CENTRAL PUGET SOUND
GROWTH MANAGEMENT HEARINGS BOARD
STATE OF WASHINGTON

KENT C.A.R.E.S., NORTHWEST ALLIANCE., and DON B. SHAFFER	)	**CPSGMHB Case No. 04-3-0023**
Petitioners,	)	***(Shaffer II)***
v.	)	
CITY OF KENT	)	**ORDER ON MOTIONS**
Respondents.	)	

I. BACKGROUND

On October 27, 2004, the Central Puget Sound Growth Management Hearings Board (the **Board**) issued its prehearing order (**PHO**) in the above captioned matter. The PHO set forth the Legal Issues to be decided by the Board and the briefing schedule for this proceeding. The schedule in the PHO included deadlines for dispositive motions.

On November 8, 2004, the Board received "Respondent's Motion to Dismiss for Lack of Standing" (**Kent Motion**), with nine attached exhibits. The City of Kent's Motion was timely filed.

On November 10, 2004, the Board issued an "Order Rescheduling Briefing Schedule for Motions." This Order adjusted the deadlines for Petitioner's Response and Respondent's Reply. Petitioner was given until November 19, 2004 to respond to the Kent Motion.

On November 19, 2004, via telefacsimile, the Board received "Petitioner's Reply to City's Motion to Dismiss" (**Shaffer Response**). The Shaffer Response was timely filed; however, while the motion referred to exhibits, there were no exhibits attached to the motion.[1] The City of Kent did not receive the attached exhibits either. The Board also received "Petitioner's Motion to Revise Case Name" (**Shaffer Motion**).

On November 23, 2004, the Board received the attached exhibits on November 23, 2004. Later the same day, the Board received a letter from the City of Kent requesting that the deadline for replying to Shaffer's Response be extended until November 30, 2004. The letter indicated that Mr. Shaffer concurred with the extension request. The Presiding Officer telephonically contacted the parties and orally granted the extension request, and indicated that the Board's Order on Motions would likely be delayed a week beyond the December 2, 2004 target date set forth in the PHO. No written order of the Board was issued regarding the extension.

[1] The exhibits were mailed to the Board, postmarked the day the Board received the fax.

On November 30, 2004, the Board received "Respondent's Response to Petitioner's Reply to Motions to Dismiss" (**Kent Reply**). The City's reply was timely filed.

II. MOTION TO CHANGE CASE NAME

Petitioner suggests that Kent CARES has filed prior Petitions for Review and those cases have been captioned *Kent CARES I*, *II* and *III*, respectively. For consistency, Petitioner asks that this matter be re-captioned *Kent CARES IV*. Shaffer Motion, at 1. The Board notes that it has also previously captioned a PFR filed by the same Petitioner as *Shaffer I*. The Board also notes that each previous PFR has been jointly filed by Northwest Alliance, Kent CARES and Don B. Shaffer as an individual. Based upon the pleadings and PFRs, Mr. Shaffer is a representative of Northwest Alliance and the president of Kent CARES. Consequently, the Board **denies** Petitioners motion and will retain the caption for this matter as *Shaffer II*.

III. MOTION TO DISMISS

Context

The challenged action in this matter is the City of Kent's adoption of Ordinance No. 3698, the City of Kent Comprehensive Plan Update (**Plan Update**), on July 20, 2004. The Plan Update is intended to comply with the requirements of RCW 36.70A.130(2) and (4). The City's Update review process spanned approximately 26 months, commencing in May of 2002. See Ordinance No. 3698, Recital B, at 2.

Petitioner's PFR, as reflected in the PHO, sets forth 20 Legal Issues to be decided by the Board. Generally, the Legal Issues challenge the Plan Update's compliance with the GMA's requirements for the Transportation Element, Notice and Public Participation, Critical Areas, the Goals and compliance with environmental review requirements of the State Environmental Policy Act.

Position of the parties

The City offers three arguments in its motion. First, the City argues that Petitioner Northwest Alliance (**NWA**) failed to participate orally or in writing during the City's consideration of Ordinance No. 3698 – the Plan Update. Therefore, the City contends, NWA should be dismissed as a Petitioner from the proceeding. Kent Motion, at 2-3.

