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

WILMA et al.,

Petitioners,

v.

STEVENS COUNTY,

Respondent.

Case No. 06-1-0009c

ORDER ON MOTION FOR
RECONSIDERATION AND
CLARIFICATION

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

1 Mulliken was unavailable. Present for Petitioners were, Sandra Wilma, Robert Berger,
2 Larson Beach Neighbors, & Jeanie Wagenman. Present for Respondent was Peter Scott.
3 Present for Stevens County P.U.D., amicus party, was Brian Werst.

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

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

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

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

12 On June 12, 2007, the Board issued its Order on Clarification, Reconsideration, and
13 Order on Invalidity.

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

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

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

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

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

1 On June 2, 2008, the Board received Respondent's Motion for Reconsideration and
2 Clarification.

3 On June 9, 2008, the Board received Petitioner LBN & Wagenman's Response to
4 Motion for Clarification & Reconsideration.

5 **II. DISCUSSION**

6 **Parties Positions:**

7 **Respondent:**

8 Stevens County (County) claims the Eastern Washington Growth Management
9 Hearings Board's (Board) Order on Compliance must be reconsidered because of significant
10 procedural errors and irregularities.

11 Under Section A. Issue 19, the County contends it did not have enough time to
12 prepare the motion because of the holiday weekend, leaving only four working days. The
13 County also argues the Board's orders of March and June of 2007 address Issue No. 19 for
14 failure to complete a Land Capacity Analysis (LCA). According to the County, this was the
15 only compliance item left in Issue No. 19, yet for the first time, the Board discusses the
16 Capital Facilities Plan¹ as part of Issue No. 19. In addition, the County claims the Board
17 considered at least one entirely new issue when it reviewed the Parks and Recreation
18 Element of the County's Comprehensive Plan (CP).

19 Under Section B. Issues 2, 9, and 15, the County contends the Board merges "...goal
20 No. 12 into the separate and distinct GMA requirement to conduct capital facilities planning,
21 and by ruling on issues not properly before the Hearings Board, such as the Parks and
22 Recreation Element in the County's Comprehensive Land Use Plan."²

23 Under Sub-section B.1., the County claims the requirements of the Capital Facilities
24 Element (CFE) do not apply to all public facilities and services and contends the Board's
25

26 ¹ For the purposes of this order, a capital facilities plan will be noted as a CFE or capital facilities element,
unless otherwise noted or in quotations.

² Stevens County Motion for Reconsideration and Clarification at 2 (June 3, 2008).

1 expanded interpretation of *McVittie v. Snohomish County*³ have merged the Growth
2 Management Act's (GMA) Goal 12 and the GMA's capital facilities planning element, creating
3 a requirement the legislature did not intend.⁴ According to the County, by merging Goal 12
4 with a mandatory planning element, the Board has improperly constrained the County's
5 discretion to balance conflicting goals.

6 The County contends the terms "capital facilities" and "public facilities" have different
7 definitions, confirmed by the fact the legislature chose to specify that "park and recreation
8 facilities shall be included in the capital facilities element."⁵ The County also argues there is
9 no support for the Board's interpretation in the Washington Administrative Code (WAC), in
10 particular WAC 365-195-315(2)(a), which limits the inclusion of "public facilities" to the
11 capital facilities mentioned, including parks and recreational facilities. The County claims the
12 Board has changed "Capital Facilities Element" to the "Public Facilities and Services
13 Element" and ignored the Department of Community Trade and Economic Development's
14 (CTED) guidelines and merged the elements of Goal 12 with the mandatory CFE
15 requirements.

16 Under Sub-section B.2., the County argues the Board expects it to identify locations
17 and funding sources for all public facilities and services, regardless of whether the County
18 owns, operates or needs them.⁶ The County claims nothing in Goal 12 or in the GMA
19 requires an obligation for the County to provide urban services when designating an urban
20 growth area (UGA) and cites RCW 36.70A.110 to argue that a combination of existing public
21 facilities and those provided by either public or private sources are adequate. The County
22 claims creating a UGA does not make the County responsible for providing public facilities
23 and services any more than it must do in rural areas, and contends it has satisfied Goal 12

23 ³ *McVittie v. Snohomish County*, CPSGMHB Case No. 01-3-0002, FDO (July 25, 2001).

