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

CITY OF SPOKANE,

Petitioner,

Case No. 06-1-0002

v.

FINAL DECISION AND ORDER

SPOKANE COUNTY,

Respondent.

I. SYNOPSIS

On November 5, 2001, Spokane County adopted its original Comprehensive Plan under the Growth Management Act (GMA), which designated urban growth areas (UGAs) and joint planning areas (JPAs). The City of Spokane (City) appealed that action to the Eastern Washington Growth Management Hearings Board (Board) on January 2, 2002, in Case No. 02-1-0001. This action was based in part on Spokane County's failure to designate any of the urban growth area adjacent to the City of Spokane as a joint planning area, as defined in the Spokane County Comprehensive Land Use Plan and the County-Wide Planning Policies (CWPP), for the City in a similar manner as was designated for other cities in Spokane County. On July 3, 2002, the Board issued its Final Decision and Order (FDO) in which the Board determined that Spokane County was not in compliance with the GMA on several grounds, including, but not limited to: 1) Spokane County's failure to comply with RCW 36.70A.110(2) by limiting the City of Spokane urban growth area to the City's municipal boundaries, 2) Spokane County's failure to comply with RCW 36.70A.110(2) when it failed to enter into discussions with the City on the designation of the City's urban growth area and Spokane County's final determination to eliminate the City's urban growth area outside of the City, and 3) Spokane County's failure to comply with RCW 36.70A.020(1),

1 RCW 36.70A.020(2) and RCW 36.70A.110(4) in limiting the City's urban growth area to its
2 municipal boundaries, identifying some unincorporated urban growth area adjacent to the
3 City as a non-City joint planning area, and designating the North Metro UGA as a Spokane
4 County urban growth area while precluding the City from joint planning for the North Metro
5 area.

6 Pursuant to mediation efforts between the City of Spokane and Spokane County, the
7 parties entered into a Settlement Agreement dated July 29, 2003, whereby the parties
8 agreed that Spokane County would amend the Spokane County Comprehensive Map and
9 the designation of the urban growth areas to designate all but two urban growth areas
10 adjacent to the City of Spokane as "Spokane County/City of Spokane Urban Growth
11 Area/Joint Planning Areas." It was further agreed that: 1) the parties could not resolve the
12 remaining urban growth areas, including the North Metro urban growth area, 2) Spokane
13 County would make a decision regarding the North Metro Area and 3) the City could appeal
14 that decision.

15 On August 14, 2003, the Board entered a Stipulated Order of Dismissal stating that
16 based upon the conditions of the Settlement Agreement, Spokane County was found to be
17 in compliance with the GMA with respect to the issues raised in the Petition for Review.
18 The Order stated further that nothing in the Stipulated Order of Dismissal shall constitute a
19 revision or revocation of the Board's findings and conclusions in its Final Decision and Order
20 (FDO), except for the finding of Spokane County's compliance.

21 The Spokane County Commissioners took legislative action to implement the
22 designations set forth in the Settlement Agreement on January 31, 2006. The County
23 Commissioners' actions were concluded in a summary oral decision dated January 31, 2006,
24 which was appealed by the City of Spokane on March 31, 2006. Spokane County published
25 its Findings of Fact and Decision in Resolution 6-0497, dated June 13, 2006. On July 17,
26 2006, the City of Spokane amended its Petition for Review to reflect Spokane County's
decision as set forth in Resolution 6-0497. The County Commissioners' decision designated
all of those areas agreed upon between the City and County in the Settlement Agreement,

1 including the Alcot area and a portion of the North Metro area, as "Spokane County/City of
2 Spokane Urban Growth Areas/Joint Planning Areas." Resolution 6-0497 also set forth the
3 County Commissioners' decision regarding the portion of the area known as the "North
4 Metro Area," which is the subject of this Amended Petition for Review.

5 A Hearing on the Merits was held on October 26, 2006, and the Board finds that the
6 City of Spokane has carried its burden of proof on Issue Nos. 2, 3, 4, 6, 7, and 8.

7 **II. PROCEDURAL HISTORY**

8 On March 31, 2006, the CITY OF SPOKANE, filed a Petition for Review, by and
9 through their representative, Michael Piccolo.

10 On April 28, 2006, the Board received the City of Airway Heights' Motion for
11 Intervention, Memorandum in Support of Intervention, and Declaration of Stanley Schwartz.

12 On April 27, 2006, the Board received Spokane County's Response to City of Airway
13 Heights' Motion for Intervention.

14 On May 1, 2006, the Board heard the above motion prior to the Prehearing
15 Conference. The Board granted City of Airway Heights' Motion to Intervene on behalf of
16 Respondent. Intervention is limited to issues involving West Plains not the issues involving
17 North Spokane.

18 On May 1, 2006, the Board held a telephonic Prehearing conference. Present were,
19 Dennis Dellwo, Presiding Officer, and Board Member John Roskelley. Board Member Judy
20 Wall was unavailable. Present for Petitioners was Michael Piccolo. Present for Respondent
21 was Dave Hubert.

22 On May 8, 2006, the Board issued its Prehearing Order.

23 On May 9, 2006, the Board issued an Amended Prehearing Order.

24 On May 16, 2006, the Board received Spokane County's Motion to Dismiss Petition
25 for Review.

26 On May 22, 2006, the Board received City of Airway Heights' Motion and
Memorandum to Dismiss Petition to Review.

1 On June 5, 2006, the Board received City of Spokane's Response to Motions to
2 Dismiss by Spokane County and City of Airway Heights.

3 On June 12, 2006, the Board received Reply Memorandum in Support of Airway
4 Heights' motion to Dismiss.

5 On June 26, 2006, the Board held a telephonic motion hearing. Present were, Dennis
6 Dellwo, Presiding Officer, and Board Members John Roskelley and Judy Wall. Present for
7 Petitioners was Michael Piccolo. Present for Respondent was Dave Hubert. Present for
8 Intervenors was Stanley Schwartz.

9 On July 17, 2006, the Board received an Amended Petition for Review and Joint
10 Declaration of the Parties. The parties are requesting a continuance in this matter for
11 settlement negotiations. The parties have asked the Board to hold a pre-hearing conference
12 in this matter and continue the hearing on the merits. At this time the Board time will not
13 hold another pre-hearing conference. The Intervenors, City of Airway Heights have
14 withdrawn from this matter.

15 On July 24, 2006, the Board issued its Order Extending Briefing Dates and Hearing
16 on the Merits.

17 On October 26, 2006, the Board held the Hearing on the Merits. Present were,
18 Presiding Officer, Dennis Dellwo, and Board Members John Roskelley and Judy Wall. Present
19 for Petitioner was Michael Piccolo. Present for Respondent was Dave Hubert.

