

1 BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD
2 WESTERN WASHINGTON REGION
3 STATE OF WASHINGTON
4

5 TARBOO RIDGE COALITION,

6 Petitioner,

7 v.
8

9 JEFFERSON COUNTY,
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11 Respondent.
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Case No. 19-2-0003c

FINAL DECISION AND ORDER

13
14 **SYNOPSIS**

15 *Tarboo Ridge Coalition (Petitioner) challenged Jefferson County's adoption of two*
16 *Ordinances (Title 8 and Title 18) related to shooting facilities on forest lands of long-term*
17 *commercial significance. The Board concluded it had jurisdiction over both Ordinances. The*
18 *Board found Jefferson County (County) did not comply with the requirements of the State*
19 *Environmental Policy Act (SEPA) for Title 8. The Board remanded both the Title 8 and Title*
20 *18 Ordinances to the County and imposed invalidity on the County's adoption of those*
21 *Ordinances.*
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24 **I. INTRODUCTION**

25 Petitioner challenged Jefferson County's adoption of two Ordinances related to
26 shooting facilities on forest lands of long-term commercial significance. The County first
27 adopted Ordinance No. 12-1102-18 (Title 8 – Health and Safety Code) to address shooting
28 facilities and then adopted Ordinance 15-1214-18 (Title 18 – Land Use Code) to harmonize
29 the health and safety regulations with the land use regulations. Procedural matters relevant
30 to the case are in Appendix A. Legal issues relevant to the case are in Appendix B.
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II. BOARD JURISDICTION

The Board finds the Petition for Review was timely filed, pursuant to RCW 36.70A.290(2). The Board finds the Petitioner has standing to appear before the Board pursuant to RCW 36.70A.280(2)(b). The Board also finds it has jurisdiction over matters raised in this case pursuant to RCW 36.70A.280(1). The Board will elaborate on its jurisdiction as it is the crux of this case.

III. STANDARD OF REVIEW

Comprehensive plans and development regulations, and amendments to them, are presumed valid upon adoption.¹ This presumption creates a high threshold for challengers as the burden is on the Petitioner to demonstrate that any action taken by the County is not in compliance with the Growth Management Act (GMA).² The Board is charged with adjudicating GMA compliance and, when necessary, invalidating noncompliant plans and development regulations.³

The scope of the Board’s review is limited to determining whether a jurisdiction has achieved compliance with the GMA only with respect to those issues presented in a timely petition for review.⁴ The Board is directed to find compliance unless it determines that the challenged action is clearly erroneous in view of the entire record before the Board and in light of the goals and requirements of the GMA.⁵

IV. ANALYSIS AND DISCUSSION

Issue No. 1.

Does the Title 8 Ordinance (Health and Safety Code) constitute a “development regulation” under the Growth Management Act, RCW 36.70A.030(7)? [sic]

¹ RCW 36.70A.320(1).

² RCW 36.70A.320(2).

³ RCW 36.70A.280, RCW 36.70A.302.

⁴ RCW 36.70A.290(1).

⁵ RCW 36.70A.320(3). In order to find the County’s action clearly erroneous, the Board must be “left with the firm and definite conviction that a mistake has been made.” *Dep’t of Ecology v. PUD 1*, 121 Wn.2d 179, 201 (1993).

1 **Applicable Laws:**

2 **RCW 36.70A.030 Definitions.** Unless the context clearly requires otherwise, the
3 definitions in this section apply throughout this chapter.

4 (8) "Development regulations" or "regulation" means the **controls placed on**
5 **development or land use activities by a county** or city, including, but not limited to,
6 zoning ordinances, critical areas ordinances, shoreline master programs, **official**
7 **controls**, planned unit development ordinances, subdivision ordinances, and binding
8 site plan ordinances together with any amendments thereto. ...

9 **RCW 36.70A.280 Growth management hearings board—Matters subject to**
10 **review.**

11 (1) The growth management hearings board shall hear and determine only those
12 petitions alleging either: (a) That, except as provided otherwise by this subsection, a
13 state agency, county, or city planning under this chapter is not in compliance with the
14 requirements of this chapter, chapter 90.58 RCW as it relates to the adoption of
15 shoreline master programs or amendments thereto, or chapter 43.21C RCW as it
16 relates to plans, **development regulations**, or amendments, adopted under RCW
17 36.70A.040 or chapter 90.58 RCW.

18 **WAC 365-196-200 Statutory Definitions.**

19 (8) "Development regulations" or "regulation" means the **controls placed on**
20 **development or land use activities by a county** or city, including, but not limited to,
21 zoning ordinances, critical areas ordinances, shoreline master programs, **official**
22 **controls**, planned unit development ordinances, subdivision ordinances, and binding
23 site plan ordinances together with any amendments thereto.

24 **WAC 365-196-800 Relationship between development regulations and**
25 **comprehensive plans.**

26 (1) Development regulations under the act are **specific controls** placed on
27 development or land use activities by a county or city.
28 (Emphasis added)

29 **Board Discussion**

30 Petitioner argues that the amendments to the Title 8 Ordinance (Health and Safety)
31 constitute development regulations in several ways and are subject to Board jurisdiction. It
32 contends that Title 8 "modifies the land use permitting regime for gun ranges...imposes
substantive controls on the use and development of land... directly amends a provision of
the land use code...and the County recognized that the Title 8 Ordinance creates

1 inconsistencies with the land use code.”⁶

2 First, Petitioner claims the County’s new definitions and siting requirements in Title 8
3 give the Board jurisdiction over the County’s action. It argues Title 8 changed the previous
4 regime to site and permit shooting facilities because the definition of shooting facilities in
5 Title 8 actually “expands the types of gun range uses previously allowed under the old
6 definition of gun ranges” and does not limit the size and scope of shooting facilities.⁷
7 Under the previous definition in the land use regulations in Title 18, shooting ranges were
8 allowed in the land use category of “small-scale recreation and tourist uses” and that
9 category defined “uses” as:
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11 “...those **isolated uses** which are **leisure or recreational** in nature; are reliant
12 upon a rural setting or location; do not include any new residential
13 development beyond that allowed in the underlying land use district.”⁸
14 (Emphasis added)

15 Petitioner points to Title 8’s new definitions and uses which no longer limit shooting facilities
16 to an isolated use, small scale, recreational, tourist or leisure uses.⁹ Instead, it contends
17 that commercial shooting facilities can now offer “unit training, whereas under the old
18 definition, all gun ranges (commercial or otherwise) had to meet the definition of a small-
19 scale recreational or tourist use.” Petitioner objects to Title 8’s amended definition because
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22 ⁶ Petitioner’s Prehearing Brief (March 25, 2019) at 10.

