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

HANSON et al.,

Case No. 06-1-0005

Petitioners,

**FINAL DECISION AND ORDER**

v.

CHELAN COUNTY,

Respondent,

DEAN TAPLETT and TAPLETT ORCHARDS,  
INC.,

Intervenors.

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**I. SYNOPSIS**

Chelan County (County) amended its Comprehensive Plan and re-designated 40.2 acres of rural land from Rural Residential/Resource – one dwelling unit per five acres (RR-5) to Rural Waterfront (RW). Rural Waterfront (RW) designation allows for urban level development and is permitted only upon compliance with provisions for “limited areas of more intense rural development” (LAMIRD) as authorized by RCW 36.70A.070(5)(d). Resolution No. 2006-53 is noncompliant with the Growth Management Act (GMA) in the following respects:

1. The land use re-designation violates RCW 36.70A.020(2) (Goal 2) by authorizing conversion of undeveloped rural land into sprawling low density development;
2. The land use re-designation violates RCW 36.70A.070(5)(b) by creating or improperly expanding a “limited area of more intensive rural development”;

1 failing to minimize and contain the existing areas or uses of more intensive  
2 rural development; and by allowing a new pattern of low density sprawl  
3 beyond the original outer boundary of the existing area or use.

- 4 3. The new land use designation creates an internal inconsistency within the  
5 Chelan County Comprehensive Plan. The re-designation would substantially  
6 interfere with the fulfillment of the goals of the GMA and is invalidated. RCW  
7 36.70A.302(1).

8 Resolution No. 2006-53 would substantially interfere with the goals of GMA and is  
9 declared to be invalid. RCW 36.70A.302.

## 10 II. PROCEDURAL HISTORY

11 On June 30, 2006, STEVE and JEANNE HANSON, MARY WENGER, FRED and  
12 BARBARA OWEYN, RAY JUDY WELLS, TROY and LENNIT CHENEY, KENNETH and JANE DOE  
13 GIBBS, collectively HANSON et al., filed a Petition for Review, by and through their  
14 representative, James C. Carmody.

15 On July 31, 2006, the Board received a Stipulated Motion and Order for Intervention  
16 by Dean Taplett and Taplett Orchards, Inc. Prior to the Prehearing conference, the Board  
17 heard and granted the Motion to Intervene. Dean Taplett is intervening on behalf of  
18 Respondent Chelan County for purposes of this appeal.

19 On July 31, 2006, the Board held a telephonic Prehearing conference. Present were,  
20 Dennis Dellwo, Presiding Officer, and Board Members John Roskelley and Judy Wall. Present  
21 for Petitioners was James C. Carmody. Present for Respondent was Susan E. Hinkle. Present  
22 for Intervenors was Donald L. Dimmitt. The legal issues, proposed schedule and other  
23 procedural matters were reviewed.

24 On August 7, 2006, the Board received Petitioners' Restated Issues and will be  
25 incorporated herein.

26 On August 7, 2006, the Board issued its Prehearing Order.

On August 21, 2006, the Board received Intervenor's Motion to Dismiss and  
Memorandum in Support of Motion to Dismiss for Lack of Jurisdiction.

1 On September 1, 2006, the Board received Petitioner's Memorandum in Opposition to  
2 Motion to Dismiss.

3 On September 15, 2006, the Board held a telephonic motion hearing. Present were,  
4 Dennis Dellwo, Presiding Officer, and Board Member John Roskelley. Board Member Judy  
5 Wall was unavailable. Present for Petitioners was James Carmody. Present for Respondent  
6 was Susan Hinkle. Present for Intervenors was Kevin Bromiley.

7 On September 26, 2006, the Board denied Intervenors Motion to Dismiss and issued  
8 its Order on Motion to Dismiss.

9 On November 21, 2006, the Board held the Hearing on the Merits. Present were,  
10 Presiding Officer, Dennis Dellwo, and Board Members John Roskelley and Joyce Mulliken.  
11 Present for Petitioner was James Carmody. Present for Respondent was Susan Hinkle.  
12 Present for Intervenors was Donald L. Dimmitt.

### 13 **III. PRESUMPTION OF VALIDITY, BURDEN OF PROOF AND STANDARD OF** 14 **REVIEW**

15 Comprehensive plans and development regulations (and amendments thereto)  
16 adopted pursuant to Growth Management Act ("GMA" or "Act") are presumed valid upon  
17 adoption by the local government. RCW 36.70A.320. The burden is on the Petitioners to  
18 demonstrate that any action taken by the respondent jurisdiction is not in compliance with  
19 the Act. The Board ". . . shall find compliance unless it determines that the action by the .  
20 . . County. . . is clearly erroneous in view of the entire record before the Board and in light  
21 of the goals and requirements of [Growth Management Act]." RCW 36.70A.320. To find an  
22 action clearly erroneous, the Board must be ". . . left with the firm and definite conviction  
23 that a mistake has been committed." *Department of Ecology v. Central Puget Sound*  
24 *Growth Management Hearings Board*, 142 Wn.2d 543, 552, 14 P.3d 133 (2000).

25 The Hearings Board will grant deference to counties and cities in how they plan  
26 under Growth Management Act (GMA). RCW 36.70A.3201. But, as the Court has stated,  
"local discretion is bounded, however, by the goals and requirements of the GMA." *King*  
*County v. Central Puget Sound Growth Management Hearings Board*, 142 Wn.2d 543, 561,

1 14 P.2d 133 (2000). It has been further recognized that “[c]onsistent with *King County*, and  
2 notwithstanding the ‘deference’ language of RCW 36.70A.3201, the Board acts properly  
3 when it foregoes deference to a . . . plan that is not ‘consistent with the requirements and  
4 goals of the GMA.” *Thurston County v. Cooper Point Association*, 108 Wn. App. 429, 444, 31  
5 P.3d 28 (2001).

