BEFORE THE WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

IRONDALE COMMUNITY ACTION NEIGHBORS and NANCY DORGAN, Petitioners, v. JEFFERSON COUNTY, Respondent.	CASE NO. 04-2-0022 **COMPLIANCE ORDER**
IRONDALE COMMUNITY ACTION NEIGHBORS, Petitioner, v. JEFFERSON COUNTY, Respondent.	CASE NO. 03-2-0010 **COMPLIANCE ORDER**

I. SYNOPSIS OF DECISION

This case arises from a prior order finding non-compliance on issues relating to Jefferson County's establishment of a non-municipal urban growth area (UGA) in the Irondale and Port Hadlock region. Final Decision and Order/Compliance Order, WWGMHB Case Nos. 04-2-0022 and 03-2-0010, May 31, 2005. The County does not request a compliance finding on the central task still facing it – the plan for provision of urban levels of service (especially sewer) for the UGA during the 20-year planning period of the comprehensive plan. On that score, the County has sought and been granted more time due to the "unusual scope and complexity" of the task. Order Granting Extension of Compliance Period for Sewer Planning and Financing and Setting Hearing for Consideration of Rescission of Invalidity Determinations, January 9, 2006.

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Because it is still working on its capital facilities plan, the County has not adopted major legislation in response to the Board's May 31, 2005, order. It did adopt an ordinance providing that Ch. 18.18 JCC (the development regulations applicable in the Irondale and Port Hadlock UGA) will not be effective until it is found compliant by this Board. (Ordinance 02-0126-06). However, we find that this ordinance (Ordinance 02-0126-06) did not achieve compliance since it did not adopt new development regulations or amend those in Ch. 18.18 JCC, but only provided that "rural standards" would be used until the urban development regulations are found compliant. "Rural standards" without the establishment of applicable regulations do not constitute development regulations; the actual development regulations adopted for the Irondale and Port Hadlock UGA remain unchanged and therefore non-compliant.

In addition, the County asks the Board to consider whether the 2004 Update of the Jefferson County Comprehensive Plan cured any non-compliance issues found in the May 31, 2005, decision. While it is unusual for the Board to consider legislation adopted *prior* to issuance of the Board's decision as achieving compliance on matters addressed in the Board's decision, we do so in this case because neither side raised the 2004 Update in the prior hearing and it has never been appealed.

In this Order the Growth Board finds that the 2004 Update did not address the non-compliance findings in Conclusions of Law C, E, F, G, and H, Final Decision and Order/Compliance Order, WWGMHB Case Nos. 04-2-0022 and 03-2-0010, May 31, 2005. Therefore, those remain non-compliant. However, the 2004 Update did address some of the internal inconsistencies alleged by Petitioners. The Board did not enter a finding of non-compliance on those allegations because the County expressed a desire to address them before non-compliance was found. Conclusion of Law J, Final Decision and Order, May 31, 2005. Since Petitioners have raised their challenge to internal inconsistencies and requested a non-compliance finding on each, the Board has reviewed the challenges in this

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decision. The Board finds that the Petitioners have not met their burden of proof that items 2-12 of ICAN's alleged inconsistencies cause the comprehensive plan to fail to meet the internal consistency requirements of RCW 36.70A.070. As to the first alleged inconsistency, the Board finds that the planning period is not consistently described as 2004-2024 throughout the comprehensive plan; and finds that this causes the comprehensive plan to fail the internal consistency requirements of RCW 36.70A.070 and RCW 36.70A.130(1)(b).

Since there is further remediation work to be accomplished and the County plans to adopt a comprehensive plan amendment in 2006, the Board determines that a mid-point progress report and a later Statement of Actions Taken will be required. These will lead to a clearer view and evaluation of the County's progress toward compliance with the GMA.

Integrating pertinent elements of the comprehensive plan, development regulations, and capital facilities plans affecting the anticipated Irondale and Port Hadlock UGA is of unusual scope and complexity. The Board here determines Jefferson County has not achieved full compliance on the issues upon which non-compliance was found in the May 31, 2005, decision and that the compliance period shall be extended to January 25, 2007; the same date compliance is due on sewer planning and financing for the proposed non-municipal UGA.

II. BURDEN OF PROOF

Ordinances and Resolutions adopted by a local government in response to a Board finding of non-compliance are presumed valid. RCW 36.70A.320. The burden is on Petitioners to demonstrate the legislative actions taken by Jefferson County do not bring the County into compliance with the requirements of the Growth Management Act. RCW 36.70A.320(2).

Pursuant to RCW 36.70A.320(3), the Growth Board shall find compliance unless it determines that the legislative action(s) taken by Jefferson County are clearly erroneous in

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view of the entire record before the Board and in light of the goals and requirements of the GMA. In order to find the County's compliance actions clearly erroneous, the Board must be "left with the firm and definite conviction that a mistake has been made." *Department of Ecology v. PUD 1*, 121 Wn.2d 19, 201 (1993).

III. RECENT PROCEDURAL HISTORY

Jefferson County first notified the Board of its interest in an extended compliance period on December 14, 2005, when it filed its Statement of Actions Taken and Request for Extension to Achieve Compliance. Formalizing its request for a compliance period extension and a lifting of invalidity on January 5, 2006, Jefferson County filed a Clarified Motion to Rescind Invalidity and Request for Extension to Achieve Compliance.

Petitioners requested an opportunity to respond to this motion and formally respond at a hearing. Based on a review of the County's compliance report, and a series of submissions from both parties, the Board on January 6, 2006, extended the compliance period to January 25, 2007, solely for sewer planning and financing completion and set a hearing to consider the County's motion to rescind the imposition of invalidity. In that order the Board found the task of fully planning for sewer service for the Irondale and Port Hadlock UGA is of "unusual scope and complexity," noting the Board referred to this fact in its 2005 orders and suggesting then that more than 180 days would be needed to accomplish this work. Order Granting Extension of Compliance Period for Sewer Planning and Financing and Setting Hearing for Consideration of Rescission of Invalidity Determinations.

A Motion for Determination of Partial Compliance was filed with the Board by Jefferson County on January 12, 2006, asking that this motion also be argued at the scheduled compliance hearing in Tumwater on February 7, 2006.

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The County submitted three (3) additions to the Index of Record on January 27, 2006. ICAN submitted numerous additions to the Index of the Record. The Board's March 8, 2006, Order details these submissions and the Board's ruling on them.

Petitioners disputed whether the County has achieved partial compliance as claimed in a series of filings. On January 4, the Board also received ICAN's Objections. On January 11, 2006, ICAN brought to the Board a Motion for Consolidation of Cases and a Request for Reconsideration of January 9, 2006 Order. On January 12, 2006, Petitioner ICAN filed two documents with the Board: ICAN's Response Regarding Ongoing Invalidity and Compliance and ICAN's Motion for Additional Finding of Non-Compliance and Invalidity. ICAN's Motion for Additional Findings of Non-Compliance and Invalidity.

At the February 7, 2006, hearing, both Jefferson County and Petitioners ICAN presented argument on standards and practices for determining partial compliance and for rescinding invalidity. On March 8, 2006, the Board issued its Order Denying Motion to Rescind Invalidity and Motion to Impose Additional Invalidity Determination wherein invalidity was not rescinded nor extended to other features of Jefferson County's comprehensive plan, development regulations, and designation maps. As well, this Order amended the terms and schedule of the compliance extension order of January 9, 2006, particularly imposing a requirement on the County to file with the Growth Board a status report on sewer planning and financing on July 25, 2006. Any determination of partial compliance on other items and actions found non-compliant in the Growth Board's orders of May 31, 2005, and July 29, 2005, awaited a subsequent order of the Board. This is that subsequent order.

