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

WILMA et al.,

Case No. 06-1-0009c

Petitioners,

ORDER ON COMPLIANCE

v.

STEVENS COUNTY,

Respondent.

I. 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.

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.

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, Sandra 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 Werst.

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

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

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

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

7 On June 12, 2007, the Board issued it Order on Clarification, Reconsideration, and
8 Order on Invalidity.

9 On January 16, 2008, the Board issued its Order on Motion to Amend Compliance
10 Schedule.

11 On February 19, 2008, the Board received Respondents Statement of Action Taken
12 to Comply and Motion to Adjust Compliance Schedule, Remanded Index, and Motion to
13 Rescind Invalidity.

14 On March 19, 2008, the Board held the hearing to consider compliance and the
15 rescission of the finding of invalidity. Present were, John Roskelley, Presiding Officer, and
16 Board Members Dennis Dellwo and Joyce Mulliken. Present for Petitioners were, Larson
17 Beach Neighbors, & Jeanie Wagenman. Present for Respondent was Peter Scott.

18 On March 31, 2008, the Board issued its Order on Motions and Order Rescinding
19 Invalidity.

20 On April 9, 2008, the Board held the compliance hearing. Present were, John
21 Roskelley, Presiding Officer, and Board Members Dennis Dellwo and Joyce Mulliken. Present
22 for Petitioners were, Sandra Wilma. Petitioner Jeanie Wagenman was unavailable. Present
23 for Respondent was Peter Scott.

24 II. DISCUSSION

25 The Eastern Washington Growth Management Hearings Board (Board) issued its
26 Final Decision and Order (FDO) on March 12, 2007, and found the Petitioner Wilma
(Petitioner) and Petitioners Wagenman, et al., (Petitioners) failed to carry their burden of
proof in the following issues: No. 1 (public participation), No. 4 (formation of new UGAs),

1 No. 6 (Loon Lake LAMIRD), No. 7 (private property rights), No. 8 (housing element), No. 10
2 (public participation), No. 14 (public participation), No. 16 (urban services), and No. 23
3 (EIS).

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

10 Issue Nos. 12, 13 and 14 were dismissed by motion and the Board deemed Issue No.
11 3 abandoned.

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

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

23 In its June 12, 2007, Order on Clarification and Reconsideration and Order on
24 Invalidity, the Board decided the following: (1) upheld its previous decision on Issue No. 6
25 and determined that Stevens County had created the two Loon Lake LAMIRDs using an

1 appropriate process (although the urban reserve area was found out of compliance); (2)
2 issued a finding of invalidity resulting from the actions of the County reflected in Issues No.
3 19 and 21; (3) clarified its Finding of Facts and Conclusions of Law to include "between"
4 urban growth areas; and (4) added an additional Findings of Fact and Conclusions of Law to
5 include language from RCW 36.70A.070(5)(a).

6 The Board, on March 31, 2008, after briefing by the parties and a hearing concerning
7 the County's invalidity, rescinded its finding of invalidity for Issue Nos. 19 and 21. On April
8 9, the Board held a compliance hearing in regards to the remaining issues where the
9 County was found out of compliance in the FDO and Order on Clarification/Reconsideration
10 and Order on Invalidation. This Order on Compliance reflects the Board's findings on those
11 issues.

12 **Parties' Position on Issue No. 1:**

13 (Board note: The Board found Stevens County in compliance in the FDO under Issue
14 Nos. 1, 10, and 14, which were the public participation issues. During the compliance phase
15 of the order, the County held one public hearing. The Petitioners contend this was in
16 violation of the GMA and all parties briefed the issue.)

17 **Petitioner Wilma:**

18 The Petitioner argues the County failed to follow its public participation plan and
19 conduct more than one public hearing before adopting changes to the unincorporated part
20 of the urban growth area (UGA) adjacent to the City of Colville.

21 **Petitioners' Wagenman, et al.:**

22 The Petitioners contend the County failed to follow its public participation policy and
23 did not allow the citizens of Stevens County a proper opportunity to understand the impact
24 of the changes or comment on them. The Petitioners argue the County created an
25 "emergency" to avoid public participation, but failed to state the nature of the emergency.¹
26 In addition, the Petitioners claim RCW 36.70A.130(2)(b) was not followed because

¹ Stevens County Title 3, Emergency Action.

1 "appropriate" participation was not allowed.² According to the Petitioners, Stevens County
2 Title 3 requires additional public participation, including workshops and a recommendation
3 by the Planning Commission (PC) to the Board of County Commissioners (BOCC). The
4 Petitioners contend important information was not available on-line or at the library and
5 maps were not up-dated or clear to the Petitioners during the public process.

6 **Respondent:**

7 The Respondent argues the County provided notice and a meaningful opportunity for
8 comment, including the requisite public hearing, before it amended the Comprehensive Plan
9 (CP) in accordance with RCW 36.70A.130(2)(b) and SCC 3.31.070.A. The GMA requires only
10 one public hearing to amend a CP and the County's development regulations permit
11 amendments made to resolve an appeal before the Hearings Board after only one hearing.

12 **Petitioners Reply:**

13 The Petitioners argue the County claimed an emergency, but did not explain what
14 emergency existed to hold just one hearing. The Petitioners also contend the County's
15 information was inadequate or not available to the general public and claim the cities did
16 not have an opportunity to agree to the County's proposed changes. According to the
17 Petitioners, the County is required to follow WAC 365-195-600(2) (iv) and (v), which
18 provide for at least one additional public hearing to be held by the legislative authority, and
19 a series of public meetings and workshops.

20 **Board Analysis:**

21 The GMA's Goal 11 encourages the involvement of citizens in the planning process.
22 As such, this Board has always held that public participation is the heart and soul of the
23 GMA. Counties and cities are encouraged to adopt public participation plans that include
24 citizen participation throughout the planning process.

25 The County followed its public participation plan in adopting the original CP and
26 development regulations. Upon being found out of compliance in a number of different

² RCW 36.70A.130.(2)(b).

1 issues, the County followed RCW 36.70A.130(2)(b) and the Stevens County Code, SCC
2 3.31.070.A, to amend its documents and come into compliance. RCW 36.70A.130(2)(b)
3 states in part:

4 However, after appropriate public participation a county or city may adopt
5 amendments or revisions to its comprehensive plan that conform with this
6 chapter whenever an emergency exists or to resolve an appeal of a
7 comprehensive plan filed with a growth management hearings board or with
8 the court.³ (Emphasis added).

9 The County fulfilled its obligation for one public hearing under RCW
10 36.70A.130(2)(b). In the staff report referred to by the Petitioners, the County references
11 not only emergency actions, but "to resolve an appeal of a comprehensive plan filed with a
12 growth management hearings board or with the court."⁴ The Petitioners may feel more
13 hearings and better communication with the citizens is critical to open government, but the
14 statute is clear and, therefore, the County complied with the GMA.

15 **Conclusion:**

16 The Petitioners failed to meet their burden of proof as to Issue No. 1, public
17 participation. Stevens County is found in compliance by abiding by SCC 3.31.070.A and
18 RCW 36.70A.130(2)(b).

19 **Parties Positions on Issue No. 2, No. 9 and No. 15:**

20 **Petitioner Wilma:**

21 The Petitioner contends the County's Capital Facilities Plan (CFP) and six-year
22 Financial Plan (FP) are flawed and omit critical information. For instance, the Petitioner
23 claims the following: (1) there is no request from the City of Clayton for school facilities; (2)
24 there are no plans by the County for sidewalks, street lighting systems, storm sewers in the
25 new UGAs, or a financial plan to fund them; (3) there are no parks in Stevens County, other

26 _____
³ RCW 36.70A.130(2)(b).

⁴ Exhibit 112; Staff Report – Proposed changes to the Stevens County Comprehensive Plan and Development Regulations
– Title 3 in response to Case 06-1-0009c.

1 than the Fairgrounds, and no plans or forecast for parks and recreation areas.

2 **Petitioners Wagenman, et al.:**

3 The Petitioners contend the County failed to identify a level of service (LOS) for a
4 number of public facilities and the funding and sources for these facilities. The Petitioners
5 quote from the Board's March 12, 2007, FDO to indicate what capital facilities requirements
6 are necessary and what public services the CFP and FP must include. The Petitioners claim
7 the CFP "submitted by the County does not establish a level of service so a base line
8 number is used in comparison to what would be needed within the six-year financial plan."⁵
9 The Petitioners argue the Board stated in its FDO that the County needed to make it clear
10 the LOS is a trigger, if services fall below the baseline minimum, and necessary to provide a
11 forecast of the future needs for such capital facilities for the new unincorporated UGAs.

12 The Petitioners contend the LOS given in the CP is not specific and the County fails
13 to adopt other jurisdiction's comprehensive plans, such as the Stevens County Public Utility
14 District (PUD). The Petitioners reference the Lake Spokane and Hunters UGAs as examples.
15 According to the Petitioners, there appears to be no future plan, financial or otherwise, for
16 some public facilities or services, such as streets, roads, highways, sidewalks, traffic signals,
17 parks, schools, and sewer and water systems.

18 **Respondent:**

19 Stevens County contends it hired a consultant to assist in preparation of its annual
20 CFP and FP and all public services and facilities in the County were inventoried and service
21 providers contacted and asked for input of future needs.

22 In response to Petitioner Wilma's three arguments, the County contends: (1) the
23 GMA does not contain a requirement for the County to plan for expansion of capital facilities
24 in other counties (i.e. Spokane County) and the capital facilities in question (Clayton - Deer
25 Park) are properly addressed in the Spokane County CPF and FP; (2) the GMA requires the
26 CFP to include an inventory of existing capital facilities, a forecast of future needs, a

⁵ Petitioners Wagenman, et al. Brief at p. 28.

1 financial plan to pay for them, and a requirement for annual reassessment, but the County
2 does not have any sidewalks, street lights or storm sewers in inventory and these facilities
3 are not planned in the future; (3) the County does not have parks, trails or bicycle paths,
4 other than the Fairgrounds, and does not plan any in the future. Its parks and recreation
5 element is focused on UGAs in coordination with cities.

6 In response to the Petitioners' concerns, the County claims its CP is based on a 20-
7 year projection and its six-year projection for future services is GMA compliant. Stevens
8 County argues it adopted a CFP and FP, which inventoried all public services and facilities
9 and established a baseline LOS that covers every public facility or service for which a
10 standard exists.

