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

BRUCE ROBERTS and MARILYN TAYLOR,
Petitioner,
v.
BENTON COUNTY and BENTON COUNTY
BOARD OF COMMISSIONERS,
Respondent,
NOR AM DEVELOPMENT, LLC,
Intervenors,
CITY OF RICHLAND,
Intervenors.

Case No. 05-1-0003

ORDER FINDING COMPLIANCE

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I. SUMMARY OF DECISION

On January 31, 2005, the Benton County Board of Commissioner's (BOCC) adopted Resolution No. 05-057, increasing the City of Richland's Urban Growth Area (UGA) by adding 3,322 acres southwest of the existing UGA boundaries. In its September 20, 2005, Final Decision and Order (FDO), the Eastern Washington Growth Management Hearings Board (Board) found Resolution No. 05-057 out of compliance because the expansion of the UGA by 3,322 acres was 56% more than the 2,116 acres allegedly justified by the applicable OFM population projection and County Wide Planning Policy (CWPP) #4, and because neither the County or the City adequately planned for capital facilities, utilities and transportation in the expanded UGA area.

In response to the Board's FDO, the County adopted Resolution No. 06-659, which reduced the expanded UGA from 3,322 acres to approximately 2,100 acres, and updated

1 the capital facilities, utilities and transportation elements of the Comprehensive Plan by
2 adopting an approved capital facilities plan for the expanded UGA.

3 The Petitioners, Bruce Roberts and Marilyn Taylor, allege fourteen errors in the
4 County's compliance action, they are as follows:

- 5 1. Failure to Follow the OFM Population guidelines as required by RCW
6 36.70A.110(2) when determining the need for residential acreage in the
7 UGA expansion.
- 8 2. Benton County failed to increase density within their UGA and to
9 demonstrate the reasons for the market factor.
- 10 3. Benton County erroneously inflated the land needs of the proposed
11 UGA by including unnecessary acreage for commercial and industrial
12 land.
- 13 4. The Capability Analysis fails to comply with the 6-year planning horizon
14 required by RCW 36.70A.070(3). The document favors a plan-as-you-
15 go approach.
- 16 5. The proposed UGA expansion by Benton County is inconsistent with the
17 Benton County Comprehensive Plan and therefore fails to meet the
18 requirements of RCW 36.70A.120.
- 19 6. The proposed expansion is inconsistent with the Richland
20 Comprehensive Plan and therefore fails to meet the requirements of
21 RCW 36.70A.100.
- 22 7. The Capability Analysis does not meet the requirements of a Capital
23 Facilities Plan pursuant to RCW 36.70A.070(3).
- 24 8. There is no evidence that the UGA Extension Capability Analysis
25 provides a commitment by Benton County to make capital facility
26 improvements in the next six years.
9. The total cost of streets and roads in Table 28 fails to address the costs
of streets and roads inside the UGA Expansion Area of 2,100 acres in
the first six years.

1 On April 26, 2005, the Board heard the Motions to Intervene filed by Nor Am
2 Development, LLC, and the City of Richland before the Prehearing conference. The Board
3 grants Intervenor status to Nor Am Development, LLC, and the City of Richland. The parties
4 are intervening on behalf of the Respondent.

5 On August 16, 2005, the Board held the Hearing on the Merits.

6 On September 20, 2005, the Board issued its Final Decision and Order.

7 On September 30, 2005, the Board received Motion of Nor Am Development, LLC for
8 Reconsideration.

9 On October 5, 2005, the Board received Petitioners Answer to Nor Am Development's
10 Motion for Reconsideration.

11 On October 19, 2005, the Board issued Order on Motion for Reconsideration.

12 On December 23, 2005, the Board received Motion for Additional Time to Take
13 Corrective Action and Report on Progress.

14 On January 10, 2006, the Board held a telephonic conference. Present were, John
15 Roskelley, Presiding Officer, and Board Member Dennis Dellwo. Board Member Judy Wall
16 was unavailable. Present for Petitioners were Bruce Roberts and Marilyn Taylor. Present for
17 Respondent was Ryan Brown. Present for Intervenors Nor Am was Loren Combs. Present
18 for Intervenors City of Richland was George Fearing.

19 On June 21, 2006, the Board held a telephonic status conference.

20 On July 14, 2006, the Board received Respondent's Motion for Additional Time to
21 Complete Corrective Action.

22 On July 19, 2006, the Board received Petitioners' Reply to Motion for Additional Time
23 to Complete Corrective Action.

24 On July 24, 2006, the Board issued its Order on Motion to Extend Time.

25 On September 11, 2006, the Board held the previous scheduled status conference.
26 Present were, John Roskelley, Presiding Officer, Board Members Dennis Dellwo and Judy
Wall. Present for Respondent was Ryan Brown. Present for Intervenors City of Richland was
George Fearing.

1 On September 19, 2006, the Board received Petitioners' Request for Additional Time
2 to Complete Corrective Action.

3 On September 20, 2006, the Board issued its Order on Motion to Extend Time.

4 On December 13, 2006, the Board received Respondent Benton County's Statement
5 of Compliance Action.

6 On January 5, 2007, the Board received Petitioners' Response to Benton County
7 Request for Compliance/Motion for Invalidity.

8 On January 9, 2007, the Board received Petitioners' Motion to Change Hearing
9 Date/Motion to Change Hearing from Telephonic Hearing.

10 On January 10, 2007, the Board received Respondent Benton County's Response to
11 Petitioner Roberts' Motion to Change Date and Nature of Compliance Hearing.

12 On January 16, 2007, the Board received Intervenors' City of Richland's Response to
13 Roberts' Request to Change Hearing Date and to Have In-Person Hearing.

14 On January 17, 2007, the Board received Intervenors' Nor Am Development, LLC,
15 Response to Petitioners' Motion to Change Date and Nature of Compliance Hearing.

16 On January 18, 2007, the Board issued its Order on Motion to Change Hearing
17 Date/Motion to Change Hearing from Telephonic.

18 On February 12, 2007, the Board received Respondent Benton County's
19 Memorandum in Support of Finding of Compliance.

20 On February 13, 2007, the Board received Response Brief of Nor Am Development,
21 LLC Regarding Compliance.

22 On February 15, 2007, the Board received City of Richland's Compliance Brief.

23 On February 20, 2007, the Board received Petitioners' Motion to Dismiss Intervenor
24 Richland's Response, Petitioners' Reply to Benton County Response, and Petitioners' Reply
25 to Intervenor Nor Am Development's Response.