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

#### 8 **IV. ISSUES AND DISCUSSION**

##### 9 **Issue No. 1:**

10 Does Chelan County Resolution No. 2006-53 violate RCW 36.70A.020(2) by allowing  
11 inappropriate conversion of undeveloped rural land into sprawling low-density development?

##### 12 **The Parties’ Position:**

##### 13 **Petitioners:**

14 Petitioners assert that Resolution No. 2006-53 violates RCW 36.70A.020(2) by  
15 allowing inappropriate conversion of undeveloped rural land into sprawling low-density  
16 residential development. The property consists of approximately 40.2 acres of open and  
17 vacant land situated in rural Chelan County. The site is a former orchard and not  
18 characterized by existing manmade structural improvements. The site includes three (3)  
19 large parcels and lies to the south of the existing Rural Village known as Turtle Rock  
20 Estates. The Columbia River is located to the east of the property and Highway 97A is on  
21 the west. The Chelan County Comprehensive Plan designated the property as Rural  
22 Residential/Resource – one dwelling unit per five (5) acres (RR-5).<sup>1</sup> The existing  
23 designation is proper rural density under the GMA.

24 <sup>1</sup> Chelan County Comprehensive Plan contains four (4) primary residential land use categories: (1) Rural Residential/Resource: 1 dwelling unit per 20  
25 acres (RR-20); (2) Rural Residential/Resource: 1 dwelling unit per 10 acres (RR-10); (3) Rural Residential/Resource: 1 dwelling unit per 5 acres (RR-  
26 5); and (4) Rural Residential: 1 dwelling unit per 2.5 acres (RR-2.5). Additional rural designations include Rural Waterfront (RW); Rural  
Recreational/Residential (RRR); Rural Village (RV); Peshastin Village Commercial (PVC); Rural Industrial (RI); and Public Lands and Facilities (RP).  
The purpose of the Rural Residential/Resource (RR-5) land use designation is to “. . . provide opportunities for small scale agricultural activities, and  
rural development consistent with the rural character and rural development provisions outlined in the goals and policies of the Comprehensive Plan.”  
The land use designation is intended to encourage the preservation of rural areas and shall act as a buffer between designated resource lands and more  
intense rural or urban development.

1 Rural Waterfront (RW) land use designation allows for the development,  
2 redevelopment and infill of existing intensely developed shoreline areas. The RW land use  
3 designation (and implementing zoning ordinance) allows for development in the rural area  
4 with a minimum lot size of 12,000 square feet. The County's Comprehensive Plan  
5 amendment would allow a development density of approximately 3 ½ units per acre. Such  
6 development density is urban in nature. The site is not served by public water or sewer  
7 services. Such development density would be allowed only in a "limited area of more  
8 intense rural development", as outlined in RCW 36.70A.070(5)(d).

9 The Petitioners point out that Growth Management Hearings Boards have recognized  
10 that as a general matter, the development at densities greater than one dwelling unit per  
11 five acres violates the rural development standards of the Growth Management Act. *City of*  
12 *Moses Lake v. Grant County*, EWGMHB Case No. 99-1-0016, Final Decision and Order, pp.  
13 5-6, (May 23, 2000); *Citizens for Good Governance v. Walla Walla County*, EWGMHB Case  
14 No. 01-1-0015c and 01-1-0014c, Final Decision and Order (May 1, 2002); *Yanish v. Lewis*  
15 *County*, WWGMHB Case No. 02-2-0007c, Final Decision and Order, p. 12 (December 11,  
16 2002); and *Sky Valley v. Snohomish County*, CPSGMHB Consolidated Case No. 95-3-0068c,  
17 Final Decision and Order, p. 46 (March 12, 1996).

18 **Respondent:**

19 Intervenor Taplett conceded that the RW land use designation would not be allowed  
20 here in the absence of compliance with the LAMIRD provisions of the GMA. It was stated:

21 Petitioners make a five-page argument at Section 4.1 of their Opening Brief  
22 that the proposed zoning is too dense after having already been informed by  
23 Intervenor's in the LUPA briefing, that Intervenor's agree that the plan  
24 amendment could not be allowed in a rural area outside of the LAMIRD  
25 provisions of the GMA. As a result, this brief will not address the arguments  
26 contained in paragraph 4.1 of Petitioners' Opening Brief or legal issues 3.1 and  
3.2 as they are inapplicable to this application.

(Intervenor's Taplett Hearing on the Merits Brief – 7-8). Chelan County offered no specific  
comment on this issue.

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2 **Board Analysis:**

3           The Growth Management Act recognizes that a guiding purpose of comprehensive  
4 plans and development regulations is to “. . . reduce the inappropriate conversion of  
5 undeveloped land into sprawling, low density development.” RCW 36.70A.020(2) (Goal 2).  
6 While development must be permitted in the rural areas, urban growth is prohibited. RCW  
7 36.70A.070(5)(b) and .110(1). The legislation has defined “urban growth” as “. . . growth  
8 that makes intensive use of land for the location of buildings, structures, and impermeable  
9 surfaces to such a degree to be incompatible with the primary use of the land for the  
10 production of food, or other agricultural products, or fiber, or the extraction of mineral  
11 resources, rural uses, rural development, and natural resource lands designated pursuant to  
12 RCW 36.70A.070.” Resolution No. 2006-53 improperly authorizes urban development  
13 densities within a designated rural area. The property is vacant and unimproved land  
14 located in “rural” Chelan County. It lies outside of any established Urban Growth Area  
15 (UGA) and there is no significant existing building or manmade improvements on the  
16 property. To the north of the subject property is the long established “Rural Village” of  
17 Turtle Rock Estates. That pre-existing development was appropriately designated as “Rural  
18 Village” under the Chelan County Comprehensive Plan. It was minimized and contained  
19 within a logical outer boundary established by the land use designation (i.e., Rural Village),  
20 which was delineated predominately by the built environment.

