State of Washington
GROWTH MANAGEMENT HEARINGS BOARD
FOR EASTERN WASHINGTON

WILMA et al., Petitioners, v. STEVENS COUNTY, Respondent.	Case No. 06-1-0009c **FINAL DECISION AND ORDER**

I. SYNOPSIS

The Petitioners, Saundra Wilma, et al. and Jeanie Wagenman, et al. filed two petitions raising twenty-three issues in regards to the Stevens County's Comprehensive Plan, Resolution #59-2006, adopted by the Stevens County Board of County Commissioners (BOCC). Respondent, Stevens County (County), and amicus parties, Stevens County Public Utility District (PUD) and Washington State Community, Trade and Economic Development (CTED), believe the petitions or, in the case of the amicus parties, portions thereof, are without merit and should be dismissed.

The County adopted the Stevens County Comprehensive Plan (CP) by Resolution #59-2006 on July 13, 2006. Three separate and distinct petitions were filed challenging various portions of the CP. The Eastern Washington Growth Management Hearings Board (Board) consolidated the three petitions into one petition under Case No. 06-1-0009c. At a motion hearing on November 27, 2006, the Board dismissed Mr. James Davies' petition containing three issues, which left nineteen issues. They are summarized in the following paragraph.

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The Petitioners contend in their arguments that the County failed to follow its own Public Participation Plan (PPP) as required by RCW 36.70A.140 and the County's Countywide Planning Policies (CWPP); failed to comply with RCW 36.70A.110(1) and (3) by adopting unincorporated UGAs; failed to follow RCW 36.70A.210(1) by not following the County's CWPPs; failed to follow RCW 36.70A.110(2) by not establishing open space and greenbelts in the new UGAs; failed to meet the requirements of RCW 36.70A.070(5)(d)(iv) by not establishing properly-sized limited areas of more intense development (LAMIRDs); failed to comply with RCW 36.70A.370(2) by violating private property rights; failed to follow RCW 36.70A.070(2) by not including the housing element mandatory requirements; failed to comply with RCW 36.70A.070A(3) and adopt a compliant capital facilities plan; failed to meet the requirements of RCW 36.70.070(5) and RCW 36.70A.110 to protect the rural character and correctly size the County's new LAMIRDs; failed to comply with RCW 36.70A.070(1) by not providing for the protection of quality and quantity of ground water; failed to meet the requirements of RCW 43.21C and adopt a compliant environmental impact statement (EIS); failed to comply with RCW 36.70A.160 to include greenbelts and open space in the new UGAs; failed to comply with RCW 36.70A.110(1) and (2) for not prohibiting growth outside the UGAs; and failed to meet the requirements of RCW 36.70A.110(4) for not restricting urban services to urban areas.

The Respondent and the two amicus parties argued that the County's CP is a result of many years of hard work and public participation. They claim it's a balanced document that reflects the rural nature of Stevens County, protects the citizen's private property rights and takes into consideration the broad discretion granted to local governments under the GMA. They believe the Petitioners issues are overly broad and have forced the County to produce numerous documents unrelated to the CP. Their arguments of the issues are varied and concise.

The Board studied the issues as presented and determined from the parties' arguments, the record, past Hearings Boards' decisions, case law, and the requirements set forth in the Growth Management Act (GMA), whether the County complied with RCW

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36.70A. Rather than reiterate the Board's analysis for every issue here in the synopsis, only a summary of the conclusions will be given.

The Board finds that the Petitioners failed to carry their burden of proof in the following issues: No. 1 (public participation), No. 4 (formation of new UGAs), No. 6 (Loon Lake LAMIRD), No. 7 (private property rights), No. 8 (housing element), No. 10 (public participation), No. 14 (public participation), No. 16 (urban services), and No. 23 (EIS).

The Board finds that the Petitioners carried their burden of proof in the following issues: No.2 (urban growth areas); No. 5 (greenbelts and open spaces); No. 9 (capital facilities plan); No. 15 (capital facilities plan); No.17 (concurrency); No. 18 (quantity and quality of groundwater); No. 19 (land quantity analysis); No. 20 (greenbelts and open space); No. 21 (rural character); and No. 22 (urban reserve designation).

Issue Nos. 12, 13 and 14 were dismissed by motion and the Board deemed Issue No. 3 abandoned.

II. PROCEDURAL HISTORY

On September 8, 2006, SAUNDRA WILMA and ROBERT BERGER, filed a Petition for Review.

On September 11, 2006, JAMES DAVIES and LARSON BEACH NEIGHBORS and JEANIE WAGENMAN, filed Petitions for Review.

On October 10, 2006, the Board held a telephonic Prehearing conference for Case Nos. 06-1-0007, 06-1-0008, and 06-1-0009 collectively. Present were, John Roskelley, Acting Presiding Officer, Board Members Judy Wall and Dennis Dellwo were unavailable. Present for Petitioners were Saundra Wilma, Robert Berger, James Davies, and Jeanie Wagenman. Present for Respondent was Peter Scott.

The Board at the Prehearing conference consolidated Case Nos. 06-1-0007-06-1-0009. The new Case Name and Number is as follows and shall be captioned accordingly: WILMA et al. v. STEVENS COUNTY, 06-1-0009c. The acting Presiding Officer instructed the Petitioners to consolidate the issues and provide the Board and Respondent with copies of consolidated issues by October 16, 2006. The Petitioners advised they were unable to meet

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the October 16, 2006, deadline for submitting the proposed consolidated issues and would provide the Board and Respondent the issues as soon as possible.

On October 24, 2006, the Board received the proposed consolidated issues.

On October 25, 2006, the Board asked the Respondent to advise the Board if it objected to the rewritten issues. Mr. Scott on October 31, 2006, filed with the Board Respondent's Objection and Motion for Extension.

On October 31, 2006, the Board received Petitioners' Motion to Supplement the Record.

On November 1, 2006, the Board issued its Prehearing Order.

On November 8, the Board received Respondent's Motion to Dismiss Issue Nos. 11, 12, and 13, filed by Petitioner James Davies.

On November 15, 2006 the Board received from Petitioner James Davies, Response to Motion to Dismiss, Respondent Stevens County's Response to Motion to Supplement the Record, and Request for Extension.

On November 20, 2006, the Board received Respondent's Reply in Support of Motion to Dismiss and Response to Petitioners' Request for Extension.

On November 27, 2006, the Board received Larson Beach Neighbors & Jeanie Wagenman's Response to Stevens County's Response to Motion to Supplement Record.

On November 27, 2006, the Board held the telephonic motion hearing. Present were, John Roskelley, Presiding Officer, and Board Members Dennis Dellwo and Joyce Mulliken. Present for Petitioners were, Saundra Wilma, James Davies, Larson Beach Neighbors, & Jeanie Wagenman. Present for Respondent was Peter Scott, Clay White, and the Stevens County Board of County Commissioners.

On December 4, 2006, the Board received from Jeanie Wagenman, a Motion to Intervene.

On December 4, 2006, the Board issued its Order on Motions.

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On December 18, 2006, the Board received from Stevens County's PUD No. 1 a Request for Permission to File a Motion After the Date Set Forth in the Prehearing Order; and Motion to File Amicus Curiae Brief.

On December 18, 2006, the Board received from Stevens County Response to Petitioner Wagenman's Motion to Intervene.

On December 20, 2006, the Board issued its Order on Motion to File Amicus Brief.

On December 29, 2006, the Board received Petitioners' Wilma et al. Response to Stevens County P.U.D. Request to File Late Motion and Response to PUD Motion to File Amicus Curiae Brief.

On January 3, 2007, the Board received CTED's Request for Permission to File a Motion After the Date Set Forth in the Prehearing Order and Motion to File Amicus Brief.

On January 4, 2007, the Board issued its Order on Stevens County PUD's Motion to File Amicus Curiae Brief.

On January 11, 2007, the Board received Petitioners Larson Beach Neighbors and Jeanie Wagenman's letter expressing concern over CTED's involvement in this matter.

On January 12, 2007, the Board issued its Order on CTED's Motion to File Amicus Curiae Brief.

On January 31, 2007, the Board received Petitioner Larson Beach Neighbors and Jeanie Wagenman's Motion to File a Motion, a Motion to File an Extended Reply Brief, and Motion Requesting the Eastern Washington Growth Management Hearings Board (EWGMHB) ask for a complete CD record.

On February 5, 2007, the Board issued its Order on Petitioners' Motion to File a Motion, Motion to File an Extended Reply Brief, and Motion for Complete CD Record.

On February 7, 2007, the Board held the hearing on the merits. Present were, John Roskelley, Presiding Officer, and Board Member Dennis Dellwo. Board Member Joyce Mulliken was unavailable. Present for Petitioners were, Saundra Wilma, Robert Berger, Larson Beach Neighbors, & Jeanie Wagenman. Present for Respondent was Peter Scott. Present for Stevens County P.U.D., amicus party, was Brian Wurst.

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On February 12, 2007, the Board received Petitioners Larson Beach Neighbors and Jeanie Wagenman's Re-Submitted Hearing on the Merits Reply Brief.

On February 14, 2007, the Board received Respondent's Motion to Reconsider Order and Strike Portions of Petitioners' Reply Brief.

On February 15, 2007, the Board issued its Order on Respondent's Motion for Reconsideration.

III. PRESUMPTION OF VALIDITY, BURDEN OF PROOF AND STANDARD OF REVIEW

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

The Hearings Board will grant deference to counties and cities in how they plan under Growth Management Act (GMA). RCW 36.70A.3201. But, as the Court has stated, "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, 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 goals of the GMA." *Thurston County v. Cooper Point Association,* 108 Wn. App. 429, 444, 31 P.3d 28 (2001).

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

IV. ISSUES AND DISCUSSION

Issue No. 1:

Legal Issue #1 contains issues relating to Public Participation in passing Resolution 59-2006, The Comprehensive Plan (CP). Did one hearing in front of the County Commissioners on the final draft of the CP and one Commissioner hearing in which testimony was limited to changes made to the draft of the Stevens County CP, meet the requirements of RCW 36.70A.140, including but not limited to the following; "early and continuous public participation in the development and amendment of comprehensive plans"; "opportunity for open discussion"; and "public meetings after effective notice". Furthermore, did these two hearings which allowed no open discussion, or public questions and answers from the public to the commissioners, meet the goals and the "spirit of the Act" referred to in RCW 37.70A.020(11) and RCW 36.70A.140, and Countywide Planning Policy #8(I)(D) to wit: "provisions for open discussion"? If these public hearings were not closed on the date they were held, but continued to other dates without the same public notice, would this violate RCW 36.70A.140, "…The procedures shall provide …public meetings after effective notice.", and Stevens County Public Participation Policy Resolution 20-2002 page 13 which relates to "close hearing" as the last step in the hearing, and County-wide Planning Policy #8(I)C. "Public meetings after effective notice?

The Parties' Position:

Petitioners:

The Petitioners, Saundra Wilma and Robert Berger, contend that "open discussion", as it relates to public participation, means that citizens will have the opportunity to discuss issues with their elected officials, in this case the Stevens County Commissioners. RCW 36.70A.140 requires the public participation policy (PPP) to contain "provision for open discussion." The Stevens County PPP, Resolution 20-2002, provides for open discussion. The Petitioners argue that the Commissioners did not "provide for open discussion" as required by the PPP at either of the two Commissioner hearings and the Commissioners' action does not meet the goals or the spirit of the GMA.

The Petitioners contend that the Commissioners did not follow the Stevens County PPP, Resolution 20-2002, as written. For instance, the PPP calls for the hearing body

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(Commissioners) to deliberate in front of the public after a hearing is closed and afterward make a motion for disposition. A discussion then takes place, followed by a vote. The Petitioners argue that the Commissioners did not re-advertise continued hearings from the March 14, 2006, hearing. The June 12, 2006, hearing was the only advertised date after the March 14, 2006, hearing, even though there were six additional continued hearings after the March 14th hearing and before the June 12th hearing. If the hearings had been adjourned, as required by the GMA, then the Commissioners would have had to re-advertise the above mentioned hearings. The Petitioners contend the County significantly violated the spirit of the Act.

Respondent:

The Respondent contends that the Stevens County PPP has procedures that provide for open discussion and, therefore, complies with RCW 36.70A.140. Open discussions were provided at public meetings and workshops held in May, June, July, August, and September of 2005. Additional hearings were held by the BOCC on September 6 and 7, 2005.

According to Petitioner Wilma, open discussion requires immediate response in the form of active dialog. The Respondent argues that this definition is too narrow and creates a system that is unworkable and not required. The Respondent contends that all comments on the Comprehensive Plan were "meticulously responded to". Respondent's Brief at 6. Chapter 8, Section D of the PPP allows time limits and other appropriate constraints for hearings and discretion by the hearing body to orally address comments, which is what the BOCC said they would do.

The Respondent also argues that state law allows hearings to be continued or re-continued. The Petitioner's allege that the County violated the PPP because the PPP does not expressly allow for continuances. The Stevens County PPP does not prohibit the County from continuing and re-continuing hearings, so state law controls.

Petitioners HOM Reply:

The Petitioners contend that the CP draft hearings in September 2005, referred to by the Respondent, did not have UGAs or LAMIRDs chosen. The only public hearing on the

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final draft, which included maps of the UGAs and LAMIRDs, was February 21, 2006. The Petitioners contend there was no provision for open discussion at this hearing as the County's PPP requires. Rather than time limits for open discussion, the Commissioners denied discussion.

The Petitioners argue that RCW 42.30.100 does not allow the County to continue or re-continue any hearing without proper notice as provided in RCW 42.30.080. Proper notice for "special meetings" includes a local newspaper of general circulation. RCW 42.30.080. Re-notification would include the same as the original notification. According to the Petitioners, the requirement set forth in the statutes for notification was not done by the County.

Board Analysis:

RCW 36.70A.140 Comprehensive plans – Ensure public participation, is the heart and soul of the GMA. It requires "[E]ach county and city to establish and broadly disseminate to the public a public participation program providing for early and continuous public participation in the development and amendment of comprehensive land use plans and development regulations implementing such plans." It also requires procedures for an "opportunity for written comments, public meetings after effective notice, provision for open discussion, communication programs, information services, and consideration of and response to public comments."

The Petitioners argue that the County did not follow the requirements of RCW 36.70A.140 that requires "open discussion", nor did the County follow its own public participation policy (PPP), Resolution 20-2004, which also encourages and allows for open discussion in workshops, meetings and hearings. The Respondent disagrees and argues that open discussions were provided at public meetings and workshops and, therefore, the County followed its procedures found in the PPP and Countywide Planning Policies.

The Board agrees with the Respondent. The County's PPP, under Chapter 6, Provisions For Open Discussion, allows for open discussions between the Stevens County Planning Department, the committee, and the public under A. Workshops, and is

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encouraged under B. Meetings. Under C. Hearings, where public hearings are conducted by either the Planning Commission or the BOCC, open discussion can be considered optional:

> Hearings shall include opportunities, as deemed appropriate by the hearing body and as the issue and circumstances allow, for oral public comment and testimony on the proposal being considered. The hearing body shall encourage and solicit public opinions, reactions or suggestions and provide for open discussion.

The County's hearing procedures outlined in Chapter 6, D. Conduct Of Workshops, Meetings and Hearings To Provide For Equal Opportunities, does not require an exchange of dialogue between the hearing body and the public, only that testimony is allowed at a certain time in the proceeding. Under the heading, Order for Legislative Hearings, No. 10, Open for Hearing Body Discussion, the hearing body may open the subject for "discussion of finding of fact and conclusions by the Hearing Body members." Stevens County Resolution 20-2004. Nothing is mentioned about an open discussion taking place between the hearing body and the public.

The Stevens County Countywide Planning Policies (CWPP), under Policy #8, requires provisions for open discussion in its Citizen Participation Plan, which it has done. Again, nothing in the CWPP requires the hearing body, in this case the BOCC, to respond verbally in open discussion to the public. The option for open discussion is required and this obligation is taken care of in workshops and meetings, or in the alternative, in hearings at the discretion of the hearing body.

There are numerous decisions rendered by all the Hearings Boards concerning public participation required by the GMA. This Board, in *City of Ellensburg,* wrote the following:

> "Substantive compliance with the Act is the Board's first consideration. If it finds substantive compliance with the minimum requirements of the Act, its inquiry ends, except where the public participation process is at issue. If substantive compliance is arguable, the Board looks to evidence of procedural compliance. If the record shows valid consideration of the factors necessary for compliance, weight is given to the decision maker's position." *City of Ellensburg, et al. v. Kittitas County*, EWGMHB Case No. 95-1-0009, Final Decision and Order (May 7, 1996).

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The record shows that Stevens County gave sufficient public notice, held numerous public meetings, allowed both verbal and written public comment and, in general, followed its public participation policy adopted by Resolution 20-2004.

In *Save Our Butte Save Our Basin Society*, the Board said the elected decision makers must give the public their due consideration for public input:

> "The elected decision makers need not agree with all that participate or even with the majority of those speaking, as long as they comply with the GMA. They must, however, give the people of the county a chance to express their views on pending county action." *Save Our Butte Save Our Basin Society, et al. v. Chelan County*, EWGMHB Case No. 94-1-0015, Order on Compliance and Rescinding Invalidity Concerning Critical Areas (Sep. 2, 1998).

Stevens County gave its citizens ample opportunity to express their views on the County's Comprehensive Plan and the workshops, meetings and hearings fulfilled the County's obligation to its citizens:

> "Citizen or surrounding community disappointment in local government decisions is not a violation of the public participation requirements of the GMA, so long as a reasonable opportunity to comment has been provided." *City of Burien, City of Des Moines, City of Normandy Park and City of Tukwila v. City of Sea-Tac* (*Burien*), CPSGMHB Case No. 98-3-0010, FDO, August 10, 1998.

This Board said in *Saundra Wilma, et al.*, that public participation can take many forms, but it has to be adequate:

> "The GMA does not prescribe how public participation shall occur, it provides only that there be extensive public participation. The process must be examined to determine whether there is adequate public participation. This Board has always held that public participation was the very core of the Growth Management Act. Without it the legislative body cannot possibly know what its jurisdiction's needs are." *Saundra Wilma, et al. v. Stevens County,* EWGMHB Case No. 99-1-0001c, Final Decision and Order, May 21, 1999.

The Central Board defined several terms in their decision in *Twin Falls*:

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> "Take into account public input" means "consider public input." "Consider public input" means "to think seriously about" or "to bear in mind" public input; "consider public input" does not mean "agree with" or "obey" public input. T*win Falls Inc., Weyerhaeuser Real Estate Co., Snohomish County Property Rights Alliance and Darrell R. Harting v. Snohomish County* (*Twin Falls*), CPSGPHB Case No. 93-3-0003c, FDO, September 7, 1993.

The Central Board also clarified the weight of written comments and oral comments in public participation:

> "For purposes of satisfying the requirements of RCW 36.70A.140, written comments carry just as much weight as oral comments." *West Seattle Defense Fund v. City of Seattle* (*WSDF I*), CPSGMHB Case No. 94-3-0016, FDO, April 4, 1995.

