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

CITIZENS FOR GOOD GOVERNANCE,

Case No. 05-1-0013

Petitioners,

FINAL DECISION AND ORDER

FUTURWISE,

Intervenors,

v.

WALLA WALLA COUNTY,

Respondent

PENNBROOK HOMES,

Intervenors,

CITY OF WALLA WALLA,

Intervenors.

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I. SYNOPSIS

The Petitioners, Citizens for Good Governance and Intervenors Futurewise, are challenging Walla Walla County's (County) Ordinance 322 adopted by the Walla Walla Board of County Commissioners (BOCC) on October 31, 2005. Respondent, Walla Walla County, and Intervenors, Pennbrook Homes and the City of Walla Walla, collectively called the Respondents, believe the petition is without merit and should be dismissed.

The County enacted Ordinance 322 in 2005, containing the County's 2005 amendments to its Comprehensive Plan, Countywide Planning Policies (CWPP), and development regulations. The Petitioners challenge only one of the urban growth area (UGA) amendments, which added 381 acres to the UGA, along with related Comprehensive

1 Plan amendments and implementing development regulations. The Petitioners contend that
2 Ordinance 322 fails to comply with a number of statutes under the GMA, including RCW's
3 36.70A.020(1), .020(2), .020(8), .030, .040, .060, .110, .130, .140, and .170, which relate
4 to the following issues: the County lacks a Growth Management Act (GMA) compliant public
5 participation program; the County violated its own docketing procedures; the County is
6 permissibly allowing sprawl; the County violated its own CWPP's; the County violated the
7 agricultural lands conservation mandate; and the County adopted sections into the Walla
8 Walla County Code (WWCC) that are in violation of the GMA.

9 The Respondents disagree. They argue the following: the County has an
10 unchallenged and compliant public participation program in its Chapter 14.10; the citizens
11 of Walla Walla County, including the Petitioners, had ample opportunity for input into the
12 amendment process; the County's docketing procedures were followed; a three du/acre is
13 an allowable density and in line with the communities needs; the County followed the intent
14 and substance of its CWPP's; the County's expansion of the UGA into the agricultural area
15 was necessary; and the County's Urban Planned Community (UPC) section fulfills the
16 requirements and goals of the GMA.

17 The Board found the arguments compelling for both sides of the issues, but at the
18 end of the day, the Petitioners' arguments failed to convince the Board that the County was
19 clearly erroneous in light of the entire record.

20 This is not to say the Board approves of the methodology used by the County to
21 approve the Pennbrook amendments, nor the density of a minimum of three du/acre
22 adopted by the County.

23 The Board recognizes that the County, City of Walla Walla and the Walla Walla Port
24 District collaborated on the Pennbrook amendments in order to expand the UGA, which is
25 commendable. However, it also recognizes that the applicant, Pennbrook Homes, paid for
26 the private planning consultant hired by the County, Mr. Bill Stalzer, to re-write the Walla
27 Walla County Code to ensure the applicant's amendments were in compliance. The County

1 went so far as to allow Mr. Stalzer to recommend changes to the Code so a special district,
2 such as the Port District, can now run public services to new development.

3 The Petitioners broached the subject of the ethics of this action several times in their
4 briefing and at the hearing. The Petitioners argued that Pennbrook Homes enjoyed a special
5 privilege not available to the common citizen of Walla Walla County by financing a planner
6 to work on the applicant's behalf.

7 The Board, in its limited role, does not have jurisdiction over the motivation or
8 appropriateness of the County actions where it used a developer-sponsored planner to
9 effectuate the Pennbrook amendment. The citizens of Walla Walla County, not the Board,
10 must determine whose interest the BOCC had in mind when they allowed a developer-
11 sponsored contract planner to rewrite portions of the Walla Walla County Code specifically
12 for Pennbrook Homes. As to the issue of density, the Board believes a higher density per
13 acre is more appropriate for counties planning under the GMA. The County claims it has
14 always used a three du/acre density. Justifying a density of three du/acre because it was
15 used historically is like the County saying, "We are going to use the horse and buggy in
16 Walla Walla County because that is what we used to use." The County has a variety of
17 planning techniques and development regulations it can use to infill and increase density
18 within the present UGA before expansion, but those solutions, although within the purview
19 and discretion of the County, were not considered.

20 The Central Board found in *Aagaard*, a jurisdiction has broad discretion in many
21 areas:

22 [A] city enjoys broad discretion in its comprehensive plan to make many
23 specific choices about how growth is to be accommodated. These choices
24 include the specific location of particular land uses and development
25 intensities, community character and design, spending priorities, level of
26 service standards, financing mechanisms, site development standards and the
like. *Ann Aagaard, Sue Kienast, Tris Samberg, Cheri Miller, Michael Hablewitz,
Craig Bernhart and Judy Fisher v. City of Bothell*, CPSGMHB Case No. 94-3-
0011c, FDO at 9, (Feb. 21, 1995).

1 Respondent. The Board granted Futurewise's Motion to Intervene on behalf of Petitioner.
2 The Board granted Petitioner's Clarification of Issues as agreed to by all parties.

3 On January 23, 2006, the Board held a telephonic Prehearing conference. Present
4 were, John Roskelley, Presiding Officer, and Board Member Dennis Dellwo. Board Member
5 Judy Wall was unavailable. Present for Petitioners was Jeff Eustis. Present for Respondent
6 was Mr. Nagle and Charles Maduell. Present for Intervenors Pennbrook was Susan
7 Drummond. Present for Intervenors Futurewise was Tim Trohimovich.

8 On February 24, 2006, the Board received a Motion to Intervene by the City of Walla
9 Walla.

10 On March 1, 2006, the Board received a letter from Petitioner stating Citizens for
11 Good Governance and Futurewise do not oppose the Board granting intervention status to
12 the City of Walla Walla. Citizens for Good Governance and Futurewise request the Board
13 extend the deadline for the optional Hearing on the Merits Reply brief from May 8, 2006, to
14 May 11, 2006.

15 On March 9, 2006, the Board issued its Order Granting Intervenor Status and
16 Extending Due Dates.

17 On April 10, 2006, the Board received Petitioners Citizens for Good Governance and
18 Intervenors Futurewise Hearing on the Merits Brief, and Request for Board to Take Judicial
19 Notice and Motion to Supplement Record.

20 On April 20, 2006, the Board received Pennbrook Homes and Walla Walla County's
21 Response to Petitioners and Intervenors Request for Board to Take Judicial Notice and
22 Motion to Supplement Record.

23 On April 24, 2006, the Board received a Motion by Citizens for Good Governance and
24 Intervenors Futurewise for Consolidated Argument on Requests for Official Notice and
25 Motion to Supplement Record.

26 On May 1, 2006, the Board received a Motion to File Over-length Brief and
Declaration in Support Thereof and Hearing on the Merits Brief of Pennbrook Homes.

1 On May 1, 2006, the Board received the Hearing on the Merits Brief of Intervenor
2 City of Walla Walla.

3 On May 2, 2006, the Board received the Hearing on the Merits Brief of Respondent
4 Walla Walla County and Request to Take Official Notice of Aerial Photograph.

5 On May 11, 2006, the Board received a Motion to File Over-length Brief, Reply Brief
6 of Petitioners Citizens for Good Governance and Intervenor Futurewise, and Second Motion
7 to Supplement the Record.

8 On May 16, 2006, the Board held the Hearing on the Merits. Present were, Presiding
9 Officer John Roskelley, and Board Members Dennis Dellwo and Judy Wall. Present for
10 Petitioners/Intervenor was Jeff Eustis and John Zilavy. Present for Respondent/Intervenor
11 was Dennis Reynolds, Tim Donaldson, and Susan Drummond.

12 **III. PRESUMPTION OF VALIDITY, BURDEN OF PROOF AND STANDARD OF 13 REVIEW**

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

19 The Hearings Board will grant deference to counties and cities in how they plan
20 under Growth Management Act (GMA). RCW 36.70A.3201. But, as the Court has stated,
21 "local discretion is bounded, however, by the goals and requirements of the GMA." *King*
22 *County v. Central Puget Sound Growth Management Hearings Board*, 142 Wn.2d 543, 561,
23 14 P.2d 133 (2000). It has been further recognized that "[c]onsistent with *King County*, and
24 notwithstanding the 'deference' language of RCW 36.70A.3201, the Board acts properly
25 when it foregoes deference to a . . . plan that is not 'consistent with the requirements and
26 goals of the GMA." *Thurston County v. Cooper Point Association*, 108 Wn. App. 429, 444, 31
P.3d 28 (2001).

1 Pursuant to RCW 36.70A.320(3) we “shall find compliance unless [we] determine
2 that the action by [Jefferson County] is clearly erroneous in view of the entire record before
3 the Board and in light of the goals and requirements of [the GMA].” In order to find the
4 County’s action clearly erroneous, we must be “left with the firm and definite conviction that
5 a mistake has been made.” *Department of Ecology v. Public Utility Dist. 1*, 121 Wn.2d 179,
6 201, 849 P.2d 646 (1993).

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

9 **IV. ISSUES AND DISCUSSION**

10 **Issue No. 1:**

11 Is Walla Walla County out of compliance with RCW 36.70A.130 and .140 for failure to
12 adopt and to broadly disseminate to the public a public participation program?

13 **The Parties’ Position:**

14 **Petitioners/Intervenors:**

15 The Petitioners/Intervenors (Petitioners) contend that Walla Walla County has failed
16 to adopt a public participation program consistent with the requirements set forth in RCW
17 36.70A.140. The Petitioners argue the County’s Title 14, Chapter 14.10, does not constitute
18 a public participation program as claimed by the County. The Petitioners recognize that
19 Chapter 14.10.010B “parrots” the language in 36.70A.140, but contends that the
20 procedures within Chapter 14.10 do not actually contain provisions that would meet the
21 requirements of the statute.