IV. DISCUSSION

The County seeks a finding of compliance on eight findings of non-compliance entered by this Board in its May 31, 2005, Final Decision and Order/ Compliance Order and

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Order Granting Reconsideration, July 29, 2005. Conclusions of Law C, D, E, F, G, H, I, and J.[1]

Petitioners oppose a finding of compliance on Conclusions of Law C (urban growth area boundary non-compliance); the development regulations applicable in the Irondale and Port Hadlock UGA (Conclusions of Law D, E); Conclusion of Law H (market factor); Conclusion of Law G (transportation concurrency); Conclusion of Law I (UGA Policy 1.6 - allowing residential property to be re-zoned as commercial without tying the designation change to need or analyzing impacts); and Conclusion of Law F (capital facilities plan). ICAN's Objections at 7–11. Petitioners also seek findings of non-compliance on a number of alleged internal inconsistencies in the comprehensive plan (Conclusion of Law J). Previously, the Board had declined to enter a finding on those allegations since the County asked for time to make minor corrections without a non-compliance finding.

A. Conclusion of Law D

Issue D: Do the development regulations applicable in the proposed UGA allow new urban levels of development without provision of public sanitary sewer in violation of RCW 36.70A.110, 36.70A.020(1) and (12)?

Positions of the Parties

In objecting to the adequacy of Jefferson County's ordinance suspending the effectiveness of Ch. 18.18 JCC with a disclaimer in the ordinance and disclaimers authorized to be printed on future land use and zoning maps, Petitioners rely on a January 23, 2006, letter from Nancy Dorgan to the Board of County Commissioners (BOCC). In that letter, Ms. Dorgan commented on their proposed adoption. Re-adoption of Chapter 18.18*: Irondale and Port Hadlock UGA Development Regulation Implementation* with a 'Disclaimer'. (Letter Ex.

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[1] Conclusions of Law M, N, and O are determinations of invalidity.

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1070). Petitioners assert that the County will still not accomplish an effective reversion of UGA urban development regulations to their 2003 status nor clarify the zoning map with the ordinance. Petitioners reference the BOCC agenda notice of a re-adoption ordinance (Ex. 12-219) and the measure passed on January 26, 2006, as Ordinance 02-0126006. (Ex. 13-106).

Claims are stated in the letter from Petitioner Dorgan that there is no certainty a January 2006 BOCC legislative action would actually replace UGA urban regulations "in the (Unified Development) code and govern any aspect of the UGA or can be relied upon by an applicant for any regulatory guidance or for any site-specific rezone." *Ibid.* p.1. Also claimed is lack of clarity on the status of the zoning map. Petitioners question whether a re-adoption ordinance is in line with public participation requirements of the GMA. Further, the existence of sign restrictions and their implementation --- and other restrictions not related to a particular zone in Chapter 18.18----is questioned. (Exhibit 1070 at 1). Petitioners question whether a decision of the WWGMHB <u>or</u> a follow-on decision of the Board of County Commissioners will trigger newly-effective UGA development regulations. *Ibid*. at 1. Petitioners state the County gives mixed and opposing signals about allowed uses and real development regulations in the UGA, noting that prohibition of further mini-storage facilities and upcoming changes to sign code provisions appear to be based on invalid regulations. *Ibid*. at 2.

Respondent County in its Response to Petitioners' Late Additions to the Record filed on February 10, 2006, particularly defends the County's Land Use Designations Map dated June 2005 which returned the land use designations map to December 2003 Comp Plan levels, reflecting Rural Residential zones of 1:20 and 1:10 in the proposed UGA, including a disclaimer statement that rural standards were returned to 2003 in accordance with the WWGMHB's Final Decision and Orders of May 31 and July 28 of 2005. The County states "in short, there is no confusion regarding the applicable densities applied to Jefferson

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County within the boundaries of the proposed UGA, for anyone who wishes to inquire thereto." *Ibid.* at 2.

Jefferson County also argued at the Board's February 7, 2006, hearing that Ex. 17-111, the disclaimer regarding the effectiveness of the readopted Chapter 18.18 JCC not occurring until the WWGMHB finds compliance was, in fact, insurance that any new Board orders on compliance are determinative. Additionally, the County stated there are further consultations with State agency experts and three public hearings planned before the BOCC will formally adopt detailed new plans and maps.

Jefferson County offers the plain language of the ordinance (10-0126-06 - Ex. 13-106) as proof of its intent to revise Chapter 18.18 JCC to rationalize all the Unified Development Code Amendments of the past three years, make certain the challenged Irondale and Port Hadlock UGA Development Regulations implementation is repealed and replaced with a rural standards version (Section 2), and that both a savings clause (Section 3) and a severability clause (Section 4) were enacted.

Board Discussion

At the time the County submitted its Statement of Actions Taken, the action taken by the Board of County Commissioners with respect to development regulations applicable in the proposed UGA was limited to a motion passed on June 6, 2005, to “reinstate the rural standards in the Tri Area Urban Growth Area.” Exhibit 12-210. This motion, while an expression of the County’s good faith in attempting to comply with the Board’s order, did not have the legal effect of either modifying the existing development regulations or of adopting new development regulations; thus it did not bring those development regulations into compliance.

Later, on January 26, 2006, the Board of County Commissioners did adopt a new legislative enactment - Ordinance 02-0126-06. This ordinance provides:

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> Section 2. The current version of Jefferson County Code Title 18.18 entitled "Irondale Port Hadlock UGA Development Regulation Implementation" is hereby repealed and replaced in its entirety with the attached version of Title 18.18, also known as Attachment "C" hereto.

Ordinance 02-0126-06, Section 2.

It adopted the following disclaimer, placed at the top of Chapter 18.18 of the Jefferson County Code:

> The County Commissioners, through adoption of Ordinance #xx-xxxx-06, hereby put the reader on notice that Chapter 18.18 of the Jefferson County Code, listed in its entirety below, is null and void and has no force and effect and shall not regulate, control or be applicable to any development, permitting process or other land use action that will occur or is proposed to occur within the boundaries of the Irondale and Port Hadlock Urban Growth Area until such time as the Western Washington Growth Management Hearings Board ("WWGMHB") states in writing that these development regulations are compliant with Ch. 36.70A RCW, commonly known as the Growth Management Act or "GMA." Until such time as there is a final adjudication by the WWGMHB or any other court of competent jurisdiction which finds Ch. 18.18 JCC to be compliant with the GMA, rural standards shall control and regulate the development of, permitting process for or other land use decisions for proposals that would occur, if approved or allowed, upon real property within the boundaries of the Irondale and Port Hadlock Urban Growth Area.

At the hearing on the requests to rescind invalidity, Petitioners argued persuasively that the question of which rural standards apply within the Irondale and Port Hadlock UGA continues to be unclear. On that basis, and under the burden of proof that requires the County to show that substantial interference has been removed, the Board denied the motion to lift invalidity at that time. Order Denying Motion to Rescind Invalidity and Motion to Impose Additional Invalidity Determination, March 8, 2006.

While the County has clearly addressed Issue D with the adoption of Ordinance 02-0126-06, it has done so conditionally. That is, the County has not adopted new development

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regulations but it has essentially suspended the effectiveness of the urban development regulations applicable in the Irondale and Port Hadlock UGA, until Ch. 18.18 JCC has been found compliant by this Board. This was an appropriate measure to be taken to ensure that inconsistent development does not occur while the County is working on compliance. It is also a significant factor in the Board's decision to grant the County additional time to achieve compliance. However, since the development regulations found non-compliant in 2005 have been neither repealed nor amended, they remain non-compliant.[2]

Conclusion: While new urban levels of development without provision of public sanitary sewer (Issue D) are not allowed under the provisions of Ordinance 02-0126-06, the development regulations that are in fact applicable to the subject UGA (Ch. 18.18 JCC) are unchanged and therefore remain non-compliant.

