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II. MOTION FOR RECONSIDERATION

FDO and the Motion:

In the Board's FDO, the Board dismissed Petitioners' challenge to Kitsap County's selected urban densities and the County's land capacity analysis [Legal Issues 1 and 2]. FDO, at 10-17, and 64. Also in the FDO, the Board found that Kitsap County's Capital Facilities Element (CFE) did not comply with RCW 36.70A.070(3) and .020(12); the Board also invalidated the CFE, at Appendix A, because it did not demonstrate that adequate public facilities and services [sanitary sewer] would be available within the planning period, thereby interfering with the fulfillment of Goal 12. [Legal Issue 3]. FDO, at 17-27, and 63-65.

On reconsideration, Petitioners ask the Board to:

1. Find noncompliance and invalidate the County's expanded urban growth areas (UGAs) that are based upon the noncompliant and invalid capital facilities element. Petitioners assert that the CFE and Land Use Element, including UGAs, are "inextricably linked." Petitioners cite to prior Board cases discussing the "inextricable linkage" of these two elements - Legal Issue 3. Suquamish Motion, at 3-6.
2. Address arguments offered in briefing that challenged the County's Urban Densities – Legal Issue 1. *Id.* at 7-9.
3. Address argument offered in briefing that challenged the County's Land Capacity Analysis – Legal Issue 2. *Id.* at 9-12.

The County responds by asserting:

1. No matter how "inextricably linked" the Capital Facilities Element and Land Use Element are, Petitioners did not challenge the land use element in their Petition for Review. Therefore, the County contends the Board may not rule on the validity of the UGA expansions – Legal Issue 3. Kitsap Answer, at 12-14.
2. The Board has already addressed Petitioners' arguments challenging the County's Urban Densities and found them unpersuasive. Therefore, the Board need not entertain additional argument. *Id.* at 2-7.
3. The Board has already addressed Petitioners' arguments challenging the County's Land Capacity Analysis and found them unpersuasive. Therefore, the Board need not entertain additional argument. *Id.* at 7-11.

Board Discussion

A motion for reconsideration must be based on alleged material errors of procedures, misinterpretation of fact, misinterpretation of law; an irregularity that occurred at the

1 hearing preventing a fair hearing; or clerical mistakes in the final decision. WAC 242-02-
2 832(2)(a)-(c). With the motion presented, the Petitioners allege a misinterpretation of
3 law pertaining to Legal Issues 1, 2 and 3.
4

5 Regarding Legal Issue 1 [Urban Densities] and Legal Issue 2 [Land Capacity Analysis],
6 the Board has reviewed the August 15, 2007 FDO, the Suquamish Motion and the Kitsap
7 Answer and agrees with Kitsap County. On Legal Issues 1 and 2, Petitioners simply
8 reargue, or attempt to offer new argument pertaining to these Legal Issues. The Board
9 remains unpersuaded on these issues and finds and concludes that it has not
10 misinterpreted the law. Petitioners' request for reconsideration on Legal Issues 1 and 2 is
11 **DENIED**.
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14 Regarding Legal Issue 3 [Capital Facilities Element], the Board reaches a different
15 conclusion. The Board notes that Petitioners challenged Ordinance No. 370-2006, the
16 County's Plan Update Ordinance, which included the Land Use and Capital Facilities
17 Elements, among others. Additionally, the County acknowledges that Petitioners' issues
18 and briefing addressed the UGA boundaries and their expansion. Kitsap Answer, at 12.
19 Further, the Board's discussion and analysis of the Capital Facilities Element was
20 narrowed to the five UGA expansion areas and the entities that are responsible for
21 providing sewer service to them. See FDO, at 20-27. In the FDO, the Board found that
22 the Capital Facilities Element, Appendix A, pertaining to sanitary sewer service, was
23 noncompliant with RCW 36.70A.070(3) and RCW 36.70A.020(12). See FDO, at 26-27.
24 Additionally, the Board entered a determination of invalidity for the Capital Facilities
25 Element, Appendix A, pertaining to sanitary sewer service, for substantially interfering
26 with the fulfillment of Goal 12 – RCW 36.70A.020(12).
27