22 According to the Petitioners, nothing within the procedures of Chapter 14.10 and the
23 notice requirements of 14.07.040 requires or provides for several of the mandatory
24 elements required by RCW 36.70A.140, such as continuous public participation and broad
25 dissemination of proposals and alternatives. In addition to this deficiency, the Petitioners
26 contend that the County’s plan amendment process was deficient in public notice and public
participation.

1 **Respondent/Intervenors:**

2 The Respondents contend Walla Walla County adopted its public participation
3 program in full compliance with GMA public participation requirements. The County's public
4 participation program was used throughout the amendment process leading up to the
5 adoption of Ordinance No. 322 to ensure adequate public notice and ample opportunities
6 for public participation. Through Resolution 02118, adopted in 2002, the County codified
7 Chapter 14.10, which establishes the procedures for amending its Comprehensive Plan,
8 including the public participation process. The Respondents contend the Board has no
9 jurisdiction over the Petitioner's "facial challenge" because it is untimely.

10 In addition, the Respondents argue that the County's public participation program
11 complied with the GMA by ensuring ample public participation throughout the process
12 consistent with the GMA's requirements. In fact, according to the Respondents, the County
13 exceeded its own public participation program and detailed the workshop meetings, public
14 meetings, open houses, public forums, newspaper ads, mailings and public hearings in their
15 brief. Some of these meetings and hearings included the Pennbrook UGA amendments
16 adopted in Ordinance No. 322. There was also extensive coordination with the City, County
17 and Walla Walla Port District.

18 The Respondents contend that the requirements in the GMA for public participation
19 be liberally construed and quote RCW 36.70A.140 to that effect. In addition, they argue
20 that the Petitioners have failed to show that their members have suffered any prejudice
21 even if the County did violate the spirit and intent of the public participation requirements of
22 the GMA.

23 **Petitioners/Intervenors Reply Brief:**

24 The Petitioners contend that the County's plan amendment procedures do not show
25 where the statutory requirements for public participation are contained, such as "broad
26 dissemination", and "consideration of and response to public comments". Petitioners' Reply
Brief at 4. The Petitioners argue they are not barred from challenging the County's failure to

1 adopt a public participation program by failing to bring a challenge to the County's plan
2 amendment procedures.

3 **Board Analysis:**

4 The Board considers public participation as the heart and soul of the GMA. There are
5 a significant number of Growth Management Hearings Boards decisions encouraging or
6 requiring counties and cities to provide their citizens with ample opportunity to participate in
7 the process.

8 Issue No. 1 questions whether Walla Walla County followed the requirements in RCW
9 36.70A.130 and .140, to adopt and broadly disseminate to the public a public participation
10 program. RCW 36.70A.130(2)(a) requires counties and cities to "establish and broadly
11 disseminate to the public a public participation program identifying procedures whereby
12 proposed amendments or revisions of the comprehensive plan are considered by the
13 governing body..." RCW 36.70A.140 requires counties and cities to "establish and broadly
14 disseminate to the public a public participation program identifying procedures providing for
15 early and continuous public participation in the development and amendment of
16 comprehensive land use plans and development regulations implementing such plans."

16 To determine if Walla Walla County complied with the GMA, the Board looks at the
17 County's public participation plan and whether the County followed this plan during the
18 amendment process.

19 Walla Walla County's Chapter 14.10, entitled, "Comprehensive Plan and GMA
20 Implementing Regulations Amendment Process, in particular Section 14.10.010(B.), outlines
21 the County's public participation program. The Board may agree with the Petitioners that
22 the statute "parrots" the language in RCW 36.70.140, but that in itself indicates the County
23 has full intentions of following the GMA's requirements for public participation. In addition,
24 the County has added language throughout Chapter 14.10 requiring the hearing bodies to
25 hold public hearings, provide notice and make opportunities for public comment. The
26 question is did the County do so?

1 The Petitioners' concern is whether there was sufficient public notice and opportunity
2 for public comment on the Pennbrook Amendment. The record indicates that the Pennbrook
3 Amendment was included in the final docket as recommended by the Planning Commission
4 to the County Commissioners. The final docket was approved on April 7, 2005. After that
5 date, the public had opportunities to provide public input on June 13, 20, and 29, 2005. The
6 Petitioners commented on the proposed amendments on June 21. Additional comment was
7 received on August 2, 2005 from Jeff Eustis on behalf of the Petitioners and Nancy Ball,
8 President of Petitioner Citizens for Good Governance. The Board of County Commissioners
9 held an additional public hearing on August 2, 2005. The proposed 2005 amendments were
10 adopted on October 31, 2005. The Respondents outlined the numerous public notices and
11 opportunities for public participation throughout the process in their briefs. The County not
12 only followed its County Code Chapter 14.10 requirements, but from the record, the public
13 participation opportunities were broadly disseminated, early and continuous.

13 **Conclusion:**

14 The Board finds that the Petitioners have failed to carry their burden of proof
15 concerning Legal Issue No. 1.

16 **Issue No. 2:**

17 Was Ordinance 322 enacted in violation of RCW 36.70A.130 and .140 for failure to
18 be reviewed and adopted in accordance with an approved public participation program?

19 **The Parties' Position:**

20 **Petitioners/Intervenors:**

21 The Petitioners grouped this issue with their response to Issue No. 1. They contend
22 the County did not have an approved public participation program and that Chapter 14.10
23 fails to satisfy the statutory requirements of a public participation program required by RCW
24 36.70A.140. Chapter 14.10 also violates the requirements of RCW 36.70A.070.
25
26

1 **Respondent/Intervenors:**

2 The Respondents claim that Walla Walla County adopted its public participation
3 program in full compliance with GMA public participation requirements and has
4 implemented the program in the Comprehensive Plan amendment process leading up to
5 adoption of Ordinance No. 322 to ensure adequate public notice and ample opportunities
6 for public participation. According to the Respondents, Chapter 14.10 of the Walla Walla
7 County Code "establishes the procedures for amending the Comprehensive Plan, including a
8 public participation process. In addition, the Respondents argue that the Petitioners are too
9 late to challenge the County's public participation program, as it was adopted in 2002.

9 **Petitioners/Intervenors Reply Brief:**

10 The Petitioners argue they are not barred from challenging the County's failure to
11 adopt a public participation program by failing to bring a challenge to the County's plan
12 amendment procedures. They contend the two are different requirements. The Petitioners
13 agree that the County's Comprehensive Plan procedures "were never challenged or found to
14 be compliant with the public participation requirements of the GMA." Petitioners Reply Brief
15 at 5.

16 **Board Analysis:**

17 The Board agrees with the Respondents concerning Issue No. 2. The County
18 adopted Chapter 14.10, which included its statement for public participation and
19 requirements for public notice and public hearings at various stages of the process.
20 Objections to the County's public participation process were not timely brought before this
21 Board.

21 **Conclusion:**

22 The Board finds that the Petitioners have failed to carry their burden of proof
23 concerning Legal Issue No. 2.

24 **Issue No. 3:**

25 Was Ordinance 322 enacted in violation of the County's own docketing procedures
26 and RCW 36.70A.130 where the Pennbrook amendments were submitted to the County

1 after the docketing deadline for the submittal of Comprehensive Plan and development
2 regulation amendments?

3 **The Parties' Position:**

4 **Petitioners/Intervenors:**

5 The Petitioners contend the County did not follow its own docketing procedures set
6 forth in the Walla Walla County Code, Section 14.10. The plan amendment process
7 established a one-month window for plan amendment applications of July 1-31, 2004. This
8 was expanded to close on August 31, 2004.

9 According to the Petitioners, only one application had been submitted by David
10 McConnell prior to the close of the application process and that application. Application No.
11 8725 was submitted on September 30, 2003, for a "boundary amendment only" for four tax
12 parcels. After the plan amendment process closed, Ralph Gregory, Director of Land
13 Development for Pennbrook Homes, submitted an amendment to application No. 8725. This
14 amendment covered lands owned by not only David McConnell, but two other adjacent
15 landowners as well. Furthermore, the application was amended again in November 2004.
16 The preliminary docket that was eventually approved did not include the amendments for
17 the Pennbrook lands.

18 The Petitioners detail the subsequent meetings and public hearings held by the
19 Planning Commission and County Commissioners on the amendments, including the
20 Pennbrook amendments. Public meetings were held on June 20, 29, and August 2, 2005.
21 The amendments were approved by the BOCC on October 31, 2005, under Ordinance 322.
22 The Petitioners contend the County's consideration of the Pennbrook amendments failed to
23 comply with the County's own procedures set forth in the WWCC, Chapter 14.10.

24 **Respondent/Intervenors:**

25 The Respondents claim the GMA specifically authorizes changes to proposals during
26 the public review process, as long as the changes are subject to public review and
comment. RCW 36.70A.035(2)(a). The Respondents contend that the Pennbrook application

1 was timely and that subsequent amendments were submitted to reduce the size of the
2 proposal and remove "prime" or "unique" farmland. The amendments also provided the
3 County with more specific plan policies and regulatory text. According to the Respondents,
4 an eight-month docketing process and six months of hearings followed the changes to the
5 amendments.

6 The Respondents argue that the Walla Walla County Code allows for proposal
7 amendments to be revised and that there was opportunity for public comment after the
8 amendments were submitted as required by RCW 36.70A.035(2)(a). Petitioners took
9 advantage of the process and commented on all of the changes in proposed amendments
10 during the extensive public review and hearing process.

