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**State of Washington
GROWTH MANAGEMENT HEARINGS BOARD
FOR EASTERN WASHINGTON**

**CITY OF SPOKANE VALLEY,
WASHINGTON, a municipal
corporation,**

Petitioner,

v.

**CITY OF LIBERTY LAKE,
WASHINGTON, a municipal
corporation,**

Respondent,

**LIBERTY LAKE SEWER & WATER
DISTRICT,**

Intervenor.

Case No. 03-1-0007

ORDER ON COMPLIANCE

I. SUMMARY OF DECISION

On May 24, 2004, the Eastern Washington Growth Management Board (Board) filed its Final Decision and Order (FDO) in case number 03-1-007 finding the City of Liberty Lake in non-compliance for failure to meet the requirements of the Spokane County Wide Planning Policies and RCW 36.70A.070(3).

The Respondent, City of Liberty Lake, worked diligently to update its Comprehensive Plan and Capital Facilities Plan (CFP) to bring the City into compliance with the Board's Order. Liberty Lake's efforts were commendable, given the difficulties it encountered in receiving a population allocation from the Spokane County Steering Committee and, subsequently, the Spokane County Board of County Commissioners (BOCC). It obtained a recommended population allocation from the Steering Committee, reviewed and updated its

1 CFP, completed an environmental review of the CFP under SEPA, obtained an official
2 population allocation from the BOCC, provided public participation based on its Public
3 Participation Plan (PPP) and finally adopted Ordinance 133, the updated CFP for 2004-2009,
4 on December 14, 2004.

5 The Petitioner, City of Spokane Valley, and Intervenor, Liberty Lake Sewer and Water
6 District (District), contend that Liberty Lake's adopted ordinance fails to comply with the
7 Board's Order and is in non-compliance with the following seven issues stated here as
8 questions:

- 9 1. Is Liberty Lake out of compliance because the CFP was not a six-year
10 plan as required by RCW 36.70.070(3)?
- 11 2. Does Liberty Lake's Capital Facilities Plan contain an inventory of water
12 facilities as required by RCW 36.70A.070(3)(a)?
- 13 3. Does Liberty Lake's CFP make adequate provisions for a public library
14 system?
- 15 4. Did Liberty Lake meet the public participation requirements?
- 16 5. Did Liberty Lake comply with SEPA requirements?
- 17 6. Was Liberty Lake required to send its CFP to the Department of
18 Community, Trade and Economic Development (CTED) at least 60 days
19 prior to adoption and within 10 days after adoption?
- 20 7. Are Liberty Lake's CFP and Comprehensive Plan internally consistent?

21 The Board held a Compliance Hearing on March 1, 2005, and the Parties argued the
22 seven issues, citing relevant case law to support their positions. The Board finds the
23 Petitioner and Intervenor carried their burden of proof on two of the seven issues, numbers
24 1 and 6 as numbered above. The Board agrees with the Petitioner and Intervenor that
25 Liberty Lake's six-year plan is out of compliance because it only covers five years, rather
26 than the six full years required by the GMA. The Board also agrees that Liberty Lake has the
responsibility to notify CTED of its intent to adopt amendments/updates to their

1 Comprehensive Plan or Development Regulations 60 days prior to adoption and provide a
2 copy of such change within 10 days after adoption.

3 The Board finds that the Petitioner and Intervenor did not carry their burden of proof
4 on issue numbers 2, 4, 5 and 7 as cited above. In issue number 2, case law supports
5 Liberty Lake's decision to incorporate the Liberty Lake Sewer and Water District's Capital
6 Facilities Plan into the City's plan, without having to duplicate the information. In issue
7 number 4, the Board finds Liberty Lake followed its PPP as adopted and is in compliance
8 with the GMA's requirements. In issue number 5, the Board finds that Liberty Lake's State
9 Environmental Policy Act (SEPA) process in the adoption of the CFP and Comprehensive
10 Plan was in compliance with RCW 43.21C and the GMA. In issue number 7, the Board finds
11 Liberty Lake's Comprehensive Plan internally consistent with its revised CFP. It is
12 commendable for the City of Liberty Lake to plan ahead for annexations and it is consistent
13 with the GMA.