21           The property is open and vacant land, which had been historically farmed with  
22 orchard crops. Less than 1% of the site is waterfront and there are no structural and  
23 manmade developments or improvements to the site. The site contains geologically  
24 hazardous areas and includes significant wildlife habitat conservation areas. (Resolution No.  
25 2006-53, Findings 10 and 11). While the application was denominated a “nonproject”  
26 action, the effect of the Comprehensive Plan amendment would be to allow the  
development and subdivision of the property into more than 100 residential lots. The  
potential development density would exceed 3 ½ dwelling units per acre (3 ½ du/ac).

1 Intervenor acknowledged that the intent was to develop "river view property at urban  
2 density levels". (CR 7c).

3 The Growth Management Hearings Boards have generally recognized that rural  
4 development density may not exceed one housing (dwelling) unit per five acres. *City of*  
5 *Moses Lake v. Grant County*, EWGMHB Case No. 99-1-0016, Final Decision and Order, pp.  
6 5-6, (May 23, 2000); *Citizens for Good Governance v. Walla Walla County*, EWGMHB Case  
7 No. 01-1-0015c and 01-1-0014c, Final Decision and Order (May 1, 2002); *Yanish v. Lewis*  
8 *County*, WWGMHB Case No. 02-2-0007c, Final Decision and Order, p. 12 (December 11,  
9 2002); and *Sky Valley v. Snohomish County*, CPSGMHB Consolidated Case No. 95-3-0068c,  
10 Final Decision and Order, p. 46 (March 12, 1996). Any new land use patterns that consist of  
11 lots smaller than five acres would generally constitute urban growth and is therefore  
12 prohibited in rural areas unless authorized by the GMA.<sup>2</sup>

13 The adopted density is clearly urban in nature and prohibited in the absence of  
14 compliance with other provisions of the GMA.

15 **Conclusion:**

16 The Board finds that re-designation of the property to Rural Waterfront (RW) violates  
17 RCW 36.70A.020(2) in that it permits the inappropriate conversion of undeveloped rural  
18 land into sprawling low-density development.

19 **Issues No. 2 and 3:**

20 Does Chelan County Resolution No. 2006-53 violate RCW 36.70A.070(5)(c) by failing  
21 to contain or otherwise control rural development; to assure visual compatibility with rural  
22 development; and to reduce the inappropriate conversion of undeveloped land into  
23 sprawling, low density development in the rural area?

24 Does Chelan County Resolution No. 2006-53 violate RCW 36.70A070(d) by allowing  
25 expansion of a "limited areas of more intensive rural development" outside of existing areas  
26 and beyond the logical outer boundary of an existing area or use?

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<sup>2</sup> The Growth Management Act has allowed for three (3) types of residential designations within rural areas which allow a greater land use density. Those types of authorized and developments include: (1) Master Planned Resorts (MPRs) (RCW 36.70A.360); (2) new fully contained communities (RCW 36.70A.350); and (3) "limited areas of more intensive rural development" (RCW 36.70A.070(5)(d)).

1 Issues No. 2 and 3 address the Growth Management Act compliance with provisions  
2 for "limited areas of more intensive rural development" as prescribed by RCW  
3 36.70A.070(5)(d). The issues will be discussed, analyzed and determined collectively by the  
4 Board.

4 **The Parties' Position:**

5 **Petitioners:**

6 Petitioners contend that Resolution No. 2006-53 violates the applicable requirements  
7 and standards for LAMIRDs as specifically set forth in RCW 36.70A.070(5)(d). The property  
8 is open and undeveloped land comprised of three large parcels. It is adjacent to Turtle Rock  
9 Estates, which has been designated as a "Rural Village" under the Chelan County  
10 Comprehensive Plan. The Rural Village is defined by a built environment that was in  
11 existence on July 1, 1990.

12 The re-designation of the Taplett property represents an unauthorized expansion and  
13 enlargement of the existing development (i.e., Turtle Rock Estates) to adjacent vacant and  
14 undeveloped land. The provisions and authorizations for LAMIRDs are set forth in RCW  
15 36.70A.070(5)(d). Areas of more intensive rural development are not "mini-UGA's" or a  
16 rural substitute for a UGA. *Citizens for Good Governance v. Walla Walla County*, EWGMHB  
17 Case No. 01-1-0015c and 01-1-0014c p. 16, Final Decision and Order (May 1, 2002). The  
18 statutory directives require the following: (1) the County shall adopt measures to minimize  
19 and contain the existing areas for uses of more intensive rural development; (2) the existing  
20 areas or uses shall not extend beyond the logical outer boundary of the existing area or  
21 use; and (3) the logical outer boundary is delineated predominantly by the built  
22 environment. In establishing the logical outer boundary, a county is required to "show your  
23 work" in support of the designation authorizing a LAMIRD. *Whitaker v. Grant County*,  
24 EWGMHB Case No. 99-1-0019, \*\* 2-3, Second Order on Compliance (November 1, 2004).  
25 Chelan County failed to "show its work" in support of the amendment.

26 The logical outer boundary is delineated by the built environment. *Citizens for Good  
Governance v. Walla Walla County*, EWGMHB Case No. 01-1-0015c, Final Decision and

1 Order (May 1, 2002). The "built environment" includes manmade structures located above  
2 and below the ground, such as existing buildings, sewer lines, and other urban level utilities  
3 or infrastructures, in existence on July 1, 1990. RCW 36.70A.070(5)(d)(iv). Infilling is  
4 allowed only if it is "'minimized' and 'contained' within a 'logical outer boundary.'"

