

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12

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

CITY OF WENATCHEE,

Petitioner(s),

Case No. 08-1-0015

v.

FINAL DECISION AND ORDER

CHELAN COUNTY,

Respondent,

BRIAN NELSON,

Intervenor.

13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

**I. SYNOPSIS**

The City of Wenatchee challenges Chelan County in regards to six comprehensive plan amendments (CPAs) which changed the land use designation/zoning on land located outside of the existing Wenatchee Urban Growth Area (Wenatchee UGA). All of the challenged CPAs allow for an increased number of residential lots on the land. Because of this increase in allowed density, the City of Wenatchee contends Chelan County has violated the Growth Management Act, RCW 36.70A (GMA), in regards to urban growth, low-density sprawl, transportation efficiency, housing affordability, open space preservation, environmental protection, and necessary public facilities and services.

The Board determined the entirety of Wenatchee's assertion that the County violated RCW 36.70A.115 was founded on the concept that the challenged CPAs thwart the future expansion of the Wenatchee UGA. But, without any legal or evidentiary support, Wenatchee failed to demonstrate Chelan County's actions create a deficit of land suitable for development within the UGA which would result in an insufficient capacity to

1 accommodate OFM's 20-year growth projections allocated to the UGA in violation of RCW  
2 36.70A.115. [Legal Issue 1]

3 The Board determined the record lacked substantial evidence to support a conclusion  
4 that CPA 2007-011 and CPA 2007-012 comply with RCW 36.70A.110 and, therefore, these  
5 CPAs permit urban growth outside of a designated Urban Growth Area. Because one of the  
6 primary tenets of the GMA is the prevention of urban sprawl into areas without sufficient  
7 public facilities and services, by permitting such urban-type development in rural areas the  
8 County violated Goals 1, 2, 3, and 12 of the GMA. [Issues 2, 3, and 4]

9 The Board concluded the City of Wenatchee did not carry its burden of proof in  
10 demonstrating the adoption of the challenged CPAs violated RCW 36.70A.177. The land  
11 encompassed by the challenged CPAs, although some is currently being used for  
12 agricultural purposes, is not designated agricultural land of long-term commercial  
13 significance and, therefore, the Board determined RCW 36.70A.177's provisions were not  
14 applicable. [Legal Issue 5]

15 The Board concluded the City of Wenatchee did carry its burden of proof in  
16 demonstrating the adoption of the challenged CPAs violated RCW 36.70A.130(2).  
17 Although, the GMA limits comprehensive plan amendments to once per year and requires  
18 concurrent review of proposed amendments to ascertain the cumulative effects of the  
19 proposals, the Board's review was limited to the six challenged CPAs. And, although five of  
20 these CPAs were enacted based on a prior appeal before this Board, Case No. 08-1-0012,  
21 the enactments did not resolve the issues underlying the appeal. Therefore, the Board  
22 determined Chelan County's actions, by adopting resolutions on varying dates, violates RCW  
23 36.70A.130(2)'s mandates. [Legal Issue 6]

24 The matter was remanded to Chelan County with direction to take legislative action  
25 to bring itself into compliance with the GMA as provided in the FDO.

## 26 II. INVALIDITY

The Board determined there was not a basis for a finding of Invalidity.

1 **III. PROCEDURAL HISTORY**

2 On September 8, 2008, CITY OF WENATCHEE, by and through its representative,  
3 Rick Smith, filed a Petition for Review.

4 On September 26, 2008, the Board received Motion to Intervene by Brian Nelson.

5 On September 29, 2008, the Board received Intervenor's Proposed Legal Issues.

6 On October 1, 2008, the Board received Chelan County's Index of the Record.

7 On October 6, 2008, the Board received Chelan County's Proposed Legal Issues.

8 On October 8, 2008, the Board held the telephonic Prehearing Conference. Present  
9 were, Joyce Mulliken, Presiding Officer, and Board Member Raymond Paolella. Board  
10 Member John Roskelley was unavailable. Present for the City of Wenatchee were Amy Vira,  
11 City Attorney, Rick Smith, Director Community Development Department, and Brian  
12 Frampton, City Planner. Present for the Chelan County was Susan Hinkle and, for the  
13 Intervenor, Donald Dimmitt. During the telephonic prehearing conference the Board heard  
14 and granted the Motion to Intervene. Although the County and Intervenor filed Proposed  
15 Legal Issues, the Board did not accept these issues as RCW 36.70A.290 limits the Board's  
16 review authority to deciding only those issues presented to the Board by a Petitioner.

17 On October 14, 2008, the Board received Petitioners' First Amended Petition for  
18 Review & Notice of Appearance.

19 On October 15, 2008, the Board issued its Prehearing Order.

20 On October 27, 2008, the Board received Intervenor's Motion on the Merits and  
21 Memorandum.

22 On October 29, 2008, the Board received Chelan County's Dispositive Motions;  
23 Memorandum in Support of Dispositive Motions; Affidavit of Freeman L. Moore, Jr., and  
24 Supplemental Index of Record.

25 On November 12, 2008, the Board received Petitioner's Response to Dispositive  
26 Motions.

On November 20, 2008, the Board received Intervenor's Reply Brief.

1 On November 25, 2008, the Board held its Telephonic Motion Hearing. Present were,  
2 Joyce Mulliken, Presiding Officer, Board Members John Roskelley and Raymond Paoella,  
3 and Board Staff Attorney Julie Ainsworth-Taylor. Present for the Petitioners were City of  
4 Wenatchee Attorney Steve Smith and City of Wenatchee Community Development Director  
5 Rick Smith. Present for Chelan County was Susan Hinkle, and for the Intervenor, Donald  
6 Dimmitt.

7 On December 2, 2008, the Board issued its Order on Motions denying both the  
8 County's and the Intervenor's motions in their entirety.

9 On December 23, 2008, the Board received the City of Wenatchee's Hearing on the  
10 Merits Brief.

11 On January 14, 2009, the Board received Intervenor's Hearing on the Merits brief.

12 On January 16, 2009, the Board received Chelan County's Hearing on the Merits  
13 Brief.<sup>1</sup>

14 On January 23, 2009, the Board received the City of Wenatchee's Hearing on the  
15 Merits Reply Brief.

16 On January 28, 2009, the Board held its hearing on the merits. Present were, Joyce  
17 Mulliken, Presiding Officer, Board Members John Roskelley and Raymond Paoella, and  
18 Board Staff Attorney Julie Ainsworth-Taylor. Present for the Petitioners were City of  
19 Wenatchee Attorney Steve Smith, City of Wenatchee Community Development Director Rick  
20 Smith, and City of Wenatchee Planner Brian Frampton. Present for Chelan County was  
21 Susan Hinkle, County Planning Director Karen Peele, and County Long-Range Planner

---

22 <sup>1</sup> The Board notes that the County's Hearing on the Merits Brief was received electronically at the Board's  
23 office after the close of business on January 15, 2009; therefore, the brief was not officially received until  
24 January 16, 2009. WAC 242-02-240(2)(a) Pursuant to the Board's October 15, 2008 Prehearing Order, the  
25 County's brief was due on January 14, 2009 and thus this filing was two days late. Because of the County's  
26 delinquent filing, the Board extended the City's deadline for filing a Reply Brief by two days, reducing the  
amount of time the Board had to review the entirety of briefing. The County is reminded that deadlines are  
established for a reason and late filings are generally not tolerated by the Board. The County should take  
heed as the next time a brief is delinquently filed, the Board may deny acceptance and the County will be left  
to rely solely on the presumption of validity the GMA grants it.

1 Graham Simon. Intervenor Brian Nelson was present and represented by counsel, Donald  
2 Dimmitt.

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

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

14 *Sound Growth Management Hearings Board*, 142 Wn.2d 543, 552, 14 P.3d 133 (2000).  
15 The Hearings Board will grant deference to counties and cities in how they plan  
16 under the Growth Management Act (GMA). RCW 36.70A.3201. But, as the Court has stated,  
17 "local discretion is bounded, however, by the goals and requirements of the GMA." *King*  
18 *County v. Central Puget Sound Growth Management Hearings Board*, 142 Wn.2d 543, 561,  
19 14 P.2d 133 (2000). It has been further recognized that "[c]onsistent with *King County*, and  
20 notwithstanding the 'deference' language of RCW 36.70A.3201, the Board acts properly  
21 when it foregoes deference to a . . . plan that is not 'consistent with the requirements and  
22 goals of the GMA.'" *Thurston County v. Cooper Point Association*, 108 Wn. App. 429, 444, 31  
23 P.3d 28 (2001).

24 The Board finds that the Petition for Review was timely filed, pursuant to RCW  
25 36.70A.290(1); the City of Wenatchee has standing to bring this matter before the Board,  
26 pursuant to RCW 36.70A.280(2); and the Board has jurisdiction over the subject matter of  
the Petition for Review, pursuant to RCW 36.70A.280(1)(a).

1 **V. ISSUES AND DISCUSSION**

2 With its Petition for Review, the City of Wenatchee challenges Chelan County's  
3 approval of six comprehensive plan amendments (CPA), each of which were adopted by  
4 separate resolution on July 22, 2008.<sup>2</sup> The challenged CPAs are as follows:<sup>3</sup>

CPA Number	Resolution	Action
CPA 2007-011	2008-106	Rezoning approximately 103 acres from RR20 and RR5 (95 acres) to RR10 and RR 2.5 (59 acres)
CPA 2007-012	2008-107	Rezoning approximately 348 acres from RR20 and RR5 (300 acres) to RR10 and RR2.5 (48 acres)
CPA 2007-017	2008-110	Rezoning approximately 135 acres from RR10 to RR5
CPA 2007-018	2008-111	Rezoning approximately 140 acres from RR10 to RR5
CPA 2007-019	2008-112	Rezoning approximately 506 acres from RR20 to RR10
CPA 2007-021	2008-113	Rezoning approximately 37 acres from RR5 to RR2.5

14  
15 The Wenatchee Urban Growth Area (UGA) contains both incorporated and unincorporated  
16 land.<sup>4</sup> The UGA is bordered on the west by the Cascade Foothills and on the east by the

17  
18 <sup>2</sup> From the Record, 33 proposed CPAs were before the County. See Petitioner's Exhibit F, County Department  
19 of Community Development's Staff Report RE: Proposed 2007 Amendments. Of these 33 proposed CPAs,  
20 the City challenges six of the proposals which are in close proximity to the City's UGA. The July 22, 2008  
21 resolutions were the result of a determination by the Board of Chelan County Commissioners that previously  
22 enacted resolutions did not comply with the noticing requirements of Chelan County Code Title 14.08. The  
23 offending resolutions were repealed, the BOCC held a properly noticed public hearing on July 14, 2008 which  
24 incorporated the File of Record and afforded opportunity for public comment, and enacted new resolutions on  
25 July 22, 2008. See e.g. Petitioner's Exhibit G, "Whereas" of Resolution 2008-106; Petitioner's Exhibit K, Listing  
26 of Enactments for CPAs.

<sup>3</sup> Within the Rural Element of Chelan County's Comprehensive Plan, four rural residential land use designations are provided for: Rural Residential/Resource 1 dwelling unit (du) per 20 acres – RR20; Rural Residential/Resource 1 du/10 acres – RR10; Rural Residential/Resource 1 du/5 acres – RR5; Rural Residential/Resource 1 du/2.5 – RR2.5. See Chelan County Comprehensive Plan, Rural Element, Part IV Rural Designations.

<sup>4</sup> At several times in the briefing, the City refers to the Wenatchee UGA as the City's UGA. However, given the fact that not all land contained within the UGA is within the municipal boundaries, the UGA is not just that of the City's.

1 Columbia River, limiting land suitable for future expansion to those lands north and south of  
2 the existing UGA. For those portions of the UGA outside of the municipal boundaries,  
3 Chelan County and Wenatchee have entered into a Memorandum of Understanding that  
4 provides for Wenatchee's development regulations and land use designations to be utilized  
5 in the unincorporated portions of the UGA.<sup>5</sup> Of the six CPAs, only CPA 2007-012 directly  
6 adjoins the UGA; however, this land does not abut the municipal boundaries for the City.<sup>6</sup>  
7 All other challenged CPAs, although in close proximity to the UGA, are not contiguous to the  
8 UGA. All of the land pertaining to the challenged CPAs is currently designated as rural  
9 land.