11 The Respondents contend the Petitioners acknowledge, "[e]rrors in exact compliance
12 with the established program and procedures shall not render the comprehensive land use
13 plan or development regulations invalid if the spirit of the program and procedures is
14 observed." *City of Spokane Valley v. City of Liberty Lake*, EWGMHB Case No. 03-1-0007,
15 Order on Compliance (March 18, 2005). According to the Respondents, Petitioners have not
16 demonstrated any harm they have suffered by the 2004 revisions when they had ample
17 opportunities to comment on them at public hearings and in writing.

18 The Respondents also contend the Board lacks jurisdiction over County decisions on
19 docketing a particular amendment and cites RCW 36.70A.280. The Respondent also cites
20 *Harvey v. Snohomish County*, CPSGMHB Case No. 00-3-0008, Order on Dispositive Motion
21 (July 13, 2000) (Board lacked jurisdiction over county decision not to docket proposed
22 amendments).

23 **Petitioners/Intervenors Reply Brief:**

24 The Petitioners argue the County must follow the terms of its own plan and cite two
25 cases that deal with public participation plans and one with procedures. The Petitioners
26 contend that Resolution No. 05098, the final docket of plan amendments considered by the
BOCC, does not include the Pennbrook amendments. The list includes a request by
McConnell to change the Comprehensive Plan designation from Primary Agriculture - 40 to

1 low-density residential for an area that has become the Pennbrook lands. The Petitioners
2 argue that the consequences of Pennbrook's failure to comply with the County's docket
3 procedures is the loss of any right to have its proposed amendments considered, as
4 provided by section 14.10.040.D. The County's procedures, the Petitioners contend, "...do
5 not allow exceptions for 'favored' plan amendment requests or those proposed by contract
6 planners". Petitioners' Reply Brief at 8.

7 The Petitioners dispute the Respondents' use of RCW 36.70A.035(2)(a) as an excuse
8 to consider proposed amendments that were not timely docketed. They contend this section
9 applies in the event that changes to pending amendments are proposed after the public
10 hearings have been closed. The Petitioners argue that the late amendments pertaining to
11 the Pennbrook lands were not simply changes to plan and zoning amendments, but
12 complete new additions to the Comprehensive Plan and zoning code. They also argue that
13 the Pennbrook amendments were not just tweaks, but rather the addition after the deadline
14 of entirely new plan and zoning districts authored by a contract planning consultant paid for
15 by the applicant, Pennbrook Homes. And last, the Petitioners argue that RCW
36.70A.035(2)(a) does not override an express, mandatory cut-off.

16 **Board Analysis:**

17 The Board finds it has no jurisdiction over the County's docketing decisions. The
Central Board decided:

18 When a local government includes a self-imposed duty in its plan, such as a
19 deadline, the consistency requirements of RCW 36.70A.070 and .120 oblige it
20 to meet that duty; however, it retains the discretion to amend its plan,
21 including the revision or deletion of such self-imposed duty, provided that it
22 does so pursuant to the authority and requirements of RCW 36.70A.130.
COPAC-Preston Mill Inc. v. King County, CPSGMHB Case No. 96-3-0013c, FDO
(Aug. 21, 1996).

23
24 RCW 36.70A.130(2)(a) states:

25 "Each county and city shall establish and broadly disseminate to the public a
26 public participation program identifying procedures whereby proposed

1 amendments or revisions of the comprehensive plan are considered by the
2 governing body of the county or city ...”

3 The Board, having reached a conclusion under Issues No. 1 and No. 2 in this Order,
4 has already determined that Walla Walla County did have a public participation program
5 (WWCC Chapter 14.10) and it was followed during the amendment process. While this
6 Board may disagree with the special privilege allotted to the Pennbrook amendments by the
7 County, the Board does not find it has jurisdiction over the County's docketing process.
8 Further, the Board does not find that the County is prohibited from considering
9 amendments to the original applications as long as public participation is provided as
10 required by the GMA and the County's public participation plan.

11 **Conclusion:**

12 The Board finds the Petitioners have failed to carry their burden of proof concerning
13 Legal Issue No. 3.

14 **Issue No. 4:**

15 Does the inclusion of the Pennbrook lands within the Walla Walla Urban Growth Area
16 amount to impermissible sprawl in violation of RCW 36.70A.020(1) and (2) and .110 where
17 the claimed need for expansion of the UGA has been based upon an impermissibly low
18 average density for urban growth?

19 **The Parties' Position:**

20 **Petitioners/Intervenors:**

21 The Petitioners point out that RCW 36.70A.020(1) and (2) require local government
22 policies and regulations to encourage future growth and development to occur in urban
23 areas and for a reduction of sprawl and the inappropriate conversion of undeveloped land
24 into sprawling, low-density development. RCW 36.70A.110 requires counties to designate
25 urban growth areas and include territory located outside of a city only if such territory is
26 already urban in nature. RCW 36.70A.110(2) requires urban densities within each urban
growth area.

1 The Petitioners contend that the County's required minimum density of three du/acre
2 contradicts both the goals of the GMA and the requirement of RCW 36.70A.110(2) and asks
3 the Board to find that development on 1/3 acre lots is not urban density. According to the
4 Petitioners, in order to comply with the GMA, expansion of the County's urban growth area
5 "should be something in the order of a last resort." Petitioners' HOM Brief at 19. Such an
6 approach is necessary in order for a local government to comply with the previously cited
7 provisions and other goals and requirements.

8 The Petitioners argue that by approving the Pennbrook amendments, the County is
9 violating the GMA. First, the Pennbrook development would remove 381 acres of
10 agricultural land of long-term commercial significance. Second, the County should base its
11 need for growth on a mean or average urban density, not a minimum density. And third,
12 the County is not using the present land within the UGA efficiently by designating a
13 minimum density of three du/acres.

Respondent/Intervenors:

14 The Respondents contend that a minimum density of three du/acre is appropriate for
15 Walla Walla County and that there is no "bright line" minimum in the GMA. The
16 Respondents cite *Viking Properties, Inc. v. Holm*, 155 Wn.2d 112, 118 P.3d 322 (2005) to
17 emphasize that there is no "bright line" and that the Boards do not have the authority to
18 make "public policy" in their jurisdictions, let alone statewide public policy. In addition,
19 *Viking Properties*, clearly articulates the role of the GMA; "...the GMA creates a general
20 'framework' to guide local jurisdictions instead of 'bright line' rules."

21 The Respondents argue that within RCW 36.70A.110(2) counties are given
22 considerable discretion to size UGA's and adopt appropriate urban densities and uses based
23 upon local circumstances. According to the Respondents, the record shows the County has
24 and can show its work and has complied with all of the GMA requirements. The
25 Respondents explain and detail the County's population projection and its need to expand
26 the County's UGA. What the Petitioners' fail to understand, according to the Respondents, is

1 that the three du/acre density is not an average, but a minimum density. Densities within
2 the Walla Walla UGA vary from a net density of 3.4 to 19.5 du/acre.

3 The Respondents refute the Petitioners' claim that the Pennbrook amendments
4 remove some of the best farmland in Walla Walla County. The land is not "prime" or
5 "unique", but typical of the County's other 539,836 acres of agricultural lands of similar
6 characteristics and any UGA expansion would have to expand into the same type of
7 agricultural land designation.

7 **Petitioners/Intervenors Reply Brief:**

8 The Petitioners respond to the eleven arguments raised by the Respondents on this
9 issue. Summarized, the eleven arguments and the Petitioners response are:

- 10 1. Prior CGG comments do not support a three du/acre density factor.
- 11 2. The *Viking Properties* case does not undercut the Petitioners' position.
- 12 3. The City of Walla Walla misplaces reliance upon the 1996 density
13 factor.
- 14 4. Board decisions do not support use of one du/acre for future urban
15 density.
- 16 5. The Board need not entertain rationalization for even greater UGA
17 expansion.
- 18 6. Petitioners agree that a range of densities should be used.
- 19 7. Claimed expansion of the UGA for open space, recreation,
20 accommodations and buffers is inappropriate.
- 21 8. UGA expansion does not promote urban infill.
- 22 9. Pennbrook's lands are productive agricultural lands.
- 23 10. Pennbrook's development increases pressures for sprawl.
- 24 11. Petitioners have not abandoned this issue.

24 **Board Analysis:**

25 The Board agrees in principle with the Respondents' basic arguments in Issue No. 4.
26 The Petitioners argue the County's minimum density of three du/acre within the Walla Walla

1 UGA, is impermissibly low. A three du/acre density factor may be lower than the Petitioners
2 would like to see and what the Central Board held in *Bremerton v. Kitsap County* as a
3 "bright line" rule, however, the Supreme Court in *Viking Properties, Inc. v. Holm*, opened
4 the door to a variety of densities based in part on local circumstances.

5 The Respondents argue Walla Walla County's minimum density is based on local
6 factors, a recent buildable lands analysis, a medium-high Office of Financial Management
7 (OFM) projection, and without using a market factor authorized by the statute. From the
8 extensive record, the Board believes the County did its homework and decided on the
9 smaller minimum density figure from facts and figures pertinent to Walla Walla County.

10 While the Board does not condone a density less than four du/acre, it clearly
11 understands that local governments have broad discretion in developing comprehensive
12 plans and development regulations tailored to local circumstances, bounded of course by
13 the goals and requirements of the GMA. In this case, the County and City of Walla Walla
14 decided that a minimum three du/acre fits their twenty-year planning horizon, but will
15 adjust this density upwards in the future if necessary. The Board recognizes that this figure
16 is a minimum and the density in this zone can be as high as five du/acre.