Next, the City argues that while Kent CARES and Mr. Shaffer did provide oral or written testimony during the City's consideration of its Plan Update, the testimony and comments provided, with the exception of Legal Issue 13, did not reasonably relate to the issues presented in the PFR. Consequently, the City asserts that all other Legal Issues be dismissed for lack of GMA participation standing. *Id*, at 3-4.

Finally, the City agrees that Mr. Shaffer's comments on December 8, 2003 are reasonably related to Legal Issue 13, regarding the rail grade separation at James Street. However, the Plan Update (Transportation Element amendment) references the City's six-year Transportation Improvement Program (**TIP**) which is updated yearly. The City contends

Petitioner did not comment on either the 2004-2009 TIP adopted by Resolution 1654 in 2003 or the 2005-2010 TIP (Resolution 1684). *Id*, at 5-6.

Petitioner responds to each argument offered by the City. Petitioner contends that during the 26 month period of the Plan Update, Petitioner submitted a letter dated May 22, 2002 on NWA letterhead, which attached a January 8, 2002 letter (also on NWA letterhead, 17 pages and Attachments – totaling 44 pages) allegedly raising numerous GMA related issues, including Plan Update issues. Petitioner asserts that the City did not respond to the letter. Shaffer Response, at 1-2, Attachment A. Additionally, Petitioner provides a copy of an electronic Public Records Request submitted by Shaffer and NWA for the 2002 annual amendments to demonstrate standing. *Id*, at 2, Attachment B.

Next Petitioner asserts that "the City stated [Exhibit A] was too voluminous to respond to, and now . . . the City argues it is too brief to be considered." *Id*, at 3. Additionally, Petitioner asserts: 1) the City's Plan includes a Subarea Plan – the Downtown Strategic Action Plan – which Petitioner commented extensively on during 1997 and 1998; and 2) letters to the City dated February 27, 1997 and April 21, 1997 demonstrate Petitioner's willingness to participate in a meaningful manner, but noting the City has resisted an open exchange or discussion with Petitioner. *Id*, at 3-4, Attachment C and D.

Finally, regarding Legal Issue 13, Petitioner asserts that the 1998 Downtown Strategic Action Plan [part of the City's Plan] indicates that "James Street will be the downtown's busiest east-west traffic corridor, and the grade separated crossing will eliminate what would otherwise have been a serious blockage at the Burlington-Northern/Santa Fe railroad crossing." *Id*, at 5. Yet, Petitioner contends, "the James Street Grade Separation project magically disappear(ed) from the City's TIP without any public discussion, there has not been any consideration of the impact to the downtown traffic congestion due to its elimination." *Id*.

In reply, the City contends that the May 22, 2002 letter with attachments [Shaffer Response, Attachment A] were submitted to the City as comments to a Supplemental Environmental Impact Statement for a Planned Action Ordinance regarding the Kent Street Station challenged by Petitioner in *Kent CARES v. City of Kent*, CPSGMHB Case No. 02-3-0015.[2] The City contends this letter or its attachments were not submitted as comments to the Plan Update. Further, the City states, "Comments sent in response to one ordinance cannot provide standing to an appeal of a separate ordinance two years later." Kent Reply, at 1-2.

Likewise, the City contends that responses to Public Records Requests "[O]nly provide information from the City to an interested party. These documents do not let the City Council know what Petitioners specific concerns were regarding the Comprehensive Plan Update. Additionally, Exhibit B is actually a request for information regarding the City's annual plan amendment [process], not the update required under RCW 36.70A.140 (a)

[2] *See Kent CARES v. City of Kent*, CPSGMHB Case No. 02-3-0015, Order on Motions, (Nov. 27, 2002), [the matter was dismissed for lack of subject matter jurisdiction of the planned action ordinance].

(*sic* .130). [Another distinct ordinance adopted by the City at a different time.]" *Id*, at 2-3.