14 The Petitioner conceded issue number 3 and was not argued by the Parties.

15 The Board therefore Orders the City of Liberty Lake to bring its CFP into compliance
16 by adopting a full six-year plan and, in doing so, notify CTED prior to 60 days of adoption
17 and provide them a copy within 10 days after adoption. The Respondent is in compliance in
18 the other five issues.

19 **II. PROCEDURAL HISTORY**

20 On November 19, 2003, CITY OF SPOKANE VALLEY, by and through its attorney,
21 Cary Driskell, filed a Petition for Review.

22 At the Prehearing conference in Case No. 04-1-0001, held on February 19, 2004, the
23 Board discussed consolidating Cases No. 03-1-0007 and No. 04-1-0001. The Board asked
24 the parties to discuss consolidation with Mr. Driskell, for he was not present at this hearing.

25 On February 24, 2004, the Board issued its Order Consolidating the two cases.

26 On April 5, 2004, the Board held the Hearing on the Merits. Present were Judy Wall,
Presiding Officer, and Board Members Dennis Dellwo and D.E. "Skip" Chilberg. Present for

1 Petitioners was Cary Driskell. Present for Respondent was Brian T. McGinn. Present for
2 Intervenor was Dawn Findlay.

3 On May 24, 2004, the Board issued its Final Decision and Order.

4 On September 20, 2004, the Board received from Respondent Liberty Lake's
5 representative, Doug Smith, Director of Community Development, Motion and Memorandum
6 to Amend Final Decision and Order to Extend the Compliance Deadline.

7 On September 21, 2004, the Board received Petitioner's Motion to Strike Liberty
8 Lake's Motion to Extend Time and Alternatively Objecting to Portions of Respondent's
9 Motion.

10 On September 30, 2004, the Board held a telephonic conference. Present were Judy
11 Wall, Presiding Officer, and Board Member Dennis Dellwo. Present for Petitioners was Cary
12 Driskell. Present for Respondent was Doug Smith. Present for Intervenor was Rosemary
13 Larson.

14 Petitioner withdrew their Motion to Strike Liberty Lake's Motion to Extend Time and
15 Alternatively Objecting to Portions of Respondent's Motion. The parties agreed that there
16 were circumstances outside of the Respondent's control and an extension of time was
17 appropriate. The Petitioner and Intervenor did not object to the extension of the compliance
18 deadline to November 19, 2004.

19 On September 30, 2004, the Board issued its Order on Motion to Extend Compliance
20 Deadline.

21 On November 19, 2004, the Board received a letter from Doug Smith, Planning
22 Director of the City of Liberty Lake, advising the Board as to the status of compliance in the
23 above matter.

24 On November 22, 2004, the Board received a letter from Cary Driskell, City Attorney,
25 City of Spokane Valley, requesting a status conference in this matter.

26 On December 22, 2004, the Board received Mr. Driskell's objections to a finding of
compliance for Liberty Lake and request for a compliance and briefing schedule in this
matter.

1 On January 3, 2005, the Board held a telephonic status conference. Present were
2 Presiding Officer, Judy Wall and Board Members Dennis Dellwo and John Roskelley. Present
3 for Petitioners was Cary Driskell. Present for Respondent was Doug Smith. Present for
4 Intervenor was Dawn Findley.

5 On January 4, 2005, the Board issued its Order Setting Briefing and Compliance
6 Schedule.

7 On March 1, 2005, the Board held a compliance hearing in Liberty Lake. Present
8 were Presiding Officer, Judy Wall and Board Members Dennis Dellwo and John Roskelley.
9 Present for Petitioners was Cary Driskell. Present for Respondent was Stanley Schwartz,
10 Stacy Bjordhal, and Doug Smith. Present for Intervenor was Dawn Reitan by phone.

11 **III. STANDARD OF REVIEW**

12 Comprehensive plans and development regulations (and amendments thereto)
13 adopted pursuant to the Growth Management Act ("GMA" or "Act") are presumed valid
14 upon adoption by the local government. RCW 36.70A.320. The burden is on the Petitioners
15 to demonstrate that any action taken by the respondent jurisdiction is not in compliance
16 with the Act.