17 Few, if any, counties have established a minimum density. Usually counties set a
18 maximum in the low-density urban zone. For instance, Spokane County established a
19 maximum in the low-density urban zone of six du/acre, but no minimum. This type of
20 density option opens the door to even lower densities than if a minimum is set, such as in
21 Walla Walla County.

22 As the Legislature has said, unless the Board can find the County's actions clearly
23 erroneous and inconsistent with the goals and requirements of the GMA, the Board must
24 give a local jurisdiction deference in its decision-making.

25 The Petitioners argue that by removing 381 acres of agricultural land of long-term
26 significance the County would be violating the GMA. The Board will cover this issue under
Issue No. 6.

1 **Conclusion:**

2 The Board finds that the Petitioners have failed to carry their burden of proof
3 concerning Legal Issue No. 4.

4 **Issue No. 5:**

5 Is expansion of the Walla Walla Urban Growth Area into the Pennbrook lands
6 consistent with the order of urban expansion set forth within RCW 36.70A.110 and within
7 the County-wide Planning Policies, including CPP 3.5, 3.6, 3.7, and 5.1?

7 **The Parties' Position:**

8 **Petitioners/Intervenors:**

9 The Petitioners contend that by the County extending the Walla Walla UGA into
10 designated agricultural land, Walla Walla County violated the requirements for the
11 sequencing of expansion of UGA's established under RCW 36.70A.110 and its own
12 Countywide Planning Policies (CWPP).

13 As defined by RCW 36.70A.110, the following lands may be appropriately included
14 within a UGA: 1. incorporated cities; 2. designated new fully contained communities; 3.
15 territory located outside of a city that is already characterized by urban growth; and 4.
16 lands adjacent to territory already characterized by urban growth. The Petitioners contend
17 the Pennbrook lands fit none of these four categories and gave an explanation for each of
18 the first three items. Item 4 was not addressed in their brief.

19 The Petitioners argue that GMA goals, RCW 36.70A.020(1), (2) and (8) require the
20 County to expand into non-agricultural areas. By expanding into the Pennbrook lands, the
21 County violates these goals and the sequence set forth under RCW 36.70A.110.

22 The Petitioners also contend the County's expansion into the Pennbrook lands
23 violates three CWPP's, 3.5, 3.6 and 3.7.

24 CWPP 3.5 directs where UGA's should be located, which is where infrastructure exists
25 or is planned and where it is environmentally appropriate for growth to occur. The
26 Petitioners argue that prior to the Pennbrook proposal infrastructure neither existed, nor
was planned. Water and sewer facilities are to be extended pursuant to amendments to

1 other CWPP's and an agreement between the City and the Port District to allow the Port
2 District to provide those services.

3 CWPP 3.6 sets parameters under which the County can designate UGA's. According
4 to the Petitioners, none of the five parameters allows the County to expand into the
5 Pennbrook lands.

6 CWPP 3.7 lists six conditions under which the County can allocate population. Again,
7 according to the Petitioners, the Pennbrook lands fail to conform to the established criteria.

8 **Respondent/Intervenors:**

9 The Respondents contend the only limitation on location of a UGA is the provision in
10 RCW 36.70A.110. The Respondents point out that the Petitioners argued three of the
11 limitations in .110, but failed to mention the fourth, "adjacent to territory already
12 characterized by urban growth". The Pennbrook UGA is adjacent to the Port of Walla Walla
13 to the west and the City of Walla Walla city limits and a water reservoir to the south. Thus,
14 contend the Respondents, the Pennbrook UGA satisfies the location criteria of RCW
15 36.70A.110(1).

16 In addition, the Respondents (Intervenors) argue that RCW 36.70A.110(3) does not
17 apply to the adjustment of the Walla Walla urban growth area to include the Pennbrook
18 lands. Moreover, it does not compel a particular order of expansion. The Respondents cite
19 *City of Bremerton v. Kitsap County*, CPSGMHB Case No. 04-3-0009c, FDO (August 9, 2004),
20 where the Central Board rejected the argument that RCW 36.70A.110 sequencing provisions
21 apply to urban growth area expansion.

22 The Respondents also argue that the Pennbrook UGA is consistent with CWPPs 3.5,
23 3.6 and 3.7. The Petitioners, according to the Respondents, make allegations that are
24 unsupported by evidence.

25 Not only do the Respondents contend the Pennbrook UGA is supported by existing or
26 planned infrastructure, but so do the Petitioners, which contradicts the Petitioners'
conclusion that water and sewer is not available. The agreement to extend water and sewer
by the Port District clearly provides the necessary infrastructure for the Pennbrook UGA. In

1 addition, Washington State Highway 12 abuts the site and can provide access via Harbert
2 Road and Mill Creek Road. Thus, consistent with the CWPP's, infrastructure exists or can be
3 reasonably extended.

4 In regards to CWPP 3.6, the Respondents argue that the Pennbrook UGA is adjacent
5 to an existing incorporated boundary, the Port of Walla Walla, which is part of the current
6 City of Walla Walla UGA. In addition, the Respondents detail why the Pennbrook UGA
7 efficiently makes use of the existing sewer system and why the Petitioners' suggested areas
8 for expansion to the south and west are more expensive and less appropriate to develop.
9 The Petitioners allegations are unsupported, according to the Respondents.

10 The Respondents contend CWPP 3.7 deals with population allocations, not individual
11 UGA designations. Even if that were not the case, the Respondents argue the provisions of
12 CWPP 3.7 were met by the County when it updated its population projections and
13 allocations, and analyzed availability of infrastructure, the natural or man-made topography
14 and protection of resource and critical areas. The Respondents also contend the Pennbrook
15 UGA is adjacent to the Port of Walla Walla, near the Walla Walla city limits and is only four
16 miles from downtown Walla Walla.

Petitioners/Intervenors Reply Brief:

17 The Petitioners contend the proposed Pennbrook UGA is leapfrog development. They
18 challenge the Pennbrook UGA expansion for violations of the requirements of RCW
19 36.70A.110(1), not the criteria under RCW 36.70A.110(3).

20 First, the Petitioners argue that RCW 36.70A.110(1) does establish a sequence for
21 UGA expansion. "By making mandatory the designation of cities as UGA's and making only
22 discretionary the designation of those areas "already characterized by urban growth" or
23 areas "adjacent to territory already characterized by urban growth" the GMA places higher
24 priority on the inclusion of cities within UGA's". Petitioners Reply Brief at 21.

25 Second, the Petitioners contend adjacency to lands characterized by urban growth
26 does not automatically entitle those lands to be designated as urban, citing
Bremerton/Alpine v. Kitsap County.

1 Third, the Petitioners argue that the Port District's present and planned development
2 does not characterize lands adjacent to the Pennbrook UGA as urban. The Petitioners
3 contend that the urbanization of the Port is not adjacent to the expanded UGA and US 12, a
4 railroad right-of-way and a width of about 1000 feet of open lands separate the developed
5 area.

6 Fourth, the Petitioners argue that the City's water treatment facility is neither urban
7 growth nor characterized by urban growth. The City's facility does not make "intensive use
8 of land for the location of buildings, structures, and the impermeable surfaces to such a
9 degree as to be incompatible with the primary use of land for the production of food, other
10 agricultural products..." RCW 36.70A.030(17).]

11 Fifth, according to Petitioners, the Pennbrook UGA lacks adjacency to lands
12 characterized by urban growth. The Petitioners dispute whether the development at the
13 Port District is really urban in nature.

14 In regards to the CWPP's, the Petitioners contend the Respondents arguments are
15 "not well-founded". According to the Petitioners, CWPP's are not discretionary and cite *King*
16 *County v. CPSGMHB*, 138 Wn. 2d 161, 175, 979 P. 2d 374 (1999) as their argument
17 (CWPP's are binding upon the county in its adoption of a comprehensive plan). The
18 Petitioners also contend that by statute both adoption of and later compliance with CWPP's
19 is mandatory. Petitioners Reply Brief at 23.

20 The Petitioners also argue that the word "should" does not make CWPP 3.5
21 discretionary and cite *Larson Beach Neighbors, et al. v. Stevens County*, EWGMHB Case No.
22 03-1-0003, FDO (Feb. 10, 2004).

23 The Petitioners contend that no utilities from the Port of Walla Walla served or were
24 planned to serve the Pennbrook UGA until its proposal. The existence of the infrastructure
25 at the airport "does establish an infrastructure suitable for the expansion of a UGA." The
26 Port has statutory authority to install and operate water and sewer facilities to serve its own
property, but cities are to be the purveyors of utilities. The City of Walla Walla did not

1 forecast a need for any future water and sewer facilities for the Pennbrook UGA. Petitioners
2 Reply Brief at 24.

3 Finally, the Petitioners argue that the City's utility agreement to allow the Port
4 District to extend utility services to the Pennbrook lands does not qualify the area as one
5 with available infrastructure and cite *Futurewise v. Skagit County*, CPSGMHB Case No. 05-2-
6 0012, FDO (August 21, 2005).

7 **Board Analysis:**

8 The Petitioners have provided the Board with some interesting arguments on this
9 issue, however, the Board finds the Petitioners have not carried their burden of proof. For
10 example, RCW 36.70A.110, under criteria # 4., clearly allows "lands adjacent to territory
11 already characterized by urban growth" to be appropriately included within an UGA. The
12 Petitioners argue the Port District is not urban in character. The Board disagrees. It is part
13 of the Walla Walla UGA and has been since the adoption of the County's Comprehensive
14 Plan. Whether it is fully built-out with homes or businesses is irrelevant. The Port District is
15 considered part of a UGA, has multiple businesses within the Port District's boundary, is
16 predicting substantial future growth, and has its own sewer and water. By definition, the
17 Pennbrook UGA is "adjacent" to an existing urban growth area.