26 On February 27, 2007, the Board held the compliance hearing. Present were, John
Roskelley, Presiding Officer, and Board Members Dennis Dellwo and Joyce Mulliken. Present
for Petitioners were Bruce Roberts and Marilyn Taylor. Present for Respondent was Ryan

1 Brown. Present for Intervenors Nor Am was Gregory Amann. Present for Intervenors City of
2 Richland was George Fearing.

3 III. STANDARD OF REVIEW

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

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

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

21 *King County v. Central Puget Sound Growth Management Hearings Board*, 142 Wn.2d 543,
22 552, 14 P.3d 133, 138 (2000).

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

1 goals of the GMA." *Thurston County v. Cooper Point Association*, 108 Wn.App. 429, 444, 31
2 P.3d 28 (2001).

3 The Board has jurisdiction over the subject matter of the Petition for Review. RCW
4 36.70A.280(1)(a).

5 **IV. DISCUSSION**

6 **Motion to Dismiss Intervenor City of Richland's Response:**

7 Pursuant to the Board's Order on Motion to Change Hearing Date/Motion to Change
8 Hearing from Telephonic Hearing dated January 18, 2007, the Respondent's and
9 Intervenor's briefs were due on February 13, 2007. The City of Richland's Brief was not
10 filed until February 15, 2007, and not received by the Petitioners until February 17, 2007.
11 The Petitioners argued that the late filing was prejudicial because they did not have
12 adequate opportunity to prepare a response and include it in their Reply brief, which was
13 due February 20, 2007. The Board granted the Petitioners motion, struck the City of
14 Richland's brief and did not consider Richland's brief in reaching its decision on compliance.

14 **Issue No. 1:**

15 The County failed to follow the OFM population guidelines as required by RCW
16 36.70A.110(2) when determining the need for residential acreage in the UGA expansion.

17 **The Parties' Position:**

18 **Petitioners:**

19 The Petitioners argue that the Board in the FDO ordered Benton County to adopt a
20 UGA appropriately sized according to Office of Financial Management's (OFM) population
21 projections. Petitioners Brief at 1. The Petitioners contend that the FDO never ordered
22 Benton County to reduce the Richland UGA to 2,100 acres. Petitioners Reply Brief at 2. The
23 Petitioners argue in the Compliance Hearing that during the August 16, 2005, Hearing on
24 the Merits (HOM), they supported a pull back from 3,200 acres to 2,100 acres, but they did
25 not have an opportunity at that time to determine if the 2,100 acres was supported by the
26 OFM population projections.

The Petitioners argue that since Resolution 06-659 is a new 2006 document not

1 previously reviewed by the Board, the focus of the Board should be whether or not the
2 information in Resolution 06-659 is compliant. The Petitioners contend that Benton County
3 erroneously used a 23-year (2002-2025) growth projection of 22,880 for Richland rather
4 than the OFM high projections for 2005-2025 (20-yr growth) of 16,955 (Petitioners Reply
5 Brief to Benton County, at 3-4). The Petitioners argue that RCW 36.70A.110(2) requires
6 that the County use the OFM 20-yr population projections, not a 23-year population growth.

7 The Petitioners argue that the Richland UGA does not require expansion, since Table
8 LU-4 of the current 2005 Richland Comprehensive Plan states that Richland has room for
9 27,608 additional people within the existing UGA. The Petitioners also argue that Chapter
10 4: Land Use Element of the 2002 Benton County Comprehensive Plan, states that "Richland
11 has 21,719 acres of vacant incorporated and unincorporated land designated for residential
12 use." The Petitioners claim that neither Richland's nor the County's comprehensive plans
13 support an expansion of the Richland UGA.

14 The Petitioners used Table 1 of the November 1, 2004, Benton County Revised Staff
15 Report to support Resolution 06-659 and argued that Table 1, Column 8 sets the capacity in
16 the Richland UGA for new population at 15,401. Petitioner Brief at 7-8. The Petitioners
17 argue that Benton County used the 23-yr population growth of 22,880 to generate an
18 erroneous shortfall of 7,479 people, when the actual shortfall was $16,955 - 15,401 = 1,554$,
19 assuming the 15,401 number is correct. After the County applied an occupancy factor of
20 2.49 to convert the shortfall of 7,479 people to a shortfall of 3,003 dwelling units (DUs), the
21 Petitioners claim that number is over-inflated, i.e. its numbers generate an actual shortfall
22 of 1,554 people or a shortfall of 624 DUs. Petitioners Brief at 7-8. The Petitioners argue that
23 the County erred by using a density of 2.81 DUs/acre rather than an urban density of four
24 to six DUs/acre as required by the Benton County CP. With a shortfall of 3003 DUs and an
25 urban density of four, the proper acres using the County's numbers are 751 acres. The
26 Petitioners argue that the County erred by using a non-urban density of 2.81 DUs/acre to
yield 1,067 acres, a 42% bonus over the proper number of 751 acres. The County also
erred by adding another 55% bonus to reach 1,574 acres when the County's own numbers

1 of a 3,003 DU shortfall revealed that only 751 acres were needed to achieve an urban
2 density of four. At the Compliance Hearing, the Petitioners argued that the number of
3 1,574 acres was 120% inflated over the actual number of 751 acres.

4 The Petitioners argue that the 55% bonus consisted of a 30% bonus when the City
5 has used 70% of the available land, plus an additional 25% market factor tacked on for
6 good measure. The 30% bonus and the 25% market factor were not justified by Benton
7 County. The Petitioners also argue that Benton County did not justify why a need for only
8 751 acres could be inflated to 1574 acres. In the Appeals Court case, *Diehl v. Mason*
9 *County*, 94 Wn.App.645, 654, 972 P.2d 543 (1999), the court said that market factors must
be justified when used by a county.

10 "Although a county may enlarge a UGA to account for a 'reasonable land
11 market supply factor,' it must also explain why this market factor is required
12 and how it was reached." *Diehl v. Mason County*, 94 Wn.App.645, 654, 972
13 P.2d 543 (1999).

14 The Petitioners argue that if 15,401 people were the actual capacity of the Richland
15 UGA, and that since the 2005-2025 high population growth was only 16,955, the actual
16 shortfall was 1,554 people, not the 7,479 shortfall claimed by the County. Using an
17 occupancy factor of 2.49 to obtain 624 DUs, and using a urban density of four DUs/ac, as
18 argued by the Petitioners, the acreage needed by Richland was 156 acres, not 2116 acres
19 as claimed by Benton County.