20 **III. PRESUMPTION OF VALIDITY, BURDEN OF PROOF AND STANDARD OF** 21 **REVIEW**

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

The Hearings Board will grant deference to counties and cities in how they plan
under Growth Management Act (GMA). RCW 36.70A.3201. But, as the Court has stated,

1 "local discretion is bounded, however, by the goals and requirements of the GMA." *King*
2 *County v. Central Puget Sound Growth Management Hearings Board*, 142 Wn.2d 543, 561,
3 14 P.2d 133 (2000). It has been further recognized that "[c]onsistent with *King County*, and
4 notwithstanding the 'deference' language of RCW 36.70A.3201, the Board acts properly
5 when it foregoes deference to a . . . plan that is not 'consistent with the requirements and
6 goals of the GMA." *Thurston County v. Cooper Point Association*, 108 Wn. App. 429, 444, 31
7 P.3d 28 (2001). To be found inconsistent, the Comprehensive Plan must be found to
8 thwart the requirements and goals of the GMA. *Chevron U.S.A. v. Central Puget Sound*
Growth Management Hearings Board, 123 Wn. App. 161, 93 P.3d 880 (2005).

9 Pursuant to RCW 36.70A.320(3) we "shall find compliance unless [we] determine
10 that the action by [Jefferson County] is clearly erroneous in view of the entire record before
11 the Board and in light of the goals and requirements of [the GMA]." In order to find the
12 County's action clearly erroneous, we must be "left with the firm and definite conviction that
13 a mistake has been made." *Department of Ecology v. Public Utility Dist. 1*, 121 Wn.2d 179,
14 201, 849 P.2d 646 (1993).

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

17 **IV. ISSUES AND DISCUSSION**

18 **Issue No. 1:**

19 Did the County violate the requirements of the GMA, specifically RCW 36.70A.110(2)
20 (which requires counties to consult with and attempt to reach agreement with cities on UGA
21 boundaries), when the County failed to designate portions of the unincorporated UGA
located in the North Metro as Spokane County/City of Spokane UGAs/JPAs as originally
proposed by the City in its Comprehensive Plan and proposed urban growth area?

22 **The Parties' Position:**

23 **Petitioners:**

24 The Petitioner argues that Spokane County violated RCW 36.70A.110(2) when it
25 failed to attempt to reach agreement with the City of Spokane regarding the designation of
26

1 the North Metro area as a Spokane County only urban growth area and not a joint planning
2 area for the City of Spokane. It is the Petitioner's position that the designation of the North
3 Metro urban growth area is the same as it was in the original urban growth area
4 designation where Spokane County was determined to be out of compliance and that
5 Spokane County failed to consult with the City in regards to the designation of the North
6 Metro urban growth area.

7 **Respondent:**

8 The Respondent argues that the City does not dispute the location or the size of the
9 portion of the UGA known as the North Metro area, but that Petitioner's objection is with
10 Spokane County's decision not to designate a portion of the North Metro area within the
11 UGA as a joint planning area (as defined in the Spokane County Comprehensive Land Use
12 Plan) assigned to the City of Spokane. Respondent further asserts that Spokane County
13 and the City engaged in mediation and extensive negotiations regarding the designation of
14 a portion of the North Metro area as a joint planning area.

15 **Board Analysis:**

16 As addressed in Issue No. 1, RCW 36.70A.110(2) requires that counties "must
17 attempt to reach agreement with each city on the location of an urban growth area within
18 which the city is located." The Petitioner acknowledges that it is not disputing the size or
19 location of the urban growth boundary in the North Metro area, but only the Respondent's
20 failure to designate this area as a joint planning area for the City of Spokane. RCW
21 36.70A.110(2), as it pertains to counties attempting to reach agreement with each city on
22 the location of an urban growth area, does not encompass the issue of joint planning or
23 designation of joint planning areas.

24 **Conclusion:**

25 There is no evidence in the record that the County did not attempt to reach
26 agreement with the City of Spokane concerning the designated urbanized areas of the
County. Therefore, the Board finds the Petitioner failed to carry their burden of proof
concerning Issue No. 1.

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Issue No. 2:

Did the County violate the requirements of the GMA, specifically RCW 36.70A.110(2) when the County failed to justify in writing why it designated the amended UGA boundaries to exclude portions of the North Metro as Spokane County/City of Spokane UGAs/JPAs, ignoring the findings and conclusions of the EWGMHB's July 3, 2002, Final Decision and Order, the City's previously adopted comprehensive plan and the City's demonstrated ability to provide services to the area that the City proposed for inclusion in the City's UGA, as recognized by the EWGMHB in its Final Decision and Order?

The Parties' Position:

Petitioners:

The Petitioner argues that the North Metro area should be designated as a "Spokane County/City of Spokane Urban Growth Area/Joint Planning Area" and that Spokane County violated RCW 36.70A.110(2) and the Board's July 3, 2002, Final Decision and Order when it failed to justify in writing why it designated the amended North Metro area to exclude the majority of the area as a joint planning area for the City. The Petitioner further argues that the Board previously concluded that the City of Spokane, as the largest city in Eastern Washington, should be an active participant in the planning for services in urban areas that abut the City's municipal boundary and that it was the County's failure to coordinate its planning with the City of Spokane that contributed to the finding of non-compliance.

Respondent:

The Respondent argues that 1) the UGA boundaries were not amended by Resolution 6-0497; 2) the designation of "joint planning areas" as differentiated from the UGA is not required by the GMA and that the Petitioner has misunderstood the nature of urban growth areas; 3) Spokane County has fully complied with the Settlement Agreement between Spokane County and the City of Spokane and did so even though the City's population and land quantity analysis provided in support of its request for an urban growth area outside of its municipal boundary did not support that request; and 4) the Findings and Conclusions stated in Resolution No. 6-0497 provide written explanation of Spokane County's decision in

1 designating a portion of the North Metro area as a joint planning area for the City of
2 Spokane. The Respondent argues that the designation of joint planning areas is based upon
3 the growth that a city is expected to experience and the need of a city for an area within
4 the urban growth area within which to grow. Nothing in the Spokane County
5 Comprehensive Plan or Resolution No. 6-0497 prevents the City from growing into any part
6 of the urban growth area.

7 **Petitioners Reply Brief:**

8 The Petitioner replies to the Respondent's position by arguing that Spokane County
9 ignored the Board's previous decision that Spokane County was not in compliance with the
10 GMA in its refusal to include the City in joint planning in the North Metro area. According to
11 the Petitioner's, inclusion of joint planning areas is expressly provided for in the County-
12 Wide Planning Polices (CWPP), Topic No. 2 Spokane County's argument that designation of
13 joint planning areas is based upon the growth the City is expected to experience and the
14 need of the City for an area within the urban growth area within which to grow is erroneous
15 and not supported by the GMA or the CWPPs. The Board has already concluded that the
16 City has the ability to provide urban services in the unincorporated urban growth area.

17 **Board Analysis:**

18 The Board has previously concluded that, as the largest city in Eastern Washington,
19 the City of Spokane should be an active participant in the planning for services in urban
20 areas that abut its municipal boundaries and that it is Spokane County's failure to
21 coordinate its planning with the City of Spokane that contributed to the findings of non-
22 compliance. The Board further held that the City of Spokane is capable of and is currently
23 providing many urban services to areas outside of its corporate boundaries and that the City
24 is capable of and is currently providing many urban governmental services in urban growth
25 areas, including the North Metro UGA. The Board also held that Spokane County had acted
26 erroneously in excluding the City from joint planning in the North Metro area. City of
Spokane v. Spokane County, EWGMHB 02-1-0001, Final Decision and Order (July 3, 2002)
at 17 and 27.