Regarding all Legal Issues, except No. 13, the City reasserts that the letters received from Petitioner did not give the City's decision-makers an idea of the concerns held by Petitioner related to the Plan Update – they were not reasonably related to the issues in the PFR. *Id*.

Finally, the City does not dispute that the Plan Update incorporates the TIP and that the TIP eliminates the James Street Grade Separation Project. However, the City contends that Petitioner needed to challenge the TIP at the time it was adopted and it cannot challenge the decision to eliminate a project now. *Id*, at 4.

Applicable Law

The test for participation standing, as stated in *Wells*, was codified into RCW 36.70A.280 (4) during the 2003 Legislative Session. RCW 36.70A.280(4) provides:

> To establish participation standing under subsection (2)(b)[3] of this section, a person must show that his or her participation before the county or city was *reasonably related to the person's issue as presented to the board*.

(Emphasis supplied.)

Board Discussion

Northwest Alliance Inc.:

Petitioner relies upon two documents to demonstrate NWA participation standing: 1) January 8, 2002 letter on NWA letterhead [Attachment A to Shaffer Response]; and 2) a Public Disclosure Request by NWA [Attachment B to Shaffer Response]. Review of these documents leads the Board to conclude that the City is correct. Attachment A contains comments[4] on the City's Supplemental EIS for a Planned Action Ordinance for the Kent Street Station, not Ordinance No.3698 regarding the Plan Update. Likewise, NWA's Public Disclosure Request asks for information regarding the City's 2002 annual Plan amendment review; it does not offer any comment on the City's Plan generally or Ordinance No. 3698 specifically. The Board concludes that Northwest Alliance Inc. has not established GMA participation standing to challenge the City's adoption of Ordinance No. 3698. Northwest Alliance Inc. is **dismissed** as a Petitioner in this matter and **stricken** from the caption of this case.

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[3] RCW 36.70A.280(2)(b) provides, "[A] person who has participated orally or in writing before the county or city regarding the matter on which review is being requested."

[4] Comments in this letter [Attachment A] include concerns with the process by which the Kent Street Station site was acquired, the public process and environmental review, the ability of the City to manage the project, the selection of contractors and taxpayers expenditures related to the Planned Action for the Kent Street Station. None of these comments is germane to the City's Plan Update.

Legal Issues 1-12 and 14-20[5] *– Are Petitioner's oral or written comments reasonably related to the issues posed for the Board to resolve?*

The City concedes that Kent CARES and Mr. Shaffer testified and provided written comment on the Plan Update - Ordinance No. 3698. However, the City contends that the concerns raised by Petitioner during the Plan Update are not reasonably related to the Legal Issues posed in the PFR [excluding Legal Issue 13]. The City provides copies of four letters to support its argument: 1) Shaffer letter of 2/9/04 [Ex. 89]; 2) City letter of 2/13/04 responding to the 2/9/04 letter [Ex. 90]; 3) Shaffer letter of 4/2/03 [Ex. 81]; and 4) Shaffer letter of 4/1/03 [Ex. 80].

The February 9, 2004 letter, states, in relevant part:

> Please be advised that *Kent CARES has a number of concerns regarding the various elements of the Comp. Plan as proposed*. The 3 minutes provided from time to time at your Board meetings is much too limited a time for us to detail our concerns.
>
> We would like to meet with some or all of the Board in the near future to discuss our issues of concern. Please call to set up a meeting.

Ex. 89, at 1, (emphasis supplied).

The City responded to this letter, as follows:

> In response to your February 9, 2004 letter to Kent's Land Use & Planning Board, I encourage you to submit your concerns about the 2002/2004 Comprehensive Plan Update in writing (typewritten preferably) to the Board. This method provides you the opportunity to fully explore the areas you are concerned about, gives each Board Member the opportunity to be clearly informed of you concerns, and frees you up at the public meeting to emphasize points found in your letter, giving your presentation and letter more impact while fitting into the time allotted for public comment.
>
> To ensure your letter gets to the Board with enough time to read and consider its contents, please ensure your letter arrives at the Planning Services Office by February 26, 2004. We will include your letter in the Board's packet for the scheduled March 8, Public Hearing.