17 The Washington Supreme Court has summarized the standards for Board review of
18 local government actions under Growth Management Act. It was stated:

19 The Board is charged with adjudicating GMA compliance, and, when
20 necessary, with invalidating noncompliant comprehensive plans and
21 development regulations. RCW 36.70A.280.302. The Board "shall find
22 compliance unless it determines that the action by the state agency, county or
23 city is clearly erroneous in view of the entire record before the county, or city
24 is clearly erroneous in view of the entire record before the Board and in light
25 of the goals and requirements of [the GMA]." RCW 36.70A.320(3). To find an
26 action "clearly erroneous" the Board must be "left with the firm and definite
conviction that a mistake has been committed." *Dep't of Ecology v. Pub. Util.*
Dist. No. 1, 121 Wn.2d 179, 201, 849 P.2d 646 (1993).

King County v. Central Puget Sound Growth Management Hearings Board, 142 Wn.2d 543,
552, 14 P.3d 133, 138 (2000).

1 The Board will grant deference to counties and cities in how they plan under Growth
2 Management Act (GMA). RCW 36.70A.3201. But, as the Court has stated, "local discretion is
3 bounded, however, by the goals and requirements of the GMA." *King County v. Central*
4 *Puget Sound Growth Management Hearings Board*, 142 Wn.2d 543, 561, 14 P.2d 133
5 (2000). It has been further recognized that "[c]onsistent with *King County*, and
6 notwithstanding the 'deference' language of RCW 36.70A.3201, the Board acts properly
7 when it foregoes deference to a . . . plan that is not 'consistent with the requirements and
8 goals of the GMA." *Thurston County v. Cooper Point Association*, 108 Wn.App. 429, 444, 31
9 P.3d 28 (2001).

10 The Board has jurisdiction over the subject matter of the Petition for Review. RCW
11 36.70A.280(1)(a).

12 IV. ISSUES PRESENTED

- 13 1. Is Liberty Lake out of compliance because the Capital Facilities Plan
14 (CFP) was not a six-year plan as required by RCW 36.70A.070(3)?
- 15 2. Does Liberty Lake's Capital Facilities Plan contain an inventory of water
16 facilities as required by RCW 36.70A.070(3)(a)?
- 17 3. Does the Liberty Lake Capital Facilities Plan make adequate provisions
18 for a public library system?
- 19 4. Did the City of Liberty Lake meet the public participation requirements?
- 20 5. Did Liberty Lake comply with SEPA requirements?
- 21 6. Was Liberty Lake required to send their Capital Facilities Plan to
22 Department of Community, Trade and Economic Development, (CTED)
23 at least 60-days prior to adoption and within 10 days after adoption?
- 24 7. Are the City of Liberty Lake's Capital Facilities Plan and their
25 Comprehensive Plan internally consistent?
26

1 **V. ARGUMENT, DISCUSSION AND ANALYSIS**

2 **Issue No. 1:**

3 Is Liberty Lake out of compliance because their Capital Facilities Plan (CFP) was not a
4 six-year plan as required by RCW 36.70A.070(3)?

5 **The Parties Positions:**

6 The City of Spokane Valley contends that the GMA requires a Capital Facilities
7 Plan "of at least a six-year plan that will finance such capital facilities within projected
8 funding capacities and clearly identifies sources of public money for such purposes."
9 (RCW 36.70A.070(3)). They contend also that the CFP for Liberty Lake is for only
10 five years. The effective date of the plan is January 18 2005, yet the final year of
11 the plan is 2009. The Petitioner and Intervenor list a series of cases supporting the
12 requirement of the adoption of a six-year Capital Facilities Plan and that the six years
13 begins with the date of the adoption of the plan. *Alpine v. Kitsap County*, CPSGMHB
98-3-0032c, FDO at Section F – Capital Facilities.

14 Liberty Lake explains the missing year by describing the time they took to get
15 the population allocation and the time needed for the final development of the CFP
16 language. The Respondent further refers to WAC 365-195-315(2)(d) and suggests
17 that the WAC calls for a city's six-year plan to be updated at least biennially. Because
18 of that, it will be quite often when Liberty Lake would have less than six years left in
the CFP.

