (a) Determine whether a county and its cities are achieving urban densities within urban growth areas by comparing growth and development assumptions, targets, and objectives contained in the county-wide planning policies and the county and city comprehensive plans with actual growth and development that has occurred in the county and its cities; and
- (b) Identify reasonable measures, other than adjusting urban growth areas, that will be taken to comply with the requirements of this chapter.

RCW 36.70A.215(1).

[6] Kitsap Citizens also cites a CPP from the August 10, 1992 Kitsap County County-wide Planning Policies, but offers no argument as to how the County has failed to comply with it. Kitsap Citizens PHB, at 26.

[7] See: *King County v. CPSGMHB (Bear Creek)*, [Supreme Court Remand of a portion of *Vashon Maury v. King County*, CPSGMHB Case No. 95-3-0008, Order on Supreme Court Remand, (Jun. 15, 2000), at 9 – 11) for a discussion of the locational criteria of RCW 36.70A.110.

[8] See: Section II, *infra*, and Concurring opinion by Board Member Tovar, *supra*.

[9] See: *Association of Rural Residents v. Kitsap County*, CPSGMHB Case No. 93-3-0010, Final Decision and Order, (Jun. 3, 1994); *Tacoma v. Pierce County*, CPSGMHB Case No. 94-3-0001, Final Decision and Order, (Jul. 5, 1994); *Vashon-Maury v. King County*, CPSGMHB Case No. 95-3-008c, Final Decision and Order, (Oct. 23, 1995); *Sky Valley v. Snohomish County*, CPSGMHB Case No. 95-3-0068c, Final Decision and Order, (Mar. 12, 1996);

*Litowitz v. City of Federal Way*, CPSGMHB Case No. 96-3-0005, (Jul. 22, 1996); *Bremerton/Alpine v. Kitsap County*, coordinated CPSGMHB Case Nos. 95-3-0039c and 98-3-0032c, Order Rescinding Invalidity in Bremerton and Final Decision and Order in Alpine, (Feb. 8, 1999). *See also: Diehl v. Mason County*, 94 Wn. App. 645 (1999).

[10] Ordinance No. 249-2000, at Section 2(1), adopted as an attachment, the Kitsap County Sub-Area Plan – Port Blakely Joint Planning Area (Volume I, Version 2.4, as amended August 29, 2000 and issued September 8, 2000). Volume II, Version 2.4, is in the record at Index No. 21521.

[11] For example, this section directs counties and cities to “Identify reasonable measures, other than adjusting urban growth areas, that will be taken to comply with the requirements of this chapter.” RCW 36.70A.215(1)(b). Emphasis added.