Ex. 90, at 1. There is no indication in the materials provided to the Board, that any further correspondence was transmitted from Kent CARES or Mr. Shaffer to the City between February 13 and March 8, 2004.

Almost a year earlier, Mr. Shaffer's letter of 4/2/03 asks that a copy of an attached letter [apparently Ex. 80] be distributed to the City Council [Ex. 81]. The attached letter from

[5] *See* Appendix A for the text of the 20 Legal Issues presented in this matter.

Mr. Shaffer, dated 4/1/03, raises concerns about the City's appeal procedures, and provides,

> One of the City's favorite procedural sidesteps is to say that the appellant failed to formally challenge a particular issue or subject earlier in the process and so therefore should not be allowed to file a formal appeal regarding that issue at a later date. It is in anticipation of just such a maneuver by the City regarding any future challenge to any of the pending revisions to the current Kent Comprehensive Plan that forces me personally and on behalf of Kent CARES to *formally object to any and all revisions to the City of Kent Comprehensive Plan*. Individually and on behalf of Kent CARES, *all proposed changes to the text of the plan including all proposed changes in goals and policies for the plan elements of "Land Use, Housing, Capital Facilities, Transportation, Utilities, Parks, Economic Development, Community Design, and Human Services" are, for the formal record, hereby opposed*.
>
> *It is the intention of Kent CARES in the near future to provide the Land Use & Planning Board more detailed and specific comments regarding the proposed revisions to the Plan*. However, due to past experience with the current City Administration it was considered necessary to be as comprehensive as possible regarding the scope of our concerns.

Ex. 80, at 2, (emphasis supplied).

The Board notes that this generalized condemnation of the City's Plan provides nothing of substance to which the City could be expected to respond. The letter evidences a general distain and formal objection to the entire plan. Additionally, there is no indication in the materials provided to the Board that any further correspondence was transmitted from Kent CARES or Mr. Shaffer to the Land Use & Planning Board containing detailed and specific comments regarding the Plan Update.

Petitioner's response implies that the January 8, 2002 letter from NWA [Attachment A to Shaffer Response], details specific concerns with the City's Plan Update. In review of this letter, the Board has already determined that the comments therein relate to the Planned Action Ordinance for the Kent Street Station, not the Plan Update. Consequently, Petitioners reliance on this document to demonstrate that the concerns raised by Petitioner were reasonably related to the issues presented to the Board in the PFR challenging Ordinance No. 3698 is misplaced and without merit.

Petitioner submits two additional Exhibits in response to the City's Motion: Attachment C and Attachment D to the Shaffer Response.

Attachment C, includes – City of Kent Downtown Strategic Action Plan (**KDSAP**) FSEIS, dated April 7, 1998; and two letters dated 3/5/97 and 3/31/97from NWA, signed by Don Shaffer, commenting on the Draft SEIS for the Kent Downtown Strategic Action

Plan SEIS[6] and the Downtown Area Revision to the Plan.[7] These letters were submitted five years prior to the beginning of the City's Plan Update process which the City began in May of 2002. Further the comments in these letters *supra*, are directed at the Downtown Strategic Action Plan – they were not updated, revised or resubmitted as objections or concerns addressing the Plan Update.

Attachment D, includes: an April 7, 1997 letter on NWA letterhead, signed by Mr. Shaffer, asking questions about appeal process procedures; a February 27, 1997 letter, on NWA letterhead, signed by Mr. Shaffer, objecting to the lack of personal notice and lack of cooperation accorded Mr. Shaffer regarding the environmental review related to the Downtown Area Revision to the Comprehensive Plan. These letters were also submitted years prior to the present Plan Update – they were not updated, revised or resubmitted as objections or concerns addressing the Plan Update.

