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

WILMA et al.,

Petitioners,

v.

STEVENS COUNTY,

Respondent.

Case No. 06-1-0009c

ORDER ON CLARIFICATION
RECONSIDERATION AND ORDER ON
INVALIDITY

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I. SYNOPSIS

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

The County adopted the 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 and deemed one issue abandoned, which left nineteen issues. They are summarized in the March 12, 2007, Final Decision and Order (FDO).

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

6 However, the Board found that the Petitioners carried their burden of proof in the
7 following issues and Stevens County was ordered to come into compliance with the Board's
8 FDO by September 10, 2007: No.2 (urban growth areas); No. 5 (greenbelts and open
9 spaces); No. 9 (capital facilities plan); No. 15 (capital facilities plan); No.17 (concurrency);
10 No. 18 (quantity and quality of groundwater); No. 19 (land quantity analysis); No. 20
11 (greenbelts and open space); No. 21 (rural character); and No. 22 (urban reserve
12 designation).

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

15 Upon completion of the FDO in this matter and the receipt of the motions for
16 reconsideration, the Board felt compelled to consider a finding of invalidity based on the
17 County's failure to designate a variety of densities of Rural lands as required by the GMA.
18 The Board gave the County an opportunity to clarify as to where in the submitted record or
19 arguments the final Comprehensive Plan contains other land use designations or densities
20 other than "a density of no greater than 1 d/u per 5 acres."

21 On March 22, 2007, Petitioner Wilma and Petitioners Wagenman, et al., filed
22 separate Motion(s) for Clarification and Reconsideration of the FDO. Petitioner Wilma asked
23 for reconsideration of Issue Nos. 6 and 10, and Petitioners LBN and Jeanie Wagenman
24 asked for clarification and reconsideration of the Board's decisions on Issue Nos. 20 and 21,
25 and requested invalidity of portions of the CP resulting from noncompliance determinations
26 on Issue Nos. 15, 17, 19 and 21. The Board denied reconsideration of Issue No. 10, but
allowed the Parties to brief the other issues.

1 In their reconsideration below, the Board decided the following: the Board upheld
2 their previous decision in Issue No. 6 and determined that Stevens County had created the
3 two Loon Lake LAMIRDs using an appropriate process; they were compelled to issue a
4 finding of invalidity resulting from the actions of the County reflected in Issues No. 19 and
5 21; they clarified the Board's Finding of Facts and Conclusions of Law to include "between"
6 urban growth areas; and the Board added an additional Findings of Fact and Conclusions of
7 Law to include language from RCW 36.70A.070(5)(a).

8 **II. PROCEDURAL HISTORY**

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

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

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

18 The Board at the Prehearing conference consolidated Case Nos. 06-1-0007-06-1-
19 0009. The new Case Name and Number is as follows and shall be captioned accordingly:
20 WILMA et al. v. STEVENS COUNTY, 06-1-0009c. The acting Presiding Officer instructed the
21 Petitioners to consolidate the issues and provide the Board and Respondent with copies of
22 consolidated issues by October 16, 2006. The Petitioners advised they were unable to meet
23 the October 16, 2006, deadline for submitting the proposed consolidated issues and would
24 provide the Board and Respondent the issues as soon as possible.

25 On October 24, 2006, the Board received the proposed consolidated issues.
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1 On October 25, 2006, the Board asked the Respondent to advise the Board if it
2 objected to the rewritten issues. Mr. Scott on October 31, 2006, filed with the Board
3 Respondent's Objection and Motion for Extension.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 On March 12, 2007, the Board issued its Final Decision and Order. The Board
6 indicated it would issue an Order regarding invalidity at a later date.

7 On March 21, 2007, the Board received Petitioners LBN & Wagenman's Motion for
8 Clarification/Reconsideration of FDO of 3/12/07, and Petitioners Wilma and Berger's Motion
9 and Argument for Reconsideration and Request for Rebuttal Briefing to Respondent's
Expected Clarification of the Record.

10 On March 22, 2007, the Board received Respondent's Motion for Partial
11 Reconsideration.

12 On March 29, 2007, the Board received Respondent's Motion for Clarification and
13 Declaration of Sarah E. Steiner.

14 On April 2, 2007, the Board received Petitioners Wagenman & LBN's Response to
15 Respondent's Motion for Clarification.

16 On April 10, 2007, the Board issued its Order on Motion for Reconsideration and
17 Clarification.

18 On April 23, 2007, the Board issued its Order Granting Extension of Time.

19 On April 30, 2007, the Board issued its Order on Motion for Clarification of the
Record.

20 On May 1, 2007, the Board received Respondent's Supplemental Brief on
21 Reconsideration.

22 On May 15, 2007, the Board received Petitioners' Response to Respondent's
23 Supplemental Brief on Reconsideration and Motion to File a Motion and Motion to
24 Supplement the Record.

25 On May 29, 2007, the Board received Respondent's Objection and Motion to Strike.

1 On May 31, 2007, the Board issued its Order on Motion to File a Motion, Motion to
2 Supplement the Record, and Motion to Strike.

3 **III. PRESUMPTION OF VALIDITY, BURDEN OF PROOF AND STANDARD OF**
4 **REVIEW**

5 Comprehensive plans and development regulations (and amendments thereto)
6 adopted pursuant to Growth Management Act ("GMA" or "Act") are presumed valid upon
7 adoption by the local government. RCW 36.70A.320. The burden is on the Petitioners to
8 demonstrate that any action taken by the respondent jurisdiction is not in compliance with
9 the Act. The Board ". . . shall find compliance unless it determines that the action by the .
10 . . . County. . . is clearly erroneous in view of the entire record before the Board and in light
11 of the goals and requirements of [Growth Management Act]." RCW 36.70A.320. To find an
12 action clearly erroneous, the Board must be ". . . left with the firm and definite conviction
13 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).

