

1 BEFORE THE WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

2
3 IRONDALE COMMUNITY ACTION NEIGHBORS
4 and NANCY DORGAN,

5
6 Petitioners,

7 v.

8 JEFFERSON COUNTY,

9
10 Respondent.

CASE NO. 04-2-0022

FINAL DECISION AND ORDER

11
12 IRONDALE COMMUNITY ACTION NEIGHBORS,

13
14 Petitioner,

15 v.

16 JEFFERSON COUNTY,

17 Respondent.

CASE NO. 03-2-0010

FINAL DECISION AND ORDER

18
19
20 **I. SYNOPSIS OF DECISION**

21 Jefferson County is a lovely, productive, largely rural county with one incorporated city –
22 Port Townsend. It also has an area with a major concentration of pre-existing small lots in
23 the Irondale and Port Hadlock area. The County has long been grappling with the best way
24 to plan for this region and has determined that the best course of action is to make it a non-
25 municipal urban growth area (UGA). The sticking point is the ability of the County to serve
26 this area with urban governmental services. Of these urban services, providing public
27 sanitary sewer is the most difficult problem.
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30 In 2003, the County set broad urban growth boundaries with the expectation that sewer and
31 other services could be provided to the entire area in phases during the 20-year planning
32 horizon. This Board found that the County could create a non-municipal UGA in the

1 Irondale and Port Hadlock region but that the boundaries and the plan for that UGA were
2 non-compliant, in large part because there had not been adequate planning and funding
3 sources identified for urban services to the area.
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5 On remand from the Board's August 22, 2003, Final Decision and Order, the County
6 diligently set about further capital facilities planning and analysis of funding sources. This
7 further work convinced the County that it could not, in the 20-year planning horizon for
8 comprehensive plans under the Growth Management Act (GMA), provide sewer service to
9 the entire UGA. Therefore, the County developed a plan that contemplates sewer service to
10 the commercial core of the new UGA, "optional" sewer service in those areas adjacent to
11 the sewer-served commercial core, and an "unsewered" area that is not planned to receive
12 public sanitary sewer service over the next 20 years. The County also adopted development
13 regulations to implement the plan for this new UGA. Petitioners timely challenged the
14 adoption of these comprehensive plan amendments and development regulations in
15 WWGMHB Case No. 04-2-0022.
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19 After a thorough review of the record and consideration of the arguments of both sides, we
20 are compelled to find that the plan for the new UGA and its implementing development
21 regulations do not comply with the GMA because the County's capital facilities plan for this
22 area does not provide sanitary sewer throughout the new UGA over the 20-year planning
23 period. Also, the capital facilities plan for areas where commercial and industrial
24 development is allowed at urban densities fails to show firm funding for sewer service within
25 the next six years. A defined funding mechanism needs to be included in the capital
26 facilities plan before urban development is allowed. Public sanitary sewer service is a key
27 urban governmental service with important public health and environmental consequences,
28 and is essential to providing urban densities.
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1 At the same time, we must acknowledge the thorny problem facing the County. The County
2 has reasonably chosen to consider the existing small lots as “urban growth.” The choice to
3 create an urban growth area which incorporates existing urban growth is also a responsible
4 one – but it must be accompanied by urban levels of service. Otherwise, new growth will
5 compound the existing problem.
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7
8 The County and its staff have done impressive work to plan within the confines of their
9 funding capacities. We are struck, once again, with the high quality of the County’s plans
10 and regulations. In addition, the County Commissioners have rolled up their proverbial
11 sleeves to do the hard work of planning for this area. Nonetheless, all their efforts lead to
12 the conclusion that most of the area cannot reasonably be served with sanitary sewer in the
13 next 20 years. The Board concludes therefore that the current UGA boundaries are not
14 appropriate for designation as an urban growth area.
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17 We have also entered a finding of invalidity as to those parts of the comprehensive plan that
18 designate “unsewered” and “optional sewer” within the UGA, and as to those parts of the
19 development regulations that allow new urban levels of development without sewer service,
20 or an implementable funding plan for sewer service.
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23 The invalidity findings do not reflect a determination that the violations here were
24 “egregious”; rather they reflect a concern that development applications could vest during
25 the period of remand which would interfere with the GMA goals, specifically those which
26 encourage urban growth with adequate urban services (Goals 1 and 12) and prevent sprawl
27 (Goal 2).
28

29 30 **II. PROCEDURAL HISTORY**

31 In our August 22, 2003, order in this case, the Board found the following:

32 Under the special circumstances faced by Jefferson County in this case, it is
appropriate to establish a non-municipal UGA in the Hadlock/Irondale portion of the

1 Tri-Area. However, Jefferson County failed to comply with the Act when it officially
2 designated the UGA before completing its work of adopting urban level of service
3 standards, finishing required capital facilities planning (especially for sewer) and
4 fiscal analysis of affordability of those needed facilities, and developing development
5 regulations for application within the UGA (or tiers thereof).

6 In that order the Board expressed the following concern:

7 However, having carefully considered all of the County's arguments and
8 rationale, we remain concerned about the Tri-Area Final UGA being
9 designated before adequate capital facilities planning for sewer, including
10 fiscal analysis of the ability to provide those facilities, the setting of urban level
11 of service standards and the adoption of development regulations that are
12 ready for implementation in the UGA are completed. We agree with the
13 Petitioners that these steps must be completed prior to designation to ensure
14 that development within the UGA will be urban in nature, that the UGA will be
15 efficiently served with urban levels of service and that the County and its
16 citizens can meet the financial obligations required for these urban facilities
17 and services at the level of service adopted by the County.

16 Final Decision and Order (August 22, 2003) at 26 and 27.

17 The County began work on its compliance efforts but was not able to complete its
18 compliance efforts by the originally scheduled due date. A compliance hearing was held
19 and the Board issued a Compliance Order on June 11, 2004, finding continuing non-
20 compliance and giving the County an additional 180 days to achieve compliance. That
21 Compliance Order extended the compliance deadline until December 7, 2004.
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23
24 On August 23, 2004, the County adopted Ordinance No. 10-0823-04. That ordinance
25 enacted amendments to the comprehensive plan for the non-municipal UGA, now called the
26 "Irondale and Port Hadlock UGA." The ordinance was published on August 25, 2004, and
27 on October 25, 2004, Petitioners Irondale Community Action Neighbors and Nancy Dorgan,
28 filed their Petition for Review. Petitioners challenged the adoption of Ordinance 10-0823-04
29 in August of 2004 - General Sewer Plan for the UGA, the Transportation planning (Appendix
30 J to the comprehensive plan), the Stormwater Management Plan, May 2004 (Appendix K to
31 the comprehensive plan), an untitled consistency document, the size of the subject UGA,
32

1 protection of groundwater, provision of urban water supply by the Public Utility District
2 (PUD), the adequacy of the Future Land Use and Future Zoning Map, and the adequacy of
3 the development regulations for the subject UGA - all as non-GMA compliant and not
4 responsive to the terms of the Board's August 22, 2003 Final Decision and Order. The on-
5 going fiscal analysis—since June 2004--- of urban infrastructure and capital facilities was
6 challenged as an example of the lack of completeness and certainty that denotes the
7 comprehensive plan update. Further, Petitioners requested the Board find invalid any
8 portion of the ordinance appealed that may be found non-compliant and threatened to pose
9 substantial interference with the fulfillment of the GMA Goals 1, 2, and 5.
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11
12 At the prehearing conference on November 22, 2004, there was agreement these two cases
13 would be tracked, for convenience and economy, but not consolidated. Petitioner stressed
14 that his client named some new matters of non-compliance in the UGA designation by
15 Respondent County in WWGMHB Case No. 04-2-0022. An adjudication schedule was set
16 allowing for coordinated briefing and hearings schedules, an amended issues statement,
17 index filing, the submission of Respondent County's Compliance Report in WWGMHB Case
18 No. 03-2-0010, and allowing for the proposal of any additions and supplements to the index.
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22 On January 3, 2005, the Board was contacted about the parties' interest in entering into
23 settlement discussions. Such discussions then occurred between the parties in January.
24 The January 5, 2005, motions deadline was extended. On January 25, 2005, the parties
25 and presiding officer met in prehearing conference to ascertain settlement progress and
26 discuss the extension of the Final Decision and Order deadline to May 31, 2005. The Final
27 Decision and Order deadline was extended. Settlement discussions, however, had failed.
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29
30 Petitioner filed a dispositive motion on January 31, 2005. Motion for Noncompliance and
31 Invalidity on the UGA Urban Development Regulations for the Irondale/Hadlock UGA.
32 Petitioners challenged Jefferson County Ordinance 10-0823-04 Section Three that adopted

1 and implemented development regulations for the subject UGA, effective August 23, 2004.
2 Petitioners objected to the lack of available, planned, and financed sewer service for the
3 Irondale/Hadlock UGA and asked the Board to grant the motion and find the urban
4 development regulations invalid for substantial interference with Goal 12 of the Growth
5 Management Act (GMA). Petitioners contended the County will allow urban development
6 through the subject UGA without actually providing urban sewer service, in contravention of
7 Jefferson Countywide Planning Policy 2.1 and of the Board's Final Decision and Order on
8 August 22, 2003. Petitioner claimed that without a UGA sewer plan and a six-year capital
9 facilities plan and financing in place, urban growth would occur in the Irondale/Port Hadlock
10 UGA without adequate sanitary sewerage service. Petitioners expressed concern that
11 applications are vesting, allowing for urban densities and uses in the subject UGA without
12 adequate urban services being planned, financed, and in place in any part of the UGA.
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16 On February 11, 2005, Jefferson County filed a response to ICAN's Dispositive Motion on a
17 Limited Record. The County argued there is no justification for granting a dispositive motion
18 prior to the Hearing on the Merits and asked that the Petitioners' motion be denied. The
19 county contended no egregious circumstances existed which would warrant a finding of
20 invalidity at this time. Further, the county pointed to its diligent efforts to achieve
21 designation of an appropriate UGA for the Irondale/Port Hadlock area for ten years or more,
22 and believes it has endeavored to comply with the Board's August 22, 2003 order on
23 WWGMHB Case No. 03-2-0010. On March 2, 2005, the Board issued an Order Denying
24 the Motion and determined the issues would be carried forward to the Hearing on the Merits.
25 The motion involved an extensive record and was not appropriate for resolution without full
26 briefing and a more thorough review of the record. On March 2, 2005, the Board issued an
27 order denying the motion and determined the issues would be carried forward to the
28 Hearing on the Merits. On March 11, 2005, an Order on Motions Requesting Additions and
29 Supplements to the Index was issued. This reserved final ruling on some proposed items
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1 until the Hearing on the Merits. In March and early April the normal hearing briefings
2 schedule was observed and met.