19 **Legal discussion:**

20 RCW 36.70A.070(3) in relevant part states:

21 A capital facilities plan element consisting of: (a) an inventory of existing
22 facilities owned by public entities, showing the locations and capacities of the
23 capital facilities; (b) a forecast of the future needs for such capital facilities;
24 (c) the proposed locations and capacities of expanded or new capital facilities;
25 (d) at least a six-year plan that will finance such capital facilities within
projected funding capacities and clearly identifies sources of public money for
such purposes; and (e) a requirement to reassess the land use element if
probable funding falls short of meeting existing needs and to ensure that the

1 land use element, capital facilities plan element, and financing plan within the
2 capital facilities plan element are coordinated and consistent. (emphasis
3 provided).

4 This Board and the other Boards have consistently held that jurisdictions are
5 required to adopt a six-year CFP. *City of Spokane v. Spokane County*, EWGMHB No.
6 02-1-0001, Final Decision and Order; *Bremerton v. Kitsap County*, CPSGMHB No. 95-
7 3-0039, Order Rescinding Invalidity. This CFP is Liberty Lake's first compliant Capital
8 Facilities Plan and it is required by statute to be a six-year plan. The Petitioner had
9 adopted a previous CFP, but it was in part limited to a period of less than six years.
10 The Growth Management Act requires a six-year plan, beginning with its effective
11 date. In this case, the Ordinance, including the CFP, was adopted December 14,
12 2004, with an effective date of January 18, 2005. Even if Liberty Lake had adopted
13 the CFP sometime in 2004, the plan would need to have covered a part of 2010.

14 While the Board finds that the CFP is satisfactory, it does not cover the proper
15 number of years. When the City of Liberty Lake adopts an amended CFP, they need
16 to make sure it covers a period of six years from its effective date.

17 The Board believes the Capital Facilities Plan update is an amendment to the
18 Comprehensive Plan, therefore the six-year plan must start from the time of the adoption of
19 the amendments. The law is clear. The plan must be "at least a six year plan".

20 **Conclusion:**

21 The Board finds the City of Liberty Lake does not have a six-year Capital Facilities
22 Plan. The Petitioner and Intervenors have carried their burden of proof and Liberty Lake is
23 not in compliance on Issue No. 1.

24 **Issue No. 2:**

25 Does Liberty Lake's Capital Facilities Plan contain an inventory of water facilities as
26 required by RCW 36.70A.070(3)(a)?

1 **The Parties Position:**

2 The Petitioners claim the City of Liberty Lake failed to list an inventory of the water
3 facilities within their UGA. Spokane Valley does not believe the mere incorporation by
4 reference of the District's plan is sufficient.

5 The Respondent states Liberty Lake has adopted by reference the Liberty Lake Sewer
6 and Water District's own Capital Facilities Plan and this satisfies the requirements of the
7 GMA. The District's plan gives the locations of the water facilities and the capacities for the
8 facilities as well as the other required information.

9 The Respondent cites EWGMHB Case No. 99-1-0009 Wenatchee Valley Mall
10 Partnership, et al. v. Douglas County. The Board wrote the following on this same issue:

11 The GMA requires a county to analyze some of the capital facility planning
12 issues relevant to special districts, but we believe this should not be construed
13 to require a county to do the detailed planning required of the special district
14 itself. In fact, it would be a fruitless effort to plan for the special district and
15 tell them what they will do and how the money will be raised. This would be
16 useless duplication and normally unenforceable.

17 **Legal discussion:**

18 The Board is very familiar with the case cited by the Respondent, *Wenatchee Valley*
19 *Mall Partnership, et al v. Douglas County*, Case No. 97-1-0003. In *Wenatchee*, the Board
20 quoted the Central Puget Sound Hearings Board in *Sky Valley V. Snohomish County*,
21 CPSGMHB Case No. 95-3-0068c at page 1675 and cited with approval, the Central Board's
22 interpretation of RCW 36.70A.070(3)c):

23 "... as if the phrase 'owned or operated by the city or county' existed at the
24 end. This interpretation is required by necessary implication. To hold
25 otherwise would require a county government as the regional planning entity
26 within a county, to conduct capital planning for all public facilities regardless
of ownership...."

