

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

	)	
MICHAEL GAWENKA, HELEN	)	<b>Case No. 02-3-0003</b>
MILLER, JOANNE and DAVID	)	
FORBES, JOHN and JENNIFER	)	<i>(Miller)</i>
DIDIO	)	
	)	
Petitioners,	)	
	)	
v.	)	
	)	<b>FINAL DECISION AND ORDER</b>
CITY OF BREMERTON,	)	
	)	
Respondent.	)	

**I. Procedural Background**

**A. General**

On January 30, 2002, the Central Puget Sound Growth Management Hearings Board (the **Board**) received a Petition for Review (**PFR**) from Michael Gawenka, Helen Miller, Joanne and David Forbes, John and Jennifer Didio (**Petitioners**). The matter was assigned Case No. 02-3-0003, and is hereafter referred to as *Miller, et al., v. City of Bremerton*. Board member Edward G. McGuire is the Presiding Officer (**PO**) for this matter. Petitioners challenge the City of Bremerton’s (**City** or **Bremerton**) adoption of Ordinance Nos. 4771, 4783 and 4784, adopting Plan and development regulation amendments. The basis for the challenge is noncompliance with numerous provisions of the Growth Management Act (**GMA** or **Act**), the Shoreline Management Act and State Environmental Policy Act.

On February 4, 2002, the Board issued a “Notice of Hearing” in the above-captioned case. The Order set a date for a prehearing conference (**PHC**) and established a tentative schedule for the case.

On February 8, 2002, the Board received “Notice of Appearance” indicating that attorney Loren D. Combs is representing the Respondent City of Bremerton.

On March 1, 2002, the Board received “Certification of Record of the City of

Bremerton” (**Index**).

On March 7, 2002, the Board conducted the PHC, that same day the Board issued its “Prehearing Order” (**PHO**) setting the briefing schedule for the case and establishing the Legal Issues to be decided by the Board. The parties agreed to review the Index to determine if additional items should be included.

On June 10, 2002, due to a Board scheduling conflict, the Board issued, with the concurrence of the parties an “Order Rescheduling the Hearing on the Merits.”

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

On March 1, 2002, the Board received “Certification of Record of the City of Bremerton.”

On April 8, 2002, the Board received “Amended Certification of Record of the City of Bremerton.”

On May 9, 2002, the Board received “Supplement to Amended Certification of Record of the City of Bremerton” (**Index**).

On May 13, 2002, the Board received Petitioner’s “Statement of Petitioners Confusion” regarding the modifications of the Index beyond the deadline for motions established in the PHO. Petitioners sought assurances that the amended and supplemented Index would not be ignored since they were filed beyond the deadline for motions.

On May 14, 2002, the Board received: 1) “Transmittal of Core Documents by the City of Bremerton;” and 2) “Stipulation to Amend Index and Final Case Schedule” wherein the parties agreed to the contents of the Index, and agreeing for more time for Petitioners to prepare the prehearing brief. That same day, the Board issues an “Order Amending Briefing Schedule” to allow Petitioners more time to review the Index and prepare the prehearing brief.

### **C. Dispositive Motions**

On April 8, 2002, the Board received “Respondent’s Motion for Partial Dismissal” (**Bremerton Motion**). Bremerton moved that the Board dismiss Legal Issues 2, 4, 5 and 6<sup>[1]</sup> as they relate to Ordinance No. 4771. Copies of two exhibits were attached to the Motion.

On April 17, 2002, the Board received “Response to Motion for Partial Dismissal” (**Miller Response**).

The Board did not receive a reply from the City; the Board did not hold a hearing on the motions.

On April 30, 2002, the Board issued its “Order on Dispositive Motions.” The Order **granted** the City of Bremerton’s motion to partially **dismiss**. Legal Issues 2 and 4 were dismissed in their entirety and those portions of Legal Issues 5 and 6, as the related to Ordinance No. 1447 were also dismissed.

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

On May 30, 2002, the Board received “Petitioners Prehearing Brief” (**Miller PHB**).

On June 11, 2002, the Board received “Respondent’s Brief”, with numerous attached exhibits” (**Bremerton Response**).

The Board did not receive a reply brief from Petitioner.

On July 8, 2002, the Board held the hearing on the merits (**HOM**) in Suite 1022 of the Financial Center, 1215 4th Avenue, Seattle, Washington. Board members Joseph W. Tovar, Lois H. North and Edward G. McGuire, Presiding Officer, were present for the Board. Petitioner Helen Miller [2] appeared *pro se*. Gregory F. Amann represented Respondent City of Bremerton. Brenda Steinman of Mills & Lessard, Inc provided Court reporting services. The hearing convened at 10:15 a.m. and adjourned at approximately ---12:15 p.m.