3
4 Throughout the case proceedings Petitioners Irondale Community Action Neighbors[ICAN]
5 and Nancy Dorgan were represented by attorney Gerald Steel, PE. Attorney for respondent
6 Jefferson County was Mark R. Johnsen of Karr, Tuttle, Campbell. Jefferson County Civil
7 Deputy Prosecuting Attorney David Alvarez assisted with advocacy and advice for
8 Respondent County.
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11 The Hearing on the Merits occurred on April 18, 2005 in Olympia. All three board members
12 participated. At the Hearing on the Merits, employees of the County's Community
13 Development Department and Public Works Department and engineering contractors to the
14 County appeared, at the request of respondent's attorney were also present. The Presiding
15 Officer invited attorneys for parties to file simultaneous post-hearing briefs on April 27, 2005.
16 Each party filed such a brief. In addition, Jefferson County filed Respondent's Statement of
17 Additional Authority on May 9, 2005.
18

19 20 21 **INDEX/EXHIBIT RULINGS**

22 Respondent County's proposed Index item and Exhibits numbered 1002 and 1003 were
23 admitted. Proposed item number 1001 was not admitted.

24
25 Proposed supplemental item, Exhibit 16-282, offered by Petitioners is official record of the
26 Respondent County. An April 14, 2005, legal notice in the local newspaper, proposed
27 Exhibit 16-297, was also offered by Petitioners. The Board took judicial notice of both of
28 these items. Petitioners' proposed Exhibit 16-296, a Jefferson County permit case summary
29 of certain activity listings ranging from August 2004 through January 2005 and selections
30 from the County's permit file on a subject area project proposed by the Community
31 Methodist Church, was admitted.
32

1 In its Posthearing Brief in Support of Noncompliance and Invalidity, Petitioners requested
2 the Board admit three black and white enlargements of already-admitted exhibits: Exhibit
3 13-31 shows the zoning for the subject UGA as adopted. An enlargement would show it
4 better to the human eye. It is labeled Exhibit 16-298 and is admitted and will be given the
5 weight it is due. Petitioner also proposed a two-foot by three-foot version of the plat map for
6 the subject UGA. The ordinary-sized plat map is an official record of the County on file in
7 the Assessor's Office. The enlarged plat map is labeled Exhibit 16-299 and the Board takes
8 judicial notice of it, as requested. Proposed Exhibit 16-300 contains an index page and
9 pages A to E. Depicted on these pages are portions of plat maps from the Assessor's
10 Office that show the dimensions of platted lots that correspond with the letters A to E. As
11 requested, the Board takes judicial notice of these county records depicting dimensions of
12 platted lots in the UGA.
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15 16 **IV. ISSUES PRESENTED**

17 1. Does the processing and adoption of the Ordinance comply with RCW
18 36.70A.020(11), .035, .040, .070 (preamble), .130(1)(b), .140 and .210 {the adopted
19 County-wide Planning Policies (CPP)}?
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22 2. Do the CP amendments and development regulations amendments made by
23 the Ordinance comply with RCW 36.70A.020(1), (2), (5), (6), (10), and (12), and .130(1)(b)
24 regarding: .070 (preamble), (1), (2), (3), (4), and (6), .100, .110(3) and (4), .115, .150, and
25 .210(1) ?
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28 3. Did the County allocate a proper amount of commercial/industrial development
29 to the unincorporated subject UGA, consistent with RCW 36.70A.020(1), (5), (6), and (12),
30 and .130(1)(b) regarding: .070 (preamble), (1), (3), (4), and (6), .110(2), .115, .150, and
31 .210? Did the County comply with these terms of the GMA when it allowed the expanded
32 commercial designation and zoning in the subject UGA?

1 4. Do the Comprehensive Plan and development regulations properly size the area
2 and intensity for build-out of urban commercial/industrial development in the unincorporated
3 subject UGA, consistent with GMA provisions listed in Issue 3?
4

5 5. Has the County set adequate urban levels of service for public facilities and
6 services for the unincorporated subject UGA, consistent with RCW 36.70A.020(1), (2), (5),
7 (6), and (12), and .130(1)(b) regarding: .070 (preamble), (1), (3), and (6), .110(2), and (3),
8 .115, .150, and .210?
9

10 6. Do the Comprehensive Plan and development regulations ensure that the
11 urban facilities and services necessary to support development in the unincorporated
12 subject UGA will be adequate to serve that development at the established urban levels of
13 service at the time of occupancy, consistent with the RCW 36.70A.020(12)?
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16 7. Has the County adequately implemented transportation concurrency
17 requirements for the unincorporated subject UGA, consistent with RCW 36.70A .070(6)(b)?
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20 8. Because the County does not currently supply all urban facilities and services
21 in all parts of the subject unincorporated UGA, is the phased growth in the subject
22 unincorporated UGA consistent with RCW 36.70A.020(1), (2), (5), (6), and (12), and
23 .130(1)(b) regarding: .070 (preamble), (1), (2), (3), (4), and (6), .110(1), (2), and (3), .115,
24 .150, and .210?
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27 9. Did the County use a proper 20-year horizon for UGA planning consistently
28 throughout the adopted Comprehensive Plan, development regulations, and capital facility
29 planning and fiscal analysis in the unincorporated subject UGA that is also consistent with
30 RCW 36.70A.020(6), and .130(1)(b) regarding: .070 (preamble), .100, .110(2), .115, and
31 .210?
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1
2 10. Is the County's capital facility and fiscal planning for urban water service,
3 sewer service, and transportation services in the unincorporated subject UGA adequate and
4 consistent with RCW 36.70A.020(1), (2), (5), (6), (10), (11), and (12), and .130(1)(b)
5 regarding: .070 (preamble), (1), (2), (3), (4) and (6), .100, .110(2) and (4), .115, .150, and
6 .210?
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9 11. Is the County's capital facility and fiscal planning for urban facilities and
10 services besides water, sewer, and transportation in the unincorporated subject UGA
11 adequate and consistent with RCW 36.70A.020(1), (2), (5), (6), (10), (11), and (12), and
12 .130(1)(b) regarding: .070 (preamble), (1), (2), (3), and (4), .110(2) and (4), .115, .150, and
13 .210?
14

15
16 12. Has the County adequately provided for transformance of governance in the
17 provision of adequate urban water supply in the unincorporated subject UGA, consistent
18 with RCW 36.70A.110(4)?
19

20
21 13. Are there adequate descriptions of building intensities and densities for the
22 unincorporated subject UGA in the land use element of the CP and that are appropriately
23 implemented in the development regulations? Are these consistent with RCW
24 36.70A.130(1)(b) regarding .070 (preamble), and (1)?
25

26
27 14. In implementing the unincorporated subject UGA, has the County provided for
28 protection of the quality and quantity of ground water used for public water systems to serve
29 the UGA in a manner consistent with RCW 36.70A.020(5) and (10), and RCW
30 36.70A.130(1)(b) regarding .070(1) and 210?
31
32

1 In order to find the Jefferson County’s action clearly erroneous, the Board must be “left with
2 the firm and definite conviction that a mistake has been made.” *Department of Ecology v.*
3 *PUD 1*, 121 Wn.2nd 179, 201, 849 P.2d 646 (1993).and *Achen v. Clark County*, WWGMHB
4 Case No. 95-2-0067. Thus, we review the compliance action and the challenges under the
5 new Petition for Review under the clearly erroneous standard.
6

7 8 VI. DISCUSSION

9 In the final decision issued in WWGMHB Case No. 03-2-0010, we found that the County
10 could create a non-municipal UGA in the Irondale and Port Hadlock area to reflect the urban
11 growth that had already vested there. However, we found that the County had not met the
12 requirements for a non-municipal UGA before formal designation of a UGA. Thus, the
13 sufficiency of the infrastructure planning as well as the boundaries of the non-municipal
14 UGA was found non-compliant. ¹ Final Decision and Order (August 22, 2003) at p. 15.
15

16
17 The challenges in this case can be grouped into five categories:

- 18 • challenges to the sufficiency of planning for urban levels of sewer, transportation and
19 other services within the non-municipal UGA;
- 20 • challenges to the densities and intensities established within the UGA;
- 21 • inconsistencies alleged between the new comprehensive plan amendments and
22 development regulations and other County planning policies and regulations;
- 23 • miscellaneous challenges to the procedures incorporated within the new amendment
24 and development regulations; and
- 25 • the request for imposition of invalidity.
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¹ Ordinance No. 10-0823-04 recites that the WWGMHB found the Irondale/Hadlock UGA boundary
“appropriate” but that characterization is not wholly accurate. The Board reserved the issue of the UGA
boundaries until after the capital facilities and other planning is complete.

1 **A. Urban Levels of Governmental Services**

2 Petitioners raise challenges to the adequacy of the County's planning for urban levels of
3 service provided for the Irondale and Port Hadlock UGA. Petitioners argue that the UGA
4 boundaries must be set in accordance with urban levels of governmental services and that
5 the County's plan fails to meet this requirement. These issues fall into three major
6 categories: sewer planning; transportation planning; and miscellaneous other infrastructure
7 concerns. Sewer service to the new UGA is chief among these concerns and we will
8 address it first.
9

10
11 1. Sewer Planning - Petitioners first challenge the comprehensive plan amendments that
12 create the new UGA and argue that the County has not done sewer planning for most of the
13 designated urban growth area (UGA). ICAN's Opening Brief at 2. Petitioners contend that
14 the County's plan for sewer in the new UGA lacks a forecast of future needs, proposed
15 locations of future facilities, a six-year financing plan, and a plan to serve the entirety of the
16 UGA within the 20-year planning period for the comprehensive plan. Ibid at 2-3. This,
17 Petitioners allege, fails to comply with RCW 36.70A.070(3), which mandates those features
18 as part of the capital facilities element of a comprehensive plan. Petitioners point out that
19 there are no existing sewer facilities in the new UGA and argue that the plan contains
20 nothing but a very general concept for a providing sewer service; the sewer plan offers four
21 alternatives for treatment and concept level cost estimates and financing options but no
22 commitment to any of the options for treatment or financing. Ibid at 3-4.
23
24

25
26 The County responds that it is not required to plan to serve the entire UGA with sewer
27 service in the 20-year planning horizon. Respondent's Prehearing Brief at 10. The County
28 argues that it is not a violation of the GMA to allow portions of a UGA to be served by on-
29 site septic systems in an area of many pre-existing lots and no public health considerations
30 to prevent the use of on-site septic systems. Ibid at 6-7. The unsewered area of the UGA is
31 already full of vested lots at urban densities, the County asserts, and these are allowed to
32

1 develop at a density of 3.5 dwelling units per acre in accordance with the County's public
2 health regulations regarding on-site systems. Under these circumstances, the County
3 believes it is not clearly erroneous to allow the interim use of on-site septic until a sewer
4 system is fully operational, when other urban services are available. Ibid. The County cites
5 previous statements of the Board in regard to this area and *Abenroth v. Skagit County*,
6 WWGMHB Case No. 97-2-0067c in which contends the Board allowed for interim use of
7 septic on one-acre parcels until sewer was available. Respondent's Prehearing Brief
8 (April 1, 2005) at 7 and 8.
9