24 ⁴ Stevens County Motion at 4.

25 ⁵ RCW 36.70A.070(3).

26 ⁶ Stevens County Motion at 6.

1 by adopting policies and development regulations to ensure necessary services exist before
2 approval is issued. The County argues there is no GMA requirement for concurrency for any
3 public facility or service other than transportation. According to the County, "CTED
4 recommends, but does not mandate including a concurrency mechanism for water and
5 sewer systems, but says nothing about concurrency for any of the other public facilities or
6 services listed in its CFP guidelines."⁷

7 The County argues it has created a situation in which others, such as sewer and
8 water districts and/or private developers, may plan for and construct sewer systems in the
9 new UGA's, and provide the Hunters UGA as an example. The County contends
10 development projects must ensure that the service will be adequate at the time of use or
11 occupancy in order to be permitted. According to the County, it coordinates other public
12 and private entities to ensure necessary services are available when needed, but is not
13 required to plan or finance the construction of facilities, such as sewer, until needed. The
14 County claims the legislature chose to use the word "existing" if funding for "existing needs"
15 falls short because it is impractical to require a county to demonstrate adequate funding for
16 every project that may be needed in the future.

17 Under Sub-section B.3., Parks and Recreation Element, the County contends this
18 element is not before the Board. The County claims that to review a county action under
19 the GMA, a petition for review must be properly filed with the Board and cites RCW
20 36.70A.280, RCW 36.70A.290(1) and WAC 242-02-210(2)(c).⁸ The County argues the
21 petition filed in this case does not challenge the Parks and Recreational Element and the
22 issue was not argued by any petitioner.

23 Under Section C. Issues 5 and 20 – Open Space Corridors, the County claims the
24 issue appears to be one of semantics. The County contends it has identified and mapped
25 open space useful for recreation, wildlife, trails and connection of critical areas, but the
26

⁷ Ibid at 8 referring to WAC 365-195-070(3).

⁸ Ibid at 10. RCW 36.70A.280.

1 Board requires additional mapping designations. In addition, the County argues it has
2 identified areas between and within UGA's, including specific reference to riparian corridors,
3 but the Board appears to believe that the use of the word "corridor" creates a requirement
4 to designate some kind of open space right-of-way.⁹ The County claims no such
5 requirement exists.

5 **Petitioners Response:**

6 The Petitioners argue the County failed to specify the Board's errors as required by
7 WAC 242-02-832(2) and uses its motion to reargue the County's case. For instance, the
8 Petitioners contend the parks and recreation issue was argued in the Petitioner's February
9 10, 2007, Reply brief and in their December 27, 2006, HOM brief. In addition, according to
10 the Petitioners, this issue was also mentioned in the Board's March 12, 2007, Final Decision
11 and Order (FDO).

12 The Petitioners contend the County argued the public facilities and service issue in its
13 Response to Petitioners HOM brief, and suggested that capital facilities is separate. The
14 Petitioners claim the County now argues the Board misinterpreted the definition of capital
15 facilities to public facilities and services requiring the County to include parks and
16 recreation. According to the Petitioners, the GMA defines public facilities and public services
17 and these definitions are included in capital facilities and, according to WAC 365-195-
18 315(2)(a), parks and recreational facilities should be given recognition as such.

19 The Petitioners argue the County fails to provide certain urban services because if
20 there is not a service presently, then no level of service is needed. The Petitioners point to
21 CTED's publication (Petitioners' Attachment 1, previously HOM Attachment 81), which
22 discusses the statutory requirements for capital facilities, such as quantifiable objective
23 measures of capacity and dependable revenue sources, and that forecasts of future needs
24 for capital facilities must be developed with levels of service standards as a basis for
25 providing public facilities. The Petitioners cite Goal 12 as "public facilities and services

25 ⁹ Ibid at 12.

1 necessary to support development shall be adequate to serve this development at the time
2 development is available for occupancy without decreasing the current levels of service.”¹⁰
3 The Petitioners claim under concurrency, a proposed development should not be approved
4 if it would cause levels of service to fall below a specified baseline. The Petitioners point out
5 the County’s arguments concerning level of service for parks and recreation is not
6 consistent with its own Countywide Planning Policies (CWPP).