5 *Bremerton v. Kitsap County*, CPSGMHB Case No. 95-3-0039c, Finding of Noncompliance and  
6 Determination of Invalidity (September 8, 1997); *Panesko v. Lewis County*, WWGMHB Case  
7 No. 00-2-0031c, Final Decision and Order, p. 19 (March 5, 2001). Petitioners assert that  
8 Chelan County improperly authorized a new pattern of low-density sprawl by expanding and  
9 enlarging existing areas of development onto adjacent open and vacant land. Petitioners'  
analysis was supported by Chelan County planning staff, which concluded:

10 It is staff's opinion that the proposed amendment is in conflict with the intent  
11 of the GMA for the protection of the Rural Lands. Intensive development is  
12 intended to continue to be permitted in areas that have existing development.  
13 The GMA does not intend that undeveloped rural lands be converted into low-  
density development.

14 Resolution No. 2006-53 failed to minimize and contain existing areas of more  
15 intensive rural development; improperly authorized the expansion and enlargement of an  
16 existing LAMIRD (Turtle Rock Estates); failed to establish and maintain a logical outer  
17 boundary; and the record failed to include information from the County showing its work in  
the establishment of a logical outer boundary.

18 **Respondent:**

19 Intervenor Taplett argued that Resolution No. 2006-53 was consistent with the  
20 provisions of RCW 36.70A.070(5)(d). They contend that the GMA was amended in 1997, to  
21 recognize that there are pockets of development outside of the urban growth areas and  
22 that continued development of those areas was necessary as long as it was contained  
23 within a logical outer boundary. The area may include vacant land and that the "area" may  
24 include more than just the specific parcels that are already intensely developed. It was also  
25 asserted that the absence of existing development on the property is irrelevant because the  
26 subject property is "in an area" of intense shoreline development. Intervenors' primary

1 argument was that the re-designation constituted "infill development" including shoreline  
2 development. The infill and/or development was allowed to include vacant land within the  
3 area. The Intervenor argued that the logical outer boundary was established by Turtle Rock  
4 Estates (the "Rural Village) located on the north end of the property; the Rural Waterfront  
5 (RW) designated property to the south; State Highway 97A on the west and the Columbia  
6 River on the east. It was also argued that the Boards recognize the right to a one-time re-  
7 evaluation to acknowledge historical reality. *People for a Livable Community v. Jefferson*  
8 *County*, WWGMHB Case No. 03-2-0009, Order Granting County's Motion for  
Reconsideration, p. 1 (September 19, 2003).

9 **Board Analysis:**

10 Resolution No. 2006-53 results in the conversion of open and undeveloped rural  
11 property to an impermissible urban density. The Growth Management Act specifically  
12 addresses requirements and standards for LAMIRDs RCW 36.70A.070(5)(d). LAMIRDs were  
13 added to the GMA in 1997, to recognize pre-existing patterns of development that were  
14 urban in nature. The characterization allowed counties to grandfather the established  
15 areas, but directed that such areas must be minimized and contained.

16 A LAMIRD is an existing area of rural development that is more concentrated than  
17 that typically found in rural areas. This limited rural development is not considered urban  
18 growth under the GMA, but must be contained to logical boundaries defined by the  
19 development pattern existing in 1990.<sup>3</sup> LAMIRDs are authorized by RCW 36.70A.070(5)(d),  
which provides:

- 20 (d) Limited areas of more intensive rural development. Subject to the  
21 requirements of this subsection and except as otherwise specifically  
22 provided in this subsection (5)(d), *the rural element may allow for*

23 <sup>3</sup> Planning Staff recognized that LAMIRDs are defined by existing areas and uses established on July 1, 1990. It was stated:

24 For purposes of designated Limited Areas of More Intensive Rural Development, an existing area or existing use is one that was  
in existence on July 1, 1990, in a county that was initially required to plan under all of the provisions of this chapter; or on the  
date that the County was mandated to plan, or chose to plan under the Growth Management Act.

25 (CR 38g). The record indicates that the subject property was farmed and did not contain more intense rural development on July 1, 1990.

1 *limited areas of more intensive rural development, including necessary*  
2 *public facilities and public services to serve the limited area as follows:*

3 (i) *Rural development consisting of the infill, development, or*  
4 *redevelopment of existing commercial, industrial, residential,*  
5 *or mixed-use areas, whether characterized as shoreline*  
6 *development, villages, hamlets, rural activity centers, or*  
7 *crossroads developments.*

8 \* \* \*

9 (iv) *A county shall adopt measures to minimize and contain the*  
10 *existing areas or uses of more intensive rural development,*  
11 *as appropriate, authorized under this subsection. Lands*  
12 *included in such existing areas or uses shall not extend*  
13 *beyond the logical outer boundary of the existing area or*  
14 *use, thereby allowing a new pattern of low density sprawl.*  
15 Existing areas are those that are clearly identifiable and  
16 contained and whether there is a logical boundary  
17 *delineated predominately by the built environment, but that*  
18 *may also include undeveloped lands if limited as provided in*  
19 *this subsection. The county shall establish the logical outer*  
20 *boundary of an area of more intensive rural development.*  
21 In establishing the logical outer boundary, the county shall  
22 address (A) the need to preserve the character of existing  
23 natural neighborhoods and communities, (B) physical  
24 boundaries such as bodies of water, streets and highways,  
25 and land forms and contours, (C) the prevention of  
26 abnormally irregular boundaries, and (D) the ability to  
provide public facilities and public services in a manner that  
does not permit low density sprawl.