The 19 Legal Issues that are the focus of Petitioner's challenge relate to whether the Plan Update complies with the GMA's requirements for: the Transportation Element [*Legal Issues 1 and* 3]; requirements for Notice and Public Participation [*Legal Issues 2, 4, 5, 7 and 8*]; requirements for Critical Areas [*Legal Issue 6*]; whether the Plan Update was guided by the Goals of the Act [*Legal Issues 9, 10, 11, 12, 14, 15 and 16*]; and whether the Plan Update complied with environmental review requirements of the State Environmental Policy Act [*Legal Issues 17, 18, 19 and 20*].

The Board's review of the exhibits, letters and materials presented by the parties leads the Board to conclude that none of the general objections, questions or comments presented by Petitioner in those materials reasonably relates to the City's adoption of the Plan Update – Ordinance No. 3698. Nor do those letters establish a reasonable relationship to the Legal Issues presented in the PFR/PHO challenging the 2004 Plan Update.

The comments or concerns raised in the submitted materials relate to the alleged inadequacy of the notice and public process and environmental review procedures for other actions – other planning documents and ordinances, not the Plan Update [as reflected in Legal Issues 2, 4, 5, 7, 8, 17, 18, 19 and 20] .

The specific concerns in Legal Issues 1 [the alleged lack of an inventory of land transportation facilities and lack of goals and policies regarding freight mobility by truck and rail] or Legal Issue 3 [the alleged inadequate consideration of transportation land-use assumptions] cannot be discerned from Petitioner's "comment" letters.

Likewise, any asserted violation of any of the goals of the Act or critical areas [Legal Issues 6, 9, 10, 11, 12, 14, 15 and 16] reflected in Petitioner's "comment" letters are obtuse, if referenced or raised at all.

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[6] This letter sets forth 4 pages of questions (approximately 75 questions), mostly related to the different types of environmental review, the public participation process for the KDSAP, the cost, timing and who pays for the proposed improvements, toxic or hazardous materials questions.

[7] The comments in this 1997 letter generally relate to the costs for different locations for the proposed Kent Street Station and the general costs of railroad grade separations.

Based upon review and consideration of the exhibits submitted by the parties in support of their respective arguments on this portion of the motion, the Board concludes that the comments and concerns presented by Kent CARES or Mr. Shaffer, prior to and during the City's consideration of its Plan Update – Ordinance No. 3698 – are not reasonably related to the issues presented to the Board for resolution. Neither Kent CARES nor Mr. Shaffer has established GMA participation standing. Consequently, **Legal Issues 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, 15, 16, 17, 18, 19 and 20 are dismissed with prejudice**.

Legal Issue 13:

Legal Issue 13 provides:

> 13. *Did the City of Kent in its approval and adoption of its Ordinance 3698 intended to update and amend its Comprehensive Plan, fail to comply with adverse-impact analysis requirements by failure to analyze impacts of eliminating James Street Grade Separation project from the Transportation Element in Update?* [RCW 36.70A.070. 020, .070(6), .140 and .210 and RCW 43.21C]

The City does not dispute that Kent CARES or Mr. Shaffer has testified objecting to the elimination of the James Street Grade Separation project in the Plan Update. The City also concedes that Petitioner has GMA participation standing to pursue this portion of the challenge and that the comments made are reasonably related to the issue posed. However, Respondent asserts that Petitioner's challenge is to the City's TIP [which eliminated the project], not the Plan Update [which the City acknowledges incorporates the TIP]. The City contends that Petitioner failed to participate in the City's TIP process and is time barred from challenging the TIP at this time.

The City is correct in asserting that the time to challenge the elimination or inclusion of projects in the TIP is within the appeal timeframe after the TIP is adopted. But the TIP is not before the Board.

The City is incorrect to assert that inclusion of the TIP in the Plan Update cannot be challenged. Here Mr. Shaffer's Legal Issue 13, relating to inclusion of the TIP into the Plan, appears to relate to the internal consistency of the Plan Update [.070], its compliance with the goals of the Act [.020], its compliance with the GMA's requirements for the Transportation Element [.070(6)] and consistency with King County County-wide Planning Policies (**CPPs**) [.210]. Whether Petitioner carries the burden of proof in demonstrating noncompliance with the noted provisions of the Act, remains to be seen. The City's motion to dismiss this Legal Issue is **denied**.