20 The Petitioners point to a previous ruling by the Eastern Board: "The Act establishes
21 population projections upon which IUGAs must be based. These exclusive projections are
22 made for each county by the Office of Financial Management (OFM); no provision is
23 permitted for local jurisdictions to use their own numbers." EWGMHB Case No. 97-1-0015c,
24 December 24, 1997 FDO, *Kenneth and Sandra Knapp, et al v. Spokane County et al*. The
25 Petitioners argue that Benton County cannot use population numbers for a 23-year period
26 (35% over the allowed OFM number), inflate acreage needs by using a non-urban density

1 of 2.81 DUs/acre (a 42% bonus) and then add a 55% bonus on top of that. The Petitioners'
2 arguments would have yielded an actual shortfall of 156 acres, not the 2,116 acres claimed
3 by the County.

4 The Petitioners argue that all of the residents in the Wilson Addition signed a petition
5 stating that they object to their property being included in the Richland UGA and they
6 strongly oppose any annexation effort by the City of Richland. The Benton County Comp
7 Plan of 2002 states in the Land Use Element, "the land owners and residents within the
8 UGA must support, not resist annexation and urbanization". The Petitioners argue that
9 because of the petition, which was given to the County, the Wilson Addition cannot be
10 included in the UGA. They also note the failure by Benton County to obtain property owner
11 approval is a failure to conduct its activities in conformity with its Comprehensive Plan and
12 is therefore noncompliant with RCW 36.70A.120.

12 **Respondent:**

13 The Respondent argues the Petitioners conceded in their appeal that CWPP #4,
14 which utilizes the applicable OFM projection, justified a 2,116 acre expansion of Richland's
15 UGA, and the Petitioners should be precluded as a matter of fairness, due process, and
16 equitable estoppel, from changing their position now. Benton County also argues that the
17 County correctly used Richland's actual population at the time of application and the 2025
18 OFM population figure to calculate the projected growth of 22,880, and that the Petitioners
19 erroneously used, not only the 2025 population projection, but also a second population
20 projection as the starting point for calculating projected growth and that this results in an
21 underestimation of projected growth.

22 The Respondent further points out that residents owning only a portion of the
23 property within the Wilson Addition are opposed to the expanded UGA and that there is no
24 authority mandating the exclusion of land from a UGA simply because the property owner
25 prefers to be outside the UGA.
26

1 **Intervenor:**

2 Intervenor, Nor Am Development, LLC, argues the Petitioners in their Petition for
3 Review (PFR) did not dispute that an expansion of Richland's UGA by 2,116 was justified
4 under CWPP #4, and they should be precluded from raising this new argument at the
5 compliance hearing (CH). The Intervenor argues that the Board in its FDO already found
6 that the calculations used by the County were based on OFM projections. Nevertheless, the
7 County's needs analysis for the expanded UGA did in fact follow the 2025 OFM projection
8 reflected in the OFM population estimates issued in 2002, which estimated the 2025
9 population of Richland at 63,030.

10 The Intervenor argues that County policy does not require 100% land owner support
11 in order to expand a UGA, and that the Wilson Addition is only a small fraction of the total
12 UGA expansion area.

13 **Discussion:**

14 As the Board stated in its FDO, "Petitioners do not dispute that an expansion of
15 Richland's UGA is justified under CWPP #4. They agree with the original number of 2,116
16 acres recommended by County staff (Petitioner's Brief p. 30; also Ex. 37, p. 8)." FDO at 25.
17 Moreover, the Board found that the calculations used by the County were based on the
18 OFM projection. Finding of Fact No. 5 states: "According to the OFM high projection and the
19 City of Richland's calculations from the formula in CWPP #4, the City's projected needs in
20 acreage up to 2025 is 2,116 acres." FDO at 29. Nothing prevented the Petitioners from
21 raising these issues in their Petition for Review. The Petitioners are precluded in the
22 compliance hearing from attacking specific portions of the Comprehensive Plan, which were
23 not challenged by the Petitioners in connection with the original hearing on the merits
24 before the Board in 2005. Moreover, the Board determined during the Petitioner's appeal
25 that the County showed its work as to the need for 2,116 additional acres. The Board again
26 finds that the County showed its work as to the need for 2,116 additional acres and that the
County's calculations were correctly based on Richland's actual estimated population at the

1 time of the application to expand its UGA and the OFM population projection for 2025 as
2 required by RCW 36.70A.110(2).

3 **Conclusion:**

4 The Petitioners have failed to meet their burden of proof as to Issue No. 1. The
5 Board finds that the County followed the OFM population guidelines as required by RCW
6 36.70A.110(2) when determining the need for residential acreage in the UGA expansion.

7 **Issue No. 2:**

8 Benton County failed to comply with the Board's Order to Increase Density within
9 their UGA and to Demonstrate the Reasons for the Market Factor.

10 **The Parties' Position:**

11 **Petitioners:**

12 The Petitioners point out that the Board stated in their September 20, 2005 FDO:

13 In *Diehl v. Mason county*, 95 Wn.App. 645, 654, a market factor is consistent
14 with a jurisdiction's determination of their land supply, but they must
15 demonstrate the reasons for the market factor. "Although a county may
enlarge a UGA to account for a 'reasonable land market supply factor,' it must
also explain why this market factor is required and how it was reached."

16 "Allowing a .5 DU/acre in the new PUD, a 5 DUs/acre overall in the expanded
17 UGA and a historical decrease in the City's overall UGA density, which is
18 predicted to be at 2.81 DUs/acre in 2025, is not following the mandate of the
GMA by controlling sprawl. The City of Richland has not shown that ability."

19 The Petitioners argue that Resolution 06-659 did not correct the previous error
20 regarding the 2.81 DUs/ acre versus the expected four to six DUs/acre for urban density.
21 The Petitioners argue that Benton County has never explained why it used a density of 2.81
22 DUs/acre for an UGA in the face of the requirement for a density of four to six DUs/acre.
23 Petitioner Reply Brief at 5. The Petitioners contend that if the Board made such
24 observations in the original FDO, and the county made no changes, the original Board
25 observation should be re-applied.

1 **Respondent:**

2 The County argues the Petitioners' alleged Error #2 was based on a
3 mischaracterization of the Board's FDO. The County asserts that the FDO reflects
4 agreement by the Board that a 2,116 acre expansion was warranted, and that the FDO did
5 not mandate any particular density nor did it require any further justification of the market
6 supply factor embodied in CWPP #4 and used by the County.

7 **Intervenor:**

8 The Intervenor argues that the Board concurred in its FDO with the County's use of a
9 25% market supply factor, and that market supply factors of 25% are presumed valid and
10 reasonable. Because the market supply factor did not exceed 25%, the County is not
11 required to further justify the market supply factor or explain how it was reached.