10 Intervenor Brian Nelson is the property owner and the applicant for the proposed  
11 land use designation amendments encompassed by three of the CPAs: 2007-017, 2007-  
12 018, and 2007-019. All other CPAs were proposed by and pertain to property owned by  
13 separate individuals.<sup>7</sup>

### 14 **Sufficient Land Capacity for Development**

#### 15 **Issue No. 1:**

16 Does Chelan County's approval of the six (6) Comp Plan amendments violate RCW  
17 36.70A.115 by severely limiting the City of Wenatchee's ability to expand urban services to  
18 accommodate future housing and employment growth?

#### 19 **The Parties' Position:**

##### 20 **Petitioners:**

21 The City of Wenatchee asserts RCW 36.70A.115 requires the comprehensive plans  
22 and development regulations of cities and counties, taken together, provide sufficient  
23 capacity of land for housing and employment growth. Because it is the sole provider of  
24 urban services within the UGA, the City contends the higher density permitted outside of  
25 the Wenatchee UGA by the challenged CPAs will "effectively limit the City's ability to provide

26 <sup>5</sup> County Comprehensive Plan, at LU-40; Wenatchee Comprehensive Plan, at 12.

<sup>6</sup> Wenatchee Exhibit B; *See also*, Wenatchee Zoning Map for delineation of city limits.

<sup>7</sup> Wenatchee Exhibit F, Chelan County Staff Report, at 2; Intervenor's HOM Brief, at 1.

1 urban services to an expanding [UGA].”<sup>8</sup> Wenatchee further argues by permitting high  
2 density development on the outskirts of the UGA, the County is blocking UGA expansion to  
3 the north and south and preventing the City from accommodating future population  
4 growth.<sup>9</sup>

5 The City contends its acceptance of the Sunnyslope Long Range Comprehensive Plan  
6 does not bar this matter as the GMA permits the periodic review of UGAs and, given the  
7 fact the City reviews its growth areas annually, the UGA “has the potential to change from  
8 year to year to reflect changes in population.”<sup>10</sup>

8 **Respondent:**

9 Chelan County contends the City of Wenatchee, by raising mere assertions, has  
10 failed to carry its burden of proof in demonstrating a violation of RCW 36.70A.115. The  
11 County argues Wenatchee presents no evidence, via facts or figures, on how the CPAs block  
12 the UGA’s expansion with high density development or place demands on urban services.  
13 The County further asserts Wenatchee never distinguishes between those portions of the  
14 CPAs amending RR20 to RR10 from those amending RR5 to RR2.5.<sup>11</sup>

15 Lastly, Chelan County states the City “could have requested expansion of the [UGA]  
16 if it believed its expansion interests were of concern” and the City has not submitted any  
17 population projection which would change its UGA boundary.<sup>12</sup>

17 **Intervenor:**

18 Intervenor contends the City’s allegation is essentially that CPAs 2007-17, 2007-18,  
19 and 2007-19 “hems the City in and block future expansion to accommodate growth.”<sup>13</sup>  
20 Intervenor asserts the Sunnyslope Plan denotes future growth has been accommodated and  
21

22 \_\_\_\_\_  
23 <sup>8</sup> Wenatchee HOM Brief, at 3-4.

24 <sup>9</sup> Wenatchee HOM Brief, at 4; HOM Oral Arguments of Counsel.

25 <sup>10</sup> Wenatchee’s HOM Brief, at 4.

26 <sup>11</sup> County’s HOM Brief, at 2-3.

<sup>12</sup> County’s HOM Brief, at 3.

<sup>13</sup> Intervenor’s HOM Brief, at 7.

1 will go in a different direction and, the City has agreed to this plan.<sup>14</sup> According to  
2 Intervenor, the City's arguments are undermined not only by the Sunnyslope Plan but the  
3 topography of the area – “steep rugged terrain with only a few relatively flat areas suitable  
4 for construction” – resulting in an area unlikely for expansion of the City's municipal  
5 boundaries.<sup>15</sup>

6 **Petitioners Reply:**

7 The City of Wenatchee argues it has presented sufficient evidence to overcome the  
8 presumption of validity and demonstrate a violation of RCW 36.70A.115. The City further  
9 notes although the GMA grants a presumption of validity, the County does not have  
10 “unbridled discretion” and local discretion is “bounded by the goals and requirements” of  
11 the GMA.<sup>16</sup>

12 **Board Analysis:**

13 The Board concurs with the City of Wenatchee; the GMA does not grant unbridled  
14 discretion to Chelan County. Rather the GMA's goals and requirements create boundaries  
15 all jurisdictions must respect. The problem with the City's allegation is it has presented  
16 nothing to demonstrate the *current* Wenatchee UGA is unable to accommodate urban  
17 growth allocated to the area within the 20-year planning horizon.<sup>17</sup> It is this planning  
18 horizon which serves as the basis for GMA planning and underlies RCW 36.70A.115.<sup>18</sup>  
19 RCW 36.70A.115 provides, emphasis added:

20 Counties and cities that are required or choose to plan under RCW 36.70A.040  
21 shall ensure that, taken collectively, adoption of and amendments to their  
22 comprehensive plans and/or development regulations provide **sufficient**  
23 **capacity of land suitable for development within their jurisdictions to**

24 <sup>14</sup> Intervenor's HOM Brief, at 7

25 <sup>15</sup> Intervenor's HOM Brief, at 7.

26 <sup>16</sup> Wenatchee Reply Brief, at 2.

<sup>17</sup> At the HOM, Counsel for the City conceded the City was not asserting the UGA was inadequate.

<sup>18</sup> The County's Comprehensive Plan denotes the Plan represents the County's policy plan for growth to the year 2017. Plan, at Page IN-3. However, several portions of the CP also denote projections to 2025 (Land Use Element, LU-13 to LU-15; Housing Element, HO-13 and HO-14) and 2027 (Transportation Element, TR-23 and TR-24). Wenatchee's CP specifically notes it is intended to provide for planning to 2025. See Wenatchee Comprehensive Plan, at 2.

1 ***accommodate their allocated housing and employment growth, as***  
2 ***adopted in the applicable countywide planning policies and***  
3 ***consistent with the twenty-year population forecast*** from the office of  
financial management.

4 Thus, in order to demonstrate a violation of RCW 36.70A.115, the City of Wenatchee  
5 is required to show the adoption of the challenged CPAs result in a deficit of land suitable  
6 for development within the 20 year planning horizon so as to create insufficient capacity to  
7 accommodate allocated growth projections within the existing Wenatchee UGA.<sup>19</sup> This, the  
8 City did not do. Nor, since RCW 36.70A.115 does not limit its application to urban lands,  
9 does the City explain how the challenged CPAs create insufficient capacity of suitable land  
10 within the rural areas of Chelan County.

11 Although the City noted the challenged CPAs encompass approximately 1,200 acres  
12 of rural land, with a potential development capacity of 382 residential units,<sup>20</sup> the City did  
13 not explain why or how the CPAs create a deficit of land suitable for development. The  
14 Board is left to wonder just how CPAs which allow for an increase in residential density  
15 result in insufficient capacity within either the existing UGA or the rural area and, this was  
16 not presented by the City. From the briefing, the crux of the City of Wenatchee's allegation  
17 lies with the CPAs authorization of "higher density cluster zones" and the impact these  
18 zones would have in any *future* expansion of the Wenatchee UGA. In this regard, the  
19 Board must first address the City's responsibility in regards to UGAs as both the City and  
Chelan County made some erroneous statements.

20 As this Board has previously stated, the GMA places the responsibility of designating  
21 a UGA solely on Chelan County.<sup>21</sup> Cities have no power, in and of themselves, to delineate

22 \_\_\_\_\_  
23 <sup>19</sup> The Land Use Element of Chelan County's CP denotes the Greater Wenatchee UGA has been allocated a  
24 growth projection of 16,945 persons to the year 2025, and this figure was agreed to by the County and the  
City of Wenatchee. Chelan County CP, Land Use Element at LU14-15; Table 5. The City's CP reflects this same  
25 growth projection. Wenatchee CP, Land Use Element at 6-7; Table 3.

<sup>20</sup> Wenatchee Exhibit E; density is based on clustering with a 200 percent density bonus

<sup>21</sup> RCW 36.70A.110(1): *Each county ... shall designate an urban growth area or areas ...*

1 UGAs.<sup>22</sup> Although the duty of designating a UGA belongs to a county, coordination and  
2 consultation between a county and its cities underlies many aspects of the GMA, including  
3 the designation of UGAs. Therefore, the GMA requires counties to consult with each of its  
4 cities and attempt to reach agreement as to the location of the UGA, but if agreement  
5 cannot be reached the County may designate a UGA as it deems appropriate.<sup>23</sup>

6 In addition to RCW 36.70A.110, RCW 36.70A.130 solidifies the County's responsibility  
7 in regards to future UGA expansion by providing, in relevant part, emphasis added:

8 (a) **Each county that designates urban growth areas under RCW**  
9 **36.70A.110 shall review, at least every ten years, its designated**  
10 **urban growth area or areas**, and the densities permitted within both the  
11 incorporated and unincorporated portions of each urban growth area. In  
12 conjunction with this review by the county, **each city located within an**  
13 **urban growth area shall review the densities permitted within its**  
14 **boundaries**, and the extent to which the urban growth occurring within the  
15 county has located within each city and the unincorporated portions of the  
16 urban growth areas.

17 (b) The **county comprehensive plan designating urban growth areas**,  
18 and the densities permitted in the urban growth areas by the comprehensive  
19 plans of the county and each city located within the urban growth area, **shall**  
20 **be revised to accommodate the urban growth projected to occur in**  
21 **the county for the succeeding twenty-year period...**

22 Thus, it is clear from the GMA the duty for the initial delineation and the future  
23 expansion of a UGA is Chelan County's alone. Wenatchee's assertion the challenged CPAs

---

24 <sup>22</sup> RCW 36.70A.110(2); RCW 36.70A.280(1); .280(2)(a). *See also*, our colleagues at the WWGMHB: *Harader*  
25 *et al v. City of Winlock*, WWGMHB Case No. 06-2-0007, Final Decision and Order (Aug 30, 2006) (City has no  
26 ability or duty under the GMA to set or alter UGA boundaries); *Wells v. Whatcom County*, WWGMHB Case No.  
97-2-0030 (Nov. 5, 1997)(County not a city has responsibility for UGA boundary); *Reading et al v. Thurston*  
*County*, WWGMHB Case No. 94-2-0019 (March 25, 1995).

<sup>23</sup> RCW 36.70A.110(2); If the County designates a UGA without agreement, it must justify its actions in writing  
The Board notes this provision addresses the initial designation of UGAs. However, the Board finds and  
concludes these same provisions apply to future alterations of a UGA boundary. The Board also recognizes  
although the GMA does require a county to consult with its cities as to boundary lines, cities have no power, in  
and of themselves, to delineate UGAs. Cities are only capable of submitting a recommendation for the location  
of the UGA and filing any objection with Washington State Department of Community, Trade and  
Development (CTED) over the UGA designation or filing an appeal before the Board.

1 block the City's ability to expand the UGA is therefore unsupported by the GMA as the  
2 decision of when and where the Wenatchee UGA expands in the future is ultimately the  
3 responsibility of Chelan County.<sup>24</sup>

4 The City of Wenatchee further states the GMA contemplates the expansion of UGAs  
5 and, because the City "reviews its growth area annually," its UGA has the "potential to  
6 change from year to year to reflect changes in population."<sup>25</sup> In response to this assertion,  
7 Chelan County stated the City has not shared any "population project which would change  
8 its [UGA] boundary line."<sup>26</sup> Both the City and the County misunderstand the use of  
9 population projections.

10 As noted *supra*, there is no doubt the GMA contemplates the future expansion of a  
11 UGA as RCW 36.70A.130 requires Chelan County to review its UGAs at least every 10 years  
12 in order to ensure the County's UGAs are properly sized to accommodate urban growth  
13 projected to occur over the succeeding 20 year planning horizon.<sup>27</sup> Therefore, the GMA  
14 recognizes the long-range and dynamic, but not stagnant, nature of GMA planning.  
15 However, the growth projection used for UGAs is based on growth management population  
16 projections produced by the Office of Financial Management (OFM) *not* the City of  
17

---

18 <sup>24</sup> RCW 36.70A.110(2). As noted, counties are required to consult with their cities but cities are only capable  
19 of submitting a recommendation for the location of the UGA. For any objection a city has as to the UGA  
20 boundary, it may file such an objection with Washington State Department of Community, Trade and  
21 Development (CTED) over the UGA designation or filing an appeal before the Board.