18 The same scenario plays out with CWPP's 3.5, 3.6 and 3.7.

19 CWPP 3.5 stipulates where UGA's should be designated. Under criteria #1,
20 "Infrastructure exists or is planned, as identified in an approved capital improvement
21 program or can be reasonably and economically extended..." Both the Petitioners and
22 Respondents acknowledge that infrastructure from the Port District is available and can be
23 "economically extended".

24 As to the issue of whether it is environmentally appropriate, the Board has to defer
25 to the County and the local process. The City of Walla Walla is surrounded by the best
26 agricultural lands in the state, designated as "prime", "unique" and "agricultural lands of
long-term commercial significance". The GMA under RCW 36.70A.060 requires counties and
cities to conserve agricultural lands designated under RCW 36.70A.170, but does not

1 preclude jurisdictions from placing agricultural land within a UGA if necessary. UGA
2 expansion has to take place under certain criteria. One of those criterion is whether the
3 land is adjacent to an existing UGA boundary. The Pennbrook UGA fulfills this criterion.

4 CWPP 3.6 states, "Designate UGA's by:" and five criteria are available. The
5 Respondents argue the County has fulfilled criteria No. (4) presence of availability of
6 infrastructure; and No. (5) natural and manmade topographical constraints. The Board
7 agrees.

8 The Pennbrook UGA has the "presence or availability of infrastructure", as detailed
9 above, and Walla Walla's expansion, according to the Respondents, is under "natural and
10 manmade topographical constraints". These constraints are minimal, but nevertheless,
11 documented in the record.

12 CWPP 3.7 states, "Allocate population based on:" and six criteria are listed. The
13 County has met Criterion No. (2) availability of existing/planned infrastructure; and No. (3)
14 natural and manmade topography. There is obviously a conflict with criterion No. (4).
15 Converting agricultural land to urban does not protect resource and critical lands, but in this
16 case, the City of Walla Walla and the County have documented their reasoning behind the
17 conversion.

18 **Conclusion:**

19 The Board finds that the Petitioners have failed to carry their burden of proof
20 concerning Legal Issue No. 5.

21 **Issue No. 6:**

22 Does the county's designation of the Pennbrook lands for an Urban Planned
23 Community and a mixed-use destination resort consisting of a hotel, restaurant, golf course,
24 driving range, clubhouse, retail shops and approximately 365 single family and duplex
25 homes violate the agricultural lands conservation mandate of RCW 36.70A.020(8), .060 and
26 .170?

1 **The Parties' Position:**

2 **Petitioners/Intervenors:**

3 The Petitioners argue that the GMA mandates counties to take action to conserve
4 agricultural lands and cite the Washington State Supreme Court's holding in *King County v.*
5 *CPSGMHB*, this Board's Order on Remand for *Wenas Citizens Assoc. v. Yakima County*, and
6 this Board's Final Decision and Order for *Grant County Association of Realtors v. Grant*
7 *County*.

8 The Petitioners acknowledge that once designated for agriculture, the GMA does not
9 require that agricultural lands be designated as such forever. *Orton Farms et al. v. Pierce*
10 *County, et al.* CPSGMHB 04-3-0007c, FDO (August 2, 2004). However, the Petitioners'
11 continue, "this is not license for local governments to de-designate lands 'where it may be
12 locally popular or politically convenient.'" According to the Petitioners, "De-designation
13 requires consideration of the same criteria considered for the original designation", and cite
14 the *Orton Farms* decision. Petitioners Reply Brief at 26.

15 The Petitioners argue that designation and de-designation of agricultural lands
16 requires consideration of two principal factors: first, whether the land is "primarily devoted
17 to commercial production" of agriculture; and second, whether the land has "long-term
18 commercial significance" for agricultural production. The Petitioners contend the Pennbrook
19 lands satisfy both principal factors and detail the facts necessary to substantiate their claim.
20 The Pennbrook lands are actively farmed, the soils are ranked Class 2 and produce 125
21 bushels an acre of winter wheat, the area has sufficient rainfall to be agriculturally
22 productive, the lands are relatively isolated and, apart from Pennbrook's interest, nothing
23 has changed to render the land appropriate for a more intense use.

24 The Petitioners argue the County did not justify the de-designation by the criteria
25 required and that Ordinance 322 fails to apply the ten criteria adopted by CTED in WAC
26 365-190-050 for assessing the proximity of agricultural land to population areas and the
possibility of more intense uses. The Petitioners then detail their analysis of CTED's ten
criteria concerning the Pennbrook de-designation.

1 **Respondent/Intervenors:**

2 The Respondents point out that the GMA does not preclude a county from including
3 agricultural lands within an urban growth area, so long as the size and location criteria of
4 RCW 36.70A.110 are met. See *Stewart v. Washington State Boundary Review Bd. For King*
5 *County*, 100 Wn. App. 165, 996 P.2d 1087 (2000) (“[N]othing in the GMA prohibits inclusion
6 of agricultural land in an urban growth area.”). They argue the requirement in RCW
7 36.70A.060(4) does not apply in this case because the County re-designated the Pennbrook
8 lands to an urban designation and zoning at the same time it included them in the Walla
9 Walla UGA.

10 According to the Intervenor, Pennbrook Homes, RCW 36.70A.060(4), which is the
11 only requirement that has any relevance to resource lands within UGA’s, “...makes it clear
12 that the Legislature did not intend to compel the designation of agricultural land within
13 UGA’s no matter how high the quality of the agricultural land. Based on this statutory
14 directive, as a matter of law, the de-designation of the property is mandatory upon its
15 inclusion in the UGA, and arguably automatic, unless a transferable development rights
16 program is enacted.” Pennbrook Homes Brief at 38.

17 Therefore, the only issue is whether the expansion of the UGA to include the
18 Pennbrook lands complies with RCW 36.70A.110, which the Respondents believe it does.

19 First, the Respondents argue that in an agricultural county such as Walla Walla
20 County the UGA cannot be expanded without including arable lands. If the Pennbrook lands
21 fit the criteria for expansion, then the County should be compliant with the GMA.

22 Second, according to the Respondents, while Washington courts have made it clear
23 the GMA mandate to designate and conserve agricultural lands of long-term significance is
24 an important one, so is the designation of urban growth areas.

25 The Respondents argue that the Petitioners are asking this Board to create a
26 “hierarchy” within the planning goals of the GMA. This, they contend, the Board cannot and
should not do. Planning, harmonizing the planning goals of the GMA, and implementing a

1 county or city's future are a burden on counties and cities. *Quadrant Corp v. State Growth*
2 *Management Hearings Board*, 154 Wn.2d at 237.

3 In this case, the Respondents contend, "local circumstances made the GMA urban
4 growth and agricultural policy goals and mandates irreconcilable..." The County balanced
5 the competing goals of agricultural conservation to that of having adequate land for its
6 projected population projection by allowing an expansion of the Walla Walla UGA into
7 agricultural lands. Walla Walla County Brief at 34.

8 Regarding de-designation, the Respondents argue that the County in Ordinance 322
9 properly found that de-designation of the Pennbrook lands was appropriate. The Pennbrook
10 lands are productive, but so are 90% of the surrounding agricultural lands. Furthermore,
11 the Respondents contend that the United States Department of Agriculture, Farm Service
12 Agency, did not identify any impact on the agricultural economy with the development of
13 this area.

14 Intervenor Pennbrook Homes argues that the statutory criteria allow the County to
15 assess a variety of information to reach a decision on de-designation. This analysis is
16 presumed valid, and may not be second-guessed. It is not subject to "heightened scrutiny".
17 *City of Redmond v. CPSGMHB*, 116 Wn. App. 48, 65 P.3d 337 (2003).

18 In addition, Pennbrook Homes argues that the statutory criteria for designation of
19 agricultural resource lands are on soil productivity and geographic location in relation to
20 urbanized areas. The Intervenors point out that "long-term commercial significance" as
21 defined in RCW 36.70A.030(1), is balanced by the final part of that definition, "...in
22 consideration with the land's proximity to population areas, and the possibility of more
23 intensive use of the land".

24 The Respondents contend that the Pennbrook lands are adjacent to developing
25 commercial and industrial lands to the east, planned and existing growth along Highway 12
26 and the Walla Walla City limits to the south. Urban infrastructure is readily available as
shown in the record.

1
2 **Petitioners/Intervenors Reply Brief:**

3 The Petitioners again argue that the duty to conserve agricultural lands is both
4 statutory and mandatory. They contend that when read together, RCW 36.70A.020(8),
5 .060, and .170, create an agricultural conservation imperative and cite *Green Valley v. King*
6 *County*, CPSGMHB Case No. 98-3-0008c, FDO at 16 (July 29, 1998). In addition, the
7 Petitioners contend that this mandatory obligation to conserve agricultural and resource
8 lands has been confirmed by the court in *King County v. CPSGMHB*, 142 Wn. 2d 543, 558,
9 14 P.3d 133 (2000) ("The County has a duty to designate and conserve agricultural lands to
10 assure the maintenance and enhancement of the agricultural industry."). This conservation
11 imperative includes five mandatory obligations; 1) to designate agricultural lands; 2) to
12 assure their conservation; 3) to assure non-interference by adjacent lands; 4) to conserve
the lands; and 5) to discourage incompatible uses.