The Board continues to hold as they did in *Wenatchee supra*, that a county or a city
need not do the work that is already done by special districts or entities not owned or
operated by a city. Adoption by reference or attachment is sufficient. Here Liberty Lake has

1 referenced the Capital Facilities Plan of Liberty Lake Sewer & Water District and adopted it
2 by reference. Upon review of the record, it appears to comply with the GMA and the
3 Petitioner and Intervenors have not carried their burden of proof.

4 **Conclusion:**

5 The Petitioner and Intervenor have not carried their burden of proof on this issue.
6 The City of Liberty Lake is in compliance with Issue No. 2.

7 **Issue No. 3:**

8 Does the Liberty Lake Capital Facilities Plan make adequate provisions for the
9 public library?

10 **The Parties Position:**

11 The Petitioner conceded this issue and it will not be argued here.

12 **Conclusion:**

13 The City of Liberty Lake is in compliance with Issue No. 3.

14 **Issue No. 4:**

15 Did the City of Liberty Lake meet the public participation requirements?

16 **The Parties Position:**

17 The Petitioner and Intervenor contend that the City of Liberty Lake did not comply
18 with the public participation requirements of the GMA or their own PPP beyond the general
19 published notice in the official newspaper of record and the regular agenda posting. The
20 Petitioner states that they requested copies of the draft as it was being considered and did
21 not receive it until immediately prior to its adoption. Notice was also claimed to have been
22 given at a time which allowed little preparation and with less notice than required by the
23 City's PPP.

24 The Respondent, Liberty Lake, states they followed their own Public Participation
25 Plan. Liberty Lake held public hearings, gave notice, and the Petitioner and Intervenor had
26 the opportunity to participate at three hearings.

The Respondent cited the *Chevron U.S.A. Inc. v. Hearings Board*, 123, Wn.App 161
(2004). There the Court held that pursuant to RCW 36.70A.035 and RCW 36.70A.140 and

1 due process the City was not required to give Chevron individual notice. The Respondent
2 points out that there is no requirement that individual participants need be given more
3 notice than is provided for under the Public Participation Plan of the City.

4 Liberty Lake contends that it carefully followed their PPP and provided more than
5 adequate public participation. They compared the public participation provided herein with
6 the requirements of their own PPP and point out that in each case they complied with the
7 requirements of their Plan.

8 **Legal discussion:**

9 The City of Liberty Lake is required to adopt a Public Participation Plan which
10 complies with the GMA. (RCW 36.70A.140). A Plan was adopted by Liberty Lake and was
11 not challenged or found out of compliance. The City of Liberty Lake is required to follow
12 their own Plan. The City will not be measured by what they should have adopted, but what
13 they have adopted as their PPP.

14 We must look at the City's public participation in this case and whether it complies
15 with their PPP. In this case, Liberty Lake provided the public participation their plan
16 required. While more could be wished for, Liberty Lake is not out of compliance.

17 RCW 36.70A.140 also provides that "errors in exact compliance with the established
18 program and procedures shall not render the comprehensive land use plan or development
19 regulations invalid if the spirit of the program and procedures is observed." The spirit of
20 the Public Participation Plan has been followed and is adequate under the GMA.

21 **Conclusion:**

22 The Petitioner has not met their burden of proof. The City of Liberty Lake is found in
23 compliance with Issue 4.

24 **Issue No. 5:**

25 Did Liberty Lake comply with SEPA requirements?

26 **The Parties Position:**

The Petitioner and Intervenor contend Liberty Lake failed to comply with SEPA requirements in adopting their Comprehensive Plan and these failures were not addressed

1 in the adoption of the revised Capital Facilities Plan. The Petitioners referred the Board to
2 their original briefings. They contend the Board declined to rule on the SEPA arguments,
3 stating that these issues would be reexamined by Liberty Lake when they adopted their
4 "new Comprehensive Plan." The Respondent did not adopt a new Comprehensive Plan and
5 did not perform a SEPA review in addition to what they did for the amendment of the CFP.

6 The Respondent states they conducted a SEPA review and environmental checklist of
7 the updated Capital Facilities Policy. The City of Liberty Lake issued a Determination of Non
8 Significance (DNS) on November 11, 2004. The Respondent contends the City of Spokane
9 Valley did not file any comments with the City of Liberty Lake regarding the checklist on the
10 DNS. The City of Spokane Valley also failed to appeal the DNS.