1 Spokane County has amended the North Metro urban growth area to designate a
2 portion of the North Metro area east of Highway 2 as an "urban growth area/joint planning
3 area" for the City of Spokane. However, the majority of the North Metro area remains as it
4 existed in the original designation of the urban growth area. The record before the Board
5 fails to justify why the County has excluded the North Metro area as a joint planning area
6 for the City of Spokane consistent with the RCW 36.70A.110(2), the CWPPs and the Board's
7 FDO in Case No. 02-1-0001. The procedure in Spokane County, as called for by the CWPPs,
8 is to designate those urban growth areas adjacent to cities as "urban growth area/joint
9 planning areas," as was the case for all of the incorporated cities in Spokane County at the
10 time of the 2001 adoption of Spokane County's Comprehensive Plan and urban growth
11 areas.

11 **Conclusion:**

12 RCW 36.70A.110(2) states in part, "If such an agreement is not reached with each
13 city located within the urban growth area, the county shall justify in writing why it so
14 designated the area an urban growth area." The record shows Spokane County did not
15 justify in writing its exclusion of portions of the North Metro UGA as an "urban growth
16 area/joint planning area" for the City of Spokane. The City of Spokane has carried its
17 burden of proof and the Board finds the County out of compliance on Issue No. 2 for failure
18 to comply with RCW 36.70A.110(2) and the Board's FDO in Case No. 02-1-0001.

18 **Issue No. 3:**

19 Did the County violate the requirements of the GMA, specifically RCW 36.70A.020(1)
20 (GMA goal encouraging urban development where adequate public facilities and services
21 exist or can be provided in an efficient manner), RCW 36.70A.020(2) (GMA goal to reduce
22 sprawling, low-density development), and RCW 36.70A.110(4) (which provides that cities
23 are the units of local government most appropriate to provide urban governmental
24 services), in designating portions of the North Metro area adjacent to or in close proximity
25 to the City of Spokane as a Spokane County UGA, thereby precluding the City of Spokane
26 from participating in joint planning with the County for those areas?

1 **The Parties' Position:**

2 **Petitioners:**

3 The Petitioner argues that Spokane County violated RCW 36.70A.020(1) and RCW
4 36.70A.020(2) by failing to designate the North Metro area as a "Spokane County/City of
5 Spokane Urban Growth Area-Joint Planning Area." The Petitioner further argues that
6 Spokane County violated RCW 36.70A.110(4) by failing to designate the North Metro area
7 as a UGA/JPA, thereby prohibiting the City from engaging in joint planning with Spokane
8 County. The Petitioner argues that Spokane County has violated RCW 36.70A.110(4) by
failing to comply with the requirement of transformation of local government.

9 **Respondent:**

10 The Respondent argues that notwithstanding the allegations made in its Petition for
11 Review, the Petitioner is not alleging that there are inadequate public services in the North
12 Metro area of the UGA or that those services cannot be efficiently provided. Neither does
13 the Petitioner argue that there is sprawl or low-density development taking place in the
14 North Metro area of the UGA. Respondent does not dispute the quotation by the Petitioner
15 of the language of RCW 36.70A.110(4). Respondent asserts that by designating certain
16 areas of the UGA as joint planning areas, as defined in the Spokane County Comprehensive
17 Land Use Plan, it has not precluded the City from joint planning in other areas of the UGA.
18 Respondent further asserts that the Board's decision in EWGMHB Case No. 02-1-0001 only
19 determined that Spokane County acted erroneously in excluding the City from joint
20 planning, not for choosing not to designate the North Metro area of the UGA as a joint
21 planning area. Spokane County further argues that it has actively engaged the City in joint
22 planning activities in the UGA in areas other than joint planning areas, and in discussions
23 regarding the transformation of local government, but that the City has failed to participate
in such efforts.

24 **Petitioners Reply Brief:**

25 The Petitioner replies to the Respondent's position by arguing that CWPP Topic No. 2
26 specifically provides for joint planning areas as "areas designated as Urban Growth Areas

1 assigned to a city or town for future urban development but located in the unincorporated
2 county where a coordinated planning process between the cities, towns, and the County will
3 be conducted." The Petitioner further argues that Spokane County has failed to comply with
4 RCW 36.70A.110(4) by failing to comply with the requirement of transformation of local
5 government because Spokane County has failed to adopt as part of its Comprehensive Plan
6 a realistic strategy for the transformation of local government. The Petitioner further argues
7 that it has cooperated to the extent possible in the development of joint planning.

Board Analysis:

8 RCW 36.70A.110(4) states "...cities are the units of local government most
9 appropriate to provide urban governmental services." CWPP Topic No. 2 provides for joint
10 planning areas as "areas designated as Urban Growth Areas assigned to a city or town for
11 future urban development but located in the unincorporated county where a coordinated
12 planning process between the cities, towns, and the County will be conducted."

13 This Board has previously determined that the City of Spokane has demonstrated its ability
14 to provide urban governmental services in the unincorporated UGA, should be an active
15 participant in the planning for services in the UGA abutting the City's municipal boundaries,
16 and that it should be part of joint planning in the North Metro area.

17 Spokane County has designated the other UGAs abutting other municipalities as the
18 UGAs assigned to those cities. This designation is established by identifying these areas as
19 "urban growth area/joint planning areas" for those cities. CWPP No. 2 contemplates this
20 designation.

21 The North Metro area is the most urbanized area of the unincorporated Spokane
22 County. The City of Spokane surrounds the southern portion of the North Metro area on
23 three sides. Two major highways, Highway 2 and Highway 395, run the full length of the
24 North Metro area and converge into the heart of the City. The City is currently providing
25 urban governmental services to the North Metro area and, in conjunction with special
26 purpose districts, is capable of providing a full array of urban governmental services to the

1 area. The entire North Metro area should be an "urban growth area/joint planning area" for
2 the City of Spokane.

3 **Conclusion:**

4 There is no evidence in the record to support the City's allegation that the County
5 has failed to follow the requirements of RCW 36.70A.020(1) and (2). The record does show
6 that the area known as North Metro is urbanized and RCW 36.70A.110(4) states "...cities
7 are the units of local government most appropriate to provide urban governmental
8 services." Therefore, the North Metro UGA shall be treated no differently than the other
9 planned City/County UGA/JPA's. The City of Spokane has carried its burden of proof and the
10 Board finds the County out of compliance on Issue No. 3 for failure to comply with RCW
36.70A.110(4) and the Board's FDO in Case No. 02-1-0001.

11 **Issue No. 4:**

12 Did the County violate the requirements of the GMA, specifically RCW 36.70A.010
13 (which requires cooperation and coordination between cities and counties in comprehensive
14 land use planning) and RCW 36.70A.110(4) by amending the UGA boundaries to designate
15 portions of the North Metro area as Spokane County UGA adjacent to and in close proximity
16 to the City of Spokane's corporate boundaries with no plans for the transformation of
governance as contemplated by RCW 36.70A.110(4) and prior decisions of this Board or
joint planning?