21 The statutory directive is three-fold: (1) the County shall “minimize and contain the  
22 existing areas. . . of more intensive rural development”; (2) lands included in the LAMIRD  
23 shall not extend beyond the “logical outer boundary”; and (3) the logical outer boundary is  
24 delineated predominantly by the built environment. Taplett redesignation fails all three  
25 requirements.

1 LAMIRDs are permitted to be designated in rural areas where the County has  
2 adopted measures to “minimize and contain the existing areas or uses”. The area of a  
3 LAMIRD is established by a logical outer boundary delineated predominately by the “built  
4 environment” that existed on July 1, 1990. RCW 36.70A.070(5)(d)(i). The “built  
5 environment” includes manmade structures located above and below the ground, such as  
6 existing buildings, sewer lines, and other urban level utilities and infrastructure. *1000*  
7 *Friends of Washington v. Spokane County*, EWGMHB Case No. 03-1-0004, p.4-5, (Final  
8 Decision and Order, May 25, 2004). Infilling is allowed if it is “minimized” and “contained”  
9 within a logical outer boundary. *Bremerton v. Kitsap*, CPSGMHB Case No. 95-3-0039c,  
10 (Finding of Non-Compliance and Determination of Invalidity, September 8, 1997). The  
11 Intervenor asks that the logical outer boundary be the built areas that might be around the  
12 subject property. This is not what is meant by a “logical outer boundary delineated  
13 predominately by the ‘built environment’ that existed on July 1, 1990”. It describes instead,  
14 what is to be included within the boundaries. The LAMIRD is to include the previously  
15 developed area.

16 Chelan County established a LAMIRD with the designation of Turtle Rock Estates as a  
17 “Rural Village”. Infill development is allowed within the designated area, but there is no  
18 authorization to expand the area to adjacent undeveloped lands. Resolution No. 2006-53  
19 represents an improper expansion of a LAMIRD to large vacant adjacent properties. Chelan  
20 County has failed to contain and minimize the pre-existing development area and  
21 improperly expanded the LAMIRD in a manner that allows a new pattern of low-density  
22 sprawl.

23 This Board has rejected similar efforts to expand LAMIRDs into adjacent  
24 undeveloped lands. *1000 Friends of Washington v. Spokane County*, EWGMHB Case No. 03-  
25 1-0004, Final Decision and Order (May 25, 2004); and *Whitaker v. Grant County*, EWGMHB  
26 Case No. 99-1-0019, Second Order on Compliance (November 1, 2004). This expansion  
fails for the same reasons.

1 The boundaries of a Type I LAMIRD are permanent and there is no authority for the  
2 expansion to new undeveloped properties at some later date. LAMIRDs must be contained  
3 within a "logical outer boundary." Such a boundary shall not permit or encourage a new  
4 pattern of sprawling or low density or urban type development. RCW 36.70A.050(5)(d)(iv).  
5 The boundary cannot be expanded because this would be inconsistent with the goal of  
6 infilling existing areas of development. *Olympic Environmental Council v. Jefferson County*,  
7 WWGMHB Case No. 00-2-0019, Final Decision and Order, p. 5 (November 22, 2000).  
8 Demand or need for commercial or residential development does not permit the expansion  
9 of LAMIRDs beyond their logical outer boundaries. *Id.* In establishing a logical boundary, a  
10 county must "show its work." *Whitaker v. Grant County*, EWGMHB Case No. 99-1-0019, pp.  
11 2-3, Second Order on Compliance (November 1, 2004). Chelan County has not shown its  
12 work. In fact, the primary work and evaluation prepared by planning staff is contrary to the  
13 conclusion reached by the Board of County Commissioners.

13 Taplett argues that the inclusion of undeveloped and vacant orchard property  
14 constitutes "infill" for purposes of establishing a new ". . . limited area of more intense rural  
15 development." This argument was specifically rejected by the Board in *1000 Friends of*  
16 *Washington v. Spokane County*, EWGMHB Case No. 03-1-0004, p.4-5, (Final Decision and  
17 Order, May 25, 2004), in which it was stated:

18 The Board finds that RCW 36.70A.070(5)(d) requires the property must have  
19 had a pre-existing intensive use and cannot simply have been a pre-existing  
20 industrial zone as a boundary for a LAMIRD. . . . In 1997, the State  
21 Legislature amended the GMA to make accommodation for "infill, development  
22 or redevelopment" of "existing" areas of "more intensive rural development,"  
23 however, such a pattern of growth must be "minimized" and "contained"  
24 within a "logical outer boundary." This cautionary and restrictive language  
25 evidences a continuing legislative intent to protect rural areas from low-  
26 density sprawl. The county's inclusion of the eastern 24.32 acres in this  
LAMIRD does not comply with the Type I LAMIRD. *The inclusion of this vacant  
land cannot be interpreted as "infill". Here, the eastern parcel is completely  
undeveloped and is not delineated primarily by the built environment.  
Therefore, the county is not in compliance with respect to including the  
Rowan and Canal parcel inside the LAMIRD.*

1  
2 The inclusion of the vacant and unimproved Taplett property cannot be considered  
3 "infill". The parcel is completely undeveloped and not characterized by any manmade  
4 improvements or the built environment.

5 A similar analysis has been applied by the Central Puget Sound Hearings Board with  
6 respect to shoreline development. *City of Bonney Lake v. Pierce County*, CPSGMHB Case  
7 No. 05-3-0016c, Final Decision and Order (August 4, 2005) (shoreline density exception  
8 was noncompliant with RCW 36.70A.070(5) Goals 1 and 2. Infill does not include expansion  
9 of pre-existing development to adjacent undeveloped land.