12 **Discussion:**

13 The Board is charged with adjudicating GMA compliance and, when necessary, with
14 invalidating non-compliant comprehensive plans and development regulations. RCW
15 36.70A.300. In the FDO, the Board ordered Benton County to take appropriate legislative
16 action to bring itself into compliance, but did not order Benton County to increase density
17 within the Richland UGA or to demonstrate the reasons for the market factor. The County
18 has the discretion to choose the appropriate action, provided the action is in compliance
19 with the goals and requirements of the GMA. The Board lacks authority to order Benton
20 County to increase density within its UGA, and Benton County has no legal obligation to
21 further demonstrate its reasons for the 25% market supply factor.

22 **Conclusion:**

23 The Petitioners have failed to meet their burden of proof in Issue No. 2. The Board
24 can not order the County to increase density and there is no legal requirement for the
25 County to further demonstrate its reasons for its 25% market supply factor.

26 **Issue No. 3:**

Benton County erroneously inflated the land needs of the proposed UGA by including unnecessary acreage for commercial and industrial land.

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2 **The Parties' Position:**

3 **Petitioners:**

4 The Petitioners argue that there is no need for 126 acres of commercial land in the
5 proposed UGA expansion because the existing Richland UGA has 665 acres of vacant
6 commercial land compared to 550 acres of developed commercial land which took over 50
7 years to develop. Likewise, the Petitioners argue that Resolution 06-659 does not provide
8 justification for 227 acres of industrial land in the proposed UGA for industrial land when
9 Richland currently has 3,749 acres of vacant industrial land inside the Richland UGA,
10 together with 982 acres of developed industrial land which took 50 years to develop. The
11 Petitioners contend there is enough industrial land inside the Richland UGA to suffice far
beyond the 20-year planning period required by the GMA.

12 **Respondent:**

13 The Respondent argues the Petitioners did not raise this issue in their PFR or in the
14 original appeal hearing, and they have therefore waived the argument or are estopped from
15 bringing it now. Second, the Petitioners have produced no evidence that the amount of
16 commercial and industrial is excessive. Third, local circumstances must be considered. A
17 large amount of the land designated "industrial" is in north Richland associated with the
18 Hanford Reservation. There may be restraints to the development of this industrial land,
19 and the County does not have evidence to refute the need for commercial or industrial land
20 in the southwest portion of the expanded UGA. It would be imprudent for the County to
21 deny Richland additional acreage for commercial and industrial land to serve the expanded
UGA.

22 **Intervenor:**

23 The Intervenor argues the Petitioners did not contest the original number of 2,116
24 acres, which included 126 acres of commercial and 227 acres of industrial. Thus, they are
25 precluded from challenging the commercial and industrial acreage now. The area needed
26 for commercial and industrial was calculated based on Richland's acre per capita goal for

1 each land use classification set forth in Richland's original GMA Comprehensive Plan. The
2 acre per capita ratios were then plugged into the uniform methodology for determining UGA
3 acreage provided in CWPP #4. The analysis and calculations were fully documented in the
4 City's application for the UGA expansion.

5 **Discussion:**

6 In their appeal, the Petitioners did not contest the original number of 2,116 acres of
7 UGA expansion recommended by County staff, which included 126 acres of commercial and
8 227 acres of industrial. Exhibit 37; FDO at 25. Thus, they are precluded from challenging
9 the commercial and industrial acreage now. Even if such a challenge were not precluded,
10 the Petitioners have not demonstrated that the commercial or industrial land allowed for the
11 UGA expansion area is excessive. The County has the discretion to determine the necessary
12 industrial and commercial area within the expanded UGA based on local circumstances. The
13 area needed for commercial and industrial, as well as parks and recreation, public uses and
14 schools, was calculated based on Richland's acre per capita goal for each land use
15 classification set forth in Richland's original GMA Comprehensive Plan. Exhibit 3, Attachment
16 3 to July 10, 2003 staff report. The acre per capita ratios were then plugged into the
17 uniform methodology for determining UGA acreage provided in CWPP #4. The analysis and
18 calculations were fully documented in the City's application for the UGA Expansion.

19 **Conclusion:**

20 Petitioners have failed to meet their burden of proof as to Issue No. 3.

21 **Issue No. 4:**

22 The Capability Analysis fails to comply with the 6-year planning horizon required by
23 RCW 36.70A.070(3). The document favors a plan-as-you-go approach.

24 **The Parties' Position:**

25 **Petitioners:**

26 The Petitioners argue that statements on Page 31 of the Capability Analysis
(attachment B of Resolution 06-659) indicate that Benton County favors a plan-as-you-go
approach. Quoting Page 31:

1 "Because of the uncertainty of the location and timing of the future
2 development, a review of historic projected growth should be made yearly,
3 prior to adoption of the City's annual Capital Improvement Budget. Periodic
4 review should also be made as permits for development are submitted to the
5 City for approval."

6 The Petitioners argue that the Board made it clear in the FDO (p16, line 1) that:
7 "Once an area is brought into an existing UGA, it will need infrastructure. The
8 GMA requires a 'forecast of the future needs' in the six-year plan."

9 The Intervenor argued that:

10 "The GMA requires only that the County determine that urban services can be
11 provided at the time of development. RCW 36.70A.110(3)."

12 The Board responded to the Intervenor by writing:

13 "That's certainly when they can be provided, but planning for those services
14 has to take place much earlier. RCW 36.70A.070(3)(b)."

15 The Petitioners quoted the EWGMHB, ORDER ON MOTION FOR RECONSIDERATION
16 on October 20, 2005, in which the Board made the following quotes from the case, *Fred
17 Klein v. San Juan County*, WWGMHB FDO, Case No. 02-2-0008:

18 Instead of detailing the work that will need to be done to meet projected
19 further demand, the wastewater analysis (San Juan County) simply notes that
20 sewer main lines will be installed "periodically in future years to serve new
21 customers. The scope and cost of these projects will be determined on an as-
22 needed basis that reflects the pattern of future development." According to
23 the statements of the County's planning representative (Mr. Mann) at the
24 hearing, planning will be on a permit-by-permit basis. This is not what the Act
25 contemplates as capital facilities planning. (Page 7, lines 6-14, October 20,
26 2005 Order)

27 The Petitioners argue that the absence of planning within the three-square mile
28 expansion of the UGA indicate that Benton County and Richland are planning on a permit-
29 by-permit basis, which is not compliant with the GMA.