14 The Hearings Board will grant deference to counties and cities in how they plan
15 under Growth Management Act (GMA). RCW 36.70A.3201. But, as the Court has stated,
16 "local discretion is bounded, however, by the goals and requirements of the GMA." *King*
17 *County v. Central Puget Sound Growth Management Hearings Board*, 142 Wn.2d 543, 561,
18 14 P.2d 133 (2000). It has been further recognized that "[c]onsistent with *King County*, and
19 notwithstanding the 'deference' language of RCW 36.70A.3201, the Board acts properly
20 when it foregoes deference to a . . . plan that is not 'consistent with the requirements and
21 goals of the GMA." *Thurston County v. Cooper Point Association*, 108 Wn. App. 429, 444, 31
P.3d 28 (2001).

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

1 **IV. DISCUSSION**

2 In the Board's Order on Motion For Reconsideration And Clarification, issued April 10,
3 2007, they agreed to (A) reconsider Issue No. 6; (B) consider adding the word "between" in
4 its FDO under Issue No. 20; (C) consider adding additional language to the Findings of Fact
5 and Conclusions of Law under Issue No. 21; (D) consider issuing a finding of invalidity
6 concerning the determination of non-compliance in Issue Nos. 15, 17, and 19 and (E)
7 consider issuing a finding of invalidity concerning the determination of non-compliance in
8 Issue No. 21, where the Board also asked for clarification as to where in the submitted
9 record or arguments the final Comprehensive Plan contains other land use designations
10 other than "a density of no greater than 1 d/u per 5 acres."

11 **(A) Issue No. 6:**

12 Petitioner Wilma and Petitioners Wagenman, et al., contend that the County failed to
13 document its work in designating the logical outer boundaries for the fifteen LAMIRDS and
14 how the boarders of these areas were designated by the built environment that existed in
15 1993. Petitioner Wilma argues that the Wilma property, which is platted in Loon Lake Town,
16 is left out of the Loon Lake LAMIRD, yet properties that were not of the built environment in
17 1993, were included. Petitioner Wilma contends the County failed to show its work and
18 adopted LAMIRD boundaries as large as the County could justify – with the exception of
19 Loon Lake. Petitioner Wilma argues that the residents submitted the "Loon Laker's" map for
20 consideration as a town site, but the County made this area an urban reserve area. Wilma
21 Response brief at 5. The LAMIRD includes an undeveloped public utility district's (PUD)
22 property of 6.27 acres. Petitioner Wilma contends this property is on the outside eastern
23 edge of the new LAMIRD, yet her six acres is between the two LAMIRDs and left out.
24 Petitioner Wilma argues that the PUD property will not be used for public facilities and
25 services because the PUD has over three other acres in the other two parcels for expansion
26 purposes. The Petitioner also contends that the County is wrong when it asserts that the
Berger/Wilma property is not between the two LAMIRDs. She contends that the logical,

1 sensible boundary would continue down both sides of Colville Road, joining the two
2 LAMIRDs.

3 The Respondent argues that Petitioner Wilma has submitted arguments raised for
4 the first time and thus are untimely; that her contention that the County was "arbitrary and
5 discriminatory" is without merit (Respondent Supplemental Brief at 13); and that the
6 County's decision to include a day-care center and post-office that were not built before
7 1993, is proper because they are contiguous to the area designated within the logical outer
8 boundary. The Respondent contends that the County did not decide the area should be
9 urban, but decided to establish an area of urban reserve to preserve the status quo until a
10 sub-area plan could be completed. In defense of the inclusion of the PUD property, the
11 Respondent argues that the property falls within the designated area of a logical outer
12 boundary. According to the Respondent, the Petitioner's property does not.

13 The Board, after researching the record, has determined that the County designated
14 the final logical outer boundaries for the Loon Lake LAMIRDs appropriately. This is not to
15 say the Board agrees with the County's designation of this urban-like area as a LAMIRD, nor
16 agree with the County's boundary determination. The Board finds only that the County
17 apparently used a compliant process to determine the Loon Lake LAMIRD's boundaries.

18 Based on the record, the Board could not find the Petitioner carried their burden of
19 proof that the County did not show its work in designating the logical outer boundaries. In
20 Exhibit 1065, which contains the responses to public comments, Petitioner Wilma's
21 comments about inclusion of her property were responded to by staff. The County staff
22 wrote in the document, "In the current letter Ms. Wilma acknowledges that her property is
23 not currently developed, it is simply adjacent to developed areas. RU-4 does not support
24 the inclusion of her property as her property was not developed as of September 1993,
25 (when Stevens County opted into GMA). Her property is not characterized by residential,
26 commercial, or industrial activities. Type I LAMIRDs are subject to a logical outer boundary.

1 The Wilma's property does not meet the criteria for being included in the Loon Lake
2 LAMIRD. Her property is not an infill area but outside the LOB."

3 This evidence indicates to the Board that the staff did use criteria to define the
4 boundaries of this particular LAMIRD. After examining the maps, the Board agrees with the
5 staff that the property in question, which is across Colville Road from the eastern LAMIRD,
6 may be adjacent to, but not within a logical outer boundary of the eastern LAMIRD. While a
7 lot may be able to be included within a logical outer boundary, the GMA does not require
8 the jurisdiction to include all development within that boundary, only that it cannot go
9 beyond such logical outer boundary. Whether this area should have been designated a UGA
10 and allotted a larger area is the more logical question, especially given the County's
11 inappropriate designation of a large urban reserve area outside of the LAMIRD and the
12 division between the two LAMIRDs.

12 **(B) Issue No. 20: "between"**

13 The Petitioners, Wagenman, et al., would like the Board to clarify their FDO
14 concerning greenbelts, open spaces, and open space corridors to ensure that the County's
15 future actions are in compliance with RCW 36.70A.070, RCW 36.70A.110(2), RCW
16 36.70.160 and WAC 365-195-420. The Petitioner requests that the Board add the word
17 "*between*" urban growth areas, not just "*within*."

18 The Respondent argues that the County considered greenbelts and open space in its
19 policies and goals. The County contends that the GMA requires local government to include
20 greenbelts and open space, but the GMA does not say that those elements must be
21 designated in the CP. According to the Respondent, the County "will address this
22 compliance issue in accordance with the FDO. Respondents Supplemental Brief at 11.