11 **Petitioners Wagenman, et al. Response:**

12 The Petitioners agree with the County that it did improve upon its inventory, but
13 lacks a LOS as a baseline. According to the Petitioners, there has to be an application of the
14 LOS to the population to show the needed facilities. The Petitioners quote the Board that
15 without a designated level of service the County cannot determine what is necessary to
16 ensure adequate public facilities and services, let alone ensure they will be available for new
17 growth.

18 The Petitioners contend the County is deficient in assessing projected needs for
19 sidewalks, streetlights and storm sewer in the newly designated UGAs. According to the
20 Petitioners, these small communities will expect urban level of services if they are
21 designated UGAs, but the County has not planned to provide these services. The Petitioners
22 cite RCW 36.70A.070(3)(e) which stipulates park and recreation facilities shall be included
23 in the CFP element.

24 The Petitioners contend the PUD committed to servicing the new UGAs, but it fails to
25 provide a financial plan to support the anticipated LOS. The Petitioners point to Hunters and
26 Lake Spokane as examples of UGAs which need water and sewer service, but do not have a
financial plan to provide these necessary urban services. The Petitioners argue the Board
found LU-3D invalid, yet the County failed to correct or remove this policy.

1 The Petitioners also contend the CFP is missing an assessment for the needs of the
2 15 LAMIRDs and the impact of those needs upon the County's services and facilities. The
3 Petitioners point to the lack of sewer and water available to the Kettle Falls LAMIRD, which
4 allows a density of 3 du/acre. The Petitioners cite RCW 36.70A.020(12), which requires
5 public facilities and services to be available to serve development as that development
6 occurs or within a reasonable time. According to the Petitioners, there is nothing in the CFP
7 concerning the Kettle Falls LAMIRD.

8 The Petitioners also claim the Loon Lake LAMIRD is deficient in public facilities and
9 services and the County failed to provide an assessment regarding CFP or a SEPA for this
10 LAMIRD. The Petitioners cite the Board's FDO, page 23, to emphasize the public facilities
11 and service deficiencies.

12 The Petitioners argue the County's CFP and six-year FP are inadequate to provide the
13 necessary services to the new UGAs. The FP fails to provide specific funding for most
14 facilities and services mentioned by the County, including Martin Hall, the solid waste
15 landfill, ambulance and general facilities. The Petitioners claim the County dismissed the
16 Board's order to fix its CFP and six-year financial plan to reflect the future impact of the five
17 new UGAs and fifteen LAMIRDs.

18 **Board Analysis:**

19 The Board looks to the GMA, past Hearings Boards cases, case law, and the County's
20 documents to determine if the County fulfilled its obligation under the GMA and developed a
21 CFP and six-year financial plan which provide for necessary public facilities and services as
22 defined by RCW 36.70A.030(12) and (13).⁶

23 In its FDO, issued March 12, 2007, the Board concluded that the County failed to
24 adopt a compliant CFP and six-year financial plan as required by RCW 36.70A.110(3) and
25

26 ⁶ RCW 36.70A.030(12) "Public facilities" include 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. RCW 36.70A.030(13) "Public services" include fire protection and suppression, law enforcement, public health, education, recreation, environmental protection, and other governmental services.

1 RCW 36.70A.070(3). The County chose to work on the following items: (1) include capital
2 facilities belonging to other providers; (2) incorporate other service providers capital
3 facilities plans; (3) link its forecast of future needs to land availability and projected growth;
4 (4) include the locations and capacities of projected, expanded or new capital facilities; (5)
5 include a mechanism for financing public facilities and services for the new UGAs; and (6)
6 clearly indicate that an LOS for public services and facilities is a trigger if services fall below
7 the baseline minimum standard.

8 As a result, the County developed and adopted an updated CFP and six-year financial
9 plan. The County also reworded policy CFP-1 for clarification and incorporated the Stevens
10 County PUD and Hunters Water District service plans by reference. The question for the
11 Board is whether Stevens County's actions are compliant with the GMA's provisions.

- 12 • *Capital Facilities Planning under the GMA*

13 RCW 36.70A.070(3), requires a capital facilities plan to consist of five fundamental
14 elements:

- 15 (a) an inventory of existing capital facilities;
- 16 (b) a forecast of the future needs for such capital facilities;
- 17 (c) the proposed locations and capacities of expanded or new capital facilities;
- 18 (d) at least a six-year financial plan; and
- 19 (e) a requirement to reassess the land use element if probable funding falls short,
20 that the land use element, CFP element and FP are coordinated and consistent, and
21 park and recreation facilities are included in the CFP.

22 In *McVittie v. Snohomish County*,⁷ the Central Puget Sound Board set forth a
23 number of guidelines a capital facilities element must include:

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

⁷ *Jody L. McVittie v. Snohomish County (McVittie VI)*, CPSGMHB Case No. 01-3-0002, FDO (Jul. 25, 2001).

1 addition, the CFE must explicitly state which of the listed public facilities are
2 determined to be "necessary for development" and each of the facilities so
3 designated must have either a "concurrency mechanism" or an "adequacy
4 mechanism" to trigger appropriate reassessment if service falls below the
5 baseline minimum standard. Transportation facilities are the only facilities
6 required to have a concurrency mechanism, although a local government may
7 choose to adopt a concurrency mechanism for other facilities.

8 Therefore, at a minimum, Stevens County's CFP must include the required elements
9 set forth in .070(3)(a)-(e) – inventory of current facilities, forecast of future needs,
10 proposed locations and capacities for expanded/new facilities, six year financing plan, and a
11 reassessment requirement.

12 Upon review of the County's CFP, the Board finds that for all intents and purposes
13 the CFP fulfills only the very basic needs required by the GMA for a capital facilities plan,
14 and primarily, those needs are addressed by other providers, such as the fire and school
15 districts. The County's CFP includes an inventory of existing capital facilities, with many of
16 those facilities owned and operated by other providers. It also includes a limited forecast of
17 future needs for capital facilities. Unfortunately, the CFP fails to provide proposed locations
18 and capacities of expanded or new capital facilities, such as the jail, and determines that
19 sidewalks, traffic signals, and lighting systems do not presently exist in the County, so no
20 planning is necessary for future service. Parks are not mentioned, despite a requirement
21 that they be addressed in the CFP, and the required six-year financial plan for the County's
22 future capital facilities needs is missing altogether, although the County did include financial
23 details on current projects. **Therefore, the Board finds that Stevens County's CFP, by
24 not including all of the required elements, fails to comply with RCW
25 36.70A.070(3).**

- 26 • *Parks and Recreation Planning under the GMA*

RCW 36.70A.070(3) requires parks and recreation facilities to be included with the
CFP. In addition, the GMA sets forth requirements in regards to parks and recreation. RCW
36.70A.070(8) requires:

- 1 (a) estimates of park and recreation demand for at least a ten-year period;
- 2 (b) an evaluation of facilities and service needs, and;
- 3 (c) an evaluation of intergovernmental coordination opportunities to provide regional approaches for meeting park and recreational demand.

4 The County's Comprehensive Plan contains its Parks and Recreation Element 7.0 in section
5 II-25. Under 7.1 Parks and Recreation Goal, the County claims support for "retention,
6 enhancement, and development of recreation areas and activities, and parks and open
7 space within Stevens County."⁸ The County acknowledges it "does not own or operate any
8 parks or recreational facilities except for the County Fairgrounds located in Colville."⁹ Under
9 subsection 7.2, PR-2, the County's policy is to "[P]lan for and allow a wide range of private
10 recreational facilities throughout the county," while under PR-6, the County determines it is
11 not feasible to establish recreational districts, but notes it "will continue to coordinate with
12 cities regarding provision of park and recreational opportunities, with particular focus in
Urban Growth Areas."¹⁰

13 According to the record and County documents, none of the requirements of .070(8)
14 have been met by the County. Steven County's Park and Recreation Element does not
15 contain a ten-year estimate of demand nor an evaluation of needs. Claiming not to have
16 any parks does not exempt the County from the requirements of RCW 36.70A.070(8),
17 especially in light of the anticipated growth in the new UGAs. Therefore, the Board finds
18 Stevens County's Park and Recreation Plan is not compliant with RCW 36.70A.070(8).

- 19 • *Level of Service Standards*

20 RCW 36.70A.020(12), the GMA's "concurrency goal" provides:

21 Public facilities and services. Ensure that those public facilities and services
22 necessary to support development shall be adequate to serve the
development at the time the development is available for occupancy and use

23 _____
24 ⁸ Stevens County Comprehensive Plan, Parks and Recreation Element at II-25.

25 ⁹ Ibid.

26 ¹⁰ Stevens County Comprehensive Land Use Plan 2006, Parks and Recreation Element, II-25.

1 without decreasing current service levels below locally established minimum
2 standards.

3 The Western Board, in *Taxpayers for Responsible Government v. City of Oak*
4 *Harbor*,¹¹ dissected Goal 12 into parts to determine its meaning in terms of concurrency.
5 It's worth noting several of its conclusions. The first quote relates to that portion of Goal 12
6 which states, "Ensure those public facilities and services necessary to support
7 development"¹²:

8 The general scheme of the GMA is that within the parameters of the goals and
9 requirements of the Act, local governments have a wide variety of discretion
10 to make localized decisions. Because the Legislature chose to use the word
11 "those" instead of "all" we conclude that local governments have the
12 discretion to determine which public facilities and services are necessary to
13 support development. A county may have entirely different priorities on public
14 facilities and services than that of a city. An urban growth area outside of
15 current city boundaries may have different public facility and service
16 requirements than either within municipal boundaries or for county areas
17 outside UGAs.

18 This discretion is not unfettered however, but must be within the confines of
19 the goals and requirements of GMA. In determining what public facilities and
20 services are "necessary to support development" a local government must
21 consider all aspects of public facilities and public services and make a
22 reasoned decision as to what facilities and services are necessary and how to
23 subject those facilities and services to concurrency requirements. The
24 resulting decision must be within the bounds of discretion afforded to local
25 governments by the Act.

26 The second quote from Goal 12 pertains to the final portion, "...without decreasing
current service levels below locally established minimum standards":

This component imposes a requirement for local governments to establish a
baseline for public facilities and services so that an objective test is available.
A local government must determine whether "new development" places

¹¹ *Taxpayers for Responsible Government v. City of Oak Harbor*, WWGMHB Case No. 96-2-0002, FDO (July 16, 1996).

(Internal citations omitted.)

¹² RCW 36.70A.020(12).

1 additional demands that would create a decline of LOS below the previously
2 locally adopted minimums.