10
11 We begin our analysis by noting that the County has changed its position with respect to
12 providing for sewer service in the new UGA. At the first hearing on the merits, the County
13 represented that it planned to phase sewer service during the 20-year planning horizon,
14 throughout the new UGA. Final Decision and Order, August 22, 2003. It was also an
15 express understanding that the County would not allow urban levels of development in the
16 new UGA until sewer and other urban services could be provided. In fact, the Board
17 commended the County for keeping its rural development regulations in place while it
18 completed its sewer planning:
19

20 The County has also responsibly put in a proviso that until work to determine
21 how urban service will be provided is completed, the rural development
22 regulations will apply. Thus, the County is not encouraging urban
23 development until urban services are available.
24 Final Decision and Order (August 22, 2003) at 13.
25

26 Because the County was not allowing urban development until urban services including
27 sewer is provided, the Board declined Petitioner's request for an imposition of invalidity.
28

29 The Board also understood that one of the primary motivators for the establishment of the
30 Irondale and Port Hadlock UGA was the proliferation of development on small lots in this
31 area that could lead to potential public health problems that sewers could prevent. The
32

Board noted the following:

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We agree with the County that it makes more sense to plan to serve this community in an urban manner. By doing this, the County is making an ecologically responsible choice to provide urban services to an area of higher-than-rural densities rather than to allow it to develop permit-by-permit in a way that is dependent upon essentially rural levels of service. As the County says, it is being proactive and is managing growth (the Act's intent) instead of burying its head in the potentially septic-waste-ridden sand. We agree that this approach complies with the GMA.

Final Decision and Order (August 22, 2003) at 14.

The County may, of course, change its strategy as it strives to achieve compliance. However, it is important to acknowledge that this is a change and that the Board's earlier order relied upon the County's original plan.

a) We are therefore addressing for the first time the County's decision to establish non-municipal UGA boundaries that include areas for which no public sewer is to be provided in the 20-year planning horizon. Petitioners claim that this violates RCW 36.70A.070(3) (requirements of the capital facilities element) and RCW 36.70A.110 (requirements for urban growth areas). We agree.

Urban growth areas are designated lands which will contain "areas and densities sufficient to permit the urban growth that is projected to occur in the county or city for the succeeding twenty-year period." RCW 36.70A.110(2). "Urban growth" makes intensive use of land for buildings, structures and impermeable surfaces. RCW 36.70A.030(17). Every city must be contained in an urban growth area. RCW 36.70A.110(1). A primary goal of the GMA is the encouragement of development in urban areas where adequate public facilities and services exist or can be provided in an efficient manner. RCW 36.70A.020(1) (Goal 1 of the UGA). Non-municipal UGAs, that is, UGAs that do not contain cities, are closely scrutinized to ensure that they do not contribute to sprawl but are planned to provide urban levels of service to populations and uses at urban densities. Because non-municipal UGAs may

1 allow an extension of urban growth to areas that do not already have a governmental
2 structure for the provision of urban levels of service, it is important to have a plan for the
3 provision of urban services to the entire non-municipal UGA. If this cannot be done, the
4 boundaries of the non-municipal UGA are likely too large.

5
6
7 This principle is embodied also in guidance provided to local governments by the
8 Department of Community, Trade, and Economic Development:

9 The capacity of water and sewer represents an important consideration
10 affecting development. The GMA requires that you must be able to provide
11 adequate facilities and services before permitting development. Although
12 capital facilities can be expanded, you will need to consider the cost-
13 effectiveness of doing so and the appropriateness relative to community
14 goals. If it will not be feasible to expand or extend a facility and finance the
15 necessary improvements, the land use plan will need to be adjusted
16 accordingly. For this reason, you must work back and forth between your
land use analysis and your analysis of capital facility and transportation
needs.

17 Preparing the Heart of Your Comprehensive Plan, A Land Use Element Guide, Washington
18 State Department of Community, Trade and Economic Development (1993) at 20 and 21.

19 Here, Respondent County has adopted comprehensive plan amendments for the Irondale
20 and Port Hadlock UGA that allow urban development with three different levels of sewer
21 service:
22

- 23 • sewer service in areas of high density residential and commercial or industrial zones;
- 24 • optional sanitary sewer service to areas which are adjacent to sewer service areas;
- 25 • and unsewered areas. Exhibit 13-37 at 2-14.

26 This scheme allows urban levels of development without corresponding urban levels of
27 sewer service.
28

29
30 Respondent County argues that it is providing most services at urban levels and that interim
31 use of septic systems is acceptable if other urban services are in place. Respondent's
32 Prehearing Brief at 8. The County relies upon the Board's decision in *Abenroth v. Skagit*

1 County, WWGMHB Case No. 97-2-0060c (Final Decision and Order, January 23, 1998) for
2 this proposition.

3
4 However, the facts in *Abenroth* are different from those here. In that situation, the UGAs in
5 question were municipal UGAs and the questioned area was expected to become part of a
6 city, where a city would provide the urban services. Also, Skagit County's development
7 regulations provided that either: there could not be development above one dwelling unit per
8 5 acres until sewer was provided; or a portion of the platted lots up to one acre could be
9 "used" for development utilizing a well and on-site system, if the land was platted to ultimate
10 urban densities and provided with all transportation and utilities at urban standards and if
11 the applicant promised to connect to sewer when it was available.²
12
13

14
15 The Irondale and Port Hadlock UGA, on the other hand, lacks any sewer service today.
16 Since it is not associated with any city, the new UGA would have to be served through the
17 County. However, the County has no existing capacity to serve any part of the new UGA
18 with sewer, although it has been researching the options very carefully.
19

20
21 *Conclusion 1.a):* Public sanitary sewer is a key urban governmental service. See RCW
22 36.70A.030(19). Creating a non-municipal UGA to acknowledge pre-existing growth is only
23 responsible if urban levels of service are provided within that non-municipal UGA. Under
24 these circumstances, the creation of the UGA boundaries to include large areas for which
25 no public sewer can reasonably be provided in the 20-year planning horizon does not
26 comply with RCW 36.70A.110.
27

28
29
30 ² In regard to commercial and industrial development, the Board found that Skagit County's phasing plan for
31 commercial and industrial development did not comply with RCW 36.70A.110 (3). The Board found that
32 before it could find compliance that 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 See *Abenroth v. Skagit County*, Case No. 97-2-0067c (Final Decision and Order, January 23,
1998)

1 b) In addition, the capital facilities element of the County's land use plan is required to plan
2 for capital facilities needs and funding. RCW 36.70A.070(3) requires the following for
3 capital facilities elements:

- 4 (a) An inventory of existing capital facilities owned by public entities, showing
5 the locations and capacities of the capital facilities; (b) a forecast of the
6 future needs for such capital facilities; (c) the proposed locations and
7 capacities of expanded or new capital facilities; (d) at least a six-year plan
8 that will finance such capital facilities within projected funding capacities
9 and clearly identifies sources of public money for such purposes; and (e) a
10 requirement to reassess the land use element if probable funding falls
11 short of meeting existing needs and to ensure that the land use element,
12 capital facilities plan element, and financing plan within the capital facilities
13 plan element are coordinated and consistent...

12 RCW 36.70A.070(3)

13 In Jefferson County's situation in this case, the County is the sewer provider. Therefore, its
14 capital facilities plan must give assurance that the extension of urban services will actually
15 be available prior to permitted urban levels of development. In addition, development must
16 not be permitted in a manner which will preclude future urban densities and uses. Where
17 urban levels of development have not been permitted until sewer is available, the Board has
18 found the use of interim on-site septic systems compliant with the RCW 36.70A.110.
19 However, when we examine Jefferson County's six-year capital facility plan and the General
20 Sewer Plan (GSP) that supports its Urban Growth Area Element, we find that these
21 conditions do not exist. Several difficult technical and political decisions still need to be
22 made to make the provision of sewers a reality. The capital facilities section of the Urban
23 Growth Element has a generalized capital facilities plan that has cost estimates, but no
24 choices about what specific sources of funds will be used or the distribution of costs among
25 the County's general fund, loans and grants, and user fees. Exhibit 13 – 37 at 2 – 15.

26 The County states the GSP is the first step required of the County for a wastewater
27 treatment system. It is a requirement of WAC 173-240-050(2) to be sufficiently complete
28 that engineering reports can be developed without substantial alteration or basic
29 consideration. The County maintains that the GSP contains the locations for the proposed

1 facilities for conveyance and treatment for several alternatives. The County also says that
2 cost estimates have been included for the alternatives and various financing scenarios are
3 outlined including a Limited Improvement District (LID) and several different ways to
4 distribute the costs between rates and system development charges. Jefferson County's
5 Compliance Report (December 17, 2004) at 5 and 6.
6

7
8 When we look at the GSP the Board finds that the GSP contains some, but not all the
9 necessary components for a compliant capital facilities element for the provision of sewer
10 service. The GSP contains a forecast of future needs for capital facilities and the proposed
11 general locations for future conveyance facilities, but not their capacities. While the plan
12 designates a preferred alternative from four alternatives for sewage treatment and identifies
13 those locations, no decision has been made on the alternative so no definite location for
14 sewage treatment is contained in the GSP. Likewise, while the GSP discusses outside
15 funding sources generally, makes some assumptions about how much of the facilities
16 certain sources could fund, and presents various alternatives for distributing the costs
17 among the users of the proposed system, the County has not selected a method for
18 financing the sewer system. The Board recognizes that the County has proceeded
19 appropriately with its sewer planning and has laid the groundwork for necessary future work.
20 However, the present capital facilities plan fails to comply with the GMA requirements for
21 sewer to the Irondale and Port Hadlock UGA.
22
23

24
25 *Conclusion 1.b):* The most glaring deficiencies of the sewer plan are the fact that a
26 treatment option has not been selected, which is integral to determining the final costs to
27 develop a final funding mechanism, and an agreed upon six-year financing plan. Even
28 though the County requires new development in the future sewer service area to connect to
29 the future sewer system, we find that deficiencies in the County's capital facilities plan fail to
30 comply with the Board's August 22, 2003 Compliance Order and RCW 36.70A.070(3) (a)(c)
31 and (d). They do not give the necessary assurance that sewers will actually be provided.
32

1
2 c) Petitioners next argue that Respondent County should not have adopted development
3 regulations that implement the UGA without an adequate sewer plan. Petitioners maintain
4 that the County's general sewer plan (GSP) does not offer adequate assurance that urban
5 services will be available at the time of occupancy. Petitioner cites the Board's August 22,
6 2003 decision in this case, where the Board commended the County for keeping its rural
7 regulations in place while it developed its sewer plan. Petitioners also cite the portion of the
8 Final Decision and Order where the Board described how compliant phasing should be
9 implemented. ICAN's Reply Brief in Support of Noncompliance and Invalidity (April 13,
10 2005) at 5.
11

12
13 Respondent County argues that even though the newly adopted development regulations
14 allow urban intensities, development at this scale will not happen, because the County's
15 health department regulations will restrict the intensity and densities allowed due to the use
16 of an interim septic. The County says that allowing for urban densities is appropriate for
17 commercial and industrial designations, because the County requires these applicants to
18 sign an agreement that they will connect to the sewer when it is available, and this is an
19 area where the County plans to have sewer available within the next six years. Further, the
20 County projects that the risk of large commercial structures occurring without the guarantee
21 of sewer is slight since applicants for those developments would not want to install interim
22 septic systems and then connect to the sewer system.
23
24

25
26 The plan's enforcement is set out in the County's Uniform Development Code (UDC). The
27 code requires that within the sewer service area that development must connect to the
28 sewer when it is available, with the caveat that interim on-site septic systems in commercial
29 and industrial areas will not be prohibited in this UGA, unless there is a sewer system which
30 has capacity to accommodate the proposed development. Exhibit 13 – 32 at 21.
31
32

1 *Conclusion 1.c):* Instituting urban development regulations before the development of a
2 compliant capital facilities plan will either preclude eventual future development at urban
3 densities in the UGA when sewer is available, or permit densities that constitute sprawl. We
4 understand the County's desire to establish this UGA to realize its legitimate economic
5 development goals and its investment spent in years of planning for this area.