23 ⁷ *Id.* at 2 and 8.

24 ⁸ *Id.* at 2; See also JCC 18.15.040, Land Use Districts, Categories of land use, Table 3-1.

25 ⁹ RN 2018-024 at 00024 “Commercial shooting facility” means an indoor facility or outdoor facility designed
26 and specifically designated for safe shooting practice with firearms, whether open to the public, open only to
27 private membership, open to organizational training for law enforcement officers or organizational training for
28 members of the armed forces, or any combination of the above that for the use of the commercial shooting
29 facility requires a contract, charges a fee or other compensation, or requires membership. There may be one
30 or more shooting ranges located at a commercial shooting facility. The term commercial shooting facility does
31 not include: a. Shooting facilities that are both owned and operated by any instrumentality of the United States,
32 the State of Washington, or any political subdivision of the State of Washington; b. Any portion of a privately
owned property used for lawful shooting practice solely by its owner or the owner’s guests without payment of
any compensation to the owner of the privately owned property or to any other person. For the avoidance of
doubt, where privately owned property is used primarily for lawful shooting practice for guests of the owner,
and where the other uses of the property either facilitate shooting practice or are incidental, intermittent or
occasional, it is presumed that the privately owned property used for lawful shooting practices is a commercial
shooting facility. RN 2018-024 at 00024, “Title 8 Ord. § 8.20.220” (at 19) (emphasis added).

1 it removes an important constraint on gun ranges: that they be confined to small-scale,
2 recreational or tourist uses.¹⁰

3 Second, Petitioner argues that the County recognized that it had created an
4 inconsistency with the existing shooting facility definitions in Jefferson County's land use
5 code when the Title 8 Ordinance re-defined commercial shooting facilities. Petitioner
6 explains that the County decided to "harmonize" the two codes by adopting a second
7 Ordinance (Title 18 Ordinance). That second Ordinance changed shooting facility definitions
8 in the Title 18 Land Use Code to say: "has the same meaning as in JCC 8.50.220(61)"
9 (Health and Safety Code).¹¹ Petitioner claims the amended definitions in Title 18 (Land Use
10 Code) deleted a key concept found previously in Title 18 that shooting facilities must be of
11 "small scale recreation or tourist uses."¹² Petitioner concludes that the "two Ordinances
12 work together to replace the old gun range regulation regime, which allowed gun ranges
13 only if they are small-scale recreational or tourist uses (meaning leisurely or recreational),
14 with a new regulation regime that explicitly authorizes gun ranges for police and military unit
15 training."¹³

16 Third, Petitioner argues Title 8 changes the land use permitting regime because it
17 now requires commercial shooting facilities to obtain an operating permit and a conditional
18 use permit (CUP) required in Title 18.¹⁴ Petitioner concludes that when Title 8 amended the
19 conditional use permit criteria of Title 18 by adding a new "operating permit, then Title 8
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24 ¹⁰ Petitioner's Prehearing Brief at 6.

25 ¹¹ Petitioner's Prehearing Brief at 7. See RN 2018-034 Ordinance Harmonizing Title 18 with the Commercial
26 Shooting Facilities Ordinance No. 12-1102-18 (Safety and Health) App. A at 2018-034-00180.

27 ¹² Petitioner's Prehearing Brief at 8 "By way of these various provisions, the two Ordinances work together to
28 replace the old gun range regulation regime, which allowed gun ranges only if they are small-scale
29 recreational or tourist uses (meaning leisurely or recreational), with a new regulation regime that explicitly
30 authorizes gun ranges for police and military unit training.

31 ¹³ Petitioner's Prehearing Brief at 8.

32 ¹⁴ Petitioner's Prehearing Brief at 11-12 "Under the land use code, JCC 18.15.040, Table 3-1, "Allowable and
Prohibited Uses," shooting facilities are a conditional use in the forest zones. Shooting facilities, therefore,
require a conditional use permit. JCC 18.15.040(3). (This conditional use permit requirement exists under both
the pre-Ordinance and post-Ordinance versions of the land use code—gun ranges have always needed a
conditional use permit and continue to need a conditional use permit now.)"

1 “acts as an amendment to the CUP permitting process” and thus “the Title 8 Ordinance is a
2 development regulation, per *Servais*” and Title 8 comes under the Board’s jurisdiction.¹⁵

3 Fourth, Petitioner claims that Title 8’s imposition of substantive physical controls and
4 development constraints on shooting facilities renders it a development regulation,¹⁶ thus
5 making it subject to the Board’s jurisdiction.¹⁷ Petitioner argues these new physical
6 requirements impose constraints on land used by a commercial shooting facility. Thus, the
7 Title 8 Ordinance imposes controls on land use and development and is a development
8 regulation subject to the Board’s jurisdiction.¹⁸
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13 ¹⁵ Petitioner’s Prehearing Brief at 12; See *Servais v. City of Bellingham*, WWGMHB No. 00-2-0020 (FDO,
October 26, 2000) at 3.