17 **The Parties' Position:**

18 **Petitioners:**

19 The Petitioner argues that by amending the UGA in the North Metro area to
20 designate a majority of that area as a "Spokane County North Metro UGA", and not as a
21 "urban growth area/joint planning area" for the City of Spokane, Spokane County violated
22 RCW 36.70A.010 and RCW 36.70A.110(4) by not coordinating and cooperating with the City
23 of Spokane in comprehensive planning and joint planning. The City further argues that,
24 consistent with the requirements of RCW 36.70A.110(4) and the requirement for
25 transformation of local government, the City is the most appropriate governmental entity to
26 provide urban governmental services.

1
2 **Respondent:**

3 The Respondent argues that 1) Spokane County has not amended or revised the
4 urban growth boundaries, but has only modified the nomenclature given to specifically
5 identified areas of the UGA; 2) transformation of governance as indicated in the GMA
6 pertains to incorporation or annexation; 3) means of transformation of governance under
7 the GMA is facilitated by the designation of an UGA adjacent to the corporate limits of cities,
8 coordination and cooperation between the County, cities and special purpose districts within
9 the UGA, and the adoption of countywide planning policies. Respondent cites *Friends of*
10 *Skagit County v. Skagit County and the City of Mount Vernon*, WWGMHB No. 00-2-0050c
11 (City Regulations Issues) (page 7), 2001 GMHB LEXIS 44 (page 4) (2001), in which the
12 Western Washington Growth Management Hearings Board opines that transformation of
13 governance should occur prior to urban development and that annexation should occur
14 prior to urban infrastructure being extended into the UGA.

15 The Respondent further argues that it is engaged in joint planning with the City of
16 Spokane and does not prevent the City from annexing all or part of the North Metro area.
17 The Respondent also argues that it has designated an UGA adjacent to the city limits of the
18 City of Spokane, is engaged in coordination and cooperation with the City of Spokane and
19 the other public service providers in the North Metro area of the UGA, and has adopted
20 Countywide Planning Policies, all of which are actions supportive of the transformation of
21 governance under the GMA. Respondent asserts that Petitioner has not suggested any plan
22 for its assumption of the governance of the North Metro area of the UGA.

23 **Petitioners Reply Brief:**

24 The Petitioner replies to the Respondent's position by arguing that the requirements
25 for transformation of local government are very specific and direct. The Petitioner argues
26 that in Spokane County, the cities and the County have developed a method to accomplish
the transformation of local government, which is the creation of joint planning areas
designated to the cities pursuant to CWPP Topic No. 2., that Spokane County has failed to

1 recognize this designation, and that failure to provide the designation of "urban growth
2 areas/joint planning areas" prolongs the transformation of local government.

3 **Board Analysis:**

4 RCW 36.70A.010 requires cooperation and coordination between cities and counties
5 in comprehensive land use planning. RCW 36.70A.110(4) provides that cities are the units
6 of local government most appropriate to provide urban governmental services. This Board
7 has previously determined that the City of Spokane should be an active participant in the
8 planning for services in urban areas that abut its city municipal boundaries, that it is
9 Spokane County's failure to coordinate its planning with the City of Spokane that
10 contributed to the previous findings of noncompliance, that the City of Spokane can and
11 does provide urban services to areas outside of its corporate boundaries, that the City is
12 capable of and currently provides urban governmental services in the urban growth area,
13 and that Spokane County had acted erroneously in excluding the City from joint planning in
14 the North Metro area. City of Spokane v. Spokane County, EWGMHB 02-1-0001, Final
Decision and Order (July 3, 2002) at 17 and 27.

15 Transformation of local government is a legislative directive well recognized by the
16 Boards. The Boards recognize this legislative directive as requiring a "transformation of local
17 governance," whereby urban services (which are permitted only in UGAs) are primarily
18 provided by cities." *Tacoma v. Pierce County*, CPSGMHB 94-3-0001, Final Decision and
19 Order (July 5, 1994), at 12. Both the CPSGMHB (Central Puget Sound Growth Management
20 Hearings Board) and the WWGMHB have concluded that: (1) "That which is urban should
21 be municipal", (2) "Implicit in RCW 36.70A.110(4) is the principle that "incorporations and
22 annexations must occur", and (3) One of the three "fundamental purposes" of
23 comprehensive plans is to "achieve the transformation of local governance within the UGA
24 such that cities are the primary providers of urban services." *Abenroth v. Skagit County*,
25 WWGMHB, 97-2-0060, Compliance Order Re: Short-Term Stipulated Issues (June 10, 1999)
26 at 6, citing to *Snoqualmie v. King County*, CPSGMHB, #92-3-0004, and *Bremerton v. Kitsap
County*, CPSGMHB, 95-3- 0039.

1 It is inappropriate to establish a non-municipal UGA in close proximity to a
2 municipality with no plan for the transformation of local governance. *Abenroth v. Skagit*
3 *County*, WWGMHB 97-2-0060, Final Decision and Order (January 23, 1998), at 23 (WL 11).
4 Spokane County has the burden to adopt a comprehensive plan that satisfies the legislative
5 directive requiring transformation of local governance. *Tacoma v. Pierce County*, CPSGMHB
6 94-3-0001, Final Decision and Order (July 5, 1994). Spokane County's Comprehensive Plan
7 has to effectuate the legislative direction that cities are to be the primary providers of urban
8 services within the UGA and adopt realistic strategies for achieving this directive. *City of*
9 *Poulsbo v. Kitsap County*, CPSGMHB, 92-3-0009, Final Decision and Order (April 6, 1993) at
10 27.

11 The cities in Spokane County and Spokane County have adopted CWPP Topic No. 2,
12 which provides that Spokane County and each jurisdiction must plan jointly in the
13 establishment of Urban Growth Areas (UGAs) and for future activity within those areas."
14 Policy Topic 2 goes on to reference the definition of joint planning areas from Spokane
15 County's Comprehensive Plan as "areas designated as Urban Growth Areas assigned to a
16 city or town for future urban developed but located in the unincorporated county where a
17 coordinated planning process between the cities, towns and the County will be conducted."
18 Finally, Policy Topic 2 states that the joint planning process should include all jurisdictions
19 adjacent to the UGA and special purpose districts that will be affected by the eventual
20 transference of governmental services.

21 A required step in the joint planning process is for the designation of urban growth
22 areas adjacent to cities as "urban growth areas/joint planning areas" for the respective city.
23 The designation of the North Metro area as a "Spokane County/City of Spokane Urban
24 Growth Area/Joint Planning Area" is a required step in the joint planning process between
25 the City and County. Spokane County's failure to designate the North Metro area as an
26 "urban growth area/joint planning area" for the City of Spokane demonstrates the County's
failure to have a realistic strategy for the transformation of local government.