3 In *Fallgatter v. City of Sultan*, the Central Puget Sound Board emphasized the need
4 for LOS standards, claiming these are the “basis for the needs assessment”:¹³

5 The LOS standards are the basis for the needs assessment, which identifies
6 future needed facilities and capacity. Absent an LOS standard, the future
7 projects become a “wish list” with no needs assessment to support them. This
8 is why the Board required, in the *McVittie* series of cases, that “locally-
9 established minimum” standards of Goal 12 – or “LOS standards” – must be
10 contained in the CFE. And it is from these standards – whether termed “locally
11 established minimum” standards or “LOS” standards – that a jurisdiction is
12 able to analyze whether or not the capital facilities it has identified as
13 “necessary to support development” are, in fact, adequate. Additionally, the
14 inclusion of LOS standards in the CFE means that they are formally adopted
15 by the City (as part of the Comprehensive Plan) and may not be revised
16 without direct approval of the elected officials of the City. These LOS
17 standards have meaning and impact upon what the City intends for its future.

18 Again, *McVittie v. Snohomish County*¹⁴ provides further guidance as to whether a
19 LOS is required for public services and facilities and just what defines a minimum standard.

20 Goal 12 gives context to RCW 36.70A.070(3). Goal 12 requires a locally
21 established single minimum (level of service) standard to provide the basis for
22 objective measurement of need and system performance for those facilities
23 locally identified as necessary. The minimum standard must be clearly
24 indicated as the baseline standard, below which the jurisdiction will not allow
25 service to fall. The minimum standard may be the lowest point indicated
26 within a range of service standards for a type of facility.

In *City of Gig Harbor v. Pierce County*,¹⁵ the Central Puget Sound Board determined
that providing public facilities, such as parks, is a duty, but with two constraints. The
County, in this case, failed to establish a local minimum standard for parks or other public
facilities:

¹³ *Jocelyne Fallgatter v. City of Sultan*, CPSGMHB Case No. 07-3-0017, FDO (Sept. 5, 2007).

¹⁴ *Jody McVittie, et al., v. Snohomish County*, CPSGMHB Case No. 99-3-0016c, FDO (Feb. 9, 2000).

¹⁵ *City of Gig Harbor, et al., v. Pierce County*, CPSGMHB Case No. 95-3-0016c, FDO (Oct. 31, 1995).

1 Jurisdictions have a duty to provide for adequate public facilities, including
2 parks. However, this duty is limited by two constraints. First, provision of
3 those services is to take place "at the time development is available for
4 occupancy and use" and second, adequacy is measured by "locally established
5 minimum standards."

6 When read together with RCW 36.70A.070(3), Goal 12 of the GMA (RCW
7 36.70A.020) requires Stevens County to ensure those public facilities and services necessary
8 to support development will be available when needed and that any subsequent
9 development will not cause the capability of these facilities and services to fall below
10 accepted minimum standards. Determining which facilities and services are necessary is at
11 the discretion of Stevens County based on the needs of its existing citizens and for the
12 growth it anticipates.

13 The GMA provides guidelines for jurisdictions in regard to Goal 12's requirements as
14 RCW 36.70A.030(12) and .030(13) define "public facilities" and "public services."
15 Jurisdictions planning under the GMA must explicitly state in their CFP which public facilities
16 and services are determined *necessary to support development* with each having a
17 correlating minimum standards to trigger reassessment if the service falls below this
18 established standard.¹⁶ The GMA also requires the provision of urban governmental services
19 within a UGA which includes, at the minimum, storm and sanitary sewer systems, domestic
20 water systems, and fire and police services, as well as park and recreational facilities. RCW
21 36.70A.030(20); RCW 36.70A.070(8); RCW 36.70A.110.

22 The County claims to have inventoried all public facilities and services and
23 established a baseline level of service that covers every public facility or service for which a
24 standard exists. In other words, the County argues that because there are no standards for
25 public facilities, a baseline level of service is not necessary.

26 Under Definitions in the CFP, the County, by defining "Level of service standards",

¹⁶ *McVittie v. Snohomish Co.*, CPSGMHB Case No. 01-3-0002, FDO (July 25, 2001); *Taxpayers for Responsible Government v. City of Oak Harbor*, WWGMHB Case No. 96-2-0002, FDO (July 16, 1996).

1 acknowledges that a level of service is quantifiable by minimum threshold standards, which
2 should be met by existing and new service facilities:

3 [q]uantifiable measures of public services that the County provides to its
4 present and future residents and businesses. They allow the County to assess
5 deficiencies in the services it provides and define minimum threshold
standards that should be met by existing and new service facilities to avoid
under-served growth.¹⁷

6 A review of Stevens County's CFP reveals neither an explicit statement as to what
7 public facilities and services are necessary nor does it denote minimum standards for a
8 variety of facilities, with the exception of a police station (LOS of 1.68 deputies/1000
9 population) and roads (LOS of D). Reference is made to standards established by outside
10 purveyors - water and sewer facilities (DOH guidelines or PUD plan), fire districts (LOS
11 based of Fire Insurance Rating), library (LOS established by library), some school districts
12 (LOS is based on student/teacher ratio and various by school) – but the County fails to
13 incorporate these entities plans into the CFP and therefore, no standards have been
14 established within the CFP itself. The County has simply failed to clearly “label” an LOS for
15 parks and other public facilities, failed to do a “needs assessment” for the new UGAs, and
16 has failed to explicitly state in its CFP which of the listed public facilities are determined to
17 be “necessary for development”.¹⁸ If the County deems certain services are not
“necessary,” then it must indicate that determination in its CFP.

18 Given the Central Board's definition in *McVittie*, the County's rationale of no current
19 public facilities or service, so no standards, fails to provide a basis for objective
20 measurement of need. After all, the County, in establishing five new UGAs, has chosen to
21 be the purveyor of urban services that districts can't or won't provide in those UGAs. The
22 County must accept its obligation to current and future citizens, who rely on the
23 government to provide public facilities and services at urban levels. The “County doesn't

24 ¹⁷ Stevens County Capital Facilities Plan at 3.

25 ¹⁸ Ibid.

1 own facilities" argument is not within a range of service standards for these types of public
2 facilities in the new UGAs. Therefore, the Board finds Stevens County has failed to comply
3 with RCW 36.70A.070(3), .070(8) and .020(12) in regards to identifying those public
4 facilities and services necessary to support development and establishing a minimum
5 acceptable standard for such facilities.

6 **Conclusion:**

7 The importance of capital facility planning, by all entities, when a *County is setting*
8 *UGA* boundaries is paramount. The County must be sure that the areas within the UGAs will
9 have adequate and available urban services provided over the 20-year planning period.
10 The County has an obligation under the GMA to do more than it has in its CFP and FP for
11 public facilities and services, which include sewer, water, and parks, with the five newly
12 established UGAs. The County has a duty to clearly state which public facilities and services
13 are "necessary to support development," providing minimum acceptable standards for those
14 designated as necessary, and a duty to complete the requirements of RCW 36.70A.070(3) –
15 Capital Facilities, and .070(8) - Parks and Recreation. As it stands, the County's CFP and FP
16 for the public services and facilities it provides or will possibly provide within 20 years is
17 woefully lacking in detail and inadequate in light of the new UGAs it now governs, as is the
18 County's Park and Recreation Element. The Board finds the Petitioners have carried their
19 burden of proof and finds the County in continuing non-compliance for failing to comply
20 with RCW 36.70A.020(12), RCW 36.70A.070(3)(e) and RCW 36.70A.070(8).

21 **Parties Positions on Issue No. 5 and No. 20:**

22 **Petitioner Wilma:**

23 The Petitioner stipulates that the County has come into compliance on Issue Nos. 5
24 and 20.

25 **Petitioners Wagenman, et al.:**

26 The Petitioners contend the County failed to identify open space corridors within and
between UGAs as required by RCW 36.70A.160. The Petitioners are concerned that urban

1 areas and rural areas will slowly be subdivided into urban lots and five-acre parcels, and
2 that Title 3 does not recognize greenbelts and open spaces and corridors.

3 **Respondent:**

4 The County argues the Petitioners do not cite supporting authority that the County
5 must formally designate open space and greenbelts. According to the Respondent, the
6 County identified these areas in a set of maps, which indicates the County showed its work
7 and identified open space and greenbelts as required by the GMA.

8 **Petitioners Wagenman, et al. Response:**

9 The Petitioners argue they cited RCW 36.70A.160 as supporting authority. The
10 Petitioners claim the County failed to identify open space corridors, which are important
11 connections to open space.¹⁹ According to the Petitioners, the County's comprehensive
12 planning maps have been adjusted to identify agriculture, forest and riparian areas as open
13 space and greenbelts, but there are no designated corridors.

14 **Board Analysis:**

15 RCW 36.70A.160 requires counties and cities to identify open space corridors within
16 and between urban growth areas and these corridors shall include lands useful for
17 recreation, wildlife, trails and connection of critical areas.²⁰ Importantly, there is no GMA
18 requirement that these areas be regulated or protected²¹ and where large size UGAs and a
19 maximum population projection is adopted, the need to identify these corridors is even
20 more compelling²². The Hearings Boards have held that this requirement to identify open
21 space corridors applies to both counties and cities.²³ The most common method of such

22 ¹⁹ Petitioners Wagenman, et al. Reply brief at 9.

23 ²⁰ RCW 36.70A.160.

24 ²¹ *Suquamish Tribe, et al., v. Kitsap County*, CPSGMHB Case No. 07-3-0019c, FDO (Aug. 15, 2007).

25 ²² *Achen v. Clark County*, WWGMHB Case No. 95-2-0067, Compliance Order (Oct. 1, 1996).

26 ²³ RCW 36.70A.160 provides "Each county and city ... shall identify open space corridors"; *See Agriculture For Tomorrow v. City of Arlington*, CPSGMHB Case No. 95-3-0056, FDO (Feb. 13, 1996).

1 identification is by mapping²⁴ and the scale must allow features, such as future trails and
2 parks, to be accurately located²⁵. Official maps, which fail to show these areas, fail to
3 comply with the GMA.²⁶

4 The County has complied in part with the Board's FDO and Order on Clarification and
5 Reconsideration. The County has included "greenbelts"²⁷ in its policies and added the word
6 "between" to LU-7, but there is still no language specific to "open space corridors."
7 Although most of the maps identify open space (and the Board recognizes this map
8 designation may also be applied to green belts), the County failed to include "open space
9 corridors" in its Comprehensive Plan policies or identify them on the County's
10 Comprehensive Land Use maps, as required in the Board's Order on Clarification and
11 Reconsideration, Findings of Fact No. 10 and Conclusions of Law No. 6.