<sup>25</sup> Wenatchee's HOM Brief, at 4.

<sup>26</sup> County's HOM Brief, at 3.

<sup>27</sup> Although RCW 36.70A.130(3)(a) does permit review of a UGA's boundaries more frequently than every ten  
22 years based on the language requiring review "at least every ten years," given the long-range planning aspect  
23 of the GMA the continual amendment of UGA boundaries on an annual basis would effectively defeat this  
24 purpose as the UGA establishes the direction of planning for a city and county in multiple areas – land use,  
25 housing, economic development, capital facilities, etc. If UGA boundaries were modified on a whim, GMA's  
26 long-range planning would be compromised. In addition, an expansion of the boundaries of a UGA is not the  
only method by which projected growth is accommodated. Jurisdictions can utilize regulatory measures to  
accommodate growth without expanding a UGA's boundaries, such as increasing allowed residential densities,  
provide density bonuses, permit accessory dwelling units, encourage multi-family development, or allow for  
mixed use development.

1 Wenatchee.<sup>28</sup> Thus, the City's contention its own projections permit expansion of a UGA,  
2 and the County's apparent concession to this contention, is not supported by the GMA.<sup>29</sup>

3 **Conclusion:**

4 Without any legal or evidentiary support for its assertions, Wenatchee fails to  
5 demonstrate Chelan County's action of changing the land use designation/zoning on land  
6 within the rural areas of the County create a deficit of land suitable for development.  
7 Furthermore, Wenatchee fails to demonstrate how the County's actions result in insufficient  
8 capacity to accommodate OFM's 20-year growth projections. Therefore, in regards to  
9 Legal Issue 1, the City of Wenatchee has failed to carry its burden of proof in  
demonstrating a violation of RCW 36.70A.115.

10 **Permitting "Urban" Growth within Rural Lands**

11 Since the following issues are all founded on the City of Wenatchee's assertion the  
12 County is permitting urban growth within its rural areas, in violation of the GMA's goals and  
13 requirements, the Board will discuss these issues together.

14 **Issue No. 2:**

15 Does Chelan County's approval of the six (6) Comp Plan amendments violate  
16 Planning Goals as stated in RCW 36.70A.020(1), (2), (3), (8), (10), and (12)?

17 **Issue No. 3:**

18 Is Chelan County's approval of the six (6) Comp Plan amendments which would allow  
19 the location of unlimited numbers of cluster subdivisions directly adjacent to each other in  
20 compliance with RCW 36.70A.110, given the definition of urban growth" per RCW  
36.70A.030(18)?

21 **Issue No. 4:**

22 Does Chelan County's approval of the six (6) Comp Plan amendments allowing  
23 clusters of homes and dedicated open space in close proximity to each other, effectively  
blocking the future expansion of the Wenatchee Urban Growth Area, violate RCW

24 <sup>28</sup> RCW 36.70A.110(2).

25 <sup>29</sup> RCW 36.70A.110(2) states that a UGA's size is to be based upon OFM population projections. *See also,*  
26 *Thurston County v. WWGMHB*, 164 Wn.2d 329, 351-352 (2008)(holding that the size of a UGA must be based  
on OFM projections).

1 36.70A.110(3) and (4) requiring that urban growth be located first in areas already  
2 characterized by urban growth and not expanding urban governmental services into rural  
3 areas?

4 **The Parties' Position:**

5 **Petitioners:**

6 The City of Wenatchee recognizes the inherent tension between the GMA's goals but  
7 cites to previous Board decisions which have held that all of the goals must be given effect  
8 to the extent possible.<sup>30</sup> Wenatchee contends the County failed to consider some of the  
9 GMA's goals, such as the feasibility of providing public transportation and services to these  
10 areas, and did not adequately evaluate the cumulative impacts and effects of the CPAs.<sup>31</sup>

11 Wenatchee contends the change in zoning designation permitted by the six  
12 challenged CPAs will "prevent the future expansion of the UGA as well as cost effective  
13 extensions of urban services while at the same time encouraging urban sprawl."<sup>32</sup> The City  
14 points out County Staff had determined three of the CPAs – CPA 2007-011, CPA 2007-012,  
15 and CPA 2007-19 – did not comply with the goals of the GMA, the adopting resolutions did  
16 not set forth a contrary analysis, and the Washington State Department of Transportation  
17 (WSDOT) submitted comments which noted the "cumulative impact" of the amendments in  
18 relationship to traffic had not been addressed.<sup>33</sup>

19 The City of Wenatchee states the GMA prohibits urban development outside of UGAs,  
20 citing to the GMA's definition for definition of urban growth and noting this Board has  
21 previously held densities of less than one dwelling unit per five acres (1 du/5 acre) are  
22 urban.<sup>34</sup> Although the City acknowledges the GMA permits a variety of rural densities, it

23 <sup>30</sup> Wenatchee HOM Brief, at 7 (citing to *Save our Butte Save our Basin v. Chelan County*, Case No. 94-1-0001,  
24 FDO (July 1994)

25 <sup>31</sup> Wenatchee HOM Brief, at 7-8.

26 <sup>32</sup> Wenatchee HOM Brief, at 7.

<sup>33</sup> Wenatchee HOM Brief, at 6.

<sup>34</sup> Petitioner's HOM Brief, at 8-10, citing RCW 36.70A.030(18) and RCW 36.70A.110; *City of Moses Lake v. Grant County*, EWGMHB Case No. 99-1-0016 (Order on Remand, April 2002); *Citizens for Good Governance, et al v. Walla Walla County*, EWGMHB Case No. 01-1-0014cz/01-1-0015c (FDO, May 2002); *Futurewise v. Pend Oreille County*, EWGMHB Case No. 05-1-0011 (FDO, Nov. 2006).

1 contends these densities must be rural in nature and, due to the application of the County's  
2 clustering provisions, the challenged amendments permit "urban like densities" outside of  
3 the UGA.<sup>35</sup> In addition, Wenatchee asserts if the County seeks to justify smaller density  
4 lots based on local circumstances, it must provide a written record explaining how the rural  
5 element harmonizes the GMA's goals and requirements; which Chelan County has not  
6 done.<sup>36</sup>

7 Wenatchee further recognizes the GMA's provision for clustering within rural areas  
8 but argues by permitting unlimited high density cluster developments on the outskirts of the  
9 UGA, in areas not served by public facilities and services and not characterized by urban  
10 growth, the County is creating a "leap-frog" area which will be difficult to annex and provide  
11 urban services in the future.<sup>37</sup>

12 **Respondent:**

13 Chelan County points out the City highlights just six of the GMA's goals but declines  
14 to mention other goals which the County contends would be supported with the CPAs.  
15 Specifically, but without providing any analysis, the County cites to Goal 4 Housing, Goal 5  
16 Economic Development, Goal 6 Property Rights, Goal 9 Open Space and Recreation, and  
17 Goal 11 Citizen Participation.<sup>38</sup>

18 The County further asserts the City's allegation that permitting 1 du/2.5 acre zoning  
19 encourages sprawl is unsupported and amounts to an untimely challenge of the RR2.5  
20 zoning designation which has been part of the County's Comprehensive Plan since 2000.<sup>39</sup>

21 Chelan County notes the Supreme Court has previously held the Board may not use a  
22 bright line rule to delineate between urban and rural densities and the GMA does not define  
23 what constitutes such densities; rather, density is a question of fact based upon the

24 <sup>35</sup> Petitioner's HOM Brief, at 8-10.

25 <sup>36</sup> Petitioner's HOM Brief, at a10, citing RCW 36.70A.070(5)(a).

26 <sup>37</sup> Petitioner's HOM Brief, at 9.

<sup>38</sup> County HOM Brief, at 3-4.

<sup>39</sup> County HOM Brief, at 4.

1 circumstances of each case.<sup>40</sup> The County argues Wenatchee has made a “broad brush  
2 assertion” focusing on older case law and failing to analyze each application’s circumstances  
3 as to geography, topography, and proximity to services.<sup>41</sup>

4 **Intervenor:**

5 Similar to the County’s arguments, Intervenor notes the inherent tension in the  
6 GMA’s non-prioritized goals which are intended to guide the development of comprehensive  
7 plans.<sup>42</sup> Intervenor recognizes the goals cited by the City but contends these are  
8 addressed in the Land Use, Transportation, and Capital Facilities sections of the Sunnyslope  
9 Plan and County Planning Staff conducted an environmental review for the CPAs.<sup>43</sup> In  
10 addition, Intervenor asserts the CPAs are consistent with other GMA goals such as Goal 4,  
11 Goal 6, Goal 9, and Goal 11.<sup>44</sup>

12 As to the alleged violation of RCW 36.70A.110, Intervenor argues the authority  
13 offered by the City focuses on previous “Board decisions indicating that lots under five acres  
14 are found to be urban.”<sup>45</sup> Thus, Intervenor believes the City’s argument “apply to those  
15 applications that did create RR2.5 zoning” which the three CPAs relating to the Intervenor  
16 did not allow.<sup>46</sup> In addition, Intervenor contends what the City is doing with these issues is  
17 alleging “that allowing cluster subdivisions outside of the UGA is not in compliance with  
18 RCW 36.70A.110,” which is essentially “an [untimely] attack on Chelan County’s original  
19 decision to allow cluster subdivisions within [rural zones] but outside of the UGA.”<sup>47</sup>

20 **Petitioners Reply:**

21 The City of Wenatchee once again acknowledges the competing tension between the  
22 GMA’s goals but reiterates all of the goals must be given effect and the County acted in

23 <sup>40</sup> County’s HOM Brief, at 4-5, citing to *Thurston County v. WWGMHB*, 164 Wn.2d 329 (2008).

24 <sup>41</sup> County’s HOM Brief, at 5.

25 <sup>42</sup> Intervenor’s HOM Brief, at 8

26 <sup>43</sup> Intervenor’s HOM Brief, at 8-9.

<sup>44</sup> Intervenor’s HOM Brief, at 9.

<sup>45</sup> Intervenor’s HOM Brief, at 10.

<sup>46</sup> Intervenor’s HOM Brief, at 10.

<sup>47</sup> Intervenor’s HOM Brief, at 11.

1 such a way all of the GMA's goals could not be met. The City argues "compliance with  
2 some goals does not sanction blatant disregard for others."<sup>48</sup>

3 Wenatchee also contends it is not appealing the previously enacted allowance of  
4 cluster zoning; it is appealing "the increased density clustering that will result from these  
5 new amendments."<sup>49</sup> The City asserts it has demonstrated these increased densities  
6 violate the GMA because they will block expansion of urban services, contribute to sprawl,  
7 and allow urban-like densities in non-urban areas.<sup>50</sup>

8 **Board Analysis:**

9 The City of Wenatchee alleges Chelan County's approval of several Comprehensive  
10 Plan Map Amendments does not comply with RCW 36.70A.110, in correlation with the  
11 definition of urban growth provided in RCW 36.70A.030(18), because the Map Amendments  
12 would allow the location of unlimited numbers of cluster subdivisions directly adjacent to  
13 each other. Wenatchee does not and cannot challenge the **text** of the CP nor the system of  
14 future land use categories provided for in the CP, since those prior County actions were not  
15 appealed. Rather, the City's challenge here is limited to whether these distinct land use  
16 **map amendments** improperly allow for "**Urban Growth**" in a "**Rural Area**."

17 The GMA establishes a clear dichotomy between an Urban Growth Area (UGA) and a  
18 Rural Area (RA). Urban Growth Areas have urban uses, urban densities, urban  
19 development, and urban governmental services. In contrast, Rural Areas have rural uses,  
20 rural densities, rural development, and rural governmental services. "Urban Growth Areas"  
21 and "Rural Areas" are mutually exclusive concepts under the GMA.<sup>51</sup>

22 **Urban Growth**

23 RCW 36.70A.110(1) provides that growth can occur outside of an Urban Growth Area  
24 "only if it is not urban in nature." Urban growth must occur within an Urban Growth Area,

25 <sup>48</sup> Wenatchee Reply Brief, at 4-5.

26 <sup>49</sup> Petitioner's Reply Brief, at 2-3.

<sup>50</sup> Petitioner's Reply Brief, at 3.

<sup>51</sup> RCW 36.70A.110; RCW 36.70A.030; RCW 36.70A.070.