The case decision that sheds considerable light on this particular issue concerning "open discussion" was written by the Central Board in *Robinson*:

> In RCW 36.70A.140, the Act envisions a "response" to public comments and "open discussion" to occur within a variety of forums including vision workshops, open houses, focus groups, opinion surveys, charettes, committee meetings and public hearings. It does not entitle citizens to a face-to-face confrontation and verbal exchange with elected officials about the Plan." *Robison, et al., v. City of Bainbridge Island [SBCA and BISD – Intervenors]* (*Robison*), CPSGMHB Case No. 94-3-0025c, FDO, May 3, 1995.

The Petitioners argue that the "public was denied their right to discourse with their elected representatives." Petitioners HOM brief at 8. The Act does not direct elected representatives to respond in one form or another. It is within the elected representative's discretion outlined in the jurisdiction's public participation plan as to the manner in which they will respond. Again, the Central Board considered this question in *Bremerton/Alpine*:

> "[T]he most appropriate definition of "respond" within the context of RCW 36.70A.140 is "to react in response." Applying this definition does not mean that jurisdictions must react in response to all citizens questions or comments; applying this definition means only that citizens comments and questions must be considered and, where appropriate, jurisdictions must take action in response to those comments and questions." *Bremerton, et al., v. Kitsap County*, CPSGMHB Case No. 95-3-0039c, FDO, October 6, 1995.

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As much as the Petitioners would like the BOCC to have an "open discussion" with them concerning their issues, there is no requirement in the GMA for the BOCC to do so. Elected officials are usually not land use experts. To be accurate and informed, they often take the time to consult with their expert staff before responding. Public hearings are to take the public's testimony. An open dialogue between a citizen and an elected official at a public hearing without more specific information on the issue, investigation into the pros and cons, and staff input is rare.

Conclusion:

The Board finds that the Petitioners have not carried their burden of proof in Issue No. 1.

Issues No. 2:

In naming the following unincorporated areas as Urban Growth Areas (UGAs): Addy, Clayton, Valley and Hunters, did Stevens County meet the requirements of RCW 36.70A.110(1) including, but not limited to the following "…An urban growth area may include territory that is located outside of a city only if such territory already is characterized by urban growth whether or not the urban growth area includes a city, or is adjacent to territory already characterized by urban growth, or is a designated new fully contained community as defined by RCW 36.70a.350" and would naming these areas as UGAs conflict substantially with RCW 36.70A.110(3) "Urban growth should be located first in areas already characterized by urban growth that have adequate existing public facility and service capacities to serve such development, second in areas already characterized by urban growth that will be served adequately by a combination of both existing public facilities and services and any additional needed public facilities and services that are provided by either public or private sources, and third in the remaining portions of the urban growth areas"?

The Parties' Position:

Petitioner:

The Petitioners argue that the County's four (of five) designated UGAs, Hunters, Valley, Addy and Clayton, are not urban in nature, but may qualify as LAMIRDs. The Petitioners contend the four UGAs do not fit the criteria in RCW 36.70A.030 "Urban Growth" and these UGAs fit a pattern of more intensive rural development as described by RCW

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36.70A.070(5)(d). The sewers in three of the four towns are limited in capacity; the UGA boundaries of Addy and Valley are larger than the boundaries of the existing service area of the PUD; there are no capital facilities plan or financial plan; and very little urban character. The Petitioners cite several Board cases to emphasize their points. The four urban growth areas are not characterized by urban growth or adjacent to urban growth. The Petitioners contend these UGAs should be LAMIRDs.

Respondent:

The Respondent contends that Stevens County designated UGAs based on local circumstances per RCW 36.70A.3201. The County added strategically located UGAs to manage future growth and services. The Respondent argues that there is no requirement for urban growth areas to be incorporated and that counties are permitted to designate UGAs outside cities in places characterized by urban growth. RCW 36.70A.110(1). Counties may also designate UGAs adjacent to unincorporated territory that is characterized by urban growth. The definition of urban growth states that urban governmental services are typically required only when urban growth is allowed to spread over a wide area.

According to the Respondent, the County went through an "extensive analysis" to characterize numerous communities as UGAs. Respondent's Brief at 8. The County used a variety of factors to designate UGAs, such as land use character, water and sewer service, proximity to existing UGAs, economic potential and environmental constraints. Five of the six highest scoring communities were designated as UGAs. The Respondent argues that Clayton was the only designated UGA that was not ranked in the highest category for land use; that three of the four designated UGAs have sewer systems; and that Hunters and Suncrest are remote urban communities in environmentally sensitive areas.

The Petitioner agrees that Hunters and Suncrest should become UGAs, but argues that the County already has cities that should develop before more UGAs are declared. The Respondent argues this reasoning is flawed. First, the communities provided favorable responses to the County to become UGAs. Second, the time is now, while the County is adopting its Comprehensive Plan, to designate UGAs because there must be sufficient urban

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areas to accommodate growth over the next twenty years. The County has decided to manage rural growth, which is more than 50% of the growth projected in Stevens County, by establishing new UGAs in previously approved high-density rural development.

The Respondent argues that if the County can only designate UGAs based on the Office of Financial Management's (OFM) projection for urban growth, it would never be able to increase the percentage of growth occurring in urban areas. According to the Respondent, this last statement is "especially true in Stevens County where the built environment includes vested high-density plats and a growth pattern that is remote from its existing UGAs." Respondent's Brief at 12. The newly designated UGAs are defined by existing and platted development, so it makes sense to increase the percentage of growth that is urban by facilitating high-density growth where it is already approved. These unincorporated UGAs are intended to encourage a higher percentage of urban growth in Stevens County in order to minimize the loss of agricultural land and open space to low-density development.

The Respondent contends that designating new UGAs is appropriate to lessen the financial burden on the County. Low density rural development increases the demand for certain services and is more costly to provide.

Amicus Response (PUD No. 1):

Public Utility District No. 1 (PUD) contends that all of the unincorporated areas designated UGAs are "urban" in character in light of the local circumstances of the County. The record reflects population growth in the County will be seven times higher in the unincorporated areas than in incorporated cities and towns. According to the PUD, the GMA specifically allows the designation of UGAs in the unincorporated areas, if such area is characterized by "urban growth," as defined by RCW 36.70A.030(18). The PUD points out that the Petitioner acknowledges that UGAs typically require urban governmental services, as defined in RCW 36.70A.030(20). The County used six factors to evaluate whether areas qualified for UGA designation. These six factors are public water service, public sewer service, proximity to other UGAs, economic potential, potential for environmental impacts,

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and land use character. Addy, Clayton, Valley and Hunters all scored the highest under these factors, even though Hunters does not have a sewer system presently.

Amicus Response (CTED)

CTED contends that the GMA allows a UGA to extend beyond municipal boundaries or even to be located where there are no municipal boundaries. A UGA can be where it contains territory that "already is characterized by urban growth," "is adjacent to territory already characterized by urban growth," or "is a designated new fully contained community." RCW 36.70A.110(1). According to the courts, it would be inconsistent with legislative intent to unnecessarily constrain the ability of local jurisdictions to plan and manage for imminent and inevitable growth. *Quadrant Corp v. Growth Mgmt. Hrgs. Bd.*, 154 Wn.2d 239, 110 P.3d 1132 (1995). In counties with substantial urban areas or pressure for urban sprawl, urban growth most certainly should be directed to cities and existing UGAs, and UGA expansion and the designation of new UGAs should occur only when existing capacity is reasonably expected to be exhausted within the 20-year planning horizon.

According to CTED, Stevens County is in a "different situation." The County has an opportunity to plan for urban development before the press of urban sprawl reduces its planning options. CTED contends that the GMA permits a predominantly rural county to designate a limited number of established communities to receive urban growth – even if those communities are not yet incorporated – as a means of encouraging urban development in UGAs and discouraging urban development in rural areas. The key is whether the County used a deliberative process that is consistent with the goals and requirements of the GMA. Unlike more populous counties in Washington, there are few options for centering new urban development on existing cities. In developing its Comprehensive Plan, the County sought to reduce anticipated pressures for more rural development "by establishing four unincorporated UGAs as a means of channeling future population growth into urban areas." Amicus brief at 5 (CTED).

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CTED argues that the central question before the Board is whether the deliberations undertaken by the County reflect a process that is consistent with the goals and requirements of the GMA. CTED suggests the answer is yes, given the local conditions. First, the County adopted the Office of Financial Management's (OFM) intermediate projection. Second, the County proposed Land Use Policy LU-1 to raise the percentage of new growth that occurs in designated urban areas and to reduce sprawling, low-density development in non-urban areas. Third, the County adopted supporting land use policies to ensure that UGAs are appropriately located and sized. Fourth, the County undertook an analysis of nine unincorporated communities, including the four at issue here, to determine whether and how they might be designated to encourage new development and discourage sprawling low-density rural development. The County considered creating UGAs or LAMIRDs and chose UGAs as the best alternative, given the ratings scale it developed from specific criteria.

CTED contends that the County acknowledged that designating new UGAs would not guarantee that new urban development would be attracted to those communities. The County made the "conscious, rational decision that urban development is more likely to be channeled to designated UGAs and away from rural areas, if UGAs are intelligently planned and located where at least some urban-level development and urban services are available or can be made available." CTED brief at 9.

CTED contends that in this situation, the County's decision to designate four unincorporated UGAs was a reasoned decision, consistent with the GMA's goals of channeling urban growth into urban areas and avoiding urban sprawl into rural areas.

Petitioners HOM Reply:

The Petitioners contend that Addy, Clayton and Valley did not have sanitary sewers operated by the PUD prior to 1993 and there are no dates for the creation of these sewers in the record. The Petitioners contend that all three sewers were installed after 1995 and provide PUD Resolutions No. 1-95, 8-97 and 19-99 as proof. They cite RCW 36.70A.110 and argue that cities are the units of local government most appropriate to provide urban

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governmental services except in those limited circumstances shown to be necessary to protect basic public health and safety. The PUD used RCW 36.70A.110(4) to place sanitary sewers in Addy, Clayton and Valley. The Petitioners contend the "PUD simply provided three rural areas with sanitary sewers for the health and welfare of the occupants." There were no urban areas created.

According to the Petitioners, the community of Hunters has been unresponsive to the PUD installing sewer and the citizens will have no choice but to accept the County's and PUD's decision to install them.

The Petitioners contend that Stevens County is a rural county and will not change its population gain to urban growth areas. By declaring these areas urban, the County removes the rural lifestyle the inhabitants have chosen, and subjects those citizens to future urbanization. The Petitioners also argue that based on the population figures allocated to Stevens County by OFM, there are discrepancies in the County's targets for urban areas at four units per acre. With the inclusion of Suncrest, with an acreage of 4,867, the county could support the entire county population into the city UGAs. Additional UGAs are not warranted.

The Petitioners argue that an appropriate land capacity analysis was not done and, if one were to be completed, the figures would not add up to allow UGAs in Clayton, Addy, Valley and Hunters.

Board Analysis:

There are two parts to Issue No. 2. The first part challenges compliance with the UGA location requirements of RCW 36.70A.110(1), and the second part asks if the County, by designating four of the five new UGAs, is in conflict with RCW 36.70A.110(3).

The GMA allows the designation of UGAs in unincorporated areas, if such area is characterized by urban growth. Urban growth is defined by RCW 36.70A.030(18):

> "Urban growth" refers to growth that makes intensive use of land for the location of buildings, structures, and impermeable surfaces to such a degree as to be incompatible with the primary use of land for the production of food, other agricultural products, or fiber, or the extraction of mineral resources,

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> rural uses, rural development, and natural resource lands designated pursuant to RCW 36.70A.170."

RCW 36.70A.110(1) requires counties and cities to designate urban growth areas within which urban growth shall be encouraged and outside of which growth can occur only if it is not urban in nature:

> "Each city that is located in such a county shall be included within an urban growth area. An urban growth area may include more than a single city. An urban growth area may include territory that is located outside of a city only if such territory already is characterized by urban growth whether or not the urban growth area includes a city, or is adjacent to territory already characterized by urban growth, or is a designated new fully contained community as defined by RCW 36.70A.350."

Stevens County followed a process to determine whether certain areas within the County already characterized by urban-type growth should be designated as either unincorporated UGAs or as LAMIRDs. Taking into account growth projections, the existing built environment and vested plats, as well as economic and environmental issues, the County concluded that "additional strategically located UGAs were needed to manage future growth and services." Respondent's brief at 8. The County used six factors to evaluate whether areas qualified for UGA designation. These six factors included public water service, public sewer service, proximity to other UGAs, economic potential, potential for environmental impacts, and land use character. The unincorporated urban-like areas of Addy, Clayton, Valley, Hunters and Suncrest were selected as new UGAs by their ranking based on the six factors. Taking into account the medium population allocation by OFM, the County chose to designate new unincorporated UGAs in areas already characterized by urban growth to accommodate some of the expected growth.

This Board recognizes that designating UGAs that are not adjacent to or abutting incorporated UGAs is unusual, but has been done by counties in other parts of the state. The Western Board has decided several cases that have to do with newly designated unincorporated UGAs, which they call non-municipal UGAs. In *Advocates for Responsible*

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Development, et al., the Western Board clarified the terms "territory" and "adjacent" in the statute:

> "We agree with the County that parcel-by-parcel contiguity is not what is required by the phrase "adjacent to territory already characterized by urban growth". The GMA uses the term "territory" when referring to lands that may be included in a UGA: … An urban growth area may include **territory** that is located outside of a city only if such **territory** is already characterized by urban growth whether or not the urban growth area includes a city, or is adjacent to **territory** already characterized by urban growth…" RCW 36.70A.110(1)(in part)(emphasis added)
>
> "Territory" is not defined in the GMA so we turn to the dictionary to interpret its meaning. ("Unless contrary legislative intent is indicated, words are given their ordinary, dictionary meaning". *City of Bellevue v. Lorang,* 140 Wn.2d 19 at 24, 992 P.2d 496, 2000 Wash LEXIS 79 (2000)). The Random House Dictionary defines "territory" as: 1. any tract of land; region or district. 2. the land and waters belonging to or under the jurisdiction of a state, sovereign, etc. 3. any separate tract of land belonging to a state.
>
> "Adjacent" is also undefined in the GMA; again, the dictionary definition is instructive: 1. lying near, close, or contiguous; adjoining; neighboring (*a field adjacent to the highway*) 2. just before, after, or facing (*a map on an adjoining page*) "Territory …adjacent to territory" must therefore mean that the tracts of land are near, close or contiguous. It does not mean that every lot or parcel within the territory included must be contiguous to a lot or parcel already characterized by urban growth. 06-2-0005: *Advocates for Responsible Development, et al v. Mason County and Brian Petersen, et al, Intervenors*, WWGMHB Case No. 06-2-0005 FDO, August 14, 2006.

By statute, the legislature requires the Board "to grant deference to counties and cities in how they plan for growth, consistent with the requirements and goals of" the GMA. RCW 36.70A.3201. Accordingly, the Board must defer to the County's planning actions, if they are consistent with the goals and requirements of the GMA. *Quadrant* Corp. v. Hearings Board, 154 Wn.2d 224, 238, 110 P.3d 1132 (2005). The Board cannot find error or violation of RCW 36.70A.110(1) by Stevens County within the context of this issue. Counties

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are allowed by statute to designate UGAs in territory already characterized by urban growth.

In the second part of the issue, the Board is asked to decide if designating Addy, Valley, Hunters and Clayton as UGAs is in conflict with RCW 36.70A.110(3), which states:

> "Urban growth should be located first in areas already characterized by urban growth that have adequate existing public facility and service capacities to serve such development, second in areas already characterized by urban growth that will be served adequately by a combination of both existing public facilities and services and any additional needed public facilities and services that are provided by either public or private sources, and third in the remaining portions of the urban growth areas. Urban growth may also be located in designated new fully contained communities as defined by RCW 36.70A.350."

RCW 36.70A.110(3) requires in part that urban growth take place in areas that have <u>existing public facilities and service capacities</u> or in areas that can be served by a combination of both existing <u>public facilities and services and any additional needed public facilities and services that are provided by either public or private sources</u> (Board emphasis). In order to ensure that urban areas have the necessary public facilities and services, counties and cities are required under RCW 36.70A.070 to adopt a comprehensive plan with specific mandatory elements. RCW 36.70A.070(3) requires Stevens County to include a capital facilities plan, which consists of:

> (a) An inventory of existing capital facilities owned by public entities, showing the locations and capacities of the capital facilities; (b) a forecast of the future needs for such capital facilities; (c) the proposed locations and capacities of expanded or new capital facilities; (d) at least a six-year plan that will finance such capital facilities within projected funding capacities and clearly identifies sources of public money for such purposes; and (e) a requirement to reassess the land use element if probable funding falls short of meeting existing needs and to ensure that the land use element, capital facilities plan element, and financing plan within the capital facilities plan element are coordinated and consistent. Park and recreation facilities shall be included in the capital facilities plan element.

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While the Stevens County Comprehensive Plan provides some information about capital facilities planning in the new unincorporated UGAs, and additional information about sewer and water is available in the Stevens Public Utility District's (PUD) 2005 Updated Comprehensive Water System Plan (Exh. 536), the County fails its obligation under RCW 36.70A.070(3). The County acknowledges its responsibility under this statute in its Capital Facilities Plan Element, yet fails to provide: (1) a complete inventory of existing capital facilities; (2) adopt or incorporate the PUD's and other provider's capital facilities plans; (3) provide a forecast of the future needs for such capital facilities for the new unincorporated UGAs"; (4) include the proposed locations and capacities of expanded or new capital facilities; (5) and include a six-year plan that will finance the public facilities and services in the new UGAs.

In fact, under CFP-1, the County's policy is to "[D]evelop and regularly update a six-year financing program for capital facilities that meets the requirements of the GMA, achieves the County's objectives for level of service, and is within the County's financial capabilities to carry out." "Develop" in this context seems to mean "in the future." No detailed capital facilities plan or financial plan to support a capital facilities plan as required by the GMA was written and submitted with the Comprehensive Plan. In addition, the Board can not find levels of service (LOS) for public facilities or services.

The parties debated the definition of "public facilities" and "capital facilities". Capital facilities are considered "public facilities" as defined by RCW 36.70A.030(13).

> For purposes of conducting the inventory required by RCW 36.70A.070(3)(a), "public facilities" as defined at RCW 36.70A.030(13) are synonymous with "capital facilities owned by public entities." *West Seattle Defense Fund v. City of Seattle*, CPSGMHB Case No. 94-3-0016, FDO April 4, 1995.