14 ¹⁶ Petitioner’s Prehearing Brief at 13 “These requirements impose physical constraints on the land use,
15 because a gun range must either be sited on a parcel so large that bullets, lead, and noise cannot travel off
16 the property, or a gun range must include physical barriers to stop bullets, lead, and noise. By forcing gun
17 range operators to select extremely large parcels or construct physical barriers on smaller parcels, the Title 8
Ordinance imposes controls on land use and development...”

18 ¹⁷ Petitioner’s Prehearing Brief at 12-13 Petitioner lists the following as examples of such physical controls and
19 constraints: Physical security measures must be provided at commercial shooting facilities. RN 2018-024, at
20 00042, Title 8 Ord. § 8.50.250.1 (at 37); Commercial shooting facilities must be designed such that projectiles
21 are kept from leaving the facility. *Id.*, Title 8 Ord. § 8.50.250.2 (at 37); Commercial shooting facilities shall be
22 designed and operated to prevent adverse public health or environmental impacts to critical areas. *Id.*, Title 8
23 Ord. § 8.50.250.3 (at 37); Commercial shooting facilities must be designed to protect human life, protect
24 critical areas, and mitigate any detrimental effects on critical areas. RN 2018-024, at 00038, Title 8 Ord. §
25 8.50.240.7.c.vi (at 33); Commercial shooting facilities must include a noise abatement plan to minimize noise
26 nuisance. RN 2018-024, at 00037, Title 8 Ord. § 8.50.240.6 (at 32); Commercial shooting facilities must
27 include an environmental plan that is consistent with EPA Best Management Practices for Outdoor Shooting
28 Ranges, which in turn requires backstops, sand traps, and other physical devices to contain bullets. *Id.*, “Title 8
Ord. § 8.50.240.5” (at 32). These backstops must be shown on the facility site plan, *Id.*, at 00033, Title 8 Ord.
§ 8.50.240.2.b (at 28); Commercial shooting facilities must establish a storage plan for hazardous substances
or hazardous waste. *Id.*, at 00037, Title 8 Ord. § 8.50.240.5 (at 32); and Commercial shooting facilities must
establish a “safety fan” for bullets. Title 8 Ord. § 8.50.240.2.b.v. A “safety fan,” in turn, means an area within
the maximum range of the most powerful cartridge and firearm used on the shooting range, unless a physical
barrier is provided that stops the bullet short of its maximum range. *Id.*, at 00028, Title 8 Ord. § 8.20.220(58)
(at 23).

29 ¹⁸ Petitioner’s Prehearing Brief at 13 “These requirements impose physical constraints on the land use,
30 because a gun range must either be sited on a parcel so large that bullets, lead, and noise cannot travel off
31 the property, or a gun range must include physical barriers to stop bullets, lead, and noise. By forcing gun
32 range operators to select extremely large parcels or construct physical barriers on smaller parcels, the Title 8
Ordinance imposes controls on land use and development, just as the initiative did in *Yes for Seattle*.
Therefore, the Title 8 Ordinance is a development regulation subject to the Board’s jurisdiction.”

1 Finally, Petitioner explains that land use provisions in JCC 18.20.350(8) previously
2 controlled shooting facilities, but when the County amended Title 18, it repealed JCC
3 18.20.350(8) and with it the land use controls. This action essentially removed land use
4 controls under Title 18 and instead placed control of shooting facilities under Title 8.
5 Petitioner concludes "...because the Title 8 Ordinance directly amends JCC 18.20.350(8),
6 which is a development regulation, the Title 8 Ordinance is also a development regulation.
7 RCW 36.70A.280(1)(a)."¹⁹
8

9 The County responds by arguing it did not change any requirements for conditional
10 use permits in Title 18 (Land Use Code) for shooting facilities.²⁰ Rather, the County
11 explains it amended Title 8 to manage safety and health concerns at shooting facilities by
12 requiring an operating permit in addition to the conditional use permit. It only amended Title
13 18 to close definitional loopholes for consistency with the County Comprehensive Plan (e.g.
14 definition of ammunition, isolated uses, minimal impact, recreational uses, etc.).²¹ The
15 County clarifies it wanted controls over shooting facilities in its safety and health code
16 because land use controls are connected with property rights, which have a higher level of
17 protection, and the County's legal liability would be reduced if these controls were in the
18 health and safety code.²²
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22 ¹⁹ Petitioner's Prehearing Brief at 14 and RN 2018-34, at 00183.

23 ²⁰ Respondent Jefferson County's Response Brief (May 7, 2019) at 14: "In considering the Title 8 Ordinance,
24 the County believed "the current conditional use permit process in Title 18, along with the SEPA process, is
25 the best way to deal with facility siting issues. 2018-018, 24. The Title 8 Ordinance made no changes to the
26 conditional use permit process in Title 18—or any other provision of Title 18."

27 ²¹ Respondent Jefferson County Response Brief (May 7, 2019) at 15-18; *See also* PowerPoint hand out at the
28 Hearing on the Merits (May 31, 2019) at 5-7.

29 ²² *Id.* at 13 -14 "While drafting the Title 8 Ordinance, the County relied on a seven drafting principles, including
30 that "The Ordinance should not regulate land use." The County wanted to avoid regulating land use in the Title
31 8 Ordinance because: There is an unnecessary risk of increasing the time and cost of implementing the
32 Ordinance. **The County's power in creating health and safety regulations is significant and unhampered
by the potential application of the vested rights doctrine in land use. While the applicability of this
doctrine has been severely limited in recent years by Washington courts, it remains a source of
potential liability, particularly with respect to attorney's fees exposure.**" (RN 2018-018 at 24 Staff Report
(August 23, 2018)) Accordingly, the Title 8 Ordinance "does not delve into land use in Title 18 JCC or seek to
revise the noise standards in Chapter 8.70 JCC (Noise Control)." 2018-018, 24. Instead, the Title 8 Ordinance
"Ordinance relies on existing Jefferson County Code (JCC) in the areas of land use and nuisance, **without**