1 particularly in portions of an Urban Growth Area already characterized by urban growth and  
2 with existing or available public facilities and services.<sup>52</sup> In general, cities are the units of  
3 local government most appropriate to provide urban governmental services. It is not  
4 appropriate that urban governmental services be extended to or expanded in Rural Areas  
5 except in limited circumstances.<sup>53</sup>

6 "Urban growth" refers to growth that makes intensive use of land for the location of  
7 buildings, structures, and impermeable surfaces to such a degree as to be incompatible with  
8 the primary use of land for the production of food, other agricultural products, or fiber, or  
9 the extraction of mineral resources, rural uses, rural development, and natural resource  
lands designated pursuant to our RCW 36.70A.170.

10 "Characterized by urban growth" refers to land having urban growth located on it, or  
11 to land located in relationship to an area with urban growth on it as to be appropriate for  
12 urban growth.<sup>54</sup>

13 "Urban governmental services" include those public services and public facilities at an  
14 intensity historically and typically provided in cities, specifically including storm and sanitary  
15 sewer systems, drastic water systems, street cleaning services, fire and police protection  
16 services, public transit services, and other public utilities associated with urban areas and  
normally not associated with rural areas.<sup>55</sup>

17 Comprehensive Plans should be guided by the GMA planning goal to "encourage  
18 development in urban areas where adequate public facilities and services exist or can be  
19 provided in an efficient manner."<sup>56</sup>

## 20 Rural Areas

21 RCW 36.70A.050(5) requires counties to include in their Comprehensive Plan a "rural  
22 element including lands that are not designated for urban growth, agriculture, forest, or

---

23 <sup>52</sup> RCW 36.70A.110 (3).

24 <sup>53</sup> RCW 36.70A .110 (4).

25 <sup>54</sup> RCW 36.70A .030 (18).

26 <sup>55</sup> RCW 36.70A .030 (20).

<sup>56</sup> RCW 36 .70A .020(1).

1 mineral resources." In establishing a pattern of rural densities and uses, a County may  
2 consider local circumstances but shall develop a written record explaining how the rural  
3 element harmonizes the GMA and planning goals in RCW 36.70A.020.<sup>57</sup> (Is there a written  
4 record showing how the rural element harmonizes the GMA and planning goals? If there is,  
5 it escaped the attention of the planning staff, which found three of the amendments, and in  
6 particular 011 and 012, did not.) Counties must provide for a variety of rural densities, uses,  
7 essential public facilities, and rural governmental services needed to serve the permitted  
8 densities and uses; appropriate **rural densities and uses cannot be "characterized by  
9 urban growth" and must be "consistent with rural character."**<sup>58</sup>

9 The rural element of a Comprehensive Plan shall include measures that apply to rural  
10 development and protect the rural character of the area by:

- 11 • containing or otherwise controlling rural development
- 12 • assuring visual compatibility of rural development with the surrounding rural area
- 13 • reducing the inappropriate conversion of undeveloped land into sprawling, low-  
14 density development in the rural area
- 15 • protecting critical areas and surface water and groundwater resources
- 16 • protecting against conflicts with the use of agricultural, forest, and mineral resource  
17 lands<sup>59</sup>

16 "Rural character" refers to the patterns of land use and development established by  
17 a County in the rural element of its comprehensive plan

- 18 • in which open space, the natural landscape, and vegetation to dominate over the  
19 built environment
- 20 • that fostered traditional rural lifestyles, rural-based economies, and opportunities to  
21 live and work in rural areas
- 22 • that provide visual landscapes that are traditionally found in rural areas and  
23 communities
- 24 • that are compatible with the use of the land by wildlife and for fish and wildlife have
- 25 • that reduced the inappropriate conversion of undeveloped land into sprawling, load-  
26 density development
- that generally do not require the extension of urban governmental services, and

<sup>57</sup> RCW 36.70A .070(5)(a).

<sup>58</sup> RCW 36.70A .070(5)(b).

<sup>59</sup> RCW 36.70A. 070(5)(c).

- 1 • that are consistent with the protection of natural surface water flows and  
2 groundwater and surface water recharge and discharge areas<sup>60</sup>

3 "Rural development" refers to development outside the urban growth area and  
4 outside agricultural, forest, and mineral resource lands designated pursuant to RCW  
5 36.70A.170. Rural development can consist of a variety of uses and residential densities,  
6 including clustered residential development, at levels that are consistent with the  
7 preservation of rural character and the requirements of the rural element.<sup>61</sup>

8 Comprehensive Plans should be guided by the GMA planning goal to "reduce the  
9 inappropriate conversion of undeveloped land into sprawling, low-density development."<sup>62</sup>

10 The six appealed CPAs are all located outside the Urban Growth Area and within the  
11 Rural Area of Chelan County but in close proximity to the Urban Growth Area.<sup>63</sup> The Board  
12 must determine whether these map amendments constitute prohibited urban growth within  
13 a Rural Area and whether the County's Findings of Fact and Conclusions of Law are  
14 supported by the Record.

15 In a November 17, 2007 Staff Report, the Chelan County planning staff stated "in  
16 evaluating these proposals that would create higher Rural/Residential Resource densities,  
17 staff analyzed how current and surrounding land uses were established and how the  
18 existing pattern of rural densities and land uses currently meet the requirements of RCW  
19 36.70A.070(5)."<sup>64</sup> The planning staff found some "of the proposals have not shown that  
20 they meet the requirements outlined in the RCW."<sup>65</sup> Specifically, the staff found CPA 2007-  
21 017, CPA 2007-018, and CPA 2007-021 meet the rural development guidelines in RCW  
22 36.70A.070(5) because this application had shown it contained or controlled rural

23 <sup>60</sup> RCW 36.70A .030(15).

24 <sup>61</sup> RCW 36.70A.030(17).

25 <sup>62</sup> RCW 36.70A.020 (2).

26 <sup>63</sup> Petitioner's HOM Brief, Exhibit B.

<sup>64</sup> Petitioners HOM Brief, Exhibit F, at 9.

<sup>65</sup> Exhibit F, at 10.

1 development and also assured the visual compatibility of the rural development of the  
2 surrounding rural areas.<sup>66</sup>

3 In contrast, staff found CPA 2007-011, CPA 2007-012, and CPA 2007-019 "all fail to  
4 show how they would meet the Goals outlined above for Rural Development and the  
5 measures governing rural development."<sup>67</sup> Staff also found these three "applications don't  
6 meet the requirements of assuring visual compatibility of rural development with the  
7 surrounding rural areas, and in some cases, doesn't fully protect critical areas by shifting  
8 the densities of those subject parcels to higher densities and allowing for closer and more  
9 development next to them."<sup>68</sup> However, there is some evidence elsewhere in the record  
10 that supports a conclusion that CPA 2007-019 (10-acre lots) does meet the above-  
11 referenced goals and guidelines for rural residential development.<sup>69</sup>

12 The planning staff further found that CPA 2007-017, CPA 2007-018, and CPA 2007-  
13 021 seems to be consistent with the goals and policies of the Chelan County Comprehensive  
14 Plan.<sup>70</sup> In contrast, the planning staff found that CPA 2007-011, CPA 2007-012, and CPA  
15 2007-019 "are viewed as not meeting the Goals and Policies" of the CP, specifically the  
16 Rural Element Goal 1, Policy 3 to "provide for a variety of rural densities and designations  
17 that would accommodate the wide variety of rural land uses which represent the rural  
18 character."<sup>71</sup> In analyzing rural character and the change that could come from these two  
19 re-designations, staff found they would go against the policy in the Rural Element of the  
20 CP.<sup>72</sup> However, there is some evidence elsewhere in the record that supports a conclusion  
21 that CPA 2007-019 (10-acre lots) does meet the above-referenced goals and guidelines for  
22 rural residential development.<sup>73</sup>

---

22 <sup>66</sup> Exhibit F, at 9-10.

23 <sup>67</sup> Exhibit F, at 9-10

24 <sup>68</sup> Exhibit F, at 11..

25 <sup>69</sup> Intervenor's HOM Brief, Exhibit 10.

26 <sup>70</sup> Exhibit F, at 12.

<sup>71</sup> Exhibit F, at 12.

<sup>72</sup> Exhibit F at 12.

<sup>73</sup> Intervenor's HOM Brief, Exhibit 10.

1 The planning staff also analyzed whether the CPAs comply with the CP land use  
2 designation/siting criteria.<sup>74</sup> Staff found CPA 2007-021 was consistent with the designation  
3 citing criteria.<sup>75</sup> Staff found CPA 2007-011 and CPA 2007-012 were not consistent with the  
4 designation and siting criteria.<sup>76</sup> As to CPA 2007-021, staff found it specifically met the  
5 purpose statement and intent of the RR2.5 designation by showing it was consistent with  
6 the rural character and rural development provisions outlined in the CP by "contain[ing] or  
7 control[ing] rural development and also assur[ing] the visual compatibility of the rural  
8 development of the surrounding rural areas and can provid[ing] buffering and transitions  
between existing rural developments."<sup>77</sup>

9 As to CPA 2007-011 and CPA 2007-012, staff found they did not meet the  
10 requirements of assuring visual compatibility of rural development with the surrounding  
11 rural areas, nor did they coincide with surrounding land adjacent to those subject  
12 properties.<sup>78</sup> These CPAs did not offer a transition area, as no other RR2.5 land uses are  
13 located adjacent to these parcels, **creating pockets of higher densities in areas  
14 where lower densities are predominant.**<sup>79</sup>

15 The planning staff indicated "the areas proposed for re-designation to  
16 Rural/Residential Resource 2.5 do not require public service levels to be provided to them;  
17 governmental services (fire, etc.) are available."<sup>80</sup> This portion of the staff report does not  
18 make any distinction between urban governmental services and rural governmental  
19 services. Thus, it is unclear what the staff found as to whether there was a need for urban  
20 governmental services in CPA 2007-011 and CPA 2007-012. The Chelan County CP Rural  
21

---

22 <sup>74</sup> Exhibit F, at 22-23.

23 <sup>75</sup> Exhibit F, at 23

24 <sup>76</sup> Exhibit F, at 23

25 <sup>77</sup> Exhibit F, at 23.

26 <sup>78</sup> Exhibit F, at 23.

<sup>79</sup> Id.

<sup>80</sup> Id.

1 Element Goal 3 is to **“Develop at densities such that demands will not be created**  
2 **for urban levels of public services and facilities.”**<sup>81</sup>

3 An important question regarding CPA 2007-011, CPA 2007-012, and CPA 2007-021 is  
4 to what extent these three applications will cumulatively create demands for urban levels of  
5 public services and facilities to serve the new 2.5 acre (or smaller) lots. The staff report  
6 does not answer this question, and there is no evidence in the record this question was  
7 considered by either the Planning Commission or the County Commissioners. The record  
8 does contain on October 22, 2007 a letter from the Washington State Department  
9 transportation requesting there be a cumulative impact analysis of all of the proposed  
10 comprehensive plan amendments, along with associated mitigation measures. This letter  
11 expressed particular concern about the “potential to adversely affect the safety and  
12 operation of the State highway system.”<sup>82</sup>

13 The GMA requires proposed comprehensive plan amendments “shall be considered  
14 by the governing body **concurrently** so the **cumulative effect** of the various proposals  
15 can be ascertained.”<sup>83</sup> Further, GMA planning goal 10 provides that counties are to be  
16 guided by the directive to “protect the environment,” and procedurally GMA requires the  
17 aforementioned cumulative effect analysis together with a SEPA cumulative impacts  
18 analysis.<sup>84</sup> The Chelan County Code also requires SEPA review of “the entire package of  
19 proposed comprehensive plan amendments to provide consideration of cumulative effects  
20 of proposed amendments.”<sup>85</sup>

21 There is no evidence in the record Chelan County conducted the required cumulative  
22 effects analysis to determine whether the CPAs would create demands for urban levels of  
23 public services and facilities to serve the 2.5 acre (or smaller with allowable clustering) lots.

24 <sup>81</sup> Intervenor’s HOM Brief, Exhibit 4.

25 <sup>82</sup> Petitioner’s Hearing On the Merits Brief, Exhibit J.

26 <sup>83</sup> RCW 36.70A.130(2) (b).

<sup>84</sup> Id.; RCW 43.2 1C .030.

<sup>85</sup> Chelan County Code §14.14.070(2).