11 **Legal discussion:**

12 Upon the review of the arguments in the briefing submitted in the earlier case, April
13 5, 2004, the Board does not find that the City of Spokane Valley or the Intervenor has
14 carried their burden of proof. The SEPA process followed in the present CFP and in the
15 adoption of the Comprehensive Plan was in compliance with the State Environmental Policy
16 Act, RCW 43.21C, and the Growth Management Act, RCW 36.70A.

17 **Conclusion:**

18 The Petitioner has failed to meet their burden of proof. The City of Liberty Lake is in
19 compliance on Issue 5.

20 **Issue No. 6:**

21 Was Liberty Lake required to send their Capital Facilities Plan to the
22 Department of Community, Trade and Economic Development, (CTED), at least 60-
23 days prior to adoption?

24 **The Parties Position:**

25 The Petitioner and Intervenor contend that Liberty Lake failed to send their revised
26 Capital Facilities Plan to CTED 60 days prior to adoption and no more than 10 days after
adoption as required by RCW 36-70A.106. They contend this is a requirement of the GMA.

1 The City of Liberty Lake claims the updated Capital Facilities Plan is not required to
2 be reviewed by CTED, as it's not an amendment and they contacted CTED by e-mail and
3 were told that they were not required to send their CFP under the circumstances given.
4 They further contend that CTED was directed by the GMA to provide help to and guide local
5 jurisdictions in their effort to comply with the GMA. Liberty Lake was permitted to rely upon
6 their advice. Liberty Lake also states that if the 60-day rule were followed they would not
7 have adequate time to prepare and adopt the corrective language within the 180 days
8 allowed.

9 The Petitioner, in preparation for the compliance hearing, also contacted the person
10 at CTED that had been contacted by Liberty Lake. The Petitioner gave a different summary
11 of what was being considered and adopted by Liberty Lake and received a different answer.
12 The Petitioner and Intervenor contend that the Ordinance adopted by Liberty Lake must be
13 submitted to CTED 60 days prior to adoption, and this was not done. They contend this is a
14 clear violation of the GMA and the CFP must be remanded.

Legal discussion:

15 The GMA describes the role of CTED and other state agencies in reviewing and
16 commenting upon plan and development regulations.

**RCW 36.70A.106 Comprehensive plans – Development
Regulations – Transmitted to state.**

- 17 (1) Each county and city proposing adoption of a
18 comprehensive plan or development regulations under
19 this chapter shall notify the department of its intent to
20 adopt such plan or regulation at least sixty days prior to
21 final adoption. State agencies including the department
22 may provide comments to the county or city on the
23 proposed comprehensive plan, or proposed development
24 regulations, during the public review process prior to
25 adoption.
- 26 (2) Each county and city planning under this chapter shall
transmit a complete and accurate copy of its
comprehensive plan or development regulations to the
department within ten days after final adoption.

1 (3) Any amendments for permanent changes to a
2 comprehensive plan or development regulations that are
3 proposed by a county or city to its adopted plan or
4 regulation shall be submitted to the department in the
same manner as initial plans and development regulations
under this section... (Emphasis added).

5 As noted above, RCW 36.70A.106(3) provides that "any amendments for permanent
6 changes to a comprehensive plan or development regulation that are proposed by a county
7 or city to its adopted plan or regulations shall be submitted to CTED at least sixty days prior
8 to its final adoption".

9 RCW 36.70A.106 provides that notice of any proposed amendments for permanent
10 changes to a county or city's development regulation shall be submitted to CTED "at least
11 sixty days prior to final adoption" so that the department or other state agencies may
12 provide comments. This notice must be sufficient to give CTED full notice of what the
13 jurisdiction intends to do. This notice must be 60-days or more before the adoption. CTED
14 is then allowed to participate as needed in the process. The adopted Ordinance must then
15 be sent to the department within 10 days of adoption. This is not an unreasonable burden
and is mandated so that CTED can provide the necessary help and advice available to them.