6
7 Nevertheless, we cannot find the County's urban development code compliant or valid, until
8 they have completed a compliant capital facilities plan. Development regulations that
9 implement a non-compliant capital facilities plan do not themselves comply with RCW
10 36.70A.040, 36.70A.110(3), 36.70A.020(1), (2) and (12).

11
12 d) Petitioners also contend that the comprehensive plan amendment and development
13 regulations are inconsistent with Countywide Planning Policies (CWPPs) 1.3 and 1.5.
14 Petitioner argues that Policy 1.3 requires that land within a non-municipal UGA must either
15 be served by sewer or planned to be served by sewer. Policy 1.5 provides for tiers for
16 sewer provision that includes all tiers receiving "the full range of urban services within 20
17 years." Petitioner argues that for the County's comprehensive plan to be consistent with this
18 policy the required sewer planning must be in the comprehensive plan's capital facility
19 element and must ensure all tiers receive sewer service. Petitioner maintains that there are
20 sewer facilities listed in the capital facilities element and no amendments to the plan that
21 show required sewer planning for all parts of the UGA.
22
23

24
25 In regard to Petitioner's arguments concerning inconsistency of the County's sewer planning
26 efforts, the County responds that the County's existing planning documents reflect that
27 sewer construction will be under way within six years. The County maintains that CWPPs
28 provide general guidance and that the County has done sufficient planning to satisfy the
29 guidance in the CWPP.
30
31
32

1 CWPP lists criteria for designating urban growth areas, but does not include a time frame for
2 delivery of sewer service. However, CWPP 1.5 does delineate two tiers, the first tier
3 receiving sewer service within the six year capital facilities plan and the second tier within 20
4 years. CWPP 2.1 says that UGAs will have a full range of urban services over 20 years and
5 lists sewer service as one of these services.
6

7
8 *Conclusion 1.d):* The Board concludes that CWPP 1.3 is in fact a general policy as the
9 County argues. However, CWPP 1.5 specifically requires a full range of urban services and
10 CWPP 2.1 defines those as including sewer service. As described above, the County's
11 capital facilities plan and the County's UGA Element do not show plans to serve the
12 northern residential part of the UGA with sewers over the next 20 years. Therefore, we find
13 that the County's comprehensive plan's UGA Element, that includes a capital facilities
14 element, is not consistent with CWPP 1.5 and therefore with RCW 36.70A.210.
15

16 17 2. Transportation Planning

18 a) Levels of Service (LOS) standards - Petitioners argue that the LOS for transportation for
19 the UGA set by UGA P.2.6(d) fails to explicitly apply the standard to road intersections.
20 Petitioner says that this does not comply with RCW 36.70A.070 (6)(b) and (c). ICAN's
21 Opening Brief at 11, 12.
22

23
24 Respondent County replies that the GMA does not require LOS standards to be directed at
25 intersections, and that RCW 36.70A.070 (6)(b) and (c) requires LOS standards for locally
26 owned arterials. Respondent's Prehearing Brief at 14.
27

28
29 The Board agrees with Respondent County. RCW 36.70A.070(6)(a)(iii)(B) requires LOS for
30 all locally owned arterials and transit routes to serve as a gauge for their performance.
31 RCW 36.70A.070(6)(a)(iii)(C) requires levels of service for state-owned transportation
32 facilities for the purpose of measuring their performance. For locally owned arterials, the

1 County has discretion on how they choose to describe the LOS as long as it describes this
2 in their comprehensive plan and use their description to measure LOS. For state-owned
3 facilities, highways of state-wide significance are set by the state. For other state-owned
4 highways the local government and the state work together to set the LOS.
5

6
7 *Conclusion 2.a):* Petitioners have not sustained their burden of proof pursuant to RCW
8 36.70A.320(2).
9

10 b) Error in traffic analysis on SR-19 from Irondale Road to Four Corners - Petitioners
11 contend that the County failed to accurately report that existing traffic on the SR-19 from
12 Irondale Road to Four Corners does not meet the current LOS standard D for UGAs.
13 Petitioner says that the County averaged the traffic for the road segment within the UGA
14 that operates at LOS E with rural road segments north of Four Corners that have
15 substantially less traffic. Petitioner asserts that this does not comply with RCW
16 36.70A(6)(a)(iii). ICAN's Opening Brief at 12 and 13.
17

18
19 The County responds that the road segment that ICAN contends is operating at LOS E is .3
20 of a mile long. Half of the road section is located in the UGA, and not representative of the
21 SR 19 from Irondale to the SR 20 intersection. The County maintains that a more accurate
22 way to analyze conditions along SR 19 is to use the entire segment rather than the
23 challenged section due to its short length and the short amount of time it operates at LOS E.
24 Respondent's Prehearing Brief at 16 and 17.
25

26
27 *Conclusion 2.b):* Although Petitioners request the Board to order the County to accurately
28 report the existing traffic in the UGA north of Four Corners using Petitioner's analysis, they
29 fail to show how RCW 36.70A.070 (6)(a)(iii) gives the Board that authority. Petitioner has
30 not sustained its burden of proof pursuant to RCW 36.70A.320(2).
31
32

1 c) Failure to show work in regard to transportation projections - ICAN argues that the
2 County has not shown its work for the assumptions that it used to perform its traffic analysis.
3 Petitioner contends that the traffic projections reflect inaccurate assumptions for
4 development that will occur in the UGA because they did not reflect the ultimate intensities
5 allowed by the County's development regulations. The development regulations allow for
6 high concentrations of office and commercial development. Petitioners argue that this is the
7 type of development that traffic projections should reflect. Petitioner also points out that the
8 County has made a mathematical error, which should be corrected. ICAN's Opening Brief
9 at 16 – 18.

10
11
12 Respondent County contends that Petitioner failed to appreciate the County's methodology.
13 The County explains that the traffic projections were based on intensities of development
14 that actually are likely to happen given Jefferson County's low population density. The
15 County says that Petitioner gave no rationale for its assumption that half the commercial
16 development will be at high intensity uses. The County maintains that its methodology for
17 traffic projections is not clearly erroneous. Respondent's Prehearing Brief at 18 – 21.

18
19
20 The County clearly lays out its assumptions for its traffic projections in its Transportation
21 Element. Exhibit 13-35 at 2 – 6 - 2 – 9. The Transportation Element reflects the Capital
22 Facilities Element assumption that sanitary sewer will not be available in the UGA until
23 2011. RCW 36.70A.070(6)(a)(i) requires the County to include its assumptions in its
24 transportation element and base its traffic forecasts on its land use plan (RCW 36.70A.070
25 (6)(E). The County has included a clear rationale for why its assumptions about the
26 intensities allowed in its development regulations will not likely occur.

27
28
29 *Conclusion 2.c):* We agree with the County that its methodology is not clearly erroneous or
30 noncompliant with RCW 36.70A.070(6). The County has acknowledged that a
31 mathematical error was made in making the projections and that it has been corrected. The
32

1 County has offered to correct such errors and we agree that the County should have the
2 opportunity to correct its minor errors. Since this is being returned for compliance, the
3 Board reserves any non-compliance finding on minor errors such as this until the County
4 has had an opportunity to make its own corrections. We expect that the County will show us
5 its corrections at the next compliance briefing. If the County does not make the corrections
6 of identified minor errors, Petitioners may raise them at the next compliance hearing.
7

8
9 d) Definition of Chimacum and Port Hadlock Intersections - ICAN asserts that the
10 identification of two intersections as simply Chimacum and Port Hadlock is inadequate for
11 public review. ICAN's Opening Brief at 18
12

13 The County objects to including this issue as "silly" and "frivolous." The County says that
14 this intersection is the only intersection in the Port Hadlock area and commonly referred to
15 as the Port Hadlock intersection. Likewise, the County maintains that Exhibit 13-35 at 2-13
16 describes this Chimacum Intersection as being between Chimacum Road and Center Road.
17 Respondent's Prehearing Brief at 22.
18

19
20 *Conclusion 2.d):* We agree with the County's characterization of this issue and that the
21 intersections are adequately described. Petitioner has not sustained its burden of proof
22 pursuant to RCW 36.70A.320(2) that public participation was hindered by these
23 descriptions.
24

25
26 e) Concurrency Ordinance - ICAN argues that TRP 1.10 allows urban road standards only
27 to be optionally applied to development in the Irondale and Port Hadlock UGA. Petitioner
28 contends that the RCW 36.70A.070 requires urban road standards be established in the
29 UGA and enforced by a concurrency ordinance and that the County does not have a
30 concurrency ordinance. Petitioner argues that TRP 4.10 only states that the County "should
31 not" approve new development that does not meet concurrency requirements while RCW
32

1 36.70A(6)(b) requires the County to “prohibit” such development. ICAN’s Prehearing Brief
2 at 18, 19.

3
4 The County responds that TRP 1.10 commits the County to applying urban road standards
5 but gives it the flexibility to use professional engineering judgment where instances of
6 providing urban facilities may not be appropriate. The County argues that a stand alone
7 concurrency ordinance is not required and UDC 6.2.5 fulfills RCW 36.70A.070(6)(b)’s
8 requirement. Further, the County contends that RCW 36.70A.070(6)(c) specifies that the
9 Transportation Element of comprehensive plans must be consistent with transportation
10 improvement plans, which do not identify any transportation deficiencies. Therefore, the
11 County argues, there are no concurrency issues. Respondent’s Prehearing Brief at 22, 23.
12
13

14
15 RCW 36.70A.070(6)(b) requires the following:

16 After adoption of the comprehensive plan by jurisdictions required to plan or
17 who choose to plan under RCW [36.70A.040](#), local jurisdictions must adopt and
18 enforce ordinances which prohibit development approval if the development
19 causes the level of service on a locally owned transportation facility to decline
20 below the standards adopted in the transportation element of the
21 comprehensive plan, unless transportation improvements or strategies to
22 accommodate the impacts of development are made concurrent with the
23 development...