1 The County moved to dismiss Issues 1-3 based on the Board's alleged lack of
2 jurisdiction over issues in Title 8 Ordinance because that Ordinance is not a development
3 regulation.²³ The County concedes, "...that the Title 18 Ordinance is a development
4 regulation, so the Board has jurisdiction to consider it and Petitioner's complaints can be
5 decided by a review of the Title 18 Ordinance alone."²⁴

6 The Board disagrees with the County's assertion that the Board lacks jurisdiction
7 over amendments to Title 8 regarding shooting facilities. RCW 36.70A.030 defines
8 development regulations as placing controls on land use activities by a county or city.²⁵
9 RCW 36.70A.280 authorizes the Board to hear petitions relating to development
10 regulations.²⁶ Here, Title 8 places controls on development and land use activities for
11 shooting facilities and the Board has jurisdiction to hear challenges to the County's Title 8
12 action for several reasons.
13

14 First, the County expanded the size, scope and types of land uses allowed for
15 shooting facilities in Title 8. These are land use amendments which come under the
16 Board's jurisdiction per RCW 36.70A.030 and .280.
17

18 Second, Title 8's purpose statement at JCC 8.50.210 illustrates the County's
19 intention to regulate commercial shooting facilities under Title 8:
20

21 _____
22 **repeating requirements in existing code or attempting to change it."** 2018-018, 6. RN 2018-018, 24.
(emphasis added)

23 ²³ *Id.* at 18.

24 ²⁴ *Id.* at 19.

25 ²⁵ **RCW 36.70A.030 Definitions.** Unless the context clearly requires otherwise, the definitions in this section
apply throughout this chapter.

26 (8) "Development regulations" or "regulation" means the controls placed on development or land use activities
27 by a county or city, including, but not limited to, zoning ordinances, critical areas ordinances, shoreline master
programs, official controls, planned unit development ordinances, subdivision ordinances, and binding site
28 plan ordinances together with any amendments thereto. ... (emphasis added)

29 ²⁶ **RCW 36.70A.280 Growth management hearings board—Matters subject to review.**

(1) The growth management hearings board shall hear and determine only those petitions alleging either: (a)
30 That, except as provided otherwise by this subsection, a state agency, county, or city planning under this
chapter is not in compliance with the requirements of this chapter, chapter 90.58 RCW as it relates to the
31 adoption of shoreline master programs or amendments thereto, or chapter 43.21C RCW as it relates to plans,
development regulations, or amendments, adopted under RCW 36.70A.040 or chapter 90.58 RCW. (emphasis
32 added)

- 1 • Establish a permitting procedure and rules for the siting, design and operation of
2 commercial shooting facilities that protect participants, spectators, neighboring
3 properties and the public...
- 4 • Protect the environment...
- 5 • Ensure compatibility with neighboring land uses as regulated in JCC Title 18.²⁷
(Emphasis added)

6 Regulations designed to accomplish those purposes, that is, to protect the environment,
7 ensure compatibility with neighbors through siting, design, and land use regulations,
8 constitute land use controls. The Board has jurisdiction over these types of land use
9 controls, as they constitute development regulations per RCW 36.70A.030 and .280.

10
11 Third, Title 8 requires a new shooting facility applicant to obtain an operating permit
12 and a conditional use permit under Title 18.

13 JCC 8.50.230 (3) New Commercial Shooting Facilities. The owner or operator
14 of a proposed new commercial shooting facility shall apply for an operating
15 permit at the time of the conditional use permit application. A hearing examiner
16 considering a conditional use permit application pursuant to JCC Title 18 shall
17 review the operating permit application as part of the review of the conditional
18 use permit application. (Emphasis added)²⁸

19 Once an applicant has both permits, then a hearing examiner reviews both permits required
20 in Title 8 and Title 18. The County solidifies this link between both permits and places land
21 use controls on a shooting facility through Title 8 JCC 8.50.230:

22 (6) In addition to the operating permit required by this article, land use permit
23 applications may be required. Land use permit applications for a commercial
24 shooting facility shall be governed by JCC Title 18. [Ord. 12-18 § 1 (App. B)]
25 (Emphasis added)²⁹

26 If JCC 8.50.230(6) requires a land use permit application for a commercial shooting facility
27 then it is governed by JCC Title 18. The Board sees this requirement as a land use control
28 regulation in Title 8 because Title 18 refers back to the definition in Title 8 for actual controls
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31 ²⁷ RN 2018-024 at 00023.

²⁸ RN 2018-024 at 00028.

32 ²⁹ RN 2018-024 Title 8 Ordinance 8 at 00028-29 and 00032.

1 and definitions of shooting facilities. For example, Title 18's definitions for indoor and
2 outdoor commercial shooting facilities are the same as JCC 8.50.220(34) and JCC
3 8.50.220(45). Title 18 provides little control over shooting facilities because those controls
4 have been shifted to Title 8.³⁰ Title 8 contains the substantive land use requirements for
5 shooting facilities such as references to critical areas (RN 2018-024 at 00029) and facility
6 locations and designs (RN 2018-024 at 00033-42). Such regulations in Title 8 are under the
7 Board's jurisdiction per RCW 36.70A.030 and .280.

9 Fourth, Title 8 cross-references the administrative remedy for appeals to the hearing
10 examiner process in Title 18 JCC 18.05.080 and .085:

11 **JCC 8.50.260 Administrative remedy for decisions made by the director.**

12 When a decision is made by the director pursuant to the provisions of this
13 article, an applicant or any aggrieved party may appeal the decision to the
14 hearing examiner pursuant to the procedures in JCC 18.05.080 and 18.05.085
15 by providing written notice of appeal to the director within 14 calendar days of
16 the decision. The fee for such appeal shall be as set forth in the Jefferson
17 County fee ordinance and must be paid by the appellant at the time of filing the
notice of appeal. [Ord. 12-18 § 1 (App. B)]³¹

18 This cross-reference in Title 8 directly links the hearing examiner process in Title 18.
19 Hearing examiners under Title 18 hold hearings for "land use matters."³² This reference in
20 Title 8 again invokes a land use, not a health and safety, appeals process. This is yet more
21 evidence that Title 8 is a land use regulation and under the Board's jurisdiction per RCW
22 36.70A.030 and .280.