13 The Petitioners argue that the GMA contains no statutory mandate that
14 unincorporated lands be designated for urban growth. Furthermore, they contend that the
15 discretion, but not the duty, to extend an urban growth area into certain unincorporated
16 areas does not extend into designated resource lands. The Petitioners contend that it is a
17 mandatory duty to conserve agricultural areas and a discretionary authority to extend UGA's
18 into certain unincorporated areas. Respondents, they say are asking the Board to invert the
"proper order of priority". Petitioners Reply Brief at 28.

19 The Petitioners argue that Respondents' reliance on *Stewart v. Washington State*
20 *Boundary Review Bd.*, 100 Wn.App. 165, 176-177, 996 P.2d 1087 (2000), is misplaced.
21 *Stewart* is a Boundary Review Board case and did not purport to establish the requirements
22 for inclusion of agricultural lands within a UGA.

23 In regards to RCW 36.70A.060(4), the Petitioners argue that while the GMA does
24 allow UGA's to include agricultural resource lands, a precondition for inclusion is the
25 existence of a transfer of development rights program. In *1000 Friends, et al. v. Snohomish*
26 *County* the Central Board said:

1 The Board notes that RCW 36.70A.060 does not prohibit agricultural resource
2 lands from being included within a UGA. However, RCW 36.70A.060(4)
3 requires a program authorizing the transfer or purchase of development rights
4 as a condition precedent to such inclusion in the UGA. *1000 Friends, et al. v.*
Snohomish County, CPSGMHB Case No. 03-3-0019c, FDO at 36, footnote 11
(March 22, 2004).

5 The Petitioners emphasize that RCW 36.70A.060(4) does not provide that agricultural
6 lands be freely added to UGA's and that they become automatically de-designated in the
7 absence of a transfer of development rights (TDR) program. According to the Petitioners,
8 RCW 36.70A.060(4) applies at the time of initial designation. Once agricultural lands are
9 designated, the Petitioners contend, counties have a mandatory obligation to protect them.

10 The Petitioners cite several cases where Boards have determined that either de-
11 designation demands the same analysis as the initial designation [*Friends of Agriculture v.*
12 *Grant County*, EWGMHB Case No. 05-1-0010, FDO at 10 (March 14, 2006)] or the
13 jurisdiction in question was not consistent with its own policies [*Futurewise v. Skagit*
14 *County*, WWGMHB Case No. 05-2-0012, FDO at 10 (Sept. 21, 2005)]. The Petitioners
15 contend the County is trying to "evade the very process with which this Board previously
16 required the County to comply" under. *City of Walla Walla, Citizens for Good Governance,*
17 *1000 Friends of Washington v. Walla Walla County*, EWGMHB Case No. 02-1-0012c, Order
18 on Remand at 4 (Dec. 16, 2003) ("If this is what the County desires to do, the County must
19 adopt a procedure allowing the careful examination of the subject parcel and the re-
20 designation of such parcel only if it is found to be poor soil and unsuited for agricultural use
and compatible with the agricultural uses around it."). Petitioners Reply Brief at 31.

21 The Petitioners, in reply to the Respondents arguments concerning de-designation,
22 contend the County did not satisfy the criteria for de-designation. The Petitioners list the
23 following that do not satisfy the criteria: availability of public facilities from the Port District
24 is not conclusive and warrant de-designation; tax status indicates the four parcels are
25 agriculture or open space; proximity to population and urban growth areas is inconclusive;
26 parcel size is right for farming; nearby land development, intensity and compatibility of land

1 uses do not render the lands unsuitable for continued farming; land value will promote
2 sprawl; and proximity to market has benefited the property.

3 **Board Analysis:**

4 The GMA is clear that the thirteen goals listed under RCW 36.70A.020 are all
5 considered important and equal in the development and adoption of comprehensive plans
6 and development regulations.

7 "The following goals are not listed in order of priority and shall be used
8 exclusively for the purpose of guiding the development of comprehensive
9 plans and development regulations." RCW 36.70A.020.

10 The Board recognizes the importance of the GMA goals, in particular Goal (8) Natural
11 resource industries, which requires counties and cities to maintain and enhance natural
12 resource-based industries, including agriculture and encourages the conservation of
13 productive agricultural lands and discourage incompatible uses. The Board also recognizes
14 that Walla Walla County has worked hard to accomplish this goal by classifying over
15 700,000 acres as agricultural lands when it adopted Ordinance 269. The County now wants
16 to remove 381 acres classified as Primary Agriculture from that total.

17 As summarized, once land is designated for agriculture, the GMA does not require
18 that it be designated as such forever. But to de-designate agricultural lands, "[I]t logically
19 follows that if the County is required to conduct an analysis based upon [the] GMA
20 mandated criteria to designate agricultural resource lands of long-term commercial
21 significance; it cannot simply adopt an Ordinance that undoes, undermines or contradicts
22 the analysis performed to support the original designation decisions." *Orton Farms et al. v.*
23 *Pierce County et al.* at 36.

24 But under *City of Redmond v. CPSGMHB*, 116 Wn.App 48, 65 P.3d 337 (2003), the
25 Washington Court of Appeals rejected the Central Board's test imposing heightened scrutiny
26 for de-designating agricultural lands:

The Board's test for what it calls "de-designating" agricultural lands has no
support in the GMA. Nothing in the GMA suggest a city must present "specific
and rigorous" evidence subject to "heightened scrutiny" when defending a

1 land use designation. Rather, the GMA requires the Board to presume a
2 challenged ordinance is valid, and the challenger has the burden of
3 establishing invalidity.

4 The Petitioners argue that to de-designate agricultural lands as defined under RCW
5 36.70A.030(2), the County must consider two principal factors: first, whether the land is
6 "primarily devoted to commercial production" of agriculture; and second, whether the land
7 has "long-term commercial significance for agricultural production". This is a simplified test
8 and if these two criteria were the only factors in de-designating agricultural land, the
9 County would be unable to expand its UGA.

10 The record is clear and convincing; the 381 acres included in the Pennbrook
11 amendment is primarily devoted to or has been devoted to commercial production and that
12 it has long-term commercial significance. Any wheat land that is capable of a "seven year
13 average of 110 bushels of wheat an acre" or even a high of 125 bushels per acre is
14 certainly land of long-term commercial significance. Intervenor Pennbrook HOM Brief at 43.

15 As mentioned above, a designation as 'agricultural land' does not prohibit its
16 inclusion into an urban growth area. As noted in *Stewart v. Boundary Review Bd.*, "nothing
17 in the GMA prohibits inclusion of agricultural lands in an urban growth area."

18 The question is does the record support that the County went through a process or
19 analysis to de-designate agricultural land of long-term commercial significance.

20 The Board believes it does.

21 First, the County has gone through a thorough buildable lands analysis, including a
22 population analysis and allocation process and came to the conclusion it needs the
23 additional expansion of the City of Walla Walla's UGA to fulfill its predicted twenty-year
24 population allocation. The County used the medium-high Office of Financial Management
25 (OFM) projection, a density factor of three du/acre, and did not include a market factor
26 quantity analysis.

Second, the County studied the Pennbrook lands soil quality and compared it to
similar land in Walla Walla County. The soil compared with 90% of the lands in the County.

1 If soil type prohibited de-designation, then the cities in Walla Walla County could not
2 expand their urban growth areas. The soils around the City of Walla Walla are either
3 classified as "prime", "unique" or "agricultural land of long-term commercial significance, so
4 expansion would be impossible.

5 Third, the minimum guidelines for the designation (or de-designation as the case
6 may be), developed by CTED are found in WAC 365-190-050, which states in part,
7 "Counties and cities shall also consider the combined effects of proximity to population
8 areas and the possibility of more intense uses of the land as indicated by: (a) through (j)".
9 The Pennbrook lands satisfy de-designation because of several of these criteria, including
10 (a) The availability of public facilities (highway, airport) and (c) The availability of public
11 services (water, sewer).

12 Fourth, the Pennbrook lands, as determined by the Board in Issue No. 5, are
13 adjacent to an already existing UGA and public services are available.

14 Fifth, counties are authorized by RCW 36.70A.130(3) to revise their "comprehensive
15 plan designating urban growth areas, and the densities permitted in the urban growth areas
16 by the comprehensive plans of the county and each city located within the urban growth
17 areas..." "...to accommodate the urban growth projected to occur in the county for the
18 succeeding twenty-year period." The record shows Walla Walla County went through an
19 adopted and thorough process to revise its Comprehensive Plan and has chosen to expand
20 into the Pennbrook lands, rather than expand in alternative locations, increase density or
21 change its development regulations to increase infill.

22 Walla Walla County has designated its natural resource lands, including agricultural
23 lands, under RCW 36.70A.170. This statute is not violated by the Counties actions.

24 **Conclusion:**

25 The Board finds that the Petitioners have failed to carry their burden of proof
26 concerning Legal Issue No. 6.

1 **Issue No. 7:**

2 Does the newly adopted Urban Planned Community section of the Walla Walla zoning
3 code, Chapter 17.14, violate RCW 36.70A.030 and .040 and other statutory and
4 constitutional standards of specificity for failure to contain any standards or controls?

5 **The Parties' Position:**

6 **Petitioners/Intervenors:**

7 The Petitioners contend that Chapter 17.14 of the Walla Walla County Code fails to
8 comply with the GMA because it lacks specificity defined by RCW 36.70A.030(7) -
9 Development Regulations, which states in part, ""Development regulations" or "regulation"
10 means the controls placed on development or land use activities..." Petitioners argue that
11 during project review, the development regulations adopted under the GMA will be relied
12 upon to define the type of land use permitted, the density of the development and the
13 availability and adequacy of public facilities. They further argue that the Local Project
14 Review statute, Chapter 36.70B.030(1) and (2) require a level of specificity. The Petitioners
15 cite several Board cases and a court case to emphasize their point.

