

**BEFORE THE WESTERN WASHINGTON GROWTH
MANAGEMENT HEARINGS BOARD**

ABENROTH, et al.,)	
)	No. 97-2-0060c
Petitioners,)	
)	FINAL DECISION
v.)	AND ORDER FOR
)	SHORT-TERM
SKAGIT COUNTY,)	STIPULATED
)	ISSUES
Respondent,)	
)	
and)	
)	
TOM and SHEILA BUGGIA, et al.,)	
)	
Intervenors.)	
_____)	

On June 28, 1998, Skagit County (County) adopted Ordinance #17029 addressing the short-term stipulated issues which were subject to the stipulation and order entered by this Board on October 28, 1997. Ordinance #17029 addressed the ten short-term issues identified in a status report filed December 15, 1997. Of those ten issues, five were unchallenged, a sixth (CaRD) was the subject of a further stipulation and will be addressed when a CaRD development regulation is adopted, and the balance are the subject of this order.

On August 28, 1998, a Hearing on the Merits was held in Hearing Room C of the Skagit County Administration Building in Mount Vernon, Washington. All three Board members were present. Representing the County was John Moffat; representing Friends of Skagit County (FOSC) was Gerald Steel; representing the City of Anacortes (Anacortes) was Ian Munce; representing the City of Sedro-Woolley was Patrick Hayden; and representing Fluke Capital Management was Dan Drais. At the beginning of the hearing we admitted proposed Exhibits 1537 through 1543 to the record.

Under the Growth Management Act (GMA, Act), a local government's ordinance is considered valid unless petitioners show that the County's actions are clearly erroneous in view of the entire record and in light of the goals and requirements of the Act. RCW 36.70A.320.

Petitioners have challenged the County's compliance on four of the short-term postponed issues:

1. Sizing of community sewer systems outside urban growth areas (UGAs).
2. Transformance of urban governmental service inside UGAs.
3. Minimum densities allowed inside UGAs.
4. Assuring that policy language in the comprehensive plan (CP) conforms with the County critical areas ordinance (CAO) and rulings in Case #96-2-0025.

Issues

Issue 1. Sizing of Community Sewer Systems

RCW 36.70A.110(4) states in part:

“In general, it is not appropriate that urban governmental services be extended to or expanded in rural areas except in those limited circumstances shown to be necessary to protect basic public health and safety and the environment and when such services are financially supportable at rural densities and do not permit urban growth.”

Countywide planning policy (CPP) 1.8, which was incorporated into the CP, states:

“All growth outside the urban growth boundary shall be rural in nature as defined in the Rural Element, not requiring urban governmental services except in those limited circumstances shown to be necessary to the satisfaction of both the County and the affected city to protect basic public health, safety and the environment, and when such services are financially supportable at rural densities and do not permit urban development.”

Ordinance #17029 amended CP Policy 6.4 at 11-44 to read:

“Urban governmental services should not be extended to or expanded in rural areas except in those limited circumstances shown to be necessary to protect basic public health and safety and the environment and when such services are financially supportable at rural densities and do not permit urban development.”

Through these and other policies of the CP, the County has established the intent to not provide

urban governmental services outside UGAs to serve new development.

FOSC’s major argument is that the County has violated .110(4) and is inconsistent with the above policies because it “fails to adequately preclude sanitary sewer systems outside urban growth areas.”

FOSC based this assertion in part on RCW 36.70A.030(16) and .030(19):

“‘Urban governmental services’ or ‘urban services’ include those public services and public facilities at an intensity historically and typically provided in cities, specifically including storm and sanitary sewer systems, domestic water systems, street cleaning services, fire and police protection services, public transit services, and other public utilities associated with urban areas and normally not associated with rural areas...

‘Rural governmental services’ or ‘rural services’ include those public services and public facilities historically and typically delivered at an intensity usually found in rural areas, and may include domestic water systems, fire and police protection services, and other public utilities associated with rural development and normally not associated with urban areas. Rural services to not include storm or sanitary sewers except as otherwise authorized by RCW 36.70A.110(4).” (Emphasis supplied)

Friends used a tortured logic stream to conclude that individual septic tanks are not sanitary sewer systems, but community on-site systems are sanitary sewer systems, and therefore prohibited in the rural area.