B. Threshold Question: Does the Board have the authority to find compliance based on the 2004 Update of the Comprehensive Plan (Ordinance 17-1213-04)?

Positions of the Parties

The County argues that it corrected the issues found in Conclusions of Law G, H, and J when it adopted its Update of its comprehensive plan and development regulations on December 13, 2004 (Ordinance 17-1213-04). Jefferson County's Statement of Actions Taken ("Statement") at 2. The County submitted a list of its efforts to achieve compliance as of December 2005 and requested additional time to finish its work, especially but not exclusively, with respect to sewer planning and financing. In this Statement the County, at pages 6 and 7, refers often to the Update, Ordinance 17-1213-04 (Ex. 17-110) -----calling it the CP-----as the *actual* location of current comprehensive plan text and maps which, "through oversight," were not referred to by either ICAN or the County in the critiques of plan

[2] In fact, under the terms of Ordinance 02-0126-06, it appears that were the Board to find the development regulations applicable in the Irondale and Port Hadlock UGA compliant, the prior non-compliant development regulations would become effective.

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elements and features during the pendency of these combined cases. *Statement* at 2. This assertion was repeated in oral argument at the February 7, 2006, hearing.

In its December 2005 submission to the Board, Jefferson County detailed its actions taken since the issuance of the May 31, 2005, and July 29, 2005, Growth Board orders including, principally, a legislative action (Ordinance) taken in December 2004:

(1) by action of the Board of County Commissioners in June 2005, the development regulations were returned to pre-UGA rural standards throughout the entire boundaries of the UGA; (see Conclusions of Law D and E in May 31, 2005, Order of the Board and Conclusion of Law N in the Order on Reconsideration of July 29, 2005);

(2) TRP 4.10 links development approval with maintenance of LOS (Level of Service) (Conclusion of Law G in May 31, 2005, Order of the Board);

(3) removal of the market factor calculation for population projections (see Conclusion of Law H in May 31, 2005, Order of the Board);

(4) correction of minor inconsistencies in the plan and regulations (see Conclusion of Law J in the May 31, 2005, Order of the Board). Jefferson County's Statement of Actions Taken and Request for Extension to Achieve Compliance (Statement) at 3-6.

Petitioners first point out that the County has taken no legislative action to achieve compliance since the Board's order of May 31, 2005. A request to find compliance based on legislation enacted prior to the findings of noncompliance, Petitioners argue, amounts to a motion for reconsideration. A motion for reconsideration was brought with respect to the May 31, 2005, order and reconsideration was granted. Order Granting Reconsideration, July 29, 2005. However, the County did not raise any of the arguments it raises in its compliance report at the motion for reconsideration. Therefore, Petitioners maintain, this compliance request cannot be granted. ICAN Objections at 11.

The County concedes it did not raise its claims of compliance based upon the adoption of the Update in December 2004 in the proceedings leading to the issuance of the May 31,

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2005, order in this case. Statement at 2. The County did append Exhibit 17-110, a copy of Ordinance 17-1213-04 and associated materials to its Statement. However, the County urges the Board to find that the changes adopted in the Update ordinance make the County's comprehensive plan and development regulations compliant. *Ibid.* [3]

Petitioners argue that the County is claiming that the Board erred in entering some findings of non-compliance in its May 31, 2005, order and its July 29, 2005, Order Granting Reconsideration, and that it is "incredible" that the County would raise as a defense an ordinance that was enacted a half year before the orders were entered. ICAN's Motion for Additional Finding of Non-Compliance and Invalidity at 5 and 6.[4]

Board Discussion

It is ordinarily necessary for a county or city to adopt new legislation in response to a board's finding of non-compliance. This is because a board bases its findings of non-compliance on legislative enactments. RCW 36.70A.280 and 36.70A.290. *See* also *Lake Cavanaugh Association v. Skagit County,* WWGMHB Case No. 04-2-0011(Order Finding Compliance, January 23, 2006) (In determining compliance, the board cannot look beyond the language of the comprehensive plan to determine if the county is actually enforcing its provisions); and *Swinomish v. Skagit County,* WWGMHB Case No. 02-2-0012c (Order Finding Continuing Non-Compliance, May 1, 2006). (The Board cannot find compliance

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[3] The December 2004 update ordinance was the subject of a January 2005 period of jointly agreed-to settlement negotiations between the parties. Settlement negotiations failed.

[4] Petitioners additionally argue on January 4, 2006, in *ICAN Objections* under the heading "exhibits" at pages 6 and 7 that Exhibit 17-210 (sic) is a copy of a 20-page ordinance and other materials from a pre-existing ordinance. In fact, the actual appended exhibit number is 17-110. ICAN does not refer to the ordinance by number in its written argument, but rather asks for a de-coupling of December 2004 ordinance text from other material included in Exhibit 17-110 and the use of additional exhibit numbers under the rubrics of ICAN's offered Additions to the Index.

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based on administrative actions taken without legislative modification of the non-compliant ordinance or resolution originally challenged).

However, the unusual circumstances here present a situation where the County is asking the Board to consider whether certain non-compliant features in the ordinance challenged in Case No. 04-2-0022 were in fact corrected in an ordinance which the Board has not reviewed – the County's 2004 Update of its comprehensive plan and development regulations. The County is thus asking the Board to consider whether a legislative enactment that the Board had not reviewed previously achieved compliance, even though the legislative enactment was adopted prior to the Board's findings of non-compliance regarding a different legislative enactment.

This is not a case where there is any question that the County's assertion that it has corrected certain errors is in good faith. Clearly, it was an oversight that led the County (and Petitioners) to fail to bring the pertinent terms of the update ordinance to the Board's attention previously. In addition, the County's comprehensive plan Update is a legislative action which is properly a subject for Board review. RCW 36.70A.280(1); 36.70A.290(2). Therefore, to determine compliance, the Board will consider the amendments made to the County's comprehensive plan and development regulations in its 2004 Update ordinance (Ordinance 17-1213-04), in determining whether compliance has been achieved.

C. Conclusions of Law C, G, H, and I were not addressed in the 2004 Update.

Issue C: Do the boundaries of the Irondale and Port Hadlock UGA include large areas for which no public sewer will be provided in the 20-year planning horizon in violation of RCW 36.70A.110?

Issue G: Does Policy TRP 1.10 of the Transportation Element of the Plan now comply with RCW 36.70A.070(6)(b)?

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Issue H: Does the County's use of a market factor to increase the OFM population range for the Irondale and Port Hadlock UGA comply with RCW 36.70A.110(2)?

Issue I: Does UGA Policy 1.6 fail to comply with RCW 36.70A.110(2) and 36.70A.130(1)(b)?

1. Conclusions of Law C and I[5]

Issue C: Do the boundaries of the Irondale and Port Hadlock UGA include large areas for which no public sewer will be provided in the 20 year planning horizon in violation of RCW 36.70A.110.?

Conclusion of Law I: Does UGA Policy 1.6 fail to comply with RCW 36.70A.110(2) and 36.70A.130(1)(b)?

Positions of the Parties

Jefferson County reports in its Statements at 8 through 10 that its capital facilities planning continues and additional time is necessary to bring that element into compliance. Thus, no legislative action has been taken. In its Statement at 5 the County reports it is relying on its re-adoption of rural development standards or LAMIRD status of lands within the boundaries of the proposed UGA to avoid problems in the short-run. Thus, the County asserts, there cannot be any change of residential lands to commercial lands without a Comprehensive Plan Amendment

Petitioner ICAN asserts that because sewer planning is incomplete the UGA boundaries should remain in continuing non-compliance. ICAN Objections at 5. Noting further that optional and unsewered areas remain an unchanged part of the County's comprehensive plan and that the County has not changed the Urban Growth Area Element, Chapter 2 of the comprehensive plan, it must remain in continued non-compliance and continued invalidity under terms of Conclusions of Law C and I in the Board's Order of May 31, 2005,

[5] The Issues are numbered according to the Conclusions of Law entered in the Final Decision and Order/ Compliance Order, May 31, 2005, and Order Granting Reconsideration, July 29, 2005.