The Central Board further defined "capital facilities" and what is required to fulfill the GMA obligation:

> "The Board holds that a Capital Facilities Element must include all facilities that meet the definition of public facilities set forth in RCW 36.70A.030(12). All facilities included in the CFE must have a minimum standard (LOS) clearly

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> labeled as such (i.e., not "guidelines" or "criteria"), must include an inventory and needs assessment and include or reference the location and capacity of needed, expanded or new facilities. (RCW 36.70A.070(3)(a), (b) and (c). In addition, the CFE must explicitly state which of the listed public facilities are determined to be "necessary for development" and each of the facilities so designated must have either a "concurrency mechanism" or an "adequacy mechanism" to trigger appropriate reassessment if service falls below the baseline minimum standard. Transportation facilities are the only facilities required to have a concurrency mechanism, although a local government may choose to adopt a concurrency mechanism for other facilities." *Jody L. McVittie v. Snohomish County*, CPSGMHB Case No. 01-3-0002), Final Decision and Order, July 25, 2001.

Therefore, as defined by "public facilities", the County is required to have a capital facilities plan and financial plan for "streets, roads, highways, sidewalks, street and road lighting systems, traffic signals, domestic water systems, storm and sanitary sewer systems, parks and recreational facilities, and schools." In addition, the capital facilities plan and financial plan must also include "public services", defined as "fire protection and suppression, law enforcement, public health, education, recreation, environmental protection and other governmental services." WAC 365-195-200(12) and (13).

The Board couldn't find in the County's Final CP, Final Draft CP, Appendix A or the FEIS any mention of specific adopted levels of service (LOS) for public facilities and services, a list of public facilities "determined to be necessary for development", or a "concurrency mechanism" or an adequacy mechanism" to trigger appropriate reassessment, if service falls below the baseline minimum standard. *McVittie v. Snohomish County*, FDO. The County can not determine what it will need in the future for public facilities and services without knowing what levels of service it has to meet.

The PUD is the main provider of sewer and water services in Stevens County and the incorporated cities. It has documented the present state of its facilities, including the facilities, or lack thereof, located within the five new UGAs. The PUD also has provided a forecast of growth projections and existing service area maps for Addy, Suncrest, Clayton, and Valley. Hunters is not currently served by the PUD and the residents have indicated by

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not responding to the PUD's offer to provide services that they are not willing to accept the PUD services at this time. Other special districts will provide the new UGAs with education facilities and fire protection. Capital facilities and financing plans adopted by special districts, other jurisdictions, and private providers should be incorporated into the County's CFP and financial plan. Again, as far as the Board can tell, there is no future financial plan to support the new UGAs with sewer and water as they are now currently sized.

The Central Board decided in two *Bremerton v. Kitsap County* cases that counties should at least provide some detailed capital facilities and financing information from special purpose districts, other jurisdictions or private interests in its CFP or be cautious in designating new UGAs:

> "If a county designates a UGA that is to be served by a provider (other than the county), the county should at least cite, reference or otherwise indicate where locational and financing information can be found that supports the UGA designations and GMA duty to ensure that adequate public facilities will be available within the area during the twenty-year planning period." *Bremerton/Port Gamble v. Kitsap County,* CPSGMHB Case No. 5339/7324c*,* FDO September 8, 1997.

> "If a county has limited authority to locate and finance needed infrastructure because those aspects of capital facility decision-making rest with special districts, other jurisdictions (city, state or federal governments) or private interests, then a county should be cautious and judicious in designating UGAs until assurances are obtained that ensure public facilities and services will be adequate and available." *Bremerton, et al., v. Kitsap County* CPSGMHB Case No. 95-3-0039c and No. 97-3-0024c, Order at 42, Sept. 8, 1997.

The Western Board in *Ludwig, et al., v. San Juan County* agreed with the Central Board in that a county's plan for a UGA must include capital facilities information and financing for those services:

> "An urban growth area may be designated where there is a realistic plan for the extension of urban levels of service throughout the UGA during the 20-year planning horizon. Here, the County has chosen to rely upon private agencies to provide water and sewer services to the Lopez Village UGA. Private providers may be the source of such public services. See RCW 36.70A.110(3). However, if they are, the County's plan for the UGA must

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> include necessary capital facilities information and financing for those services needed during the planning period. RCW 36.70A.070(3)(a), (c), and (d)." *Stephen F. Ludwig, et al., v. San Juan County*; Case No. 05-2-0019c WWGMHB FDO April 19, 2006.

All three Growth Management Hearings Boards have consistently held that counties and cities must include the mandatory elements in their comprehensive plans. A detailed capital facilities plan and a six-year financial plan that will finance such capital facilities is not an option. Generalized statements in the County's Comprehensive Plan (8.0 Capital Facilities Plan Element, and 7.0 Utilities Element, Stevens County Final Draft Comprehensive Plan, Appendix A, A-49 and 50, A-53 through A-56) of what capital facilities the County has presently and may need in the future does not clearly identify what is needed to support the incorporated cities, let alone the new unincorporated UGAs, nor how much these public facilities and services will cost and sources of public money needed for such purposes.

The Board acknowledges that the County can designate unincorporated UGAs, but it should be cautious and follow the GMA requirements for designating UGAs. As the Western Board said in *Irondale Community Action Neighbors* in support of designating unincorporated UGAs:

> "A defined funding mechanism needs to be included in the capital facilities plan before urban development is allowed. Public sanitary sewer service is a key urban governmental service with important public health and environmental consequences, and is essential to providing urban densities. At the same time, we must acknowledge the thorny problem facing the County. <u>The County has reasonably chosen to consider the existing small lots as "urban growth." The choice to create an urban growth area which incorporates existing urban growth is also a responsible one – but it must be accompanied by urban levels of service. Otherwise, new growth will compound the existing problem.</u> Board emphasis. *Irondale Community Action Neighbors v. Jefferson County*; WWGMHB Case No. 03-2-0010, FDO, May 31, 2005.

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Conclusion:

In the first part of the issue, the Respondent's argument concerning the location of the new unincorporated UGAs is acceptable. In the second part, the Board finds that the Petitioner has carried their burden of proof and that the County's actions are clearly erroneous. The County failed to adopt a capital facilities plan and six-year financial plan as required by RCW 36.70A.110(3) and RCW 36.70A.070(3).

Issue No. 3:

If the population projections used by Stevens County were substantially different from the population projections adopted in the comp plans of Colville, Springdale and Marcus, would theses differences substantially interfere with the consistency requirements of RCW 36.70A.100? "The comprehensive plan of each county or city that is adopted pursuant to RCW 36.70A.040 shall be coordinated with, and consistent with the comprehensive plans adopted pursuant to RCW 36.70A.040 of other counties or cities with which the county or city has, in part, common borders or related regional issues." And would this UGA adoption interfere substantially with RCW 36.70A.210(1) "…This framework shall insure that the city or county comprehensive plans are consistent as required by RCW 36.70A.100." Do these conflicting population forecasts interfere substantially with Countywide Planning Policies (CPP) #1, "Each jurisdiction shall base their urban capital facilities element (e.g. their urban growth area) on a proportion of the population projection numbers for Stevens County from the Washington State Office of Financial Management. The combined population figures for each municipality and the County must total the State's population forecast for Stevens Count."?

The Parties' Position:

Petitioners:

The Petitioners failed to brief Issue No. 3.

Respondent:

The Respondent argues that the Petitioner expressly waived this issue.

Board Analysis:

The Board agrees the Petitioner failed to brief Issue No. 3 and is deemed abandoned.

Conclusion:

The Petitioner failed to brief this issue, therefore it is abandoned.

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Issue No. 4:

Transference of governance within UGAs: If the population projections for Addy, Clayton, Hunters and Valley do not reach the threshold to become a municipality by 2010, and these UGAs are not adjacent to any cities to provide services by annexation, do naming these areas as UGAs substantially interfere with the Act including, but not limited to RCW 36.70A.210(1)? "The legislature recognizes that counties are regional governments within their boundaries, and cities are primary providers of urban governmental services within urban growth areas." If the CP provides no analysis of infrastructure to support urban densities for these four areas, would this interfere substantially with RCW 36.70A.210(1) id, and Countywide Planning Policy (CPP) #1(III) "Designated urban growth areas should include those portions of our communities already characterized by urban growth that have existing public facilities and service capacities to serve such developments as well as those areas projected to accommodate future growth"? Are these four proposed UGAs non-compliant with CPP #2(I)(C) "The availability of the full range of urban services will be subject to the annexation policy of the adjacent municipality"?

The Parties' Position:

Petitioners:

The Petitioners argue that Stevens County is out of compliance for not including an incorporation policy within its Comprehensive Plan for isolated UGAs and the communities of Hunters, Clayton, Addy and Valley do not have a forecasted population figure that would allow these areas to incorporate in the State of Washington. Therefore, the burden for responsibility for the governance of these UGAs would be on Stevens County and the taxpayers.

Respondent:

The Respondent argues that none of the new UGAs designated by the County are in close proximity to an existing municipal UGA and, therefore, as cited in the Petitioner's brief, the County is under no obligation to plan for transference of governance as part of its Comprehensive Plan. The Petitioner acknowledges that "the C[W]PP does not expressly prohibit naming UGAs that are not contiguous to a municipality. Wilma Brief at 14." Respondent's Brief at 14.

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Amicus Response (PUD No. 1)

The PUD contends that a "UGA specifically allows an area to be designated as a UGA if the 'territory that is located outside of a city only if such territory already is characterized by urban growth,' whether or not the urban growth area includes a city." RCW 36.70A.110(1) and Amicus brief at 7. According to the PUD, under the GMA the comprehensive plan need not require annexation or incorporation of UGAs and there is no showing by the Petitioner that these areas are not characterized by urban growth.

Petitioners HOM Reply:

The Petitioners quote a paragraph from *Tacoma v. Pierce County*, CPSGMHB Case No. 94-3-0001 FDO, which in part says that a UGA must have urban governmental services provided primarily by cities.

Board Analysis:

The Board agrees with the Respondent and the PUD. As discussed under Issue No. 2, RCW 36.70A.110(1) specifically allows for an area to be designated as an urban growth area: "territory that is located outside of a city only if such territory already is characterized by urban growth." The five new unincorporated UGAs were determined by the County to be urban in nature after following a process with a ratings scale to determine whether certain communities could be designated UGAs. The areas are "characterized by urban growth, relative to the local circumstances of the County". "Under the GMA, the comprehensive plan need not require annexation or incorporation of UGAs." PUD brief at 7. The Board is not saying it agrees with the population allocation or the density provision found in the CWPP LU-3(D.), only that UGAs can be located as per RCW 36.70A.110(1).

The Petitioner acknowledges that "the C[W]PP does not expressly prohibit naming UGAs that are not contiguous to a municipality." Wilma brief at 14.

Conclusion:

The Board finds the Petitioners have failed to carry their burden of proof in Issue No. 4.

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Issue No. 5:

The County shows no greenbelts and open spaces on its maps portraying the UGAs of Clayton, Valley, Addy and Hunters. Does this interfere substantially with RCW 36.70A.110(2), "…Each urban area shall permit urban densities and shall include greenbelt and open space areas'?

The Parties' Position:

Petitioners:

The Petitioners argue there are no greenbelts and open spaces as required by RCW 36.70A.070(8) in the plans for the four UGAs and cites *Wilma et al v. Stevens County*, EWGMHB Case No. 99-1-0001c, to show that greenbelts and open spaces are necessary components of a UGA.

Respondent:

The Respondent argues that the County's land use policy for open spaces (LU/OS-1) identifies a variety of uses and designations, such as rural development patterns, wetlands and riparian corridors, as greenbelts and open space. They contend that all of the new UGAs include some rural development patterns, as well as limited critical areas, and mention Suncrest and Clayton as examples. The Respondent also argues that the County's CWPP encourages the designation of open space and recreational opportunities, not requires such elements.

Petitioners HOM Reply:

The Petitioners again quote *Tacoma v. Pierce County* and argue that there are no designated greenbelts or open spaces as required by the County's own Comprehensive Plan at Open Space LU/OS-1 and LU/OS-2.

Board Analysis:

The Board agrees with the Petitioners. RCW 36.70A.110(2) requires that "[E]ach urban growth area shall permit urban densities and shall include greenbelt and open space areas." The County has incorporated cities and newly designated unincorporated UGAs. The statute requires that greenbelts and open space be part of the County's planning.

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The Western Board narrowed the responsibility to counties in *Agriculture for Tomorrow:*

> RCW 36.70A.110(2) applies only to counties; it does not impose that requirement [to *include* greenbelt and open space areas when it designates UGAs] on cities. *Agriculture for Tomorrow v. City of Arlington,* CPSGMHB Case No. 95-3-0056, FDO, Feb. 13, 1996.

In *Evergreen v. Skagit County*, the Western Board opined:

> Counties are required to identify "green belt and open space areas" within UGAs and to "identify open space corridors within and between" UGAs. Official maps, which do not show these areas fail to comply with the GMA. *Evergreen v. Skagit County,* WWGMHB Case No. 00-2-0046c, Final Decision and Order, 2-6-01.

Greenbelts are not mentioned in the County's CWPP under Open Space planning policies. The County has within its discretion in "their comprehensive plans to make many choices about accommodating growth." RCW 36.70A.110(2). As such, the County is required to at least analyze the potential for greenbelt and open space within specific UGAs. The County can base its decision on a variety of criteria, including population, size, and need of the individual UGAs, factor that analysis into its planning and show designated greenbelts and open space in the County's maps. Some UGAs may not need greenbelts or open spaces, some may need both. Regardless, the County must include greenbelt and open space areas or show its work why greenbelts and open spaces are not necessary when it designates UGAs.

Conclusion:

The Board finds that the Petitioners have carried their burden of proof and that the County's actions are clearly erroneous. The County failed to designate or identify greenbelts and open space or show its work why these elements were not considered within the new unincorporated UGAs.

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Issue No. 6:

The County has declared two non contiguous areas of Loon Lake as a Land Area of More Intense Rural Development (LAMIRD) including 74 acres of commercial land and 19 acres of residential land, but has excluded a large portion of the built environment residential land near the school, medical clinic and post office. Does this meet the goals of RCW 36.70A.070(5)(d)(iv) "…Lands included in such existing areas or uses shall not extend beyond the logical outer boundary delineated predominately by the built environment, but that may also include undeveloped lands if limited as provided in this section. The county shall establish the logical outer boundary of an area of more intense rural development. In establishing the logical outer boundary the county shall address (A) the need to preserve the character of existing natural neighborhoods and communities, (B) physical boundaries such as bodies of water, streets and highways, and land forms and contours, (C) the prevention of abnormally irregular boundaries, and (D) the ability to provide public facilities and services in a manner that does not permit low density sprawl." Does this exclusion of residential land interfere substantially with the goals of the act including, but not limited to Goal #4 (RCW 36.70A.0202(4) "Housing. Encourage the availability of affordable housing to all economic segments of the population of this state, promote a variety of residential densities and housing types, and encourage preservation of existing housing stock"?

The Parties' Position:

Petitioners:

The Petitioners argue that the County has made a mistake by creating two LAMIRDs, at Loon Lake, rather than one continuous LAMIRD that would include the developed land between the two. The Petitioners contend the "no-man's land" between the two LAMIRDs has all the urban services and built environment necessary to be included into one large designated LAMIRD and would infill accordingly. Petitioners' brief at 17. The Petitioners cite RCW 36.70A.070(5)(d)(iv) to emphasize their argument and claim that the County's two LAMIRDs substantially interfere with the GMA Goals Nos. 2, 4, and 6.

Respondent:

The Respondent contends that the two LAMIRDs have logical boundaries and conform to the requirement not to extend beyond the predominantly built environment. The area in question, which lies between the two designated LAMIRDs, is currently not developed beyond ordinary rural intensity and was not characterized by urban growth in

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1993. The decision as to whether this area should be included as part of one contiguous LAMIRD was deferred by the County in recognition of the need for additional public input in the upcoming Loon Lake sub-area planning process. According to the Respondent, the existing LAMIRDs accurately reflect the bifurcated nature of the built environment that existed in 1993 and only the sub-area planning process will best determine how best to manage growth in the Loon Lake watershed.

Amicus Response (CTED):

CTED argues that RCW 36.70A.070(5)(d)(iv) does not require that any particular LAMIRD extend all the way to "the logical outer boundary." Accordingly, the alleged exclusion of some area that qualifies for inclusion in a LAMIRD cannot be a violation of that statute. Without non-compliance, there can be no substantial interference with the goals of the GMA. RCW 36.70A.302(1).

Petitioners HOM Reply:

The Petitioners argue that infill has taken place between the two proposed Loon Lake LAMIRDs and that the County's development map is wrong. They also contend that the PUD's 6.2 acre property was put into the LAMIRD, but not the Petitioners developed property.

The Petitioners contend that the County chose 452 acres for the LAMIRD at Arden and only 93 acres for Loon Lake. They argue that the County considered Loon Lake an urban area at one point, then a LAMIRD later. LAMIRDs can never be made larger. CTED did not indicate that the Petitioners property did not qualify as built environment for the LAMIRD, just that the boundary need not encompass all the property to the very end. The Petitioners argue that if a LAMIRD can't be expanded or enlarged, why did the County place an urban reserve area in the middle of the two?

Board Analysis:

The County went through a lengthy and arguably detailed process to determine which areas of urban-like development in the County should be designated unincorporated UGAs or LAMIRDs. The Loon Lake commercial/residential urban-like area was ranked sixth

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out of the nine communities eligible for consideration and, after additional analysis by County staff, was designated a LAMIRD with two distinct logical outer boundaries. In this case, the Board believes the County showed its work. The Board's decision for this LAMIRD does not mean we agree or disagree with the designation of Loon Lake as a LAMIRD or the "logical outer boundaries" of the LAMIRD. In fact, there doesn't seem to be a logical explanation for the County to designate 1,713 acres of residential in the West Kettle Falls LAMIRD without any discussion in the FEIS, 238 acres of residential at Arden, and yet choose to exclude six additional acres between the two LAMIRDs at Loon Lake, which would have made one logical LAMIRD.

RCW 36.70A.320(3) directs the Boards to apply a more deferential standard of review to actions of counties and cities and allow them to balance priorities and options when developing their comprehensive plan "in full consideration of local circumstances." RCW 36.70A.3201.

> In amending RCW 36.70A.320(3) by section 20(3), chapter 429, Laws of 1997, the legislature intends that the boards apply a more deferential standard of review to actions of counties and cities than the preponderance of the evidence standard provided for under existing law. In recognition of the broad range of discretion that may be exercised by counties and cities consistent with the requirements of this chapter, the legislature intends for the boards to grant deference to counties and cities in how they plan for growth, consistent with the requirements and goals of this chapter. Local comprehensive plans and development regulations require counties and cities to balance priorities and options for action in full consideration of local circumstances. The legislature finds that while this chapter requires local planning to take place within a framework of state goals and requirements, the ultimate burden and responsibility for planning, harmonizing the planning goals of this chapter, and implementing a county's or city's future rests with that community.