The Board notes that Legal Issue 13 is the sole Legal Issue remaining for the Board to decide in this case. Consequently, the Board expects the briefing of the parties to be focused on this limited issue – related to the inclusion of the TIP (specifically the TIP's elimination of the James Street Grade Separation) in the Plan Update.

Conclusions

NWA is **dismissed** as a party to this proceeding; all Legal Issues except Legal Issue 13 are **dismissed** due to lack of GMA participation standing; and the City's motion to dismiss Legal Issue 13 is **denied**.

III. ORDER

Based upon review of the Petition for Review, the briefs and materials submitted by the parties, the GMA, the Board's Rules of Practice and Procedure, prior decisions of this Board and other Growth Management Hearings Boards, case law, and having deliberated and considered the matter, the Board enters the following ORDER:

- Petitioner Northwest Alliance Inc. is **dismissed** as a party to this proceeding for having failed to established GMA participation standing pursuant to RCW 36.70A.280(2)(b);

- Kent CARES and Mr. Don Shaffer **failed to establish GMA participation standing** for nineteen of the Legal Issues presented in the PFR/PHO because the comments made by Petitioner during the Plan Update process were **not reasonably related** to the issues presented to the Board to resolve. **Legal Issues 1 through 12 and 14 through 20 are dismissed with prejudice**.

- The City of Kent's motion to dismiss Legal Issue No. 13 is **denied**.

So ORDERED this 9th day of December 2004.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

_____
Bruce C. Laing, FAICP
Board Member

_____
Edward G. McGuire, AICP
Board Member

_____
Margaret A. Pageler
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 RCW 242-02-832.

APPENDIX A

The following are the Legal Issues presented in the PFR and reflected in the Board's PHO.

1. Did the City of Kent in its approval and adoption of its Ordinance 3698 intended to update and amend its Comprehensive Plan, fail to comply with the mandate to include within its transportation review an "inventory" of "land transportation facilities" and goals and policies regarding "freight mobility" by truck and rail? [RCW 36.70A.070 and .210, WAC 365-195-325]

2. Did the City of Kent in its approval and adoption of its Ordinance 3698 intended to update and amend its Comprehensive Plan, fail to comply with the mandate to "encourage the involvement of citizens in the planning process" and ensure community coordination to "reconcile conflicts"? [RCW 36.70A.020(11) and .210]

3. Did the City of Kent in its approval and adoption of its Ordinance 3698 intended to update and amend its Comprehensive Plan, fail to comply with the mandate to include and adequately consider transportation "land-use assumptions"? [RCW 36.70A.020, .070(6) and .210]

4. Did the City of Kent in its approval and adoption of its Ordinance 3698 intended to update and amend its Comprehensive Plan, fail to provide for "early and continuous" public "open discussion" in "the development and amendment" of "proposals and alternatives" prior to adoption? [RCW 36.70A.140 and .210]

5. Did the City of Kent in its approval and adoption of its Ordinance 3698 intended to update and amend its Comprehensive Plan, fail to comply with requirements to "provide the public with timely information and meaningful opportunities for participation" including "site-specific public participation plans" with regard to disclosure of the plans for the clean up of toxic contamination within City Hall's proposed urban center"? [RCW 36.70A.020 and .210, RCW 43.21C and RCW 90.58.380]

6. Did the City of Kent in its approval and adoption of its Ordinance 3698 intended to update and amend its Comprehensive Plan, fail to comply with the mandates regarding the protection of "frequently flooded areas" and "wetlands" within areas of City Hall's proposed Urban Center? [RCW 36.70A.172, .175 and .210 and RCW 43.21C and RCW 90.58.380]

7. Did the City of Kent in its approval and adoption of its Ordinance 3698 intended to update and amend its Comprehensive Plan, fail to comply with the mandate to provide for "consideration of and response to public comments"?