12 Open space corridors are areas within and between UGAs that are useful for
13 "recreation, wildlife habitat, trails and connection of critical areas." While many designated
14 open space, greenbelts, and forest and agricultural areas may qualify as corridors, the
15 County is required to identify those areas that serve as open space corridors "within and
16 between" UGAs. Additional mapping designations denoting these areas are needed (i.e.
17 Lake Spokane) as is a Comprehensive Land Use policy, which specifically addresses "open
18 space corridors".

19 **Conclusion:**

20 The Petitioners have carried their burden of proof and the Board finds the County in
21 continued non-compliance in Issue Nos. 5 and 20 for failing to comply with RCW
22 36.70A.160 and identify open space corridors on the Land Use maps or by Land Use policy.

23 ²⁴ *FOSC v. Skagit County*, WWGMHB Case No. 95-2-0065, FDO (Aug. 30, 1995).

24 ²⁵ *Dawes v. Mason County*, WWGMHB Case No. 96-2-0023c, Compliance Order (March 2, 2001).

25 ²⁶ *Evergreen v. Skagit County*, WWGMHB Case No. 00-2-0046c, FDO (Feb. 6, 2001).

26 ²⁷ See LU-7; LU/OS-1; LU/OS-2.

1 **Parties Positions on Issue No. 17:**

2 **Petitioner Wilma:**

3 The Petitioner contends the County fails to have a mechanism to trigger sidewalks,
4 lighting and storm sewers in UGAs and refers the Board to her arguments under Issue Nos.
5 2, 9, and 15.

6 **Petitioners Wagenman, et al.:**

7 The Petitioners argue the County's LOS for public services and facilities fails to
8 comply with the GMA, even though CFP-6 ensures that public services and facilities will be
9 available or that financial commitments are in place to provide a consistent acceptable LOS
10 at the time of development approval.²⁸ The Petitioners contend there are no development
11 regulations that fully implement this policy as written, that enforcement relies on a planner's
12 judgment, and refers to Section 3.04.020 in Title 3.

13 **Respondent:**

14 The Respondent claims LOS is a "term of art" that is only used in the Transportation
15 Element of the GMA.²⁹ The Respondent contends the public facilities and services
16 mentioned are "necessary" to support development³⁰ and Stevens County does not have
17 sidewalks, streetlights or storm sewers, so there is no risk of decreasing the current service
18 below any locally established standard. According to the Respondent, the County's adoption
19 of CFP-6 complies with the Board's order.

20 **Petitioners Wagenman, et al. Response:**

21 The Petitioners argue CFP-6 is a qualified policy and without a LOS for services, there
22 could be a decrease in current service levels below locally established minimum standards.
23 The Petitioners cite to the Board's FDO and Goal 12 of the GMA to indicate the County's
24 facilities and services should not decrease the current service levels.

25 ²⁸ Stevens County Comprehensive Plan CFP-6.

26 ²⁹ Respondent's Response brief at 9.

³⁰ Ibid.

1 **Board Analysis:**

2 The County is required to include in its Comprehensive Plan a CFP which consists of
3 those requirements mentioned under RCW 36.70A.070(3). Goal 12, the GMA's "concurrency
4 goal," requires LOS standards concerning those public facilities and services that the County
5 expressly denotes as "necessary to support development...without decreasing current
6 service levels below locally established minimum standards."³¹ The decision as to what
7 public services and facilities fall under this definition as "necessary" is at the discretion of
8 the County, but these services have to be "expressed".

9 It is not clear to the Board what public facilities and services the County has
10 determined as "necessary to support development," as previously mentioned under Issue
11 No. 2. The Respondent argues that since the County does not have sidewalks, streetlights
12 or storm sewers, a LOS is not needed now or in the future, despite five new UGAs and 15
13 LAMIRDs. The County claims there is no risk of decreasing the current service below the
14 locally established standard because there is no standard or current service.

15 Unlike parks and recreation, which has additional requirements for jurisdictions under
16 RCW 36.70A.070(8), a LOS for other public services and facilities, such as sidewalks, street
17 lighting and storm sewers, are at the discretion of the County, which has chosen not to set
18 a LOS for these and other public facilities and services. The County has written and included
19 in its CP, CFP-6, but this policy does little to ensure facilities and services are available when
20 there are no levels of service to measure compliance.

21 To comply with RCW 36.70A.070(3), the County must establish which public facilities
22 and services are "necessary to support development" and develop measureable levels of
23 service for these facilities and services in the future. The County has chosen to designate
24 densely populated areas of the County as UGAs, including by far the largest UGA in the
25 County. By designating these areas as UGAs, the County is committing itself to providing
26 urban services and facilities, whether they are police and fire protection, parks, streetlights

³¹ GMA Goal 12.

1 or sidewalks adjacent to schools. Communities will request public facilities and services in
2 the future, even if they are not available when an area is designated a UGA. Failure of the
3 County to look 20 years ahead does not comply with the GMA. The County's CFP and FP
4 need additional work as required by RCW 36.70A.070(3) to comply with the Board's order.

5 **Conclusion:**

6 The Petitioners have carried their burden of proof and the Board finds the County in
7 continued non-compliance in Issue No. 17 for failing to comply with RCW 36.70A.070(3)
8 and RCW 36.70A.020(12).

9 **Parties Positions on Issue No. 18:**

10 **Petitioner Wilma:**

11 The Petitioner contends the County failed to address storm drainage control in the
12 new urban areas, although acknowledges the County moved some natural resource policies
13 to the Land Use Element.

14 **Petitioners Wagenman, et al.:**

15 The Petitioners argue the County does not have the appropriate protections in place
16 to protect critical areas, surface and ground water. In addition, Title 13, the County's critical
17 areas ordinance (CAO) does not address land use and densities, impervious surfaces or
18 stormwater management, surface and ground water, or open space. The Petitioners
19 contend LU-10 is an improvement, but does not address the need to protect open space,
20 critical areas and impervious surfaces. The Petitioners also claim SEPA has exemptions that
21 allow dramatic impacts on a cumulative basis for critical areas and cite Loon Lake as an
22 example. The Petitioners argue Title 3 does not require review of all projects for
23 stormwater, but only when plans are being prepared does the DOE manual need to be used
24 as guidance. The Petitioners point to a DOE letter submitted to the County, which states
25 proper erosion and sediment control practices must be used and mentions local stormwater
26 ordinances. The Petitioners claim the revised CP, in addition to Title 3, provides little
protection for rural character and resource lands, fails to address water quality and
quantity, and fails to consider environmental issues related to the intense densities that are

1 permitted to change or rezone to a density not to exceed 1 du/5 acres.

2 **Respondent:**

3 The Respondent argues the County amended the Land Use Element to include three
4 policies that directly relate to protection of water; LU-CA-1, LU-10 and LU-11. The
5 Respondent claims LU-11 expressly requires the County to use the state's stormwater
6 manual to plan for and implement best management practices for dealing with stormwater.

7 The Respondent contends the County's development regulations are not at issue
8 here. According to the Respondent, the County is in compliance because: (1) the Land Use
9 Element contains protections for groundwater resources; (2) the CAO has been found
10 compliant; (3) the County has balanced the goals of the GMA and; (4) LU-10 invites
11 professional judgment to determine development proposals and stormwater controls.

12 **Petitioners Wagenman, et al. Response:**

13 The Petitioners claim the County's land use policies are inadequate to protect water
14 resources, fail to consider proposals outside of SEPA, and fail to go far enough to protect
15 the rural character, water quality and quantity. The Petitioners also contend there is nothing
16 in Title 3 about flooding, water quality and quantity, drainage or air quality. The Petitioners
17 claim there are no County policies for development inside of critical areas and no policies
18 that reflect WAC 365-195-305(2)(1), suggesting a water protection strategy consistent with
19 areas of critical recharging effects.

20 **Board Analysis:**

21 In review of Issue No. 18 in the FDO, the Board found:

22 "...the goals and policies of the County's CP do not protect the quality and
23 quantity of ground water used for public water supplies, or review drainage,
24 flooding, and storm water run-off in the rural areas and nearby jurisdictions.
25 The County has designated new UGAs, LAMIRDs, Urban Reserve areas, and a
26 single density of a minimum of 1 unit/5 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

1 policies do not fulfill the obligation set forth in RCW 36.70A.070(1).³²

2 RCW 36.70A.070(1) specifically states:

3 "The land use element shall provide for protection of the quality and quantity
4 of ground water used for public water supplies. Where applicable, the land
5 use element shall review drainage, flooding, and storm water run-off in the
6 area and nearby jurisdictions and provide guidance for corrective actions to
mitigate or cleanse those discharges that pollute waters of the state..."³³

7 The County amended its Land Use Element to include three policies; LU-CA-1, to give
8 appropriate protections to critical areas; LU-10, to protect air quality, public drinking
9 supplies and mitigate adverse water quality impacts; and LU-11, to require the use of the
10 DOE's Stormwater Manual as guidance for planning and implementing stormwater best
11 management practices. With these changes, the County has come into compliance with the
12 Board's order.

13 **Conclusion:**

14 The Board finds the Petitioners failed to meet their burden of proof in Issue No. 18.
15 The County has complied with the Board's order by amending its CP to reflect added
16 protections to critical areas, air quality, public drinking supplies, and the requirement to use
the DOE's Stormwater Manual for guidance.

17 **Parties Positions on Issue No. 19:**

18 **Petitioner Wilma:**

19 The Petitioner, after giving a brief historical perspective on UGA boundaries around
20 cities in Stevens County, contends she will only address the Colville UGA. The Petitioner
21 claims there were no public meetings in Colville to advise citizens the County was revising
22 the UGA by removing over 500 acres. The Petitioner contends the following: (1) the record
23 does not show why the population allocation was modified and reduced or permission

24 ³² Wilma, et al. v. Stevens County, EWGMHB Case No. 06-1-0009c, FDO (March 12, 2007).

25 ³³ RCW 36.70A.070(1).

1 granted by the City of Colville for the UGA to be reduced; (2) the County reduced the UGA
2 of Colville in order to justify the new unincorporated UGAs; (3) the area that was removed
3 from the Colville UGA was the economic development area located near the airport and this
4 area was necessary for an expansion of the runway and pertinent to on-going planning and;
5 (4) notice and proper public participation was inadequate as per RCW 36.70A.130(1)(d) and
6 the one hearing on January 29, 2008 was not GMA compliant.

6 **Petitioners Wagenman, et al.:**

7 The Petitioners contend the following: (1) the Land Quantity Analysis studied the
8 UGAs, but did not include the impact of the LAMIRDs; (2) the land use maps are
9 inconsistent and the website does not clearly define the UGA boundaries; (3) information is
10 missing concerning the unincorporated UGAs; (4) areas, such as critical areas, subtracted
11 from the total acreage are not marked; (5) inconsistency in acres brings into question the
12 credibility of the report and; (5) and the County failed to estimate lands allocated to
13 greenbelts and open space.