The County responded in part:

“....stripped to its essence, FOSC’s argument is that the only type of sewage disposal system allowed in rural areas is individual septic tanks. GMA contains no such requirement. Even attempting to follow FOSC’s complex string of arguments, weaving through various GMA statutes and WAC provisions, with an occasional detour to non-GMA statutes (such as RCW 70.118.010), FOSC’s argument fails.”

We agree with the County. As long as County ordinances preclude new urban development outside UGAs, serving new rural development with “community on-site systems” rather than many individual septic tanks does not violate the Act. FOSC has failed to meet their burden of proof. **The County is in compliance on**

this issue.

Issue 2. Transformance of Urban Governmental Services Inside of UGAs

In its opening brief Anacortes stated:

“At the outset of these proceedings the City of Anacortes was of the opinion that both the short-term issue of ‘transformance of governance’ and the long-term issue of ‘concurrency’ had been adequately addressed in the City’s Interlocal Agreement with Skagit County relative to the City’s March Point Urban Growth Area. Exhibit 1521, pages 47-51 (‘Interlocal Agreement’ or ‘Agreement’).

“After all, the City had an active proposal to annex South March Point and provide full City services within six years, this proposal was explicitly acknowledged in the Interlocal Agreement, and the County in this Interlocal Agreement had agreed not to oppose annexation. Further, such Agreements are:

- mandated in the Countywide Planning Policies (‘Development within the urban growth area shall be coordinated and phased through inter-agency agreements,’ CPP 2.2)
- the focal point of the County Comprehensive Plan’s Urban Growth Area Element (‘Urban development shall not occur within the unincorporated areas unless an Interlocal Agreement has been made between the County and a city regarding urban public facilities and services. This Agreement shall include the level of urban public facilities and services,’ CPP 2.2.4)
- based on joint planning relative to zoning, subdivision, development standards, sequencing, capital improvements, joint project review, special district boundaries, concurrency of public facilities and services, economic development, and revenue sharing (CPs 1.1 and 4.1-4.3)

“Of course, the County had declined to dissolve the local Boundary Review Board (‘BRB’) pursuant to RCW 36.93.230. However, this BRB is required to follow the Growth Management Act and respect Interlocal Agreements adopted pursuant to GMA. Further, the WWGMHB had upheld the City of Anacortes’ Urban Growth Area stating as to South March Point:

“We will take the County at its word that the Interlocal Agreement between Anacortes and the County will be enforced to require concurrency and preclude such [uncoordinated strip commercial growth along SR20] development.

“The City also took the County at its word when all three Commissioners, the Chief Civil Deputy, the Planning Director and the Budget and Finance Director executed a Resolution in which ‘The County agrees not to oppose City annexations within the Urban Growth Area.’ Interlocal Agreement, Section 8, Exhibit 1521, page 48.

“Skagit County broke its word to the WWGMHB and the City of Anacortes by opposing the South March Point annexation, hereby undermining the Interlocal Agreement, transformance of governance, and concurrency efforts and promoting uncoordinated development at South March Point. Further, under the pretext of ‘addressing’ the ‘transformance of governance’ issue Skagit County now attempts to rewrite service provision rules in unincorporated UGAs. These activities constitute violations of RCW 36.70A.120 (‘Each county...shall perform its activities...in conformity with its comprehensive plan’).

A. Interlocal Agreement

“Skagit County first began to undermine the Interlocal Agreement by raising special district concerns to the BRB (‘...we feel it is important to outline certain issues that the Boundary Review Board should consider during their deliberations on this issue. Those issues include: (1) The impact of the annexation to special purpose districts that currently provide services within the proposed annexation and adjacent area, specifically Fire Protection District No. 13 and PUD No. 1.’). Exhibit 1521, page 39. Skagit County then cited without explanation to certain CPPs relative to County ‘issues’ and to uncertainties as to GMA appeals, concluding by stating that, ‘A County representative will be available to further clarify our interests at the public hearing.’ Exhibit 1521, page 40. This representative then volunteered the statement at the BRB Hearing that, ‘The Commissioners’ letter has cited five basic policies of those Countywide Planning Policies. They are primarily issues that relate to **timeliness** that the Board of Commissioners feel **very strongly** that you need to address during your deliberations.’ Exhibit 1521, page 44 (emphasis added).