1 **Respondent:**

2 The County argues that the passage in the Capability Analysis cited by Petitioners
3 simply reiterates the Board’s acknowledgement that the “six-year CFE is a living document.”
4 FDO at 15. Nevertheless, the Capability Analysis does contain an analysis of the projected
5 additional public facilities and services that are anticipated as necessary within the six-year
6 period, the estimated cost of such facilities, and potential revenue sources to meet those
7 costs.

7 **Intervenor:**

8 The Intervenor argues that the provision cited by Petitioners merely echoes the good
9 GMA planning practices set forth in the FDO that the six-year capital facilities plan is a living
10 document that should be reviewed and updated regularly. FDO at 15. Contrary to the
11 Petitioners’ assertions, the Capability Analysis includes six-year planning for all public
12 facilities requiring concurrency within the six-year planning horizon, including streets and
13 roads, domestic water, sanitary sewer and electric power.

14 **Discussion:**

15 The Board agrees that the passage quoted on page 31 of the Capability Analysis
16 simply reiterates the Board’s acknowledgement that the “six-year CFE is a living document,”
17 that should be reviewed and updated regularly. FDO at 15. The capital facilities plan for the
18 expanded UGA, which incorporates the Capability Analysis, does comply with the six-year
19 planning horizon required by RCW 36.70A.070(3) because it contains a forecast of capital
20 facilities needed within the six-year period, has a plan that estimates the cost of such
21 facilities and clearly identifies potential funding sources.

21 **Conclusion:**

22 Petitioners have failed to meet their burden as to Issue No. 4. The Capability Analysis
23 complies with RCW 36.70A.070(3).
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1 **Issue No. 5:**

2 The proposed UGA expansion by Benton County is inconsistent with the Benton
3 County Comprehensive Plan and therefore fails to meet the requirements of RCW
36.70A.120.

4 **Parties' Position:**

5 **Petitioners:**

6 The Petitioners argue that the UGA expansion is inconsistent with the Benton County
7 Comprehensive Plan and is thus not in compliance with RCW 36.70A.120, because the
8 County's Comprehensive Plan, Chapter 4, Land Use Element, states: "Richland has 21,719
9 acres of vacant incorporated and unincorporated land designated for residential use. . . .
10 For the foreseeable future, the expansion of the UGA in the Metropolitan Planning Area for
11 the purpose of accommodating residential development cannot be justified in terms of
12 population growth projections."

13 The Petitioners argue that the Benton County CP should be updated to reflect the
14 need for the proposed UGA expansion prior to the Board approving the UGA expansion."
15 Also, the draft FDO did not mention Petitioners argument during the Feb 27 HOM that the
16 Benton County CP did not support the need for additional UGA land in the Tri-Cities area for
the foreseeable future.

17 **Respondent:**

18 The Respondent argues the Petitioners did not raise the issue in their PFR or at their
19 original appeal hearing and they have thus waived the argument. The language quoted by
20 Petitioners was adopted in 1998 and prepared sometime before that. Growth in the Tri-
21 Cities in the last eight to ten years has exceeded expectations. Benton County argued at the
22 compliance hearing that the reference to 21,719 acres in Richland's UGA is an obvious error
23 because the entire City of Richland is only approximately 25,000 acres, indicating that the
24 reference to 21,719 vacant acres was clearly a mistake
25
26

1 **Intervenor:**

2 The Intervenor argues that the Petitioners make a challenge to the original number
3 of 2,116 acres, which should have been raised in their appeal. The UGA expansion
4 calculation that resulted in the need for 2,116 acres was based on 2,196.16 acres of
5 buildable residential land, of which 1,996.99 was designated low density residential.
6 Although expansion of the UGA may not have been foreseeable in 1997, it is warranted now
7 based on the OFM projections and the formula set forth in CWPP #4.

8 **Discussion:**

9 Considering that the entire area of the City of Richland is approximately 25,000
10 acres, the reference in the Comprehensive Plan to 21,719 acres of buildable residential land
11 in Richland's UGA is obviously an error. Also, the passage was adopted in 1998. The County
12 cannot be required to adjust its UGA expansion analysis to information that is obviously in
13 error. Furthermore, this argument should have been raised by the Petitioners at their
14 original appeal hearing.

15 **Conclusion:**

16 Petitioners have failed to meet their burden of proof as to Issue No. 5.

17 **Issue No. 6:**

18 The proposed expansion is inconsistent with the Richland Comprehensive Plan and
19 therefore fails to meet the requirements of RCW 36.70A.100.

20 **The Parties' Position:**

21 **Petitioners:**

22 The expanded UGA came about because Badger Mountain Development requested
23 that their property should be included in the UGA. The Petitioners argue that the Richland
24 CP should be updated to justify the UGA expansion prior to the Board approving the UGA
25 expansion. The Respondents argued that the reference to 21,719 available acreage in the
26 City's CP is an obvious error. The Petitioners argued during the HOM that these same
numbers are in the 2002 CP and draft 2006 CP.

1 **Respondent:**

2 The Respondent argues that the Petitioners did not raise the issue in their PFR or
3 during their original appeal hearing, and they have waived the argument. The County relies
4 on the City to explain statements in the City's Comprehensive Plan.

5 **Intervenor:**

6 The Intervenor argues the Petitioners are again challenging the 2,116 acre UGA
7 expansion, which they did not do on appeal. Nevertheless, according to the Intervenor,
8 Petitioners' claim of lack of coordination for the UGA expansion is without merit. The
9 expanded UGA originally came about because the City requested it. The number of acres
10 needed was based on calculations performed by the City. The City and County jointly
11 prepared and adopted the Capacity Analysis for the expansion area as part of their
12 respective comprehensive plans (County Resolution No. 06-659, City Ordinance No. 24-06),
and they entered into an interlocal agreement regarding annexation of the expansion area.

13 **Discussion:**

14 RCW 36.70A.100 provides that "The comprehensive plan of each county or city that
15 is adopted pursuant to RCW 36.70A.040 shall be coordinated with, and consistent with, the
16 comprehensive plans adopted pursuant to RCW 36.70A.040 of other counties or cities with
17 which the county or city has, in part, common borders or related regional issues." The
18 provisions of the Richland Comprehensive Plan are not before the Board in this case. What
19 is before the Board is Benton County Resolution No. 06-659, which reduced the expanded
20 UGA from 3,322 acres to approximately 2,100 acres and updated the capital facilities,
21 utilities and transportation elements of the County's Comprehensive Plan by adopting an
22 approved capital facilities plan for the expanded UGA. The expanded UGA originally came
23 about because the City requested it (Exhibit 3). Resolution No. 06-659 complies with RCW
24 36.70A.100 as to the City of Richland because the number of acres needed was based on
25 information provided by the City.
26

1 **Conclusion:**

2 Petitioners have failed to meet their burden of proof as to Issue No. 6. Benton
3 County, through Resolution No. 06-659, has complied with the Board's FDO to reduce the
4 number of acres in the expanded UGA and update the capital facilities, utilities and
5 transportation elements of the County's Comprehensive Plan.