RCW 36.70A.070(5)(d)(iv) states:

> (iv) A county shall adopt measures to minimize and contain the existing areas or uses of more intensive rural development, as appropriate, authorized under this subsection. Lands included in such existing areas or uses shall not extend beyond the logical outer boundary of the existing area or use, thereby

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allowing a new pattern of low-density sprawl. Existing areas are those that are clearly identifiable and contained and where there is a logical boundary delineated predominately by the built environment, but that may also include undeveloped lands if limited as provided in this subsection. The county shall establish the logical outer boundary of an area of more intensive rural development. In establishing the logical outer boundary the county shall address (A) the need to preserve the character of existing natural neighborhoods and communities, (B) physical boundaries such as bodies of water, streets and highways, and land forms and contours, (C) the prevention of abnormally irregular boundaries, and (D) the ability to provide public facilities and public services in a manner that does not permit low-density sprawl;

The Board may not agree with the County on designating two LAMIRDs at Loon Lake and its analysis when compared to the West Kettle Falls LAMIRD designation and the statute's wording, "…but that may also include undeveloped lands if limited as provided in this subsection", but after review of the County's work and analysis, and in light of the requirements of RCW 36.70A.070(5)(d)(iv), the Board agrees that the Loon Lake LAMIRD, as proposed, follows the mandate of the GMA to designate limited areas of more intense development as LAMIRDs.

Conclusion:

The Board finds the Petitioners have failed to carry their burden of proof in Issue No. 6.

Issue No. 7:

In LU-7 (B) and (C) the County has established an "urban" reserve classification and designated this classification to the proximate to a UGA to keep minimum lot size at 10 acres for possible inclusion in a UGA at a later date. Does this interfere substantially with private property rights RCW 36.70A.370(2) "Local governments that are required or choose to plan under RCW 36.70A.040 and state agencies shall utilize the process established by subsection (1) of this section to assure that proposed regulatory or administrative actions do not result in an unconstitutional taking of private property."? Does this "saving" or "holding" pattern interfere with CPP Preamble #6 "Property rights. Private property shall not be taken for public use without just compensation having been made. The property rights of landowners shall be protected from arbitrary and discriminatory actions"?

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The Parties' Position:

Petitioners:

The Petitioners contend the County has violated the landowner's legal rights by an arbitrary and capricious action in designating a large portion of the Loon Lake area as Urban Reserve. A sub-area plan for the Loon Lake area was developed by the County and citizens, yet not adopted during the Comprehensive Plan process. The Petitioners argue that by designating ten acre minimum lots in the Loon Lake watershed for Urban Reserve until a plan is in place violates their rights.

Respondent:

The Respondent contends that counties have the right to plan for future urban development where it makes sense to do so. Stevens County has designated two Urban Reserve areas, one at Loon Lake and the other at Hunters, which may be appropriate for inclusion within a UGA at a later date. The Respondent argues that the community committed to the sub-area planning process and, in recognition of the substantial disagreement within the Loon Lake community over growth management, the County has elected to defer a determination of a UGA in this area until that process is completed. They also argue that the Urban Reserve designation is a place holder to preserve the status quo until the sub-area plan is adopted. The Respondent contends that Ms. Wilma's challenge to her constitutional property rights is premature and she needs to challenge the zoning after the designation is completed. The Respondent also contends that the Hunters UGA is heavily platted and, therefore, a logical choice for future urban growth.

Petitioners HOM Reply:

See Petitioners answer to Issue No. 6.

Board Analysis:

The Petitioner asks the Board to determine if the Urban Reserve classification with a ten acre minimum lot size violates RCW 36.70A.370(2). As framed, this is a private property rights issue and not whether the Urban Reserve areas designated by the County are appropriate.

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The Board agrees with the Respondent concerning Issue No. 7. Counties and cities who are required or choose to plan under RCW 36.70A.040 are authorized by RCW 36.70A to designate land use. If these actions are done in an "orderly, consistent process", the county or city does not violate the statute in question. RCW 36.70A.370(1).

The County followed the proper process authorized by RCW 36.70A to determine land use designation throughout the County. After following a process, the County adopted its Comprehensive Plan as authorized by RCW 36.70A.

The Central Board in *Shulman v. City of Bellevue* clarified the role of the Hearings Boards:

> "A private party is not granted the right to seek judicial relief for alleged noncompliance with RCW 36.70A.370 (Protection of private property). The Board does not have jurisdiction to determine whether there has been a violation of RCW 36.70A.370." *Shulman v. City of Bellevue*, CPSGMHB Case No. 95-3-0076, FDO, May 13, 1996.

In the same case, the Central Board also explained what the petitioners must do to prevail:

> "In order for petitioners to prevail in this type of challenge, they must prove that the action taken by a city or county is both arbitrary and discriminatory. Showing either an arbitrary or discriminatory action is insufficient to overcome the presumption of validity that actions of cities and counties are granted by the Act." *Shulman v. City of Bellevue*, CPSGMHB Case No. 95-3-0076, FDO, May 13, 1996.

As stated, Issue No. 7 concerns RCW 36.70A.370(2). The Board has no jurisdiction over this issue.

Conclusion:

The Board finds the Petitioners have failed to carry their burden of proof in Issue No. 7.

Issue No. 8:

Mandatory to the Comprehensive Plan are the following: RCW 36.70A.070(2) "A housing element ensuring the vitality and character of established residential neighborhoods

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that: (a) Includes an inventory and analysis of existing and projected housing needs" and (c) "identifies sufficient land for housing, including, but not limited to, government assisted housing, housing for low-income families, manufactured housing, multifamily housing, and group homes and foster care facilities; and (d makes adequate provision for existing and projected needs of all economic segments of the community." Does it interfere substantially with the Act that Stevens County has none of these things in its CP?

The Parties' Position:

Petitioners:

The Petitioners contend the County has failed to adequately address housing issues in its Comprehensive Plan as mandated in RCW 36.70A.070(2). The Comprehensive Plan does not say how the County will promote affordable housing in UGAs, and allow manufactured housing. The Petitioners contend that the CP Appendix includes an inventory of residential structures, but no projected needs analysis, such as housing for low income, government assisted housing, multifamily housing, group homes and foster care facilities. The County's CWPP #5 contain the elements required for the housing section of the CP, but does not contain sufficient information.

Respondent:

The Respondent contends that the County addresses each of the four parts to the GMA Housing element. First, the County provided an inventory and analysis of existing and projected housing needs and identified the need for 5,200 additional homes. The second part requires the County to provide a statement of goals, policies, objectives and mandatory provisions for the preservation, improvement and development of housing, which the Respondent argues the County did with mandatory elements in its plan. The third part of the GMA housing element requires counties to identify sufficient land for all types of housing. The Respondent contends that the County established UGAs and LAMIRDs as part of its plan to fulfill this element and shift low-density rural growth into areas where the built environment will support greater density. In addition, Appendix A provides for a variety of alternative housing in the County. In the fourth part, the Respondent argues that the

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County developed a clear understanding of the economic range within the County and its policies and goals reflect its commitment to serving all segments of the community.

Petitioners HOM Reply:

Petitioners reiterate previous arguments, but agree with the Respondent that the County did include an estimate of 5,200 houses would be needed.

Board Analysis:

A housing element is one of the mandatory elements that must be included in a county's or a city's comprehensive plan. The Respondent contends that the County addressed each of the four parts. First, counties are required to provide an inventory and analysis of existing and projected housing needs that identifies the number of housing units necessary to manage growth. RCW 36.70A.070(2)(a). In the County's CP, Appendix A, the County provided an inventory of housing units and concluded that 5,200 homes will be needed for permanent full-time residents. The County fulfilled their obligation under (2)(a).

Second, the housing element requires counties and cities to include a statement of goals, policies, objectives, and mandatory provisions for the preservation, improvement, and development of housing, including single-family residences. RCW 36.70A.070(2)(b). The County established its goal for housing in its Comprehensive Plan under sec. 6.1 and its policies for housing under sec. 6.2. Four policies were written, HO-1 through HO-4, that provide for sufficient land, infrastructure and densities to meet the County's housing demands; address affordable housing needs; allows housing for the special needs population; and encourage innovative regulatory strategies. The County fulfilled its obligation under (2)(b).

A third part of the GMA housing element requires the County to identify sufficient land for all types of housing and housing needs. The County established new unincorporated UGAs and LAMIRDs to ensure there is adequate land available for housing needed to support growth. The section under Appendix A: Affordable Housing; A Range of Housing Types, makes clear that housing alternatives are available. The County fulfilled its obligation under (2)(c).

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The fourth and final requirement of the housing element is to make adequate provisions for existing and projected needs of all economic segments of the community. The County analyzed census data for each subdivision in the County, which developed a clear understanding of the economic range within the County. This is reflected in the goals and policies in the housing element. The County has fulfilled its obligation under (2)(d).

Conclusion:

The Board finds that the Petitioners have failed to carry their burden of proof in Issue No. 8.

Issue No. 9:

Is Stevens County's CP out of compliance for not containing "A capital facilities plan element consisting of: (a) An inventory of existing capital facilities owned by public entities, showing the location and capacities of expanded or new capital facilities; (b) a forecast of the future needs for such capital facilities; (c) the proposed locations and capacities of expanded or new capital facilities; (d) at least a six-year plan that will finance such capital facilities within projected funding capacities and clearly identifies sources of public money for such purposes: and (e) a requirement to reassess the land use element if probable funding falls short of meeting existing needs and to ensure that the lands use element, capital facilities plan element, and financing plan within the capital facilities plan element are coordinated consistent," RCW 36.70A.070(3)?

The Parties' Position:

Petitioners:

The Petitioners argue that the County has failed to provide planning, including existing inventories, projected needs analysis and funding sources, for capital facility utility elements as required by the GMA under Goal 12, Public facilities and services.

Respondent:

The Respondent contends that the capital facilities plan elements (CFP), such as sewer and water, are defined as public facilities. RCW 36.70A.030(12). The Petitioner acknowledges that the public facilities district (PUD) has primary responsibility for financing the construction of such utilities. Thus, the County is not in a position of having to address financing such projects.

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Amicus Response (PUD No. 1):

The PUD contends that nowhere does RCW 36.70A.070(3) address domestic water systems or sanitary sewer systems, rather domestic water and sanitary sewer systems, as provided by the PUD, are defined as "public facilities." RCW 36.70A.030(12). Accordingly, there is no need for the capital facilities plan in the County's Comprehensive Plan (CP) to adopt or even address the PUD's plan regarding "public facilities" such as domestic water systems and sanitary sewer systems. The PUD argues that the Utility Element in the County's CP "clearly and satisfactorily addresses these elements, including timing of utility extensions into UGAs, citing of public facilities, and forecasted future need for public facilities services." Amicus brief at 8.

The PUD argues that the County did evaluate and rely upon the PUD's Comprehensive Water System Plan and Satellite Management Agency Plan in its CP. The Petitioners' own admissions concerning the PUD's role overcome their own contentions.

Petitioners HOM Reply:

The Petitioners cite the Eastern Board's case, *Moitke v. Spokane County*, EWGMHB Case No. 05-1-0007 FDO, February 14, 2006, and *Roberts v. Benton County*, EWGMHB, 05-1-0003 FDO, October 19, 2005, as examples where the Board held that an amendment of a comprehensive plan to expand the UGA requires a new review of a capital facilities plan to determine if services will be available and how they would be paid for. According to the Petitioners, all the GMA cases referenced above reveal utilities are capital facilities. The County does not plan for how these services are to be financed. Levels of service are not even adopted.

Board Analysis:

This issue was covered extensively under Board Analysis of Issue No. 2.

Conclusion:

The Board finds that the Petitioners have carried their burden of proof and that the County's actions are clearly erroneous. The County failed to adopt a capital facilities plan and financial plan as required by RCW 36.70A.070(3).

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Issue No. 10:

The county commissioners stated that all land owners who wanted their land reclassified, should ask for that reclassification in their comment. The commissioners guaranteed they would answer those requests in written form during the commissioner deliberations. If all requests were answered except the Petitioner's request, would that be a violation of RCW 36.70A.140 "…consideration of and response to public comments"; and a violation of Stevens County Public Participation Policy #8 paragraph 4; "The hearing body is encouraged to orally address public comments in public hearings and make oral findings of facts to support decisions"? And would this failure to answer also conflict substantially with the Goals of the Act RCW 36.70A.020(11) Citizen participation and coordination?

The Parties' Position:

Petitioners:

The Petitioners contend the County failed to properly, accurately and adequately respond to certain documents submitted by the Petitioners. The Petitioners argue that based on the documents prepared by Mr. Clay White, Stevens County Planning Department, a mistake has been made, which interferes significantly with the GMA Goal No. 11 Citizen participation.

Respondent:

The Respondent contends that the County staff did not falsify public documents and that the planning director, Mr. White, did not lie about past correspondence or current development on Ms. Wilma's property. According to the Respondent, the County answered public comments appropriately.

Petitioners HOM Reply:

The Petitioners argue that their letter (Exh. 840) requests the area containing the six acres of their property be added to the LAMIRD and they also requested this orally at the February 21, 2006, hearing. In addition, the Petitioners argue that the County put excessive acreage into other LAMIRDs, including the Arden and West Kettle (Falls) LAMIRDs, and describe the services available to these LAMIRDs compared to those at Loon Lake, which they contend are minimal.

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Board Analysis:

RCW 36.70A.140 requires counties to have a public participation plan that is broadly disseminated to the public. Included in this plan are procedures providing for "early and continuous public participation in the development and amendment of comprehensive land use plans and development regulations implementing such plans." It also requires "…consideration of and response to public comments." The County has an adopted public participation plan. After full review of the record, this Board believes the County fulfilled its obligation to follow its plan and the method of response, while not what the Petitioner's would have liked, was legal and appropriate.

Having determined that the County followed its adopted public participation plan, the Board can not find the County out of compliance with RCW 36.70A.020(11). In addition, the Board incorporates their conclusion from Issue No. 1.

Conclusion:

The Board finds that the Petitioners have failed to carry their burden of proof in Issue No. 10.

Issue Nos. 11, 12, & 13:

The Petitioner, Mr. James Davies, failed to carry his burden of proof on Issues Nos. 11, 12, and 13. The Board, after hearing all arguments at the motions hearing on November 27, 2006, dismissed all three Issues by its Order on Motions issued December 4, 2006.

Issue No. 14:

Has Stevens County failed to follow their own Public Participation Policy, County Wide Planning Policy, as well as the requirements for Public Participation set forth in the Growth Management Act in RCW 36.70A .020 (11), RCW 36.70A.035 and RCW 36.70A.140, when it adopted Stevens County's Comprehensive Plan?

The Parties' Position:

Petitioners:

The Petitioner argues that despite numerous letters, comments and submission of a sub-area plan to the BOCC by the Loon Lake Watershed Citizens Advisory Committee

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(LLWCAC), the Loon Lake Property Owners Association (LLPOA) and the Petitioners, the BOCC failed to follow the County's PPP in providing open discussion, dialogue and feedback to the citizens. The Petitioner contends that public participation is not optional by the County. The BOCC has a duty and legal requirement to respond to submissions by the public.

Respondent:

The Respondent argues that sub-area planning issues, in particular the sub-area plan for Loon Lake, which was dismissed by the Board, and documents supplemented into the record (over the County's continuing objection) could not be used to support an argument related to sub-area planning. As argued before, the County deferred sub-area planning and was upheld by the Board, so it does not have to engage in public participation for a process that has been properly deferred.

Petitioners HOM Reply (Wagenman, et al):

The Petitioners contend that the County, in an effort to disqualify environmental comments received by Petitioners and by the Loon Lake community, defer and deny any responsibility in addressing these factors by stating these issues are for sub-area planning at a later date. The County has written a document that has no goals and policies that would support the future sub-area plans. The Petitioners argue that they followed the communications by the County to participate and produce a growth management sub-area plan to have it incorporated into the first Comprehensive Plan. The County created the LLWCAC by Resolution #61-2002, which has not been replaced or repealed, and it cannot later opt not to accept the committee's work. The Petitioners argue that the County repealed the old zoning map and sub-area plan and adopted in their place a CP that ignores the environmental concerns, such as water quality, wetlands and rural character, that the LLWCAC recommended being protected.

The Petitioner contends that many of their concerns about the rural character of Loon Lake and environmental concerns are not addressed and, according to the Petitioners, nothing in the CP or the background for this CP addresses the watershed/rural character

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issues either. They argue that at some point in the hearing process there should be "conversation or dialogue, not monologue with the Hearing Body." HOM Reply brief at 7.

Board Analysis:

This issue was covered and decided under Board Analysis of Issues No. 1 and 10.

Conclusion:

The Board finds the Petitioners have failed to carry their burden of proof in Issue No. 14.

Issue No. 15:

Has Stevens County failed to comply with the Growth Management Act and RCW 36.70A.070 (3) ensuring that Capital Facilities and Services exist, (finance plan) are adequate and available at the time the development is available ("when impacts of development occur") for occupancy and uses without decreasing minimum standards as per .070 (3), RCW 36.70A.110 (3) RCW 36.70A.020 (12) and WAC 365-195-070 (3) Has the County failed to provide a forecast of future needs for such capital facilities? Has the County failed to complete the necessary joint planning among local and other counties jurisdictions (consistency)? Has the County failed to adequately show their work? Does this substantially interfere with the Goals of the Act? (#1, #12)

The Parties' Position:

Petitioners:

The Petitioners argue that the County has not adequately planned for capital facilities and public facilities and services to comply with the GMA. In addition, the Petitioners contend that the County has failed to follow CTED's recommendation that a plan for public facilities must be based on quantifiable, objective measures of capacity; that concurrency is required for transportation facilities; and that the County has not followed its own Countywide Planning Polices #2 and #3. The Petitioners also contend the County has failed to plan for the future needs of the five new UGAs; that the data is insufficient to support the County's claim that its facilities, except for jails, are adequate; that there is a financial plan to support projected facilities in the new UGAs; and that the County engaged in joint planning with other jurisdictions. The Petitioners argue the County has expanded the five new UGAs without taking into consideration the impact of the new growth, the necessary

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capital facilities and how to pay for these facilities, and details these problems for each UGA. Citing several EWGMHB cases, the Petitioners contend that RCW 36.70A.020(12) requires that public facilities and services be available to serve development as the development occurs or within a reasonable time. According to the Petitioners, the County has not established the capability of providing these services as development occurs or within a reasonable time and that there is little or no planning for these new UGAs.

Respondent:

The Respondent contends the County's CP includes a forecast for capital facilities. As for public facilities, these are discussed in the Plan's utility element. Growth for the new UGAs is forecast in its plan and policies are in place to require coordinated planning with utility providers at the project level in the long term. According to the Respondent, the County engaged in joint planning with other local jurisdictions, as documented in many of the exhibits, and received comments from both CTED and WSDOT. The Petitioners question the County's ability to provide services as required by the GMA. The Respondent counters by reiterating the requirements set forth by the GMA, which is the adoption of policies to govern growth when it occurs and that applicants for building permits must demonstrate that services are available.

Amicus Response (PUD No. 1):

The PUD contends that Petitioner Wagenman "clearly ignores the burden of proof that falls on the Petitioners, who must demonstrate clear error and that the CP does not comply with the GMA, thereby overcoming the presumed validity of the CP." Amicus brief at 8. The PUD also contends that the Petitioner is mistaken in that the County did engage in significant joint planning with local jurisdictions, special interests, citizen groups and the citizenry. One special purpose district states that it was not contacted, but that does not mean there was no local jurisdiction coordination.