## **II. presumption of validity, burden of proof and standard of review**

Petitioner challenges Bremerton’s adoption of GMA Plan amendments, as adopted by Ordinance Nos. 4783 and 4784 [note that Ordinance No. 4771 is also at issue in Legal Issue 1]. Pursuant to RCW 36.70A.320(1), Bremerton’s adoption of Ordinance Nos. 4783 and 4784 [and 4771] is presumed valid upon adoption.

The burden is on Petitioner, Miller, et al, to demonstrate that the actions taken by Bremerton 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 [Bremerton] 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 Bremerton’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).

Pursuant to RCW 36.70A.3201 the Board will grant deference to the City of Bremerton in how it plans for growth, consistent with the goals and requirements of the GMA. However, as our State

Supreme Court has stated, “Local discretion is bounded, however, by the goals and requirements of the GMA.” *King County v. Central Puget Sound Growth Management Hearing Board*, 142 Wn.2d 543, 561 (2000) (**King County**). Further, Division II of the Court of Appeals has stated, “Consistent with *King County*, and notwithstanding the ‘deference’ language of RCW 36.70A.3201, the Board acts properly when it foregoes deference to a county’s plan that is not ‘consistent with the requirements and goals of the GMA.’” *Cooper Point Association v. Thurston County*, No. 26425-1-II (Court of Appeals, Div. II, September 14, 2001), 108 Wn. App. 429 (2001).

### **iii. board jurisdiction and Prefatory note**

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

The Board finds that Petitioner Miller’s PFR was timely filed, <sup>[3]</sup> pursuant to RCW 36.70A.290 (2); Miller, et al., have standing to appear before the Board, pursuant to RCW 36.70A.280(2); and the Board has subject matter jurisdiction over the challenged ordinances, which amend Bremerton’s Comprehensive Plan, pursuant to RCW 36.70A.280(1)(a).

#### **B. Prefatory Note**

In “Petitioners’ Prehearing Brief,” Petitioner frames, and briefs, six Legal Issues for the Board to decide. Miller PHB, at 1, 6. Two of the issues framed were not included in the original petition for review, nor included in the Board’s March 7, 2002 PHO. Petitioner also briefs issues related to internal consistency, traffic and land use overall evaluation. Miller PHB, at 20-25. Respondent noted this discrepancy in the City’s response. Bremerton Response, at 6-7 and 10, at footnote 3.

RCW 36.70A.290(1) provides: “The board shall not issue advisory opinions on issues not presented to the board in the statement of issues [PFR], as modified by any prehearing order.” Therefore, the new issues posed and argued in Miller’s PHB are not properly before the Board and the Board will not address them in this Order.

The Legal Issues remaining in this matter, after the Order on Dispositive Motions, are Legal Issues 1, 3, 5 and 6, as stated in the PHO. The Board will first address Legal Issues 5, 6 and 3, and then take up Legal Issue 1.

### **iv. legal issues and discussion**

#### **A. Legal Issue No. 5**

The Board’s PHO set forth Legal Issue No. 5

5. *Did the City fail to comply with the housing element requirements of RCW 36.70A.070(2) when it amended its Plan by adopting Ordinance No. 4783?*<sup>[4]</sup>

**Applicable Law and Discussion**

RCW 36.70A.070 sets forth the mandatory elements required for comprehensive plans. RCW 36.70A.070(2) sets forth the requirements for the housing element of each jurisdiction's comprehensive plan, including an inventory and analysis of existing and projected housing needs. RCW 36.70A.070(2)(a). Petitioners argue that since the City's population has decreased since the City's GMA Plan was adopted, the City was required to conduct an updated inventory and analysis of housing needs prior to adopting the amendments contained in Ordinance No. 4783. Miller PHB, at 15-16. The City counters that Section G of the City's GMA Plan complied with the requirements of 070(2)(a) when it was adopted and that Ordinance No. 4783 did not amend the Housing Element of the City's Plan. Therefore the City is not required to conduct additional review and analysis of its housing needs. Further the City argues that although several residential lots are effected, the designation of the Weslon Place properties from residential to commercial would "bridge a current gap of commercial uses along Kitsap way and create a buffer between residential properties along Oyster Bay and traffic along Kitsap Way." Bremerton Response, at 8-9. The Board agrees with the City.