7 According to the Petitioners, the County has failed to identify corridors within and
8 between UGA’s, and suggests the word “corridor” means passageway.¹¹ The Petitioners
9 contend it is not enough for the County to present a map that shows where rural, forestry
10 and agricultural lands exist. The Petitioners claim the language of the GMA mentions “within
11 and between urban growth areas” and the County has failed to identify these connections
12 of critical areas.

13 **Board Discussion:**

14 **Timeliness:**

15 The Board issued its Order on Compliance on May 22, 2008. Pursuant to WAC 242-
16 02-832(1), the County must file a motion for reconsideration within ten days of service of
17 the final decision. In this case, the County filed a timely motion on June 2, 2008. Pursuant
18 to RCW 36.70A.270(7), which provides that absent a rule of the Board, the APA guides
19 procedures and practices. RCW 34.05.010(19) defines “service” as being deemed complete
20 upon deposition in the U.S. mail with proper address and postage. Therefore, in regards to
21 the service of the Board’s Order on Compliance, there was no procedural error in service.
22 The Board, however, will consider the effect of timing issues on the parties in the future.

23 **Capital Facilities Element:**

24 In the FDO and subsequent Orders, the Board’s discussion in regard to capital
25 facilities dealt with the amount of analysis Stevens County must conduct and show in its CP
26

¹⁰ Petitioners Response to Motion for Clarification & Reconsideration at 3.

¹¹ Ibid at 4.

1 in order to examine the County's existing capital facilities or infrastructure (excluding
2 transportation) and what changes (improved maintenance, replacement, additional
3 construction, etc.) to that infrastructure, if any, should be made in order to accommodate
4 anticipated growth. In addition, the Board's discussion questioned whether the County was
5 accepting the responsibility to its citizens to ensure that those necessary public facilities and
6 public services shall be adequate to serve the development at the time of occupancy and
7 use without decreasing current level of service levels below locally established minimum
standards.¹²

8 To paraphrase the GMA, uncoordinated and unplanned growth and a lack of common
9 goals is a threat to the environment, sustainable economic development, and the health,
10 safety and welfare of the public. Given the intent of the GMA, more is required of the
11 County than simply drawing the boundaries for new UGAs and establishing urban densities
12 to accommodate projected growth over a 20-year timeframe. The GMA requires Stevens
13 County to accommodate urban development on land within the UGA and to have adequate
14 infrastructure - public facilities - available and provided within the planning horizon. Without
15 a plan for the underlying infrastructure, urban growth will not occur within the UGA and
16 relying on the market or developers to determine where growth will occur will result in the
17 very leap-frog development style the GMA was enacted to prevent. Under the GMA,
18 planning is to precede or occur concurrently. This is where a properly drafted Capital
19 Facilities Element and correlating Capital Facilities 6-year Finance Plan demonstrating that
20 capital facilities, at urban service levels, will be available within the entirety of the UGA by
the end of the 20-year period.

21 A basic tenant of GMA planning, is coordination and cooperation among jurisdictions,
22 service providers, and agencies. Therefore, the Board is not saying the County must provide
23 for capital facilities themselves, but they must plan for and assure that necessary capital
24 facilities will be available throughout the UGA within the 20-year planning horizon. With this

25 ¹² RCW 36.70A.020(12).

1 in mind, a measurement is needed to base "current level of service levels" and "locally
2 established minimum standards." The Central Board recently addressed this issue in
3 *Suquamish II v. Kitsap County*:¹³

4 If the County designates a UGA that is to be served by such a provider
5 [outside purveyor], the County should at least cite, reference or otherwise
6 indicate where such locational or financing information may be found that
7 supports the County's UGA designations and GMA duty to ensure that
8 adequate public facilities will be available within the area during the twenty-
9 year planning period. *Bremerton, et al. v. Kitsap County*, CPSGMHB Case No.
10 95-3-0039c, coordinated with *Port Gamble, et al. v. Kitsap County*, CPSGMHB
11 Case No. 97-3-0024c, Finding of Noncompliance and Determination of
12 Invalidity in *Bremerton* and Order Dismissing *Port Gamble*, (Sep. 8, 1997), at
13 41.