23 The Board agrees with the Petitioner that RCW 36.70A.160 specifically requires
24 counties and cities to "identify open space corridors within and between urban growth
25 areas." The Board will change No. 9 in the Findings of Fact and No. 6 in the Conclusions of
26 Law to read:

1 Findings of Fact:

- 2 8. Stevens County failed to designate or identify greenbelts and open
3 space or show its work why these elements were not considered within
4 the new unincorporated UGAs as required by RCW 36.70A.110(2).
5 *Stevens County also failed to identify open space corridors within and
6 between urban growth areas as required by RCW 36.70A.160.*

6 Conclusions of Law:

- 7 6. Stevens County is found out of compliance for its failure to designate or
8 identify greenbelts and open space or show its work why these
9 elements were not considered within the new unincorporated UGAs are
10 required by RCW 36.70.110(2). *Stevens County is also found out of
11 compliance for its failure to identify open space corridors within and
12 between urban growth areas as required by RCW 36.70A.160.*

11 **(C) Issue No. 21: Harmonizing the Goals in the Rural Element:**

12 As written in the Order on Motion for Reconsideration and Clarification, the Board
13 agrees with the Petitioner that the County "...shall develop a written record explaining how
14 the rural element harmonizes the planning goals in RCW 36.70A.020 and meets the
15 requirements of this chapter." RCW 36.70A.070(5)(a).

16 The Respondent argues that the County "expressly identified this requirement in the
17 background materials for the Rural Element and references Ex. 639 at A-38, which is a
18 statement agreeing with RCW 36.70A.070(5)(a), not a discussion of how the Rural Element
19 harmonizes the planning goals. The Respondent contends that the Petitioners fail to provide
20 evidence, such as specific goals, demonstrating that the County failed to satisfy this
21 requirement. Furthermore, the Respondent argues that the Petitioners have raised a new
22 issue on Resource Lands and is not appropriate for the Board to accept review.

23 The Petitioners, LBN and Jeanie Wagenman, argue that the County has failed to
24 develop a written record that explains how the County's Rural Element harmonizes the
25 planning goals [RCW 36.70A.020(9) and (10)] when the County's highest rural density, for
26 instance, is found in watersheds, critical areas and CARAs, which are already showing signs

1 of degradation. The Petitioners contend that what the Respondent has cited to and has
2 shared with the Board does not comply with this requirement of the Growth Management
3 Act (GMA).

4 The Board agrees that the County has not provided a written record explaining how
5 the rural element harmonizes the planning goals of the GMA as is required by
6 RCW36.70A070(5)(a). The Board adds the following Findings of Fact and Conclusions of
7 Law:

8 Findings of Fact

- 9 18. Stevens County failed to comply with RCW 36.70A.070(5)(a) when it
10 failed to provide a written record "explaining" how the rural element
11 harmonizes the planning goals in RCW 36.70A.020, specifically goals 9
12 and 10, and meet the requirements of this chapter.

13 Conclusions of Law

- 14 13. Stevens County failed to comply with RCW 36.70A.070(5)(a) by not
15 providing a written record explaining how its rural element harmonizes
16 the planning goals in RCW 36.70A.020, specifically goals 9 and 10.

17 **V. INVALIDITY**

18 **Parties Positions:**

19 **Issue Nos. 15, 17, and 19**

20 The Petitioners, Jeanie Wagenman, et al., in their Motion for
21 Clarification/Reconsideration, have asked the Board to consider a finding of invalidity
22 because the County failed to adopt an adequate capital facilities plan, failed to complete a
23 six-year financial plan as required, failed to complete a "land quantity analysis" justifying
24 the new UGAs, and failed to ensure that existing public facilities and services are adequate
25 or even exist. Petitioners Wagenman, et al., HOM brief at 29. The Petitioners argued that
26 these "fatal" defects substantially interfere with the goals of the Act and merit invalidity.
(See Issues 15, 17 and 19) Petitioners' Motion for Clarification/Reconsideration. In their
Hearing on the Merits brief, the Petitioners asked the Board to invoke invalidity because, in

1 the words of the Petitioners, "...the consequences (of a failure of the County to write a
2 compliant GMA plan) are alarming. So much so that it would be imperative that the
3 EWGMHB declare Stevens County's Comprehensive Plan 'invalid' or part of it." Petitioners'
4 Wagenman, et al., HOM brief at 39. The subject amendments by the County "substantially
5 interferes with the Goals of the Act." (Petitioners' HOM Reply brief at 34).

6 The Respondent contends that the requirements to make a determination of
7 invalidity on reconsideration are not met, nor can the Board simply change its mind on
8 reconsideration. But if the Board "could simply change its mind", the Respondent contends
9 the Petitioners' arguments have no merit. Respondent Supplemental Brief at 3.

10 The Respondent argues that contrary to the Board's findings, the County did adopt a
11 capital facilities plan and a six-year financial plan and have done so yearly since 2001. The
12 Respondent asks the Board to take judicial notice of the County's new CFP, which includes a
13 six-year financial plan. The Respondent contends that the Board's Findings of Fact No. 12 in
14 the FDO is in error because the County adopted a compliant CFP. In addition, RCW
15 36.70A.110 allows designation of UGAs that rely on a combination of existing and additional
16 facilities when needed. The Respondent argues that the County has policies and goals that
17 ensure planned capital facilities and services will be adequate at the time of development.
18 Furthermore, the Respondent contends that the public service providers have established
19 plans to increase their service capacity to meet the demands of anticipated growth.

20 The Respondent argues that there is no statutory requirement to perform a land
21 quantity analysis and that CTED provides recommendations for meeting the requirements
22 for cities to develop UGAs, but are largely silent on the subject of establishing
23 unincorporated UGAs. The Respondent contends that the size of the new UGAs was
24 determined by parcel maps and all the new UGAs are much smaller than the delineated
25 future service areas.

26 The Respondent claims Stevens County's plan provides for a variety of urban
densities that will be increased by including a target density for new development of four

1 dwelling units per acre. The County presently has an overall density of .9 persons per acre.
2 By 2020, that figure should rise to 1.64 persons per acre, an overall urban density increase
3 of 82% over a 20-year period. The goal of increasing density is only possible if the
4 designated UGAs include land that is available for development.