24 Based on the foregoing analysis, **the Board finds and concludes that the Title 8**

26 ³⁰ RN 2018-034 at 00180 -184 Title 18 after the amendments has few land use controls over shooting facilities
27 except clarification to standards for cottage industries and home businesses and a table of allowable uses in
certain land use categories.

28 ³¹ RN 2018-024 at 00042.

29 ³² JCC **18.05.080 Hearing examiner.** (1) Office Created. (a) Pursuant to RCW 35.63.130 and 36.70.970, the
30 separate office of the Jefferson County hearing examiner (hearing examiner) is created and established.
31 (b) The hearing examiner shall exercise the authority designated in Chapter 18.40 JCC **for the land use**
32 **matters set forth in this section.** (c) Hearings held by the hearing examiner shall constitute the hearings
required by state law for **such land use matters.** (d) Unless the context requires otherwise, the term "hearing
examiner" used in this code shall include hearing examiners pro tempore. (emphasis added)

1 **Ordinance constitutes a “development regulation” under the Growth Management**
2 **Act, RCW 36.70A.030 (8), and the Board has jurisdiction over the Title 8 Ordinance**
3 **pursuant to RCW 36.70A.280.**

4
5 **Issue No. 3.**

6 By adopting the Title 8 Ordinance without any SEPA review (RCW 43.21C) did the County
7 violate RCW 43.21C.030 and WAC 365-196-620?

8 **Applicable Laws:**

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10 **RCW 43.21C.030 Guidelines for state agencies, local governments...**

11 The legislature authorizes and directs that, to the fullest extent possible: (1) The
12 policies, regulations, and laws of the state of Washington shall be interpreted and
13 administered in accordance with the policies set forth in this chapter, and (2) all
14 branches of government of this state, including state agencies, municipal and public
corporations, and counties shall:

- 15 (a) Utilize a systematic, interdisciplinary approach which will insure the integrated use
16 of the natural and social sciences and the environmental design arts in planning
and in decision making which may have an impact on the environment...
17 (b) Identify and develop methods and procedures, in consultation with the
18 department of ecology and the ecological commission, which will insure that
19 presently unquantified environmental amenities and values will be given
20 appropriate consideration in decision making along with economic and technical
21 considerations;
22 (c) Include in every recommendation or report on proposals for legislation and other
23 major actions significantly affecting the quality of the environment, a detailed
statement by the responsible official on...

24 **WAC 365-196-620 Integration of State Environmental Policy Act process with**
25 **creation and adoption of comprehensive plans and development regulations.**

26 (1) Adoption of comprehensive plans and development regulations are "actions" as
27 defined under State Environmental Policy Act (SEPA). Counties and cities must
28 comply with SEPA when adopting new or amended comprehensive plans and
29 development regulations. (Emphasis added)

30 (2) Integration of SEPA review with other analysis required by the act.

31 (a) The SEPA process is supplementary to other governmental decision-making
32 processes, including the processes involved in creating and adopting comprehensive
plans and development regulations under the act. The thoughtful integration of SEPA

1 compliance with the overall effort to implement the act will provide understanding and
2 insight of significant value to the choices growth management requires. . . .

3 **Board Discussion**

4 While the County argued the Title 8 Ordinance did not constitute a development
5 regulation and, therefore, the Board lacks jurisdiction to address this SEPA challenge, the
6 Board has found and concluded that Title 8 is indeed a land use regulation. The County did
7 not conduct any SEPA review of Title 8, a fact that the County acknowledges. Without that
8 SEPA analysis, the County could not assess the environmental impacts and alternatives
9 addressed through a SEPA analysis. This Board has often considered SEPA requirements:
10

11 Thus, when a city amends its Comprehensive Plan or changes zoning, a
12 detailed and comprehensive SEPA environmental review is required. SEPA is
13 to function “as an environmental full disclosure law,” and the City must
14 demonstrate environmental impacts were considered in a manner sufficient to
15 show “compliance with the procedural requirements of SEPA.”³³

16 It is incumbent upon the County to establish a showing that “environmental factors
17 were considered in a manner sufficient to amount to *prima facie* compliance with the
18 procedural requirements of SEPA.”³⁴ Here, the County amended the Jefferson County
19 Codes, replacing development regulations allowing small-scale outdoor shooting range
20 facilities “specifically designed and used for safe shooting practice with firearms and/or
21 archery practice” with “commercial shooting facilities,” a use of much greater scale and
22 which includes “organizational training for law enforcement” and “organizational training for
23 members of the armed forces.”³⁵ Those changes were made without any review pursuant
24 to the requirements of SEPA.
25

26 Based on the Board’s finding that the Title 8 Ordinance is a development regulation
27 and development regulations must be reviewed through the SEPA process, the Board is left
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29 _____
30 ³³ *Association of Citizens Concerned About Chambers Lake Basin, et al. v. City of Olympia*, GMHB No. 13-2-
0014 (Final Decision and Order, August 7, 2013) at 15.

31 ³⁴ *Chuckanut Conservancy v. Dep’t of Natural Res.*, 156 Wn. App. 274, 286 – 87 (2010); *Juanita Bay Valley*
Cmty. Ass’n v. Kirkland, 9 Wn. App. 59, 73 (1973).

32 ³⁵ RN 2018-034 Title 18 Ordinance Appendix A Definitions JCC 18.10.150 and 18.10.190.