14 The Board has reiterated the importance of capital facility planning, by all
15 entities, when a *County is setting UGA* boundaries. The County must be sure
16 that the areas within the UGAs will have adequate and available urban
17 services provided over the 20-year planning period – otherwise, the UGAs
18 must be adjusted or other remedial measures taken.¹⁴

19 In addition to the *Suquamish II* case, the Western Board held in the coordinated
20 cases of *Ludwig v. San Juan County*, WWGMHB Case 05-2-0019c,¹⁵ *Klein v. San Juan*
21 *County*, WWGMHB 02-2-0008,¹⁶ and *Campbell v. San Juan County*, 05-2-002c¹⁷ that not

22 ¹³ *Suquamish II v. Kitsap County*, CPSGMHB Case 07-3-0019c, FDO (August 2007).

23 ¹⁴ See *Hensley III v. City of Woodinville*, CPSGMHB Case No. 96-3-0031, Final Decision and Order, (Feb. 25,
24 1997); *Johnson II v. King County*, CPSGMHB Case No. 97-3-0002, Final Decision and Order, (Jul. 23, 1997);
25 [*Bremerton coordinated with*] *Alpine Evergreen v. Kitsap County*, CPSGMHB Case No. 98-3-0030c, Order
26 Rescinding Invalidity in *Bremerton* and Final Decision and Order in *Alpine*, (Feb. 8, 1999); and most recently,
KCRP VI v. Kitsap County, CPSGMHB Case No. 06-3-0007, Order of Partial Compliance [Re: Kingston Sub-area
Plan], Order of Continuing Noncompliance and Invalidity [Re: Kingston Wastewater Treatment Plan], (Mar. 16,
2007).

¹⁵ *Ludwig v. San Juan County*, WWGMHB Case 05-2-0019c

¹⁶ *Klein v. San Juan County*, WWGMHB 02-2-0008,

¹⁷ *Campbell v. San Juan County*, 05-2-002c

1 only is it important for jurisdictions to show the capacity and locations of sewer facilities to
2 serve UGAs in the 20-year planning period, but funding and future facilities as well:

3 A major deficiency in the County's remand work is the absence of a capital
4 facilities plan showing the capacity and locations of sewer facilities to serve
5 the entire UGA in the 20-year planning period; a six year financing plan that
6 shows funding capacities and sources of public money, and how future
7 facilities will be extended throughout the UGA during the 20-year planning
8 period. To make the ESSWD plan part of the County's capital facilities
9 element, the County must also incorporate compliant capital facilities
10 information from the ESSWD plan that the County wishes to utilize for the
11 Eastsound UGA into the County's comprehensive plan's capital facilities'
12 element itself. Without such information, the County's record fails to show
13 that urban densities can be achieved and sewer provided throughout the UGA
14 over the 20-year planning period as required by RCW 36.70A.070(3)(a) – (d),
15 RCW 36.70A.020 (12), and RCW 36.70A.110 (1) and (3).

16 The Western Board addressed a situation like that of Stevens County in *Durland v.*
17 *San Juan County*:¹⁸

18 The fact that water and sewer facilities are provided by non-county serving
19 agencies does not relieve the county of including the budgets and/or plans in
20 its analysis of the proper location of an UGA.

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

26 The County argues the "Board's interpretation of RCW 36.70A.070(3) has changed
"Capital Facilities Element" to the "Public Facilities and Services Element" thereby rendering
the requirement to include parks and recreational facilities entirely superfluous."¹⁹
According to the County, "[t]he Hearings Board has ignored CTED guidelines and fully
merged the elements of planning Goal 12 with the mandatory CFP requirements." This

¹⁸ *Durland v. San Juan County*, WWGMHB Case No. 00-2-0062c, FDO (May 2001).