1 **Conclusion:**

2 Evidence in the record shows that the actions of the County were clearly erroneous
3 and they violated RCW 36.70A.010 and RCW 36.70A.110(4) when it failed to designate the
4 North Metro UGA as a JPA with the City of Spokane, thus failing to cooperate and
5 coordinate with the City of Spokane and acknowledge that cities are the units of local
6 government most appropriate to provide urban governmental services. The Petitioner has
7 carried its burden of proof and the Board finds the County out of compliance on Issue No. 4
8 for failure to comply with RCW 36.70A.010, RCW 36.70A.110(4) and the Board's FDO in
9 Case No. 02-1-0001.

9 **Issue No. 5:**

10 Did the County violate the requirements of the GMA, specifically RCW 36.70A.100
11 (which requires coordination of comprehensive plans) and RCW 36.70A.110(4) by amending
12 the UGA boundaries to designate portions of the North Metro area as Spokane County UGA
13 adjacent to and in close proximity to the City of Spokane's corporate boundaries without
14 any coordination with the City of Spokane, planning for the transformation of governance s
15 contemplated by RCW 36.70A.110(4) and prior Board decisions or joint planning?

14 **The Parties' Position:**

15 **Petitioners:**

16 The Petitioner argues that Spokane County has failed to comply with RCW
17 36.70A.100, requiring the coordination of comprehensive plans between jurisdictions, and
18 RCW 36.70A.110(4), requiring that cities are the units of local government most appropriate
19 to provide urban governmental services, when it failed to designate the North Metro area as
20 an "urban growth area/joint planning area" for the City. The Petitioner argues that the
21 requirement for transformation of local government and coordination of comprehensive
22 plans requires that the North Metro area be designated as an "urban growth area/joint
23 planning area" for the City.

24 **Respondent:**

25 The Respondent argues that the only distinction between Issue No. 5 and Issue No. 4
26 in the Amended Petition for Review is the allegation by Petitioner regarding RCW 36.70A.100

1 and the coordination of comprehensive plans. Respondent points out that without any
2 mention of RCW 36.70A.100, except in the framing of the issue itself, Petitioner simply states
3 in its brief that: "Issue No. 5 is adequately addressed under the City's discussion in Issue No.
4 3 and No. 4". Respondent argues that the interpretation and intent of RCW 36.70A.100 is
5 succinctly addressed in the case of *Chevron U.S.A., Inc. v. The Central Puget Sound Growth*
6 *Management Hearings Board*, 123 Wn. App. 161, 93 P.3d 880 (2004), which states that for
7 the purposes of RCW 36.70A.100, which requires that the growth management plans of
8 counties and cities be coordinated and consistent with each other, comprehensive plans are
9 coordinated and consistent if they do not thwart one another. Respondent also points out that
10 the Petitioner has not briefed nor alleged in its brief any issue regarding the coordination or
11 consistency of the Comprehensive Plans of the County and the City of Spokane and thus this
12 issue is abandoned by the City and should be dismissed by the Board pursuant to WAC 242-

13 **Board Analysis:**

14 "The comprehensive plan of each county or city ... shall be coordinated with, and
15 consistent with, the comprehensive plans ... of other counties or cities with which the
16 county or city has, in part, common borders or related regional issues." *Diehl v. Mason*
17 *County*, 94 Wn. App. 645, 654 (1999). The City has shown the Board why it is necessary to
18 jointly plan with the County, but has not specifically shown where the City and County
19 Comprehensive Plans are inconsistent. Alleging inconsistency without detailing substance,
20 such as a difference in urban density regulations, is not enough for the Board to find the
21 County non-compliant with RCW 36.70A.100. As to RCW 36.70A.110(4), the Board has
22 already found the County out of compliance in Issues No. 3 and No. 4 and therefore it is not
23 necessary to make that determination here.

24 **Conclusion:**

25 The City has not carried its burden of proof on their contention that the County failed
26 to comply with RCW 36.70A.100. The County is not found out of compliance on that portion
of this issue. However, the County has been found out of compliance for its failure to

1 comply with RCW 36.70A.110(4) and the Board's FDO in Case No. 02-1-0001 in Issues 3
2 and 4 and it is therefore not necessary to again make such a determination here.

3 **Issue No. 6:**

4 Did the County violate the requirements of GMA, specifically RCW 36.70A.020(2)
5 (which requires comprehensive plans and development regulations to reduce urban sprawl),
6 RCW 36.70A.110(4) by amending the UGA boundaries to designate portions of the North
7 Metro area as Spokane County UGA adjacent to and in close proximity to the City of
8 Spokane's corporate boundaries with no plan for the transformance of governance as
9 contemplated by RCW 36.70A110(4) and prior Board decisions or joint planning?

8 **The Parties' Position:**

9 **Petitioners:**

10 The Petitioner argues Spokane County has failed to reduce the inappropriate
11 conversion of undeveloped land into sprawling, low-density development by failing to
12 designate the North Metro area as an "urban growth area/joint planning area." The
13 Petitioner further argues that the Hearings Board previously determined that Spokane
14 County violated RCW 36.70A.110 (4) for its failure to comply with the legislative directive of
15 transformation of local government and that the County's recent action in Resolution No. 6-
16 0497 does not correct the prior non-compliant action.

16 **Respondent:**

17 Respondent argues that the only distinction between Issue No. 6 and Issues Nos. 4
18 and 5 in the Amended Petition for Review is the allegation by Petitioner regarding RCW
19 36.70A.020(2) and the reduction of urban sprawl.

20 Respondent points out that Petitioner has admitted that it is not making any allegation
21 regarding urban sprawl with regard to the North Metro area of the UGA.

22 Respondent argues that the Petitioner ignores the Stipulated Order of Dismissal finding
23 that Spokane County was in compliance with the Final Decision and Order in EWGMHB Case
24 No. 02-1-0001. Respondent points out that Petitioner's only comment on this issue is that the
25 County is still out of compliance with the Board's Final Decision and Order in the Board's Case
26 No. 2-1-0001. Respondent argues that because Petitioner has admitted facts inconsistent with

1 the allegation in Issue No. 6 and because Petitioner fails to brief the issue beyond alleging
2 continued non-compliance in direct conflict with the previous orders of this Board, Petitioner
3 has failed to brief Issue No. 6 and has abandoned the issue, thus Issue No. 6 must be
4 dismissed pursuant to WAC 242-02-570(1).

5 **Petitioners Reply Brief:**

6 The Petitioner replies to the Respondent's position by arguing that the Board's
7 determination of compliance as set forth in the Stipulated Order of Dismissal specifically
8 provided that nothing in the stipulation shall constitute a revision or revocation of the
9 Boards' findings and conclusions in its Final Decision and Order. The Petitioner further
10 argues that Spokane County's argument regarding when a joint planning area designation is
11 appropriate encourages urban sprawl.

12 **Board Analysis:**

13 The recent action of Spokane County in adoption of Resolution No. 6-0497 is not in
14 violation of RCW 36.70A.020(2) as it pertains to the County's Comprehensive Plan and
15 development regulations failing to reduce urban sprawl. As previously set forth in this Final
16 Decision and Order, Spokane County is in violation of RCW 36.70A.110(4) for failure to
17 adopt realistic strategies for the transformation of local government due to the County's
18 failure to designate the North Metro area as an "urban growth area/joint planning area."