5 In their response, the Petitioners, Jeanie Wagenman, et al., under Issue No. 15
6 contend that the County is required by the GMA to update its capital facility plan even when
7 some of the public services are to be provided by another agency or organization. This is
8 the case in Stevens County where sewer, water, education, and fire protection, among
9 other services, are provided by outside agencies. The Petitioners contend this does not
10 excuse the County from preparing an updated capital facility plan (CFP) and a future
11 forecast of the County's needs.

12 The Petitioners argue that Resolution No. 121-2006 does not contain an inventory of
13 existing needs, nor does it even mention the new urban growth areas. They also contend
14 that RCW 36.70A.070(3) requires that CFP's contain park and recreation facilities. According
15 to the Petitioners, there are no parks in the County's CFP. The County is not required by
16 statute to ensure that adequate public facilities exist when an urban growth area is
17 designated, but the County must have a capital facility plan that provides for the facilities as
18 needed.

19 The Petitioners argue that RCW 36.70A.070(3) requires the County "to ensure the
20 land use element, capital facilities plan element, and financing plan within the capital
21 facilities plan element are coordinated and consistent." They contend the County's
22 omissions substantially interfere with the goals of the Act and merit a determination of
23 invalidity.

24 Under Issue No. 17, the Petitioners argue that the County's record does not provide
25 any information which shows the level of services for the new UGAs with the needed
26 revenues projected for future development of these facilities and services. The new
27 attachments submitted by the County do not mention the five new UGAs, except Hunters,

1 which is only in the context of a road maintenance shop and transfer station. The
2 Petitioners paraphrase the Board's FDO on concurrency, stating that not only are there
3 facilities with the capacity to serve development, but also these facilities and services are in
4 place or that a financial commitment is in place to ensure these facilities and services can
5 be provided in a timely manner.

6 Under Issue No. 19, the Petitioners contend that the County failed to show its work
7 when it designated the new urban growth areas and failed to perform a "land quantity
8 analysis." Petitioners' Response brief to Respondent's Supplemental brief on
9 Reconsideration at 6. The GMA requires that counties show their work in the sizing of UGAs
10 and that this sizing is based on the OFM twenty-year population forecast. The Petitioners
11 cite *Knapp, et al. v. Spokane County*, EWGMHB Case No. 97-1-0015c FDO, Dec. 24, 1997,
12 to emphasize their argument that the County must base its new UGAs on the Office of
13 Financial Management's twenty-year population projection and its own data and analysis of
14 that data to include sufficient areas and densities for a twenty-year period. The issue is not
15 whether the County is required to do a land quantity analysis, but whether the County
16 showed its work when sizing the new UGAs. The County must collect data and conduct
17 analysis of that data to justify the new UGA areas and must meet the requirements of the
18 Act. The Petitioners contend that the County presents no new information in its argument
19 justifying the sizes of the new UGAs and this omission of information "substantively
20 interfere with the Goals of the Act." Petitioners' Response brief to Respondent's
21 Supplemental brief on Reconsideration at 7.

22 Board Discussion on Invalidity:

23 Issue Nos. 15, 17 and 19

24 A hearings board has the authority to impose a finding of invalidity upon those parts
25 of a comprehensive plan or development regulations which it has found noncompliant, if it
26 finds that the "continued validity of part or parts of the plan or regulation would

1 substantially interfere with the fulfillment of the goals of this chapter." RCW
2 36.70A.302(1)(a) and (b).

3 A hearings board must then specify in the final order "the particular part or parts of
4 the plan or regulation that are determined to be invalid and the reasons for their invalidity."
5 RCW 36.70A.302(1)(c). A determination of invalidity has the effect of preventing the future
6 vesting of most types of permit applications to the invalid comprehensive plan provisions
7 and/or development regulations until the County adopts provisions which the board finds no
8 longer substantially interfere with the goals of the GMA:

9 Except as otherwise provided in subsection (2) of this section and (b) of this
10 subsection, a development permit application not vested under state or local
11 law before receipt of the board's order by the county or city vests to the local
12 ordinance or resolution that is determined by the board not to substantially
13 interfere with the fulfillment of the goals of this chapter. RCW
14 36.70A.302(3)(a).

15 A finding of invalidity may be entered only when a board makes a finding of
16 noncompliance and further includes a "determination, supported by findings of fact and
17 conclusions of law that the continued validity of part or parts of the plan or regulation
18 would substantially interfere with the fulfillment of the goals of this chapter." RCW
19 36.70A.302(1). The Board has also held that invalidity should be imposed if continued
20 validity of the non-compliant Comprehensive Plan provisions or development regulations
21 would substantially interfere with the local jurisdiction's ability to engage in GMA-compliant
22 planning.

23 In its FDO, the Board found Stevens County clearly erroneous and out of compliance
24 in Issue Nos. 15, 17 and 19, and directed the County to come into compliance with the
25 Board's Order.

26 The Board finds that non-compliance in Issue Nos. 15 and 17 does not rise to the
level of substantially interfering with the goals of the Act - at this time. The County has
been found out of compliance and will be given an opportunity to fix its CFP and six-year
financial plan to reflect the future impact of the five new UGAs and fifteen LAMIRDs on the

1 County's services and facilities, and adopt policies and regulations to ensure concurrency
2 takes place as required by the GMA. RCW 36.70A.330(4) authorizes the Board to make a
3 determination of invalidity during the compliance stage, if the County has not complied with
4 the Board's Order.

5 However, the Board finds that a determination of invalidity is warranted for actions of
6 the County found out of compliance under Issue No. 19. The County's failure to justify the
7 acreage assigned to its incorporated cities, new UGAs, and LAMIRDs using OFM projections
8 substantially interferes with the goals of the Act.

9 Under WAC 365-195-335. *Urban growth areas*, counties and cities are required to
10 perform and/or follow established procedures for designating UGAs. The steps that Stevens
11 County needs to take can be found under WAC 365-195-335(3)(a-k) *Recommendations for*
12 *meeting requirements*. The following steps are recommended in developing urban growth
13 areas:

14 (a) County-wide planning policies. In adopting urban growth areas, each
15 county should be guided by the applicable county-wide (and in some cases
16 multicounty) planning policies. To the maximum extent possible, the creation
17 of urban growth areas should result from a cooperative effort among the
18 jurisdictions involved.