24 RCW 36.70A.070(6)(b)

25 As to Petitioner’s contention that TRP 4.10 is not consistent with RCW 36.70A.070(6)(b), we
26 note that the key place for the required prohibition of development approval is in the
27 development regulations. Development regulations that implement the comprehensive plan
28 must prohibit development that causes the LOS to decline below locally adopted standards.
29 The challenged TRP is a comprehensive plan policy, rather than a development regulation.
30 While it might be better if TRP 4.10 were more prescriptive, RCW 36.70A.070(6)(b) does not
31 require this of a comprehensive plan policy, but of development regulations.
32

1 The County argues that it has a concurrency ordinance which suffices for the new non-
2 municipal UGA. However, the existing concurrency ordinance does not link permitting
3 development to the County's LOS.
4

5 We agree with the County that the County does not need a stand alone concurrency
6 ordinance as long as it has regulations that do not permit the LOS on locally owned facilities
7 to decline below the County's locally adopted LOS. A regulation such as TRP 6.1.2 would
8 be acceptable if it linked its requirements to the County's levels of service. However, it
9 does not link development approval to the maintenance of current County levels of service.
10
11

12 *Conclusion 2.e):* We understand why the refinement of the County's concurrency
13 requirements has not been a high priority for the County. The Transportation Element of the
14 Irondale-Hadlock UGA indicates that at the level of development forecasted in the next six
15 years no LOS deficiency is predicted and the County's established LOS will be maintained.
16 Nevertheless, the Board cannot waive the requirements of RCW 36.70A.070(6)(b). We find
17 that Policy 1.10 does not comply with RCW 36.70A.070(6)(b) without a concurrency
18 requirement that links transportation improvements and development approval to
19 maintaining the County's LOS.
20
21

22
23 f) Stormwater Planning - ICAN argues that the Stormwater Section of the UGA Element
24 fails to project the six year funding plan required by RCW 36.70A(3)(d). ICAN's Opening
25 Brief at 10.
26

27 The County responds that the UGA Element summarizes data in the UGA Stormwater
28 Management Plan adopted by Ordinance 10-0823-04. Exhibit 13-22. The County
29 maintains that the UGA Element clearly references this plan that includes six-year project
30 projections. Respondent's Prehearing Brief at 13.
31
32

1 *Conclusion 2.f):* We agree with the County. Our examination of Exhibit 13 – 22 shows that
2 the County has clearly referenced the UGA stormwater plan. This plan includes 6-year
3 project and funding sources. The plan actually covers 2005 – 2024. Exhibit 13-32 at 8-9.
4 The UGA Element with this clear reference to work that is compliant with RCW
5 36.70A.070(3)(d) also complies with this statute.
6

7
8 g) LOS for Fire flows - Petitioner asserts that allowing the Jefferson County fire marshal to
9 establish fire flow requirements in the UGA does not ensure that fire flows will be maintained
10 at an urban LOS and does not comply with RCW 36.70A.030(16) and (19). Exhibit 13-32 at
11 20. ICAN's Opening Brief.
12

13 The County replies that, while the GMA specifies that fire protection services are necessary
14 urban services for UGA, there is nothing in the GMA that prohibits the fire marshall from
15 setting urban standards for fire flows. Respondent's Prehearing Brief at 27.
16

17
18 *Conclusion 2.g):* We find that the Petitioner has not sustained its burden of proof that the
19 Fire Marshall is not the appropriate entity to set fire flow requirements. RCW
20 36.70A.030(16) and (19) give us no direction in that regard.
21

22
23 h) Rural v. Urban Standards - Petitioner points out that the UGA Element states that capital
24 facilities and utilities in the UGA are being provided by non-County providers at urban
25 standards. Petitioner also says that the County has the responsibility to ensure urban
26 services are not extended outside of UGAs without specific circumstances. Petitioner
27 alleges that the County has violated RCW 36.70A.100(4). ICAN's Opening Brief at 9.
28

29 We can find no County response to these statements.
30
31
32

1 *Conclusion 2.h):* We cannot determine the basis upon which the Petitioner believes the
2 County has violated the cited statute. Petitioner has not sustained its burden of proof that
3 the UGA Element has violated this statute by adopting these LOS standards.
4

5 **B. Densities and Intensities Within the Non-Municipal UGA**
6

7 Petitioners make a number of arguments related to the establishment of densities and
8 intensities of use in the Irondale and Port Hadlock UGA through the challenged
9 comprehensive plan amendment and implementing development regulations. First they
10 argue that the County has failed to adequately “include population densities [and] building
11 intensities in its Urban Growth Element, Exhibit 13-22, as required by RCW 36.70A.070(1).
12 ICAN’s Opening Brief, A. 3 at 6-7. Second, they argue that the population figures used to
13 determine the size of the UGA are inaccurate. Ibid at 7. Third, Petitioners argue that the
14 County’s justification for commercial lands designated in the Irondale and Port Hadlock UGA
15 is flawed and inconsistent with its needs analysis. Ibid at 11. Finally, they argue that the
16 allowed building heights and lot coverages for commercial in the implementing development
17 regulations are not consistent with the commercial needs analysis or the sewer analysis.
18 Ibid at 25. We will address these arguments as challenges to the urban density levels set
19 for the UGA, to the population projections used for planning in the new UGA, to the
20 commercial designations, and to the development regulations of commercial uses allowed in
21 the UGA.
22
23

24
25
26
27 1. Urban densities
28

29 As a threshold matter, the Petitioners argue that the Urban Low Density Residential zone
30 density planned for the Irondale and Port Hadlock UGA does not constitute an urban density
31 level. ICAN’s Opening Brief at 24-25. Both the Petitioners and the County agree that the
32 density projected for Urban Low Density Residential within the UGA is 3.5 dwelling units per

1 acre. Petitioners argue that “the allowance of suburban development with septic systems
2 (or even 4-unit per acre development with septic waivers) precludes true urban development
3 at densities of 4-6 dwelling units per acre in the UGA.” Ibid at 25.
4

5 The County argues that density of 3.5 dwelling units per acre is “essentially urban in nature
6 and it would be incongruous to apply rural DR’s in such an environment.” Respondent’s
7 Prehearing Brief at 6. The County urges that the 3.5 dwelling units per acre density that it
8 has adopted for Urban Low Density Residential in the Irondale and Port Hadlock UGA
9 simply reflects the density of existing platted lots with vested rights for residential
10 development. Respondent’s Prehearing Brief at 6.
11
12

13 The Boards have agreed that densities of 4 dwelling units per acre or greater constitute
14 urban densities. The Central Puget Sound Growth Management Hearings Board has said
15 that any residential pattern of four net dwelling units per acre (or higher) is compact urban
16 development and satisfies the low end of the range required by the Act. *Bremerton, v.*
17 *Kitsap County*, CPSGMHB Case No. 95-3-0039c (Final Decision and Order, October 6,
18 1995). This Board has also adhered to this general principle. See *Berschauer v. Tumwater*,
19 WWGMHB Case No. 94-2-0002 (Final Decision and Order, July 27, 1994); and *Klein v. San*
20 *Juan County*, WWGMHB Case No. 02-2-0009 (Final Decision and Order, October 15, 2002)
21 (“the ratio of four dwelling units per acre as a minimum urban density level... more
22 accurately reflects an urban level of density”).
23
24
25
26

27 However, the boards have not held rigidly to this standard. The Central Board has stated
28 that there may be other factors that justify residential densities under 4 dwelling units per
29 acre in urban growth areas. *Benaroya, v. City of Redmond*, CPSGMHB Case No. 95-3-
30 0072c (Final Decision and Order, March 25, 1996). This Board has also recognized that
31
32

1 environmental factors may play a part in determining appropriate urban densities.
2 *Berschauer v. Tumwater*, WWGMHB Case No. 94-2-0002 (Compliance Order
3 December, 17, 1994)
4

5
6 In the Urban Growth Element here, the County's comprehensive plan discusses the
7 residential density decision in the Irondale and Port Hadlock UGA further. As an
8 explanation for the 3.5 dwelling units per acre urban residential density, it notes that it is
9 important to protect the critical aquifer recharge area that serves the Irondale and Port
10 Hadlock UGA. Exhibit 13-37 at 2-5. It also points out the need to protect the Chimacum
11 Creek Corridor and its associated wetlands, and the marine shoreline at the mouth of
12 Chimacum Creek. Ibid. Although the environmentally sensitive areas do not correspond
13 exactly with the residential areas of lesser density, they are in close enough proximity to
14 warrant the County's concern. See Figure 2-3, Exhibit 13-37.
15

16
17 *Conclusion B.1:* Under these circumstances, we do not find that the County's choice to use
18 densities of 3.5 dwelling units per acre for certain residential portions of the Irondale and
19 Port Hadlock UGA to be clearly erroneous. Because environmentally sensitive areas are
20 present, lesser densities are justifiable.³
21

22 23 24 2. Population Projections

25 Petitioners argue that the County used the wrong market factor in determining the need for
26 residential and commercial growth in the new non-municipal UGA. ICAN's Opening Brief
27 at 7. Petitioners argue that the County applied a 25 percent market factor to the projected
28

29 ³ We do not find that the area of small pre-existing platted lots *must* be considered urban growth. If the County
30 cannot provide urban services to this portion of the UGA within the 20-year planning horizon, the County may
31 want to consider whether this area should be designated as a limited area of more intensive rural development
32 pursuant to RCW 36.70A.070(5)(d)(i). We do not foreclose this alternative by finding that the County has not
clearly erred in making the choice for 3.5 dwelling unit per acre densities in the Tri-Area UGA.

1 maximum population for the Irondale and Port Hadlock UGA rather than applying the 25
2 percent market factor to the maximum projected population *growth*. Ibid. By applying the
3 market factor to the total population rather than to the growth in population, Petitioners
4 argue, the County used an effective 52 percent market factor. Ibid.
5

6
7 The County responds that the Urban Growth Element provides a range for the estimated
8 population in 2024. Respondent's Prehearing Brief at 9. The range is from 4,906 assuming
9 no market factor, to 6,133, using a 25 percent market factor. Ibid.
10

11 The GMA expressly provides for the use of a "market factor" in making an urban growth
12 area determination:
13

14 An urban growth area determination may include a reasonable land market
15 supply factor and shall permit a range of urban densities and uses. In
16 determining this market factor, cities and counties may consider local
17 circumstances. Cities and counties have discretion in their comprehensive
18 plans to make many choices about accommodating growth.