16 The Central Board has interpreted this requirement in the case of *Children's Alliance*
17 *and Low Income Housing Institute v. City of Bellevue*, CPSGMHB Case No. 95-3-0011, Final
18 Decision Order, (Jul. 25, 1995) and *Home Builders Association of Kitsap County v. City of*
19 *Bainbridge Island*, Case No. 00-3-0014 Final Decision and Order. In those decisions, the
20 Board did not elaborate on what a jurisdiction must actually submit to CTED as "notice of its
21 intent", but the Board recognized that CTED must be fully apprised and fully aware of the
22 substance of any proposed amendment. A city or county's notice must describe *what* it is
proposing to do.

23 The Central Board saw two aspects to the issue of notification of the Department of
24 Community, Trade, and Economic Development: timeliness and sufficiency. Here, Liberty
25
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1 Lake admits that no notice was sent to CTED, relying upon the belief a notice was not
2 needed.

3 The GMA provides that notice of any amendments for permanent changes to a
4 comprehensive plan or development regulation "shall" be submitted "at least sixty days"
5 prior to its final adoption. The record shows that this was not done. This is an error on the
6 part of the City of Liberty Lake and is noncompliant with the provisions of section RCW
36.70A.106.

7 The Legislature directed CTED to properly review the substance of all proposed
8 amendments submitted by local government entities. The Board does not wish to
9 undermine the statutorily mandated 60-day timeframe that CTED needs to carry out its duty
10 under the GMA. The Board finds the updated Capital Facilities Policy is an amendment and
11 it should have been sent to CTED for review. The Respondent failed to comply with the
12 GMA. The fact that CTED gave confused directions, while unfortunate, does not excuse
13 Liberty Lake from the requirement of the law.

14 **Conclusion:**

15 Petitioner has carried their burden of proof. The City of Liberty Lake failed to comply
16 with the requirements of RCW 36.70A.106(3) as to notifying the Department of Community,
17 Trade, and Economic Development of their intent to amend its Comprehensive Plan or
development regulations.

18 **Issue No. 7:**

19 Are the City of Liberty Lake's Capital Facilities Plan and their Comprehensive Plan
20 internally consistent?

21 **The Parties Position:**

22 The Petitioner and Intervenor contend that Liberty Lake's Comprehensive Plan is
23 internally inconsistent with their recently revised Capital Facilities Plan.

24 The basis of the Petitioner's argument is that Liberty Lake included in their
25 deliberations the possibility of annexation of additional lands, which would include additional
26 population. Because the population allocation from Spokane County was for 5,511 people

1 and all were directed to be contained within Liberty Lake's corporate boundary, (IR 0015,
2 page 7), the Intervenor concludes that any inclusion of outside lands within the CFP is
3 inconsistent with the Comprehensive Plan.

4 The City of Liberty Lake demurs. They contend that it is their responsibility to
5 consider future annexations or they are not properly planning for the future. They further
6 contend that this is consistent with their Comprehensive Plan.

7 **Legal Discussion:**

8 The City of Liberty Lake included a discussion of possible annexation. This is
9 appropriate and is the responsibility of planning for Cities. This does not make the CFP
10 inconsistent with their Comprehensive Plan. The population allocated for Liberty Lake's
11 UGA is properly considered and planned for. The consideration of additional population in
12 potential annexation areas is appropriate and not inconsistent with the Comprehensive Plan.
13 *Chevron U.S.A. Inc. v. Hearings Board*, 123, Wn.App 161 (2004). The Record is clear that
14 Liberty Lake's Comprehensive Plan considered population outside of their existing corporate
15 limits. See Dec. of Doug Smith. The Capital Facilities Plan and the Comprehensive Plan are
internally consistent.

16 **Conclusion:**

17 The Petitioner and Intervenor have not carried their burden of proof and the City of
18 Liberty Lake is found in compliance on Issue 7.