1 There is, however, evidence in the record suggesting 2.5 acre lots in close proximity to the  
2 urban area may create demands for urban levels of public services and facilities.<sup>86</sup>

3 The Chelan County CP requires proposed amendments serve the interests of both  
4 the applicant and the general public including public health, safety, and welfare. City staff  
5 found the proposed re-designations to a higher density do serve the interests of the  
6 applicant but have not been shown to prove the general public would be served and  
7 benefitted. The planning staff concluded "other studies would need to be performed to  
8 show the general public being served." However, the County commissioners made a  
9 conclusion of law that "the public use and interest will be served in general by these  
amendments."

10 As for the GMA's various goals, Wenatchee contends the County violates six but  
11 focuses on urban sprawl (Goals 1 and 2), urban services (Goal 12), and transportation (Goal  
12 3) by asserting the County (a) did not give all of the goals effect to the extent possible and  
13 (b) did not evaluate the cumulative impact of the CPAs in relationship to the goals.<sup>87</sup>

14 These four goals are as follows:

15 Goal 1 Urban Growth. Encourage development in urban areas where  
16 adequate public facilities and services exist or can be provided in an efficient  
manner.

17 Goal 2 Reduce Sprawl. Reduce the inappropriate conversion of undeveloped  
18 land into sprawling, low-density development.

21 <sup>86</sup> Petitioner's Hearing On the Merits Brief, Exhibit E.

22 <sup>87</sup> With the exception of a citation from a prior Board case and setting forth the text of the goal, Natural  
23 Resource Industries (Goal 8) is not discussed. Similarly, although an increase in the development potential  
24 of land may adversely impact the environment (Goal 10), with the exception of providing the goal's text, the  
25 City does not assert how the County's action violated the Goal 10 except to note, in context of a conclusory  
26 statement that the future provision for public sewer, septic systems could fail and lot sizes of 2.5 acres would  
not protect critical areas. Therefore, because the City failed to submit argument as to how the County's  
actions were not guided by Goals 8 and 10, the Board deems the City's challenged in regard to these two  
goals abandoned. WAC 242-02-570(1); *Humphrey v. Douglas County*, Case No. 07-1-0010, FDO at 4 (Feb.  
2008) citing to *Woodmansee v. Ferry County*, Case No. 00-1-0006 FDO (Sept. 2000).

1        Goal 3 Transportation. Encourage efficient multimodal transportation systems  
2        that are based on regional priorities and coordinated with county and city  
3        comprehensive plans.

4        Goal 12 Public Facilities and Services. Ensure that those public facilities and  
5        services necessary to support development shall be adequate to serve the  
6        development at the time the development is available for occupancy and use  
7        without decreasing current service levels below locally established minimum  
8        standards.

9        The GMA sets forth 13 enumerated planning goals.<sup>88</sup> These goals are to guide the  
10       development and adoption of comprehensive plan and development regulations.<sup>89</sup> The  
11       goals are all created equal with no priority set forth by the Legislature and with no goal  
12       independently creating a substantive requirement.<sup>90</sup> At times, this lack of priority becomes  
13       problematic when jurisdictions are faced with competing goals. Although the GMA does not  
14       permit the elevation of a single goal to the detriment of other equally important GMA goals,  
15       the GMA does permit local legislative bodies to give varying degrees of emphasis to the  
16       goals so as to allow them to make decisions based on local needs in order to harmonize and  
17       balance the goals.<sup>91</sup> Since RCW 36.70A.020 requires planning decisions to be *guided* by the

---

18       <sup>88</sup> RCW 36.70A.020(1) through .020(13). In addition to these 13 goals, RCW 36.70A.480 adds the goals of  
19       the Shoreline Management Act, RCW 90.48.020 as one of the 14<sup>th</sup> goal of the GMA.

20       <sup>89</sup> RCW 36.70A.020 Planning Goals. The following goals are adopted *to guide the development and adoption*  
21       *of comprehensive plans and development regulations ...and shall be used exclusively for the purpose of*  
22       *guiding* the development of comprehensive plans and development regulations.

23       <sup>90</sup> RCW 36.70A.020 ... [T]he following goals *are not listed in order of priority* and ...; *Quadrant Corp. v.*  
24       *CPSGMHB*, 154 Wn.2d 224, 246 (2005)(citing to *King County v. CPSGMHB*, 142 Wn.2d 543 (2000); *See also,*  
25       *Viking Properties v. Holm*, 155 Wn.2d 122, 127 (2005)(Noting the Legislative intent for non-priority with the  
26       goals and the court's propensity to prioritize GMA goals only under the narrowest of circumstances where  
27       certain goals came into direct and irreconcilable conflict as applied to the facts of a specific case).

28       <sup>91</sup> *Swinomish Tribe v. WWGMHB*, 161 Wn.2d 415, 424-25 (2007); *Lewis County v. WWGMHB*, 157 Wn.2d 488,  
29       511 (2005). Despite the fact the goals, in and of themselves, do not create substantive requirements, RCW  
30       36.70A.320(3) requires the Board to determine whether the County's action was clearly erroneous "in view of  
31       the entire record before the board and *in light of the goals and requirements*" of the GMA; *Citizens for Good*  
32       *Governance, et al v. Walla Walla County*, Case No. 05-1-0013 FDO (June 2003)(GMA is clear that the 13 goals  
33       are all considered important and equal in the development and adoption of comprehensive plans and  
34       development regulations).

1 GMA's goals, Wenatchee is required to show the County failed to be *guided* by the cited  
2 GMA goals to rebut the presumption of validity afforded the County's actions.<sup>92</sup>

3 To be "guided" by the GMA's goals has historically been defined as "considering" the  
4 goals.<sup>93</sup> Thus, in determining if the County was guided by the goals requires a response to  
5 the question: Is the County's action consistent with the Goals?

6 Although the Board has stated it would be useful, satisfying this procedural  
7 component does not require a tangible writing which explicitly discusses the goals in order  
8 to demonstrate they were considered. In *Save our Butte Save Our Basin Society v. Chelan*  
*County*, the Board stated:<sup>94</sup>

9 **There is no requirement for a tangible procedural demonstration nor**  
10 **will the Board attempt to read the collective minds of the county's**  
11 **elected officials or staff to determine whether they considered the**  
12 **GMA's planning goals ... While this approach does not require written**  
13 **findings of consideration or a record that carefully considers the**  
14 **planning goals from a procedural view, such finding and/or valid**  
15 **consideration in the record of the relevant goals is useful, if not,**  
16 **essential to making a determination as to whether a county's adoption ... was**  
17 **substantively guided by the planning goals.**

18 Since this time, the court has made a similar statement. In *Manke Lumber v. Diehl*,<sup>95</sup> in  
19 response to an assertion that the record lacked documentation showing consideration of  
20 some of the GMA's goals, the Court stated:<sup>96</sup>

21 **No provision in the GMA specifically requires that local governments**  
22 **discuss, address, and weigh** any of the 13 planning goals in development  
23 **their comprehensive plan ...the only requirement is for counties and**

24 <sup>92</sup> See *Kittitas County Conservation, et al v. Kittitas County*, Case No. 07-1-0004c, Partial 2<sup>nd</sup> Compliance  
25 Order, at 37 (Feb. 2, 2009)(Holding the presumption of validity accorded to legislative enactments is not  
26 conclusive but rebuttable); *Manke Lumber v. Diehl*, 113 Wn. App. 615 (2002).

<sup>93</sup> *Save our Butte Save our Basin Society v. Chelan County*, Case No. 94-1-0001 FDO (July 1994); *Benton*  
*County Fire District v. Benton County*, Case No. 94-1-0023 FDO (April 1995).

<sup>94</sup> *Save our Butte Save our Basin Society v. Chelan County*, Case No. 94-1-0001, FDO at 6 (July  
1994)(Emphasis Added)

<sup>95</sup> *Manke Lumber v. Diehl*, 113 Wn. App. 615 (2002).

<sup>96</sup> *Manke*, 113 Wn. App. at 627-28.

1           **cities to keep the goal ... in mind (along with the other 12 goals) in**  
2           **development their comprehensive plan.**

3           Therefore, despite the City of Wenatchee's contention, there is nothing in RCW  
4 36.70A.020 which required the County to prepare a written analysis of the consideration it  
5 undertook in regards to the GMA's goals. From the Record presented to the Board, it is  
6 clear the County scrutinized the GMA's goals during the amendment process. The  
7 applications for the proposed CPAs explicitly address the applicability of each goal to the  
8 proposed CPA.<sup>97</sup> The November 2007 Staff Report, although not specifically citing to a goal  
9 by number, addresses the consistency of the proposed CPAs with the goals of the GMA and  
10 addresses the subject matter of the goals, such as densities and public services.<sup>98</sup> The  
11 adopting resolutions, in both the Findings of Fact and the Conclusions of Law, denote the  
12 CPAs have been reviewed for consistency with the requirements of the GMA, with one of  
13 those requirements being for comprehensive plans to be guided by the Goals, and the CPAs  
14 were deemed to be consistent.<sup>99</sup> These documents and statements support a finding  
15 Chelan County had the GMA's goals in mind during the amendment process.

16           But the GMA requires more than keeping the goals in mind; rather it seeks to ensure  
17 the County's actions are consistent with the GMA's goals. In the *Save our Butte Save our*  
18 *Basin* case, the Board recognized the "inherent tension between some of the planning  
19 goals" but concluded although one goal may be given higher priority this did not sanction  
20 disregarding another goal where there was no showing that both goals cannot be  
21 achieved.<sup>100</sup> While the Board's holding as to no goal may be disregarded in its entirety is  
22 still viable, based on subsequent Board and court cases, the extent to what effect each goal  
23 has is based on the discretionary balancing performed by the County in light of local  
24 circumstances. Thus, the GMA permits, at times, for some goals to be given more

24 <sup>97</sup> Intervenor Exhibits 8, 9, and 10.

25 <sup>98</sup> Wenatchee Exhibit F. CCC 14.14.060 requires the County to consider whether the proposal is consistent  
26 with the goals of the GMA when analyzing a CPA.

<sup>99</sup> Wenatchee Exhibits G, H, and I.

<sup>100</sup> *Save our Butte Save our Basin*, Case No. 94-1-0001, FDO (July 1994).

1 significance than others and, for goals which have correlating mandates, it may be  
2 necessary for a goal to be partially sacrificed at the expense of another.<sup>101</sup>

3 Wenatchee asserts the County's actions were not consistent with the GMA's goals  
4 because the CPAs: Promote urban sprawl (Goals 1 and 2) by encouraging higher density  
5 development on the perimeter of the UGA; fail to consider how public services will be  
6 provided and prevents cost effective extensions of urban services (Goal 12); and fails to  
7 consider the feasibility of providing public transportation into these areas (Goal 3).  
8 Although Goals 4, 5, and 6 are important within GMA planning, the GMA specifically  
9 prohibits urban development outside of the UGA regardless of the County's desire to  
10 provide more affordable homes or protect property rights.<sup>102</sup> In permitting urban-like  
11 densities in violation of RCW 36.70A.110, the County has violated, at the minimum Goals 1  
12 and 2. Since such urban densities may create a demand for urban levels of services,  
including public transportation, the County has also violated Goals 3 and 12.

13 **Conclusion:**

14 Based upon a close review of the record provided by the parties, the Board  
15 determines there is some evidence in the record to support a conclusion that CPA 2007-  
16 017, CPA 2007-018, CPA 2007-019, and CPA 2007-021 all comply with RCW 36.70A.110,  
17 based on the definition of urban growth contained in RCW 36.70A.030(18). However, there  
18 is no substantial evidence in the record to support a conclusion that CPA 2007-011 and CPA  
19 2007-012 comply with RCW 36.70A.110 and RCW 36.70A.030(18). Because the Board  
20 finds and concludes the County is permitted urban-style growth within these rural lands, the  
21 Board also finds the County's actions were not guided by RCW 36.70A.020(1), .020(2),  
22 .020(3), and .020(12). The City has not set forth any argument in regards to RCW

23 <sup>101</sup> See e.g. *King County v. CPSGMHB*, 142 Wn.2d 543 (2000)(Holding Recreation Goal (Goal 9) did not  
24 override the more directive, mandated language for Agricultural Land (Goal 8) in conjunction with other  
25 mandated requirements set forth in the GMA; *Lewis County v. WWGMHB*, 157 Wn.2d 488, Fn. 12 (Noting the  
26 GMA goals merely offer guidance and when there is a conflict between the "general" planning goals and more  
specific requirements of the GMA, "the specific requirements control.)

<sup>102</sup> The Board knows of no state law or court holding which grants a property owner the fundamental right to  
have a land use designation/zoning application approved or to develop land at the highest economic value.