13 **Respondent:**

14 In response to all Petitioners, the Respondent refers the Board to the Motion to
15 Rescind Invalidity. On remand, the Respondent argues the County completed a Land
16 Capacity Analysis (LCA) for UGAs and used CTEDs regulatory guidelines and data from the
17 Office of Financial Management (OFM) to size its UGAs. The Respondent contends the
18 County removed nearly 2,600 acres from UGA designation.

19 In addition, the County prepared an updated Capital Facilities Plan (CFP), six-year
20 financial plan (FP), and adopted a zoning map to meet the GMA goal of discouraging
21 sprawl. The Respondent claims the County consulted with 34 service providers for input into
22 the CFP and FP and, with these documents, the County is now able to assess the LOS and
23 projected capital facility needs over the six-year planning period.

23 **Petitioners Wagenman, et al. Response:**

24 The Petitioners contend the Respondent should not be submitting comments in the
25 compliance portion of their briefing for an issue found invalid, but only in the invalidity

1 response.

2 **Board Analysis:**

3 In its FDO, the Board found the County out of compliance in Issue No. 19 for failing
4 to complete a land quantity (capacity) analysis to justify the designation of the five new
5 UGAs and its sizing as required by RCW 36.70A.020(2). The Board also entered Findings of
6 Fact No. 13, which stated, "Stevens County failed to adopt policies or regulations in its CP
7 to "ensure" public facilities and services are available when impacts of development occur
8 or within a reasonable time afterwards as required by RCW 36.70A.020(12); and
9 Conclusions of Law No. 8, which stated, "Stevens County is found out of compliance for
10 failure to adopt policies or regulations in its CP to "ensure" public facilities and services are
11 available when impacts of development occur or within a reasonable time afterwards as
12 required by RCW 36.70A.020(12).

13 On reconsideration, the Board determined in its Order on Clarification and
14 Reconsideration and Order on Invalidity that the failure of the County to show its work to
15 justify the size of the new UGAs substantially interfered with Goals 1, 2, and 12 and
16 invalidated Stevens County Comprehensive Plan policies LU-3(D), LU-5, LU-7(A), LU-9 and
17 LU-10. The Board subsequently withdrew its determination of invalidity on March 19, 2008,
18 based on the County no longer substantially interfered with the Goals of the Act.

19 On remand, the County completed a Land Capacity Analysis to size its UGAs, and a
20 limited Capital Facilities Plan and Financial Plan as required by the GMA. The County also
21 changed LU-3(D) to reflect the Board's concern of one-acre urban density, if sewer and
22 water are not immediately available.

23 It's worth repeating a section of the Board's FDO concerning Issue No. 19 to clarify
24 exactly what is needed to designate an urban growth area. Particular attention needs to be
25 focused on the emphasis RCW 36.70A.110(3) places on public facilities and services:

26 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) states that counties and cities shall include
areas and densities sufficient to permit the urban growth that is projected to

1 occur in the county or city for the succeeding twenty-year period. It also says,
2 “[C]ities and counties have discretion in their comprehensive plans to make
3 many choices about accommodating growth.” Discretion, of course, is
4 bounded by the requirements of the GMA. Section (3) requires counties and
5 cities to locate urban growth “first in areas already characterized by urban
6 growth that have adequate existing public facility and service capacities to
7 serve such development, second in areas already characterized by urban
8 growth that will be served adequately by a combination of both existing public
9 facilities and services and any additional needed public facilities and services
10 that are provided by either public or private sources, and third in the
11 remaining portions of urban growth areas. Section (4) says that, in general,
12 cities are the units of local government most appropriate to provide urban
13 governmental services. Section (5) requires counties and cities to adopt
14 development regulations designating interim urban growth areas and final
15 UGAs shall be adopted at the time of comprehensive plan adoption.³⁴

16 The Stevens County PUD is the purveyor of public sewer in most, if not all, of the
17 pre-existing unincorporated UGAs and three of the newly designated UGAs. According to
18 the CFP, Stevens County PUD provides sanitary sewer facilities for eight districts, including
19 Addy, Clayton and Valley, which are three of the five new UGAs. The Hunters UGA is
20 recognized in the CFP under future needs for sanitary sewer facilities, but fails to have an
21 adequate financial plan. Lake Spokane’s future sanitary sewer is not addressed in either the
22 CFP or the FP.

23 The crux of Petitioners arguments and this Board’s finding of non-compliance in the
24 March 2007 FDO, was not simply Stevens County’s failure to prepare a LCA when it created
25 five new UGAs, but also its failure to ensure public facilities and services would be available
26 within the 20-year planning period so as to sufficiently serve the residents of the newly
created UGAs as mandated by the GMA. In order to do this, the County needs to have a
CFP that satisfies the requirements set forth in RCW 36.70A.070(3). The purpose of the
CFP, particularly the forecasting provisions contained in .070(3)(b) and (c), is for the County
to determine what the needs for such facilities will be for its growing population. The CFP

³⁴ *Wilma, et al., v. Stevens County*, EWGMHB Case No. 06-1-0009c, FDO at 61 (March 12, 2007).

1 must include, at a minimum, all facilities that meet the definition of public facilities set forth
2 in RCW 36.70A.030(12) – roadways, sidewalks, street, and road lighting systems, traffic
3 signals, domestic water systems, storm and sanitary sewer systems, parks and recreational
4 facilities, and schools.

5 A review of the County's CFP demonstrates an inventory of a variety of facilities,
6 including those pertaining to public safety, governmental offices, recreation, solid waste,
7 water, sanitary sewer, stormwater, fire, library, and schools. The County then sets forth a
8 "Needs" section which states certain facilities have no identified future needs (i.e.
9 governmental offices, recreation, solid waste, stormwater) while others make cursory
10 reference to potential improvements. Just because the County does not *currently* have
11 certain types of facilities (such as sidewalks and parks) does not mean that it is exempt
12 from *analyzing its ability* to provide these facilities or the *projected needs* of these facilities
13 for its residents. In this regard, Stevens County's CFP fails to comply with key mandatory
14 requirements of .070(3) and the basic long-range planning goals of GMA.

15 Also, Stevens County relies primarily on outside purveyors for many of the public
16 facilities and services the GMA requires it provide, giving it limited authority to locate and
17 finance needed infrastructure due to the fact that those aspects of capital facilities planning
18 rests with special use districts (i.e. sewer/water district, school district, fire district), other
19 jurisdictions (city, state, or federal governments), or private interests. Because of this
20 reliance, when designating a UGA that is to be served by an outside purveyor, within its
21 CFP, Stevens County should at least *cite to, incorporate by reference, or otherwise indicate*
22 where the location and financing information can be found that supports the UGA
23 designation and the GMA duty to ensure that adequate public facilities will be available
24 within the area during the 20-year planning period. The County should have been more
25 cautious in designated UGAs until assurances were obtained from such outside purveyors,
26 so as to ensure the needed facilities and services would be both adequate and available
because it is ultimately the County's responsibility to ensure that this is accomplished.

Although the County uses the requirements of RCW 36.70A.070(3) in the

1 introduction of its CFP, the document is void of any future plans to provide Lake Spokane
2 the following: (1) a forecast of the future sanitary sewer needs; (2) proposed locations and
3 sizes or capacities of expanded or new sanitary sewer facilities and service; and (3) a six-
4 year plan that will finance these facilities and services.

5 The CFP is supposed to be a document that looks to the future and includes a
6 forecast of future needs, not just an inventory of existing facilities. As designated, the Lake
7 Spokane UGA is two and half times larger than Colville's UGA and is located on a major
8 body of water, the Spokane River, a critical area. A sanitary sewer plan should have been
9 done for the CFP before designating Lake Spokane a UGA. There are no assurances in the
10 County's development regulations to prohibit low-density sprawl from taking place while the
11 PUD puts together a plan and implements that plan. As written, LU-3(D) does not prohibit
12 low-density sprawl and the County's development regulations fail to ensure public facilities
13 and services necessary to support development shall be adequate at the time the
14 development is available for occupancy and use without decreasing current service levels
15 below locally established minimum standards.³⁵ Urban growth requires urban services,
16 including sanitary sewer systems, and these services are required for existing and new
17 developments within the 20-year planning period.³⁶

18 As for the required financing plan (RCW 36.70A.070(3)(d)), the County notes that in
19 the next six years the unincorporated portions of the County will experience growth – with
20 some experiencing increasingly rapid growth. The financing portion of the County's CFP
21 denotes *proposed facilities* with costing provided for some of the facilities, but not all. With
22 the exception of school facilities and one fire facility, no source of funding for development
23 of these proposed facilities is provided. The FP does provide a 6-year funding plan, but this
24 appears to correlate to the continued operation of *current, existing facilities* and not to the

25 ³⁵ RCW 36.70A.020(12).

26 ³⁶ *MBA/Brink v. Pierce County*, CPSGMHB Case No. 02-3-0010, FDO at 11-12 (Feb. 4, 2003) and *J. Fallgatter, et al. v. City of Sultan*, CPSGMHB Case No. 06-3-03, FDO at 14-16 (June 29, 2006).

1 development of *proposed, anticipated facilities*. Therefore, Stevens County's CFP fails to
2 comply with the GMA's requirement that the CFP contain a six-year plan that will finance
3 not only *existing* facilities, but also *proposed* facilities and identified sources of funding.

4 The Board understands the Stevens County PUD has the authority and responsibility
5 for providing sanitary sewer in Stevens County. With that in mind, the County should have
6 been cautious in designating UGAs until "...assurances are obtained that ensure public
7 facilities and services will be adequate and available."³⁷ Land Use policy LU-4 is the criteria
8 the County is supposed to consider when designating UGAs. LU-4(B) is the criterion to
9 consider whether communities have or plan to have adequate public facilities and service
10 capacities, including public sewer.

11 In *Durland v. San Juan County*,³⁸ the Western Board wrote:

12 A designated UGA without any updated or adequate inventory, estimate of
13 current and future needs or adoption of methodologies to finance such needs
14 for infrastructure does not comply with the GMA, nor did the county properly
15 address urban facilities and services through an analysis of capital facilities
16 planning.

17 The Board agrees with the Petitioner that the County failed to adequately plan for
18 public facilities and services for the Lake Spokane UGA in its CFP and six-year financial plan.