“Then, when the City protested this action prior to the BRB’s decision the County Commissioners ratified the actions of their representative. Exhibit 1521, page 37. Finally, the BRB denied the annexation citing special district concerns, policy concerns raised by the County, and timing issues and, following County representations, declined to consider a motion for reconsideration. Exhibit 1521, pages 6-18. As a direct result of County actions

- transformance of governance is being rejected in favor of a bill of rights for special districts and an open invitation to agencies with pre-GMA authorities, such as the Skagit

County BRB, to attack cities for stepping up to their service responsibilities under the GMA, CPPs, CP, and Interlocal Agreements.

- concurrency is not being achieved, particularly as to sewer service and urban level police and fire protection at South March Point
- uncoordinated development is occurring as special districts continue to set standards and dictate timing of service provision within the City UGA”

Anacortes also requested:

“To remedy this blatant attempt to circumvent the GMA, the Western Board should adopt the Central Board’s interpretations that, ‘That which is urban should be municipal’ and ‘Implicit in RCW 36.70A.100(4) is the principal that ‘incorporations and annexations must occur’.” *Snoqualmie and Kelly v. Snohomish County*, CPSGMHB No. 97-3-0012. [sic – should be 0004].

As to its interlocal agreement with the County, Anacortes stated:

“As to interlocal/joint planning agreements relative to South March Point the County has seen fit to enter into a single agreement, one with the City of Anacortes. This Interlocal Agreement assigns full legal responsibility for urban standards and services to the City. Exhibit 1521, page 35. No responsibility is assigned to special districts, nor in the case of First District #13 could any such responsibility be assigned as this District is not in a position to provide urban level fire protection. Exhibit 1521, page 10.

“Rather, the Interlocal Agreement first recognizes that it is the City that will incur the cost of extending urban facilities and services. Section 11, Exhibit 1521, page 48. Second, the Agreement recognizes that it is desirable to ensure that transformance of governance and concurrency are assured by having annexation occur prior to development. Section 5, Exhibit 1521, page 48. Finally, annexation is recognized as the mechanism for ensuring transformance of governance and concurrency. Section 8, Exhibit 1521, page 48. For the County to now argue that a Fire District or PUD should be allowed to dictate service standards and, by implication, the timing of development within the City of Anacortes’ UGA is contrary to the GMA, RCW 36.70A.110(4), the Countywide Planning Policies, and the County Comprehensive Plan Urban Growth Area Element policies. Again, this Board should clearly state that as to the Skagit County Comprehensive Plan: ‘That which is urban should be municipal’ and ‘annexations must occur’.”

In its opening brief FOOSC supported Anacortes’ position. It stated in part:

“Skagit County is not in compliance with RCW 36.70A.110(4) which directs the County to plan so that generally cities provide urban governmental services. Friends urges this Board to adopt the holding of the Central Board that one of the three ‘fundamental purposes’ of Comprehensive Plans is ‘to achieve the transformation of local governance within the UGA such that cities are the primary providers of urban governmental services.’ Bremerton v. Kitsap County, CPSGMHB #95-3-0039 (Final Decision and Order, 1995) at 1190. See also City of Snoqualmie v. King County, CPSGMHB #92-3-0004 (Final Decision and Order, 1993) at 55-58 interpreting the requirements of RCW 36.70A.110, -.030(16) and -.210.

“The issue addressed by the City of Anacortes is that the Comprehensive Plan allows urban development within urban growth areas outside incorporated cities that is not only not being provided by municipal urban services but it is simply not being provided with any urban governmental services....

“The Board addressed this issue under the heading Phasing of Growth and Interim Uses in the UGAs in the Final Decision and Order at 28-31. With respect to non-residential development inside the UGAs and outside of the cities the Board stated:

“However, as pertains to new urban commercial and industrial land uses within the UGA without services, the County has not met the phasing requirements of RCW 36.70A.110(3), CP at 4-7 and Objectives 3 and 4 of 7-9 of the CP. Interlocal agreements with cities, ensuring that growth and development of commercial and industrial uses are timed, phased, and efficiently provided with services, must be in place and enforceable before compliance can be found.

“It appears that the Board overlooked this finding when it wrote the ‘Order’ section of the Final Decision and Order. Friends requests that the Board find the County out of compliance on this issue with the requirement to adopt appropriate interlocal agreements not only with the Cities, but also with the Swinomish Tribal Community and PUD No. 1 prior to coming into compliance.”