1 36.70A.020(8) and .020(10), and therefore those sections of the GMA are deemed  
2 abandoned.

### 3 **Permitting "Urban Growth" in Agricultural Lands**

#### 4 **Issue No. 5:**

5 Does Chelan County's approval of the six (6) Comp Plan amendments comply with  
6 RCW 36.70A.177, which directs that innovative zoning techniques shall be designed to  
7 conserve agricultural lands and encourage the agricultural economy, and that non-  
8 agricultural uses should be limited to lands with poor soils or otherwise not suitable for  
9 agricultural purposes?

#### 8 **The Parties' Position:**

##### 9 **Petitioners:**

10 Wenatchee states the County did not assess the agricultural value of the land when  
11 adopting the challenged CPAs and some of this land is currently being used for agricultural  
12 purposes, such as fruit orchards.<sup>103</sup> The City argues clustering is an innovative zoning  
13 technique intended to conserve agricultural lands; thus without an agricultural use there is  
14 no need for clustering.<sup>104</sup> Wenatchee further contends the fact it did not appeal earlier  
15 zoning allowing low density clusters does not bar it from appealing any changes to the  
16 cluster zoning.<sup>105</sup>

##### 17 **Respondent:**

18 Chelan County states all of the challenged CPAs pertain to designated rural lands, not  
19 designated agricultural lands, and the GMA permits clustering within rural areas.<sup>106</sup> The  
20 County further contends clustering is an acceptable innovative tool and is not merely for the  
21 preservation of agricultural lands.<sup>107</sup>

22  
23  
24 <sup>103</sup> Petitioner's HOM Brief, at 11; City's Opening HOM Argument.

<sup>104</sup> Petitioner's HOM Brief, at 11, citing to RCW 36.70A.177.

<sup>105</sup> Petitioner's HOM Brief, at 11.

<sup>106</sup> County's HOM Brief, at 5, citing RCW 36.70A.070(5)(b).

<sup>107</sup> County's HOM brief, at 5.

1 **Intervenor:**

2 Intervenor argues RCW 36.70A.177 specifically applies to agricultural lands of long-  
3 term commercial significance and there are “no agricultural lands of any kind and certainly  
4 none designated as having long-term significance, located within [the Intervenor’s]  
5 applications.<sup>108</sup> In addition, Intervenor notes that clustering is permitted not just by RCW  
6 36.70A.177 but by RCW 36.70A.070(5)(a) as well.<sup>109</sup>

7 **Petitioner’s Reply:**

8 The Board finds no direct reply by the City of Wenatchee in regards to this issue  
9 except to note it has presented sufficient evidence to demonstrate Chelan County did not  
10 comply with RCW 36.70A.177.<sup>110</sup>

11 **Board Analysis:**

12 In Legal Issue 5, the City asserts Chelan County violated RCW 36.70A.177, which  
13 provides, in relevant part, emphasis added:

14 (1) A county of a city may use a variety of *innovative zoning techniques in*  
15 *areas designated as agricultural lands of long-term commercial significance*  
16 *under RCW 36.70A.170...*

17 (2) Innovative zoning techniques a county or city may consider include, but  
18 are not limited to:

19 ...

20 (b) *Cluster zoning*, which allows new development on one portion of the  
21 land, leaving the remainder in agricultural or open space uses;

22 ...

23 Therefore, by its very language this provision applies only to land which has been  
24 designated as agricultural land of long-term commercial significance (Ag Land of LTCS)  
25 pursuant to RCW 36.70A.170. Prior to amending the land use designation, all of the land  
26 covered by the challenged CPAs, despite any current use for agricultural purposes, was  
designated as Rural Residential not Ag Land of LTCS. The County’s decision of which land

25 <sup>108</sup> Intervenor’s HOM Brief, at 13.

25 <sup>109</sup> Intervenor’s HOM Brief, at 13.

26 <sup>110</sup> Wenatchee Reply, at 2.

1 was to be designated as Ag Land of LTCS was made years ago, as this is the first step in  
2 GMA Planning,<sup>111</sup> and therefore the City's contention the County was required to consider  
3 the agricultural value of these lands prior to amending its CP is unsustainable and  
4 untimely.<sup>112</sup>

5 In addition, it also appears the City erroneously believes the sole purpose of an  
6 innovative zoning technique such as clustering is to conserve agricultural lands and the  
7 agricultural economy. However, as noted *infra*, RCW 36.70A.070(5)(b) specifically  
8 authorizes the use of clustering within rural lands as a method for achieving the variety of  
9 rural densities and uses the GMA mandates.

9 **Conclusion:**

10 The land encompassed by the challenged CPAs was not previously designated as Ag  
11 Land of LTCS pursuant to RCW 36.70A.170 but rather was designated for rural residential  
12 development. Although some of these lands may currently be used for agriculture, the  
13 provisions of RCW 36.70A.177 apply only to those lands determined to be of long-term  
14 commercial significance and thereby afforded special protection. Therefore, the City of  
15 Wenatchee failed to demonstrate Chelan County violated RCW 36.70A.177 when it adopted  
16 the challenged CPAs amending rural land use designations on land designated as rural.

17 **Annual Amendments to Comprehensive Plans**

18 **Issue No. 6:**

19 Is Chelan County in violation of RCW 36.70A.130(2) by approving comprehensive  
20 plan amendments twice in one year without any evidence on the record of special  
21 circumstances as defined by the GMA?  
22

23 <sup>111</sup> See *Redmond v. CPSGMHB*, 136 Wn.2d 38, 48 (1998)(Noting the GMA's requirement to designate natural  
24 resource lands from the outset even *before* local governments were obliged to declare their UGAs and adopt  
comprehensive plans in compliance with GMA).

25 <sup>112</sup> The Board recognizes the current use of this land may be agricultural in nature, but the GMA grants special  
26 consideration only to those agricultural lands which have long-term commercial significance – which these  
lands, based on the designation, are not.

1 **The Parties' Position:**

2 **Petitioners:**

3 The City of Wenatchee contends the GMA does not allow a county to accept  
4 applications for CPAs once a year and then proceed to review and approve those CPAs  
5 sporadically throughout the course of the year on an individual basis.<sup>113</sup> The City argues  
6 by adopting CPAs throughout the year, the County failed to ascertain the cumulative effects  
7 of the various proposals as required by the GMA. The City supports these assertions by  
8 setting forth a schedule of the CPAs' adoptions and noting the CPA process established by  
the County in the CCC 14.14.<sup>114</sup>

9 **Respondent:**

10 Chelan County argues a review of the County Staff Report "makes it obvious the  
11 County considered cumulative impacts and viewed the comprehensive plan amendments as  
12 a whole, even though physically different adoption dates were necessary due to the time  
13 constraints involved" because of the number of applications.<sup>115</sup> The County contends the  
14 purpose behind the GMA's once-per-year update limitation is to facilitate ease of public  
15 participation and CTED review and comment. In addition, the County asserts this provision  
16 of the GMA does not carry a penalty and, "given CTED's enforcement capabilities," the  
County's multiple adoption process must be GMA compliant because CTED did not object.<sup>116</sup>

17 **Intervenor:**

18 Intervenor contends the City is attempting to mislead the Board as the six challenged  
19 CPAs were part of 32 applications and were considered and analyzed concurrently by the  
20 County's Planning Staff. Due to the volume of CPAs, the BOCC reviewed the proposals over  
21 seven successive weeks with the six challenged CPAs readopted in July 2008 only because

22 \_\_\_\_\_  
23 <sup>113</sup> Wenatchee HOM Brief, at 12.

24 <sup>114</sup> Wenatchee HOM brief, at 12-13. Although the City cited to various portions of the County's Comprehensive  
Plan Amendment Process, CCC 14.14, in its briefing, its issue statement did not assert the County violated its  
own procedures. RCW 36.70A.290(1) prohibits the Board from addressing issues which were not present in  
the PFR.

25 <sup>115</sup> County's HOM Brief, at 6.

26 <sup>116</sup> County's HOM Brief, at 6.

1 of public notice problems.<sup>117</sup> Intervenor contends only two amendments occurred outside  
2 of this timeline, an amendment to the CFP and the adoption of a Sub-Area Plan, both of  
3 which Intervenor asserts were exempt from RCW 36.70A.130(2)'s once-a-year limitation.<sup>118</sup>

4 **Petitioners Reply:**

5 The Board finds no specific reply from the City on this issue except to reiterate the  
6 cumulative impact of all CPAs must be concurrently considered.<sup>119</sup>

7 **Board Analysis:**

8 With Legal Issue 6, the City of Wenatchee contends Chelan County violated RCW  
9 36.70A.130(2). RCW 36.70A.130(2)(a) requires the establishment of a process to ensure  
10 that updates, proposed amendments, or revisions are considered "no more frequently than  
11 once every year," with .130(2)(b) amplifying this limitation by stating all proposals *shall* be  
12 considered concurrently so that the cumulative effect of the various proposals can be  
ascertained. RCW 36.70A.130(2)(a) provides, in relevant part, emphasis added:<sup>120</sup>

13 Each county and city shall establish and broadly disseminate to the public a  
14 public participation program consistent with RCW 36.70A.035 and 36.70A.140  
15 that identifies procedures and schedules whereby *updates, proposed*  
16 *amendments, or revisions of the comprehensive plan are considered by the*  
*governing body of the county or city no more frequently than once every year*

17 ...

RCW 36.70A.130(2)(b) provides, in relevant part, emphasis added:

18 Except as otherwise provided in (a) of this subsection, *all proposals shall be*  
19 *considered by the government body concurrently so the cumulative effect of*  
20 *the various proposals can be ascertained ...*

21 As required by RCW 36.70A.130(2)(a), the County has established a program for the  
22 amendment of its comprehensive plan on a yearly basis and it therefore has complied with

23 \_\_\_\_\_  
24 <sup>117</sup> Intervenor HOM Brief, at 14.

<sup>118</sup> Intervenor HOM Brief, at 14.

<sup>119</sup> Wenatchee Reply Brief, at 3.

25 <sup>120</sup> RCW 36.70A.130(2)(a)(i)-(v), does provide some exceptions to this annual limitation, which as noted by  
26 Intervenor, apply to actions taken by the County not directly related to the challenged CPAs.

1 this provision of the GMA. Notwithstanding the GMA's and its own code's explicit limitation  
 2 on annual amendments, the County does not dispute it adopted multiple resolutions over a  
 3 two month time period and readopted the six challenged CPAs four months later. The City  
 4 of Wenatchee provides a listing on actions taken by the County during 2008.<sup>121</sup> This listing  
 5 denotes the following:<sup>122</sup>

- |    |                   |  |
|----|-------------------|--|
| 6  | February 12, 2008 | 3 Resolutions adopting CPAs 2007-006, 2007-027,<br>2007-030  |
| 7  | February 19, 2008 | 6 Resolutions adopting CPAs 2007-002, 2007-013,<br>2007-014, 2007-024, 2007-032, and 2007-034  |
| 8  | February 26, 2008 | 7 Resolutions adopting CPAs 2007-009, 2007-008,<br>2007-022, 2007-007, 2007-005, 2007-003, 2007-<br>001 and 1 Record of Decision for CPA 2007-004  |
| 9  | March 4, 2008     | 4 Resolutions in relationship to certain titles of the<br>Wenatchee Code, the City of Cashmere<br>Comprehensive Plan and Code, the City of Chelan<br>Comprehensive Plan and UGA, and City on Entiat<br>Comprehensive Plan and Code |
| 10 | March 11, 2008    | 6 Resolutions adopting CPAs 2007-015, 2007-016,<br><b>2007-21</b> , 2007-023, 2007-28, and 2007-31   |
| 11 | March 18, 2008    | 4 Resolutions adopting CPAs 2007-010, <b>2007-<br/>011</b> , <b>2007-12</b> , and the Wenatchee/Sunnyslope<br>Plan   |
| 12 | March 25, 2008    | 5 Resolutions adopting CPAs 2007-029, <b>2007-<br/>017</b> , <b>2007-18</b> , <b>2007-19</b> , and Wenatchee UGA<br>and 1 Record of Decision for the Wenatchee UGA.  |
| 13 | March 31, 2008    | 1 Resolution adopting revisions to the CFP and TE  |
| 14 | July 15, 2008     | 1 Resolution rescinding Sunset Clause  |
| 15 | July 22, 2008     | 12 Resolutions re-adopting CPAs 2007-010, <b>2007-<br/>011</b> , <b>2007-012</b> , 2007-015, 2007-016, <b>2007-<br/>017</b> , <b>2007-018</b> , <b>2007-019</b> , <b>2007-021</b> , 2007-<br>023, 2007-028, 2007-031               |

16 The County does not dispute the accuracy of the City's Exhibit. Therefore, the Record is  
 17 clear that multiple CPAs, each and everyone amending the County's Comprehensive Plan,  
 18  
 19

20 <sup>121</sup> Wenatchee Exhibit K  
 21 <sup>122</sup> Challenged CPAs are denoted in **Bold**

1 were adopted by the BOCC on at least eight different occasions between February 12, 2008  
2 and March 25, 2008, amounting to 35 separate Resolutions. Then, the six challenged CPAs  
3 adopted in March 2008, were subsequently rescinded due to the fact the initial action failed  
4 to comply with CCC 14.08's noticing requirements, and re-adopted on July 22, 2008.