16 The Petitioners argue that the Urban Planned Communities chapter fails to satisfy the
17 requisite of specificity because it fails to establish the "type of land use permitted" and it
18 fails to establish a "density of residential development." The UPC, according to the
19 Petitioners, is a "blank check" for the County to approve nearly anything that it wants.
20 Petitioners HOM Brief at 35.

21 The Petitioners contend that the UPC developer is not limited by other provisions of
22 the zoning code and provides Section 17.14.030.E as an example. The Petitioners also
23 argue that the UPC review criteria are just as "ill-defined" and provide the criteria set forth
24 in Section 17.14.035.C. The Petitioners contend that too much is left to the discretion of the
25 developer and there is not enough specificity in the UPC. Petitioners HOM Brief at 36.

26 **Respondent/Intervenors:**

The Respondents argue that the Boards have consistently held that the GMA does
not invest them with jurisdiction to decide violations of statutes other than the GMA or

1 SEPA. Similarly, the Board does not have jurisdiction to decide a “void for vagueness”
2 constitutional challenge. The Respondents contend “[T]here is no evidence or argument
3 provided by the Petitioner that even remotely suggests that Chapter 17.14 does not comply
4 with any GMA requirements...” Walla Walla County HOM Brief at 38-39.

5 Intervenor Pennbrook Homes contends that the “only legal requirements identified
6 by Petitioners and the primary basis for Petitioners’ claim are in the Local Project Review
7 Act, Chapter 36.70B, and case law based on constitutional due process or vagueness
8 limitations.”, and these requirements are not GMA requirements. Accordingly, the
9 Intervenor contends that the Board lacks jurisdiction. Pennbrook Homes HOM Brief at 50.

10 The Respondents contend that even if the Board takes jurisdiction, Chapter 17.14 is
11 not only in compliance with the GMA, but contains many elements that advance the goals
12 and requirements of the GMA, such as requiring measures to address impacts to public
13 services and facilities; requiring open space and trails; and setting forth a minimum density.
14 The Respondent also argues that Chapter 17.14 is consistent with the GMA’s directive that a
15 “comprehensive plan should provide for innovative land use management techniques...”, in
16 that the County’s Chapter 17.14 allows for housing and some commercial growth, but
17 requires the developer to provide open spaces, parks and buffers. Walla Walla County’s
18 HOM Brief at 40.

19 Intervenor Pennbrook Homes argues that the language in RCW 36.70A cited by the
20 Petitioners does not relate at all to degree of specificity of development regulations and
21 does not purport to impose any requirement at all.

22 The Intervenor maintains the Board does not have jurisdiction, but if it does, they
23 contend that if the County’s UPC regulations are incorrect, not specific enough and/or
24 violate the GMA, planned unit development ordinances in most jurisdictions would also be
25 out of compliance.

26 The Intervenor contends that the GMA provision relied upon by the Petitioners, RCW
36.70A.030(7), expressly recognizes that “planned unit development ordinances are an
authorized form of development regulation.” Furthermore, RCW 36.70A.090 directs that

1 comprehensive plans “should provide for innovative land use management techniques,
2 including ...planned unit developments...” Contrary to Petitioners claims, the Master Plan
3 Community policies of the Comprehensive Plan and the UPC regulations provide a flexible
4 range within which a landowner may propose a development, but the proposal must be in
5 detail and every detail is subject to County approval. The development is regulated through
6 the UPC regulatory process and requirements.

7 The Intervenors argue that the implementing master plan approval must be
8 consistent with the criteria in Chapter 17.14 and is a phased review process involving site
9 plan review, preliminary and final platting, building permit review, and critical area and
10 environmental review.

Petitioners/Intervenors Reply Brief:

11 The Petitioners argue that the Board does have jurisdiction because RCW
12 36.70A.040(4), requires jurisdictions adopt “development regulations”, a term defined at
13 RCW 36.70A.030(7). The Petitioners then tie the term “development regulations” to the
14 Local Project Review statute, RCW 36.70B.030(2). In the end, the Petitioners contends that
15 “[B]y examining related statutes in determining the meaning of “development regulations”
16 under the GMA, the Board is not enforcing the requirements of other statutes, rather it is
17 properly construing the terms of the GMA.” Petitioners Reply Brief at 35.

Board Analysis:

18 The Board understands that its jurisdiction is limited by the GMA.

19 When a petition for review alleges that a local jurisdiction failed to comply
20 with a statute other than one named in RCW 36.70A.280(1), the Board does
21 not have jurisdiction to make a decision on the issue of compliance.

22 *Gutschmidt v. City of Mercer Island*, CPSGMHB Case No. 92-3-0006, FDO at 8,
(March 16, 1993).

23 Furthermore, the Board must look at the substance and policy context of an action
24 prior to determining jurisdiction:

25 In making the determination of whether a local action is subject to the GMA
26

1 generally and Board jurisdiction specifically, it is important to focus on the
2 substance and policy context of that action, rather than the procedure
3 employed or the label attached. Simply characterizing a local action as a
4 "master plan" or employing a quasi-judicial process, rather than a legislative
5 one, is not determinative of whether the action is properly a policy or
6 regulation subject to GMA or a permit action that falls beyond the pale of
7 GMA compliance. That determination must be made after reviewing many
8 facts and factors. *Laurelhurst Community Club, Friends of Brooklyn,*
9 *University District Community Council, Northeast District Council and*
10 *University Park Community Club v. City of Seattle*, CPSGMHB Case No. 03-
11 3-0008, FDO at 11-12 (June 18, 2003)

12 The Petitioners argument under this issue presents a slight dilemma for the Board
13 because the Petitioners rely partially on the Planning Enabling Act, Chapter 36.70, to make
14 their case. The Boards do not have jurisdiction of actions under this statute. The Western
15 Board opined:

16 "A GMHB does not have jurisdiction to determine compliance with the
17 Planning Enabling Act, RCW 36.70." *Abenroth v. Skagit County*, WWGMHB
18 Case No. 97-2-0060, MO (Oct. 16, 1997)

19 However, the Petitioners argument concerning this issue is much broader in scope.
20 The Board has decided it has jurisdiction to determine whether this issue is compliant with
21 the GMA. This issue concerns a planned unit development/master planned community,
22 which is a subarea plan:

23 By whatever name (e.g., neighborhood plan, community plan, business district
24 plan, specific plan, master plan, etc.) a land use policy plan that is adopted
25 after the effective date of the GMA and purports to guide land use decision-
26 making in a portion of a city or a county, is a subarea plan within the meaning
of RCW 36.70A.080. While a city or a county has discretion whether or not to
adopt such optional enactment, once it does so, the subarea plan is subject to
the goals and requirements of the Act and must be consistent with the
comprehensive plan. *West Seattle Defense Fund, Neighborhood Rights*
Campaign, and Charles Chong v. City of Seattle, CPSGMHB Case No. 95-3-
0073, FDO (April 2, 1996) at 25.

"The Growth Management Hearings Board has jurisdiction to review a subarea
plan that by its terms was adopted pursuant to RCW 36.70A, even if it was

1 also adopted pursuant to other planning legislation." *Beckstrom v. San Juan*
2 *County*, WWGMHB Case No. 95-2-0081, FDO (Jan. 3, 1996).

3 The Board therefore looks at the County's record to determine whether it has
4 complied with the GMA. The Board believes it has.

5 Under WWCC 17.14.030 - Development agreement, the County has detailed what an
6 applicant must submit as a draft development agreement under RCW 36.70B. The
7 development plan must include a conceptual site plan, a park and open space plan, a build-
8 out timeline, a phasing plan, a conceptual infrastructure plan, a minimum amount of
9 required recreation space and/or open space, a density number, and a termination
10 agreement.

11 The Respondents/Intervenors argue that the regulations under the Comprehensive
12 Plan's Master Plan Community policies and the WWCC's Urban Planned Communities (UPC)
13 regulations, like planned unit development regulations, is not without standards and does
14 not lack specificity. According to the Respondents (in this case, Intervenor Pennbrook
15 Homes), any development proposal comes under the Master Plan Community policies of the
16 Comprehensive Plan and the UPC regulations and must be "formulated in detail and every
17 detail is subject to site-specific approval and conditioning by the County in accordance with
18 the applicable policies of the comprehensive plan and the standards in the development
19 regulations." Furthermore, the Intervenor contend that, "Very significantly, the
20 development standards ultimately approved by the County through the site-specific
21 regulatory process must be the 'functional equivalent' of those imposed under the Walla
22 Walla zoning code and must 'adequately achieve the purposes of' the zoning code
23 standards." Pennbrook Homes HOM Brief at 48-49.

24 In addition to the development standards required above, the County is attempting
25 to create a livable community through the use of a variety of land planning solutions. For
26 instance, the Development Regulations amendment to the Walla Walla County Code
authorizes a new Urban Planned Communities zone in Chapter 17.14 of the Code. Its

1 purpose is to "...provide greater flexibility and encourage more creative land planning
2 solutions on large parcels of land than would be achieved by traditional lot by lot
3 development using the other zoning districts in the Chapter..." It also states its purpose as
4 "...responding to changing community needs." Exhibit 21 of June 29, 2005, Planning
5 Commission Agenda Items.

6 The Board believes the County has the discretion to formulate its own policies and
7 development regulations in regards to the WWCC, Chapter 17.14, within the parameters of
8 the GMA. With the development regulations requirements under WWCC Chapter 17.14.030
9 and the Walla Walla zoning code requirements guiding development in the Pennbrook UGA,
10 the County has documented an intention to regulate future development in this area.