18 RCW 36.70A.110(2) (in pertinent part)

19 However, the market factor does not apply to the population calculation – it is a "land market
20 supply factor." It applies to the calculation of land availability rather than to the calculation
21 of the number of people to be accommodated.
22

23
24 The County is required to plan for growth based on the 20-year population projections
25 obtained from the Office of Financial Management (OFM):
26

27 Based upon the growth management population projection made for the
28 county by the office of financial management, the county and each city within
29 the county shall include areas and densities sufficient to permit the urban
30 growth that is projected to occur in the county or city for the succeeding
31 twenty-year period, except for those urban growth areas contained totally
32 within a national historical reserve.

30 RCW 36.70A.110(2) (in pertinent part)

1 OFM is required to prepare a projection of population for each county pursuant to RCW
2 43.62.035. Each projection “shall be expressed as a reasonable range developed within the
3 standard state high and low projection. The middle range shall represent the office’s
4 estimate of the most likely population projection for the county.” RCW 43.62.035. The
5 statute also provides that a comprehensive plan or amendment using the range adopted for
6 the projection “shall not be considered to be in non-compliance.” Ibid. As a consequence,
7 this Board has held that there is no authority for a county to adopt a projection that exceeds
8 the range limits in the OFM projection. *Dawes v. Mason County*, WWGMHB Case No.
9 96-2-0023 (Final Decision and Order, December 5, 1996).

10
11
12 Here, we have not been provided with the range of high and low 20-year OFM population
13 projection for Jefferson County. However, the new 20-year population growth allocation for
14 the Irondale and Port Hadlock UGA adopted by Jefferson County was 2,353 persons.
15 Exhibit 13-37 at 2-8. Adding the adopted population growth allocation to the existing
16 population of 2,553 persons, the County projected a total of 4,906 persons in the Irondale
17 and Port Hadlock UGA. Ibid. The County then added a 25 percent market factor to that
18 population range to create a new population range of 4,906 to 6,133 persons. Ibid. This is
19 not a correct use of the market factor which, as we said, may be applied to the calculation of
20 available land to accommodate growth but does not apply to change the projected
21 population.
22
23

24
25 *Conclusion B.2:* The County’s use of a market factor to increase the population range upon
26 which planning is based in the Irondale and Port Hadlock UGA is clearly erroneous and
27 does not comply with RCW 36.70A.110(2).
28

29
30
31 3. Designation and regulation of commercial uses
32

1 Petitioners argue that the urban growth element policies for the Irondale and Port Hadlock
2 UGA fail to comply with RCW 36.70A.070 because they allow residential lands to be
3 designated as commercial without a showing that there is any need for additional
4 commercial lands. ICAN's Opening Brief at 11. They further argue that the UDC
5 amendments allow new residential development in one of the commercial zones (Ibid at 23)
6 and allow increases in the building intensity for commercial development beyond the
7 assumptions used in the County's land capacity analysis, known as the Trottier Report. Ibid
8 at 25.
9

10
11 The County responds that the Urban Growth Element does specify the densities that will be
12 allowed in each zone and the development regulations implement the comprehensive plan.
13 Respondent's Prehearing Brief at 13. As to the UDC amendments, the County argues that
14 it is not inappropriate to allow new residential development in the Visitor Oriented
15 Commercial area which is specifically planned for a resort development. The resort plans to
16 include single-family homes as timeshares along with the Inn at Port Hadlock. The zoning
17 reflects this plan for mixed development. Ibid at 26. Finally, the County argues that the
18 Board has already upheld the needs analysis in the Trottier report. Ibid.
19
20

21
22 The County is correct that the Board found that the land capacity analysis was compliant.
23 Final Decision and Order, August 22, 2003.⁴ Petitioners also admit that they did not raise
24 their concerns about possible defects with the Trottier analysis to the Board of County
25

26
27
28 ⁴However, the County misreads the Board's decision to hold that there is no need for a land capacity analysis
29 in setting the Tri-Area UGA boundaries. The Board noted the special circumstances of the number of pre-
30 existing platted lots in the Tri-Area in addition to the adequacy of the land capacity analysis as reasons why
31 the County may establish a non-municipal UGA there but it did not approve the UGA boundaries:

32 For all the reasons we have stated above, we find that the County under these special
circumstances, can establish a non-municipal UGA in the Tri-Area. However, the final
designation of the UGA and its boundary will have to await the completion of the other steps
required that we will discuss later in this decision.

Final Decision and Order, August 22, 2003, at 15.

1 Commissioners. Hearing on the Merits, April 18, 2005. The Petitioners cannot revisit the
2 adequacy of the land capacity analysis under these circumstances.

3
4 We also agree with the County that the decision to allow mixed residential and commercial
5 development in the Visitor Oriented Commercial land use designation complies with the
6 GMA. This designation is defined in the comprehensive plan to include residential
7 development, so there is no lack of specificity in the plan itself. There is no prohibition in the
8 GMA against mixed development. Further, the total amount of area in this designation is
9 only 14 acres, of which only 7 acres are vacant and usable for any kind of development.
10 Exhibit 13-37, Table 2-1, at 2-10.

11
12
13 However, there must be a connection between the land capacity analysis and the amount of
14 land designated for a given use. That is part of the requirement to “include population
15 densities, building intensities, and estimates of future population growth” in the land use
16 element of a comprehensive plan. RCW 36.70A.070(1). See the Procedural Criteria for
17 Adopting Comprehensive Plans and Development Regulations on this concept found in
18 WAC 365-195-305. Where the County has established a need for commercial land, its
19 designation of commercial lands must correlate to that need. Petitioners argue that UGA-P
20 1.6 allows Urban Residential zoning to be designated Urban Commercial without a showing
21 of need to designate more land as commercial. ICAN’s Opening Brief at 11.
22
23

24
25 UGA-P 1.6 provides:

26 The Irondale and Port Hadlock UGA has a limited amount of undeveloped
27 commercial parcels suitable for attracting and accommodating regional
28 commercial development. To enhance the potential for commercial
29 redevelopment opportunities in the UGA, parcels currently utilized for and
30 designated as Urban Residential on the UGA Zoning Map (Figure 2-1) may be
31 designated Urban Commercial on the UGA Future Land Use Map (Figure 2-1),
32 provided that those parcels meet all of the following criteria:

- 1) are immediately adjacent to an existing designated Urban Commercial zone; and

1 2) have direct frontage on or access to a state arterial roadway;

2 The UGA Future Land Use Map may designate such parcels for Urban
3 Commercial use indicating the long-term (i.e., 20-year planning horizon) desire
4 for that type of development while recognizing the proper current utilization of
5 such parcels for residential use. This policy shall not be interpreted to require
6 a property owner with such a Zoning Map/Future Land Use Map combination
7 designation to re-zone their property to the same designation as shown on the
8 Future Land Use Map. Where such designations may occur for a particular
9 parcel on the Official Maps of the County, as described herein, the Official
10 Maps and implementing regulations shall be interpreted to be consistent with
11 the Comprehensive Plan pursuant to RCW 36.70A.040.

12 Exhibit 13-37 at 2-23.

13 In discussing the comprehensive plan land use map and zoning designations, the
14 comprehensive plan notes that almost a quarter of the land is designated for commercial
15 use. Exhibit 13-37 at 2-10. Of the total 1,057 net acres of land in the Irondale and Port
16 Hadlock UGA, 233 acres are actually designated as either Urban Commercial or Visitor-
17 Oriented Commercial. See Table 2-1. However, UGA-P 1.6 adds an additional unspecified
18 amount of acreage to this amount. There is no estimate of how much acreage of the Urban
19 Residential land use designation could be designated as Urban Commercial at the owners'
20 option under UGA-P 1.6. There is therefore no link between a need for such commercial
21 lands and this re-designation option. In addition, without an assumption for the acreage to
22 be re-designated under this policy, it has not been analyzed for potential impacts – either on
23 services or on environment. Thus, this policy is not tied to need, nor is it assessed for
24 potential urban service impacts.

25
26 UGA-P 1.7 provides that amendments to the UGA Future Land Use Map are subject to the
27 comprehensive plan amendment process but that changes to the UGA Zoning Map are
28 subject to the development regulation amendment process for the UDC. Exhibit 13-37 at 2-
29 23. This means that a re-designation of urban residential land as urban commercial land
30 would follow the procedures for a comprehensive plan amendment. However, since the
31 comprehensive plan language already allows such a designation change without a showing
32

1 of need or impact, the only issue would be whether the land subject to the designation
2 change meets the location criteria of UGA-P 1.7. Thus, the failure of the comprehensive
3 plan to link the potential commercial lands to the land use capacity analysis or the urban
4 service analyses is ripe now. The open-ended policy for cross-designation of urban
5 residential lands as commercial lands in UGA-P 1.6 without analysis or even full
6 identification of the lands to which this provision applies fails to comply with RCW
7 36.70A.070(1) as well as the requirement to size UGA commercial and residential areas in
8 the UGA to meet projected needs:
9

10 Based upon the growth management population projection made for the
11 county by the office of financial management, the county and each city within
12 the county shall include areas and densities sufficient to permit the urban
13 growth that is projected to occur in the county or city for the succeeding
14 twenty-year period, except for those urban growth areas contained totally
15 within a national historical reserve.

16 RCW 36.70A.110(2).

17 It also creates an inconsistency in the comprehensive plan itself in violation of RCW
18 36.70A.070 and between the development regulations and the plan in violation of RCW
19 36.70A.130(1)(b).

20
21 *Conclusion B.3:* The adequacy of the County's land use analysis (the Trottier Report) was
22 found compliant in the Board's Final Decision and Order and cannot be revisited here.
23 Allowing mixed residential and commercial uses in the Visitor-Oriented Commercial land
24 use designation complies with the GMA. However, UGA-P 1.6 allows for the change in
25 designation of an unspecified amount of residential land to a commercial land use
26 designation without analysis of either need or impacts. Therefore, UGA-P 1.6 fails to
27 comply with RCW 36.70A.070(1), RCW 36.70A.110(2) and RCW 36.70A.130(1)(b).
28
29

30 4. Building Intensities in the Development Regulations

31 Petitioners argue that the building heights and lot coverages that are allowed in the
32 implementing development regulations are greater than those assumed in the Trottier

1 Report and therefore the land capacity analysis for commercial lands should be revisited.
2 ICAN's Opening Brief at 25-26. The County responds that the Trottier Report was found
3 compliant and that the County anticipates a demand for 70 acres of new commercial land in
4 the new UGA during the next 20 years. Respondent's Prehearing Brief at 27.