¹⁹ *Stevens County's Motion at 5.*

1 argument about public facilities and services merging into capital facilities was addressed by
2 the Central Board in *McVittie*.²⁰

3 "While the GMA does not define 'public facilities and services' as a discrete
4 term, it does define both 'public facilities' and 'public services.' Hence, where
5 RCW 36.70A.070(3) calls for an inventory of 'existing capital facilities owned
6 by *public* entities' and a six-year financing plan that 'identifies sources of
7 *public* money,' it is clear that the 'public facilities and services' that must be
8 included in the CFE are, at the least, those specifically named in the definition
9 of public facilities."

10 The Board recognizes that RCW 36.70A.070(3) requires an analysis of "capital
11 facilities owned by public entities" and the fact that "capital facilities" is not defined by the
12 Act. However, "public facilities" is defined in the GMA and includes "streets, roads,
13 highways, sidewalks, street and road lighting systems, traffic signals, domestic water
14 systems, storm and sanitary sewer systems, parks and recreational facilities, and schools."

15 Accordingly, as this Board noted in its May 22, 2008, Compliance Order, for purposes of
16 capital facilities planning required by RCW 36.70A.070(3), "public facilities" as defined at
17 RCW 36.70A.030(12) are synonymous with "capital facilities owned by public entities." ²¹

18 Removing transportation-related capital facilities, we find, like our colleagues at the Central
19 and Western Boards have found, that specific attention is required for domestic water and
20 sanitary sewers, both of which are needed within UGAs because urban densities generally
21 will not occur on wells and septic systems due to health issues driven by the need for lot
22 sizes to accommodate sanitary control areas (wells) and drainfields (septic tanks).

23 Therefore, Stevens County, in establishing an unincorporated UGA, has a duty to
24 plan for either providing the capital facilities to serve urban levels of development within the
25 UGA on their own or by seeking assurances from outside purveyors for those capital
26

23 ²⁰ *McVittie v. Snohomish County*, CPSGMHB Case No. 01-3-0002, FDO (July 25, 2001).

24 ²¹ Compliance Order, at 10-11 (citing *Jody L. McVittie v. Snohomish County (McVittie VI)*, CPSGMHB Case No.
25 01-3-0002, FDO (Jul. 25, 2001) (holding a Capital Facilities Element must include all facilities that meet the
26 definition of public facilities set forth in RCW 36.70A.030(12)).

1 facilities needed to accommodate the urban level growth projected to occur within the UGA
2 over the 20-year planning horizon. This is a prospective analysis, not solely looking at the
3 *existing* facilities, but also what is the *demand* for such facilities in the coming years.
4 Stevens County's Capital Facilities Element must include the required elements set forth in
5 .070(3)(a)-(e) – inventory of current facilities, forecast of future needs, proposed locations
6 and capacities for expanded/new facilities, six year financing plan, and a reassessment
7 requirement – at this point in time, the County's CFE fails to provide these required
8 provisions.

8 **Level of Service Standards – Public Facilities and Services**

9 The County misreads the Board's Order on Compliance concerning LOS standards.
10 The Board recognizes the GMA only mandates an action-forcing concurrency requirement
11 for transportation facilities. The Board further recognizes that determining which other
12 public facilities and services are necessary to support development is at the discretion of
13 Stevens County based on the needs of its citizens and for the growth it anticipates to occur.
14 Capital facilities planning is not done in isolation, but must be addressed within the
15 mandates of the GMA.

16 Capital facilities planning is to occur in light of Goal 12, not in lieu of Goal 12. As the
17 Board noted in its May 22, 2008, Order on Compliance, Goal 12 gives context to RCW
18 36.70A.070(3) and requires *a locally established single minimum (level of service - LOS)*
19 *standard to provide the basis for objective measurement of need and system performance*
20 *for those facilities locally identified as necessary.* This minimum standard must be clearly
21 indicated within the CFE as the baseline standard, below which the jurisdiction will not allow
22 service required by the capital facilities element to fall. Without such a baseline standard,
23 growth could not be *managed* as required by the GMA because there would be no analytic
24 basis from which to determine if capacity could accommodate the additional demand put
25 upon it.
26

1 In an earlier case involving *McVittie v. Snohomish County*,²² the Central Board
2 provided further guidance as to whether a level of service (LOS) is required for public
3 services and facilities and just what defines a minimum standard. The Central Board noted
4 that although the term "levels of service" did not appear in the text of RCW 36.70A.070(3),
5 the fact that the term does not appear in this section of the GMA does not mean that the
6 concept of a baseline service standard is not a necessary component of capital facilities
7 planning. Such a standard is critical in providing the basis for objective measurement of
8 facility need and system performance.