11 The Board recognizes the County's efforts in providing innovative land techniques,
12 which is encouraged by the GMA.

13 RCW 36.70A.090 does not create a GMA duty; it simply encourages local
14 jurisdictions to include "innovative land use techniques" in their
15 comprehensive plans. *Tulalip Tribes of Washington v. City of Monroe*,
16 CPSGMHB Case No. 99-3-0013, FDO at 6 (Jan. 28, 2000).

17 The move to include innovative techniques is reflected in this comment by the
18 Central Board:

19 As society and technology have changed over time, so too have communities
20 and residential neighborhoods changed. This has been reflected in changes in
21 statute and case law at both the federal and state levels. In the GMA, there
22 are a number of specific references that address housing and residential land
23 uses, some of them more explicit and directive than others. There are at least
24 five sections of the Act that are on point. When these sections are read
25 together, they describe a legislatively preferred residential landscape that,
26 compared with the past, will be less homogeneous, more diverse, more
compact and better furnished with facilities and services to support the needs
of the changing residential population. *The Children's Alliance and Low
Income Housing Institute v. City of Bellevue*, CPSGMHB Case No. 95-3-0011,
FDO at 5 (July 25, 1995).

1 The Board finds that, in view of the entire record, Walla Walla County's Code,
2 Chapter 17.14 is in compliance and fulfills the goals and requirements set forth in the GMA.
3 RCW 36.70A.3201 and RCW 36.70A.320(3).

4 **Conclusion:**

5 The Board finds that the Petitioners have failed to carry their burden of proof
6 concerning Legal Issue No. 7.

7 **Issue No. 8:**

8 Does the continued validity of Ordinance 322, including the Pennbrook Amendments,
9 substantially interfere with the fulfillment of the goals of the Growth Management Act such
10 that the enactments at issue should be held invalid pursuant to RCW 36.70A.302?

11 **The Parties' Position:**

12 **Petitioners/Intervenors:**

13 The Petitioners argue that this Board and the Washington Supreme Court have
14 identified RCW 36.70A.020(8), the protection of farmland, as one of the most important
15 functions of the GMA, and RCW 36.70A.020(2), reduction of sprawl, as another. The
16 Petitioners contend the Pennbrook amendments substantially interfere with both of these
17 goals.

18 According to the Petitioners, the Pennbrook amendments would conflict with Goal 8
19 because the County would convert dedicated agricultural land into residential and
20 commercial uses; create urban development far outside of Walla Walla; and promote sprawl
21 by allowing low-density development.

22 The Petitioners also contend that RCW 36.70A.020(11) - Citizen participation and
23 coordination, is absent and the County failed to follow its own docket procedures. For the
24 reasons listed above, the County's approval of the Pennbrook amendments should be ruled
25 invalid.

26 **Respondent/Intervenors:**

Only the Intervenor, Pennbrook Homes, responded to Issue No. 8. In their brief,
Pennbrook Homes contends that the challenged amendments complied with the GMA.

1 Furthermore, the Petitioners have failed to satisfy their burden of demonstrating that the
2 challenged amendments were clearly erroneous and within the scope of the County's option
3 to consider local circumstances. The Intervenor contends that the GMA, as amended in
4 1997, clearly delegates substantial discretion to local governments to interpret, apply and
5 balance the GMA goals. According to the Intervenor, the County had difficult policy choices
6 to make and it could not please everyone. "It is the County's interpretation, application, and
7 harmonizing of GMA goals, in light of local circumstances, that is entitled to deference, not
8 Petitioners." Pennbrook Homes HOM Brief at 51.

Petitioners/Intervenors Reply Brief:

9 The Petitioners argue in their reply brief that even though the County has
10 determined that Pennbrook's Urban Planned Community application is complete, there are
11 other requirements that are still pending. An order of invalidity would be binding against
12 incomplete and unvested applications.

Board Analysis:

13 The Board finds the County in compliance with Issues 1 through 7 for the reasons
14 stated in this Order. Therefore, a ruling of invalidity is not appropriate.

Conclusion:

15 The Board finds that the Petitioners have failed to carry their burden of proof
16 concerning Legal Issue No. 8.

V. FINDINGS OF FACT

- 17
- 18 1. Walla Walla is a county located east of the crest of the Cascade
 - 19 2. Petitioners are citizens of Walla Walla County and participated in the
 - 20 3. Petitioners raised eight legal issues addressed in their Petition for
 - 21 4. Walla Walla County enacted Ordinance 322 on October 31, 2005.
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5. Petitioners filed their petition for review of Ordinance 322 on December 23, 2005.
6. Ordinance 322 amends the Walla Walla County Comprehensive Plan and County Zoning Map to increase the size of the UGA for the City of Walla Walla by 380 acres, adopt a three du/acre minimum density, permit the development of master planned communities and adopt a variety of other amendments to change the Walla Walla County Code.
7. Walla Walla County adopted a medium-high OFM population allocation of 15,000 based on the County's Population Growth Projection Analysis. To accommodate this population growth, the County used its Buildable Land Capacity and Land Needs document, and calculated it needed an additional 279 acres added to the UGA, including 125 acres of the Pennbrook lands, which can be used for residential purposes.
8. The County reviewed the available lands within the city limits of Walla Walla and found that additional lands were required for the forecasted population.
9. The County reviewed the possible areas for expansion of the City of Walla Walla's UGA and determined that the Pennbrook lands would be the most appropriate.
10. The Pennbrook lands are adjacent to the Walla Walla Port District, which is a portion of the City of Walla Walla's UGA and has access to sewer, water and other public services.
11. The County held nine public hearings, eight workshops, open houses, public forums, neighborhood meetings, placed newspaper ads, mailed notices to 1,500 citizens and created a new website for the amendments.
12. The County, City of Walla Walla, and the Port District held joint public hearings, workshops and meetings, and all of the jurisdictions

1 mentioned supported the final version of the County's 2005
2 amendments.

- 3 13. The County submitted a SEPA Addendum on June 23, 2005, to assess
4 the proposed changes to the Walla Walla Urban Area Comprehensive
5 Plan; the Walla Walla County Comprehensive Plan and development
6 regulations; the County and City of Walla Walla's zoning maps; and the
7 Countywide Planning Policies. The SEPA document also added
8 information and analyses to additional SEPA documents.
- 9 14. The Pennbrook amendments add approximately 381 acres to the Walla
10 Walla Urban Growth Area. Of the 381 acres, approximately 358 acres
11 will be for the future development of a master planned community, and
12 22 acres will be for residential development.

13 VI. CONCLUSIONS OF LAW

- 14 1. This Board has jurisdiction over the parties to this action.
15 2. This Board has jurisdiction over the subject matter of this action.
16 3. Petitioners have standing to raise the issues listed in the Prehearing
17 Order.
18 4. The Petition for Review in this case was timely filed.
19 5. Walla Walla County's Chapter 14.10 complies with RCW 36.70A.130 and
20 .140.
21 6. Walla Walla County's inclusion of the Pennbrook lands within the Walla
22 Walla UGA is in compliance with RCW 36.70A.020(1), (2) and RCW
23 36.70A.110.
24 7. Walla Walla County's expansion of its UGA through the adoption of
25 Ordinance 322 is consistent with RCW 36.70A.110 and within the
26 CWPP's, including CWPP 3.5, 3.6 and 3.7.

1 8. Ordinance 322 is in compliance with RCW's 36.70A.020(8), .060 and
2 .170.

3 9. Walla Walla County's new Urban Planned Community section of the
4 Walla Walla County Code, Chapter 17.14 is in compliance with RCW
5 36.70A.030 and .040.

6 VIII. ORDER

7 1. The Board finds that the Petitioners have failed to carry their burden of
8 proof on all issues and Walla Walla County's Ordinance 322 is not found
9 out of compliance with the Growth Management Act.

10 Pursuant to RCW 36.70A.300 this is a final order of the Board.

11 Reconsideration:

12 Pursuant to WAC 242-02-832, you have ten (10) days from the mailing of this
13 Order to file a petition for reconsideration. Petitions for reconsideration shall
14 follow the format set out in WAC 242-02-832. The original and four (4) copies of
15 the petition for reconsideration, together with any argument in support thereof,
16 should be filed by mailing, faxing or delivering the document directly to the
17 Board, with a copy to all other parties of record and their representatives. Filing
18 means actual receipt of the document at the Board office. RCW 34.05.010(6),
19 WAC 242-02-330. The filing of a petition for reconsideration is not a
20 prerequisite for filing a petition for judicial review.

21 Judicial Review:

22 Any party aggrieved by a final decision of the Board may appeal the decision to
23 superior court as provided by RCW 36.70A.300(5). Proceedings for judicial
24 review may be instituted by filing a petition in superior court according to the
25 procedures specified in chapter 34.05 RCW, Part V, Judicial Review and Civil.

26 Enforcement:

1 The petition for judicial review of this Order shall be filed with the appropriate
2 court and served on the Board, the Office of the Attorney General, and all parties
3 within thirty days after service of the final order, as provided in RCW 34.05.542.
4 Service on the Board may be accomplished in person or by mail. Service on the
5 Board means actual receipt of the document at the Board office within thirty
6 days after service of the final order.

7 Service:

8 This Order was served on you the day it was deposited in the United States mail.

9 RCW 34.05.010(19)

10 SO ORDERED this 15th day of June 2006.

11 EASTERN WASHINGTON GROWTH MANAGEMENT
12 HEARINGS BOARD

13 _____
14 John Roskelley, Board Member

15 _____
16 Judy Wall, Board Member

17 _____
18 _____
19 Dennis Dellwo, Board Member