19 **Conclusion:**

20 The Board finds the Petitioners have carried their burden of proof. The County is out
21 of compliance with RCW 36.70A.020(1) , (2) and (12), and its Capital Facilities Plan and Six-
22 Year Financing Plan (2008-2013) fails to comply to incorporate the mandatory elements set
23 forth in RCW 36.70A.070(3) as noted above and is non-compliant with the GMA.

24 ³⁷ *Bremerton/Port Gamble v. Kitsap County*, CPSGMHB Case No. 95-3-39c & 97-3-24c, Order on Non-compliance at 42
(Sept. 8, 1997).

25 ³⁸ *Durland v. San Juan County*, WWGMHG Case No. 00-2-006c, FDO (May 7, 2001).

1 **Parties Positions on Issue No. 21:**

2 **Petitioner Wilma:**

3 Petitioner Wilma does not contest this issue.

4 **Petitioners Wagenman, et al.:**

5 According to the Petitioners, Issue No. 21 pertains to the Rural Element, rural
6 character and to a variety of rural densities. The Petitioners also contend this issue involves
7 the written record explaining how the Rural Element harmonizes with the GMA goals and
8 also involves arguments concerning the West Kettle Falls LAMIRD and the Loon Lake
9 LAMIRD.

10 **Rural Character and Densities:**

11 The Petitioners contend changes to RU-11 were insignificant and the policy language
12 still maintains that as long as the rural densities do not exceed 1 du/5 acres this density is
13 acceptable. According to the Petitioners, the policy was improved, but still does not specify
14 how and where densities would recognize and adapt to geographical and other factors. The
15 Petitioners argue there is no future land use map that reflects the differences in rural lands
16 between the various densities in the zoning code. In addition, the Petitioners contend the
17 County's emphasis is on the development regulations, not the Comprehensive Plan. The
18 Petitioners claim the consequences of not designating rural densities on the future land use
19 map are the land owners can request any rural density not to exceed 1 du/5 acres and the
20 rezone will not be reviewable by the Board. The Petitioners quote RCW 36.70A.070 to
21 emphasize their point that the CP has to consist of maps and the CP must be internally
22 consistent and consistent with the future land use map. In conclusion, the Petitioners
23 contend the County failed to comply with the Board's Order and provide a variety of rural
24 densities, protect rural lands, reduce low-density sprawl, protect critical areas, surface and
25 ground water, and failed to protect agriculture, forest and mineral lands.

26 **West Kettle Falls LAMIRD and Loon Lake LAMIRD:**

The Petitioners argue both the West Kettle Falls LAMIRD and the Loon Lake LAMIRD
under this issue. According to the Petitioners, the Kettle Falls LAMIRD has the following

1 problems: (1) the water system map is unclear, so there is an unknown level of service and
2 future capacity; (2) many of the lots are rural in character and are not part of the built
3 environment prior to 1993; (3) the LAMIRD extends beyond the logical outer boundary of
4 the existing area; (4) the subdivided or platted land that was not developed in 1993 should
5 not be used to define the built environment; and (5) public facilities and services necessary
6 for development are not available and not planned for the future.

7 The Petitioner points out the West Kettle Falls LAMIRD does not fit the true definition
8 of a LAMIRD, does not have public facilities and services to serve the limited area and has
9 large areas of undeveloped land. In addition, the Petitioners contend the County failed to
10 complete any environmental analysis and failed to send DOE a threshold of determination.
11 The Petitioners argue the Board was correct when it determined this LAMIRD was added
12 late to the process without the required environmental review to determine its impact.

13 According to the Petitioners, the County changed the Loon Lake Urban Reserve area,
14 which was 19 acres in size, to a 348 acre LAMIRD, without a new EIS or SEPA checklist.
15 The Petitioners claim the County failed to show their work in designating the new LAMIRD
16 area and points to numerous areas that were not built up in 1993. The Petitioners argue
17 that portions of the new Loon Lake LAMIRD boundary are outside of the Loon Lake Sewer
18 District and the Sewer District will not service the new area. The Petitioners calculate that at
19 three homes per acre, the new LAMIRD could potentially have 987 homes, not 444 homes
20 as the County's expert contends. The Petitioners claim the septic systems from so many
21 homes will have an effect on groundwater quality and an environmental review was not
22 done prior to designation.

23 **Respondent:**

24 The County argues it prepared a written record demonstrating how the Rural
25 Element harmonizes the goals of the GMA. The County contends it has also responded to
26 the GMA requirement for a CP to provide for a variety of rural densities and its response is
found in its Reply in Support of Motion to Rescind Invalidity brief. According to the County,
the Petitioners' argument that designated resource lands could be changed by a rezone,

1 without review by the Hearings Board, has no merit. The County contends resource lands
2 are designated in the Future Land Use maps adopted with the CP and any change to those
3 designations would require a CP amendment and subject to review by the Hearings Board.

4 The County claims the Board did not make a finding of invalidity based on the West
5 Kettle Falls LAMIRD³⁹ and believes this is a compliance issue for which the Petitioners bear
6 the burden. According to the County, the Petitioners acknowledge that existing plats
7 represent vested property interests, but argue that they should not be included in the
8 logical outer boundaries (LOB) of the built environment unless they have been developed.
9 The County contends it reduced the original LAMIRD and the logical boundaries are based
10 on consideration of maps showing existing development and on existing plats and
11 infrastructure, including roads and railways.

12 With respect to the new Loon Lake LAMIRD, the County argues it originally
13 considered designating this area as a UGA, then chose to designate it as an Urban Reserve.
14 On remand to the Board's Order, the Urban Reserve designation was removed and the
15 existing LAMIRD was amended "in order to plan for expected growth in an area that is
16 heavily platted and served by two highway exits."⁴⁰ According to the County, no SEPA
17 process was required because the original SEPA review included consideration of Loon Lake
18 as a UGA or LAMIRD, and the County provided a Notice of Adoption of Existing
19 Environmental Documents. In addition, the County claims its development regulations
20 require a SEPA challenge to be made administratively, which is now time barred. The
21 County argues it did its homework as to the built environment and determined 149 acres
22 within the LOB are developable. According to the County, it hired an expert in groundwater
23 around the Loon Lake basin and the evidence suggests the watershed would not be
24 adversely affected by a potential 373 additional homes in the LAMIRD.

25 ³⁹ The Board found the West Kettle Falls LAMIRD out of compliance and invalid. Order on Clarification and
26 Reconsideration, and Order on Invalidity, Findings of Fact No. 16, Conclusions of Law No. 11, and under VIII. Order,
No. 4.

⁴⁰ Stevens County Compliance Response brief at 14.

1 **Petitioners Wagenman, et al. Response:**

2 The Petitioners agree the County submitted a written report designed to show how
3 the County is harmonizing the goals of the Act with the Rural Element, but contends the
4 document fails to include "policies that refer directly to the compatible uses and densities
5 based upon the environmental limitations of the land and water."⁴¹ The Petitioners claim
6 the County's report fails to restrict residential land uses within lake watersheds or CARAs
7 and does not have regulations to protect water quality and quantity.

8 The Petitioners claim subdivided or platted land that was not developed in 1993
9 cannot be used to determine the built environment for LAMIRDs. The Petitioners argue that
10 RCW 36.70A.070(5)(d)(iv) is a requirement and the County must show their work that the
11 LOB is delineated by the built environment that existed when the County opted into the
12 GMA. According to the Petitioners, the details in the County's work are sketchy. The
13 Petitioners contend the West Kettle Falls LAMIRD doesn't have public facilities or service,
14 such as sewer and water, and maps of these services were not available. In addition, the
15 Petitioners argue there are many five acre, ten acre and larger acreage parcels that
16 shouldn't be included in the LAMIRD, many of which are vacant. The Petitioners also
17 contend the 948-acre West Kettle Falls LAMIRD does not have the public services necessary
18 to protect the Columbia River or the environment.

19 The Petitioners contend the same issues that plague the West Kettle Falls LAMIRD,
20 affect the Loon Lake LAMIRD. According to the Petitioners, the County is extending the
21 outer boundary to capture larger acreages without buildings. In addition, the Petitioners
22 argue the LAMIRD will not be served by the Loon Lake Sewer District and public water was
23 extended later than the 1993 requirement.

24 **Board Analysis:**

25 The Board will take each sub-issue within Issue No. 21 separately.

26 ⁴¹ Petitioners Wagenman, et al. Reply to Respondent's Compliance brief at 16.

1 A written record harmonizing the Goals of the GMA:

2 Stevens County submitted Exhibit 4,⁴² a written record explaining how the County's
3 Rural Element harmonizes the planning goals in RCW 36.70A.020. The Board believes the
4 County has fulfilled its obligation under the GMA.

5 Variety of rural densities:

6 The County was found out of compliance when it "failed to protect the Rural
7 Character as required by RCW 36.70A.070(5) when designating the West Kettle Falls
8 LAMIRD and by establishing rural densities not greater than 1 unit per five acres."⁴³ The
9 Board determined that RU-11 was not sufficient to protect the rural character and,
10 therefore, the CP and future land use map were not consistent as required by the GMA. The
11 Board wrote:

12 After careful examination of the record, the Board finds that the County failed
13 to show its work from its original proposal of five, ten and twenty acre
14 designations for rural and resource lands to its final designation of "densities
15 not greater than 1 dwelling unit per 5 acres" for all rural lands. The FEIS,
16 which is the document that examines the County's potential alternatives,
17 including "no action", did not examine the five-acre minimum decision and its
18 effect on the environment. In fact, it was never mentioned. RU-11, as written
19 in the Final CP, did not see the light of day until the final hearings. RU-11 was
20 not mentioned as a possibility in the FEIS; in Appendix A of the Final Draft CP;
21 or in the Introduction portion of the Final CP under 3.0 Major Changes in the
22 Comprehensive Plan. A change in the CP of this magnitude and with such a
23 potential impact on land use throughout Stevens County should have had its
24 own alternative study in the FEIS.⁴⁴

19 The County amended RU-11 to reflect the Board's concerns, which improved the
20 protections of rural lands within Stevens County.

21 As to the difference in the Future Land Use Map, which shows only 1 du/5 acres in
22 the rural areas, and zoning maps, which delineate the rural areas into 1 du/5 acre, 10 acre

23 _____
24 ⁴² Stevens County Compliance Response Brief, Exhibit 4.

25 ⁴³ *Wilma, et al., v. Stevens County*, EWGMHB Case No. 06-1-0009c, FDO, p. 78 (March 12, 2007).

26 ⁴⁴ *Ibid* at 74.