19 **Conclusion:**

20 There is no evidence in the record to support the City's contention that the County
21 has violated RCW 36.70A.020(2). Because of the findings in Issues No. 3 and No. 4, the
22 Board continues to find that the Petitioner has carried its burden of proof on Issue No. 6 for
23 failure to comply with RCW 36.70A.110(4) and the Board's FDO in Case No. 02-1-0001.

24 **Issue No. 7:**

25 Did the County violate the requirements of the GMA, specifically RCW 36.70A.010
26 (regarding multi-jurisdictional coordination and cooperation), RCW 36.70A.020 (11) (which
requires coordination between jurisdictions) and RCW 36.70A.210 (3) (f) (which requires
joint county and city planning within urban growth areas) by failing to designate the
unincorporated North Metro area as a joint planning area between the City of Spokane and

1 Spokane and by failing to enter into joint planning or interlocal agreements with the City of
2 Spokane for joint planning of the North Metro area?

3 **The Parties' Position:**

4 **Petitioners:**

5 The Petitioner argues that Spokane County violated RCW 36.70A.010, requiring
6 multi-jurisdictional coordination and cooperation between local governments in
7 comprehensive land use planning, RCW 36.70A.020(11), requiring coordination between
8 jurisdictions to reconcile conflicts and RCW 36.70A.210(3)(f), requiring joint county and city
9 planning within urban growth areas, by failing to designate the North Metro Area as an
10 urban growth area/joint planning area for the City. The Petition relies upon *Kathy Miotke*
11 *and Neighborhood Alliance of Spokane v. Spokane County*, EWGMHB 05-1-0007, Final
12 Decision and Order (February 14, 2005), at 28, for the argument that Spokane County has
13 failed to engage in joint planning as evidenced by the lack of joint planning agreements or
interlocal agreements.

14 **Respondent:**

15 The Respondent argues that Issue No. 7 of the Amended Petition for Review alleges
16 violation of the GMA by Spokane County in two distinct actions: 1) choosing not to designate a
17 portion of the North Metro area of the UGA as a joint planning area with the City of Spokane,
18 and 2) allegedly refusing to enter into a written Joint Planning Agreement with the City of
19 Spokane.

20 Respondent relies upon the arguments made regarding the preceding issues for the
21 lack of any requirement in the GMA that joint planning areas as defined in the Spokane County
22 Comprehensive Land Use Plan be designated within an UGA.

23 Respondent asserts that the record before this Board, including the declarations of Ross
24 Kelley, Brenda Sims, and Marshall Farnell, clearly indicates that Spokane County is attempting
25 to engage the City of Spokane in joint planning in the several areas of the UGA including the
26 North Metro area. In addition, the Petitioner agrees that there has been communication and

1 discussion between the County and the City of Spokane regarding such topics as sewer
2 services, transportation issues and solutions, stormwater issues and solutions. Respondent
3 alleges that the City of Spokane refuses to coordinate and cooperate with the County
4 regarding other matters of joint planning for the UGA.

5 Respondent asserts that the City of Spokane refuses an invitation from the County to
6 engage in coordination and cooperation regarding the respective comprehensive plans or
7 written joint planning agreements, even though joint planning agreements between Spokane
8 County and the cities and towns has been the subject of discussion and interest in the
9 Spokane County Steering Committee of Elected Officials for more than a year.

10 Respondent argues that equity will not allow a party to hinder performance and then
11 cry failure of that performance.

12 Respondent asserts that there has been no proposal from Petitioner regarding the
13 matter of joint planning in the North Metro area of the UGA and that Petitioner has not
14 suggested any form of a joint planning agreement to the County or to the Steering
15 Committee. Respondent argues that designation of a joint planning area is not necessary for
16 Petitioner to jointly plan, coordinate or cooperate with the County regarding the UGA.

17 Respondent argues that the requirement of the GMA and the Spokane County Countywide
18 Planning Policies for joint planning, cooperation and coordination is not unilateral requiring
19 only the County to comply and leaving the City of Spokane's compliance to the discretion of
20 Petitioner.

21 Respondent also asserts that it is in the process of developing a written joint planning
22 agreement for use with the cities and towns within the County and that the County is actively
23 coordinating and cooperating with the City of Spokane. Respondent argues that the Petitioner
24 fails to show any evidence in the record that supports its allegations in Issue No. 7 of the
25 Amended Petition for Review and thus must be dismissed because of the Petitioner's failure to
26 meet its burden of proof.

Respondent argues that Petitioner erroneously relies upon the case of *Miotke v.*
Spokane County, EWWGMHB Case No. 05-1-0007 for the proposition that Spokane County is

1 out of compliance with a requirement to enter into written joint planning agreements with the
2 City of Spokane and other jurisdictions regarding joint planning in the UGA. Respondent
3 asserts that written joint planning agreements, though suggested, are not required.

4 **Board Analysis:**

5 This Board has previously concluded that Spokane County has failed to engage in
6 joint planning as required by RCW 36.70A.210(3)(f) and that the County remains out of
7 compliance. *Kathy Miotke and Neighborhood Alliance of Spokane v. Spokane County*,
8 EWGMHB 05-1-0007, Final Decision and Order (February 14, 2005), at 28. Joint planning
9 areas "shall be joint, or multi-jurisdictional, where two or more jurisdictions providing one
10 or more urban governmental services may participate in the joint planning process." *City of*
11 *Spokane v. Spokane County* EWGMHB 02-1-0001 (FDO, July 3, 2002), citing *Kathy Miotke*
12 *and Neighborhood Alliance of Spokane v. Spokane County*, EWGMHB 05-1-0007, Final
13 Decision and Order (February 14, 2005), at 27. Spokane County has failed to designate the
14 North Metro area as a joint planning area for the City of Spokane. Joint planning areas call
15 for joint or multi-jurisdictional planning, where two or more jurisdictions providing one or
16 more urban governmental services may participate in the joint planning process. The North
Metro area falls exactly into this scenario.

17 **Conclusion:**

18 RCW 36.70A.010 requires multi-jurisdictional coordination and cooperation between
19 jurisdictions. RCW 36.70A.020 (11) requires coordination between jurisdictions. RCW
20 36.70A.210 (3)(f), requires joint county and city planning within urban growth areas.
21 Spokane County has failed to comply with RCW 36.70A.010, RCW 36.70A.020 (11) and
22 RCW 36.70A.210 (3)(f) by failing to designate the unincorporated North Metro area as a
23 joint planning area between the City of Spokane and Spokane County and by failing to enter
24 into joint planning or interlocal agreements with the City of Spokane for joint planning of
25 the North Metro area.
26

1 **Issue No. 8:**

2 Did the County violate the requirements of the GMA, specifically the requirements set
3 forth in Issues 1-6 above, as set forth in determination of legal issues concluded by the
4 Eastern Washington Growth Management Hearings Board's July 3, 2002, Final Decision and
Order (Case No. 02-1-0001)?