Ordinance No. 4783 does not amend the Housing Element of the City's GMA Plan; instead it amends the Future Land Use Map (FLUM) and Land Use Element of the City's Plan. Ex. 71. Consequently, Petitioner's argument is misplaced and without merit. Petitioner's challenge to Legal Issue 5 is **dismissed**.

**Conclusion**

Petitioner's challenge to Legal Issue 5 is **dismissed**.

**B. Legal Issue No. 6**

The Board's PHO set forth Legal Issue No. 6

6. *Did the City fail to comply with the land use element requirements of RCW 36.70A.070(1), regarding drainage, flooding and stormwater, when it amended its Plan by adopting Ordinance No. 4783?*<sup>[5]</sup>

**Applicable Law and Discussion**

The relevant provision of RCW 36.70A.070(1) provides:

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

Petitioner's challenge in this issue suggests that the City did not evaluate the effect of the Plan amendments of Ordinance No. 4783, and subsequent proposed developments, on drainage, flooding and stormwater. Miller PHB, at 17-20. The City responds that Petitioners' focus on is on the Weslon Place amendment of Ordinance No. 4783 [PL00-0054] which did not amend the policy provisions of the land use element, but rather changed plan designations on the FLUM. Specifically PL00-0054 changed several parcels from residential to commercial along Kitsap Way. The City notes that no proposals for development are pending in Weslon Place and it further contends that impacts on drainage, flooding and stormwater, if any, would be assessed, and necessary requirements or mitigation measures imposed, when a project to develop in the area was proposed. Bremerton Response, at 10. Again the Board agrees with the City. Consequently, Petitioner's argument is misplaced. Petitioner's has failed to carry the burden of proof and the challenge to Legal Issue 6 is **dismissed**.

### Conclusion

Petitioner's challenge to Legal Issue 6 is **dismissed**.

### C. Legal Issue No. 3

The Board's PHO set forth Legal Issue No. 3

***3. Did the City fail to comply with the notice and public participation requirements of RCW 36.70A.035, RCW 90.58.130, RCW 43.21C.075 and .110, WAC 197-11-340, BMC 21-02 and BSMP 7-5-3, when it amended its Plan by adopting Ordinances Nos. 4783 and 4784, specifically relating to PL00-0054 (Exhibit B-1 to each Ordinance)?*** <sup>[6]</sup>

### Applicable Law and Discussion

The City notes that the Miller PHB (at 6-13) fails to address the City's alleged noncompliance with RCW 90.58.130, RCW 43.21C.075 and .110 and BMC 21-02 or BSMP 7-5-3. Bremerton

Response, at 7. Legal issues not briefed are deemed abandoned. WAC 242-02-220(4). Petitioners have **abandoned** this issue as it relates to the above-cited RCWs, WACs and local Bremerton laws.

It appears to the Board that the substance of Petitioners' complaint is that the City failed to comply with the notice and public participation requirements of WAC 197-11-340 [SEPA] regarding the City's issuance of a declaration of nonsignificance (**DNS**) for the Weslon Place amendment. The SEPA rules provide, in relevant part:

When a DNS is issued for any of the proposals listed in (2)(a), the requirements in this subsection shall be met. The requirements of this subsection do not apply to a DNS issued when the optional DNS process in WAC 197-11-355 is used.

a. *An agency shall not act upon a proposal for fourteen days after the date of issuance of a DNS if the proposal involves:*

...

v. A GMA action.

b. The responsible official shall send the DNS and environmental checklist to agencies with jurisdiction, the department of ecology, and affected tribes, and each local agency or political subdivision whose public services would be changed as a result of implementation of the proposal, and shall give notice under WAC 197-11-510.

c. Any person, affected tribe, or agency may submit comments to the lead agency within fourteen days of the date of issuance of the DNS.

WAC 197-11-340(2) (emphasis supplied).

Petitioner links this alleged violation to assert a failure to comply with the notice requirements of RCW 36.70A.035(1), which provides in relevant part:

The public participation requirements of this chapter shall include *notice procedures that are reasonably calculated to provide notice* to property owners and other affected and interested individuals, tribes and government agencies, businesses, school districts, and organizations of proposed amendments to comprehensive plans and development regulations.

(Emphasis supplied.)

The DNS that Petitioner takes issue with was issued on December 11, 2000 and published on

December 13, 2000. Exs. 19 and 20, (emphasis supplied). Petitioner argues that the public hearings related to the amendment addressed in this DNS occurred “58 days after the first [planning commission] public hearing on the matter was held, and a day after the public hearing was closed on the Weslon Place rezone.” Miller PHB, at 9.