9 In *Fallgatter v. City of Sultan*,²³ the Central Board emphasized the need for LOS
10 standards, claiming these are the "basis for the needs assessment". Absent an LOS
11 standard or locally established minimum standards, a jurisdiction is unable to identify in its
12 CFE which public facilities and services it has deemed necessary to support development
13 are adequate.

14 The Board recognizes the discretion afforded Stevens County in determining which
15 public facilities and services are *necessary to support development*. However, as the
16 Western Board noted in the *Taxpayers for Responsible Government v. City of Oak Harbor*²⁴
17 case, this discretion is not unfettered, but must be within the confines of the goals and
18 requirements of GMA. Therefore, when determining what public facilities are "necessary to
19 support development" a local government must consider all aspects of public facilities and
20 public services and make a reasoned decision as to what facilities and services are
21 necessary and how to subject those facilities and services to concurrency requirements.
22 Thus, the CFE must include a LOS for those public facilities (capital facilities) and public
23 services identified as necessary to support urban levels of development and, as noted

24 ²² *McVittie, et al. v. Snohomish County*, CPSGMHB Case No. 99-3-0016c, FDO (Feb. 9, 2000).

25 ²³ *Fallgatter v. City of Sultan*, CPSGMHB Case No. 07-3-0017, FDO (Sept. 5, 2007).

26 ²⁴ *Taxpayers for Responsible Government v. City of Oak Harbor*, WWGMHB Case No. 96-2-0002, FDO (July 16, 1996).

1 *supra*, at a minimum such facilities include domestic water and sanitary sewer system. The
2 County must remember, that this occurs within the prospective planning requirements of
3 the GMA and, therefore, requires an analysis not just of current facilities and services, but
4 those anticipated to be demanded over the 20-year planning horizon.

5 The County's argument that the only compliance issue left under Issue No. 19 was
6 its failure to complete an LCA is incorrect. As stated in the Order on Compliance, the "crux
7 of Petitioners arguments, and this Board's finding of non-compliance in the March 12, 2007,
8 FDO, was not simply Stevens County's failure to prepare an LCA when it created five new
9 UGAs, but also its failure to ensure public facilities and services would be available within
10 the 20-year planning period so as to sufficiently serve the residents of the newly created
11 UGAs as mandated by the GMA."²⁵

12 **Open Space Corridors:**

13 The Board's Order on Compliance is not requiring "designation" of open space
14 corridors, but "identification", as required by RCW 36.70A.160. The County suggests this
15 issue appears to be one of "semantics".²⁶ That may be partially correct, but it is not within
16 this Board's jurisdiction to rewrite the GMA. Identifying corridors can be accomplished in a
17 variety of ways, but maps which show the location of these "open space corridors" is the
18 most logical way and the method chosen by most other counties. The Board, in this case,
19 suggested "[A]dditional mapping designations denoting these areas,"²⁷ such as in the Lake
20 Spokane UGA (within and between UGAs), and "a Comprehensive Land Use policy, which
21 specifically addresses "open space corridors,"²⁸ perhaps in relationship to "open space". The
22 County failed to include any mention of "open space corridors" in its CP or map them on its
23 land use maps. Identifying and mapping "open space countywide"²⁹ fulfills only one

24 ²⁵ *Wilma, et al. v. Stevens County*, EWGMHB Case No. 06-1-0009c, Order on Compliance (May 22, 2008).

25 ²⁶ Stevens County's motion at 11.

26 ²⁷ *Wilma* at 19.

²⁸ *Ibid* at 19.

²⁹ Stevens County's motion at 11.

1 requirement in the GMA. For clarification, the Board reiterates that an open space corridor
2 has a function or utility that is distinct from open space in general. The corridor serves as a
3 linkage or a passageway between open space areas so as to provide for such things as
4 wildlife migration routes and walking trails. RCW 36.70A.160 requires the identification of
5 these vital corridors.