19 (b) General considerations. For all jurisdictions planning under the act, the
20 urban growth area should represent the physical area within which that
21 jurisdiction's vision of urban development can be realized over the next twenty
22 years. The urban growth area should be based on densities selected to
23 promote goals of the act -densities which accommodate urban growth served
24 by adequate public facilities and discourage sprawl.

25 (c) Development of city proposals. In developing the proposal for its urban
26 growth area, each city should engage in a process of analysis which involves
the steps set forth in (d), (e), and (f) of this subsection.

(d) Determination of the amount of land necessary to accommodate likely
growth. This process should involve at least:

(i) A forecast of the likely future growth of employment and population in the

1 community, utilizing the twenty-year population projection for the county in
2 conjunction with data on current community population, recent trends in
3 population, and employment in and near the community and assumptions
4 about the likelihood of continuation of such trends. Where available, regional
5 population and employment forecasts should be used.

6 (ii) Selection of community growth goals with respect to population,
7 commercial and industrial development and residential development.

8 (iii) Selection of the densities the community seeks to achieve in relation to its
9 growth goals.

10 (iv) Estimation of the amount of land needed to accommodate the likely level
11 of development at the densities selected.

12 (v) Identification of the amount of land needed for the public facilities, public
13 services, and utilities necessary to support the likely level of development.

14 (vi) Identification of the appropriate amount of greenbelt and open space to
15 be preserved or created in connection with the overall growth pattern.

16 (e) Determination of the geographic area to be encompassed to provide the
17 necessary land. This process should involve at least:

18 (i) An inventory of lands within existing municipal boundaries which is
19 available for development, including vacant land, partially used land, and land
20 where redevelopment is likely.

21 (ii) An estimate of lands within existing municipal boundaries which are
22 potentially available for public capital facilities and utilities necessary to
23 support anticipated growth.

24 (iii) An estimate of lands which should be allocated to greenbelts and open
25 space and lands which should be protected as critical areas.

26 (iv) If the lands within the existing municipal boundaries are not sufficient to
provide the land area necessary to accommodate likely growth, similar
inventories and estimates should be made of lands in adjacent unincorporated
territory already characterized by urban growth, if any such territory exists.

1 (v) The community's proposed urban growth area should encompass a
2 geographic area which matches the amount of land necessary to
3 accommodate likely growth. If there is physically no territory available into
4 which a city might expand, it may need to revise its proposed densities or
population levels in order to accommodate growth on its existing land base.

5 (f) Evaluation of the determination of geographic requirements. The
6 community should perform a check on the realism of the area proposed by
evaluating:

7 (i) The anticipated ability to finance by all means the public facilities, public
8 services, and open space needed in the area over the planning period.

9 (ii) The effect that confining urban growth within the areas defined is likely to
10 have on the price of property and the impact thereof on the ability of
residents of all economic strata to obtain housing they can afford.

11 (iii) Whether the level of population and economic growth contemplated can
12 be achieved within the capacity of available land and water resources and
13 without environmental degradation.

14 (iv) The extent to which the plan of the county and of other communities will
influence the area needed.

15 If, as a result of these evaluations, the area appears to have been drawn too
16 small or too large, the city's proposal should be adjusted accordingly.

17 (g) County actions in adopting urban growth areas. The designation of urban
18 growth areas should ultimately be incorporated into the comprehensive plan
19 of each county that plans under the act. However, every effort should be
20 made to complete the urban growth area designation process earlier, so that
21 the comprehensive plans of both the county and the cities can be completed
22 in reliance upon it. Before completing the designation process, counties should
engage in a process which involves the steps set forth in (h) through (j) of
this subsection.

23 (h) The county should determine how much of its twenty-year population
24 projection is to be allocated to rural areas and other areas outside urban
growth areas and how much should be allocated to urban growth.

25 (i) The county should attempt to define urban growth areas so as to

1 accommodate the growth plans of the cities, while recognizing that physical
2 location or existing patterns of service make some unincorporated areas which
3 are characterized by urban growth inappropriate for inclusion in any city's
4 potential growth area. The option of incorporation should be preserved for
5 some unincorporated communities upon the receipt of additional growth.

6 (j) The total area designated as urban growth area in any county should be
7 sufficient to permit the urban growth that is projected to occur in the county
8 for the succeeding twenty-year period, unless some portion of that growth is
9 allocated to a new community reserve established in anticipation of a proposal
10 for one or more new fully contained communities.

11 (k) Actions which should accompany designation of urban growth areas.
12 Consistent with county-wide planning policies, cities and counties consulting
13 on the designation of urban growth areas should make every effort to address
14 the following as a part of the process:

15 (i) Establishment of agreements regarding land use regulations and the
16 providing of services in that portion of the urban growth area outside of an
17 existing city into which it is eventually expected to expand.

18 (ii) Negotiation of agreements for appropriate allocation of financial burdens
19 resulting from the transition of land from county to city jurisdiction.

20 (iii) Provision for an ongoing collaborative process to assist in implementing
21 county-wide planning policies, resolving regional issues, and adjusting growth
22 boundaries.

23 (l) Urbanized areas outside of urban growth areas.

24 WAC 365-195-335 clearly spells out what a jurisdiction must do to designate UGAs.
25 The WAC may not designate the steps as a "land quantity analysis" or "land capacity
26 analysis", but if a county or city performs the necessary tasks, that terminology certainly
describes what must be accomplished to fulfill the requirements of the GMA.

Counties can't just arbitrarily draw a line around the built or urban-like environments
in the rural areas, add thousands of acres, and call them urban growth areas or LAMIRDs
without justifying the action. As the Central Board determined in *Strahm v. City of Everett*,

1 CPSGMHB Case No. 05-3-0042, FDO, September 15, 2006, there is a process outlined in
2 RCW 36.70A.110(2) and .130. The first is to use the OFM population projection; the second
3 directs counties and its cities to include areas and densities sufficient to permit the urban
4 growth that is projected to occur. In order to comply with these directives, jurisdictions
5 must undertake some form of "land capacity analysis" to determine how much land is
6 needed for the projected growth. *Strahm v. City of Everett supra*. The Central Board is
7 essentially paraphrasing WAC 365-195-335 and using the term "land capacity analysis" to
8 describe what the WAC requires and the steps recommended to achieve the requirements.