1 and 20 acre zones, the Board agrees with the County that there are sufficient protections
2 written in the CP and Title 3 to provide a variety of densities in the rural areas, yet allow
3 land owners some discretion to sub-divide their land. The relationship between a
4 jurisdiction's comprehensive plan and development regulations was outlined by the
5 Supreme Court in *Woods v. Kittitas County*.⁴⁵

6 Comprehensive plans serve as "guide[s]" or "blueprint[s]" to be used in
7 making land use decisions. Thus, a proposed land use decision must only
8 *generally conform*, rather than strictly conform, to the comprehensive plan. A
9 comprehensive plan does not directly regulate site-specific land use decisions.
10 Instead, local development regulations, including zoning regulations, directly
11 constrain individual land use decisions. Such regulations must be consistent
12 with the comprehensive plan and be sufficient in scope to carry out the goals
13 set forth in the comprehensive plan.

14 Rezones must implement the CP, but development regulations control.⁴⁶

15 The basic protections are written into the County's CP at RU-10, RU-11, RU-12 and
16 RU-13, while the County's development regulation, SCC 3.20.020 Zoning Reclassification,
17 specifies the criteria and requirements under which a landowner may rezone their property.
18 As reflected in SCC 3.20.020, all rezones must: (1) demonstrate changed circumstances to
19 justify a rezone and (2) be in the interest of public health and welfare. The County is in
20 compliance in this sub-issue.

21 Kettle Falls LAMIRD:

22 In its FDO, the Board found Stevens County failed to protect the Rural Character as
23 required by RCW 36.70A.070(5) for designating the West Kettle Falls area as a LAMIRD.⁴⁷
24 Furthermore, in its subsequent Order on Clarification and Reconsideration, and Order on
25 Invalidation, the Board found the West Kettle Falls LAMIRD substantially interfered with the
26

⁴⁵ *Woods v. Kittitas County*, 162 Wn.2d 597; 174 P.3d 25; 2007. (Internal citations omitted).

⁴⁶ *Bjarnson v. Kitsap County*, 78 Wn. App. 840; 899 P.2d 1290; 1995.

⁴⁷ *Ibid* at 87.

1 Goals of the GMA and determined invalidity was warranted.⁴⁸ As stated in the FDO, the
2 County failed to show its work in designating the size of the West Kettle Falls LAMIRD,
3 failed to clearly show the built environment as of September 1993, and failed to comply
4 with the requirements of RCW 36.70A.070(5)(d)(iv).⁴⁹

5 The County reevaluated the logical outer boundary of the West Kettle Falls LAMIRD
6 and consequently reduced the size of the LAMIRD from 1,943 acres to 948 acres, claiming
7 “[T]he changes are based on careful consideration of maps showing the location of existing
8 development and plats,” and it “did a good job of establishing logical outer boundaries
9 based on existing plats and infrastructure, including roads and railways.”⁵⁰

10 RCW 36.70A.070(5)(d)(iv) states that counties “shall adopt measures to minimize
11 and contain the existing areas or uses of more intensive rural development.” LAMIRDs “shall
12 not extend beyond the logical outer boundary of the existing area or use” and “[E]xisting
13 areas are those that are clearly identifiable and contained and where there is a logical
14 boundary delineated predominately by the built environment, but that may also include
15 undeveloped lands if limited as provided in this subsection.”⁵¹ (Board emphasis.)

16 The County has a duty to establish the LOB and shall address: (A) the need to
17 preserve the character of existing neighborhoods and communities; (B) physical boundaries,
18 such as water, streets and highways, and land forms and contours; (C) the prevention of
19 abnormally irregular boundaries; and (D) the ability to provide public facilities and public
20 services in a manner that does not permit low-density sprawl.⁵²

21
22
23 ⁴⁸ *Wilma, et. al. v. Stevens County*, EWGMHB Case No. 06-1-0009c, Order on Clarification and Reconsideration, and
24 Order on Invalidity (June 12, 2007).

⁴⁹ *Ibid* 29, at. 77.

⁵⁰ Stevens County Compliance Response brief, at 13-14.

⁵¹ RCW 36.70A.070(5)(d)(iv).

⁵² *Ibid*.

1 Based on a thorough investigation of the County's and Petitioners' documents, the
2 Board finds the Kettle Falls LAMIRD continues to be out of compliance.⁵³ The Board
3 concludes that the County's action in designating this LAMIRD does not comply with RCW
4 36.70A.070(5)(d)(iv) because the LOB is not delineated predominantly by the built
5 environment in order to minimize and contain the existing areas or uses of more intensive
6 rural development, and the County has not addressed its ability to provide public facilities
7 and services for this area.

8 The County provided reasonably specific detail in regards to the dates building
9 permits were issued throughout the designated LAMIRD, located these permits on individual
10 lots, and included existing plat maps to indicate the potential for future development. The
11 mapped properties within the LAMIRD exhibit a predominantly low pattern of density, with
12 many homes scattered throughout the LAMIRD built after September 1993. The County
13 provided old plat maps to evidently show the potential for future development, but fails to
14 understand that subdivided or platted land, although occurring prior to 1990, but which
15 remain undeveloped, may not be considered part of the built environment, as the
16 Legislature intended this term to relate to manmade structures.⁵⁴ Vested properties can be
17 considered part of the built environment under certain circumstances. In *Quadrant Corp. v.*
18 *CPSGMHB*, the court said, "...the vested rights doctrine establishes that land use
19 applications vest on the date of submission and entitle the developer to divide and develop
20 the land in accordance with the statutes and ordinances in effect on that date."⁵⁵

21 The evidence presented to the Board, predominantly in the form of maps and Google
22 Earth satellite photos, includes multiple areas of rural-sized acreage and undeveloped lots

23 ⁵³ Stevens County Motion to Rescind Invalidity, Attachments 4 and 5; Petitioners Wagenman, et al., Reply to
24 Respondent's Compliance brief, Attachment 2; Petitioners Wagenman, et al., Response to Motions, SOA for Compliance
25 and to Rescind Invalidity, Attachment 18.

26 ⁵⁴ *Butler et al v. Lewis County*, WWGMHB Case No. 00-2-0031c/99-2-0027c, FDO & CO (March 5, 2001); *Dry Creek
Coalition v. Clallam County*, WWGMHB Case No. 07-2-0018c, FDO (April 23, 2008).

⁵⁵ *Quadrant Corp. v. CPSGMHB, et al.*, 154 Wn2d 224; 110 P.3d 1132; 2005 Wash.

1 and/or tracts of land that are not part of the built environment as of 1993. These areas
2 include either undeveloped plats or property that may or may not be vested, yet
3 undeveloped, but specifically anticipate future development. Vested rights do not equate to
4 the built environment. By statute, the County shall not extend beyond the LOB of the
5 existing area or use.

6 In many instances, an LOB is difficult to determine and becomes an exercise in
7 judgment by a counties planning department. Fortunately, RCW 36.70A.070(5)(d)(iv) leaves
8 little doubt that counties must err on the side of caution when drawing an LOB. For
9 instance, the statute includes specific phrases and words that offer direction, such as
10 "minimize and contain the existing areas" and "existing areas are those that are clearly
11 identifiable and contained and where there is a logical boundary delineated predominately
12 by the built environment."⁵⁶ LAMIRDs are not tools for encouraging development or
13 creating opportunities for growth and their densities must be designated and restricted to
14 the clearly identifiable areas of more intense development as of September 1993.⁵⁷

15 Fundamental to the establishment of a LAMIRD is the requirement that it be based
16 upon "existing areas and uses" as established by the built environment.⁵⁸ Stevens County
17 has liberally construed RCW 36.70A.070(5)(d)(iv) to extend its logical outer boundary to
18 pick up a few homes that were built prior to 1993, but fails to contain and limit the
19 boundary expansion to those areas clearly identifiable and delineated predominately by the
20 built environment. This action fails to protect the rural character as required by the GMA. A
21 LAMIRD with a LOB enlarged to include all surrounding development, including the built
22 environment prior to and after 1993, does not minimize and contain the existing areas and
23 would allow the development of a new pattern of low-density sprawl.

24 ⁵⁶ *Gold Star Resorts, Inc. v. Futurewise*, 140 Wn. App. 378; 166 P.3d 748; 2007 Wash. App.

25 ⁵⁷ *Ibid.*

26 ⁵⁸ *Dry Creek Coalition, et al., v. Clallam County*, WWGMHB Case No. 07-2-0018c, FDO (April 23, 2008).

1 There are multiple areas within the Kettle Falls LAMIRD that do not minimize and
2 contain the existing areas or uses of more intensive rural development, such as: (1) that
3 area designated industrial north of Watertank Road/West Schreibner Road and west of Hwy
4 395; (2) that area designated commercial south of Hwy 395; (3) that area designated
5 industrial west of Peachcrest Road, south of Hwy 395 and north of the settling pond; and
6 (4) that area designated residential south of Schreibner Road located on both sides of
7 Peachcrest Road. The Board understands some of these areas listed above may include
8 small compact areas of homes and businesses that are part of the built environment prior to
9 1993, and the County has included an occasional larger parcel because they are under the
10 same ownership, but these areas in general are predominately rural and void of the built
11 environment. Previous Hearings Board's rulings have held vested rights do not equate to
12 the built environment⁵⁹ and old undeveloped plats are not considered part of the built
13 environment.⁶⁰ The County may make minor adjustments to its LOB to include undeveloped
14 property, but these adjustments should be for infill purposes, not to expand an area for
15 future growth.

16 In addition, RCW 36.70A.070(5)d)(iv)(D), requires the County to address its ability
17 to provide public facilities and public services in a manner that does not permit low-density
18 sprawl. The County's Capital Facilities Plan fails to address LAMIRDs in general and the
19 Comprehensive Plan only mentions their designation and size. Without addressing its ability
20 to provide these facilities and services in a manner that does not permit low-density sprawl,
21 the County has not fulfilled its duty under the GMA.

22 Loon Lake LAMIRD:

23 The Board incorporates the discussion above concerning the West Kettle Falls
24 LAMIRD in its analysis of the Loon Lake LAMIRD. Originally, the County considered
25 designating this area as an urban growth area, but later decided to designate it as a small,
26

⁵⁹ *Anacortes v. Skagit County*, WWGMHB Case No. 00-2-0049c, Compliance Order (Jan. 31, 2002).

⁶⁰ *Ibid* to 37.