The City contends that “Notice and opportunity to comment were given to property owners and other interested public and private entities and published in the newspaper. The City did not act on the proposal for fourteen days. Thus, all requirements of WAC 197-11-340 were met.” Bremerton Response, at 7. The City continues,

“After issuance of the DNS, the public had several opportunities to participate in the process. The planning commission held a public hearing on several of the proposed amendments, including PL00-0054 [Weslon Place], on March 20, 2001. Ex. 54. A public hearing on the cumulative effects of all proposed amendments, including PL00-0054, was held by the City Council on August 29, 2001, Exs.363-365, and another public hearing on PL00-0054 was held by the City Council on September 12, 2001. Ex. 366. Finally, a public hearing on Ordinance No. 4783 [and 4784], including PL00-0054, was held by the City Council on November 20, 2001.

Bremerton Response, at 8, (emphasis supplied).

The Board finds that Ordinance Nos. 4783 and 4784 were passed by the City Council on November 28, 2001 and published December 4, 2001, almost a year after the publication of the DNS questioned by Petitioner. (*See*: Ordinances). The action of adopting the Ordinances occurred well beyond the fourteen-day time limitation set forth in WAC 197-11-340. Additionally, the City provided additional *notice that was reasonably calculated* to provide notice of the opportunity to comment on the proposed amendments. The Board also finds that the City issued a DNS on all the proposed amendments, including PL00-0054, on August 3, 2001 and also issued an “Amended Notice of DNS to Extend the Public Comment Period and include Public Hearings” on August 17, 2001. Exs. 61 and 62. These notices also occurred prior to, and well before, the City’s action of adopting Ordinance Nos. 4783 and 4784. The Board notes that Petitioner did not dispute the issuance or publication of the notice on this DNS. The Board also notes that the Petitioner seems to misunderstand that the action referred to in WAC 197-11-340 [an agency shall not act] refers to the final adoption of the legislation, not the scheduling of public hearings. Notice and public hearings, as well as environmental review, are part of the process that leads to the final action – the decision, here, the adoption of the legislation. Petitioner has failed to carry the burden of proof. The City of Bremerton has **complied** with the notice and publication requirements of WAC 197-11-340 and RCW 36.70A.035. Petitioners’ challenge on this issue is **dismissed**.

## Conclusion

The City of Bremerton has **complied** with the notice and publication requirements of WAC 197-11-340 and RCW 36.70A.035. Petitioners' challenge on this issue is **dismissed**.

### **D. Legal Issue No. 1**

The Board's PHO set forth Legal Issue No. 1

1. *Did the City of Bremerton (City) fail to comply with the requirement of RCW 36.70A.130 to conduct annual and concurrent Plan amendment review, when it amended its Plan and Zoning Map by adopting Ordinance No. 4771 in August 2001 and Ordinance Nos. 4783, and 4784 in November?*<sup>[7]</sup>

### Applicable Law and Discussion

RCW 36.70A.130 provides in relevant part:

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

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

- i. The initial adoption of a subarea plan;
- ii. The adoption or amendment of a shoreline master program under procedures set forth in chapter 90.58 RCW; and
- iii. The amendment of the capital facilities element of a comprehensive plan that occurs concurrently with the adoption or amendment of a county or city budget.

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

(Emphasis supplied).

Petitioner contends that the City amended its comprehensive plan twice during 2001. The City acted once to adopt Ordinance No. 4771 in August 2001, and again in November to adopt Ordinance Nos. 4783 and 4784. These actions directly conflict with the provisions of .130. Miller PHB, at 3-6.

The City does not dispute that it adopted Ordinance No. 4771 in August 2001 and then adopted Ordinance Nos. 4783 and 4784 in November 2001. However, the City argues:

Although Ordinance No. 4771 was adopted first, the effects of Ordinance No. 4771 were considered cumulatively along with the other amendments in the public process for Ordinance No. 4783. The City has complied with the spirit, goals and purposes of RCW 36.70A.130(2), because the cumulative effects of all amendments, including the amendment adopted in Ordinance No. 4771, were considered in the adoption of Ordinance No. 4783.

Bremerton Response, at 5.