9 The County claims to have based its UGA designations "on objective criteria that are
10 largely consistent with GMA and CTED's recommendations" and to have used parcel maps
11 to determine available land for development. The County also argues that it "established
12 target populations for growth in each of the new UGAs." According to the Respondent's
13 argument, the target populations are based on Land Use Policy LU-3(C.), which
14 recommends a target density of four dwelling units per acre. But LU-3(D.) allows the
15 County to establish a minimum density of one dwelling unit per acre for an undetermined
16 length of time based on sewer service availability. Using the incorporated city of Newport as
17 an example, sufficient sewer service may be decades behind the designation of new urban
18 areas. Respondent Supplemental Brief at 8. There has to be a mechanism to provide
19 services at the time of development or within a specific time thereafter, not an open-ended
20 promise in the future. This time period is something the County can negotiate with the
21 public service providers.

22 The Board's discussion of Issue No. 19 in the March 12, 2007, FDO thoroughly
23 discussed the County's failure to justify the five new UGAs and the over-sized West Kettle
24 Falls LAMIRD and is incorporated here by reference. The lack of information in the Record
25 as to how the County determined its UGAs supports a determination of invalidity. The
26 Petitioners have carried their burden of proof and the Board finds that it erred in failing to
make a finding of invalidity for these actions of the County. The failure of the County to

1 show its work, which would justify the size of the new UGAs, substantially interferes with
2 GMA goals (1) Urban growth, (2) Reduce sprawl, and (12) Public facilities and services, and
3 a determination of invalidity is warranted. Allowing these UGAs and LAMIRDs where high
4 density development can occur would allow irreversible sprawl to occur prior to corrective
5 action.

6 **Parties Positions:**

7 **Issue No. 21**

8 The Board determined in their March 12, 2007, FDO under Issue 21, that the
9 County's failure to provide for a variety of densities in Rural lands, in its Comprehensive
10 Plan, or in its future land use map substantially interfered with the goals of the GMA. The
11 County was given an opportunity to demonstrate that it followed the GMA and provided a
12 variety of Rural densities pursuant to RCW 36.70A.070(5)(b) Comprehensive plans –
Mandatory elements.

13 The Respondent, Stevens County, in their Motion for Partial Reconsideration, argues
14 that the Board is confused about two separate issues: the Future Land Use Map and urban
15 growth areas. The County agrees that the two issues require consistency, but they are
16 separate items with separate functions. The County contends that the Board's conclusion
17 under Issue No. 21 that the County "remove[d] ten and twenty acre zoning and blanket[ed]
18 the County with 'densities not greater then one unit per five acres'" is erroneous.
Respondent's Motion for Partial Reconsideration brief at 2.

19 The Respondent argues that the GMA requires the County to adopt a comprehensive
20 plan with policies that provide for a variety of development regulations. RCW
21 36.70A.040(4)(d). Under the County's policies, RU-11 calls for the establishment of
22 development regulations that do not allow rural densities greater than one dwelling unit per
23 five acres. According to the Respondent, the Board's analysis of RU-11 "overlooks the fact
24 that it also requires numerous factors to be considered when establishing a "variety of lot
25 sizes." Respondent Motion for Partial Reconsideration brief at 2. The County contends that it

1 did not remove ten and twenty acre zoning from the CP. The CP, according to the County,
2 does not establish zoning. The County argues that confusion regarding its plans for creating
3 a variety of zones appears to stem from inclusion of a draft zoning map as part of the
4 integrated draft environmental impact statement (EIS). The Respondent further states that
5 the County intends to adopt a zoning code and zoning map that is consistent with the CP.

6 **Board Discussion on Invalidity:**

7 **Issue No. 21**

8 RCW 36.70A.070 lists "mandatory elements" in a comprehensive plan. Under RCW
9 36.70A.070(5)(b) Rural Development, the statute reads, in part, "The rural element shall
10 provide for a variety of rural densities..." The Respondent argues that "Those policies are
11 then implemented in development regulations. Stevens County's Comprehensive Plan and
12 final draft development regulations meet that requirement." Respondent Motion for Partial
13 Reconsideration at 2.

14 The Board disagrees. A "variety of rural densities" is mandatory in a jurisdiction's
15 comprehensive plan, not solely in the development regulations, and the plan "shall be an
16 internally consistent document and all elements shall be consistent with the future land use
17 map." RCW 36.70A.070 and (5)(b). Stevens County failed to include a variety of densities in
18 its Final Comprehensive Plan and to reflect those densities or zones on its future land use
19 map. The County's Draft Comprehensive Plan had those elements, but they were eliminated
20 in the Final CP.

21 This is a fatal flaw and exposes the County to five acre parcels throughout the rural
22 lands, without a variety of densities that consider large acreages for agriculture, timber and
23 other natural resources. Although the Respondent argued that a variety of densities would
24 be included in future development regulations, the Board can not rely on future decisions of
25 the Board of County Commissioners. We are obligated to determine the compliance of a
26 jurisdiction's comprehensive plan and future land use map that is in the record. The record
shows that Stevens County is out of compliance with RCW 36.70A.070(5)(b) and this lack of

1 compliance substantially interferes with Goals (8) Natural resource industries, (9) Open
2 space and recreation, and (10) Environment, of the GMA. The Board is compelled to issue a
3 finding of invalidity concerning Issue No. 21.