1 with the firm and definite conviction that a mistake has been made. Petitioner has met its
2 burden to establish that the County failed to comply with RCW 43.21C.030 when it adopted
3 Ordinance Title 8. **The Board finds and concludes that Jefferson County failed to**
4 **establish *prima facie* SEPA compliance; in fact, there was no compliance with SEPA**
5 **for the Title 8 Ordinance whatsoever. The Board finds and concludes that the County**
6 **violated RCW 43.21C.030.**
7

8 **Issue No. 2**
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10 In adopting the Title 8 Ordinance without review by the Planning Commission, did the
11 County violate its own public participation program, described in JCC 18.45 and JCC
12 18.05.050, and required by the GMA, RCW 36.70A.035; RCW 36.70A.140; and the GMA
13 implementing regulations, WAC 365-196-600(3); WAC 365-196-600(10)?

14 In light of the Board's findings and conclusions in this Final Decision and Order in
15 which the Board has determined it has jurisdiction over Title 8's development regulations
16 and the failure of the County to comply with the requirements of chapter 43.21C RCW in
17 adopting the Title 8 Ordinance as addressed below, combined with remand to the County,
18 the Board will not address Issue 2.
19

20 **Issue No. 4: Petitioner abandoned this Issue.**³⁶
21

22 **Issue No. 5**

23 Do the two Ordinances allow a land use that is inconsistent with and fails to implement the
24 Jefferson County Comprehensive Plan goals and policies in violation of GMA? ³⁷
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26 ³⁶ Petitioner's Prehearing Brief at 9.

27 ³⁷ **Issue No. 5 in its entirety:**

28 Do the two Ordinances (Title 8 Ord. at 8.20.220; 8.50.310) (Title 18 Ord. at 18.10.090; 18.10.150; 18.10.190;
29 Table 3-1; 18.20.170(4); 18.20.350(8)) allow a land use that is inconsistent with and fails to implement the
30 Jefferson County Comprehensive Plan goals and policies NRG 1.0, NRP 1.1, NRP 3.2, NRP 3.4, NRG 5.0,
31 NRP 5.1, and/or NRP 5.3, in violation of RCW 36.70A.120; RCW 36.70A.130(1)(d); RCW 36.70A.040 and
32 WAC 365-196-500(3)? Petitioners claim the Ordinances violate these provisions because: They allow multiple
gun ranges per parcel, whereas previously only one gun range per parcel was allowed. They allow police and
military training at commercial shooting facilities, whereas previously only recreational and tourist use was
allowed at gun ranges. They abandon the requirement that commercial shooting facilities confine themselves
only to small-scale uses, whereas previously gun ranges were required to be small-scale.

1 In light of the Board's findings and conclusions in this Final Decision and Order in
2 which the Board has determined it has jurisdiction over Title 8's development regulations
3 and the failure of the County to comply with the requirements of chapter 43.21C RCW in
4 adopting the Title 8 Ordinance as addressed above, combined with remand to the County,
5 the Board will not address Issue 5.
6

7 **Invalidity**

8 The Petitioner asks the Board to impose invalidity on both Ordinances, Titles 8 and
9 18, arguing that without conducting a SEPA review of Title 8, the Board must automatically
10 impose invalidity. Further, Petitioner claims that because Title 18's land use provisions in
11 JCC 18.20.350(8) were repealed and Title 8 acted to supersede those provisions, then both
12 Title 8 and Title 18, as development regulations under RCW 36.70A.280, should have had
13 SEPA reviews. Petitioner concludes Title 8 and Title 18 "work together to authorize a land
14 use in forest zones [and] because they allow gun ranges of unlimited size and intensity,"
15 then both should be invalidated in that no SEPA analysis was conducted.³⁸
16

17 Citing *Town of Woodway v. Snohomish County*,³⁹ the County provides the following
18 quote: "A violation of SEPA alone is not a sufficient ground for invalidity."⁴⁰ The Board
19 agrees that is an accurate statement of the law in isolation. However, a reading of *Town of*
20 *Woodway* clarifies that invalidity is available as a remedy "only when that enactment
21 substantially interferes with the fulfillment of the GMA's goals."⁴¹ RCW 36.70A.302(1)
22 provides:
23

24 The board may determine that part or all of a comprehensive plan or
25 development regulations are invalid if the board:

- 26
27 (a) Makes a finding of noncompliance and issues an order of remand under
28 RCW 36.70A.300;

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30 ³⁸ Petitioner Prehearing Brief at 14 and 25.

31 ³⁹ *Town of Woodway v. Snohomish County*, 172 Wn. App. 643, 660-661 (2013).

32 ⁴⁰ Respondent Jefferson County's Brief at 29.

⁴¹ *Town of Woodway v. Snohomish County*, 172 Wn. App. 643, 660-661 (2013).

1 (b) Includes in the final order a determination, supported by findings of fact and
2 conclusions of law, that the continued validity of part or parts of the plan or
3 regulation would substantially interfere with the fulfillment of the goals of
4 this chapter, and

5 (c) Specifies in the final order the particular part or parts of the plan or
6 regulation that are determined to be invalid, and the reasons for their invalidity.

7 In *Davidson Serles v. City of Kirkland*, the Growth Management Hearings Board's
8 (GMHB) Central Region declined to impose invalidity based on an inadequate SEPA review,
9 concluding that "While the deficiency is serious, the Board is not persuaded that the GMA
10 goal [Goal 10] will be thwarted absent a ruling of invalidity."⁴² That decision, to decline
11 imposition of invalidity, was upheld by the Court of Appeals.⁴³ However, the Court also
12 stated:

13
14 On the appropriate facts, the Board could find that failure to properly conduct
15 the required environmental review for a city or county action interfered with
16 fulfillment of the GMA's environmental goal and, upon such a finding, could
17 invalidate the relevant ordinance.⁴⁴

18 In this matter, the County conducted no SEPA analysis of the Title 8 Ordinance and
19 issued a Declaration of Non-Significance for the Title 18 Ordinance, notwithstanding the fact
20 that the two Ordinances working together authorized the permitting of shooting facilities of
21 significantly greater scale and intensity than what was previously allowed throughout the
22 County's Forest-Commercial, Rural and Inholding Resource Lands.⁴⁵

23 SEPA requires all government agencies to consider the environmental effects of a
24 proposed action.⁴⁶ The Supreme Court has referred to SEPA as an environmental full
25 disclosure law. SEPA requires agencies to identify, analyze, disclose, and consider
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28 ⁴² *Davidson Serles v. City of Kirkland*, GMHB No. 09-3-0007c (Final Decision and Order, October 5, 2009) at
29 20.