The County responded by discounting Anacortes’ challenge and stating in part:

“In light of these charges, it is important to note what is not involved in this appeal

1. This appeal does not involve whether the County has violated the Interlocal Agreement between the County and the City. That is the subject of an independent lawsuit, City of Anacortes v. Skagit County, Skagit County Cause No. 97-2-01446-1....
2. This case does not involve the issue of whether the County is in compliance with

RCW 36.70A.120 (City’s Brief at p. 3, lines 7-9; pp. 6-7). That issue was never identified in the Prehearing Order as being part of this appeal and is therefore not an issue. RCW 36.70A.290(1) (‘The board shall not issue advisory opinions on issues not presented to the board in the statement of issues, as modified by any prehearing order.’)

“The crux of the City’s claim is that CP 10.3.1 is not in compliance with GMA because it authorizes the County to enter into interlocal agreements with entities other than cities for the provision of urban services in UGAs. However, GMA specifically allows that.”

The County further charged that Anacortes’ assertion that non-municipal water purveyors should not provide service within UGAs was contrary to history, the coordinated water system plan and the CP.

The County objected to FOOSC now contending we overlooked a part of the FDO related to phasing. The County’s position was that FOOSC should have brought this matter to our attention through a motion for reconsideration. Since that did not happen, the County believes it has a right to rely on the FDO order section as written.

The County further objected to FOOSC’s request that we require interlocal agreements with the Swinomish Tribal Community and Skagit County PUD No. 1. The County contended that this was initially not raised as an issue and therefore cannot be raised now.

Anacortes replied in part:

“These Central Board conclusions are mirrored in the County’s own Comprehensive Plan and the Interlocal Agreements the County has with the Cities of Anacortes and Mount Vernon:

- ‘For the Cities/Towns to meet their growth management and locally adopted comprehensive plan goals, the County needs to ensure that it does not permit activity which would be inconsistent with their future plans.’ CP at 7-4.
- ‘The County will enter into interlocal/joint planning agreements with municipalities and other providers of public services and facilities to coordinate planning and provision of services or facilities (including any transfer of responsibilities for the provision of services or facilities) **in the annexation** and development of the Urban Growth Area’. CP at 11-44 (emphasis added)

- ‘Skagit County and the City agree that it is desirable to annex properties prior to securing development approvals.’ Exhibit 1521, page 48, Section 5 and Exhibit 1537, page 3, Section 8.
- ‘In the event that annexation is not feasible before development approval.... development approvals shall be subject to and require signature of a Petition to Annex...’. Exhibit 1537, page 3, Section 9.

“As to why the City believes more needs to be done by the County to comply with RCW 36.70A.100(4) the City highlights for the Board the problem created by the County’s continued use of its Boundary Review Board. The Skagit County BRB asserts that ‘...the timing issues are issues that need to be addressed in some form independently, under independent review...’. Exhibit 1521, page 29. Yet the County Comprehensive Plan calls for: annexation to precede development; the County to ensure that city plans, goals, and schedules are met; and service provision in UGAs to be focused around annexation.

“This problem of internal consistency needs to be addressed. The City has raised it with the County and the County Planning Commission to no avail. The City now asks this Board to address it by finding the County out of compliance on the transformance of governance issue and RCW 36.70A.120 until it addresses the timing issues it has raised with the BRB, together with the timing issues raised by the BRB thereafter, and fulfills its self-imposed duties to cities.”

FOSC’s reply supported Anacortes, stating in part:

“Friends finds the City of Anacortes reply persuasive and joins that argument. Friends notes that the County intends to allow urban development inside the UGAs without provision of urban governmental services. See proposed Exhibit 1537 at 4 (‘police and fire services may continue at rural levels until annexation occurs’).

“Friends renews the request presented in its opening brief that the Board clarify that the County is required to have interlocal agreements ensuring new commercial and industrial developments inside UGAs are timed, phased, and efficiently provided with services. Op. Br. at 11-12. This issue is appropriately an issue under transformance of urban governmental services because without such agreements, commercial and industrial development will occur in the UGAs without adequate urban services and future provision of urban services will be discouraged by this prior development. The County has not yet addressed these issues in the interlocal agreements thus far adopted.”