4 **V. FINDINGS OF FACT**

- 5 1. Stevens County is a county located east of the crest of the Cascade
6 Mountains and has chosen to plan under Chapter 36.70A.
- 7 2. Petitioners are citizens of Stevens County and participated in the
8 adoption of the Stevens County Comprehensive Plan, Resolution #59-
9 2006.
- 10 3. Petitioners raised twenty-three legal issues addressed in three original
11 petitions.
- 12 4. The Board consolidated Case Nos. 06-1-0007, 06-1-0008 and 06-1-
13 0009 into consolidated Case No. 06-1-0009c.
- 14 5. Stevens County completed a Final Draft Comprehensive Plan and a
15 Final Environmental Impact Statement on December 23, 2005.
- 16 6. Stevens County enacted Resolution #59-2006 and adopted the Stevens
17 County Comprehensive Plan on July 13, 2006.
- 18 7. Petitioners filed timely petitions on September 8, and September 11,
19 2006.
- 20 8. Stevens County held numerous public workshops, hearings and allowed
21 opportunities for written comment.
- 22 9. The Stevens County CP has designated five incorporated urban growth
23 areas, five new unincorporated urban growth areas, three Type III
24 LAMIRDs, twelve Type II LAMIRDs, and twelve Crossroads areas.
- 25 10. Stevens County failed to designate or identify greenbelts and open
26 space or show its work why these elements were not considered within
the new unincorporated UGAs are required by RCW 36.70A.110(2).

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Stevens County also failed to identify open space corridors within and between urban growth areas as required by RCW 36.70A.160.

- 11. 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 failed to follow goals RCW 36.70A.020(1), (2), and (12) as required by the GMA.
- 12. Stevens County failed to include a variety of densities in its Final Comprehensive Plan and reflect those densities or zones on its future land use map. Stevens County is out of compliance with RCW 36.70A.070(5)(b) and this lack of compliance substantially interferes with Goals (8) Natural resource industries, (9) Open space and recreation, and (10) Environment, of 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 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 show its work and complete an analysis of land capacity for urban growth to justify the designation of the five new UGAs and the acreage assigned to each as required by RCW 36.70A.020(2) and WAC 365-195-335.

- 1 16. Stevens County failed to protect the Rural Character as required by
2 RCW 36.70A.070(5) for designating the West Kettle Falls area as a
3 LAMIRD.
4 17. Stevens County failed to comply with RCW 36.70A.070(5)(d) when it
5 established an urban reserve area at Loon Lake and failed to show its
6 work in support of the establishment of an urban reserve designation
7 adjacent to the Hunter's UGA.
8 18. Stevens County failed to comply with RCW 36.70A.070(5)(a) when it
9 failed to provide a written record "explaining" how the rural element
10 harmonizes the planning goals in RCW 36.70A.020, specifically goals
11 (9) and (10), and meet the requirements of this chapter.

12 **VI. CONCLUSIONS OF LAW**

- 13 1. This Board has jurisdiction over the parties to this action.
14 2. This Board has jurisdiction over the subject matter of this action.
15 3. The Petitioners have standing to raise the issues listed in the
16 Prehearing Order.
17 4. The Petition for Review in this case was timely filed.
18 5. Stevens County is found out of compliance for its failure to adopt a
19 capital facilities plan and financial plan as required by RCW
20 36.70A.110(3) and RCW 36.70A.070(3).
21 6. Stevens County is found out of compliance for its failure to designate or
22 identify greenbelts and open space or show its work why these
23 elements were not considered within the new unincorporated UGAs are
24 required by RCW 36.70A.110(2). Stevens County is also found out of
25 compliance for its failure to identify open space corridors within and
26 between urban growth areas as required by RCW 36.70A.160.

- 1 7. Stevens County is found out of compliance for failure to adopt a
2 compliant capital facilities plan and six-year financial plan as required
3 and RCW 36.70A.070(3); failure to ensure adequate existing public
4 facilities and service capacities as required by RCW 36.70A.110(3), and
5 failure to follow goals RCW 36.70A.020(1), (2), and (12) as required by
6 the GMA.
- 7 8. Stevens County is found out of compliance for failure to adopt policies
8 or regulations in its CP to “ensure” public facilities and services are
9 available when impacts of development occur or within a reasonable
10 time afterwards as required by RCW 36.70A.020(12).
- 11 9. Stevens County is found out of compliance for failure to adopt policies
12 or regulations in the Land Use Element of the CP to protect quality and
13 quantity of groundwater used for public water supplies or review
14 drainage, flooding or stormwater in the area and nearby jurisdictions as
15 required by RCW 36.70A.070(1).
- 16 10. Stevens County is found out of compliance for failure to complete an
17 analysis of land capacity for urban growth, commonly referred to as a
18 “lands quantity analysis” or “lands capacity analysis”, to justify the
19 designation of the five new UGAs and the acreage assigned to each as
20 required by RCW 36.70A.020(1) and (2) and WAC 365-195-335.
- 21 11. Stevens County is found out of compliance for failure to protect the
22 Rural Character as required by RCW 36.70A.070(5)(c) and (d) for
23 designating the West Kettle Falls area as a LAMIRD.
- 24 12. Stevens County failed to comply with RCW 36.70A.070(5)(d) when it
25 established an urban reserve area at Loon Lake and failed to show its
26 work in support of the establishment of an urban reserve designation
adjacent to the Hunter’s UGA.

1 the development at the time the development is available for occupancy and use
2 without decreasing current services levels below locally established minimum
standards.

3 2. The Board finds that the actions of the County substantially interfere
4 with the fulfillment of the above goals. The County's actions frustrate
5 the primary purposes of the GMA reflected by these goals.

6 3. The Board finds that the actions of the County substantially interfere
7 with the fulfillment of RCW 36.70A.020(1), .020(2), .020(8), .020(9),
8 .020(10), .020(11), RCW 36.70A.110(1) through (4), RCW
9 36.70A.070(1), .070(3), and .070(5)(c) and (d). The County's action
10 frustrates the primary purposes of the GMA reflected in these goals and
11 the cited chapters.

12 4. The County failed to justify through an analysis or some accepted
13 process, such as recommended in WAC 365-195-335, commonly
14 referred to as a land capacity analysis, the size and dimension of the
five new UGAs in relationship to the OFM population projections.

15 5. Sprawl is encouraged by the expansion of the UGA without properly
16 preparing a Capital Facilities Plan for the affected area; without
17 preparing an analysis of land needed for growth (land quantity
18 analysis); and as a result of the failure to provide for a variety of
19 densities in the rural area of the County.

20 6. The County failed to protect the quality and quantity of groundwater by
21 adopting policies to accomplish this requirement of the GMA.