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and under Conclusions of Law M and O in the Board's Order on Reconsideration of July 29, 2005. ICAN Objections at 8.

Board Discussion

Issue C addresses the designation of areas within the Irondale and Port Hadlock UGA for which no sewer is planned in the period covered by the comprehensive plan. The Board found that designation non-compliant in Conclusion of Law C and imposed a determination of invalidity in Conclusion of Law M. Final Decision and Order, May 31, 2005; Order Granting Reconsideration, July 29, 2005.

Conclusion of Law I found Policy 1.6 non-compliant because it allows residential property to be re-zoned as commercial without tying the designation change to need or analyzing impacts. Final Decision and Order, May 31, 2005. The County has adopted no legislative change to this comprehensive plan policy. Ex. 17-110 at 2-23.

The County has not amended the urban growth element found non-compliant in Conclusions of Law C and I. Without a change to a non-compliant legislative enactment, a request for review of such a finding of non-compliance must be made within the time limits for a motion for reconsideration. *Swinomish v. Skagit County,* WWGMHB Case No. 02-2-0012c, Order Finding Continuing Non-Compliance, May 1, 2006. Since the County did not bring this request within the time period for a motion for reconsideration (WAC 242-02-832), the Board has no basis upon which to make a finding of compliance.

Conclusion: The boundaries of the Irondale and Port Hadlock UGA continue to be non-compliant with RCW 36.70A.110 because they include areas for which no public sewer service is planned within the 20-year planning horizon. UGA Policy 1.6 has not been amended or repealed and therefore fails to comply with RCW 36.70A.110(2) and

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36.70A.130(1)(b) as found in the Final Decision and Order in WWGMHB Case No. 04-2-0022, May 31, 2005.

D. Conclusions of Law E and F

E: Do the development regulations applicable in the Irondale and Port Hadlock UGA allow commercial and industrial development on interim septic tanks without a defined and adopted capital facilities mechanism in violation of RCW 36.70A.110(4) and 36.70A.020(2)?

F: Does the capital facilities plan of the County's UGA element for the Irondale and Port Hadlock UGA comply with RCW 36.70A.070(3)(a), (c) and (d), and RCW 36.70A.210 (inconsistency with the Countywide Planning Policies)?

Positions of the Parties

Jefferson County in its Compliance Report of December 17, 2005, states it is making progress in its plan for achieving compliance with respect to capital facilities and getting a better sense of the amount of commercial and industrial land that will likely be developed over the next six years. The County reports on this work largely through statements on completion of the stormwater management plan (p. 6-8), working with PUD #1 on water supply on sufficiency (p. 9-10) and use of prudent calculations to right-size acreage for commercial and industrial lands (p. 13-15), such that they can be properly served by various capital facilities. In its Statement of Actions Taken at 8-9, Jefferson County states it has not yet updated its Capital Facilities Plan. In all reports and at hearing the Board was advised that progress is being made, but a final capital facilities plan covering the proposed Irondale and Port Hadlock UGA has not been adopted.

Petitioner ICAN states in its ICAN Objections at page 11 "the County should be found in continued non-compliance on this issue."

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Board Discussion

Although the County has sought a finding of compliance on these issues, the County acknowledges that it has not completed work on its capital facilities plan for the proposed Irondale and Port Hadlock UGA. The Board has already granted the County an extension to complete work on its capital facilities plan. Order Granting Extension of Compliance Period for Sewer Planning and Financing and Setting Hearing for Consideration of Rescission of Invalidity Determinations, January 6, 2006.

Conclusion: Until the County acts to achieve compliance on its capital facilities plan, Issues E and F remain in non-compliance.

E. Conclusion of Law G – Transportation Concurrency

Issue G: Does Policy TRP 1.10 of the Transportation Element of the Plan now comply with RCW 36.70A.070(6)(b)?

Positions of the Parties

As to Issue G, the County argues that transportation policy (TRP 4.10) of the Amended Comprehensive Plan links development proposals to maintenance of level of service (LOS) standards. Jefferson County's Statement of Actions Taken at 2-19 through 2-21.

In contrast, Petitioners argue that TRP 4.10 is not compliant with the requirements of RCW 36.70A.070(6)(b). ICAN asserts the GMA requires a regulation that would prohibit development approval if the LOS cannot be maintained, and the above-referenced TRP is a policy, not a regulation, as required by RCW 36.70A.070(6)(b). Petitioners state there is no concurrency ordinance associated with TRP 4.10. Arguing that non-compliance should be maintained, ICAN reads in TRP 4.10 that all three options in this policy will not ensure that development is prohibited if the level of service drops below standards. Specifically, ICAN points out that a developer may pay a proportionate impact fee, but the County may not be

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able to improve the facility within the six-year period required by RCW 36.70A.070(6)(b). ICAN's Objections at 10 and 11.

Board Discussion

In our Compliance Order/Final Decision and Order in these cases, the Board ruled that the County must have development regulations that do not permit the LOS on a locally owned transportation facility to fall below the County's locally adopted LOS. Further, the Board maintained that a regulation similar to policy TRP 6.1.2 would be acceptable if it linked development approval to the maintenance of the County's LOS's. See May 31, 2005, Final Decision and Order at 27.

On compliance, the County argues that TRP 4.10 fulfills its obligations pursuant to RCW 36.70A.070(6)(b). However TRP 4.10 is also a comprehensive plan policy, not a development regulation. It does not, therefore, actually regulate development to ensure that level of service standards are maintained as required by RCW 36.70A.070(6)(b).

Further, the Board agrees with Petitioner that even if this policy were an adopted development regulation it would not comply with RCW 36.70A.070(6)(b). TRP 4.10 states:

> Ensure that new developments that would generate traffic that would significantly decrease the Level of Service below the adopted Level of Service Standard for an intersection or roadway segment not be approved without stipulations for mitigation. When a new development would lower the Level of Service below the adopted Level of Service standard, require the development proponent to mitigate the impact be one of the following:
>
> 1. Construct improvement that restore the Level of Service to the adopted Level of Service Standard;
> 2. Contribute an impact fee that is a proportionate share of the cost of improvements related to the project;
> 3. Implement alternative measures such as Transportation Demand Management (TDM), project phasing, or other appropriate measures determined by the County that will avoid the impact.

Jefferson County Plan at 10-36, Exhibit 17-110.

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First, RCW 36.70A.070(6)(b) directs local governments "to adopt local ordinances which prohibit development if the development causes the level of service on a locally owned transportation facility to decline below the standards adopted in the transportation element, unless transportation improvements and strategies accommodate the impacts of development are made concurrent with the development…." The word "significantly" in TRP 4.10 modifies the statutory language. The statute does not allow for degrees of decline from the LOS. For that reason, such a regulation would not be compliant.

Additionally, alternative 2 is a flawed means of achieving concurrency. Impact fees may be used by GMA planning counties and cities pursuant to RCW 82.02.050(2) to help pay for certain capital facilities including roads. However, while requiring payment of an impact fee that is a proportionate share of improvements related to the impact is a legitimate way to provide funds for needed improvements, it does not guarantee concurrency. For this alternative to be part of a compliant concurrency regulation, it would need to show that payment of an impact fee is a proportionate share of improvements or to a system of improvements related to the impacts on the LOS that will be in place to guarantee the maintenance of the LOS within the timeframe required by RCW 36.70A.070(6)(b).

Conclusion: Based on the foregoing, TRP 4.10 is not a development regulation that guarantees the achievement of concurrence.