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Board Discussion and Conclusions Regarding Issue 2

The County's arguments about what GMA may allow within UGAs in general misses the point here. Our decision on the size of allowable industrial UGAs in Skagit County, and particularly Anacortes' March Point Industrial UGA, was not made in a vacuum. Before making that decision we carefully reviewed many documents in the record, several of which were quoted above in the arguments. Two policies in the CP not quoted above are:

“It is the intent of...GMA that a UGA will have most urban public facilities and public services provided by cities when the UGA is contiguous to a city.” CP at 7-1.

“For the Cities/Towns to meet their growth management and locally adopted comprehensive plan goals, the County needs to ensure that it does not permit activity which would be inconsistent with their future plans.” CP at 7-4.

The interlocal agreement clearly stated, “The County agrees not to oppose City annexations within the urban growth area.”

In addition to the evidence presented before the original hearing, we received assurances from the County that the interlocal agreement with Anacortes would be enforced to assure that (1) uncontrolled, unplanned growth in that large area would not be allowed, (2) annexation would normally precede development, and (3) development would conform with Anacortes' plan, standards, and concurrency requirements. Anacortes also assured us that given the interlocal agreement previously adopted and the provisions of the CPP and CP, the City had full responsibility for phasing and concurrency and would ensure that no interim development would be allowed to occur that would spoil this land for its stated major industrial use. Given that record and those assurances we stated in our January 23, 1998, FDO:

“As to the South March Point area, we agree with FOOSC's concern that Skagit County not be given continued opportunity to promote uncoordinated strip commercial growth along SR 20. We will take the County at its word that the interlocal agreement between Anacortes and the County will be enforced to require concurrency and preclude such development.”

Since that time the County has done nothing to withdraw its previous thinly-veiled opposition to the annexation of March Point before the BRB. In fact, it has reaffirmed its concerns on timeliness and potential effect on special purpose districts. Further, the County adopted

subsection 10.3.1 into its CP which could open the door for more water service being provided within the UGA without city approval as to appropriateness and ability to provide other required urban services.

The interlocal agreement gave Anacortes responsibilities it cannot now fulfill because other service providers and the County will be deciding when, where, and what development will occur without the City's concurrence.

The large March Point industrial UGA must not be allowed to be wasted through uncoordinated, unplanned growth. Compact urban development and provisions of efficient and well planned and phased urban services cannot be achieved if water is supplied by others according to their own criteria and timing. The required concurrency cannot be achieved if water is supplied without sewer and without urban levels of fire and police protection.

The County made commitments to us, to Anacortes, and to others. For the County to now say that GMA will allow it to do things other than what it previously committed to, is extremely troublesome.

There was indeed an oversight in the order section of the FDO. The phasing section of the decision, however, is equally applicable to, and essential for, transformance-of-governance compliance. The FDO must be read in its entirety. Here, the County could not have been misled as to its responsibilities under GMA by the FDO as written.

As concerns new urban commercial and industrial land uses without urban services within the UGA, the County has not met the requirements of RCW 36.70A.110(3), CP at 4-7 and objectives 3 and 4 at 7-9 of the CP. **Interlocal agreements with cities ensuring that growth and development of commercial and industrial uses are timed, phased, and efficiently provided with services, must be in place and enforced before compliance can be found.**

The transformance of governance issue as originally set forth in FOSC's petition for review stated:

“Whether the Plan violates RCW 36.70A.110(4) by not providing for a transformance of

local governance where cities are to become the units of local government most appropriate to provide urban governmental services.”

In this regard, Anacortes and FOSC have asked us to adopt the holdings of the Central Board that (1) “That which is urban should be municipal”, (2) “Implicit in RCW 36.70A.110(4) is the principle that “incorporations and annexations must occur”, and (3) One of the three “fundamental purposes” of CPs is to “achieve the transformation of local governance within the UGA such that cities are the primary providers of urban services.” *Snoqualmie v. King County*, CPSGMHB, #92-3-0004, and *Bremerton v. Kitsap County*, CPSGMHB, 95-3-0039. **We adopt those holdings.**

Issue 3. Minimum Densities Allowed Inside UGAs

In its opening brief FOSC contended in part:

“The intent of CP Policy 1.10 at 4-8, as revised by Ordinance No. 17029, Exhibit A at 6, is to require, on the average in each UGA, an allowed minimum density of 1 unit per 4 acres [*sic* – *should be 4 units per 1 acre*] for new development. This is consistent with CP Goal A at 7-6 to ‘[p]rovide efficient urban public facilities and services’ and Goal B at 7-7 to avoid ‘sprawling’ development and provide for ‘urban density.’ CP Policy 1.2 at 7-7 is in agreement with these goals ‘by requiring urban density development within the Urban Growth Areas.’