5 The County does not contest the multiple resolutions and adoption dates, rather, the  
6 County contends its November 2007 Staff Report "makes it obvious the County considered  
7 cumulative impacts and view the comprehensive plan amendments as a whole, even though  
8 physically different adoption dates were necessary due to the time constraints involved"  
9 because of the number of applications.<sup>123</sup> The Board recognizes that given the complexity  
10 and level of detailed required for comprehensive plan amendments, to conduct multiple  
11 public hearings in a single day is not what RCW 36.70A.130(2) requires nor does the Board  
12 expect any jurisdiction to engage in a marathon of public hearings. But the City's alleged  
13 violation of RCW 36.70A.130(2) does not stem from multiple public hearings but from the  
14 amendment of a comprehensive plan more than once in a given year, something that is  
15 explicitly prohibited.

16 If the Board considers each resolution as an amendment to the County's CP, then the  
17 County has far exceeded the once-per-year limitation. However, many jurisdictions adopt  
18 proposed amendments with a separate legislative action for each and the Board finds no  
19 inherent error in this approach. However, Chelan County did more than just adopt separate  
20 resolutions for each CPA; it adopted those separate resolutions on separate dates. The  
21 County amended its CP on February 12, 2008 with the approval of three CPAs; then  
22 amended its CP again on February 19, 2008 with the approval of six CPAs, with this cycle  
23 repeating weekly until March 25, 2008. For example, on December 10, 2007, the Planning  
24 Commission held a public hearing on CPA 2007-011 and, on March 10, 2008, the BOCC held  
25 a public meeting on this proposed CPA at which public testimony was taken, then, on March  
26

---

<sup>123</sup> County HOM Brief, at 6.

1 18, 2008, the Board adopted Resolution 2008-56 approving the CPA and this enactment  
2 became effective on the same date.

3 The problem is before the BOCC, the ultimate decision-maker, even heard public  
4 testimony in relationship to CPA 2007-011, it had already enacted resolutions which  
5 adopted 16 other CPAs changing land use designations and four related to its cities'  
6 comprehensive plans. All of these previously adopted enactments were in effect and had  
7 amended the County's CP. Thus, although the County Planning Staff may have prepared a  
8 report which encompassed the proposed CPAs in their entirety, the BOCC was unable to  
9 fully consider the impacts of all the CPAs if it had yet to hear public testimony and comment  
10 on each of the proposed CPAs – with this public participation element of GMA planning  
11 being vital to the final decision. As noted above, **the County is not precluded from**  
12 **holding multiple public hearings but it may not amend its comprehensive plan**  
13 **before the conclusion of all public hearings thereby assuring the BOCC has all of**  
14 **the information needed to make a concurrent, reasoned, informed decision as to**  
15 **the cumulative effects of the various proposals.**

16 In addition, after adopting the six challenged CPAs these CPAs, the BOCC rescinded  
17 these CPAs due to a failure in public noticing requirements and then subsequently re-  
18 adopted them in July 2008. Although RCW 36.70A.130(2)(a) provides for consideration of  
19 amendments more frequently than once per year in limited situations, failure to comply with  
20 public noticing provisions is not one of the listed exceptions.<sup>124</sup> RCW 36.70A.130(2)(b)

---

21 <sup>124</sup> RCW 36.70A.130(2) also provides for amendments outside of the annual cycle in emergency situations.  
22 Although the GMA does not define emergency, CCC 14.14.130(3) defines emergency as being: (Emphasis  
23 added):

24 An emergency amendment may only be adopted if the board of county commissioners finds that the  
25 *amendment is necessary to address an immediate situation of federal, state, subarea or county-wide*  
26 *concern regarding the public health, safety, and general welfare, as opposed to a private interest; to*  
*correct a misrepresentation, mistake, or error that has been made, and that can be substantiated and*  
*documented as an oversight or omission by the county; and the situation cannot adequately be*  
*addressed by waiting until the annual comprehensive plan amendment process.*

And CCC 14.14.130(3) further establishes the process by which such amendments may be considered:

Emergency amendments shall be initiated by the board of county commissioners, evaluated and  
analyzed by staff and will be reviewed by the planning commission at a public hearing, from which a

1 does provide that a comprehensive plan may be amended more than once a year if the  
2 amendment is intended to resolve an appeal filed with the Board.

3 The re-adoption of the six CPAs stemmed from another case filed by the City of  
4 Wenatchee against Chelan County – Case No. 08-1-0012. In that case, Wenatchee  
5 asserted the County had violated the GMA with the adoption of Resolutions approving five  
6 CPAs – 2007-011, 2007-012, 2007-18, 2007-19, and 2007-21. The Board extended the  
7 case to allow for settlement and then, on July 17, 2008, entered a Stipulated Order of  
8 Dismissal based on the County's rescission of the adopting Resolutions and a promise by  
9 the County to conduct a properly notice public hearing.<sup>125</sup> The Resolutions were rescinded  
10 in June 2008, a public hearing was conducted on July 14, and the new enactment of  
11 resolutions approving the CPAs occurred on July 22, 2008.<sup>126</sup> Based on this, the Board  
12 closed Case No. 08-1-0012. Therefore, the action taken by the County in July 2008, which  
13 effectively amended its Comprehensive Plan yet again, appears to have been taken to  
14 resolve Case No. 08-1-0012 and, therefore is permitted by RCW 36.70A.130(2)(b).

14 However, the challenged CPAs and the very same issues raised in the prior appeal  
15 are before the Board yet again in the present matter. As noted *supra*, the activity  
16 occurring during the months of February and March, with resolutions being enacted before  
17 the close of all public hearings, violated RCW 36.70A.130(2)(a)'s annual limitations.

---

18 recommendation on the proposed amendment(s) will be forwarded to the board of county  
19 commissioners. Recommendations by staff and the planning commission and action taken on  
20 emergency amendments by the board of county commissioners shall be based upon the emergency  
21 amendment meeting the criteria of Section 14.14.060.

21 Although CCC 14.14.130(3) references the ability to enact an emergency amendment based on mistake or  
22 error, it also limits consideration if the situation could wait until the annual CPA process. In addition, this  
23 provision of the CCC sets forth specific procedures by which emergency amendments are processed. The re-  
24 adopting resolutions make no reference to this process nor do the resolutions set forth reasoning on why a  
25 change in land use designation could not be addressed during the next CPA annual process. Thus, not only  
26 does the Board not believe the July 2008 re-adoption of the rescinded resolutions amounted to the type of  
emergency contemplated by either the GMA or the County's own code, the adopting resolutions themselves  
give no indication these amendments were emergency enactments.

<sup>125</sup> July 17, 2008 Order of Dismissal.

<sup>126</sup> *Id.*

1 However, since it is only the July 2008 resolutions before the Board, and not any of the  
2 resolutions from the earlier part of the year, the Board's review is limited to whether or not  
3 the challenged resolutions violate the GMA. It is clear from the Record Chelan County  
4 amended its CP more than once in 2008 as the adoption of Resolutions approving the five  
5 of the six challenged CPAs did not resolve the issues on appeal related to those CPAs. In  
6 addition, CPA 2007-17 was not part of Case No. 08-1-0012, so its adoption in July 2008  
7 explicitly violated the GMA's limitation on amendments occurring only once a year.

8 In addition to addressing the merits of this issue, the Board feels it must respond to  
9 some erroneous assumptions posited by Chelan County – the purpose behind the annual  
10 limitation, CTED's authority, and GMA penalties. First, the County stated the purpose  
11 behind the "once per year update limit" is to facilitate public participation and CTED  
12 review.<sup>127</sup> Although the requirement of early and continuous public participation is a  
13 keystone to GMA planning, the purpose of once per year limitation is clearly stated: "all  
14 proposals shall be considered by the governing body concurrently so the cumulative effect  
15 of the various proposals can be ascertained."<sup>128</sup> Thus, it is the need for concurrent review  
16 in order to ascertain cumulative effects that drives the once per year limitation.

17 Second, as for CTED's "enforcement capabilities," RCW 36.70A.106 requires every  
18 jurisdiction to notify CTED of its proposed amendments 60 days prior to final adoption in  
19 order to allow for commenting on the proposal. However, unlike the Shoreline Management  
20 Act, RCW 90.58, which requires the approval of a Shoreline Management Program (SMP) by  
21 the Department of Ecology prior to the SMP becoming effective, the GMA does not require  
22 CTED's approval. In addition, the mere fact CTED does not challenge a local jurisdiction's  
23 action does not equate to compliance with the GMA. If that were the case, most of the  
24 challenges brought before the Board would result in a finding of compliance as CTED has

---

24 <sup>127</sup> The Board notes that RCW 36.70A.130(2)(a) does not limit the "once per year" requirement to "updates,"  
25 rather this limitation pertains to "updates, proposed amendments, or revisions" with "updates" being  
26 specifically defined to be the review and revision required by RCW 36.70A.130(1) in accordance with RCW  
36.70A.130(4).

<sup>128</sup> RCW 36.70A.130(2)(b).

1 been a party in only a handful of cases since the GMA's inception. Other than its ability to  
2 file a petition, CTED, in and of itself, has no independent enforcement capabilities.  
3 Enforcement of the GMA's goals and requirements is done through extensive public  
4 involvement during the adoption process and, if necessary, through the filing of a Petition  
5 for Review with the Board by a party with standing.

6 Lastly, as to the County's statement that RCW 36.70A.130(2) "is not a requirement  
7 that carries a penalty clause"<sup>129</sup> and the GMA and related WACs essentially contain only  
8 guidelines and recommendations.<sup>130</sup> The Board does not deny the WAC provisions are seen  
9 as recommendations; however there are times when jurisdictions are mandated to at least  
10 consider the WACs.<sup>131</sup> Although the GMA uses permissive, discretionary language in some  
11 of its provisions, the GMA is not just a set of guidelines and recommendations but sets forth  
12 various mandates for jurisdictions to follow.<sup>132</sup> Failure to abide by the GMA's mandates  
13 results in a finding of non-compliance and, in certain situations, a determination of invalidity  
14 and the imposition of sanctions.<sup>133</sup> These are the GMA's "penalties" and they are  
15 applicable to every GMA provision.

**Conclusion:**

16 With its PFR, the City of Wenatchee challenged six resolutions which were each  
17 approved a CPA after conducting a public hearing. Five of these CPAs, although adopted

---

18 <sup>129</sup> County's HOM, at 6.

19 <sup>130</sup> At the HOM, County Attorney asserted that the GMA contained guidelines and the WAC were mere  
20 recommendations.

21 <sup>131</sup> *E.g.* RCW 36.70A.170(2) states that counties and cities *shall consider* the WAC when designation natural  
22 resource lands and critical areas.

23 <sup>132</sup> *E.g.*, compare the discretionary, permissive language of RCW 36.70A.080(1)(A comprehensive plan *may*  
24 *include* additional elements) and RCW 36.70A.540(1)(a)(Jurisdiction *may enact* or expand affordable housing  
25 incentive programs) with non-discretionary, mandatory language of RCW 36.70A.070(Each comprehensive  
26 plan *shall include* 7 elements), RCW 36.70A.200(1)(Each comprehensive plan *shall include* a process for  
identifying and siting essential public facilities); RCW 36.70A.172(1)(Jurisdiction *shall include* the best available  
science in development policies and regulations for critical areas)/

<sup>133</sup> RCW 36.70A.300(1)(Board shall issue a final order based on whether or not the jurisdiction is in compliance  
with the GMA); RCW 36.70A.302(1)(Board may determine that all or part of the comprehensive plan or  
development regulations are invalid); RCW 36.70A.340, .345(Upon a finding of non-compliance, the Governor  
may impose sanctions).