F. Conclusion of Law H – Market Factor

Issue: Does the County's use of a market factor to increase the OFM population range, on which planning is based in the Irondale and Port Hadlock UGA, comply with RCW 36.70A.110(2)?

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Positions of the Parties

As to Issue H, Respondent County states the population projection adopted for the Irondale and Port Hadlock UGA in its 2004 Update no longer includes a non-compliant market factor. Jefferson County's Statement of Actions Taken at 4.

The County points out that the projected 2024 population for the UGA now utilized in the Updated Comprehensive Plan is 4,906, instead of the figure 6,133 that the Board found clearly erroneous as based on a non-compliant market factor. Table 3-1 of the Amended Comprehensive Plan; Jefferson County's Statement of Actions Taken at 4.

Petitioners claim that the County has not eliminated the market factor from its calculations because that would require the County to also reduce the "UGA capacity" by boundary reduction or otherwise. ICAN's Objections at 9-10.

Board Discussion

Jefferson County seeks compliance on its use of a market factor to increase the population projected for the non-municipal UGA based on a table in the Land Use and Rural Element of the 2004 update of its comprehensive plan. The table projects the population to be accommodated in the Irondale and Port Hadlock UGA as 4,906. Table 3-1, Jefferson County and City of Port Townsend 20-Year Population Projection and Distribution (Exhibit 17-110). However, the updated comprehensive plan continues to use the population based on the market factor found non-compliant in this Board's order. *See* discussion on page 33 of May 31, 2005, Final Decision and Order. The Board found that the market factor may be used to increase the amount of land needed to accommodate a projected population, but it is not a basis for increasing the projected population itself. *Ibid.*

The portion of the updated comprehensive plan dealing with the projected population growth in the Irondale and Port Hadlock UGA remains unchanged from the provisions found non-

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compliant in our May 31, 2005, decision. Compare June 30, 2004, Jefferson County Comprehensive Plan at 2-8 (Ex. 13-37) and Jefferson County Comprehensive Plan updated by Ordinance 17-1213-04 at 2-8 (Ex. 17-110). In the updated comprehensive plan, the County continues to project a range of population for the subject UGA from 4,906 to 6,133, utilizing a market factor to increase the projected population to be accommodated in the UGA. Jefferson County Comprehensive Plan updated by Ordinance 17-1213-04 at 2-8 (Ex. 17-110).

Conclusion: Having failed to take legislative action to amend or repeal the non-compliant use of the market factor to determine the population range upon which planning is based for the Irondale and Port Hadlock UGA, the County's use of that market factor continues to be non-compliant with RCW 36.70A.110(2).

G. Conclusion of Law J - Internal Inconsistencies

Issue J: Has the County corrected the minor errors identified in the May 31, 2005, order?

Positions of the Parties

Jefferson County asserts that it has corrected many of the minor errors and intends to fix the others in due course. Jefferson County's Statement of Actions Taken. Several examples of such corrections, achieved through adoption of the 2004 Update (Ordinance 17-1213-04), are asserted: i) new zoning map in Chapter 2 of the CP now matches the "Future Land Use Map"; ii) new CP has updated the tables to reflect UGA commercial and industrial acreage; iii) gross acreage listed for Rural Crossroads now matches the accompanying text; iv) reference to the Port Hadlock Rural Village Center properly stricken from a table on infill acreage for Rural Village Centers; v) weighted average persons per household figure of 2.34 was removed; 2.2 persons per household figure cited in the General Sewer Plan remains the only such figure in the comprehensive plan; vi) twenty-year planning period

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updating to read 2004 to 2024 and understood to be applicable throughout the plan.[6] *Ibid.* at 6-7.

In contrast Petitioners deny that the County has corrected the minor errors it had committed to correcting and asks the Board to enter formal findings of non-compliance as to those provisions of the comprehensive plan and development regulations which create inconsistencies. ICAN's Objections at 12.

Board Discussion

In the Final Decision and Order of May 31, 2005, the Board did not enter a finding of non-compliance as to the Petitioners' list of alleged inconsistencies in the comprehensive plan. The County had objected that these were not a proper basis for a non-compliance finding since they are merely inadvertent errors that do not rise to the level of the "clearly erroneous" standard. Respondent's Prehearing Brief at 25-26. The County requested the opportunity to correct the minor errors. *Ibid*. On that basis, the Board deferred ruling on the alleged inconsistencies to allow the County to make corrections on its own. Conclusion of Law J, Final Decision and Order, May 31, 2005. At the same time, the Order provided that Petitioners could re-raise the inconsistencies for a non-compliance finding if the County did not correct them. Final Decision and Order May 31, 2005, at 40.

Petitioners now seek a finding of non-compliance, alleging that the County's failure to make the corrections during the compliance period makes it timely for the Board to enter non-compliance findings. ICAN's Objections at 13. Here, the Board reviews the allegations of internal inconsistency to determine whether non-compliance should be found as to any of them.

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[6] However, there was a typo in the *Statement* such that it reads "updated to reflect a planning period ending in 2004." *Ibid.*

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ICAN's Issue 1 - Inconsistencies in the 20-year planning period.

Positions of the Parties

Petitioners assert that many parts of the Comprehensive Plan and Appendices show analysis of the planning period from 1996 – 2016 instead of from 2004 – 2024. ICAN's Objections at 12. The County cites one table (Table 3 -1) in the comprehensive plan that has been updated to reflect the 2004 – 2024 planning period. Jefferson County's Statement of Actions Taken at 6.

Board Discussion

While Table 3-1 has been updated to reflect the 2004 -2024 planning period, other parts of the plan have not. Table 3-3 and Table 5-1, for example, have not. Also, the County has not provided us with copies of the updated parts of the appendices so that we may determine whether they have corrected the planning period inconsistencies in the appendices adopted prior to the Update.

Conclusion: The County has not updated all parts of its plan to reflect the 2004 to 2024 planning period, and therefore the parts of the plan that do not reflect the 2004 – 2024 planning period are inconsistent with the rest of the 2004 adopted plan and do not comply with RCW 36.70A.070 or RCW 36.70A.130(1)(b). A consistent planning period throughout the comprehensive plan is necessary to ensure that "each part of the plan should be integrated with all other parts and that all should be capable of implementation together." WAC 242-02-500.

ICAN's Issues 2 and 3 - Inconsistencies in maps.

Positions of the Parties

In the 2005 proceedings, the County agreed that there is an inconsistency between the maps showing the location of zoning districts in Exhibits 13-36 and 13-31. (Respondent's Prehearing Brief at 25). Exhibit 13-31 is the Irondale and Port Hadlock UGA – Zoning map,

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dated August 16, 2004, and denominated Figure D-1. Exhibit 13-31 to December 17, 2004, County Compliance Report. Exhibit 13-36 is the General Sewer Plan and the challenged maps are Ex. 1-2 and Ex. 2-1, maps showing the proposed zoning districts in the General Sewer Plan of the Irondale and Port Hadlock UGA. The Board agreed in 2005 to allow the County time to make this change without a finding of non-compliance. Now the County alleges that the new zoning map "rectifies" this inconsistency. Jefferson County's Statement of Actions Taken at 6. Map 2-1 (Exhibit 17-110). The map that the County has offered as rectifying the inconsistency is Figure 2-1 to Exhibit 17-110 - the Future Land Use map for the Irondale & Port Hadlock UGA – which apparently takes the place of the Irondale and Port Hadlock UGA – Zoning map, dated August 16, 2004, Figure D-1.