30 ⁴³ *Davidson Serles & Assocs. v. Cent. Puget Sound Growth Mgmt. Hearings Bd.*, 159 Wn. App. 148, 160
31 (2010): "The Boards are not required, as a matter of law, to *always* invalidate an ordinance that was enacted
32 based on a noncompliant EIS in order for the Boards to abide by SEPA's policies."

⁴⁴ *Id.* at 159.

⁴⁵ Exhibit 2018-034, Title 18 Ordinance at 00184, 00185.

⁴⁶ RCW 43.21C.030.

1 mitigation of impacts on both the natural and built environments resulting from a proposed
2 action. The disclosure of environmental impact information to county or city decision-makers
3 and to the public promotes the policy of fully informed decision-making by government
4 bodies and better opportunities for meaningful public participation.⁴⁷

5 Thus, when Jefferson County amended its development regulations governing
6 “shooting ranges,” as was done here, a detailed and comprehensive SEPA environmental
7 review was required.⁴⁸ SEPA is to function “as an environmental full disclosure law,”⁴⁹ and
8 the County must demonstrate environmental impacts were considered in a manner sufficient
9 to show “compliance with the procedural requirements of SEPA.”⁵⁰ Environmental
10 documents prepared under SEPA require the consideration of “environmental” impacts with
11 attention to impacts that are likely, not merely speculative.⁵¹ SEPA further requires
12 jurisdictions to “carefully consider the range of probable impacts, including short-term and
13 long-term effects.”⁵²

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16 The Board finds that the County’s amendments of Titles 8 and 18 are inextricably
17 intertwined. The end result of the County’s actions in adopting amendments to both titles will
18 allow larger shooting facilities with more uses in natural resource lands than previously
19 allowed in its development regulations. Having made these changes through Title 8 and
20 Title 18, without SEPA review, the County had virtually no information regarding the
21 foreseeable environmental effects of the shooting facility regulations. **The Board finds and
22 concludes that the continued validity of the SEPA-noncompliant Ordinances, Titles 8
23 and 18, will substantially interfere with the fulfillment of Goal 10 of the GMA and
24 imposes invalidity.**
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28 ⁴⁷ RCW 43.21C.030; RCW 36.70A.035; *Norway Hill Pres. & Prot. Assn. v. King County Council*, 87 Wn.2d 267
29 (1976).

⁴⁸ WAC 197-11-704(b)(ii).

⁴⁹ *Moss v. Bellingham*, 109 Wn. App. 6 (2001).

⁵⁰ *Sisley v. San Juan County*, 89 Wn.2d 78, 64 (1977); 569 P.2d 712 (1977).

⁵¹ WAC 197-11-060(4)(a).

⁵² WAC 197-11-060(4)(c).

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FINDINGS OF FACT

1. County Ordinances Titles 8 and 18 are comprised of numerous amendments of the County Code which allow larger, multi-use commercial and non-commercial shooting facilities in natural resource lands and other land use zones.
2. The purpose of the Title 8 amendments was to provide uniform requirements for the establishment and operation of commercial shooting facilities including establishment of a permitting procedure for siting, design and operation of such facilities, protection of the environment and ensuring compatibility with neighboring properties.
3. The previous shooting facility regulations allowed “small-scale recreation and tourist uses” defined as isolated uses which are leisure or recreational in nature; were reliant upon a rural setting or location; and did not include any new residential development beyond that allowed in the underlying land use district.
4. The new shooting facility regulations create a new land use category, “outdoor shooting facilities”, and allow two types of shooting facilities: commercial shooting facilities (allow police and military unit training and which may include “one or more shooting ranges”⁵³ and non-commercial facilities for use by property owners or guests.
5. Title 8 and Title 18 are interrelated and work together to amend the County’s development regulations applicable to shooting ranges and shooting facilities.
6. The County’s adoption of Title 8 was done without SEPA analysis.
7. The County issued a Declaration of Non-Significance for Title 18.

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CONCLUSIONS OF LAW

- A. The Title 8 amendments include land use development regulations.
- B. The Board has jurisdiction over both Titles 8 and 18 pursuant to RCW 36.70A.280(1).

⁵³ The Title 8 Ordinance defines “Commercial shooting facility” at *Ex. 2018-024*, Appendix B, Article 3, Sec. 8.20.220(15).

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- C. The development regulation amendments related to shooting ranges and shooting facilities requires application/consideration of both Titles 8 and 18.
 - D. The County's failure to conduct a SEPA analysis on Title 8 and the issuance of a Declaration of Non-Significance for Title 18 so as to adequately consider the impacts on the County's actions violated RCW 43.21C.030.
 - E. The County's action in adopting Ordinances Title 8 and 18 implicated GMA Planning Goals 10 which provide as follows:
 - (10) Environment. Protect the environment and enhance the state's high quality of life, including air and water quality, and the availability of water.
 - F. The continued validity of the SEPA-noncompliant Ordinances, Titles 8 and 18, will substantially interfere with the fulfillment of GMA Goal 10.