28
29 Petitioners are correct. Urban facilities and services must be adequate and available for
30 the urban areas included within the County's UGAs – the Capital Facilities Element and
31 Land Use Element are "inextricably linked." *Bremerton v. Kitsap County (Bremerton)*,
32 CPSGMHB Case No. 95-3-0039c, Final Decision and Order, (Oct. 6, 1995), at 77; *West*
33 *Seattle Defense Fund v. City of Seattle (WSDF)*, CPSGMHB Case No. 94-3-0016, Final
34 Decision and Order, (Apr. 4, 1995, at 45; *Suquamish II v. Kitsap County (Suquamish II)*,
35 CPSGMHB Case No. 07-3-0019c, Final Decision and Order, (Aug. 15, 2007), at 24.
36

37
38 If the Capital Facilities Element is found deficient, the UGAs, especially UGA
39 expansions that will require urban services, will likewise be found deficient. Therefore,
40 to avoid the possibility of proposals vesting within the UGA expansion areas lacking
41 documented adequate and available public facilities and services, the Board finds that
42 these UGA expansions do not comply with RCW 36.70A.020(12) and .110 and hereby
43 enters a **determination of invalidity** for the Silverdale UGA expansion, Central Kitsap
44 UGA expansion, West Bremerton UGA expansion, Gorst UGA expansion and the Port
45 Orchard UGA expansion, for substantially interfering with the fulfillment of Goal 12 –
46 RCW 36.70A.020(12). Further, the Board **refines** its determination of invalidity for the
47 County's Capital Facilities Element, Appendix A, pertaining to sanitary sewers, to be
48 limited to those provisions dealing with those entities that allegedly provide sanitary
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1 sewer service to these five UGA expansion areas – *i.e.* Kitsap County, Port Orchard and
2 Bremerton.³ Petitioners' request for reconsideration on Legal Issue 3 is **GRANTED**.

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4 Conclusion

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6 UGA expansions based upon a noncompliant, invalid Capital Facilities Element do not
7 comply with the GMA's directive that necessary and adequate public facilities and
8 services be available within the UGA. The Capital Facilities Element and the Land Use
9 Element, especially UGA expansions, are inextricably linked. *See Bremerton, WSDP* and
10 *Suquamish II*. A UGA expansion cannot be sustained if there is no provision for public
11 facilities and services being adequate and available to support the planned-for
12 development. The Petitioners' request for reconsideration is **GRANTED** and the five
13 UGA expansions related to the noncompliant and invalid Capital Facilities Element are
14 **invalid** for substantially interfering with the fulfillment of Goal 12 – RCW
15 36.70A.020(12).
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18 **III. ORDER**

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20 Having reviewed the August 15, 2007 FDO, the Suquamish Motion for Reconsideration,
21 the County's Answer, and the relevant provisions of the GMA and the Board's Rules of
22 Practice and Procedure, prior decisions of the Boards, and having deliberated on the
23 matter, the Board ORDERS:
24

- 25
26 1. The Suquamish Motion for Reconsideration pertaining to Legal Issues 1 and 2
27 [Urban Densities and Land Capacity Analysis] is **DENIED**.
28
29 2. The Suquamish Motion for Reconsideration pertaining to Legal Issue 3 [Capital
30 Facilities Element] is **GRANTED**.
31
32 3. The Board hereby enters a **determination of invalidity** for the *Silverdale* UGA
33 expansion, *Central Kitsap* UGA expansion, *West Bremerton* UGA expansion,
34 *Gorst* UGA expansion and the *Port Orchard* UGA expansion, for substantially
35 interfering with the fulfillment of Goal 12 – RCW 36.70A.020(12). Further, the
36 Board refines its determination of invalidity for the County's Capital Facilities
37 Element, Appendix A, pertaining to sanitary sewers, to be limited to those
38 provisions dealing with those entities (*i.e.* Kitsap County, Port Orchard and
39 Bremerton) that allegedly provide sanitary sewer service to these five UGA
40 expansion areas.
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43 SO ORDERED this 13th day of September, 2007.
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50 ³ It is not clear which entity, if any, would be responsible for providing urban sanitary sewer service to the
Gorst area.

CPSGMHB Case No. 07-3-0019c
Suquamish Tribe II, et al.,

v.

Kitsap County

DECLARATION OF SERVICE:

I certify that I mailed a copy of the **Order on Motion for Reconsideration** to the persons and addresses listed hereon, postage prepaid, in a receptacle for United States mail at Seattle, Washington, on **September 13, 2007**.

Signed: *Wanda Penstone*

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