Board Discussion

It is very difficult for the Board to compare the General Sewer Plan map with the Future Land Use map, one being in color (the Future Land Use map) and one in shades of gray (the General Sewer Plan map). However, it is clear on its face that the maps are not the same: they do not have the same zoning classifications. And some regions are commercial on the Future Land Use Map (Map 2-1) while they are apparently residential on the General Sewer Plan map (Exhibit 1-2). On the other hand, it is unclear that there is any need to make these maps consistent until the County has accomplished its sewer planning and adopted development regulations and comprehensive plan designations in accordance with that planning. The Growth Board has already found that the designation of areas as the Irondale and Port Hadlock UGA fails to comply with the GMA in the absence of a plan to provide urban levels of sewer service to those areas within the 20-year planning horizon. Conclusion of Law C, Final Decision and Order, May 31, 2005. Further, the Board has imposed invalidity as to the zoning map for the UGA. Conclusion of Law P, Order Granting Reconsideration, July 29, 2005.

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Conclusion: The Board's earlier findings and conclusions adequately address the question of the zoning and sewer maps applicable in the Irondale and Port Hadlock UGA. No further finding of non-compliance will be entered.

Issue 4 - Sewer service on Indian Island

Positions of the Parties

ICAN alleges it was in error for Indian Island to be included in the General Sewer Plan (Exhibit 13-36) because "there is no evidence that RCW 36.70A.110(4) or any other provision of the GMA would allow sewer service at this location." ICAN's Objections at 13-14. The County has always taken the position that Indian Island should be included in the General Sewer Plan because it is already sewered. Respondent's Prehearing Brief (2005) at 25.

Board Discussion

As to the Petitioners' claim that Indian Island should not be included in the map of the General Sewer Plan, the County does not and never did concede that Indian Island should not be included in the General Sewer Plan. Instead, the County asserts that Indian Island is already sewered and therefore should be included in the General Sewer Plan. Respondent's Prehearing Brief (2005) at 25. ICAN failed to respond to this argument in 2005 (ICAN's Reply Brief in Support of Noncompliance and Invalidity) and asserts no new argument here.

More importantly, the Board never found a violation of RCW 36.70A.110(4) as to Indian Island. Conclusion of Law J pertained to inconsistencies in the comprehensive plan; internal inconsistencies are violations of RCW 36.70A.070 rather than violations of RCW 36.70A.110(4).

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Conclusion: The inclusion of Indian Island in the General Sewer Plan does not create an internal inconsistency.

ICAN's Issue 5 – Inconsistency in number of persons per household

Positions of the Parties

Petitioners argue that the County does not use a consistent number of persons per household throughout the comprehensive plan. Petitioners point to Exhibit 13-33 attached to their opening brief to show that the County used 2.3 persons per household for analysis in its comprehensive plan, while for its sewer planning the County uses 2.2 persons per household.

The County asserts that the weighted household advantage has been eliminated from the final adopted version of the comprehensive plan. Jefferson County's Statement of Actions Taken and Request for Extension to Achieve Compliance at 6.

Board Discussion

Our examination of Exhibit 17-110 shows that the County has eliminated the 2.34 persons per household figure from its description of the number of people likely to constitute a household in Jefferson County. In the County's comprehensive plan's discussion of its housing needs, the County points out that 65% of the County has less than 2 persons per household. Jefferson County (Updated) Comprehensive Plan at 5-2. ICAN points out that the County's sewer planning uses 2.2 persons per household and contends that this violates the consistency requirement of RCW 36.70A.070. The Board notes that the County's discussion of its housing needs pertains to the entire County, while sewer planning relates only to the Irondale and Port Hadlock UGA. It is feasible that the population per household in the UGA might be slightly higher than in the rural county. Further, it is a usual

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practice in sewer planning to use a somewhat higher number of persons to project sewer flows since sewer are sized to last for longer periods of time.

Conclusion: Therefore, we find that the County's use of a different figure to project the persons per household for the purpose of planning its housing analysis from the number of persons per household used for sewer planning is not clearly erroneous pursuant RCW 36.70A.320.

ICAN's Issue 6 – Tables 3-1 and 3-2 fail to show current planning period

Positions of the Parties

Petitioners argue that Tables 3-1 and 3-2 fail to show the current planning period (2004 – 2024 or 2005 – 2024) as used in other parts of the plan. Petitioners also contend that Table 3-2 should contain information about the land uses in the Irondale and Port Hadlock UGA. Petitioner contends that these inconsistencies make the plan inconsistent with RCW 36.70A.070 and RCW 36.70A.130(1)(b). ICAN's Objections at 13.

The County responds that Table 3-1 of the County's adopted comprehensive plan reflects the current planning period 2004-2024. Jefferson County's Statement of Actions Taken at 6.

Board Discussion

Our examination of Table 3-1 of the County's updated comprehensive plan shows that it now reflects the planning period from 2004 and 2024, and therefore is not inconsistent with the rest of the County's comprehensive plan. Jefferson County (Updated) Comprehensive Plan at 3-3, Exhibit 17-110.

Table 3.2 is a table showing the County's rural land use designations. Petitioner contends that this table should contain the uses allowed in the Irondale and Port Hadlock UGA. This

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table is included in the comprehensive plan's section entitled Land Use and Rural and clearly is a discussion of rural land uses. Urban land uses are discussed on pages 2-10 to 2-13 of the County's adopted comprehensive plan. We find that there is no reason for Table 3-2 to reflect the Irondale and Port Hadlock UGA. Petitioners have not carried their burden of proof that Table 3.2 is in non-compliance with RCW 36.70A.010 and 36.70A.130(1)(b).

Conclusion: Based on the foregoing, Petitioners have not met their burden of proof that Tables 3.1 and 3.2 do not comply with RCW 36.70A.070 or RCW 36.70A.130(1)(b).

ICAN's Issue 7 – Failure to update Table 3-4

Positions of the Parties

Petitioner argues that Table 3-4 does not correctly reflect the commercial acreage inside or outside of the UGA. For this reason and because the chart does not mention commercial acreage in the UGA, Petitioner argues that this chart is inconsistent with commercial land use designation amendments made by the adoption of these comprehensive plan amendments and therefore violates RCW 36.70A.070 and RCW 36.70A.130(1)(b). ICAN's objections at 14 and 15.

The County counters that the updated December comprehensive plan corrects these alleged inconsistencies. Jefferson County's Statement of Actions Taken at 6.

Board Discussion

Our examination of Tables 3-6 and 3-7 in the updated December 2004 comprehensive plan illustrates that these tables show the amount of land available for commercial development in rural areas while Table 3-9 show the amount of industrial land available for development throughout the County, including the Irondale and Port Hadlock UGA. In addition, our examination of the 2004 updated comprehensive plan reveals that Table 2-1 shows the amount of available commercial land in the Irondale and Port Hadlock UGA. Petitioner fails

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to point to any amendments to the comprehensive plan with which these Tables are not consistent. Jefferson County (Updated) Comprehensive Plan at 3-10, 3-14, 3-22, and 2-10. Exhibit 17-110.

Conclusion: Based on the foregoing, we find that Petitioners have not met their burden of proof pursuant to RCW 36.70A.320(2) that these Tables are inconsistent with other amendments enacted in the Update (Ordinance 17-1213-04).

ICAN's Issue 8 - Failure to make text consistent with changes to Table 3-5

Positions of the Parties.

Petitioners charge that the second paragraph on the top of 3-24 in Exhibit 13-13-33 has not been changed to reflect the changes made to Table 3-5 and therefore violate RCW 36.70A.070 and RCW 36.70A.130(1)(b). ICAN's Objections at 15. The County responds that the updated 2004 comprehensive plan corrects this error. Jefferson County's Statement of Actions Taken at 7.

Board Discussion

The Board's examination of Table 3-6 in the updated 2004 comprehensive plan shows that the figures in Table 3-6 reflecting the total commercial land and percentage of undeveloped parcels in Rural Crosswords and the accompanying text are consistent. Jefferson County Comprehensive Plan at 3-10 and 3-11. Exhibit 17-110.