Petitioners HOM Reply (Wagenman, et al):

The Petitioners contend that to grant deference to counties where they ignore the basic building blocks and mandates of the GMA simply defeats the purpose of the Act and

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cite *King County v. CPSGMHB*, 142 Wn.2d 543, 561 14P.2d 133 (2000); *City of Spokane v. Spokane County and City of Airway Heights*, EWGMHB Case No. 02-1-0001 FDO, July 3, 2002; and *Roberts, et al v. Benton County*, EWGMHB Case No. 05-1-0003 FDO, September 20, 2005. RCW 36.70A.030(12) is the definition for public facilities, yet the County has not adopted the PUD's comprehensive plan. And, according to the Petitioners, there is no statement of concurrency by the County in its CP to provide public facilities. If water and sewer are not included in the capital facilities plan by the County, why is it mentioned in the publication by CTED? The County has no mechanism to comply with the GMA's requirement for public facilities in its Comprehensive Plan. The County also has no capital facilities plan for the new UGAs, or the funding for these plans. The Petitioners contend that the PUD has not provided enough information to determine whether or not there are sufficient capital facilities or money to fund the additional expected population gain in the new UGAs. The County did not inventory capital facilities in Addy, Clayton, Valley, Hunters or Suncrest. The Petitioners contend the County is obligated to come up with a plan for the non-municipal UGAs, including a six-year capital facilities plan.

Board Analysis:

The issue was addressed and answered under Board Analysis in Issues No. 2 and 9.

Conclusion:

The Board finds the Petitioners have carried their burden of proof and that the County's actions are clearly erroneous. The County failed to adopt an adequate capital facilities plan and six-year financial plan as required by RCW 36.70A.070(3), failed to ensure adequate existing public facilities and service capacities as required by RCW 36.70A.110(3), and failed to follow goals RCW 36.70A.020(1), (2), and (12) as required by the GMA.

Issue No. 16:

Has Stevens County failed to comply with the Growth Management Act by allowing and failing to restrict urban services such as, but not limited to, public sanitary sewer services in the Rural areas. Does this substantially interfere with the Goals of the Act (#1, #2, #12) and fail to comply with RCW 36.70A. 110. (4) RCW 36.70A.030

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The Parties' Position:

Petitioners:

The Petitioners contend the County's Comprehensive Plan fails to comply with the GMA in that it doesn't give direction and definition of sewer services in the rural areas, or prohibit the extension of sewer services into rural areas, which would encourage urban-like growth in these areas. The County's action substantially interferes with RCW 36.70A.020, Goals 1, 2, and 12.

Respondent:

The Respondent argues that the County's Plan does not permit the expansion of urban services into rural areas unless there is a threat to health and safety.

Amicus Response (PUD No. 1):

The PUD argues that consistent with RCW 36.70A.110(4), "urban governmental services", such as sewer and water, are appropriate only "in those limited circumstances shown to be necessary to protect basic public health and safety and the environment and when such services are financially supportable at rural densities and do not permit urban development."

Petitioners HOM Reply (Wagenman, et al):

The Petitioners object only to sewer as being clearly not rural as stated in the definition found in RCW 36.70A.030(16), and the Respondent and amicus arguments did not include water service. The Petitioners contend the County's CP does not have a guiding policy that would prohibit the extension of sewer into the rural areas. The Petitioners contend that sewers should not be available for permitting new development, only to protect the development that is in an urban-like area now. The Petitioners also argue the County did not work with the Loon Lake Sewer District as directed by its own plan at UT-4. The Petitioners contend the County's CP permits and does not prohibit extension of sewer services into the rural areas. The Washington Supreme Court affirmed the Court of Appeals in *Cooper Point Association v. Thurston County* 148 Wn. 2d1, 57 P.3d 1156 (2002), that RCW 36.70A.110(4) does not allow a county to extend … a sewer line when the county has

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not shown that the extension is necessary to protect public health and safety and the environment.

Board Analysis:

One of the mandatory elements of a jurisdiction's comprehensive plan is a rural element. Stevens County adopted this requirement under CWPP 5.0 Rural Element, which contains many, if not all the provisions, found in RCW 36.70A.070(5). There is no requirement in this statute for a county or city to specifically state in its comprehensive plan that sanitary sewers are prohibited in the rural area. It is certainly clear in RCW 36.70A.070(5)(b) Rural development, which states in part, "The rural element shall provide for a variety of rural densities, uses, essential public facilities, and rural governmental services needed to serve the permitted densities and uses." Public facilities, such as sewer, are not mentioned and, therefore, are not to be provided.

The County chose to be more general in its statements concerning its rural element goal and policies and not specifically define, direct or prohibit the extension of urban development such as sanitary sewer services. The Petitioners concede the CP states that "land use activities and development intensities" are encouraged that "do not require or lead to extension of urban services or facilities except as may be permitted by the Comprehensive Plan." The Petitioners also acknowledge the County will work with "utility providers to support public sewer and water services" that "will not result in new urban development that is not permitted by the Comprehensive Plan." The PUD argues that RCW 36.70A.110(4) controls, which states that, "In general, it is not appropriate that urban governmental services be extended to or expanded in rural areas except in those limited circumstances shown to be necessary to protect basic public health and safety and the environment and when such services are financially supportable at rural densities and do not permit urban development."

Conclusion:

The Board finds the Petitioners have failed to carry their burden of proof in Issue No. 16.

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Issue No. 17:

Has Stevens County failed to comply with the Growth Management Act by failing to meet the goals of concurrency? Does this substantially interfere with the Goals of the Act RCW 36.70A.020 (12)& comply with RCW 36.70A 070? Has the County failed to show their work?

The Parties' Position:

Petitioners:

The Petitioners argue that along with a capital facilities element there needs to be adequate provision for concurrency. Counties and cities planning under the GMA must ensure at the time of new development public facilities and service are either in place or are adequately planned. According to the Petitioners, this imposes a requirement upon the government to state what it plans to do and how that is going to be accomplished in order to achieve concurrency. In addition to the transportation concurrency requirement, the EWGMHB has RCW 36.70A.020(12) to require that public facilities and services must be available to serve the development… as that development occurs or within a reasonable time.

The Petitioners contend the County has not even established a baseline to determine the minimum level of services for public facilities and services in the new UGAs. What is needed to serve the projected population in these new areas, either at the time of occupancy and use or within an appropriately timed phasing of growth, must be connected to a clear and specific funding strategy.

Respondent:

The Respondent contends this issue was not briefed and should be waived.

Petitioners HOM Reply (Wagenman):

The Petitioners point to the County's statement that "[T]he principle that public facilities and services needed to support development should be provided concurrently with the related development is a keystone of the GMA." The Petitioners argue there should be a written policy in the CP that reflects the above statement of concurrency. However, there

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isn't one. The Petitioners paraphrase this Board's FDO in *Cascade Columbia Alliance v. Kittitas Co.*, EWGMHB Case No. 98-1-0004, FDO, Dec. 21, 1998, which states in part that the GMA requires water and sewer and other services to be in place when development occurs and that cities are required to provide these facilities and services at least concurrently with the projected growth. According to the Petitioner, the County does not have a policy that speaks to the goal of concurrency.

Board Analysis:

RCW 36.70A.020(12) in the GMA guides local governments to "ensure that those public facilities and services necessary to support development shall be adequate to serve the development at the time the development is available for occupancy and use without decreasing current service levels below locally established minimum standards."

In *McVittie et al., v. Snohomish County*, the Central Board interpreted Goal 12 to mean:

> "Unlike the transportation element, the capital facilities element does not use the phrase "concurrent with development" and does not specify an enforcement procedure. [However, read in light of Goal 12] a local government is obligated to take steps to ensure that those facilities and services it has identified as being necessary to support development are adequate and available to serve development. *Jody McVittie, et al., v. Snohomish County [Snohomish County-Camano Association of Realtors – Intervenor]*, CPSGMHB Case No. 99-3-0016c FDO, Feb. 9, 2000.

The Central Board also determined in *McVittie* that Goal 12 does not require a development-prohibiting concurrency ordinance for public facilities and services, other than transportation:

> "The answer to question 4 – Does Goal 12 require "concurrency" for all public facilities and services, beyond the explicit concurrency requirement of RCW 36.70A.070(6)(b) for transportation" is no. Goal 12 does not require a development-prohibiting concurrency ordinance for non-transportation facilities and services. <u>Goal 12 allows local governments to determine what facilities and services are necessary to support development and develop an enforcement mechanism for ensuring that identified necessary facilities and services for development are adequate and available.</u> Board emphasis. *Jody*

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> *McVittie, et al., v. Snohomish County,* CPSGMHB Case No. 99-3-0016c, FDO Feb. 9, 2000.

The Eastern Board in *Miotke v. Spokane County* determined concurrency means that not only are there facilities with the capacity to serve development, but also these facilities and services are in place or that a financial commitment is in place to ensure these facilities and services can be provided in a timely manner. This takes a detailed capital facilities plan backed by a six-year financial plan that identifies sources of public money for such purposes:

> "Concurrency" is defined by WAC 365-195-210 and means "adequate public facilities are available when the impacts of development occur." This definition includes two additional concepts: "adequate public facilities and "available public facilities". "Adequate public facilities" means facilities, which have the capacity to serve development without decreasing levels of service below locally established minimums. "Available public facilities" means that facilities or services are in place or that a financial commitment is in place to provide the facilities or services within a specified time. In the case of transportation, the specified time is six years from the time of development. *Kathy Miotke and Neighborhood Alliance of Spokane v. Spokane County, Respondent, and Ridgecrest Developments, L.L.C., et al,* EWGMHB Case No. 05-1-0007, FDO, (February 14, 2006).

Key to the Petitioners argument is whether the County needs a policy in its CP to provide for concurrency and, again, *McVittie* gives us some direction:

> "For capital facilities, adoption of a concurrency ordinance is not required, but it is not prohibited; such action is within local discretion. In any case, an enforcement mechanism is required."

The County's CP has what may be described as a concurrency policy for transportation under 8.0 Transportation Element at TR-5, which states, "Provide for concurrent financing and development of needed transportation facilities consistent with the Land Use Element of this Plan." The County did not adopt either policies or regulations that provide reasonable assurances that the locally defined public facilities and services will be available at the time of development or shortly thereafter.

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This Board found Stevens County lacking in support of RCW 36.70A.020(12) in *Loon Lake Property Owners Association:*

> RCW 36.70A.020(12) requires local governments to adopt either policies or regulations or a combination thereof that provide reasonable assurances, but not absolute guarantees, that the locally defined public facilities and services necessary for future growth are adequate to serve that new growth, either at the time of occupancy and use or within an appropriately timed phasing of growth, connected to a clear and specific funding strategy. 01-1-0002c: *Loon Lake Property Owners Association, et al v. Stevens County*; Amended Final Decision and Order (October 26, 2001).

The Board has already found the County out of compliance in Issue No. 2 for not having an adequate capital facilities plan for all public facilities and services with a financing plan to support it. Now we find that the County in its CP has not adequately provided for locally defined public facilities and services through policies or regulations or a combination thereof that provide reasonable assurances that new growth will be served as required by RCW 36.70A.020(12). Without designated level of services for public facilities and services, the County can't even determine what is necessary to ensure adequate public facilities and services, let alone ensure they will be available for new growth.

Conclusion:

The Board finds the Petitioners have carried their burden of proof and that the County's actions are clearly erroneous. The County failed to adopt policies or regulations in its CP to "ensure" public facilities and services are available when impacts of development occur or within a reasonable time afterwards.

Issue No. 18:

Has Stevens County failed to comply with the Growth Management Act, RCW 36.70A.070 (1), Land Use Element by providing for protection of quality and quantity of ground water with review of drainage, flooding and storm water run-off.? Did the County fail to provide guidance for corrective actions to mitigate or cleanse those discharges that pollute the waters of the state? Does this substantially interfere with the Goals of the Act? #10 #9

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The Parties' Position:

Petitioners:

The Petitioners contend the County failed to protect the quality and quantity of ground water with a policy or policies that address drainage, flooding, and stormwater runoff and failed to provide guidance for corrective actions to mitigate or cleanse those discharges that pollute the waters of the state. They also contend that the County's CAO and Shoreline Master Program (SMP) do not address the intensity of uses or densities of development, ground water, surface discharge and recharge, stormwater pollution, septic tanks and uses compatible with fish and wildlife. The Petitioners argue that the CAO addresses critical areas and the SMP addresses shorelines, but the rural character is not protected by the County's Rural Element or Land Use Element.

The Petitioners contend that the GMA in RCW 36.70A.070(5)(c) requires a Rural Element in the County's CP that protects the rural character, including surface water and ground water resources. WAC 365-195-330 Rural Element Requirements, states that "[T]he Rural Element shall permit land uses that are compatible with the rural character of such lands and provide for a variety of densities." Further in the statute, under (d)(i) and (v), counties are required to preserve critical areas and establish criteria for environmental protection, including programs to control non-point sources of water pollution and to enhance habitat for fish and wildlife."

The Petitioners argue the County issued a FEIS as required by RCW 43.21C, but did not address several important environmental impacts, such as impervious surfaces created by a LAMIRD or Urban Reserve designation, allowance for five and ten acre parcels, increased development by the five-acre density, or potential for storm water pollution. In addition, the Petitioners contend Mr. St. Goddard's report did not address the five acre parcels and failed to address water quality. The Petitioners contend the FEIS did not address the impact of five acre densities in areas like Loon Lake for water quality, impervious surfaces, pollution from runoff, and storm water.

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The Petitioners acknowledge the County's Rural Element in RU-11 mentions "geographical, topographical, hydrological, transportation and other … development factors", but fail to define just what these criteria mean.

Addressing the Land Use Element, the Petitioners argue that there is nothing in this section that refers to rural areas, nor is there any direction or policies for the LAMIRDs. In addition, there are no protections for sensitive shorelines outside the jurisdiction of 200 feet from the ordinary high water mark because there are no sensitive shorelines designated by the County.

The Petitioners argue the County has no designated variety of rural densities as it did before the new CP was adopted. Consequently, septic systems will have an adverse impact on water quality and ground water. They also contend that the County designated Granite Point as a Type II LAMIRD and allowed the development to grow while still using a septic system. The County also allowed four other Type II LAMIRDs around other lakes as well and failed to address in its FEIS the impact of additional growth in these LAMIRDs next to critical areas. The Petitioners provided seventeen comments from various governmental, scientific and public submissions to the record in support of their argument that water quality is in jeopardy in the region's lakes and critical areas.

In conclusion, the Petitioners contend the County failed to write goals and policies that protect the rural character's environmental concerns as required by the GMA.

Respondent:

The Respondent argues that this issue challenges the County's shoreline master program and critical areas ordinance and those are not before the Board and should not be considered. The water quality issue is addressed in Issue No. 21.

Amicus Response (PUD No. 1):

The PUD contends the Petitioners' argument concerns the Critical Areas Ordinance and Shoreline Master Program, neither of which is before the Board. Therefore, this issue should not be considered. The PUD also contends that the County was not required to address in detail the environmental impacts, such as watershed recharge, impervious

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surfaces, pollution runoff, storm water, groundwater, water quality and impacts on wetlands, objected to by the Petitioner in the non-project Environmental Impact Statement and cites WAC 197-11-442 (non-project actions), WAC 365-195-610 (SEPA), WAC 365-195-760 (integration of SEPA), and an Eastern Board case, *Citizens for Good Governance, et al. v. Walla Walla County*, EWGMHB Case No. 01-1-0015c and 01-1-0014cz, FDO May 1, 2002.

Petitioners HOM Reply (Wagenman):

The Petitioners contend that a variety of rural densities should reflect, in part, critical areas, watersheds, surface water and ground water resources, water recharge and discharge areas, flooding and storm water runoff, wildlife, water quality and quantity. They argue that there are no goals or policies in the Land Use Element that address land uses and intensities regarding the aforementioned environmental problems. The Petitioners contend that the rural character exists outside of shorelines and critical areas and these factors are not taken into consideration in other rural areas. In addition, the issues of land use combined with intensity of development, is not addressed in a CAO or Shoreline Master Program. As previously briefed, the Petitioners argue that the County is relying on its CAO and SMP to protect water, but these ordinances do not address issues of impervious surfaces, stormwater, and water quality and quantity. The Respondent refers to the General Planning Goal of GP-13, but this does not require protections the County should place in its goals and policies and language that would reflect the requirements in the GMA. The Petitioners argue that LU-4 and LU/SMP 3, 4 and 8 fulfill other obligations to the GMA, such as to shorelines and critical areas, not watersheds and rural character.

The Petitioners contend the County only looked at one watershed, the Sheep Creek watershed, when considering CARAs and general watershed protection. They also argue that none of the County's statements concerning CARAs are supported by scientific data. There is no conclusion about five and ten acre densities in the Sheep Creek CARA as being insignificant to the watershed. This is the County's interpretation of the St. Goddard report. The conclusions drawn by the County for the Sheep Creek CARA are then applied to the entire Colville River Basin.

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The Petitioners argue that it's general knowledge that the Colville River is having problems in terms of water quality. The County has failed to address this problem and there are no policies in the plan that would do so. The County is choosing to ignore issues related to ground water, water quantity and quality, stormwater, impervious surfaces by not addressing them in the CP. The Petitioners contend that the County has no rural policies or land use policies that will guide these kinds of rural constraints for comprehensive planning purposes. The Petitioners contend the County removed the protections for Loon Lake by repealing the Loon Lake sub-area plan, but replaced it with the CP, which doesn't protect the environment or address the capacity of land, air and water.

Board Analysis:

The Board looks at whether Stevens County fulfilled its obligation under RCW 36.70A.070(1) when it adopted its CP. The Petitioners contend the County's Land Use Element does not contain a goal or policies that protect rural character, water quality and quantity, provide stormwater protections or address environmental issues related to a density of one unit per five acres in the rural areas. The Respondent argues the County's CP has goals and policies that address these issues, specifically LU-4, LU/SMP 3, 4 and 8, GP-13, NR/CA-1, 2 and 3, the County's CAO and the SMP, while the Intervenor argues that the CP is a general plan and detailed environmental impacts were not required in a non-project EIS that supports the CP.

RCW 36.70A.070(1) is the land use element required by the GMA. The land use element designates the proposed general distribution and general location and extent of the uses of land, as well as includes population densities, building intensities and estimates of future population growth. It specifically states, "The land use element shall provide for protection of the quality and quantity of ground water used for public water supplies. Where applicable, the land use element shall review drainage, flooding, and storm water run-off in the area and nearby jurisdictions and provide guidance for corrective actions to mitigate or cleanse those discharges that pollute waters of the state…" The question is did Stevens County comply with the statute?