5
6
7 As we noted earlier, the County's land use capacity analysis was found compliant in the
8 Final Decision and Order in this case. The County now allows greater building intensities
9 and lot coverages in the development regulations than were part of the assumptions of that
10 analysis, but that does not provide a basis for re-opening the analysis. A decision to allow
11 greater commercial density in the UGA is not equivalent to a change in assumptions.
12 Further, this issue is one that Petitioners have never raised to the Board of County
13 Commissioners. Even if Petitioners have standing to raise it now (RCW 36.70A.280(4)), we
14 find that they have not met their burden of showing that Respondent County has changed
15 its land use capacity analysis by adopting these development regulations.
16

17
18 *Conclusion B.4:* The County has not re-opened the adequacy of the land use capacity
19 analysis for this UGA by adopting development regulations that allow for increased building
20 heights and lot coverages.
21

22
23 **C. Inconsistencies alleged between the new comprehensive plan amendments
24 and development regulations and other County planning policies and
25 regulations**

26 **Issue No. 9:** Did the County use a proper 20-year horizon for UGA planning
27 consistently throughout the adopted Comprehensive Plan, development regulations,
28 and capital facility planning and fiscal analysis in the unincorporated subject UGA
29 that is also consistent with RCW 36.70A.020(6), and .130(1)(b) regarding: .070
(preamble), .100, .110(2), .115, and .210?

30 **Issue No. 15:** Are the amendments to the Comprehensive Plan internally consistent,
31 as required by RCW 36.70A.130(1)(b), regarding RCW 36.70A.070(1)?
32

1 Disagreement over “the” correct 20-year planning horizon separates the parties. The
2 subject ordinance adoption and plan update (amendment of the 1998 comprehensive plan)
3 occurred in August of 2004. Plan updates are scheduled in seven-year increments.
4 Repeated references in the County plan update designate 2004 to 2024. Certainly, given
5 the appeal period for plan updates, the plan could not formally take effect until the end of
6 October 2004. However, the adoption date of the ordinance and plan update reflects the
7 preparations and planning in anticipation of a 2004 adoption and formal commencement of
8 a 20-year planning period.
9

10
11 Petitioner asserts there are references in elements, studies, and projections in the plan that
12 reference years other than 2004 to 2024. ICAN’s Opening Brief. Petitioner notes at page
13 14 of the Opening Brief that this is inconsistent with the 20-year planning period of 2004 to
14 2024 used elsewhere in the plan. ICAN further states all of the UGA analysis should use
15 the same 20-year planning period to be internally consistent, as required by RCW
16 36.70A.070 (preamble).
17

18
19 Petitioner details in pages 20, 21, and 22 of ICAN’s Opening Brief ten places in the
20 comprehensive plan update where mapping errors, typographical errors, lack of detail in
21 tables, a problematic footnote, and absent information pertinent to a plan update exist. This
22 constitutes internal inconsistencies in the comprehensive plan, in the view of Petitioners,
23 and is a violation of RCW 36.70A.070 (preamble) and RCW 36.70A.130(1)(b).
24

25
26 Jefferson County in its Prehearing Brief takes umbrage at the sundry errors in maps, tables,
27 sentence structure and spelling, and missing bits of information pointed out by Petitioners
28 calling them small quibbles over the plan and development regulations adopted by
29 Ordinance 10-0823-04. Respondent County further argues that ICAN’s Opening Brief
30 resembles not so much a genuine challenge to the County’s compliance with the goals of
31 the GMA, but more of a mark-up of a grammar exam, with marks highlighting typos,
32

1 misspellings, and omissions, but without substantial challenge to the content. The County
2 does not contend that such alleged errors have no significance; however, it questions
3 whether such minutia belongs within a Petition for Review seeking a determination that an
4 ordinance is not compliant with the goals of the GMA. Ibid at p.2
5

6
7 *Conclusion C:* The challenged internal inconsistencies in reference to the 20-year planning
8 horizon are minor and can be cured by Respondent County through clarifications and
9 careful editing of the adopted comprehensive plan and development regulations. As we
10 said earlier, the County has offered to correct such errors and we agree that the County
11 should have the opportunity to correct its minor errors. Since this is being returned for
12 compliance, the Board reserves any non-compliance finding on minor errors such as this
13 until the County has had an opportunity to make its own corrections. We expect that the
14 County will show us its corrections at the next compliance briefing. If the County does not
15 make the corrections of identified minor errors, Petitioners may raise them at the next
16 compliance hearing.
17

18
19 The planning horizon of 2004 to 2024 is the dominant reference in the 2004 comprehensive
20 plan update and should control all features and elements of that plan.
21

22
23 **D. Miscellaneous challenges to the procedures incorporated within the**
24 **new amendment and development regulations**

25 Issue No. 12: Has the County adequately provided for transformance of governance
26 in the provision of adequate urban water supply in the unincorporated subject UGA,
27 consistent with RCW 36.70A.110(4)?

28 Issue No. 1: Does the processing and adoption of the ordinance comply with RCW
29 36.70A.020(11), .035, .040. and .070 (preamble), .130 (1)(b), .140, and .210?
30
31
32

1 Respondent County's adopted comprehensive plan (Exhibit 13-37, pages 2-15 and 2-16)
2 details the plan to secure potable water for the subject UGA from PUD #1 of Jefferson
3 County.

4
5 Respondent County states in Finding of Fact 34 of Ordinance 10-0823-04:

6
7 The water supply for the UGA will be provided by the Public Utility District #1
8 of Jefferson County (PUD). The PUD is a water purveyor regulated under
9 regulations of the federal Environmental Protection Agency and state
10 Department of Health (DOH). Part of these requirements includes a
11 development of a Comprehensive Water System (WSP) every 6 years. The
12 WSP must address water supply and infrastructure needed within the next 20
13 years. The PUD has recently (February 2004) completed a draft update to
14 their WSP and submitted the WSP to DOH for review and approval. As part of
15 the review and approval process and according to DOH procedures, water
16 rights and capacity must be available or planned to meet future demands for
17 the PUD's service area.

18
19 In Findings of Fact 35 and 36, planning for the amount of growth and water rights are
20 addressed. The PUD has planned for the amount of water needed to serve anticipated
21 growth. With the water rights, available source development will be needed to meet future
22 demands. Finding of Fact 37 notes the current effort to increase the production of Sparling
23 Well by 300 gallons per minute. At Finding of Fact 38 the County finds the PUD has
24 recently constructed a two-million gallon water tank and a 280,000 gallon water tank for
25 storage to provide water for fire-fighting and reduce the need for short-term demand on
26 wells.

27
28 Petitioners, however, point to the last sentence of Exhibit 13-37, Potable Water section at
29 page 2-16, noting the County adopts by reference and incorporates into the comprehensive
30 plan the PUD's WSP, as may be amended. ICAN challenges this statement as a violation
31 of public participation requirements of the GMA and of the County's own comprehensive
32 plan because future water plans will be able to amend the comprehensive plan without any
opportunity for public comment.

1
2 *Conclusion D:* The provision that makes an amendment of the PUD water plan an
3 automatic amendment of the County's comprehensive plan does not comply with RCW
4 36.70A.130(2) and RCW 36.70A.140. While the County's incorporation of the PUD water
5 plan into its comprehensive plan as the source of the water supply and service to the UGA
6 is proper, it may not also provide that future amendments to the PUD's utility plans are
7 simply incorporated into the County's comprehensive plan without the opportunity for public
8 review and comment during the County's Comprehensive Plan amendment process.
9

10
11 **E. Invalidity**

12 Issue No. 16: If any portion of the Ordinance is found not to comply with the Act in
13 the issues presented above should these Ordinance sections be found invalid under
14 terms of RCW 36.70A.302 for substantial interference with the fulfillment of Goals 1,
15 2, 5, 6, 9, 10, 11, and/or 12?

16 Petitioners also request that the Board find that any non-compliant sections of the
17 challenged ordinance be also found to substantially interfere with the goals of the GMA.
18 Pursuant to RCW 36.70A.302, if the Board makes a finding of noncompliance, the Board
19 may also find that the continued validity of part of a plan or regulation would substantially
20 interfere with the fulfillment of the goals of the GMA. RCW 36.70A.302(1)(b). The effect of
21 an invalidity finding is that any development permit application not vested before receipt of
22 the Board's order by the County, "vests to the local ordinance or resolution that is
23 determined by the board not to substantially interfere with the fulfillment of the goals of this
24 chapter." RCW 36.70A.302(3)(a).
25
26

27
28 We have held that a test for imposition of invalidity is whether the continued validity of the
29 challenged and non-compliant enactment would interfere with proper planning in the future.
30 *Vinatieri v. Lewis County*, WWGMHB Case No. 03-2-0020c (Compliance Order – 2005,
31 January 7, 2005). In this case, the non-compliant comprehensive plan provisions and
32 development regulations allowing urban levels of development without requiring urban

1 levels of sewer service pose the danger that such development might vest in the new UGA
2 before the County is able to adopt compliant development regulations. Such vested
3 development would interfere with the County's ability to plan for adequate public sewer
4 service to the new urban growth area, thus interfering with UGA goals for urban growth with
5 adequate public facilities and services (Goal 1) and adequate public facilities and services
6 to support development at the time the development is available for occupancy (Goal 12).
7 Further, the provisions that allow commercial development in the "sewered" area do not
8 assure that sewer will ever be provided but allow commercial development to occur on
9 "interim septic" indefinitely. Therefore the commercial density that is allowed in that area
10 may occur at the maximum densities that may be supported by septic systems, which are
11 neither urban nor rural.(Goal 2)
12

13
14
15 *Conclusion E:* Therefore, we find that the continued validity of the comprehensive plan
16 provisions that designate "optional sewer areas" and "unsewered areas" in the new Irondale
17 and Port Hadlock UGA, and the development regulations that permit such urban
18 development without sewer in the new UGA, substantially interfere with the fulfillment of
19 Goals 1 and 12 of the GMA.
20

21 **VII. FINDINGS OF FACT**

- 22 1. Jefferson County is a county located west of the crest of the Cascade Mountains that
23 has chosen to or is required to plan under RCW 36.70A.040.
- 24 2. Petitioner Irondale Community Action Neighbors (ICAN) is an organization that,
25 through its members and representatives, participated in writing or through oral
26 comments in the process of adoption of Jefferson County Ordinance No. 10-0823-04
27 by the County. Petitioner Nancy Dorgan is an individual who also participated in
28 writing and/or oral comments in the County process
- 29 3. Petitioner ICAN was the petitioner in WWGMHB Case No. 03-2-0010 which is now
30 before this Board on compliance.
31
32

- 1 4. Jefferson County adopted Ordinance No. 10-0823-04 in response to the Board's
2 finding of non-compliance in the Final Decision and Order dated August 22, 2003, in
3 WWGMHB Case No. 03-2-0010. Ordinance No. 10-0823-04 was adopted by the
4 Board of County Commissioners on August 23, 2004, and published on August 25,
5 2004.
- 6
- 7 5. Petitioners timely filed their Petition for Review of Ordinance No. 10-0823-04 on
8 October 25, 2004.
- 9 6. At the first Hearing on the Merits, the County represented that it planned to phase
10 sewer service during the 20-year planning horizon, throughout the new UGA.
- 11 7. It was also an express understanding that the County would not allow urban levels of
12 development in the new UGA until sewer and other urban services could be provided.
- 13 8. The County has changed its strategy with respect to its non-municipal UGA and now
14 has decided to establish non-municipal UGA boundaries that include areas for which
15 no public sewer is to be provided in the 20-year planning horizon.
- 16
- 17 9. The County has adopted comprehensive plan amendments for the Irondale and Port
18 Hadlock UGA that allow urban development with three different levels of sewer
19 service: sewer service to areas of high density residential and commercial or
20 industrial zones; optional sanitary sewer service to areas which are adjacent to sewer
21 service areas; and unsewered areas.
- 22
- 23 10. This scheme allows urban levels of development without corresponding urban levels
24 of sewer service.
- 25 11. The Irondale and Port Hadlock UGA lack public sewer service today.
- 26 12. Since it is not associated with any city, the new UGA would have to be served
27 through the County.
- 28 13. The County has no existing capacity to serve any part of the new UGA with sewer,
29 although it has been researching the options very carefully.
- 30 14. The capital facilities section of the Urban Growth Element has a generalized capital
31 facilities plan that has cost estimates, but no choices about what specific sources of
32

1 funds will be used or the distribution of costs among the County's general fund, loans
2 and grants, and user fees.