Conclusion: Petitioners have not met their burden of proof pursuant to RCW 36.70A.320(2) that Table 3-6 and the accompanying text are inconsistent with one another and violate RCW 36.70A.070 and RCW 36.70A.130(1)(b).

ICAN's Issue 9 – Failure to make text consistent with the changes in Table 3-6

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Positions of the Parties

Petitioners assert that Table 3-6 on page 3-24 of Exhibit 13-33 has not been changed to reflect changes to Table 3-6. Petitioners further allege that Table 3-6 reports inconsistent growth rates for Port Hadlock and for this reason violates RCW 36.70A.070 and RCW 36.70A.130(1)(b). The County replies that the alleged inconsistency has been removed from this table (now renumbered as Table 3-7 in the updated comprehensive plan) and no longer is inconsistent with the accompanying text.

Board Discussion

The updated 2004 comprehensive plan shows that Table 3-6 is now labeled as Table 3-7 and the Port Hadlock Rural Village Center (RVC) has been removed from the table. Table 3-6 depicts the amount of acreage in Rural Village Centers and how much of this acreage is available for infill development. Jefferson County Comprehensive Plan at 3-14, Exhibit 17-710. The Port Hadlock RVC is now part of the Irondale and Port Hadlock UGA. The amount of acreage available for various uses in the Irondale and Port Hadlock UGA is now portrayed on Table 2-1. Jefferson County Comprehensive Plan at 2-10, Exhibit 17-710.

Conclusion: Petitioners have not met their burden of proof that Table 3-6, now Table 3-7, is inconsistent with the rest of the Jefferson County (Updated) Comprehensive Plan and does not comply with RCW 36.70A.070 and RCW 36.70A.130(1)(b).

ICAN's Issues 10 and 11 - Failure to clarify that all of Tables 3-10 and 3-11 are removed and failure to remove footnote on page 5-2.

Positions of the Parties

Petitioners allege that the County's removal of the title of Tables 3-10 and 3-11 without removing the text, and the failure to remove a footnote on page 5-2, create a violation of RCW 36.70A.070 and RCW 36.70A.130(1)(b). ICAN's Objections at 15 and 16. The County declares that it has removed Tables 3-10 and 3-11 as well as the explanation of

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those tables and the footnote on page 5-2. Jefferson County's Statement of Actions Taken at 7.

Board Discussion

Our examination of the updated plan shows that Tables 3-10 and 3-11 and the footnote on 5-2 have been removed.

Conclusion: Petitioners have failed in their burden of proof that the alleged inconsistencies violate RCW 36.70A.070 and RCW 36.70.130(1)(b).

ICAN's Issue 12 – Several tables do not reflect new UGA data

Positions of the Parties

Petitioners argue that the County failed to update the incorporated data to reflect the new UGA when it changed Tables 3-1, 3-2, and Table 5-1 and this failure violates RCW 36.70A. 070 and RCW 36.70A.130(1)(b). ICAN Objections at 16. The County did not respond to this issue.

Board Discussion

We find that Table 3-1 has been updated to reflect the Irondale and Port Hadlock UGA. We also find that there is no need to discuss the land uses of the Irondale and Port Hadlock UGA in Table 3-2 since that table portrays rural uses. See discussion and conclusion in Issue 6. However, Table 5-1 has not been updated to show the designation of Irondale and Port Hadlock UGA. This table also does not reflect the current planning period. Jefferson County (Updated) Comprehensive Plan at 3-3, 3-5, and 5-2. Exhibit 17-110.

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Conclusion: Petitioners fail to carry their burden of proof that Tables 3-1 and 3-2 fail to comply with RCW 36.70A.070.[7]

V. FINDINGS OF FACT

1. Jefferson County is located west of the crest of the Cascade Mountains and has chosen to, or is required to, plan under RCW 36.70A.040.

2. Petitioner Irondale Community Action Neighbors (ICAN) is an organization that, through its members and representatives, participated in several processes of adoption of the Jefferson County comprehensive plan and development regulation ordinances affecting the Irondale and Port Hadlock UGA. Petitioner Nancy Dorgan is an individual who also participated in writing and with oral comments in the County process.

3. ICAN was the petitioner in WWGMHB Case No. 03-2-0010 and case 04-2-0022 which is now before this Board on the matter of partial compliance.

4. Because it is still working on its capital facilities plan, the County has not adopted major legislation in response to the Board's May 31, 2005, order.

5. While the County has addressed Issue D with the adoption of Ordinance 02-0126-06, it has done so conditionally.

6. The County has not adopted new development regulations but it has essentially suspended the effectiveness of the urban development regulations applicable in the Irondale and Port Hadlock UGA, until Ch. 18.18 JCC has been found compliant by this Board.

7. Since the development regulations in Ch. 18.18 JCC were found non-compliant in 2005 and have been neither repealed nor amended, they remain non-compliant. (Conclusion of Law D).

8. The County's 2004 Update of its comprehensive plan and development regulations was not reviewed by the Board prior to the findings of non-compliance entered in the Board's May 31, 2005, Final Decision and Order/Compliance Order.

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[7] The data in Table 5-1 has not been reorganized to reflect the new UGA, but shows the previous designation of the area now designated as a new UGA. When the County updates the planning period in Table 5-1 to reflect the current planning period, it should also update it to show the proper designation of the UGA.

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9. It was an oversight that led the County and Petitioners to fail to bring the pertinent terms of the County's 2004 update ordinance to the Board's attention previously.

10. The boundaries of the Irondale and Port Hadlock UGA were not changed in the 2004 Update and continue to be non-compliant with RCW 36.70A.110 because they include areas for which no public sewer service is planned within the 20-year planning horizon. (Conclusion of Law C).

11. UGA Policy 1.6 has not been amended or repealed and therefore fails to comply with RCW 36.70A.110(2) and 36.70A.130(1)(b) as found in the Final Decision and Order in WWGMHB Case No. 04-2-0022, May 31, 2005. (Conclusion of Law I).

12. The County has not taken legislative action to achieve compliance as to its capital facilities plan for the Irondale and Port Hadlock UGA. Therefore, Issues E and F remain as non-compliant.

13. TRP 4.10 is a comprehensive plan policy, not a development regulation. It does not, therefore, actually regulate development to ensure level of service standards.

14. The impact fee required by TRP 4.10 is not properly linked to the maintenance of the LOS within the timeframe required by RCW 36.70A.070(6)(b). (Conclusion of Law G).

15. The portion of the updated comprehensive plan dealing with the projected population growth in the Irondale and Port Hadlock UGA remains unchanged from the provisions found non-compliant in our May 31, 2005, decision. In the updated comprehensive plan, the County continues to project a range of population for the UGA from 4,906 to 6,133, utilizing a market factor to increase the projected population to be accommodated in the UGA. (Conclusion of Law H).

16. The County has not updated all the parts of its plan to reflect the 2004 to 2024 planning period, and therefore the parts of the plan that do not reflect the 2004 – 2024 planning period are inconsistent with the rest of the 2004 adopted plan. (Conclusion of Law J – 1).

17. The Board's earlier findings and conclusions adequately address the zoning and sewer maps applicable in the Irondale and Port Hadlock UGA. (Conclusion of Law J - 2 and 3).

18. The inclusion of Indian Island in the General Sewer Plan does not create an internal inconsistency. (Conclusion of Law J -4).

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19. The County's discussion of its housing needs pertains to the entire County, while sewer planning relates only to the Irondale and Port Hadlock UGA. It is feasible that the population per household in the UGA might be slightly higher than in the rural county. Further, it is a usual practice in sewer planning to use a somewhat higher number of persons to project sewer flows since sewers are sized to last for longer periods of time. (Conclusion of Law J – 5).