As required by RCW 36.70A.130(2), Bremerton has established and broadly disseminated a public participation program identifying procedures whereby proposed amendments or revisions of the comprehensive plan are considered by the governing body of the city no more frequently than once every year. Element K of the Bremerton Comprehensive Plan sets forth the process and timing for amending the comprehensive plan:

(1) The Comprehensive Plan shall be amended no more frequently than once per calendar year. That process shall be scheduled so that any changes that have financial implications can be included in the City's fall budget process. The amendment process shall generally conform to the following schedule:

- Spring: Neighborhood meetings, as necessary.
- May & June: Planning Commission Public Hearing(s).
- July: City Council Public Hearings.

(2) All amendment proposals shall be considered concurrently (in a package) by the Planning Commission and the City Council so that their cumulative effects can be ascertained.

(3) Provisions for the joint City/County consideration of Plan amendments of mutual concern within the Urban Growth Area shall be included in the Urban Growth Management Agreement (UGMA), or other appropriate agreement.

*See:* Core Document, City of Bremerton Comprehensive Plan, Element K – Implementation,

## Consistency and Concurrency, Page 1-2.

Notwithstanding its explicit annual amendment process, the City does not dispute that it amended its Plan twice during calendar year 2001. The City does not contend that the adoption of two Plan amendments at separate times fall within any of the exceptions of RCW 36.70A.130(2)(a)(i-iii) allowing the adoption of initial subarea plans, adoption or amendment of shoreline master programs or amendment of capital facility elements. Bremerton Response, at 2-6. Nor does the City suggest that the dual amendments in 2001 were necessitated due to an emergency or pursuant to Board or Court Order, as anticipated in RCW 36.70A.130(2)(b). Bremerton Response, at 2-6. Bremerton merely asserts that “the effects of Ordinance No. 4771 were considered cumulatively along with the other amendments in the public process for Ordinance No. 4783.” Bremerton Response, at 5. Bremerton’s actions are in direct contradiction of the explicit requirements of RCW 36.70A.130(2) and Element K of its own Comprehensive Plan.

The Board finds that Bremerton Ordinance No. 4771, “amending the Bremerton Comprehensive Plan, to include a new Policy” was passed by the City Council on August 1, 2001, was published on August 13, 2001, and became effective on August 23, 2001; this Ordinance was law, not subject to repeal or reconsideration at the time the City considered Ordinance No. 4783. Ex. 331, Ordinance No. 4771. The Board also finds that Bremerton Ordinance No. 4783, “amending the Comprehensive Plan and Map for the City of Bremerton,” was passed by the City Council on November 28, 2001, was published on December 4, 2001, and became effective on December 14, 2001. Ex. 71, Ordinance No. 4783. The City’s adoption of Ordinance No. 4771 and 4783 directly contradict the provisions of RCW 36.70A.130(2) and the City’s own Plan amendment process and was therefore **clearly erroneous**. The City’s actions **do not comply** with the requirements of the GMA. The Board will **remand** these Ordinances and direct the City to comply with the requirements of RCW 36.70A.130(2).

The Board further finds that Bremerton Ordinance No. 4784, “amending the City of Bremerton Official Zoning Map to maintain consistency with the Bremerton Comprehensive Plan pursuant to Land Use Plan FY 2000-1 annual amendments,” was passed by the City Council on November 28, 2001, was published on December 4, 2001, and became effective on December 14, 2001. Ordinance No. 4784. This Ordinance, amending the Zoning Map, although not directly governed by the single annual amendment requirement of RCW 36.70A.130(2), is noncompliant with the requirements of RCW 36.70A.130(1) which requires “any change to development regulations shall be consistent with and implement the comprehensive plan.” Since this Zoning Map amendment implements a noncompliant Plan amendment, its adoption was **clearly erroneous** and it **does not comply** with the requirements of RCW 36.70A.130(1), and will be **remanded** for the City to take corrective action.

It is important to note that the Board finds noncompliance with the process and procedures the

City of Bremerton used in amending its Plan, the Board's decision on this issue does not address the substance of the policy amendments or map amendments attempted to be accomplished in Ordinance Nos. 4771 and 4783.

### **Conclusion**

For the reasons discussed *supra*, Bremerton's adoption of Ordinance Nos. 4771 and 4783 was **clearly erroneous** and **does not comply** with the requirements of RCW 36.70A.130(2). Also, Bremerton's adoption of Ordinance No. 4784 was **clearly erroneous** and **does not comply** with the requirements of RCW 36.70A.130(1). These Ordinances will be **remanded** to the City to take legislative action to comply with the requirements of RCW 36.70A.130.