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The County's CP under 3.0 Land Use Element mentions many of the RCW 36.70A.070(1) requirements, such as "protection of the quality and quantity of ground water used for public water supplies, review of drainage, flooding and stormwater runoff", but refer these issues to the Natural Resources Element without setting any policies in this section to address them. The County, under Land Use Goal 1, mentions, in part, "Increase the percentage of new growth that occurs at higher densities in designated urban areas, and reduce sprawl and maintain the character of rural areas." This seems to be a step toward maintaining Stevens County's rural character. It isn't until 3.2 Land Use Policies, under Shorelines, the Board sees a reference to stormwater runoff or water quality, and this is addressed under LU/SMP-5 Parking. Under LU/SMP-8 Water Quality, the County addresses this issue for shorelines, but not for the rural areas as a whole.

Under 4.0 Natural Resources Element, which the Land Use Element referenced above referred the environmental issues to, the County places some of the Petitioners' issues in Goal 4.1, "It is the Natural Resources (NR) goal of Stevens County to: Maintain and enhance natural resource-based industries in the County; protect critical areas, including surface and ground water resources, and provide for the stewardship and productive use of forest, mineral and agricultural lands." The County's policy, under 4.2 Natural Resource Policies, is a directive concerning critical areas only and requires appropriate protections for critical areas and review of new development applications to ensure that reasonable provisions for drainage and stormwater management. Unfortunately, under Policy NR/CA-3, the County only considers using the Department of Ecology's Stormwater Manual for Eastern Washington as <u>guidance</u> for planning and for implementing stormwater best management practices. Board emphasis.

The Board looked at 5.0 Rural Element, as well, to determine if the County had placed a goal or policies in that section that would fulfill the obligations required by RCW 36.70A.070(1). The County paraphrases the necessary wording from the GMA in the Rural Element introduction, but falls short of putting the necessary protections in place in 5.1 Rural Goal and in 5.2 Rural Policies. For instance, in the overall statement under Rural

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Element, the County mentions, "Fundamental to the goals of the rural element is providing guidance that…protects critical areas and surface and ground water resources…", yet the County fails to implement this with a policy specific to all rural areas of the County, not just critical areas.

The Board finds that the goals and policies of the County's CP do not protect the quality and quantity of ground water used for public water supplies, or review drainage, flooding, and storm water run-off in the rural areas and nearby jurisdictions. The County has designated new UGAs, LAMIRDs, Urban Reserve areas, and a single density of a minimum of one unit per five acres. The Land Use Element requires the County to plan for the impacts of these land uses in its goals and policies. The Land Use Element is specific in its direction and the County's goals and policies do not fulfill the obligation set forth in RCW 36.70A.070(1).

Conclusion:

The Board finds the Petitioners have carried their burden of proof and that the County's actions are clearly erroneous. The County failed to adopt policies in the Land Use Element of the CP to protect quality and quantity of groundwater used for public water supplies or review drainage, flooding or stormwater in the rural area and nearby jurisdictions as required by RCW 36.70A.070(1).

Issue No. 19:

Has Stevens County failed to plan under RCW 36.70A.040 and RCW 36.70A.110 to include areas and densities sufficient to permit the urban growth that is projected based upon the population projection (OFM & vision of urban development) without exceeding the size or cap on the land that a county may allocate to handle the 20 year population projection? Has the County failed to properly perform a complete land quantity analysis showing its work? RCW 36.70A.110 (1) (2) Has the County failed to encourage then development where adequate services and facilities exist (prohibit urban growth outside of UGAs) or can be provided prohibiting sprawl? Does this substantially interfere with the goals of the Act?

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The Parties' Position:

Petitioners:

The Petitioners argue the County failed to use the Office of Financial Management (OFM) population projections and/or a land quantity analysis when designating urban growth areas. According to the Petitioners, the County's OFM population projection for twenty years is expected to be 18,118. Yet, the Petitioners calculate that the new unincorporated areas will receive 4,276 people. The Petitioner calculates that with an acreage of 6,120 acres, three-quarters of which could be residential, multiplied by four dwelling units per acre, the number of units would be 18,360 residential units. Multiply this number by 2.75 persons per unit and conceivably 50,490 people could live in the five new UGAs. The Petitioners contend this is excessive for the OFM projection. The Petitioners also contend that the sizes of the new unincorporated UGAs are much too large for the anticipated population. In addition, the five new urban growth areas are more rural in nature than urban. The County's actions substantially interfere with RCW 36.70A.020, Goals 1, 2, 4, and 12.

Respondent:

The Respondent refers this Issue to their argument for Legal Issue No. 2. Specifically in Legal Issue No. 2, the Respondent contends counties are not required to use OFM data when planning for growth in the unincorporated part of the county. They cite *Clark County Citizens v. Resources Coun.*, 94 Wn.App. 670, 674, 972 P. 2d 941, (1999). "Thus, in designating new UGAs as part of its plan to manage growth in the unincorporated part of the county, OFM data does not control but may be used. Stevens County has decided to manage rural growth by establishing new UGAs and the limit of those boundaries is not dictated by OFM projections, which do not consider previously approved high-density rural development." (Respondent's Brief page 11.)

Petitioners HOM Reply (Wagenman, et al):

The Petitioners contend the County has not met the specific requirements for sizing a UGA, in particular a new or adjusted land quantity analysis. The Petitioners question the

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Respondent's figures and conclusions when new UGAs are not simply "unincorporated" areas as portrayed by the County, so OFM data is not required, but designated new urban growth areas. The new UGAs have 6,120 acres with a population increase of 4,276 and a previous population of 4,236, totaling 8,512. Accordingly then, the County does not need the 6,120 acres. This number of acres far exceeds what is necessary for the twenty-year projection. The County's own CWPP directs that these new UGAs be designated, sized and based upon the projected population, which states the "combined population figures for each municipality and the County must total the State's population forecast for Stevens County." According to the Petitioners, the County has failed to do this.

The Petitioners also contend that the characteristics of the new UGAs do not meet the definition of urban found in the GMA. The County has failed to justify the urban growth acreage and has failed to do a land quantity analysis to determine the size of the urban areas based on anticipated population growth. The Petitioners question whether the County has adequate existing and planned infrastructure as stated by CTED's brief. The Petitioners also point out that there is nothing in the record to show that the County adopted supporting land use policies to ensure that UGAs are appropriately located and sized to the projected population. The Petitioners cite *Diehl v. Mason County* as an argument that the Growth Boards and the Appellate Courts have held that urban growth areas are limited by the OFM population projection adopted by a county. The Petitioners argue that the new UGAs do not fit the definition of urban, nor do they fit the OFM projections for the County.

Board Analysis:

Issue No. 19 questions whether the County appropriately added new unincorporated UGAs based on OFM projections and a land quantity analysis. The Petitioners argue the County failed to complete a land quantity analysis that justifies the acreage assigned to each of the five new UGAs. The County argues that adding new UGAs is part of its management of rural growth and the limit of those boundaries is not dictated by OFM projections, which do not consider previously approved high-density rural development. In

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essence, the County contends that OFM projections do not account for urban growth in unincorporated parts of the County.

The County's contention that OFM projections are not required to be used in the unincorporated part of the County is based upon an improper reading of *Clark County Citizens v. Resources Coun.*, *supra.* In that case the Court held that: "[M]ore particularly, nothing in the GMA provides that a county must use OFM's population projections as a cap when planning for non-urban growth."(Page 943). In the footnote cited by the County, to the previous quote, the Court actually said "Without so holding, we assume that the GMA permits a county to use OFM's population projections when planning for lands outside its urban growth areas. That question is not presented by this appeal." (footnote n.23). "The GMA required a county to consider OFM population projections when sizing urban growth areas." (*Clark County Citizens, supra.).* (See also WAC 365-195-335(1)(d)).

RCW 36.70A.110(1) describes where urban growth areas can be located or designated. The County's new unincorporated UGAs are covered under this section and Section 3. Section (2) says that counties and cities shall include areas and densities sufficient to permit the urban growth that is projected to occur in the county or city for the succeeding twenty-year period. It also says, "[C]ities and counties have discretion in their comprehensive plans to make many choices about accommodating growth." Discretion, of course, is bounded by the requirements of the GMA. Section (3) requires counties and cities to locate urban growth "first in areas already characterized by urban growth that have adequate existing public facility and service capacities to serve such development, second in areas already characterized by urban growth that will be served adequately by a combination of both existing public facilities and services and any additional needed public facilities and services that are provided by either public or private sources, and third in the remaining portions of urban growth areas. Section (4) says that, in general, cities are the units of local government most appropriate to provide urban governmental services. Section (5) requires counties and cities to adopt development regulations designating interim urban growth areas and final UGAs shall be adopted at the time of comprehensive plan adoption.

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The Central Board in *Strahm v. City of Everett* addressed the process to arrive at reasonable and defendable UGAs:

> "RCW 36.70A.110(2) and .130(3) contain two compatible and major directives. The first is that the State Office of Financial Management (OFM) must project population ranges for each GMA county. These are the *population drivers*, the urban growth, which the county, in conjunction with its cities must accommodate. Second, this section of the Act directs the county and its cities to include areas and densities *sufficient to permit the urban growth* that is projected to occur. In order to comply with these directives, jurisdictions must undertake some form of land capacity analysis to determine whether their *areas and permitted densities* for the lands within their jurisdiction can accommodate the projected and allocated growth. Both of these GMA requirements speak in terms of providing *densities* to accommodate growth – compact urban development." *F. Robert Strahm v. City of Everett*, CPSGMHB Case No. 05-3-0042, FDO, Sep. 15, 2006.

To determine what the County did to follow the requirements of the GMA, specifically how it distributed its population allocation, the Board looked at the numbers and conclusions. Some of the numbers in the Respondent's brief are misleading, but by careful analysis of the CP, the Board was able to decipher and understand what the figures represent and how they were calculated. This is important. Without a careful analysis of the OFM twenty-year population allocation in relation to land quantity, type of land designation, density, public services and public facilities, growth patterns and other factors by the County, its Comprehensive Plan would be inaccurate and not a true planning document as required by the GMA.

According to their brief, "In 2000, the office of financial management (OFM) predicted that over the succeeding twenty years, the population of Stevens County would increase by 18,118 or 45% overall." Respondent's brief at 11. This population is the increase over the twenty-year period from years 2000 to 2020 and calculated from Table 2 in the Final CP (Appendix A, A-15). The Respondent then contends that, "The share of growth allocated by the OFM to existing urban growth areas is 8,799 (8,740 is a misprint)." Respondent's brief at 11. The population figure of 8,799 allocated to the incorporated UGAs

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is approximately 38% of the population projection from years 2005 to 2025, which is 23,000 people (Appendix A, 2.1.1.1, Final Draft CP), and the 8,740 number is actually the true number of 38% of 23,000.

It's difficult, if not impossible, to determine what figures the County is working with throughout the CP document or FEIS and just how staff arrived at the number and size of the new UGAs. Each of the five new UGAs exceeds the area presently served by public facilities and services, some by a considerable margin. This is acceptable only if the County can justify the need for additional urban growth areas. Although considerable detail was included in the FEIS on why the UGAs were selected, how the County determined the UGA boundaries and sizing (acreage) remains a mystery.

CTED argues the County's deliberations reflect a process that is consistent with the goals and requirements of the GMA because in adopting its CP the County adopted policies and "otherwise acted to encourage urban development in designated urban growth areas and to discourage urban sprawl into designated rural areas." CTED brief at 5. CTED then summarizes the County's procedures for adopting the OFM population allocation and distribution, referenced the adopted land use policies that support the County's actions, and examined the County's analysis of the UGA/LAMIRD debate. In its conclusion, even though CTED endorsed the County's decision to designate "four" (sic) unincorporated UGAs, CTED refuses to address whether the boundaries of the new UGAs were correctly drawn, whether the existing densities are sufficiently urban, or whether the projected urban development will occur. These last three questions are the basis for Issue No. 19 and whether a land quantity analysis was used.

The new UGAs are not the only land designations that will allow for urban development and infill. While there is no documentation as to how the County determined the size of the new UGAs, the County's new LAMIRDs, on the other hand, are supposedly sized according to RCW 36.70A.070(5)(d), including the "logical outer boundary", and are included in the population allocation for the rural areas. A population target was not specifically assigned to each LAMIRD, even though 1,970 acres of residential is designated

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for the three Type I LAMIRDs. Both the Arden and Loon Lake LAMIRDs seem to be in compliance with RCW 36.70A.070(5)(d) as far as the built and platted environment, but the West Kettle Falls LAMIRD is an anomaly.

The West Kettle Falls LAMIRD, consisting of 1,906 acres, 1,713 of which has been assigned residential, does not fit the true definition of a LAMIRD as a "limited area of more intensive rural development, including necessary public facilities and public services to serve the limited area…" A large portion of the West Kettle Falls LAMIRD has one acre platted lots and access to public water. Public sewer is not presently in place and there are no plans to provide this public facility at this time, either by the PUD or the County. This designated area is adjacent to and above the Columbia River. With over 1,500 potential residential units on one acre lots, numerous commercial businesses, and several large industries, it is essential that a sewer system be put in place in the West Kettle Falls LAMIRD to prevent potential environmental damage to the river. Yet, there is not a plan or proposal to sewer this future urban-like community. A plat map was not provided in the record.

Unlike the other two designated LAMIRDs, Arden and Loon Lake, West Kettle Falls was mentioned only by name in the Final Draft Comprehensive Plan (III-18, III-39), but was never analyzed in the FEIS (Appendix A at A-65). There was only one comment letter in the record that requested this area be designated as a LAMIRD (exhibit 596). The Board mentions this LAMIRD specifically because, with its density and size, it has the potential to impact the County's population by over 3,000 people over the next twenty years, three-quarters of what was allocated to the new UGAs. A failure to analyze the West Kettle Falls area thoroughly and appropriately, like the other urban-like communities, is a major flaw in the County's FEIS and CP, given the potential impact of this urban-like area.

Rather than increase the size of the current incorporated UGAs to distribute additional population in the future, the County chose to make only "minor changes to these IUGAs" and to "reconcile urban growth boundaries with existing city limits and existing parcel lines." Final Draft CP at A-65. The County accommodated two-thirds of its projected urban population growth (8,799 people) in the five existing UGAs. The County then chose to

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create new unincorporated UGAs to focus some of the OFM population allocation into communities already urban-like in nature and have public facilities or the potential for public facilities and services in the future. The County assigned one-third (4,278 people) of its projected urban population growth to the new unincorporated UGAs. This is encouraged and, indeed, CTED submitted an amicus brief in support of these new UGAs.

In lieu of performing a land quantity analysis, though, the County based its decision to designate five new UGAs on six criteria it developed, believing that "OFM projections do not account for urban growth in unincorporated parts of the County." Respondent's brief at 12. In the Final Draft Comprehensive Plan, the County used the population figure of 23,000 for the years 2005 through 2025 and calculated that approximately 14,300 people would move into the unincorporated areas of the County, which includes the new UGAs, a master planned resort, and rural areas. Again, nothing is said about the growth in the LAMIRDs, where in Appendix A in the Final Draft CP at A-68, under 11.2 LAMIRDs: Criteria and Considerations, the County acknowledges that "UGAs are not the only option for directing growth into areas well suited for development."

Without a land quantity analysis, there is no way to determine whether the new UGAs are sized appropriately or to examine the impact of LAMIRDs, the master planned resort or crossroads areas on the overall OFM population allocation. In *Port Townsend v. Jefferson County*, the Western Board wrote:

> "A land capacity analysis, an analysis of existing and future capital facilities and services, and fiscal impacts must be completed before an IUGA outside municipal boundaries may be established. The IUGA must be consistent with the goals and requirements of the GMA and the CPPs. Guidance as to the information required for such an analysis is found in WAC 365-195-335(3)." *Port Townsend v. Jefferson County* 94-2-0006 (Final Decision and Order, 8-10-94)

The Central Board determined in *Tacoma, et al., v. Pierce County* that a County must show its work when designating UGAs:

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> "A county must base its UGAs on OFM's twenty-year population projection, collect data and conduct analysis of that data to include sufficient areas and densities for that twenty-year period (including deductions for applicable lands designated as critical areas or natural resource lands, and open spaces and greenbelts), define urban and rural uses and development intensity in clear and unambiguous numeric terms, and specify the methods and assumptions used to support the IUGA designation. In essence, a county must "show its work" so that anyone reviewing a UGAs ordinance, can ascertain precisely how the county developed the regulations it adopted." *City of Tacoma, City of Milton, City of Puyallup and City of Sumner v. Pierce County*, CPSGMHB Case No. 94-3-0001, FDO July 5, 1994.

This is not to say the County can't allocate growth to rural areas. The Central Board addressed this question in *Vashon-Maury et al. v. King County*:

> "Allocating growth to rural areas is not, on its face, a violation of the GMA. Growth may be allocated to rural areas, provided that it does not constitute urban growth. How rural growth is manifested on the ground is a separate matter." *Vashon-Maury, et al., v. King County,* CPSGMHB Case No. 95-3-0008c, Final Decision and Order, (Oct. 23, 1995),

Key to the discussion of sizing the UGAs is the density set by the County. Under 3.2 Land Use Policies, LU-3, the County's policy reflects the importance of designating UGAs "of adequate size and appropriate permissible densities to accommodate the urban growth that is projected by the State Office of Financial Management for the coming 20-year planning period." Under Policy LU-3(C.), the County even establishes a "target average density of 4 dwelling units per acre for new development" and encourages infill or redevelopment at higher densities. But under Policy LU-3(D.), the County allows on an interim basis, "until sewer service can be provided to identified Urban Growth Areas", a minimum density of 1 dwelling unit per acre, explaining that, "[1] acre reflects the density commonly found in built-up, urbanized areas of Stevens County today, and is recognized as constituting urban growth." Public sanitary sewer is not even available in the incorporated city of Northport, let alone in Hunters. By adopting Policy LU-3(D), the County is eliminating urban growth

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densities in several UGAs for the foreseeable future, thus condemning these communities to low-density sprawl.

This does not reflect RCW 36.70A.020 Planning goals (1) and (2). The Central Board wrote:

> "For sizing UGAs, the density assumption used cannot be based upon historic patterns that perpetuated low density sprawl, and must reflect the planned for urban densities." *Bremerton/Port Gamble v. Kitsap County,* CPSGMHB Case No. 95-3-0039c/97-3-24c, Finding of Noncompliance and Determination of Invalidity in *Bremerton* and Order Dismissing *Port Gamble,* (Sep. 8, 1997).

In *Bremerton/Alpine v. Kitsap County*, the Central Board also found that despite the imperfection of long-range population projections, counties need to specifically show how they arrived at the size of a UGA:

> "The sizing of the UGA must be supported by analytical rigor and an explicit accounting, yet [the sizing of UGAs] is an inexact science. The specificity and precision important to the accounting are tempered by the imprecise nature of long-range population projections, and indeed comprehensive planning itself." *Bremerton, et al., v. Kitsap County/Alpine Evergreen, et al., v. Kitsap County*, CPSGMHB Case No. 95-3-0039c Coordinated with Case No. 98-3-0024 FDO.