6 **Issue No. 7:**

7 The Capability Analysis does not meet the requirements of a Capital Facilities Plan
8 pursuant to RCW 36.70A.070(3).

9 **Issue No. 8:**

10 There is no evidence that the UGA Extension Capability Analysis provides a
11 commitment by Benton County to make capital facility improvements in the next 6 Years.

12 **Issue No. 9:**

13 The total cost of street and roads in Table 28 fails to address the costs of streets and
14 roads Inside the UGA Expansion Area of 2100 acres in the first six years.

15 **Issue No. 10:**

16 The Capability Analysis fails to address trunk lines inside the UGA other than two
17 pressurized sewer trunk lines to move sewer up over Badger Mountain; There is no
18 discussion of sewer trunk lines inside the UGA; There is only financing for one of the trunk
19 lines shown.

20 **Issue No. 11:**

21 The Capability Analysis fails to plan for storm water management and is
22 noncompliant with RCW 36.70A.110(3).

23 **The Parties' Position:**

24 **Petitioners:**

25 Under Issue No. 7, the Petitioners argue that the capital facilities plan does not
26 provide the proposed locations and capacities of new capital facilities, a noncompliance with

1 RCW 36.70A.070(3)(c). The Petitioners argue that there is insufficient information for
2 roads, trunk water lines, trunk sewer lines and storm drainage within the proposed UGA.
3 The Petitioners argue that the absence of planning is attributable to what the County labels
4 as uncertainty of the location and timing of the future development within the proposed
5 UGA. They argue the existing roads, plats and details of the planned unit development,
6 which is approved for this UGA, should have been reflected in the capital facilities plan
7 because the planned unit development agreements reflect approved development within
8 the proposed UGA.

9 Under Issue No. 8, the Petitioners argue that a Benton County Capital Facilities Plan
10 (CFP) should reflect the money to be spent by the County. The Petitioners contend that the
11 CFP contains no description of any cost to Benton County. They argue this is erroneous
12 because, as a Richland letter dated August 7, 2006 (included in attachment C of Resolution
13 06-659) describes, Benton County has over two million dollars of road improvements to be
14 made to support the UGA expansion, especially for Reata Road, Rachel Road and Dallas
15 Road, all of which are the only access routes to the proposed UGA.

16 Under Issue No. 9, the Petitioners argue that the CFP fails to address the installation
17 of major roads inside the UGA. With over three-square miles of undeveloped land, there is
18 no plan provided which shows where the major arterials will be located. The Petitioners
19 argue that \$4,601,000 is shown in Table 28 as a public expenditure for roads in the UGA,
20 but the CFP fails to describe any road system within the UGA. The Petitioners also argue
21 that the public utilities district (PUD) approved in 2001, by Benton County established a
22 network of roads which is the blueprint for development, yet none of these roads were
23 shown as required in the CFP by RCW 36.70A.070(3). Table 23 lists road improvements to
24 Dallas Road, Rachel Road and Reata Road; however, these roads are County roads outside
25 of the UGA. The Petitioners argue that none of the required information in RCW
26 36.70A.070(3)(b), (c) and (d) was provided for streets, roads, highways, sidewalks, street
and road lighting systems, and traffic signals inside the proposed UGA expansion. The
Petitioners argue that this is a fatal flaw because the Board declared non-compliance

1 because of a lack of a CFP, yet this CFP has no information about roads and does nothing to
2 remove the noncompliance.

3 Under Issue No. 10, the Petitioners argue the CFP only describes the west force-main
4 and provides no description of any gravity system over three-square miles which will direct
5 sewer to the lift station. The Petitioners argue that the CFP calls for forty houses to be built
6 in the next six years in an undisclosed location on the west side of the UGA, but the CFP
7 does not describe any gravity trunk line to which developers would attach to (that would
8 feed the lift station). They argue that the CFP fails to describe where the forty houses will
9 be located and where the trunk sewer lines will be installed. The Petitioners argue that this
is not a plan; it is up to future developers to determine this information.

10 The Petitioners argue that the CFP does not address a plan to manage storm water
11 over three-square miles of development on a slope of a hill. They argue that RCW
12 36.70A.030(12) defines public facilities as "streets, roads, highways, sidewalks, street and
13 road lighting systems, traffic signals, domestic water systems, storm and sanitary sewer
14 systems, parks and recreational facilities and schools" and that the CFP is silent on most of
15 these topics, including storm water. Therefore, the CFP does not improve the planning level
16 from the point in time when the Board originally ruled noncompliance (because of the lack
of planning.)

17 **Respondent:**

18 The Respondent argues capital facilities plans are to consist of a forecast of needs
19 for capital facilities. These plans are merely attempts to predict the future. Predicting the
20 location and cost of arterial roadways and sewer mains is feasible and helpful from a
21 planning perspective. However, it makes no sense to require and the County is not legally
22 required to develop construction level detail planning regarding placement of projected
23 neighborhood streets or sewer lines when no specific development proposal is before the
24 City or County. Without a development proposal pending, it would be impossible to identify
25 the location and layout of local streets and sewer lines that may be needed in the future.
26 Such decisions must be made in connection with specific development proposals. Specific

1 arterial and collector street projects and sewer trunk lines that are projected as necessary in
2 the next six years to accommodate projected growth are identified and costed in the plan.
3 Local streets and local sewer lines are almost universally the responsibility of landowners
4 desiring to develop their property. All storm-water costs associated with the development of
5 arterials or major roadways are included in the cost of those facilities, while local storm-
6 water management is the responsibility of the developer.

7 There is no legal requirement the CFP contain a financial commitment from the
8 County to pay for any future improvements in the area.

8 **Intervenor:**

9 The Intervenor responds that the Capability Analysis complies with the letter and
10 purpose of RCW 36.70A.070(3) regarding roads because it provides an inventory of existing
11 streets and roads in and around the UGA, determines what the street requirements in and
12 around the UGA will be in the six and twenty year planning horizons, estimates the cost of
13 such improvements, and determines how the expense will be paid. The location of the
14 "feeder" roads and water and sewer feeder lines within the PUD necessarily depends on the
15 final design of the development. As conditions of approval, the developer is required to
16 construct local access streets to county standards and pay for or construct transportation
17 improvements necessary to mitigate the traffic impacts of the development. Thus, the
18 development cannot go forward unless and until the developer provides adequate streets
19 and roads to support it.