5 **The Parties' Position:**

6 **Petitioners:**

7 The Petitioner argues that Spokane County has violated the GMA, specifically the
8 requirements set forth in Issue Nos. 1-6 as set forth in the City's Amended Petition for
9 Review and as determined by this Board in its July 3, 2002, Final Decision and Order. The
10 City further argues that the recent actions of the County Commissioners does not correct
11 the violations previously determined by the Board.

12 **Respondent:**

13 The Respondent argues that Issue No. 8 of the Amended Petition for Review merely
14 repeats issues that are already discussed in the previous issues of the Amended Petition for
15 Review and then alleges that the County remains non-compliant with the Board's Final
16 Decision and Order in case no. 02-1-0001. Respondent characterizes this as Petitioner's
17 attempt to reinstate a finding that the County is not in compliance with the Board's previous
18 decision. Respondent argues that that matter has been settled by a Stipulated Order of
19 Dismissal jointly offered to and accepted by the Board in 2003 and Petitioner has neither
alleged nor met any of the bases to reinstate the previous case findings.

20 **Petitioners Reply Brief:**

21 The Petitioner replies to the Respondent's position by arguing that the Board's
22 Stipulated Order of Dismissal specifically stated that nothing in the Stipulated Order of
23 Dismissal shall constitute a revision or revocation of the Boards' findings and conclusions in
24 its Final Decision and Order. The Petitioner argues that the City's motion to reinstate the
25 Board's prior determination of non-compliance was not ruled upon by the Board because
26

1 the County finally took the necessary legislative action to implement the terms of the
2 Settlement Agreement.

3 **Board Analysis:**

4 As set forth above, the City has carried its burden and demonstrated that Spokane
5 County is not in compliance with the GMA as determined by the Board based upon the
6 argument and issues set forth in the Petitioner's Amended Petition for Review. This Board
7 has set forth its analysis and conclusions to specific violations of the GMA and has cited
8 specifically to where this Board has determined the actions of Spokane County in adopting
9 Resolution 6-0497 are also in violation of this Board's July 3, 2002, Final Decision and Order
(Case No. 02-1-0001).

10 **Conclusion:**

11 The record shows the County violated RCW 36.70A.010, RCW 36.70A.020(11), RCW
12 36.70.110(2), RCW 36.70A.110(4), and RCW 36.70A.210(3)(f), therefore the Petitioner has
13 carried their burden of proof on Issue No. 8.

14 **V. FINDINGS OF FACT**

- 15 1. Spokane County is planning under the GMA, Chapter 36.70A.
- 16 2. The City of Spokane is the largest City in Eastern Washington and had
17 standing to raise the issues set forth in its Amended Petition for
18 Review.
- 19 3. On November 5, 2001, Spokane County adopted its original Comprehensive
20 Plan under the Growth Management Act (GMA), which designated urban
21 growth areas and joint planning areas.
- 22 4. The City of Spokane appealed that action to the Eastern Washington Growth
23 Management Hearings Board on January 2, 2002, in Case No. 02-1-0001,
24 based in part on Spokane County's unilateral decision: (1) to reduce the City's
25 urban growth area to its corporate limits; (2) to reallocate projected
26 population increases to unincorporated Spokane County; and (3) its failure to
designate any of the urban growth areas adjacent to the City of Spokane as

1 joint planning areas for the City in a similar manner as was designated for
2 other cities in Spokane County.

3 5. On July 3, 2002, the Board issued its Final Decision and Order in which it
4 determined that Spokane County was not in compliance with the GMA on
5 several grounds including, but not limited to, 1) Spokane County's failure to
6 comply with RCW 36.70A.110(2) by designating urban growth areas adjacent
7 to cities and towns as the urban growth areas and joint planning areas for
8 those cities and towns, except for the City of Spokane, whose urban growth
9 area the County limited to the City's municipal boundaries; 2) Spokane
10 County's failure to comply with RCW 36.70A.110(2) when it failed to enter into
11 discussions with the City on the designation of the City's urban growth area
12 and Spokane County's final determination to eliminate the City's urban growth
13 area outside of the City; and 3) Spokane County's failure to comply with RCW
14 36.70A.110(4) in limiting the City's urban growth area to its municipal
15 boundaries, identifying some unincorporated urban growth area adjacent to
16 the City as a non-City joint planning areas, and designating the North Metro
17 UGA as a Spokane County urban growth area and precluding the City from
18 joint planning for the North Metro area.

19 6. Pursuant to mediation efforts between the City of Spokane and Spokane
20 County, the parties entered into a Settlement Agreement dated July 29, 2003,
21 whereby the parties agreed that Spokane County would amend the Spokane
22 County Comprehensive Map and the designation of the urban growth area to
23 designate all but two urban growth areas adjacent to the City of Spokane as
24 "Spokane County/City of Spokane Urban Growth Area/Joint Planning Area." It
25 was further agreed that if the parties could not resolve the remaining urban
26 growth areas, including the North Metro urban growth area, Spokane County
would make a decision regarding the North Metro Area and the City could
appeal that decision.

1 7. On August 14, 2003, the Board entered a Stipulated Order of Dismissal stating
2 that based upon the conditions of the Settlement Agreement, Spokane County
3 was found to be in compliance with the GMA with respect to the issues raised
4 in the Petition for Review and that nothing in the Stipulated Order of Dismissal
5 shall constitute a revision or revocation of the Boards' findings and conclusions
6 in its Final Decision and Order.

7 8. Spokane County Commissioners took legislative action to implement the
8 designations set forth in the Settlement Agreement on January 31, 2006. The
9 County Commissioners' actions were concluded in a summary oral decision
10 dated January 31, 2006, which was appealed by the City of Spokane on March
11 31, 2006. Spokane County set forth its Findings of Fact and Decision in
12 Resolution 6-0497, dated June 13, 2006. On July 17, 2006, the City of
13 Spokane amended its Petition for Review to reflect Spokane County's decision
14 as set forth in Resolution 6-0497. The County Commissioners' decision
15 designated those areas agreed upon between the City and County in the
16 Settlement Agreement as "Spokane County/City of Spokane Urban Growth
17 Areas/Joint Planning Areas." Resolution 6-0497 also finalized the County
18 Commissioner's decision regarding the portion of the urban growth area
19 known as the "North Metro Area," which is the subject of this Petition for
20 Review.

21 9. The urban growth area located in the North Metro Area of Spokane
22 County was amended from its original designation to include an area
23 east of Highway 2 as a "Spokane County/City of Spokane North Metro
24 UGA-JPA." The remaining portion of the North Metro Area retained its
25 original designation as a "Spokane County North Metro UGA."

VI. CONCLUSIONS OF LAW

26 1. This Board has jurisdiction over the parties to this action.