20. Table 3-1 of the County's updated comprehensive plan shows that it now reflects the planning period from 2004 and 2024. Table 3.2 is a table showing the County's rural land use designations and clearly is a discussion of rural land uses. (Conclusion of Law J – 6).

21. Petitioner fails to point to any provisions of the comprehensive plan with which Tables 3-6, 3-7, 3-9, and 2-1 are not consistent. (Conclusion of Law J - 7).

22. The figures in Table 3-6 reflecting the total commercial land and percentage of undeveloped parcels in Rural Crosswords and the accompanying text are consistent. (Conclusion of Law J – 8).

23. The updated 2004 comprehensive plan shows that Table 3-6 is now labeled as Table 3-7 and the Port Hadlock Rural Village Center (RVC) has been removed from the table. Table 3-6 depicts the amount of acreage in Rural Village Centers and how much of this acreage is available for infill development. The Port Hadlock RVC is now part of the Irondale and Port Hadlock UGA. The amount of acreage available for various uses in the Irondale and Port Hadlock UGA is now portrayed on Table 2-1. (Conclusion of Law J – 9).

24. Tables 3-10 and 3-11 and the footnote on 5-2 have been removed in the 2004 Update of the comprehensive plan. (Conclusion of Law J – 10 and 11).

25. Table 3-1 has been updated to reflect the Irondale and Port Hadlock UGA. There is no need to discuss the land uses of the Irondale and Port Hadlock UGA in Table 3-2 since that table portrays rural uses.

VI. CONCLUSIONS OF LAW

A. This Board has jurisdiction over the parties and subject matter of the compliance issues related to the Growth Board's Final Decision and Orders of May 31, 2005, and July 29, 2005, and the adoption of various comprehensive plan ordinances that gave rise to WWGMHB Case No. 03-2-0010 and WWGMHB Case No. 04-2-0022.

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B. The Petitioners have standing to participate in these cases regarding matters of partial compliance with Board Orders.

C. The County has not enacted legislation in response to the Board's findings of non-compliance in Conclusions of Law C, E, F, G, H, and I. Final Decision and Order/Compliance Order, May 31, 2005. Therefore, compliance has not been achieved as to those conclusions of law.

D. Ordinance 02-0126-06 did not amend or repeal Chapter 18.18 of the Jefferson County Code (the development regulations adopted for the Irondale and Port Hadlock UGA) nor did it adopt new development regulations. Since the development regulations for the UGA remain unchanged, they are non-compliant.

E. The 2004 Update of the County's comprehensive plan corrected most internal inconsistencies in the comprehensive plan.

F. The failure to use the same planning period throughout the County's comprehensive plan is clearly erroneous and violates RCW 36.70A.070.

VII. ORDER

Based on the foregoing, the County is directed to take legislative action to achieve compliance in accordance with this decision no later than January 25, 2007. Under the circumstances of unusual scope and complexity detailed in this decision, an extension of the compliance period on all items at issue in the formation of the Irondale and Port Hadlock UGA is appropriate. However, a progress report is due July 25, 2006.

Accordingly, the Board establishes the identical schedule for the compliance extension for sewer planning and financing. The Board sets the following schedule:

Project report	July 25, 2006
Compliance due	January 25, 2007
County's Report of Actions Taken Due (copies to all parties)	February 9, 2007
Written Objections (if any) to a Finding of Compliance Due	February 23, 2007

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County's Response (if necessary) to any Objections to Compliance Due	March 12, 2007
Compliance Hearing (location to be announced)	**March 20, 2007**

Pursuant to RCW 36.70A.300 this is a final order of the Board.
Reconsideration. Pursuant to WAC 242-02-832, you have ten (10) days from the date of mailing of this Order to file a motion for reconsideration. The original and three copies of a motion for reconsideration, together with any argument in support thereof, should be filed with the Board by mailing, faxing or otherwise delivering the original and three copies of the motion for reconsideration directly to the Board, with a copy served on all other parties of record. Filing means actual receipt of the document at the Board office. RCW 34.05.010(6), WAC 242-02-240, WAC 242-020-330. The filing of a motion for reconsideration is not a prerequisite for filing a petition for judicial review.
Judicial Review. Any party aggrieved by a final decision of the Board may appeal the decision to superior court as provided by RCW 36.70A.300(5). Proceedings for judicial review may be instituted by filing a petition in superior court according to the procedures specified in chapter 34.05 RCW, Part V, Judicial Review and Civil Enforcement. The petition for judicial review of this Order shall be filed with the appropriate court and served on the Board, the Office of the Attorney General, and all parties within thirty days after service of the final order, as provided in RCW 34.05.542. Service on the Board may be accomplished in person or by mail, but service on the Board means actual receipt of the document at the Board office within thirty days after service of the final order. A petition for judicial review may not be served on the Board by fax or by electronic mail.
Service. This Order was served on you the day it was deposited in the United States mail. RCW 34.05.010(19)

DONE this 30th day of May 2006.

_____
Holly Gadbaw, Board Member

_____
Margery Hite, Board Member

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Board Member Rothrock, Concurring:

I concur in the majority decision. I write separately out of a desire to impress upon the County the importance that should be given to an integrated, coordinated, and consistent comprehensive plan. As well, the plan's links to development regulations and associated maps must be totally clear so any resident, consultant, developer, or plan reviewer can readily discern Jefferson County's official policies and regulations. Professional editing is known to be key to achieving this result.

Here I also note the usefulness of creating a pathway to fulfilling any pledge to adopt revisions or take other legislative action. Over the remarkably lengthy course of adjudication of matters affecting the proposed Irondale and Port Hadlock UGA there are several examples of pledges to repair non-compliant or incomplete plan elements in due course followed quickly by objections from Petitioners when there is no sign of legislative action taken at expected times. Promises of future legislative enactments without a draft work plan and timeline in evidence do not constitute achievement of compliance, only its general prospect in the future via some path. (See also recent *Swinomish, et al. v. Skagit County* Order on Compliance).

For example, a promise to repair a plan element relative to incorporating Public Utility District plans and future amendments into the County's Comprehensive Plan was raised in a reconsideration motion and briefs in early 2006 and addressed again at the February 7, 2006, hearing. The Board found in its March 2006 Order the Jefferson County Comprehensive Plan element providing for automatic incorporation of future amendments to the PUD water supply plan, without public participation in a comprehensive plan amendment review, was a lingering matter. The County's promise to fix it through a Plan amendment in 2006 was accepted as persuasive when the Board declined to extend invalidity. (See Board's Order of March, 8, 2006). Petitioner ICAN had cited a failure to

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amend the comprehensive plan in 2005 and correct the automatic incorporation of special districts plans amendments as part of making its case for not granting partial compliance and invoking invalidity. ICAN Objections and its Request for Reconsideration of January 9, 2006, Order and testimony at hearing.

And, as noted in the County's Statement of Actions Taken, reiterated in briefing documents, and addressed orally at the February 7, 2006, hearing, Jefferson County anticipates revising its development regulations and comprehensive plan to fully remove the mechanism for cross-designation and changing residential land to commercial classification "within the next 12 months." (See Conclusion of Law I, May 31, 2005, Board Order). Again, a promise to amend, or an anticipation, is not an act on which full compliance can be found, but rather a report of intentions. The July 2006 mid-point progress report would be a fine occasion to exhibit a work plan and timeline for action.

A definitive work plan showing actions and timelines for any contemplated plan and regulations revisions affecting the Irondale and Port Hadlock UGA would go a long way toward persuading the Board that compliance is likely to be timely achieved. This work plan should include action on <u>all</u> items noted in Conclusions of Law in Board orders and a pathway to completing a harmonized, integrated, and internally consistent Comprehensive Plan, Development Regulations and associated maps, without disclaimers affixed.

_____
Gayle Rothrock, Board Member

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