19 A cost and funding analysis is only required for capital facilities that are needed
20 within the six year period. The Capability Analysis adopted by Benton County and Richland
21 gives a detailed analysis of the sewer system's present capacity and the facility
22 requirements needed to serve the UGA within both the six and twenty year planning
23 periods. Cost of the sewer improvements necessary within the six year period are estimated
24 and funding sources are identified. As such, the County has complied with the capital
25 facilities planning requirements for sewer under RCW 36.70A.070(3).

1 Most of the expanded UGA is in the Badger Mountain PUD, which is required to
2 implement a coordinated storm management system as a condition of approval. After
3 annexation, funding for any storm water facilities not paid for by the developers may be
4 provided through Richland's storm water management utility, RMC Title 16.

5 **Discussion:**

6 The Capability Analysis provides an inventory of existing streets and roads in and
7 around the UGA, including Dallas and Reata Roads (p. 15-16), determines what the street
8 requirements in and around the UGA will be in the six and twenty year planning horizons (p.
9 33-45), estimates the cost of such improvements (p. 64), and determines how the expense
10 will be paid (p. 65-68). As such, it complies with the letter and purpose of RCW
11 36.70A.070(3). The UGA expansion area is unusual because approximately 1,600 of the
12 2,100 acres are included in a vested planned unit development. The location of the "feeder"
13 roads (and water and sewer feeder lines) within the planned unit development necessarily
14 depends on the final design of the development. As conditions of the County's approval for
15 the planned unit development, the developer is required to construct local access streets to
16 County standards, pay for or construct transportation improvements necessary to mitigate
17 the traffic impacts of the development and address any storm-water management concerns.
18 Thus, the development cannot go forward unless and until the developer provides adequate
19 streets, roads and other capital infrastructure necessary to support the development. Since
20 all road improvements within the UGA are already required of the developer and will be of
21 no cost to the City or County, it was not necessary to include them in Table 28.

22 By expanding the UGA boundaries and adopting the Capability Analysis, the City of
23 Richland, in coordination with the County, has committed to provide public facilities
24 necessary to support development within the UGA. *Cedardale*, WWGMHB Case No. 02-2-
25 0010, FDO at 6. It is not necessary for the Capability Analysis to contain any additional
26 language evidencing such a commitment, nor is it necessary that the City or County have
the present ability to fund such facilities. *Cedardale*, FDO at 5.

1 A cost and funding analysis is only required for capital facilities that are needed
2 within the six year period. WAC 365-195-315(1)(d). The Capability Analysis adopted by
3 Benton County and Richland gives a detailed analysis of the sewer system's present
4 capacity and the facility requirements needed to serve the UGA within both the six and
5 twenty-year planning periods. Capability Analysis at 21 and 45. Cost of the sewer
6 improvements necessary within the six-year period are estimated and funding sources are
7 identified. Capability Analysis at 64 and 67. As such, the County has complied with the
8 capital facilities planning requirements for sewer under RCW 36.70A.070(3).

9 Most of the expanded UGA is in the Badger Mountain planned unit development,
10 which is required to implement a coordinated storm water management system as a
11 condition of approval. After annexation, funding for any storm water facilities not paid for
12 by the developers may be provided through Richland's storm-water management utility,
13 RMC Title 16.

14 **Conclusion:**

15 Petitioners have failed to meet their burden of proof as to Issue Nos. 7-11. The
16 Board finds that the Capital Facilities Plan for the expanded UGA is sufficiently detailed to
17 comply with RCW 36.70A.070(3).

18 **Issue No. 12:**

19 Table 28 erroneously lists excise taxes on sales, sales taxes on construction and
20 retail sales taxes as funding sources, which will pay for a portion of Badger Mountain capital
21 facilities.

22 **Issue No. 13:**

23 Table 28 fails to comply with RCW 36.70A.070(3)(d) by possibly under-reporting the
24 City contribution to funding capital facilities in the expanded UGA.

25 **Issue No. 14:**

26 Table 28 erroneously reports that utility fees and charges will provide \$3,787,219.

1 **The Parties' Position:**

2 **Petitioners:**

3 Under Issue No. 12, the Petitioners argue that the three taxes listed in Table 28
4 mostly go into the general fund of Richland and Benton County, which is distributed by
5 cities and counties for general operating expenses, not capital improvements. The
6 Petitioners argue that sales tax on construction, for example, depends on where contractors
7 purchase building materials, and using such funds as possible income as part of a six-year
8 plan that will finance capital facilities is erroneous and misleading.

9 Under Issue No. 13, the Petitioners argue that the record is empty regarding any
10 communication between the City of Richland and the developer about who will pay for
11 infrastructure in the UGA. The Petitioners contend there is no information in the record
12 which demonstrates that the developer is willing to pay \$4,326,912, as stated in Table 28,
13 during the next six years for infrastructure. The Petitioners argue that if the developer is
14 supposed to pay for the entire infrastructure then Table 28 should show the developer
15 paying the entire \$9,343,130 of infrastructure cost. The City's financial contribution should
16 be zero. The Petitioners argue that the financial data in the CFP and in Table 28 is
17 erroneous.

18 Under Issue No. 14, the Petitioners argue that the CFP does not provide information
19 about how the City of Richland will collect the \$3,787,219 of utility fees and charges in the
20 first six years or how the number was calculated. The Petitioners question the validity of the
21 \$3,787,219 considering the number of houses to be built over the first six years. The
22 Petitioners argue that the CFP does not provide a written source of public money as
23 required by RCW 36.70A.070(3)(d).

24 **Respondent:**

25 The Respondent argues that a capital facilities plan cannot legally bind the City or
26 County to sell bonds, pledge tax revenues or obtain binding commitments from developers
to pay for projected capital facilities that are expected, but may never be needed or that
may not be needed for many years in advance. It is reasonable for the City to rely on its

1 authority to require developer contributions to fund a significant portion of the cost of
2 capital facilities needed because of developer's actions.

3 **Intervenor:**

4 The Intervenor argues that it doesn't matter that such revenue may go into the
5 general fund because the City can take into consideration the source of the funds when
6 budgeting expenditures from the general fund for capital facilities. According to the
7 Intervenor, the purpose of RCW 36.70A.070(3)(d) is to make sure that there are sufficient
8 sources of funding available to the City or County. Using this planning information, the City
9 and County have the discretion to determine which funding sources to use and how much
of each source to use.