8. Did the City of Kent in its approval and adoption of its Ordinance 3698 intended to update and amend its Comprehensive Plan, fail to comply with the mandate to

involve the public at the "earliest possible time" to begin with the "visioning process in which the public is invited to participate in a broad definition of the kind of future to be sought for the community" with regard to City Hall's proposed Urban Center? [RCW 36.70A.140, .210 and RCW 43.21C and WAC 365-195-600]

9. Did the City of Kent in its approval and adoption of its Ordinance 3698 intended to update and amend its Comprehensive Plan, fail to comply with the mandate to be fair and non-discriminatory in the City's promotion of "economic opportunity"? [RCW 36.70A.020(5) and .210]

10. Did the City of Kent in its approval and adoption of its Ordinance 3698 intended to update and amend its Comprehensive Plan, fail to comply with the mandate to protect private property owners from arbitrary and discriminatory actions and/or unconstitutional, non-compensated takings? [RCW 36.70A.020(6), .210 and .370]

11. Did the City of Kent in its approval and adoption of its Ordinance 3698 intended to update and amend its Comprehensive Plan, fail to comply with the mandate to "encourage development in urban areas" in an "efficient manner"? [RCW 36.70A.020 (1) and .210.

12. Did the City of Kent in its approval and adoption of its Ordinance 3698 intended to update and amend its Comprehensive Plan, fail to comply with the mandate to properly establish regional priorities and effectively coordinate with local comprehensive plans, Multi-County Planning Policies, and/or King County County-wide Planning Policies with regard to the regional transportation plan? [RCW 36.70A.020(3), .140 and .210]

13. Did the City of Kent in its approval and adoption of its Ordinance 3698 intended to update and amend its Comprehensive Plan, fail to comply with adverse-impact analysis requirements by failure to analyze impacts of eliminating James Street Grade Separation project from the Transportation Element in Update? [RCW 36.70A.070.020, .070(6), .140 and .210 and RCW 43.21C]

14. Did the City of Kent in its approval and adoption of its Ordinance 3698, intended to update and amend its Comprehensive Plan, fail to provide for the protection of the environment by requiring that all Urban Centers, prior to their official designation as Urban Centers, complete a Programmatic EIS? [RCW 36.70A.020(10), .210 and RCW 43.21C]

15. Did the City of Kent in its approval and adoption of its Ordinance 3698 intended to update and amend its Comprehensive Plan, fail to comply with requirements to ensure adequacy of public facilities and services in and around Urban Centers? [RCW 36.70A.020(12), .140 and .210 and RCW 43.21C]

16. Did the City of Kent in its approval and adoption of its Ordinance 3698 intended to update and amend its Comprehensive Plan, fail to comply with the mandate to

identify and encourage the preservation of structures that have historical significance? [RCW 36.70A.020(13), .210 and RCW 43.21C]

17. Did the City of Kent in its approval and adoption of its Ordinance 3698 intended to update and amend its Comprehensive Plan, fail to comply with the mandate to protect the environment by adequately analyzing adverse environmental impacts logically resulting from proposed changes to the Comprehensive Plan? [RCW 36.70A.020(10), .210 and RCW 43.21C]

18. Did the City of Kent in its approval and adoption of its Ordinance 3698 intended to update and amend its Comprehensive Plan, fail to comply with the requirements to effectively notify the public regarding the City's decision to not prepare a supplemental EIS with regard to adverse impacts resulting from proposed changes in the current Comprehensive Plan? [RCW 36.70A.020(10), .210 and RCW 43.21C]

19. Did the City of Kent in its approval and adoption of its Ordinance 3698 intended to update and amend its Comprehensive Plan, fail to comply with environmental regulations when it mad a final determination to not prepare a supplemental EIS for the Update before the Update document was actually complete? [RCW 36.70A.020(10), .140 and .210 and RCW 43.21C]

20. Did the City of Kent in its approval and adoption of its Ordinance 3698 intended to update and amend its Comprehensive Plan, fail to comply with environmental regulations when the City failed to disclose to the public how a member of the public might challenge the City's decision not to prepare a supplemental EIS for the Update? [RCW 36.70A.020(10), .210 and RCW 43.21C]

PFR 04-3-0023, at 8-10; and the Board's October 27, 2004 PHO, at 7-9.