2. This Board has jurisdiction over the subject matter of this action.
3. Petitioners have standing to raise the issues listed in the Prehearing Order.
4. The Petition for Review in this case was timely filed.
5. RCW 36.70A.110(4) requires comprehensive plans to establish and achieve a realistic strategy for the transformation of local government whereby cities are the units of local government providing urban governmental services.
6. RCW 36.70A.110(2) requires counties to justify in writing exclusions of land from joint planning areas with adjacent municipalities.
7. RCW 36.70A.010 and 36.70A.110(4) require Spokane County to designate areas of the UGA adjacent to the City of Spokane as joint planning areas for the City as part of the requirement for cooperation and coordination between cities and counties and the requirement that cities are the units of government most appropriate to provide urban governmental services.
8. RCW 36.70A.110(4) requires Spokane County to designate areas of the UGA adjacent to the City of Spokane as joint planning areas for the City as part of the requirement for consistency and coordination between cities and counties and the requirement that cities are the units of government most appropriate to provide urban governmental services.
9. RCW 36.70A.010, RCW 36.70A.020 (11) and RCW 36.70A.210 (3)(f) require Spokane County to designate areas of the UGA adjacent to the City of Spokane as joint planning areas for the City of Spokane and to enter into joint planning agreements for the joint planning of areas designated as joint planning areas as part of the requirement for multi-jurisdictional coordination and cooperation between jurisdictions, coordination between jurisdictions, joint county and city planning within urban growth areas.

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VIII. ORDER

1. Issue No. 1. The Board determines that there is no evidence in the record that the County did not attempt to reach agreement with the City of Spokane concerning the designated urbanized areas of the County. Therefore, the Board finds the Petitioner failed to carry their burden of proof concerning Issue No. 1.
2. Issue No. 2. RCW 36.70A.110(2) states in part, "If such an agreement is not reached with each city located within the urban growth area, the county shall justify in writing why it so designated the area an urban growth area." The record shows Spokane County did not justify in writing its exclusion of portions of the North Metro UGA as an "urban growth area/joint planning area" for the City of Spokane. The City of Spokane has carried its burden of proof and the Board finds the County out of compliance on Issue No. 2 for failure to comply with RCW 36.70A.110(2) and the Board's FDO in Case No. 02-1-0001.
3. Issue No. 3. There is no evidence in the record to support the City's allegation that the County has failed to follow the requirements of RCW 36.70A.020(1) and (2). Evidence does suggest that the area known as North Metro is urbanized and RCW 36.70A.110(4) states that "cities are the units of local government most appropriate to provide urban governmental services." Therefore, the North Metro UGA shall be treated no differently than the other planned City/County UGA/JPA's. The City of Spokane has carried its burden of proof and the Board finds the County out of compliance on Issue No. 3 for failure to comply with RCW 36.70A.110(4) and the Board's FDO in Case No. 02-1-0001.
4. Issue No. 4. Evidence in the record shows that the County violated RCW 36.70A.010 and RCW 36.70A.110(4) when it failed to designate the North

1 Metro UGA as a JPA, thus failing to cooperate and coordinate with the City of
2 Spokane and acknowledge that cities are the units of local government most
3 appropriate to provide urban governmental services. The Petitioner has carried
4 its burden of proof and the Board finds the County out of compliance on Issue
5 No. 4 for failure to comply with RCW 36.70A.010, RCW 36.70A.110(4) and the
6 Board's FDO in Case No. 02-1-0001.

- 7 5. Issue No. 5. RCW 36.70A.100 requires consistency and coordination with
8 jurisdictions that have a common border. There is no evidence in the record
9 that shows the County and City of Spokane have not made attempts to
10 coordinate their comprehensive plans and that the adopted plans are
11 independent and in conflict of the other in violation of RCW 36.70A.100. The
12 Petitioner has failed to carry its burden of proof on Issue No. 5.
- 13 6. Issue No. 6. There is no evidence in the record to support the City's
14 contention that the County has violated RCW 36.70A.020(2). The Board does
15 find, however, that the Petitioner has carried its burden of proof on Issue No.
16 6 for failure to comply with RCW 36.70A.110(4) and the Board's FDO in Case
17 No. 02-1-0001.
- 18 7. Issue No. 7. RCW 36.70A.010 requires multi-jurisdictional coordination and
19 cooperation between jurisdictions. RCW 36.70A.020 (11) requires
20 coordination between jurisdictions. RCW 36.70A.210 (3) (f), requires joint
21 county and city planning within urban growth areas. Spokane County has
22 failed to comply with RCW 36.70A.010, RCW 36.70A.020 (11) and RCW
23 36.70A.210 (3)(f) by failing to designate the unincorporated North Metro area
24 as a joint planning area between the City of Spokane and Spokane County and
25 by failing to enter into joint planning or interlocal agreements with the City of
26 Spokane for joint planning of the North Metro area.
8. Issue No. 8. The record shows the County violated RCW 36.70A.010, RCW
36.70A.020(11), RCW 36.70.110(2), RCW 36.70A.110(4), and RCW

1 36.70A.210(3)(f), therefore the Petitioner has carried their burden of proof on
2 Issue No. 8.

3 9. Spokane County shall take the appropriate legislative action to designate the
4 North Metro Area of the Urban Growth Area as a "Spokane County/City of
5 Spokane Urban Growth Area/Joint Planning Area" consistent with the Board's
6 Final Decision and Order.

7 10. Spokane County must take the appropriate legislative action to bring
8 itself into compliance with this Order by **February 26, 2007, 90** days
9 from the date issued. The following schedule for compliance, briefing
and hearing shall apply:

- 10 • The County shall file with the Board by, **March 5, 2007, an original**
11 **and four copies** of a Statement of Actions Taken to Comply (SATC)
12 with the GMA, as interpreted and set forth in this Order. The SATC shall
13 attach copies of legislation enacted in order to comply. The County
14 shall simultaneously serve a copy of the SATC, with attachments, on
15 the parties. **By this same date, the County shall file a**
16 **"Remanded Index,"** listing the procedures and materials considered
17 in taking the remand action.
- 18 • By no later than **March 19, 2007** Petitioners shall file with the Board
19 an **original and four copies** of Comments and legal arguments on
20 the County's SATC. Petitioners shall simultaneously serve a copy of
21 their Comments and legal arguments on the parties.
- 22 • By no later than **April 2, 2007**, the County shall file with the Board an
23 **original and four copies** of the County's Response to Comments and
24 legal arguments. The County shall simultaneously serve a copy of such
25 on the parties.
- 26 • By no later than **April 9, 2007**, Petitioners shall file with the Board an
original and four copies of their Reply to Comments and legal
arguments. Petitioners shall serve a copy of their brief on the parties.
- Pursuant to RCW 36.70A.330(1) the Board hereby schedules a
telephonic Compliance Hearing for **April 18, 2007, at 10:00 a.m.**

1 The parties will call **360-357-2903 followed by 17084 and the #**
2 **sign.** Ports are reserved for Mr. Piccolo and Mr. Hubert. If additional
3 ports are needed please contact the Board to make arrangements.

4 If the County takes legislative compliance actions prior to the date set forth in
5 this Order, it may file a motion with the Board requesting an adjustment to this
6 compliance schedule.

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

8 **Reconsideration:**

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

18 **Judicial Review:**

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

24 **Enforcement:**

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