5 **Parks and Recreation:**

6 The County is correct in that the Parks and Recreation Element, required by RCW
7 36.70A.070(8), was not squarely before the Board in this matter. Therefore, a finding of
8 non-compliance in this regard was in error and the Board withdraws the reference to this
9 provision of the GMA noted as Continuing Non-Compliance Issue No. 1 (May 22, 2008,
10 Order on Compliance, Section III, Page 44) and the related discussion contained in Section
11 II, Pages 11-12.

12 However, the Board notes that the issue of parks and recreation facilities was argued
13 in relationship to the requirement for such facilities to be included in the CFE pursuant to
14 RCW 36.70A.070(3). The Board further notes that without the analysis mandated by
15 .070(8), it will be difficult for the County to implement the CFE and achieve consistency
16 between the CFE and the Parks and Recreation Element, if the latter fails to consider the
17 required elements.

18 To clarify, the parks and recreation issue was specific to RCW 36.70A.070(3) and
19 argued by Petitioner Wagenman in her HOM brief as restated in the March 12, 2007, FDO:

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

1 Also in the FDO,³⁰ the Board addressed the County's inadequate CFE and financial
2 plan that shall include public facilities, specifically parks and recreation. Furthermore, the
3 County's CFE was silent on specific adopted levels of service for public facilities determined
4 to be necessary for development or a trigger to reassess facilities if service falls below a
5 baseline standard:

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

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

22 In addition, Findings of Fact No. 11 in the Board's Order on Clarification and
23 Reconsideration and Order on Invalidity found "Stevens County failed to "adopt a compliant
24 capital facilities plan and six-year financial plan as required by RCW 36.70A.070(3); failed to
25 ensure adequate public facilities and service capacities as required by RCW 36.70A.110(3);
26 and failed to follow goals RCW 36.70A.020(1), (2) and (12) as required by the GMA."
Conclusions of Law No. 5 in the same document stated, "Stevens County is found out of
compliance for its failure to adopt a capital facilities plan and financial plan as required by

³⁰ *Wilma, et al. v. Stevens County*, EWGMHB Case No. 06-1-0009c, FDO (March 12, 2007) at 23.

1 RCW 36.70A.110(3) and RCW 36.70A.070(3).³¹

2 The GMA requires counties to have a capital facilities plan and that plan shall include
3 park and recreation facilities. The Board found the County out of compliance for failing to
4 adopt a compliant CFE, which shall include the consideration of parks and recreation
5 facilities.³² The County's Parks and Recreation Element of its CP was not challenged or
6 argued by the Petitioner and is therefore not before this Board.

7 III. ORDER

8 The Board finds the following:

- 9 1. The County's Motion for Reconsideration and Clarification concerning
10 Issue No. 19 is DENIED.
- 11 2. The County's Motion for Reconsideration and Clarification concerning
12 Issue Nos. 2, 9, and 15, are DENIED in part and APPROVED in part.
13 The County's request for the Board to reconsider its finding of non-
14 compliance concerning the Parks and Recreation Element of the
15 County's CP is APPROVED. Reconsideration of the Board's findings
16 concerning the County's CFE and LOS is DENIED.
- 17 3. The County's Motion for Reconsideration and Clarification concerning
18 Issue Nos. 5 and 20 are DENIED.

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

20 Reconsideration:

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

26 ³¹ *Wilma, et al. v. Stevens County*, EWGMHB Case No. 06-1-0009c, Order on Clarification and Reconsideration
and Order on Invalidity (June 12, 2007).

³² RCW 36.70A.070(3)(e).

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

4 **Judicial Review:**

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

8 **Enforcement:**

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

14 **Service:**

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

17 SO ORDERED this 25th day of June 2008.

18 EASTERN WASHINGTON GROWTH MANAGEMENT
19 HEARINGS BOARD

20 _____
21 John Roskelley, Board Member

22 _____
23 Dennis Dellwo, Board Member

24 **DISSENT of Board Member Mulliken:**

1 With the County's Motion for Reconsideration, it has become clear to me with both
2 the May 22, 2008, Order on Compliance and this Order on Reconsideration, this Board is
3 requiring Stevens County to do something the GMA does not require – establish LOS
4 standards for all public facilities and services. Therefore, I respectfully dissent in regards to
5 the Majority's finding of non-compliance concerning public facilities and services. The
6 Majority's position creates a burden on smaller rural counties that the GMA did not intend to
7 create.