The Central Board in *Kitsap Citizens, et al. v. Kitsap County* emphasized again that counties must show their work:

> "Actions of local governments are presumed valid; however, when [UGA designations or expansions are] challenged the record must provide support for the actions the jurisdiction has taken; otherwise the action may be determined to have been taken in error – clearly erroneous. The Board will continue to adhere to the requirement that counties must "show their work" when designating UGAs and affirms its prior decisions on this question." *Kitsap Citizens for Rural Preservation and Suquamish Tribe v. Kitsap County [Port Blakely Tree Farms L.P.- Intervenor]*, CPSGMHB Case No. 00-3-0018, FDO May 29, 2001.

The County designated the communities of Addy, Clayton, Hunters, Lake Spokane and Valley, totaling 6,120 acres, as new unincorporated UGAs. It also designated the communities of Arden, Loon Lake and West Kettle Falls as Type I LAMIRDs, with an

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additional urban area of 2,451 acres, of which 1,970 are residential. The County also designated twelve communities, totaling 184 acres, as Type II LAMIRDs, and twelve more communities, totaling 351 acres, as Crossroads Areas. While the County used its own process and criteria to determine these designations, it did not do a land quantity analysis to determine how much urban growth area would accommodate the OFM population allocation or to determine the proper sizing for the five new designated UGAs.

Conclusion:

The Board finds that the Petitioners have carried their burden of proof and that the County's actions are clearly erroneous. The County failed to complete a land quantity analysis to justify the designation of the five new UGAs and their sizing as required by RCW 36.70A.020(2).

Issue No. 20:

Has Stevens County failed as per RCW 36.70A.110 to include greenbelt and open spaces, and failed under RCW 36.70A.160 to identify open space corridors within and between urban growth areas. Does this substantially interfere with the goals of the Act?

The Parties' Position:

Petitioners:

The Petitioners argue the County has failed to designate and encourage the retention of greenbelts, open space, and recreational areas. In addition, the County has failed to identify locations in the county where such areas can be found now or in the future as development takes place in the Urban Reserve and urban areas.

Respondent:

The Respondent argues the GMA requires counties that adopt comprehensive plans to identify open space and greenbelts, designating a proposed general distribution. RCW 36.70A.110(1). The policies adopted in the Comprehensive Plan adequately identify open space and greenbelts both in and between UGAs.

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Petitioners HOM Reply (Wagenman, et al):

The Petitioners contend the County has not complied with the GMA and identified open space and greenbelts in the new UGAs. The County's policy, LU/OS-1, does not identify any open space or greenbelts. The language of the GMA states that greenbelts and open space shall be identified in urban areas. Policy does not identify. The Petitioners also contend that open space corridors are also not identified.

Board Analysis:

This is the same issue as Issue No. 5 and the arguments are related.

Conclusion:

The Board finds the Petitioners have carried their burden of proof and that the County's actions are clearly erroneous. The County failed to designate or even identify greenbelts and open space within the new unincorporated UGAs.

Issue No. 21:

Has Stevens County failed under RCW 36.70A.070(5) and RCW 36.70A.110 to provide and protect the Rural character, requiring a variety of rural densities, limiting development at levels that are consistent with the rural character, protect critical areas, surface water and ground water resources, and discharge areas, requiring land use – developments that are compatible with wildlife fish and wildlife habitat(.030) and restrict the extension of urban services and prohibit or discourage urban growth in rural areas. Has the County also failed in designating Limited Areas of More Intense Development to comply with RCW36.70A.070 (5). Has Stevens County failed to develop a written record explaining how the rural element harmonizes the planning goals in RCW 36.70A and meets the requirements of the chapter as required by RCW 36.70A.070(5)? Does this substantially interfere with the Goals of the Act?

The Parties' Position:

Petitioners:

The Petitioners contend the County failed to provide for a variety of rural densities and requires only that rural densities shall not be greater than one dwelling unit per five acres. The Petitioners argue that what the County has written in its Comprehensive Plan, RU-11, is simply not enough and substantially interferes with Goals Nos. 1, 2, 8, and 10 of

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the Act. The Land Use Element, RCW 36.70A.070(1) mandates densities,…and the Rural element to establish patterns, as well as a variety of rural densities. The Petitioners also contend that five acre parcels along the urban growth boundary make the extension of public facilities, annexation and future re-subdivision at urban densities difficult, hindering the logical expansion of urban growth areas.

The Petitioners argue the County has policies for shorelines and critical areas, but nothing in place to protect the "rural character" of the county as mandated by RCW 36.70A.070(5)(c)(iv). In addition, the County failed to address several important environmental impacts which would affect the rural character and surrounding critical areas. For instance, the record does not show where the Department of Ecology (DOE) was consulted or even commented on the FEIS or Comprehensive Plan. Also, there wasn't any analysis of the increased development in the LAMIRD areas and the effect this impact will have on the recharge of the watershed. Nothing in the record shows that the County took into consideration Mr. Davies' or the Petitioner's concerns mentioned in their letters.

Respondent:

The Respondent argues that the County's rural policy specifically requires the establishment of development regulations that provide for a variety of lot sizes based on many listed factors. The Respondent contends that it is the Petitioners responsibility to show that the County committed clear error in the method they used to establish LAMIRDs. The Respondent also contends that the County has a critical areas ordinance in the Land Use element of its CP to protect critical areas and water quality, which includes GP-13, requiring new development to mitigate all significant environmental impacts; LU-4, requiring consideration of environmental constraints when designating UGAs; and LU/SMP-3, 4 and 8, requiring protection of environmentally sensitive, wetlands and water quality. In addition, Appendix B of the resolution to adopt the Comprehensive Plan is the CARA designation for the Loon Lake and Deer Lake water sheds.

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Amicus Response (PUD No. 1):

The PUD agrees with the Petitioners that the CP Rural Policy directs the County to establish development regulations within designated rural lands with densities not greater than one dwelling unit per five acres. But the CP Rural Policy also directs that such regulations must provide for densities based on geographical, topographical, hydrological, transportation and other development-related factors. No error is identified by the Petitioners on the part of the County.

The PUD also argues that the Petitioners failed to carry their burden of proof concerning the logical outer boundaries of the LAMIRDs, as they existed when the County opted into Growth Management. The Petitioners ask questions, but do not point to any error by the County.

Furthermore, the PUD contends that the Petitioners failed to carry their burden of proof concerning the County's management of environmental concerns through its Rural Element and Land Use Element in the CP. The PUD argues that the Rural Element clearly addresses the protection of critical areas, as required by RCW 36.70A.170.

Amicus Response (CTED):

RCW 36.70A.070(5)(b) requires the rural element of a comprehensive plan to "provide for a variety of rural densities, uses, essential public facilities, and rural governmental services needed to serve the permitted densities and uses." With that statute in mind, CTED contends that the County's Rural Policy RU-11 establishes a policy under which development regulations may not provide for rural densities greater than 1 dwelling unit per five acres. RU-11 also provides development factors are to be used to provide for a variety of lot sizes. Since the minimum lot size is 5 acres, RU-11 necessarily must refer to a variety of lot sizes that are larger than 5 acres, consistent with rural character as defined in the GMA. CTED argues that the policies and narrative in the County's CP comply on their face with RCW 36.70A(5)(b). The rural density provisions in the County's CP do not provide for uniform five-acre lots throughout the rural area, and they are therefore distinguishable from the provisions found non-compliant in Western Board decisions.

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According to CTED, the adoption of development regulations that implement a variety of rural densities, and that the County will allow rezones to impermissible densities, is not relevant to the Board's decision regarding the issue that is raised in this petition: whether the Rural Element of Stevens County's CP complies with RCW 36.70A.070(5)(b).

Petitioners HOM Reply (Wagenman, et al):

The Petitioners contend the County must show its work in determining the logical outer boundaries for the fifteen designated LAMIRDs. The Petitioners cannot find any maps or documents that detail how the logical outer boundaries for the LAMIRDs were determined and designated as per the build environment from 1993. The Petitioners question the County's work to show the built environment of the Loon Lake LAMIRD. The Respondent argued that the Wilma property is not "currently developed beyond ordinary rural intensity", but offers no explanation as to what defines this rural intensity and whether the County used the same criteria for the other LAMIRDs. Respondent HOM brief. The Petitioner argues that the County did not use any criteria for establishing the LAMIRD boundaries and thus promotes sprawl. The Petitioners contend the GMA is very specific in that a "…written record shall explain how the rural element harmonizes with the planning goals and meets the requirement of the chapter as required." RCW 36.70A.070(5)(a).

The Petitioners contend the County's CP does not contain specifics for protecting the rural character, but only refers to the development regulations yet to be adopted. The County relies on its Critical Areas Ordinance (CAO) to provide planning or direction for developments within critical areas. But, the Petitioners argue, the CAO and the Shorelines Management Plan (SMP) do not address water quantity and quality, stormwater run-off, impervious surfaces and watershed recharge. The County has no variety of rural densities and thus is deficient in the GMA. The Petitioners argue that development regulations can be and will be amended and changed and rezones are not subject to necessary guidance from the CP. The Petitioners further argue that five-acre minimums do not protect the environmental concerns in the Loon Lake watershed.

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The Petitioners address Issues Nos. 18 and 23 under this Issue at this point in their Reply Brief. The Petitioners argue the County's CP has no Land Use Goals or Land Use Policies in place to protect the rural character. They contend the rural character exists outside of the County's critical areas and shorelines, which the County says it has policies for protection. The Petitioners also contend that the Natural Resource Element does not have policies that identify issues as land use issues for protection of quality and quantity of ground water, drainage and flooding, as suggested by the statement in the Land Use Element, II-6. The Petitioners also contend that the County's General Planning Goal, GP-13, does not protect the environment from new development because there is no Rural Element or Land Use Element that would address the issues of protecting the rural character, such as water issues. The Petitioners argue that there are other sub-areas and sub-watersheds outside of the Sheep Creek CARA that need protection as well and that none of the County's statements about Mr. St. Goddard's report are supported by scientific data. There is also nothing in the CP that protects the Colville River, which is in poor condition, according to the Petitioners. Also, the Sheep Creek watershed and the Loon Lake watershed are distinct and different and the County should not compare the two in terms of the effect of five-acre densities.

The Petitioners contend that the County repealed the original sub-area plan and put in place its CP, which does not address the capacity of land, air and water. With the adoption of the CP by the BOCC, everything the (Loon Lake) community has worked to protect in the Loon Lake watershed is in jeopardy.

Board Analysis:

RCW 36.70A.070(5) Rural element, is a mandatory element of the GMA. The statute requires, in part, that counties develop a written record explaining how the rural element harmonizes the planning goals [(5)(a)]; it requires that the county provide a variety of rural densities [(5)(b)]; it requires measures that reduce the inappropriate conversion of undeveloped land into sprawling, low-density development [(5)(c)(iii)]; it requires measures to protect critical areas and surface water and ground water resources [(5)(c)(iv)]; it

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requires measures that protect against conflicts with the use of agriculture, forest and mineral resource lands [(5)(c)(v); and it also provides for LAMIRD designation [(5)(d)].

The Petitioners contend that the County's Comprehensive Plan Rural policy, RU-11, which establishes a minimum density of one unit per five acres, fails to protect the County's rural character by not providing a "variety of rural densities", limiting development at levels consistent with the rural character, protecting critical areas, and other requirements found in RCW 36.70A.070(5).

The Board agrees with the Petitioners. There is an obvious disconnect between the proposed variety of densities in the County's Final Draft Comprehensive Plan (December, 2005), for which the Final Environmental Impact Statement was written, and Policy RU-11 in the County's Final Comprehensive Plan (July, 2006). After careful examination of the record, the Board finds that the County failed to show its work from its original proposal of five, ten and twenty acre designations for rural and resource lands to its final designation of "densities not greater than 1 dwelling unit per 5 acres" for all rural lands. The FEIS, which is the document that examines the County's potential alternatives, including "no action", did not examine the five-acre minimum decision and its effect on the environment. In fact, it was never mentioned. RU-11, as written in the Final CP, did not see the light of day until the final hearings. RU-11 was not mentioned as a possibility in the FEIS; in Appendix A of the Final Draft CP; or in the Introduction portion of the Final CP under 3.0 Major Changes in the Comprehensive Plan. A change in the CP of this magnitude and with such a potential impact on land use throughout Stevens County should have had its own alternative study in the FEIS.

The County's Final Draft Comprehensive Plan, Appendix A, under 4.2.2 Rural Development Generally, and specifically 4.2.2.1, 5-, 10- and 20-acre Zoning, makes the assumption that the County would adopt under Policies RU-8 through RU-11, "the establishment of five, ten or twenty acre densities" based on an assessment of several factors, such as topography, access to existing County roads, areas with known water limitations, areas of higher density rural zoning; and areas characterized by higher intensity

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development. In the accompanying land maps, the Draft Comprehensive Plan Rural Zoning and Resource Lands map (A-12, page 86) has a legend with five, ten and twenty acre zoning. The map shows proposed areas of Stevens County zoned five, ten and twenty acre areas.

In the Final EIS, under 4.0 Draft Plan/EIS Comments & Responses, Issue 4: Density limits for various zones, page III-34, the County's response to citizen's questions related to density for various zones included:

> "The County elected to adopt a 20-acre density limit for resource lands, consistent with the approach used by several other eastern Washington counties with similar development characteristics. The Final Plan proposes density limits varying from 5 to 20 acres for both rural and resource lands, depending on location-specific characteristics relative to the applicable criteria."

The Board could not find in the record where the County considered the impact of its final decision to remove ten and twenty acre zoning and blanket the County with "densities not greater than 1 unit per five acres." But, from the time the FEIS and Draft Comprehensive Plan was completed and the Final Comprehensive Plan was adopted, all of the information relating to five, ten and twenty acre zoning was eliminated in the text and from the final land use maps. Without the County designating larger densities in agricultural, forest and environmentally sensitive areas, large areas of rural and resource lands will be parceled into five-acre lots.

The County's Final CP Rural Element states that "…the rural element must provide direction and support for measures applying to rural development that will protect the rural character of the area. Rural character is defined based on the local circumstances of each county." Under 5.1 Rural Goal, the County states that "It is the rural goal of Stevens County to protect and enhance the character and quality of rural areas in ways that promote traditional rural lifestyles and industries, including timber, agriculture and mining, while also allowing for a diversity of uses, densities, and innovative development." Policy RU-1 is written to "reduce the inappropriate conversion of undeveloped land into sprawling, low-

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density development and reduce the proportion of County-wide growth occurring in the rural area." Policies RU-2 A., B. and C. encourage rural land use activities and development intensities that: A. are consistent with and build upon the existing character of the rural areas; B. avoid interference with resource land uses; and C. provide appropriate protections for critical areas as required by RCW 36.70A.170.

As written in its Comprehensive Plan under the Rural Element, the County is very protective of rural areas. But Policy RU-11 fails to provide the protections contemplated by the goals and policies in the County's Rural Element. The GMA requires a "variety of densities" to protect the rural lands and resource lands as described in the GMA and the County's goal and policies. The County has an obligation to its citizens to not just print the words in its Comprehensive Plan, but to also follow-through with protections for these lands. Allowing five-acre parcels throughout the rural lands and resource lands is allowing low-density sprawl to take place in agricultural, forest and rural areas. There was no written record submitted showing how this change from a variety of densities to the present RU-11 "harmonizes the planning goals."

The Western Board addressed this issue in *Achen v. Clark County*:

> Where the record demonstrated that a greater variety of rural densities, a decrease in urban and rural sprawl and an increase in RL conservation would be achieved by a greater than 5-acre minimum lot size, maintaining a minimum 5-acre lot size throughout the county did not comply with the GMA and substantially interfered with the goals of the GMA. *Achen v. Clark County,* WWGMHB Case No. 95-2-0067, Compliance Order, Feb. 5, 1998.

As a self-defined "rural county", Stevens County has an obligation to its citizens to protect the rural nature and the resource lands so important to its economy. The County, in Chapter 1, Stevens County Context & Approach to the Comprehensive Plan, acknowledges that its Plan "…presents a unique opportunity to provide for ample conditions to foster stewardship of abundant natural resources, promote agricultural activities and encourage well-planned development throughout a wide variety of environments located throughout the County." Maintaining a rural lands policy, such as RU-11, will not achieve these goals.

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The Petitioners also contend that the County failed to comply with RCW 36.70A.070(5) when it designated the three LAMIRDs, Arden, Loon Lake and West Kettle Falls.

The Board partially addressed the County's three LAMIRDs in Issue Nos. 6 and 19. In Issue No. 6, the Board was asked whether the Loon Lake LAMIRD was incompliance with RCW 36.70A.070(5)(d)(iv). To reiterate, "In this case, the Board believes the County showed its work. The Board's decision for this LAMIRD does not mean we agree or disagree with the designation of Loon Lake as a LAMIRD or the "logical outer boundaries" of the LAMIRD." In other words, the Board agrees with the Respondent that the Loon Lake LAMIRD is in compliance.

The Arden LAMIRD was not addressed in Issue No. 6, but given the same process the County followed in the FEIS and Final Draft Comprehensive Plan as it did with Loon Lake, the Board believes that the County is also in compliance with the Arden LAMIRD, although the public facilities and services may not be available as needed when Arden finally grows in population.

The West Kettle Falls LAMIRD was discussed in Issue No. 19. In this case, as outlined in the discussion there, the Board finds that the County failed to show its work to designate 1,917 acres as a LAMIRD. The area may very well be platted, but there was no discussion or study in the FEIS or a land use map that clearly showed where the built environment, including legal plats, was located. Essentially, this LAMIRD was added late to the process without the required environmental review to determine its impact. RCW 36.70A.070(5)(d)(iv) is implicit that LAMIRDs "shall not extend beyond the logical outer boundary of the existing area or use, which are those areas clearly identifiable and contained and where there is a logical boundary delineated predominately by the built environment, but that may also include undeveloped lands if limited as provided in this subsection." The West Kettle Falls LAMIRD designation is clearly erroneous in light of the entire record.

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Conclusion:

The Petitioners have carried their burden of proof in Issue No. 21 and the Board finds the County clearly erroneous. The County failed to protect the Rural Character as required by RCW 36.70A.070(5) when designating the West Kettle Falls LAMIRD and by establishing Rural densities not greater than 1 unit per five acres. These actions substantially interfere with Goals Nos. 1, 2, 8, and 10 of the Act.

Issue No. 22:

Has Stevens County failed to comply with their County Wide Planning Policies in the following manners, but not limited to these areas: In creating Urban Reserve Areas, new Urban Growth Areas, and failing to address open space, conservation of fish and wildlife habitat while protecting and enhancing the county's quality of life including water quality and quantity.

The Parties' Position:

Petitioners:

The Petitioners contend the two areas designated Urban Reserve by the County, Loon Lake and Hunters, do not comply with the County's Countywide Planning Policies, or the County's Land Use Policies. According to the Petitioner, Loon Lake and Hunters are not designated UGAs, not incorporated, or even qualify for incorporation. In addition, neither of these rural towns have urban development or urban facilities or services. The County has inappropriately designated approximately 640 acres as Urban Reserve, yet does not know the future capacity of the sewer district to serve the area.