3 15. The General Sewer Plan incorporated in the comprehensive plan contains a forecast
4 of future needs for capital facilities and the proposed general locations for future
5 conveyance facilities, but not their capacities.

6 16. While the plan designates a preferred alternative from four alternatives for sewage
7 treatment and identifies those locations, no decision has been made on the
8 alternative so no definite location for sewage treatment is contained in the General
9 Sewer Plan.

10 17. While the General Sewer Plan discusses outside funding sources generally, makes
11 some assumptions about how much of the facilities certain sources could fund, and
12 presents various alternatives for distributing the costs among the users of the
13 proposed system, the County has not selected a method for financing the sewer
14 system.

15 18. The amendments to the Capital Facilities Element do not give the necessary
16 assurance that sewers will actually be provided to the new UGA during the 20-year
17 planning horizon.

18 19. The County's Uniform Development Code (UDC) requires that development within
19 the sewer service area must connect to the sewer when it is available, with the
20 caveat that interim on-site septic systems will be not be prohibited in this UGA,
21 unless there is a sewer system which has capacity to accommodate the proposed
22 development.

23 20. The UDC amendments also permit urban development in the optional sewer area
24 and the unsewered area of the new UGA.

25 21. CWPP 2.1 provides that UGAs will have a full range of urban services over 20 years
26 and lists sewer service as one of these services.
27
28
29
30
31
32

- 1 22. CWPP 1.5 delineates two tiers of sewer service to the new UGA, the first tier
2 receiving sewer service within the six-year capital facilities plan and the second tier
3 within 20 years.
- 4 23. The County's capital facilities plan and the County's UGA Element do not show plans
5 to serve the northern residential part of the UGA with sewers over the next 20 years.
6
- 7 24. The County clearly lays out its assumptions for its traffic projections in its
8 Transportation Element. Exhibit 13-35 at 2-6 - 2-9.
- 9 25. The County has included a clear rationale for why its assumptions about the
10 intensities allowed in its development regulations will not likely occur.
- 11 26. The County has acknowledged that a mathematical error was made in making the
12 projections and that it has been corrected The County has offered to correct such
13 errors and we agree that the County should have the opportunity to correct its minor
14 errors. Since this is being returned for compliance, the Board reserves any non-
15 compliance finding on minor errors such as this until the County has had an
16 opportunity to make its own corrections.
- 17
- 18 27. TRP 4.10 is a comprehensive plan policy, rather than a development regulation.
- 19 28. Policy 1.10 does not contain a concurrency requirement that links transportation
20 improvements and development approval to maintaining the County's level of service
21 standards.
22
- 23 29. The density allowed in the Urban Low Density Residential within the new non-
24 municipal UGA is 3.5 dwelling units per acre.
- 25 30. Lesser densities in the Urban Low Density Residential zone help protect the critical
26 aquifer recharge area that serves the Irondale and Port Hadlock UGA, the
27 Chimacum Creek Corridor and its associated wetlands, and the marine shoreline at
28 the mouth of Chimacum Creek.
- 29
- 30 31. The new 20-year population growth allocation for the Irondale and Port Hadlock UGA
31 adopted by Jefferson County in 2003 was 2,353 persons. Exhibit 13-37 at 2-8.
32 Adding the adopted population growth allocation to the existing population of 2,553

- 1 persons, the County projected a total of 4,906 persons in the Irondale and Port
2 Hadlock UGA. Ibid. The County then added a 25 percent market factor to that
3 population range to create a new population range of 4,906 to 6,133 persons. Ibid.
4 32. The market factor may be applied to the calculation of available land to
5 accommodate growth but may not be used to change the projected population
6 provided by the Office of Financial Management (OFM).
7
8 33. The Board found the County's land capacity analysis compliant in its Final Decision
9 and Order, dated August 22, 2003.
10 34. The land use designation of Visitor Oriented Commercial to allow mixed residential
11 and commercial development is defined in the comprehensive plan.
12 35. Of the total 1,057 net acres of land in the Irondale and Port Hadlock UGA, 233 acres
13 are actually designated as either Urban Commercial or Visitor-Oriented Commercial.
14 See Table 2-1.
15
16 36. UGA-P 1.6 allows for cross-designation of urban residential lands as commercial
17 lands.
18 37. There is no estimate of how much acreage of the Urban Residential land use
19 designation could be designated as Urban Commercial at the owners' option under
20 UGA-P 1.6. There is therefore no link between a need for such commercial lands
21 and this cross designation option.
22
23 38. In addition, without an assumption for the acreage to be re-designated under this
24 policy, it has not been analyzed for potential impacts – either on services or on
25 environment.
26 39. The County's development regulations for the new UGA allow greater building
27 intensities and lot coverages in the development regulations than were part of the
28 assumptions of the original land capacity analysis.
29
30 40. A decision to allow greater commercial density in the UGA is not equivalent to a
31 change in assumptions.
32

1 41. Jefferson County Public Utility District #1 (PDU) is a regulated water purveyor that
2 provides potable water to the Irondale and Port Hadlock UGA. Ordinance No. 10-
3 0823-04 provides that future amendments to the PUD plan will automatically amend
4 the County's CP without providing an opportunity for public participation and
5 comment.
6

7 8 **FINDINGS OF FACT RELATED TO INVALIDITY**

9
10 42. The non-compliant comprehensive plan provisions and development regulations
11 allowing urban levels of development without requiring urban levels of sewer service
12 pose the danger that such development might vest in the new UGA before the
13 County is able to adopt compliant development regulations.

14 43. Such vested development would interfere with the County's ability to plan for
15 adequate public sewer service to the new urban growth area.

16 44. The provisions that allow commercial development in the sewer area do not
17 guarantee that sewer will ever be provided and therefore the density that is allowed
18 in that area may occur at suburban densities rather than either urban or rural
19 densities.
20

21 22 **VIII. CONCLUSIONS OF LAW**

23 A. This Board has jurisdiction over the parties and subject matter of the compliance
24 issues related to the adoption of Jefferson County Ordinance 10 -0823-04
25 (WWGMHB Case No. 03-2-0010) and the issues raised in the new Petition for
26 Review in WWGMHB Case No. 04-2-0022.
27

28 B. The Petitioners have standing to bring their claims and raised them in a timely
29 manner.

30 C. The creation of the Irondale and Port Hadlock UGA boundaries in Ordinance 10-
31 0823- 04 to include large areas for which no public sewer will be provided in the 20
32 year planning horizon does not comply with RCW 36.70A.110.

- 1 D. The development regulations that allow new urban levels of development
2 without provision of public sanitary sewer fail to comply with RCW 36.70A.110,
3 RCW 36.70A.020(1) and (12).
4 E. The development regulations that allow commercial and industrial
5 development on interim septic tanks without a defined and adopted capital
6 facilities funding mechanism fail to comply with RCW 36.70A.110(4) and
7 36.70A.020(2).
8 F. The capital facilities plan of the County's UGA Element for the Irondale and
9 Port Hadlock UGA fails to comply with RCW 36.70A. 070 (3)(a)(c) and (d), and
10 RCW 36.70A.210 (inconsistency with the Countywide Planning Policies).
11 G. Policy TRP 1.10 of the Transportation Element of the County's comprehensive
12 plan does not comply with RCW 36.70A.070 (6) (b) since the County does not
13 have a regulation that links the County's requirements for transportation
14 improvements at the time of development to the County's level of service
15 standards.
16 H. The County's use of a market factor to increase the OFM population range on
17 which planning is based in the Irondale and Port Hadlock UGA does not
18 comply with RCW 36.70A. 110(2).
19 I. UGA Policy 1.6 fails to comply with RCW 36.70A. 110(2) and RCW 36.70A.
20 130(1)(b).
21 J. At the County's request, the Board will reserve a finding of noncompliance
22 regarding minor internal inconsistencies in the plan and regulations identified
23 in this decision until the next compliance hearing so that the County may have
24 ``an opportunity to correct these minor errors.
25 K. The incorporation of future amendments to the PUD's water supply plan into
26 the County's comprehensive plan without opportunity for review and comment
27 through the County's comprehensive plan amendment process does not
28 comply with the RCW 36. 70A. 130(2) and RCW 36.70A.140.
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1 L. All other challenges to the compliance of Ordinance 10-0932-04 with the GMA
2 fail to meet the clearly erroneous standard and the Ordinance is in compliance
3 as to those issues.
4

5 **IX. ORDER**

6 The County shall bring Ordinance No. 10-08230-04 into compliance with the Growth
7 Management Act in accordance with this decision within 180 days of the date of this order.
8 The following schedule shall apply:
9

10

11 Compliance due	December 1, 2005
12 County's Report of Actions Taken Due	December 14, 2005.
13 Written Objections to a Finding of 14 Compliance Due	January 4, 2006.
15 County's Response Brief Due	January 25, 2006
16 Compliance Hearing (location to be 17 determined)	January 12, 2006..

18

19 The remand period shall extend until the Board issues its order on compliance. The Board
20 understands that future sewer planning would be of unusual scope and complexity.
21 Therefore, the Board invites the County to propose an alternative schedule of more than
22 180 days to complete its sewer planning through a motion for reconsideration.
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1 This is a final order for purposes of appeal pursuant to RCW 36.70A.300(5) and for a motion
2 for reconsideration pursuant to WAC 242-02-832. A motion for reconsideration must be
3 filed within 10 days of service of this final decision.
4

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6 Entered this 31st day of May 2005.
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12 _____
Gayle Rothrock, Board Member

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Holly Gadbow, Board Member

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Margery Hite, Board Member
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