10 Chelan County has recognized a pre-existing pattern for Turtle Rock Estates and  
11 designated/zoned the developed area as "rural village". This designation was authorized by  
12 RCW 36.70A.070(5)(d) even though it contained densities that exceeded permissible rural  
13 areas. The development existed on July 1, 1990, and the designated area was delineated by  
14 the existing built environment. The initial designation did not include the Taplett property.  
15 It is improper to extend or expand the Turtle Rock area beyond the boundaries of the built  
16 environment, as it existed on July 1, 1990.

17 **Conclusion:**

18 Resolution No. 2006-53 violates the statutory requirements of RCW  
19 36.70A.070(5)(d). The Comprehensive Plan amendment fails to "minimize and contain the  
20 existing areas. . . of more intensive rural development"; fails to establish a "logical outer  
21 boundary" delineated predominantly by the built environment as it existed on July 1, 1990;  
22 and improperly authorized a new pattern of low-density sprawl on open and vacant land.  
23 The land use re-designation does not constitute infill as recognized by the statutory  
24 directives.

25 **Issues No. 4 and 5:**

26 Is Chelan County Resolution No. 2006-53 inconsistent with the purpose and  
locational guidelines established by the Chelan County Comprehensive Plan for Rural  
Waterfront (RW) in violation of consistency requirements of RCW 36.70A.070?

1 Is Chelan County Resolution No. 2006-53 inconsistent with goals and policies  
2 established by the Rural Element of the Chelan County Comprehensive Plan?

3 Issues No. 4 and 5 relate to comprehensive plan internal consistency requirements  
4 established by the Growth Management Act. RCW 36.70A.070. These issues will be  
discussed, analyzed and determined collectively by the Board.

5 **The Parties' Position:**

6 **Petitioners:**

7 Petitioners recognize that a comprehensive plan ". . . shall be an internally consistent  
8 document and all elements shall be consistent with the future land use map." RCW  
9 36.70A.070. It is asserted that Resolution No. 2006-53 creates an internal inconsistency  
10 between the amended land use designation and the purpose and locational guidelines for  
11 Rural Waterfront (RW designation).

12 Chelan County has adopted specific purpose statements and locational guidelines  
13 related to Rural Waterfront (RW) land use designation. The purpose statement recognizes  
14 that the designation provides for development, redevelopment and ". . . existing intensely  
15 developed shoreline areas. . ." and that a logical boundary must be delineated based upon  
16 the built environment. The plan specifically recognizes that ". . . such a boundary shall not  
17 permit or encourage a new pattern of sprawling low-density or urban type development."  
18 The Comprehensive Plan directives are consistent with the GMA provisions related to  
LAMIRDS.

19 The Chelan County Comprehensive Plan also includes "locational" guidelines for Rural  
20 Waterfront (RW) land use designations. These guidelines require that the property be  
21 located on or near shorelines; shall not have soil limitations or other physical constraints for  
22 development; will be served by necessary public facilities and services; and consist of  
23 predominant parcel sizes of one acre or smaller.

24 Petitioners contend that the undeveloped and vacant orchard property is not in an  
25 area of existing intensely developed shoreline property; there are no water  
26 related/dependent features; no logical boundaries established by the existing built

1 environment; and the amendment improperly permits or encourages a new pattern of  
2 sprawling, low-density, or urban-type development.

3 **Respondent:**

4 The Intervenor, Taplett, reiterated their arguments relating to compliance with the  
5 mandates of RCW 36.70A.070(5)(d). It was specifically argued that such areas may include  
6 vacant land including shoreline areas; the designation constitutes "infill" between two (2)  
7 areas of existing intense development; a logical outer boundary is established by the  
8 existing built environment, the highway and the river; and there is a need for urban level  
9 development properties in the rural areas.

9 **Board Analysis:**

10 A comprehensive plan ". . . shall be an internally consistent document and all  
11 elements shall be consistent with the future land use map." RCW 36.70A.070.<sup>4</sup> Resolution  
12 No. 2006-53 creates an internal inconsistency between the amended land use designation  
13 and the purpose and locational guidelines for Rural Waterfront (RW) designation. The  
14 Comprehensive Plan purpose statement for the Rural Waterfront (RW) land use designation  
15 provides:

16 This designation will provide the opportunity for development, redevelopment  
17 and infill of *existing intensely developed shoreline areas* for residential, water  
18 related/water dependent recreational and tourist development consistent with  
19 the rural character and rural development provisions outlined in the goals and  
20 policies of the comprehensive plan. These areas provide a distinct eater  
21 related lifestyle. Potential impacts to the surrounding areas, critical areas, and  
22 water quality shall be addressed. These areas must be clearly identifiable *as*  
23 *existing intensely rural shorelines; where a logical boundary can be delineated*  
24 *and set by the built environment. Such a boundary shall not permit or*  
25 *encourage a new pattern of sprawling low-density or urban type development.*

22 (Italics added). The ordinance language is modeled after statutory directives contained in  
23 the GMA relating to LAMIRDs. RCW 36.70A.070(5)(d). The adopted Comprehensive Plan

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25 <sup>4</sup> WAC 365-195-070(7) addresses internal inconsistency and recognizes ". . . that the parts of the plan must fit together so that no one feature precludes  
26 the achievement of any other." See, also, WAC 365-195-500 ("internal inconsistency").

1 recognizes and requires that the Rural Waterfront (RW) land use designation (1) be limited  
2 to "existing intensely developed shoreline areas"; (2) include a logical boundary delineated  
3 by the built environment; and (3) prohibit a new pattern of sprawling, low- density or  
4 urban-type development. The re-designation violates each of these Comprehensive Plan  
5 directives.