8 I acknowledge the GMA, pursuant to RCW 36.70A.070 Comprehensive plans –
9 Mandatory elements, requires Stevens County to prepare a Capital Facilities Plan (CFP)
10 that satisfies the requirements set forth in provisions (a) through (e) of the GMA, which
11 states in part ... "Park and Recreation facilities shall be included in the capital facilities plan
12 element." RCW 36.70A.070(3)(e).

13 However, unlike my colleagues, I believe the County has satisfied these requirements
14 of the GMA and, as was noted in briefing and at the Compliance Hearing in oral discussion,
15 the County will coordinate with other public and private entities to ensure necessary
16 *facilities* and *services* are available when needed. This is, and has been, the customary
17 practice of small counties, and is not a clearly erroneous action of Stevens County; rather it
18 is supported by the GMA's intent for coordination with other jurisdictions and entities. In
19 addition, Stevens County's Comprehensive Plan, at pages 11-25 (CP Elements) at Sections
20 7.0 Parks & Recreation Element, 7.1 Parks and Recreation Goals, 7.2 Parks and Recreation
21 Policies, PR-1 through PR-8 specify provisions to: "*Support the retention, enhancement, and*
22 *development of recreation areas and activities, and parks and open space within Stevens*
23 *County.*" Stevens County also notes it "*does not own or operate any parks or recreational*
24 *facilities except for the County Fairgrounds located in Colville.*"

25 When the Legislature enacted the GMA, it established a concurrency *requirement* for
26 transportation facilities. RCW 36.70A.070(6)(b). This section of the GMA is "action forcing"
and explicitly – local governments may not approve proposed development if it would cause
the level of service (LOS) adopted for transportation facilities to fall below a specified

1 baseline. Concurrency is not as clearly defined outside the transportation area. For other
2 types of public facilities and services, the Legislature established more general planning
3 *goals* which provides that those facilities and services necessary to support development
4 shall be adequate to serve the development at the time of occupancy without decreasing
5 current service levels of below locally established minimum standards. RCW 36.70A.020(12)
6 (Goal 12).

7 Although my colleagues acknowledge Stevens County has discretion as to
8 determining which public services and facilities are "necessary," the Majority goes on to
9 mandate not only that the County make an expressed statement within the CFE as to these
10 services and facilities, but also establish LOS standards. **The GMA requires a LOS**
11 **standard only for transportation; a LOS for any other facility or service is**
12 **optional and at the discretion of the local government.**

13 I specifically note the Majority's conclusion in regards to parks and recreation
14 facilities, and the need for the County to provide for these facilities. Currently, Stevens
15 County, like many other small rural counties, does not own any park or recreation facilities
16 with the exception of the County Fairgrounds, and has "determined that it is not feasible to
17 establish recreational districts at this time, [and] it will continue to coordinate with cities
18 regarding provision of park and recreational opportunities..." (Stevens County CFE Page 25
19 at Section 7.2 PR-6.) As for other types of public facilities and services which are to be
20 provided by outside purveyors (e.g. Public Utility District, School Districts), the provisions of
21 parks and recreation facilities within Stevens County is not only served by state and national
22 forest areas, but by private residential developments which provide for parks within their
23 newly developed communities.

24 Therefore, because I believe the Majority is elevating RCW 30.70A.020(12) from a
25 *goal* to a *requirement*, I dissent in this decision. My dissent should not be misconstrued as
26 to the importance of a well defined Capital Facilities Plan and correlating Six-Year Finance
Plan. Both of these plans provide counties and cities with a valuable *tool* for good planning
for growth with the least disruption to the current residents of that jurisdiction. The RCW

1 and the WAC, however, are the *tools* the Board must use in determining whether or not a
2 jurisdiction is in compliance or non-compliance.

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5 Joyce Mulliken, Board Member
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