The Petitioners also argue that the County's designated Urban Reserve area sits on top of a critical aquifer recharge area (CARA), which has environmental constraints. There are no uses prohibited by the County in the area of a CARA. The Petitioners contend that the County has made an error in designating Hunters and Loon Lake as areas of Urban Reserve. The County has not met its own criteria under its CWPP, specifically items III. and VI. on page 6, and in its Comprehensive Plan, specifically LU-4 and LU-7-C, to use this

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designation at Loon Lake and Hunters. This action substantially interferes with RCW 36.70A.020, Goals 1, 2, 9, and 10.

Respondent:

The Respondent incorporates Legal Issue No. 7, 2, 15 and 23 in the County's response to the Petitioner's assertions. The Respondent contends that the Petitioners' arguments cite no authority to support any assertions that the County may not plan for future urban growth in the manner it has chosen to do so.

Petitioners HOM Reply (Wagenman, et al):

The Petitioners contend the Urban Reserve area designated by the County doesn't make sense because of the number of public comments opposed to this designation and this designation would mark the Loon Lake area for consideration as urban, not rural. The Petitioners also argue that the Land Use Policies found in the CP are not supportive of this designation, including the fact that no uses are prohibited in CARA's and other uses have waived hydrology reports. The County designated this Urban Reserve area over a CARA despite its own land use policy (LU-7).

Board Analysis:

The Respondent argues that the Urban Reserve designation at Loon Lake is "essentially a place holder, intended to preserve the status quo…" Respondent brief at 19. This argument does not justify the Urban Reserve designation.

An Urban Reserve area, in general terms, is a "place holder" as described by the Respondent. The Urban Reserve designation is a tool that allows counties to plan ahead to accommodate future expansions of a UGA. An Urban Reserve area can be described as land outside of an urban growth area having the potential for inclusion within a UGA as expansion of a UGA is deemed necessary to meet land availability requirements of future OFM population projections. Urban Reserve areas are selected based on the criteria for UGAs.

An Urban Reserve designation allows cities to expand into Urban Reserve areas adjacent to urban growth areas as allowed by RCW 36.70A.110(1) or expand into these

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areas if they fit one of the six exemptions allowed by the GMA. The Central Board listed those exemptions in *Association of Rural Residents v. Kitsap County:*

> "The Act does provide six exceptions to the general rule governing locations where UGAs can be extended beyond existing city limits. 1. UGAs can be located outside existing city limits if the detailed requirements for a new fully contained community are met. RCW 36.70A.350. 2. UGAs can be located outside existing city limits if the detailed requirements for master planned resorts are met. RCW 36.70A.360. 3. UGAs may include territory outside existing city limits only if that additional territory is already "land having urban growth located on it." RCW 36.70A.110(1); or 4. UGAs may include territory outside existing city limits only if that additional territory is already "land located in relationship to an area with urban growth on it as to be appropriate for urban growth." RCW 36.70A.110(1); or 5. UGAs may include territory outside existing city limits only if that additional territory is adjacent to territory already "... having urban growth located on it." RCW 36.70A.110(1); or 6. UGAs may include territory outside existing city limits only if that additional territory is adjacent to territory already "... located in relationship to an area with urban growth on it as to be appropriate for urban growth." RCW 36.70A.110(1). [*Rural Residents, 3310,* FDO, at 48.]

There is no authorization in the GMA to designate an Urban Reserve area adjacent to a LAMIRD, either in RCW 36.70A.110 or in the six exemptions listed above. Furthermore, this designation by the County is illogical given the definition of a LAMIRD. Urban Reserve areas are designated transitional areas, where an existing urban growth area can expand in the future. LAMIRDs have logical outer boundaries predominantly set by the built environment in existence as defined in RCW 36.70A.070(5)(d)(v). This designation eliminates expansion outside the designated outer boundaries:

> Lands included in such existing areas or uses shall not extend beyond the logical outer boundary of the existing area or use, thereby allowing a new pattern of low-density sprawl. RCW 36.70A.070(5)(d)(iv).

Designating an Urban Reserve area at Loon Lake is also contrary to the County's own Countywide Planning Polices and Land Use Element in the Comprehensive Plan. CWPP III states:

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> "Designated urban growth areas should include those portions of our communities already characterized by urban growth that have existing public facilities and service capacities to serve such development as well as those areas projected to accommodate future growth."

The Loon Lake LAMIRD is not an option for designating future urban growth. By definition, a LAMIRD can not accommodate future growth outside of its logical outer boundary. It is constrained by the built environment in place when the County opted into the GMA.

CWPP VI clearly contemplates that future urban areas, such as Urban Reserve areas, should be designated near or adjacent to cities.

> Community comprehensive plans should contain annexation and/or incorporation elements. Areas for potential annexation or potential incorporation should be designated in portions of urban growth areas outside of cities.

In the County's Land Use Policies, under LU-7.C, the County again anticipates that an Urban Reserve area will be "proximate to a designated urban growth area, which are potentially suitable for inclusion in an urban growth area, based on the criteria established in LU-4. Such areas should not be extensively constrained by critical areas." The Loon Lake LAMIRD is not an urban growth area, there are extensive critical areas around the lake, and the designated Urban Reserve area sits above the Loon Lake CARA area.

Hunters, on the other hand, is one of the newly designated unincorporated UGAs. It is not served by the PUD with public water or sanitary sewer, according to the PUD's 2005 Updated Comprehensive Water System Plan. Exhibit #165 seems to indicate a private contractor is providing potable water, but the exhibit does not indicate whether the contractor is presently providing water to the built environment or is planning to do so in the future. This exhibit may simply be a photo of Hunters with a hand-written plan that indicates where the water pipes may be in the future. In the end, the Respondent's exhibits, #126 and #165, were inconclusive as to the availability of public water. Public

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sanitary sewer is presently not provided and, according to the PUD, is not planned. The area around Hunters may have a built environment, but it does not have the public services and facilities necessary to be an urban growth area at this time or have Urban Reserve designated around it.

The County has designated an oversized Urban Reserve area outside the built environment of Hunters to absorb urban-like population. Contrary to a LAMIRD, the GMA gives counties authorization in RCW 36.70A.110(1) to designate an urban reserve area outside a UGA. But to do so, the County has to include in its capital facilities a forecast of the future needs for this area and the proposed locations and capacities of expanded or new capital facilities per RCW 36.70A.070(3)(b), and (c).

The Board agrees with the Petitioners that the County has not designated Urban Reserve areas according to its CWPPs, its Land Use Element policy, LU-7, or as authorized by the GMA. Open space and quantity and quality of ground water were addressed under Issues Nos. 5 and 18. That portion of the issue concerning "conservation of fish and wildlife habitat" was not argued in the Petitioners' briefs and is therefore deemed abandoned.

Conclusion:

The Petitioners have carried their burden of proof in Issue No. 22 and the Board finds the County's actions clearly erroneous. The County failed to comply with RCW 36.70A.070(5)(d) when establishing an Urban Reserve area at Loon Lake and failed to show its work in support of the establishment of an urban reserve designation adjacent to the Hunter's UGA.

Issue No. 23:

Has Stevens County failed to comply with the requirements of RCW 43.21C in adopting the comprehensive plan?

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The Parties' Position:

Petitioners:

RCW 43.21C.030 and .031 require that the responsible official provide a detailed statement on the environmental impacts of the action, any adverse environmental effects which cannot be avoided, the relationship between short term uses and the maintenance and enhancement of long term productivity, and any irreversible, irretrievable commitments of resources. In addition, The Petitioners contend that the County should have addressed the significant impacts by having the responsible official consult agencies and the public to identify such impacts and limit the scope of the EIS.

The Petitioners contend that the County issued an FEIS, but missed addressing the environmental impacts in several important areas. They claim that the record does not show that the DOE was consulted or that the DOE even commented on the EIS or CP. In addition, there was no mention of impervious surface impact or the impact of the five and ten acre parcel designation around Loon Lake.

Respondent:

The Respondent argues that this Legal Issue should be dismissed because SEPA expressly requires aggrieved parties to use available administrative appeal procedures before seeking further review. RCW 43.21C.075(4). The Petitioner did not appeal the FEIS as required by Ordinance 02-1991, Section 3.7.1.C and the Respondent cites *CLEAN v. City of Spokane*, 133 Wash.2d 455, 947 P.2d 1169 (1997). The Respondent contends that the County's Comprehensive Plan is supported by a non-project FEIS, so by WAC 197-11-442(4), the County is not required to analyze the kinds of project specific impacts listed in the Petitioner's brief.

Petitioners HOM Reply (Wagenman, et al):

Petitioners argue that the County failed to provide and publish a Notice of the Final Action with dates of any appeal period concerning the FEIS. In addition, the Petitioners contend the publication of the adoption of the Comprehensive Plan also gave no indication that an appeal of the FEIS would be separate.

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Board Analysis:

The Stevens County Final Draft Comprehensive Plan and Final Environmental Impact Statement were released by Stevens County on December 23, 2005. As an introduction, Clay White, Planning Director for Stevens County, wrote, "To All Interested Parties/Required Agencies: All comments received are responded to within the Final Environmental Impact Statement." As a general statement and for the most part, the FEIS is a fairly complete document, which tends to follow the requirements of SEPA.

The Respondent cites RCW 43.21C.075(4), which requires an aggrieved party to use available administrative appeal procedures before seeking further review:

> (4) If a person aggrieved by an agency action has the right to judicial appeal and if an agency has an administrative appeal procedure, such person shall, prior to seeking any judicial review, use such agency procedure if any such procedure is available, unless expressly provided otherwise by state statute.

The County's SEPA ordinance requires this review before the Board of County Commissioners within ten days of an FEIS being issued (SC Ordinance 02-1991, Section 3..7.1.C). The time for the Petitioners to appeal the FEIS to the BOCC is long since past and they are thus barred from advancing this legal issue.

In addition, WAC 197-11-442(4), which addresses SEPA, is clear that the EIS is a document which discusses the general impacts of alternate policy proposals, not specific concerns:

> (4) The EIS's discussion of alternatives for a comprehensive plan, community plan, or other areawide zoning or for shoreline or land use plans shall be limited to a general discussion of the impacts of alternate proposals for policies contained in such plans, for land use or shoreline designations, and for implementation measures. The lead agency is not required under SEPA to examine all conceivable policies, designations, or implementation measures but should cover a range of such topics. The EIS content may be limited to a discussion of alternatives which have been formally proposed or which are, while not formally proposed, reasonably related to the proposed action.

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The Petitioners contend that the FEIS did not sufficiently cover environmental concerns, such as rural character, impervious surface impacts and the impacts associated with five and ten acre zoning. The Board agrees that the FEIS did not fully cover the alternatives (i.e. the impact of RU-11, Final CP), but the Petitioners are barred from advancing this issue now.

The Petitioners also argue that the DOE was not consulted, nor did they comment. According to the County's CP and FEIS introductory letter, the documents were sent to all interested parties and required agencies. Evidently, the DOE chose not to comment on the FEIS, although they did comment on December 15, 2004, (exhibit 1115A). Other agencies did comment on the FEIS. For instance, CTED commented numerous times (exhibits 634, 646, 813, 1012, 1073, 1091); Washington State Department of Fish and Wildlife commented several times (exhibits 728, 811); and the Washington State Department of Transportation also commented (exhibit 798, 1013).

Conclusion:

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

V. FINDINGS OF FACT

1. Stevens County is a county located east of the crest of the Cascade Mountains and has chosen to plan under Chapter 36.70A.
2. Petitioners are citizens of Stevens County and participated in the adoption of the Stevens County Comprehensive Plan, Resolution #59-2006.
3. Petitioners raised twenty-three legal issues addressed in three original petitions.
4. The Board consolidated Case Nos. 06-1-007, 06-1-0008 and 06-1-0009 into consolidated Case No. 06-1-0009c.

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5. Stevens County completed a Final Draft Comprehensive Plan and a Final Environmental Impact Statement on December 23, 2005.
6. Stevens County enacted Resolution #59-2006 and adopted the Stevens County Comprehensive Plan on July 13, 2006.
7. Petitioners filed timely petitions on September 8, and September 11, 2006.
8. Stevens County held numerous public workshops, hearings and allowed opportunities for written comment.
9. The Stevens County CP has designated five incorporated urban growth areas, five new unincorporated urban growth areas, three Type III LAMIRDs, twelve Type II LAMIRDs, and twelve Crossroads areas.
10. Stevens County failed to adopt a capital facilities plan and financial plan for the new UGAs as required by RCW 36.70A.110(3) and RCW 36.70A.070(3).
11. Stevens County failed to designate or identify greenbelts and open space or show its work why these elements were not considered within the new unincorporated UGAs are required by RCW 36.70A.110(2).
12. Stevens County failed to adopt a compliant capital facilities plan and six-year financial plan as required by RCW 36.70A.070(3); failed to ensure adequate existing public facilities and service capacities as required by RCW 36.70A.110(3), and failure to follow goals RCW 36.70A.020(1), (2), and (12) as required by the GMA.
13. Stevens County failed to adopt policies or regulations in its CP to "ensure" public facilities and services are available when impacts of development occur or within a reasonable time afterwards as required by RCW 36.70A.020(12).
14. Stevens County failed to adopt policies or regulations in the Land Use Element of the CP to protect quality and quantity of groundwater used for public water

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supplies or review drainage, flooding or storm water in the area and nearby jurisdictions as required by RCW 36.70A.070(1).

15. Stevens County failed to complete a land quantity analysis to justify the designation of the five new UGAs and the acreage assigned to each as required by RCW 36.70A.020(2).

16. Stevens County failed to protect the Rural Character as required by RCW 36.70A.070(5) for designating the West Kettle Falls area as a LAMIRD.

17. Stevens County failed to comply with RCW 36.70A.070(5)(d) when it established an urban reserve area at Loon Lake and failed to show its work in support of the establishment of an urban reserve designation adjacent to the Hunter's UGA.

VI. CONCLUSIONS OF LAW

1. This Board has jurisdiction over the parties to this action.
2. This Board has jurisdiction over the subject matter of this action.
3. The Petitioners have standing to raise the issues listed in the Prehearing Order.
4. The Petition for Review in this case was timely filed.
5. Stevens County is found out of compliance for its failure to adopt a capital facilities plan and financial plan as required by RCW 36.70A.110(3) and RCW 36.70A.070(3).
6. Stevens County is found out of compliance for its failure to designate or identify greenbelts and open space or show its work why these elements were not considered within the new unincorporated UGAs are required by RCW 36.70A.110(2).
7. Stevens County is found out of compliance for failure to adopt a compliant capital facilities plan and six-year financial plan as required by RCW 36.70A.070(3); failure to ensure adequate existing public facilities and service

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capacities as required by RCW 36.70A.110(3), and failure to follow goals RCW 36.70A.020(1), (2), and (12) as required by the GMA.

8. Stevens County is found out of compliance for failure to adopt policies or regulations in its CP to "ensure" public facilities and services are available when impacts of development occur or within a reasonable time afterwards as required by RCW 36.70A.020(12).

9. Stevens County is found out of compliance for failure to adopt policies or regulations in the Land Use Element of the CP to protect quality and quantity of groundwater used for public water supplies or review drainage, flooding or stormwater in the area and nearby jurisdictions as required by RCW 36.70A.070(1).

10. Stevens County is found out of compliance for failure to complete a lands quantity analysis to justify the designation of the five new UGAs and the acreage assigned to each as required by RCW 36.70A.020(2).

11. Stevens County is found out of compliance for failure to protect the Rural Character as required by RCW 36.70A.070(5) for designating the West Kettle Falls area as a LAMIRD.

12. Stevens County failed to comply with RCW 36.70A.070(5)(d) when it established an urban reserve area at Loon Lake and failed to show its work in support of the establishment of an urban reserve designation adjacent to the Hunter's UGA.

VII. INVALIDITY FINDINGS OF FACT

Stevens County has been found out of compliance on a number of serous issues. It is now time for the Board to consider if the remedy of a finding of Invalidity should be made. The Board has reviewed the Record and briefing in detail and we believe that the following is an accurate statement:

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There exist development regulations which speak of densities for Rural and Resource lands. These are in the process of amendment at this time. (Stevens County 3.01) However the "Future Land Use Map" attached as part of the adopted Comprehensive Plan, did not show the various zoning designations of the Rural lands or Resource lands. Because of this, it appears that the only reference in the Comprehensive Plan or maps limiting the densities of lots within the County is the provision limiting Rural lands to a density of no greater than one dwelling unit per five acres.

If this is a correct reading of the Record, the Board will feel compelled to issue a finding of Invalidity, thus finding invalid that portion of the Comprehensive Plan which would allow such a maximum lot density. **The Board will make a determination on the issue of a finding of Invalidity within 14-days of the date of this Order. The Board requests Stevens County to provide clarification as to where in the submitted record or arguments, the final comprehensive plan contains other land use designations other than "a density of no greater than 1 d/u per 5 acres" within 10 days of the date of this Order.**

VII. ORDER

1. The Board finds that the Petitioners have carried their burden of proof and that the County's actions are clearly erroneous. The County is found out of compliance in the following issues: No.2 (urban growth areas); No. 5 (greenbelts and open spaces); No. 9 (capital facilities plan); No. 15 (capital facilities plan); No.17 (concurrency); No. 18 (quantity and quality of groundwater); No. 19 (lands quantity analysis); No. 20 (greenbelts and open space); No. 21 (rural character); and No. 22 (urban reserve designation).
2. The Board has reviewed the Record and briefing and finds the County apparently has not designated a variety of densities in the Rural and Resource lands areas and on the Land Use Map. A designated density of "no greater than 1 d/u per five acres" does not fulfill the County's

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obligation under GMA. If this proves to be the case, the Board will feel compelled to issue a finding of Invalidity. Stevens County is requested to provide the Board with portions of the record or argument which might affect our decision by **March 22, 2007.**

3. Stevens County must take the appropriate legislative action to bring itself into compliance with this Order by **September 10, 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 **September 17, 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 **October 1, 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 **October 15, 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 **October 22, 2007,** Petitioners shall file with the Board an **original and four copies** of their Reply to Comments and legal arguments. Petitioners shall serve a copy of their brief on the parties.

- Pursuant to RCW 36.70A.330(1) the Board hereby schedules a telephonic Compliance Hearing for **October 29, 2007, at 10:00 a.m.** The parties will call **360-357-2903 followed by 18074 and the # sign.** Ports are reserved for Ms. Wilma, Mr. Berger, Ms. Wagenman,

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Mr. Scott, Mr. Werst, and Mr. Copsey. If additional ports are needed please contact the Board to make arrangements.

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

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.

Judicial Review:

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

Enforcement:

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

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Service on the Board means <u>actual receipt of the document at the Board office</u> within thirty days after service of the final order.

<u>Service</u>:

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

SO ORDERED this 12th day of March 2007.

EASTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

_____
John Roskelley, Board Member

_____
Dennis Dellwo, Board Member

_____
Joyce Mulliken, Board Member

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