6 The County's Comprehensive Plan also includes "locational guidelines" for Rural  
7 Waterfront (RW) land use designations.<sup>5</sup> These guidelines include a direction that parcels  
8 are located on or near shorelines identified by the Chelan County Shoreline Master Program;  
9 may only contain areas of moderate soil limitations or other physical constraints; may be  
10 served by necessary public facilities and public services; and are characterized by  
11 predominant parcel sizes of one acre or smaller. The site includes areas of geological  
12 hazards and limitations on septic systems as noted by commenting agencies. Existing  
13 parcels are large and undeveloped and inconsistent with the directive regarding  
14 predominant parcel size. Planning staff noted that insufficient information was provided with  
15 regard to availability of public services.

16 The re-designation is also inconsistent with the Comprehensive Plan directive to  
17 identify a logical boundary for existing rural development and to prevent introduction of new  
18 urban-type development.

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19 <sup>5</sup> Chelan County Comprehensive Plan includes "locational guidelines" for Rural Waterfront (RW) land use designations. Those locational guidelines  
20 are as follows:

- 21 1. Geographical and Geological Characteristics: Parcels are located on or near shorelines identified by the Chelan  
22 County Shoreline Master Program. The area may have moderate soil limitations and may have other limited  
23 physical constraints to development.
- 24 2. Natural Resources: This designation shall not be applied on resource land of long-term commercial  
25 significance.
- 26 3. Public Services: The necessary public facilities and public services to serve the development, redevelopment, or  
infill of these areas may be provided. There may be some existing urban governmental services. Rural  
governmental services are typically available, planned and/or funded for.
4. Existing Land Uses: Seasonal and year around residences, tourist and recreational activities and other rural  
development may be present. Predominant parcel sizes are one acre or smaller.

1 **Conclusion:**

2 The Board finds that the land use re-designation is inconsistent with the purpose and  
3 locational guidelines established by the Comprehensive Plan resulting in an internal  
4 inconsistency within the Comprehensive Plan.

5 **Issue No. 6:**

6 Is Chelan County Resolution No. 2006-53 clearly erroneous and noncompliant with  
7 Growth Management Act (GMA)?

8 **Conclusion:**

9 Based upon the foregoing analysis, the Board finds that Chelan County Resolution  
10 No. 2006-53 is clearly erroneous and noncompliant with Growth Management Act.

11 **Issue No. 7:**

12 Does Resolution No. 2006-53 substantially interfere with the fulfillment of the goals  
13 of the Growth Management Act and should be declared invalid?

14 **Board Analysis and Conclusion:**

15 The Board is authorized to determine that a comprehensive plan amendment is  
16 invalid where such amendment would substantially interfere with the fulfillment of the goals  
17 of the GMA. RCW 36.70A.302 provides in relevant part:

- 18 (1) A board may determine that part or all of the comprehensive plan  
19 or development regulations are invalid if the Board:  
20 (a) Makes a finding of noncompliance and issues an Order of  
21 Remand under RW 36.70A.300;  
22 (b) Includes in the final order, a determination, supported by  
23 findings of fact, conclusions of law that the continued  
24 validity of part or parts of the plan or regulation would  
25 substantially interfere with the fulfillment of the goals of this  
26 chapter. . . ."

27 A concern in re-designation cases is that a development proposal could vest during a  
28 period of remand. *Orton Farms, LLC v. Pierce County*, CPSGMHB No. 04-3-0007c, Final  
29 Decision and Order (August 2, 2004). Hearings Boards have found that invalidation is

1 appropriate in the context of re-designation cases. A potential for vesting under applicable  
2 subdivision laws are present in this matter and such vesting would be contrary to the  
3 purposes of the GMA. The development of this property will irreparably and irreversibly  
4 undermine the rural character in this area and violate the mandates for the establishment of  
5 LARMIDs. The potential for vesting is significant. The preservation and conservation of rural  
6 land use designations can be protected only through invalidation.

7 The Board finds that the continued validity of part or parts of Resolution No. 2006-53  
8 would substantially interfere with the fulfillment of the goals of this chapter, primarily Goal  
9 2. Chelan County Resolution No. 2006-53 interferes with the fulfillment of RCW  
10 36.70A.020(2) by allowing inappropriate conversion of undeveloped rural land into  
11 sprawling low-density development.

12 Based on the foregoing discussion and analysis, and the findings below, the Board  
13 concludes that Resolution No. 2006-53 be declared invalidated.

#### 14 **V. FINDINGS OF FACT**

- 15 1. Chelan County is a county located east of the crest of the Cascade  
16 Mountains and has chosen to plan under Chapter 36.70A.
- 17 2. Chelan County has adopted a Comprehensive Plan pursuant to the  
18 Growth Management Act.
- 19 3. The Intervenor, Taplett, submitted a Comprehensive Plan land use map  
20 and zone amendment application to the Chelan County Building/Fire  
21 Safety Planning Department on April 15, 2005. The application included  
22 two (2) separate but related components: (1) an application for  
23 amendment of the Comprehensive Plan land use designation from Rural  
24 Residential/Resource-5 (RR-5) to Rural Waterfront (RW) (CPA 2005-  
25 011); and (2) a rezone of the subject property. This appeal relates only  
26 to the Comprehensive Plan component of the application.
4. The property consists of three (3) parcels in the approximate total of  
40.2 acres. The property is vacant and unimproved land located in

1 "rural" Chelan County. It lies outside of any established urban growth  
2 area (UGA). There are no existing buildings or manmade improvements  
3 on the property.

4 5. To the north of the subject property is the long established "Rural  
5 Village" of Turtle Rock Estates. That pre-existing development is  
6 contained within a logical outer boundary delineated by the built  
7 environment. To the south of the site is an area designated Rural  
8 Waterfront (RW). Limited structural improvements are included within  
9 that area. The predominant land use designation in the area is Rural  
10 Residential/Resource-5. The site is bordered by Highway 97A on the  
11 west and the Columbia River on the east.