“The County adopted the land use designations for unincorporated lands by using the descriptions ‘provided by each jurisdiction.’ CP at 4-8. Unfortunately it neglected to adjust these designations to require the area average of minimum residential densities in the UGA to be 1 unit per 4 acres [*sic*]. The County’s DR also were not adjusted to implement urban zoning in the unincorporated UGAs (Section 10 of Ordinance No. 16559 only addresses development in the UGA prior to provision of urban services). The Board must find the CP out of compliance with the Act until the County makes its UGA zoning designations consistent with Policy 1.10 at 4-8. The Board must find the DR out of compliance with the Act until the County implements the required changes to the CP....

“The County recognizes that it has this work to do to come into compliance with the Act. As part of its action on this issue the County accepted task recommendations 1 and 2 on page 16 of Attachment A to Exhibit A of Ordinance No. 17029. See Ordinance No. 17029, Exhibit A at 6; see also Ordinance No. 17029 at 1. These tasks state:

1. Work with the cities/towns/tribe to arrive at an appropriate range of densities that reflect an overall [minimum] density of 4 or more units per 1 acre. This will require that each city/town/tribe amend its zoning code to reflect this cooperative work effort.
2. Amend the Comprehensive Plan Map legends for all of residential zoning districts in each UGA, as well as in the corresponding descriptions of these districts in the Comprehensive Plan to indicate a minimum and maximum lot size that is consistent with recommendations 1 and 2 above.

“Ordinance No. 17029, Exhibit A, Attachment A at 16. The County must be found out of compliance with RCW 36.70A.070 (preamble) until it completes tasks 1 and 2 to make the CP consistent with amended CP Policy 1.10 at 4-8 and out of compliance with RCW 36.70A.040(3) to make the DR consistent with and fully implement the CP.”

The County responded in part:

“The County recognizes that not all work is done on this issue. The cities, towns and the Swinomish Tribal Community will need to arrive at an appropriate range of densities for their respective UGAs which comply with Policy 1.10. This will require those entities to amend their Zoning Codes to reflect that work. Further, after that is done, the CP maps for each of the residential zoning districts in each UGA will need to be amended in a manner consistent with CP Policy 1.10 as amended by Ordinance No. 17029....

“This Board should bear in mind that adoption of City standards depends on the UGA jurisdictions to provide the County with their development code sections and zoning maps. With the exception of the Cities of Anacortes, and Sedro-Woolley and the Town of Hamilton, none of those cities, towns or the Swinomish Tribal Community are parties to this action. This Board should not issue a compliance order to entities who are not parties to this action, nor to the County regarding activities which are beyond the power of the County to accomplish.

“The County has done what it can to meet this GMA obligation. It has established clear CP policy requiring minimum densities (CP 1.10, p. 4-8). It has adopted an interim development regulation protecting this minimum density in the UGAs (Ordinance No. 16559), Section 10) which this Board has approved. It is only supporting annexations consistent with this CP requirement.”

Sedro-Wooley also responded that its adopted densities will result in an average overall density of 4.1 dwelling units per acre and consistent with CP Policy 10.1.

In its reply brief FOSC countered in part:

“However, both the County and Sedro-Woolley seem to miss the essential issue being raised by Friends. Sedro-Woolley argues that the City’s overall density is consistent with CP Policy 1.10 because the Sedro-Woolley Land Use Analysis demonstrates a capacity in the City for 4.1 dwelling units per acre. Sedro Br. at 1. Sedro-Woolley argues that the least dense residential zone is 3-5 dwelling units per acres and so this averages 4 dwelling units per acre. *Id.* at 2. But the 3-5 dwelling units per acre quoted by the City is not related to the minimum buildout allowed in the zoning district but rather it is related to the maximum build out allowed in the district. The issue before the Board relates to the minimum buildout allowed in the UGA....