1 compact Urban Reserve area of 93 acres. The Board found the County out of compliance
2 and, upon remand, the County revisited the issue and decided to amend the original Loon
3 Lake LAMIRD "in order to plan for expected growth in an area that is heavily platted and
4 served by two highway exits."⁶¹ The County determined from information about the built
5 environment to enlarge the LAMIRD and increase the available residential land from 19
6 acres to 348 acres. This action increased the size of the Loon Lake LAMIRD to 422 acres.⁶²

7 As previously discussed, LAMIRDs are not for addressing the County's future growth
8 or by allowing undeveloped plats to vest, but to recognize limited areas of more intense
9 development established prior to 1993, and to minimize and contain the existing areas or
10 uses. In doing so, the County is responsible for determining a LOB delineated predominately
11 by the built environment, which does not allow a new pattern of low-density sprawl. The
12 County is required to address the four criteria in RCW 36.70A.070(5)(d)(iv)(A-D) in
13 establishing the LOB.

14 After a thorough study of the documents provided by the parties, the Board finds the
15 County failed to minimize and contain the existing areas and uses, but rather expanded the
16 LAMIRD boundaries to fit the boundaries of the roadways. While the County is allowed to
17 address "physical boundaries such as bodies of water, streets and highways, and land forms
18 and contours,"⁶³ it appears the County went well beyond using physical boundaries in an
19 attempt to include additional undeveloped land. This is one of the criteria to consider, but
20 the County failed to address its ability to provide public services and facilities, and the
21 addition of vacant land and larger parcels built on after 1993.

22 Perhaps the most important criteria for this LAMIRD is the provision of public sewer
23 and water because of its proximity to Loon Lake, a body of water already showing serious
24 water quality problems. There is no mandate for counties to ensure public services and
25

26 _____
⁶¹ Stevens County's Compliance Response brief at 14.

⁶² Stevens County Comprehensive Plan at I-14 (Feb. 2008).

⁶³ RCW 36.70A.070(5)(d)(iv)(B).

1 facilities for LAMIRDs are provided, but as previously stated, the County must address its
2 ability to provide public facilities and services in a manner that does not permit low-density
3 sprawl. Prevention of "irregular boundaries",⁶⁴ therefore, is not as important to the quality
4 of life and protection of the rural character as the County's or PUD's ability to minimize and
5 contain the built environment and address its ability to provide public facilities and services.

6 The LAMIRD, as proposed, includes large undeveloped lots, some of which were built
7 on after 1993. These areas do not conform to RCW 36.70A.070(5)(d).

8 **Conclusion:**

9 The Petitioners have carried their burden of proof and the Board finds the County in
10 continued non-compliance in Issue No. 21 concerning LAMIRDs. The Board concludes that
11 the County's action in designating the West Kettle Falls LAMIRD and the Loon Lake LAMIRD
12 does not comply with the RCW 36.70A.070(5)(d)(iv) standards for defining the logical outer
13 boundary because it included undeveloped platted/subdivided lands as part of the existing
14 "built environment" of a LAMIRD so as not to minimize and contain the more intensive
15 development, and fails to address RCW 36.70A.070(5)(d)(iv)(D), which requires the County
16 to address its ability to provide public facilities and services in a manner that does not
17 permit low-density sprawl. The County's action is clearly erroneous.

18 The Board finds the Petitioners have failed to carry their burden of proof concerning
19 the County's lack of a written record explaining how the Rural Element harmonizes the
20 Goals of the GMA, and the County's methodology in designating a variety of rural densities.

21 **Parties Positions on Issue No. 22:**

22 **Petitioner Wilma:**

23 The Petitioner contends the County is in compliance with this issue by eliminating the
24 Urban Reserve designation.

25 **Petitioners Wagenman, et al.:**

26 The Petitioners agree that with the removal of the Urban Reserve designation the

⁶⁴ RCW 36.70A.070(5)(d)(iv)(D).

1 County is in compliance with this issue.

2 **Respondent:**

3 The Respondent contends the County removed the Urban Reserve designation from
4 the Loon Lake area

5 **Board Analysis:**

6 Under Issue No. 22, the Board found the County failed to comply with RCW
7 36.70A.070(5)(d) when establishing an Urban Reserve area at Loon Lake and failed to show
8 its work in support of the establishment of an urban reserve designation adjacent to the
9 Hunter's UGA. Both urban reserve designations were removed, thus bringing the County
10 into compliance with Issue No. 22.

11 **Conclusion:**

12 The Board finds the County in compliance with Issue No. 22 by removing the Urban
13 Reserve areas at Loon Lake and Hunters.

14 **III. ORDER**

15 The Board finds Stevens County in compliance in the following issues:

- 16 1. The Petitioners failed to meet their burden of proof in Issue No. 1,
17 public participation. Stevens County is found in compliance under SCC
18 3.31.070.A and with the GMA under RCW 36.70A.130(2)(b).
- 19 2. The Board finds the Petitioners failed to meet their burden of proof in
20 Issue No. 18. The County has complied with the Board's order by
21 amending its CP to reflect added protections to critical areas, air
22 quality, public drinking supplies, and the requirement to use the DOE's
23 Stormwater Manual for guidance.
- 24 3. The Board finds the Petitioners failed to meet their burden of proof in
25 two sub-issues of Issue No. 19. In regards to the written record, the
26 County submitted a written record explaining how the County's Rural
Element harmonizes the Goals of the GMA. In regards to the variety of
densities, the County rewrote RU-11 to reflect the Board's concerns, as

1 well as ensured a variety of rural densities and protections against
2 inappropriate rezones through policies in the CP and Title 3.

- 3 4. The Board finds the County in compliance with Issue No. 22 by
4 removing the Urban Reserve areas at Loon Lake and Hunters. The
5 Petitioners agree with the County's action.

6 The Board finds Stevens County in continuing non-compliance in the following
7 issues:

- 8 1. The Board finds the Petitioners have carried their burden of proof in
9 Issue Nos. 2, 9 and 15. The County is in continuing non-compliance for
10 failing to comply with RCW 36.70A.020(12), RCW 36.70A.070(3)(e) and
11 RCW 36.70A.070(8).
- 12 2. The Board finds the Petitioners have carried their burden of proof in
13 Issue Nos. 5 and 20. The County is in continuing non-compliance for
14 failing to comply with RCW 36.70A.160 and identify open space
15 corridors on the Land Use maps or by Land Use policy.
- 16 3. The Board finds the Petitioners have carried their burden of proof in
17 Issue No. 17. The County is in continued non-compliance for failing to
18 comply with RCW 36.70A.070(3) and RCW 36.70A.020(12).
- 19 4. The Board finds the Petitioners have carried their burden of proof in
20 Issue No. 19. The County is in continuing non-compliance for failing to
21 comply with RCW 36.70A.020(1) , (2) and (12), and its Capital Facilities
22 Plan and Six-Year Financing Plan (2008-2013) fails to comply to
23 incorporate the mandatory elements set forth in RCW 36.70A.070(3) as
24 noted above and is non-compliance with the GMA.
- 25 5. The Board finds the Petitioners have carried their burden of proof in
26 portions of Issue No. 21. The County is in continued non-compliance
for failing to minimize and contain the more intensive development
within a LOB for the West Kettle Falls and Loon Lake LAMIRDs as

1 defined by RCW 36.70A.070(5)(d)(iv), and fails to address RCW
2 36.70A.070(5)(d)(iv)(D), which requires the County to address its
3 ability to provide public facilities and services in a manner that does not
4 permit low-density sprawl, for the same LAMIRDs. The Board also
5 concludes that the County's inclusion of undeveloped, platted, and
6 subdivided lands, as part of the existing area of designation of the LOB,
7 is clearly erroneous.

- 8
- 9 • The Board establishes **September 19, 2008**, as the deadline for the
10 County to take appropriate legislative action to comply with the GMA
11 and this Order. The following schedule for compliance, briefing and
12 hearing shall apply:
 - 13 • The County shall file with the Board by **October 1, 2008, an original
14 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 15, 2008⁶⁵**, 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. In addition, the
25 Board requests the parties send their briefing electronically in Microsoft
26 Word format to: aandreas@ew.gmhb.wa.gov. The parties are
requested to use Times New Roman or a similar font with the type size
of 12 or larger, and line spacing shall be 1.5 or more.

⁶⁵ October 15, 2008, is also the deadline for a person to file a request to participate as a "participant" in the compliance proceeding. *See* RCW 36.70A.330(2).

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- By no later than **October 29, 2008**, the County shall file with the Board an **original and four copies** of their Response to Comments and legal arguments. The County shall simultaneously serve a copy of such on the parties. In addition, the Board requests the parties send their briefing electronically in Microsoft Word format to: aandreas@ew.gmhb.wa.gov. The parties are requested to use Times New Roman or a similar font with the type size of 12 or larger, and line spacing shall be 1.5 or more.
 - By no later than **November 5, 2008**, 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. In addition, the Board requests the parties send their briefing electronically in Microsoft Word format to: aandreas@ew.gmhb.wa.gov. The parties are requested to use Times New Roman or a similar font with the type size of 12 or larger, and line spacing shall be 1.5 or more.
 - Pursuant to RCW 36.70A.330(1) and WAC 242-02-891⁶⁶ the Board hereby schedules a telephonic Compliance Hearing for **November 12, 2008, at 10:00 a.m. The compliance hearing shall be limited to consideration of the Legal Issues found noncompliant and remanded in this Order.** The parties will call **360-407-3780 followed by 294188 and the # sign.** Ports are reserved for: **Ms. Wilma, Ms. Wagenman, and Mr. Scott.** If additional ports are needed please contact the Board to make arrangements.

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

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

21 **Reconsideration:**

22 **Pursuant to WAC 242-02-832, you have ten (10) days from the mailing of this**
23 **Order to file a petition for reconsideration. Petitions for reconsideration shall**
24 **follow the format set out in WAC 242-02-832. The original and four (4) copies of**
25 **the petition for reconsideration, together with any argument in support thereof,**

26 ⁶⁶ The Presiding Officer may issue an additional notice after receipt of the SATC to set the format and additional procedures for the compliance hearing.

1 should be filed by mailing, faxing or delivering the document directly to the
2 Board, with a copy to all other parties of record and their representatives. Filing
3 means actual receipt of the document at the Board office. RCW 34.05.010(6),
4 WAC 242-02-330. The filing of a petition for reconsideration is not a prerequisite
5 for filing a petition for judicial review.

6 **Judicial Review:**

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

11 **Enforcement:**

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

18 **Service:**

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

21 SO ORDERED this 22nd day of May 2008.

22 EASTERN WASHINGTON GROWTH MANAGEMENT
23 HEARINGS BOARD

24 _____
25 John Roskelley, Board Member

26 _____
Dennis Dellwo, Board Member

Joyce Mulliken, Board Member