22 7. The County failed to protect rural lands and resource lands by adopting
23 RU-11, which establishes "densities not greater than 1 dwelling unit per
24 5 acres"; failed contain or control rural development; failed to reduce
25 low-density sprawl; failed to protect critical areas, as provided by RCW
26 36.70A.060, and surface water and ground water resources; and failed

1 to protect the agricultural, forest and mineral lands from conflicts
2 associated with development.

- 3 8. The County failed to develop and adopt a compliant capital facilities
4 plan and six-year financial plan that adequately plans for public services
5 and facilities in the new unincorporated UGAs and anticipate the
6 considerable growth associated with the acreage allotted to the three
7 Type I LAMIRDs, twelve Type II LAMIRDs, and twelve Crossroads
8 developments.
- 9 9. The actions of the County failed to maintain and enhance natural
10 resource-based industries, including productive timber, agricultural, and
11 fisheries industries or encourage the conservation of productive forest
12 lands and productive agricultural lands, and discourage incompatible
13 uses.
- 14 10. The actions of the County failed to protect the environment and
15 enhance the state's high quality of life, in including air and water
16 quality, and the availability of water.
- 17 11. The actions of the County failed to retain open space, enhance
18 recreational opportunities, conserve fish and wildlife habitat, increase
19 access to natural resource lands and water, and develop parks and
20 recreation facilities.

21 **VII. INVALIDITY CONCLUSIONS OF LAW**

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

- 23 1. The Board incorporates the Conclusions of Law above in its finding of
24 invalidity.
- 25 2. The Board has found the County out of compliance as stated above.

1 3. The Board finds that the actions of the County found out of compliance
2 substantially interfere with the fulfillment of Goals of the Growth
3 Management Act and frustrate the primary purposes of that act
4 reflected by these goals.

5 4. The Board concludes that the noncompliant actions of Stevens County
6 substantially interfere with the County's ability to engage in GMA-
7 compliant planning.

8 **VIII. ORDER**

9 1. The Board, after reconsideration and clarification of Issue No. 19, finds
10 that the failure of the County to show its work to justify the size of the
11 new UGAs substantially interferes with the following goals of the GMA,
12 (1) Urban growth, (2) Reduce sprawl, and (12) Public facilities and
13 services, and a determination of invalidity is warranted. The following
14 sections of the Stevens County Comprehensive Plan are found to be
15 invalid: (Under Land Use Element, 3.2 Land Use Policies) LU-3(D.), LU-
16 5, LU-7(A.), LU-9 and LU-10.

17 2. The Board, after reconsideration and clarification of Issue No. 20 has
18 added language to Findings of Fact No. 8 and Conclusions of Law No. 6
19 to include "within and between urban growth areas."

20 3. The Board, after reconsideration and clarification of Issue No. 21, finds
21 the County out of compliance due to its failure to provide a written
22 record harmonizing the planning goals as required by the GMA and has
23 added Findings of Fact No. 18 and Conclusions of Law No. 13 to include
24 a finding and conclusion that the County failed to provide a written
25 record harmonizing the planning goals in RCW 36.70A.020, specifically
26 Goals (9) and (10) as is required by RCW 36.70A.070(5)(a).

1 4. The Board finds that the failure of Stevens County to comply with RCW
2 36.70A.070(5)(b) substantially interferes with Goals (8) Natural
3 resource industries, (9) Open space and recreation and (10)
4 Environment, of the GMA and a determination of invalidity is warranted.
5 The following sections of the Stevens County Comprehensive Plan are
6 found to be invalid: (Under 5.0 Rural Element, 5.2 Rural Policies) RU-3
7 LAMIRDs, RU-4(A).(1.) West Kettle Falls, and RU-11 under Managing
8 Rural Development.

9 5. Stevens County must take the appropriate legislative action to bring
10 itself into compliance with this Order by **October 10, 2007, 120 days**
11 from the date this Order is issued. The following schedule for
12 compliance, briefing and hearing shall apply:

- 13 • The County shall file with the Board by **October 17, 2007, an**
14 **original and four copies** of a Statement of Actions Taken to Comply
15 (SATC) with the GMA, as interpreted and set forth in this Order. The
16 SATC shall attach copies of legislation enacted in order to comply. The
17 County shall simultaneously serve a copy of the SATC, with
18 attachments, on the parties. **By this same date, the County shall**
19 **file a "Remanded Index," listing the procedures and materials**
20 **considered in taking the remand action.**
- 21 • By no later than **October 31, 2007**, Petitioners shall file with the
22 Board an **original and four copies** of Comments and legal arguments
23 on the County's SATC. Petitioners shall simultaneously serve a copy of
24 their Comments and legal arguments on the parties.
- 25 • By no later than **November 14, 2007**, the County shall file with the
26 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 **November 28, 2007**, Petitioners shall file with the
Board an **original and four copies** of their Reply to Comments and

1 legal arguments. Petitioners shall serve a copy of their brief on the
2 parties.

- 3 • Pursuant to RCW 36.70A.330(1) the Board hereby schedules a
4 telephonic Compliance Hearing for **December 4, 2007, at 10:00**
5 **a.m.** The parties will call **360-357-2903 followed by 18074 and**
6 **the # sign.** Ports are reserved for Ms. Wilma, Mr. Berger, Ms.
Wagenman, Mr. Scott, Mr. Werst, and Mr. Copsey. If additional ports
are needed please contact the Board to make arrangements.

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

10 **Pursuant to WAC 242-02-832: RECONSIDERATION:**

11 **The Order on Clarification and Reconsideration is not subject to a**
12 **motion for reconsideration. The Order on Invalidity is subject to**
13 **reconsideration.**

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

15 **Reconsideration:**

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

1 **Judicial Review:**

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

7 **Enforcement:**

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

14 **Service:**

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

17 SO ORDERED this 12th day of June 2007.

18 EASTERN WASHINGTON GROWTH MANAGEMENT
19 HEARINGS BOARD

20 _____
21 John Roskelley, Board Member

22 _____
23 Dennis Dellwo, Board Member

24 _____
25 Joyce Mulliken, Board Member