12 6. The property is currently open and vacant land, but had historically  
13 been farmed with orchard crops. The site is neither developed nor  
14 characterized by existing urban levels of development. Less than 1% of  
15 the site is waterfront and there has been no structural or manmade  
16 development of the site. The site contains geologically hazardous areas  
17 and includes significant wildlife habitat conservation habitat areas.

18 7. Applicant has acknowledged the intent to develop "river view" property  
19 at urban density levels. The land use designation would allow the  
20 development and subdivision of the property into more than 100  
21 residential lots. The potential development density would exceed 3 ½  
22 dwelling units per acre (3 ½ du/ac).

23 8. The Chelan County planning staff reviewed the application and  
24 determined that the proposal was not consistent with the Growth  
25 Management Act (RCW 36.70A), and conflicts with the goals and  
26 policies of the adopted Chelan County Comprehensive Plan, Chelan  
County Development Regulations, and the Chelan County-wide

1 Planning Policies and that approval of the redesignation was not  
2 warranted under applicable law. (CR 38r).

3 9. The Chelan County Planning Commission conducted a public hearing on  
4 the Taplett application on March 27, 2006. Public testimony was  
5 provided and the Planning Commission voted (six in favor and one  
6 opposed) to recommend to the Board of County Commissioners the  
7 denial of the Taplett Comprehensive Plan amendment.

8 10. The Board of County Commissioners conducted a public meeting with  
9 regard to the Comprehensive Plan amendment application on April 25,  
10 2006. The County Commissioners rejected recommendations of both  
11 planning staff and Planning Commission and approved the  
12 redesignation of the property. Findings of Fact, Conclusions and  
13 Decisions approving the land use redesignation were adopted pursuant  
14 to Resolution 2006-53 on May 2, 2006.

15 11. Petitioners' filed a timely Petition for Review on June 30, 2006.

#### 16 **VI. CONCLUSIONS OF LAW**

- 17 1. This Board has jurisdiction over the parties to this action.  
18 2. This Board has jurisdiction over the subject matter of this action.  
19 3. The Petitioners have standing to raise the issues listed in the  
20 Prehearing Order.  
21 4. The Petition for Review in this case was timely filed.  
22 5. The Petitioners have met their burden of showing that Chelan County is in  
23 noncompliance with the Growth Management Act by reason of the adoption of  
24 Resolution 2006-53.  
25 6. The Petitioners have met their burden to have Chelan County Resolution  
26 2006-53 declared invalid under the Growth Management Act.

1 **VIII. FINDINGS OF FACT**

2 **Pursuant to RCW 36.70A.300 (2)(a)**

3 We incorporate the Findings of Fact above and add the following:

- 4 1. RCW 36.70A.020(1) provides:
- 5 Urban Growth. Encourage development in urban areas where adequate
- 6 public facilities and services exist or can be provided in an efficient
- 7 manner.
- 8 2. RCW 36.70A.020(2) provides:
- 9 Reduce sprawl. Reduce the inappropriate conversion of undeveloped
- 10 land into sprawling, low-density development.
- 11 3. The Board finds that the actions of the County substantially interfere
- 12 with the fulfillment of the above goals. The County's actions frustrate
- 13 the primary purposes of the GMA reflected by these goals.
- 14 4. Sprawl is encouraged by the improper expansion of the proposed
- 15 LAMIRD or Urban Village into non-developed rural areas.
- 16 5. The actions of the County further fail to ensure that adequate services
- 17 are available for the expanded LAMIRD.

18 **IX. CONCLUSIONS OF LAW**

19 **Pursuant to RCW 36.70A.300 (2)(a)**

- 20 1. The Board has found the County out of compliance as stated above.
- 21 2. The Board finds that the actions of the County found out of compliance
- 22 substantially interfere with the fulfillment of Goals of the Growth
- 23 Management Act and frustrate the primary purposes of that act
- 24 reflected by these goals.
- 25 3. The Board concludes that the noncompliant actions of Chelan County
- 26 substantially interfere with the County's ability to engage in GMA-
- compliant planning.

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**X. ORDER**

1. Resolution No. 2006-53 is noncompliant with the Growth Management Act.
2. Resolution No. 2006-53 is noncompliant and would substantially interfere with the fulfillment of the goals of Growth Management Act and is determined to be invalid.
3. Chelan County must take the appropriate legislative action to bring itself into compliance with this Order by **June 11, 2007, 180 days** from the date issued. The following schedule for compliance, briefing and hearing shall apply:

- The County shall file with the Board by **June 18, 2007, an original and four copies** of a Statement of Actions Taken to Comply (SATC) with the GMA, as interpreted and set forth in this Order. The SATC shall attach copies of legislation enacted in order to comply. The County shall simultaneously serve a copy of the SATC, with attachments, on the parties. **By this same date, the County shall file a "Remanded Index," listing the procedures and materials considered in taking the remand action.**
- By no later than **July 2, 2007**, Petitioners shall file with the Board an **original and four copies** of Comments and legal arguments on the County's SATC. Petitioners shall simultaneously serve a copy of their Comments and legal arguments on the parties.
- By no later than **July 16, 2007**, the County shall file with the Board an **original and four copies** of the County's Response to Comments and legal arguments. The County shall simultaneously serve a copy of such on the parties.
- By no later than **July 23, 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.

- 1           • Pursuant to RCW 36.70A.330(1) the Board hereby schedules a  
2 telephonic Compliance Hearing for **July 30, 2007, at 10:00 a.m.** The  
3 parties will call **360-709-4803 followed by 529960 and the #**  
4 **sign.** Ports are reserved for Mr. Carmody, Ms. Hinkle, and Mr. Dimmitt.  
If additional ports are needed please contact the Board to make  
arrangements.

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

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

9           **Reconsideration:**

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

19           **Judicial Review:**

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