### **V. 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 City of Bremerton's adoption of Ordinance Nos. 4771, 4783 and 4784 was **clearly erroneous** and did **not comply** with the single annual Plan amendment process and the concurrent and cumulative review requirements of RCW 36.70A.130.

The Board therefore, remands Ordinance Nos. 4771, 4783 and 4784 to the City with the following directions:

1. By no later than **October 28, 2002**, the City shall take appropriate legislative action to comply with the requirements of RCW 36.70A.130 as interpreted and applied in this FDO.
2. By no later than **November 4, 2002**, the City shall file with the Board an original and four copies of a Statement of Action Taken to Comply (**SATC**) with the GMA, as set forth in this FDO. The SATC shall attach copies of legislation enacted in order to comply. The City shall simultaneously serve a copy of the SATC, with attachments, on Petitioners.
3. By no later than **November 11, 2002**, the Petitioners may file with the Board an original and four copies of Comments on the City's SATC. Petitioners shall simultaneously serve a copies of their Comments on the City's SATC on the City.

4. By no later than **November 18, 2002**, the City may file with the Board an original and four copies of the City's Reply to Comments. The City shall simultaneously serve a copy of such reply on Petitioners.

Pursuant to RCW 36.70A.330(1), the Board hereby schedules the **Compliance Hearing** in this matter for **10:00 a.m. November 21, 2002** at the Board's offices. With the consent of the parties, the compliance hearing may be conducted telephonically.

If the City takes legislative compliance actions prior to the October 28, 2002 deadline set forth in section 1 of this Order, it may file a motion with the Board requesting an adjustment to this compliance schedule.

So ORDERED this 29<sup>th</sup> day of July 2002.

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

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.

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[1] The Board's March 7, 2002 PHO set forth the challenged Legal Issues as follows:

2. Did the City [of Bremerton] fail to comply with the Requirements of RCW 90.58.140(3), RCW 43.21C.110, WAC 173-26-110(2) and WAC 197-11-230, when it failed to amend its Shoreline Master Program when it amended its Plan by adopting *Ordinance No. 4771* in August of 2001?
4. Did the City fail to comply with the notice and public participation requirements of RCW 36.70A.035, RCW 90.58.130, RCW 43.21C.075 and .110, WAC 197-11-340, Bremerton Municipal Code (**BMC**) and Bremerton Shoreline Master Program (**BSMP**) 7-5-3, when it amended its Plan by adopting *Ordinance No. 4771*, specifically relating to PL00-0061?
5. Did the City fail to comply with the housing element requirements of RCW 36.70A.070 (2) when it amended its Plan by adopting *Ordinance Nos. 4783 and 4771*?
6. Did the City fail to comply with the land use element requirements of RCW 36.70A.070 (1), regarding drainage, flooding and stormwater, when it amended its Plan by adopting *Ordinance Nos. 4783 and 4771*?

March 7, 2002, PHO, at 7-8 (emphasis supplied).

[2] Ms. Miller provided the Board with a written copy of her "Opening Statement" which she read at the HOM.

[3] Note that the Board, in its Order on Dispositive Motion, dismissed challenges to Ordinance No. 4771 for being untimely.

[4] This issue statement derives from issue 3.C in the PFR, which provides as follows:

3.C. In enacting Ordinances 4783, 4784 and 4771: did the City fail to comply with RCW 36.70A.070 (2) by neglecting to study and report methods to preserve the vitality and character of the established residential neighborhoods? [PFR 02-3-0003, at 5.]

[5] This issue statement derives from issue 3.D in the PFR, which provides as follows:

3.D. In enacting Ordinances 4783, 4784 and 4771; did the city fail to comply with RCW 36.70A.070? [PFR 02-3-0003, at 6.]

[6] This issue statement derives from Issue 3.B in the PFR, which states as follows:

3.B. In enacting Ordinances 4783, 4784; specifically PL00-0054, and Ordinance 4771; specifically PL01-0016 – did the City fail to comply with the public participation requirements of RCW 36.70A.035, RCW 90.58, implementing WAC 197-11-340, BMC 21-02 and the BSMP 7-5-3-? [PFR 02-3-0003, at 4.]

[7] This issue statement derives from Issue 3.A in the PFR, which states as follows:

3.A. By enacting Ordinances 4783, 4784 and 4771; did the City fail to comply with the concurrency requirement of annual submissions as specified in RCW 36.70A.130 and RCW 90.58; and did it fail to comply with RCW 36.70A.172? Were the Legal notices posted by the City defective in not representing requisite data according to the requirements of RCW 36.70A and SEPA? [PFR 02-3-0003, at 2.]