10 Sales and excise tax revenues account for only 2.4% of the total revenues necessary.
11 Revenue forecasting by nature is imprecise. Any errors in calculation of sales and excise tax
12 revenues in the Capabilities Analysis are de minimus and do not warrant a finding of
13 noncompliance.

14 The Intervenor asserts that private funding is a reasonable alternative when a public
15 entity does not have the funds to provide all the capital improvements necessary for
16 development. If the developers are unwilling or unable to pay their portion within the six-
year planning period, the projected development simply will not occur.

17 The Intervenor argues that the Petitioners failed to consider RMC 17.56.040, which
18 charges a sewer facilities assessment at the time of connection for "sewer treatment, lift
19 station, interceptor facilities and frontage charges," and RMC 18.24.110, which charges a
20 water facilities assessment at the time of connection for "water treatment, storage, source
21 of supply and frontage facilities." In addition, RMC 17.70.020 provides that "Sewerage
22 system extensions, including but not limited to mains, laterals, sewer lift stations and side
23 sewers, shall be made at the expense of the benefiting property owner(s) to be served by
24 the extension." Likewise, RMC 18.34.020 provides that "water system extensions, including
25 but not limited to mains, hydrants, service lines, meter settings, meter boxes, pumps and
26 reservoirs, shall be made at the expense of the benefiting property owner(s) to be served

1 by the extension." Considering the above referenced provisions, the estimate for utility fees
2 and charges in Table 28 of the Capability Analysis is not clearly erroneous.

3 **Discussion:**

4 RCW 36.70A.070(3) requires that sources of public funds with a reasonable
5 assurance of availability within the six-year period be clearly identified. WAC 364-195-315.
6 Table 28, as amended and explained by the City in Attachment C, does this by showing that
7 there will be revenue available, generated by sales taxes and real estate excise taxes, as a
8 result of development within the expanded UGA (County Resolution No. 06-659, Attachment
9 C). It does not matter that such revenue may go into the general fund because the City can
10 take into consideration the source of the funds when budgeting expenditures from the
11 general fund for capital facilities. The purpose of RCW 36.70A.070(3)(d) is to make sure
12 that there are sufficient sources of funding available to the City or County. Using this
13 planning information, the City and County have the discretion to determine which funding
sources to use and how much of each source to use.

14 Contrary to Petitioners' assertion, there is no GMA requirement that the capital
15 facilities plan include documentation or commitment from developers for developer
16 contributions. "Private funding is a reasonable alternative when a public entity does not
17 have the funds to provide all the capital improvements necessary for development."
18 Cedardale v. City of Mount Vernon, WWGMHB No. 02-200010 FDO at 5 (March 28, 2003).

19 If the developers are unwilling or unable to pay their portion through SEPA mitigation,
20 impact fees, utility fees, etc., within the six-year planning period, the City will not have to
21 "pony up more", as the Petitioners argue. Rather, the projected development simply will not
occur.

22 Regarding the forecast of utilities fees and charges in Table 28, Petitioners have not
23 shown that the forecasted amounts are clearly erroneous. The figure consisted of an
24 estimate of sewer and water capital facilities fees and assessments, which the City of
25 Richland is authorized to charge at the time of connection, as well as revenue that could
26

1 potentially be generated from a local improvement district. Both are common funding
2 mechanisms.

3 **Conclusion:**

4 Petitioners have failed to meet their burden of proof as to Issue Nos. 12-14. The
5 County is in compliance with RCW 36.70A.070(3)(d) and sources of funding for public
6 improvements have been identified as required.

7
8 **V. FINDINGS OF FACT**

- 9 1. On January 31, 2005, the Benton County Board of Commissioner's
10 adopted Resolution No. 05-057, increasing City of Richland's Urban
11 Growth Area ("UGA") by adding 3,322 acres southwest of the existing
12 UGA boundaries.
- 13 2. In its September 20, 2005 Final Decision and Order ("FDO"), the Board
14 found Resolution No. 05-057 out of compliance because the expanded
15 UGA was not sized appropriately according to the applicable OFM
16 population projection and County Wide Planning Policy ("CWPP") #4,
17 and because the County failed to adequately plan for capital facilities,
18 utilities and transportation in the expanded UGA area.
- 19 3. In response to the Board's FDO, the County adopted Resolution No. 06-
20 659, which reduced the expanded UGA from 3,322 acres to
21 approximately 2,100 acres, and updated the capital facilities, utilities
22 and transportation elements of the Comprehensive Plan by adopting an
23 approved capital facilities plan for the expanded UGA.
- 24 4. According to the OFM high projection and the formula set forth in
25 CWPP #4, the City of Richland's UGA should be expanded by up to
26 2,116 acres to meet its projected growth through the year 2025.
5. Benton County's Capability Analysis complies with RCW 36.70A.070(3).
6. Benton County's Capital Facilities Plan for the expanded UGA is
sufficiently detailed to comply with RCW 36.70A.070(3).
7. Benton County is in compliance with RCW 36.70A.070(3)(d) by
sufficiently identifying sources of funding for public improvements.

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VI. CONCLUSIONS OF LAW

1. The Board has jurisdiction over this case.
2. Resolution No. 06-659 expands Richland's UGA by approximately 2,110 acres, which is an appropriately sized expansion to accommodate the City's of Richland's expected growth from its 2002 estimated population through the year 2025, as reflected in the 2025 OFM population projection and CWPP #4, and complies with RCW 36.70A.020(1), RCW 36.70A.020(2), and RCW 36.70A.110(2) and (3).
3. Resolution No. 06-659 includes an adequate capital facilities plan and plans for utilities and transportation facilities in the expanded UGA area in compliance with RCW 36.70A.070(3), RCW 36.70A.070(4), and RCW 36.70A.070(6).
4. Resolution No. 06-659 is in compliance with the Board's FDO of September 20, 2005.

VII. ORDER

1. Petitioners have failed to meet their burden of proof as to all fourteen legal issues raised.
2. Resolution No. 06-659 is in compliance with the Board's FDO of September 20, 2005 and the GMA.

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

Reconsideration:

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

1 **Judicial Review:**

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

5 **Enforcement:**

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

10 **Service:**

11 This Order was served on you the day it was deposited in the United States mail.
12 RCW 34.05.010(19).

13 SO ORDERED this 4th day of April 2007.

14 EASTERN WASHINGTON GROWTH MANAGEMENT
15 HEARINGS BOARD

16 _____
17 John Roskelley, Board Member

18 _____
19 Dennis Dellwo, Board Member

20 _____
21 Joyce Mulliken, Board Member