19 **VI. FINDINGS OF FACT**

- 20 1. The City of Liberty Lake is planning under RCW 36.70A.
- 21 2. The Petitioners and Intervenor participated in the original hearings
before the City Council regarding the Liberty Lake Capital Facilities Plan.
- 22 3. On September 16, 2003, the City of Liberty Lake adopted their
23 Comprehensive Plan through Ordinance No.118.
- 24 4. The Plan stated the City could absorb over a twenty-year period a total
25 population of 10,511.
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5. On November 30, 2004, the Board of County Commissioners (BOCC) signed Resolution 3-1009 giving the City of Liberty Lake a population allocation of 5, 511 for a twenty-year period.
6. When this figure is added to the existing population of 5,000 the total of 10,511 is the exact number used by the City of Liberty Lake throughout the planning process.
7. On December 14, 2004, the third opportunity for public comment, the City Council approved Ordinance 133, their Capital Facilities Plan. The effective date of the Capital Facilities Plan was January 18, 2005.
8. The term of the Capital Facilities Plan was from January 18, 2005 through 2009.
9. The City of Liberty Lake, through its Capital Facilities Plan, adopted and incorporated by reference the Liberty Lake Sewer and Water District Comprehensive Plan.
10. The District's Plan shows the locations of the water facilities, the capacities for such facilities, as well as the other required information for the City of Liberty Lake.
11. The Capital Facilities Plan is internally consistent with the City's Comprehensive Plan.
12. The City of Liberty Lake followed their Public Participation Plan in the adoption of their Capital Facilities Plan.
13. The SEPA procedures followed by the City of Liberty Lake were adequate and in compliance.
14. The City of Liberty Lake adopted its CFP December 14, 2004 with an effective date of January 18, 2005.
15. The City of Liberty Lake did not notify or send the CFP to CTED 60 days prior to its adoption.

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VII. CONCLUSIONS OF LAW

1. The Eastern Washington Growth Management Hearings Board has jurisdiction to review the City of Liberty Lake’s Capital Facilities Plan.
2. The Capital Facilities Plan is for the years 2005-2009, making it a five-year plan instead of a six-year plan.
3. The adoption by reference of the Liberty Lake Sewer and Water District Comprehensive Plan, which includes an inventory of water facilities located in the City, fulfills the City’s responsibilities where the water facilities are privately owned.
4. If the City follows their Public Participation Plan, the public participation is adequate.
5. The Capital Facilities Updated Plan was an amendment as referred to under RCW36.70A.106 and notice of such amendment should have been provided to CTED for review 60 days before adoption by the City of Liberty Lake. The City’s non-action is clearly erroneous.
6. The City of Liberty Lake’s Capital Facilities Updated Plan and its Comprehensive Plan are internally consistent even if the City considers the additional population for possible future annexation.

VIII. ORDER

1. The City of Liberty Lake is found to be in non-compliance with the Growth Management Act regarding their five-year plan for Capital Facilities. The City must have at least a six-year plan. The City is directed to take such action to come into compliance with this order and the ACT.
2. The City of Liberty Lake is found to be in compliance regarding whether the Capital Facilities Plan contains an inventory of water facilities as required by RCW 36.70A070(3)(a).
3. This issue was conceded by the Petitioner.
4. The Petitioner and Intervenor did not meet their burden of proof regarding public participation requirements.

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5. The Petitioner and Intervenor did not meet their burden of proof regarding SEPA requirements.

6. The City of Liberty Lake is found to be in non-compliance with the Growth Management Act regarding the requirement to send their Capital Facilities Plan to CTED at least 60 days prior to adoption. The City is directed to take such action to come into compliance with this Order and the Act.

7. The Petitioner and Intervenor have not met their burden of proof on the issue regarding internal consistence of the City of Liberty Lake's Capital Facilities Plan and its Comprehensive Plan.
 - The City of Liberty Lake must take the appropriate legislative action to bring themselves into compliance with this Order by **June 16, 2005, 90-days** from the date issued.
 - The City shall file with the Board **by June 23, 2005, an original and four copies** of a Statement of Action Taken to Comply (SATC) with the GMA, as interpreted and set forth in this Order. The SATC shall attach copies of legislation enacted in order to comply. The City shall simultaneously serve a copy to the SATC, with attachments, on the Petitioner and Intervenor. By this same date, the City shall file a "Remand Index," listing the procedures and materials considered in taking the remand action.
 - By no later than **July 7, 2005**, the Petitioner and Intervenor shall file with the Board an **original and four copies** of Comments and legal arguments on the County's SATC. Petitioner and Intervenor shall simultaneously serve a copy of its Comments and legal arguments on the County.
 - By no later than **July 14, 2005**, the City of Liberty Lake shall file with the Board an **original and four copies** of the City's Response to Comments and legal arguments. The City shall simultaneously serve a copy of such Response on Petitioner and Intervenor.