“Policy 1.10 speaks to a requirement that on the average, the minimum buildout will be 4 units per acre. This requirement has not been addressed because none of the zoning codes yet have minimum densities for development or, correspondingly, maximum lot sizes. Task 2 (see Op. Br. at 15) requires the County to establish such maximum lot sizes in all zoning districts so that the minimum buildout density will be 4 dwelling units per acre. Until the County complies with Tasks 1 and 2 in Ordinance No. 17029, Exhibit A, Attachment A at 16, it will be out of compliance with the Act. See Op. Br. at 15.”

We agree with FOSC. We are unable to find the County in compliance until it completes tasks 1 and 2 above to make the CP and DRs consistent with CP Policy 1.10 at 4-8.

Issue 4. Assuring that Policy Language in the CP Conforms with the Critical Areas Ordinance and Rulings in WWGMHB Case #96-2-0025

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FOSC has not met its burden of showing that the language in the CP does not conform with the CAO and rulings in #96-2-0025. **We find the County in compliance on this issue.**

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ORDER

We find the County to be in compliance on issues (1) sizing of community sewer systems outside UGAs and (4) CA policy language in the CP.

Before compliance can be found on issue (2), transformance of urban governmental services, the following actions must be taken:

- Within 180 days, interlocal agreements with cities and towns which preclude uncoordinated development within UGAs, ensuring that growth and development of commercial and industrial uses are timed, phased, and efficiently provided with services, must be in place and enforceable. These agreements must reflect the holdings made in this decision and the prior FDO.
- Regarding the March Point portion of Anacortes' UGA, within 90 days the County must address its timing issues with the BRB. It must also reaffirm in writing its commitment to live up to its self-imposed duties to the City in its CP and interlocal agreement and the assurances made to us regarding commercial and industrial development in the March Point UGA.

In order to achieve compliance in issue (3), minimum densities allowed inside UGAs, the County must:

- - Within 180 days, complete tasks 1 and 2 set out on page 16 of Attachment A to Exhibit A of Ordinance 17029.

Findings of fact pursuant to RCW 36.70A.270(6) are adopted and appended as Appendix I.

This is a Final Order under RCW 36.70A.300(5) for purposes of appeal.

Pursuant to WAC 242-02-832(1), a motion for reconsideration may be filed within ten days of issuance of this final decision.

So ORDERED this 23rd day of September, 1998.

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

Nan A. Henriksen

Board Member

Les Eldridge
Board Member

William H. Nielsen
Board Member

APPENDIX I

Findings of Fact Pursuant to RCW 36.70A.270(6) and .302 (1)(b)

- The CP at 4 –7 states that inside UGAs commercial/industrial growth without urban services is not allowed because it “may foreclose significant future planning alternatives pertaining to urban densities and the efficient provision of services.” DRs and interlocal agreements are not in place to implement this provision.
- Exhibit 1521, Interlocal agreement between Anacortes and the County:
 - (1) States in Section 8, “The County agrees not to oppose City annexations within the Urban Growth Area.”
 - (2) Assigns full legal responsibility for urban standards and services to Anacortes. No such responsibility is assigned to special purpose districts.
 - (3) Recognizes that it is desirable to ensure that transformance of governance and concurrency are assured by having annexation occur prior to development.
- CP at 7-4 states:

“For the Cities/Towns to meet their growth management and locally adopted comprehensive plan goals, the County needs to ensure that it does not permit activity which would be inconsistent with their future plans.”

- CP at 7-1 states:

“It is the intent of ...GMA that a UGA will have most urban public facilities and public services provided by cities when the UGA is contiguous to a city.”

- The County has failed to keep the above commitments to Anacortes and is allowing development to occur without urban services being available and without the planning and phasing necessary to ensure compact, efficiently-served urban development within the March Point UGA.

- Ordinance No. 17029, Ex. A at 6 lists the following tasks:

- (1) Work with the cities/towns/tribe to arrive at an appropriate range of densities that reflect an overall [minimum] density of 4 or more units per 1 acre. This will require that each city/town/tribe amend its zoning code to reflect this cooperative work effort.

- (2) Amend the Comprehensive Plan Map legends for all of residential zoning districts in each UGA, as well as in the corresponding descriptions of these districts in the Comprehensive Plan to indicate a minimum and maximum lot size that is consistent with recommendations 1 and 2 above.

The County has not taken this action to ensure urban density development within UGAs.