15 **V. ORDER**

16 Based upon review of the Petition for Review, the briefs and exhibits submitted by the
17 parties, the GMA, prior Board orders and case law, having considered the arguments of the
18 parties, and having deliberated on the matter, the Board finds:

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- The Board has jurisdiction over Ordinance 12-1102-18, the Title 8 Ordinance, pursuant to RCW 36.70A.030(8) and RCW 36.70A.280;
 - The County failed to conduct a SEPA review of Title 8 as required by RCW 43.21C.030;
 - The Board finds and concludes Petitioner met its burden of proof to establish the actions of the County violated RCW 43.21C.030;
 - The Board remands Titles 8 and 18 to the County to achieve compliance as addressed in this Final Decision and Order;
 - The Board hereby finds and concludes that the continued validity of Ordinances Title 8 and Title 18 would substantially interfere with the fulfillment of the GMA Planning Goal 10 and imposes invalidity on both Ordinances; and

- All other allegations not addressed in this section of the Order are dismissed.

Compliance Schedule	Date Due
Compliance Due	March 2, 2020
Compliance Report/Statement of Actions Taken to Comply and Index to Compliance Record	March 16, 2020
Objections to a Finding of Compliance	March 30, 2020
Response to Objections	April 7, 2020
Telephonic Compliance Hearing 1 (800) 704-9804 and use pin code 7579646#	April 14, 2020 10:00 a.m.

SO ORDERED this 16th day of September 2019.

Nina Carter, Board Member

William Roehl, Board Member

Bill Hinkle, Board Member

Note: This is a final decision and order of the Growth Management Hearings Board issued pursuant to RCW 36.70A.300.⁵⁴

⁵⁴ Should you choose to do so, a motion for reconsideration must be filed with the Board and served on all parties within ten days of mailing of the final order. WAC 242-03-830(1), WAC 242-03-840. A party aggrieved by a final decision of the Board may appeal the decision to Superior Court within thirty days as provided in RCW 34.05.514 or 36.01.050. See RCW 36.70A.300(5) and WAC 242-03-970. It is incumbent upon the parties to review all applicable statutes and rules. The staff of the Growth Management Hearings Board is not authorized to provide legal advice.

1 **Appendix A: Procedural matters**

2 On December 27, 2018, and January 18, 2019, the Board received two Petitions for
3 Review (PFR) from the Petitioner. The cases were assigned case Nos.18-2-0007, and 19-2-
4 0003. The cases were consolidated and assigned GMHB Case No. 19-2-0003c. The Board
5 held a telephonic prehearing conference on January 22, 2019. Petitioner appeared through
6 its counsel Alex Sidles. Respondent Jefferson County appeared through its attorney Philip
7 Hunsucker.
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9 The Briefs and exhibits of the parties were timely filed and are referenced in this
10 order as follows:

- 11 • Petitioner’s Prehearing Brief, March 25, 2019;
 - 12 • County’s Response Brief, April 22, 2019;
 - 13 • County’s Request to Take Official Notice, April 22, 2019; and
 - 14 • Petitioner’s Reply Brief, May 16, 2019.
- 15
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17 Hearing on the Merits

18 The hearing was convened June 11, 2019, in Port Townsend, Washington. The
19 hearing afforded each party the opportunity to emphasize the most important facts and
20 arguments relevant to its case. Board members asked questions seeking thoroughly to
21 understand the history of the proceedings, the important facts in the case, and the legal
22 arguments of the parties. At the outset of the hearing, the Board asked Petitioners to
23 respond to the County’s request to take official notice of certain documents. Petitioners did
24 not object. The Board orally granted the County’s request to take official notice of those
25 documents.
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1 **Appendix B: Legal Issues**

2 Per the Prehearing Order, legal Issues in this case were as follows:

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4 **The first four issues pertain to Title 8 Ordinance No. 15-1214-18 only**

- 5 1. Does the Title 8 Ordinance constitute a “development regulation” under the
6 Growth Management Act, RCW 36.70A.030(7)? [sic]
- 7 2. In adopting the Title 8 Ordinance without review by the Planning Commission, did
8 the County violate its own public participation program, described in JCC 18.45
9 and JCC 18.05.050, and required by the GMA, RCW 36.70A.035; RCW
10 36.70A.140; and the GMA implementing regulations, WAC 365-196-600(3); WAC
11 365-196-600(10)?
- 12 3. By adopting the Title 8 Ordinance without any SEPA review (RCW 43.21C) did
13 the County violate RCW 43.21C.030 and WAC 365-196-620?
- 14 4. By allowing military and police training at commercial shooting facilities (Title 8
15 Ord. at 8.20.220; 8.50.310), but not amending the definition or regulation of
16 “outdoor shooting ranges” in JCC 18.10.190; 18.15.040; 18.20.350, does the Title
17 8 Ordinance create an internally inconsistent and unpredictable permitting regime,
18 in violation of RCW 36.70A.020(7) and WAC 365-196-500(3)?

19 **The final issue pertains to both Ordinances No. 15-1214-18 and No. 12-1102-18**

- 20 5. Do the two Ordinances (Title 8 Ord. at 8.20.220; 8.50.310) (Title 18 Ord. at
21 18.10.090; 18.10.150; 18.10.190; Table 3-1; 18.20.170(4); 18.20.350(8)) allow a
22 land use that is inconsistent with and fails to implement the Jefferson County
23 Comprehensive Plan goals and policies NRG 1.0, NRP 1.1, NRP 3.2, NRP 3.4,
24 NRG 5.0, NRP 5.1, and/or NRP 5.3, in violation of RCW 36.70A.120; RCW
25 36.70A.130(1)(d); RCW 36.70A.040 and WAC 365-196-500(3)? Petitioners claim
26 the Ordinances violate these provisions because:
- 27 a) They allow multiple gun ranges per parcel, whereas previously only one gun
28 range per parcel was allowed.
- 29 b) They allow police and military training at commercial shooting facilities,
30 whereas previously only recreational and tourist use was allowed at gun
31 ranges.
- 32 c) They abandon the requirement that commercial shooting facilities confine
themselves only to small-scale uses, whereas previously gun ranges were
required to be small-scale.