1 outside of the annual amendment cycle, pertained to an appeal filed with the Board – Case  
2 No. 08-1-0012. However, the July 2008 enactments did not resolve the issues underlying  
3 the prior case as the very same issues pertaining to the very same CPAs are before the  
4 Board in this matter. In addition, one of the challenged CPAs – CPA 2007-17 – was not  
5 raised in Case No. 08-1-0012, so the adoption of Resolution 2008-100 which approved this  
6 CPA explicitly resulted in an unauthorized amendment to the County's CP, therefore, the July  
7 enactments amount to a violation of RCW 36.70A.130(2)'s limitation on annual amendments  
8 of the CP. Thus, the Board finds and concludes that, in relationship to these six CPAs,  
9 Chelan County violated RCW 36.70A.130(2)'s annual amendment limitation.

10 The Board reiterates although the resolutions of February and March are not before  
11 the Board, the County is duly warned – when taking action it must complete the required  
12 public hearing process *prior* to adopting *any* amendments to its comprehensive plan or, the  
13 end result will be multiple amendments without a concurrent, cumulative review since the  
14 public hearing process is key to developing information and *all* information must be before  
15 the final decision makers in order to do a complete review.

#### 16 **VII. FINDINGS and CONCLUSIONS**

- 17 1. Chelan County is a county located east of the crest of the Cascade  
18 Mountains and opted to plan under the GMA and is therefore required  
19 to plan pursuant to RCW 36.70A.040.
- 20 2. On July 22, 2008, Chelan County enacted six Resolutions which  
21 approved six comprehensive plan amendments. These amendments  
22 changed the land use designation/zoning of rural lands within Chelan  
23 County.
- 24 3. The City of Wenatchee filed a timely appeal of the County's action by  
25 filing a Petition for Review with the Board. Pursuant to RCW  
26 36.70A.280 and .290, this Board has jurisdiction over the parties and  
subject matter of this action and the City of Wenatchee has standing to  
raise the issues presented in the Petition for Review.
4. To demonstrate a violation of RCW 36.70A.115, the City of Wenatchee  
is required to show the adoption of the challenged CPAs result in a

1 deficit of land suitable for development within the 20 year planning  
2 horizon so as to create insufficient capacity to accommodate allocated  
3 growth projections within the existing Wenatchee UGA.

4 5. The City presented no evidence to demonstrate the *current* Wenatchee  
5 UGA is unable to accommodate urban growth allocated to the area  
6 within the 20-year planning horizon.

7 6. The City noted the challenged CPAs encompass approximately 1,200  
8 acres of rural land, with a potential development capacity of 382  
9 residential units, the City did not explain why or how the CPAs create a  
10 deficit of land suitable for development.

11 7. The City of Wenatchee has failed to carry its burden of proof in  
12 demonstrating that the County's action in approving the challenged  
13 Comprehensive Plan Amendments violates RCW 36.70A.115.

14 8. The City of Wenatchee alleges Chelan County's approval of several  
15 Comprehensive Plan Map Amendments does not comply with RCW  
16 36.70A.110, in correlation with the definition of urban growth provided in  
17 RCW 36.70A.030(18), because the Map Amendments would allow the location  
18 of unlimited numbers of cluster subdivisions directly adjacent to each other.  
19 Wenatchee does not and cannot challenge the text of the CP nor the system  
20 of future land use categories provided for in the CP, since those prior County  
21 actions were not appealed. Rather, the City's challenge here is limited to  
22 whether these distinct land use map amendments improperly allow for "Urban  
23 Growth" in a "Rural Area."

24 9. The six appealed CPAs are all located outside the Urban Growth Area and  
25 within the Rural Area of Chelan County but in close proximity to the Urban  
26 Growth Area.

10. In a November 17, 2007, Staff Report, the Chelan County planning staff  
found some of the proposals have not shown that they meet the  
requirements outlined in the RCW. Specifically, the staff found CPA  
2007-017, CPA 2007-018, and CPA 2007-021 meet the rural  
development guidelines in RCW 36.70A.070(5) because these  
applications have shown they contain or control rural development and  
also assure the visual compatibility of the rural development of the  
surrounding rural areas.

- 1           11.    County Planning staff found CPA 2007-011, CPA 2007-012, and CPA  
2                    2007-019 all fail to show how they would meet the Goals outlined  
3                    above for Rural Development and the measures governing rural  
4                    development. Staff also found these three applications don't meet the  
5                    requirements of assuring visual compatibility of rural development with  
6                    the surrounding rural areas, and in some cases, doesn't fully protect  
7                    critical areas by shifting the densities of those subject parcels to higher  
8                    densities and allowing for closer and more development next to them.
- 9           12.    The planning staff found that CPA 2007-017, CPA 2007-018, and CPA  
10                   2007-021 seem to be consistent with the goals and policies of the  
11                   Chelan County Comprehensive Plan. In contrast, the planning staff  
12                   found that CPA 2007-011, CPA 2007-012, and CPA 2007-019 are  
13                   viewed as not meeting the Goals and Policies of the CP, specifically the  
14                   Rural Element Goal 1, Policy 3 to "provide for a variety of rural  
15                   densities and designations that would accommodate the wide variety of  
16                   rural land uses which represent the rural character.
- 17           13.    In analyzing the CP land use designation/siting criteria, County Staff  
18                   found CPA 2007-021 was consistent with the designation citing criteria.  
19                   Staff found CPA 2007-011 and CPA 2007-012 were not consistent with  
20                   the designation and siting criteria. As to CPA 2007-021, staff found it  
21                   specifically met the purpose statement and intent of the RR2.5  
22                   designation by showing it was consistent with the rural character and  
23                   rural development provisions outlined in the CP by containing or  
24                   controlling rural development and also assuring the visual compatibility  
25                   of the rural development of the surrounding rural areas and can  
26                   providing buffering and transitions between existing rural  
                  developments. As to CPA 2007-011 and CPA 2007-012, County Staff  
                  found they did not meet the requirements of assuring visual  
                  compatibility of rural development with the surrounding rural areas, nor  
                  did they coincide with surrounding land adjacent to those subject  
                  properties because they did not offer a transition area, as no other  
                  RR2.5 land uses are located adjacent to these parcels, creating pockets  
                  of higher densities in areas where lower densities are predominant.
14.    The November 2007 Staff Report does not make any distinction  
                  between urban governmental services and rural governmental services.  
                  Thus, it is unclear what the staff found as to whether there was a need  
                  for urban governmental services in CPA 2007-011 and CPA 2007-012.

- 1 15. There is no evidence in the record Chelan County conducted the required  
2 cumulative effects analysis to determine whether the CPAs would create  
3 demands for urban levels of public services and facilities to serve the 2.5 acre  
4 (or smaller with allowable clustering) lots. There is, however, evidence in the  
5 record suggesting 2.5 acre lots in close proximity to the urban area may  
6 create demands for urban levels of public services and facilities.
- 7 16. The Chelan County Comprehensive Plan requires proposed amendments serve  
8 the interests of both the applicant and the general public including public  
9 health, safety, and welfare. The planning staff concluded "other studies would  
10 need to be performed to show the general public being served." However, the  
11 County commissioners made a conclusion of law that "the public use and  
12 interest will be served in general by these amendments."
- 13 17. The City of Wenatchee has carried its burden of proof in demonstrating that  
14 the County's action in approving two of the challenged Comprehensive Plan  
15 Amendments – CPA 2007-011 and 2007-012 – permits urban growth within  
16 the rural areas of Chelan County in violation of RCW 36.70A.110, given the  
17 definition of urban growth set forth in RCW 36.70A.030(18).
- 18 18. There is nothing in RCW 36.70A.020 which requires the County to prepare a  
19 written analysis of the consideration it undertook in regards to the GMA's  
20 goals. From the Record presented to the Board, it is clear the County  
21 scrutinized the GMA's goals during the amendment process.
- 22 19. The City has not set forth any argument in regards to RCW 36.70A.020(8) and  
23 .020(10), and therefore those sections of the GMA are deemed abandoned.
- 24 20. The GMA requires the County's action to be consistent with the goals. In  
25 permitting urban-like densities in violation of RCW 36.70A.110, the County  
26 actions are not consistent with, at a minimum, GMA Goals 1 and 2 which  
address urban growth and sprawl. Since such urban densities may create a  
demand for urban levels of services, including public transportation, the  
County actions are not consistent with Goals 3 and 12.
- 21 21. The City of Wenatchee, because it demonstrated that the County is permitting  
22 urban growth outside of a designated Urban Growth Area, carried its burden  
23 of proof in demonstrating that the County's GMA planning decisions were not  
24 guided by the goals of the GMA as set forth in RCW 36.70A.020(1), .020(2),  
25 .020(3), and .020(12).

- 1 22. All of the land covered by the challenged CPAs, despite any current use  
2 for agricultural purposes, was designated as Rural Residential not  
3 Agricultural Lands of Long-Term Commercial Significance.
- 4 23. The provisions of RCW 36.70A.177 apply only to those lands  
5 determined to be of long-term commercial significance and thereby  
6 afforded special protection.
- 7 24. The City of Wenatchee has failed to carry its burden of proof in  
8 demonstrating that the County's action in approving the challenged  
9 Comprehensive Plan Amendments violates RCW 36.70A.177.
- 10 25. The County does not dispute it adopted multiple resolutions over a two  
11 month time period and readopted the six challenged CPAs four months  
12 later. The Record is clear that multiple CPAs, each and everyone  
13 amending the County's Comprehensive Plan, were adopted by the  
14 BOCC on at least eight different occasions between February 12, 2008  
15 and March 25, 2008, amounting to 35 separate Resolutions.
- 16 26. After adopting the six challenged CPAs in March 2008, the BOCC  
17 rescinded these CPAs in June 2008 due to a failure in public noticing  
18 requirements and then subsequently re-adopted them in July 2008.  
19 Although RCW 36.70A.130(2)(a) provides for consideration of  
20 amendments more frequently than once per year in limited situations,  
21 failure to comply with public noticing provisions is not one of the listed  
22 exceptions.
- 23 27. The re-adoption of the six CPAs stemmed from another case filed by the  
24 City of Wenatchee against Chelan County – Case No. 08-1-0012.  
25 Therefore, the action taken by the County in July 2008, which effectively  
26 amended its Comprehensive Plan yet again, appears to have been taken  
to resolve Case No. 08-1-0012 and, therefore is permitted by RCW  
36.70A.130(2)(b). However, five of the challenged CPAs are the same  
and the very same issues raised in the prior appeal are before the Board  
yet again in the present matter.
28. It is clear from the Record Chelan County amended its CP more than  
once in 2008 as the adoption of Resolutions approving the five of the six  
challenged CPAs did not resolve the issues on appeal related to those  
CPAs. In addition, CPA 2007-17 was not part of Case No. 08-1-0012, so

1 its adoption in July 2008 explicitly violated the GMA's limitation on  
2 amendments occurring only once a year.

- 3 29. The City of Wenatchee has carried its burden of proof in demonstrating  
4 that the County's action in approving the challenged Comprehensive  
5 Plan Amendments on July 22, 2008, which effectively amended the  
6 County's Comprehensive Plan more than once in a given year in  
7 violation of RCW 36.70A.130(2).

### 8 **VIII. ORDER**

9 Based upon review of the Petition for Review, the briefs and exhibits submitted by  
10 the parties, the GMA, prior Board Orders and case law, having considered the arguments of  
11 the parties, and having deliberated on the matter the Board ORDERS:

- 12 1. Chelan County's action is enacting Resolution 2008-106, approving  
13 Comprehensive Plan Amendment CPA 2007-011, and Resolution 2008-  
14 012, approving Comprehensive Plan Amendment CPA 2007-012,  
15 violates RCW 36.70A.110 and was not guided by RCW 36.70A.020(1),  
16 .020(2), .020(3), and .020(12).
- 17 2. Chelan County's action in enacting Resolutions 2008-106, 2008-107,  
18 2008-110, 2008-111, 2008-112, and 2008-113, respectively approving  
19 Comprehensive Plan Amendments CPA 2007-011, 2007-012, 2007-017,  
20 2007-018, 2007-019, and 2007-021, violates RCW 36.70A.130(2).
- 21 3. These Resolutions and related Comprehensive Plan Amendments are  
22 remanded to Chelan County for the County to take legislative action to  
23 achieve compliance with the Growth Management Act pursuant to this  
24 decision no later than **July 6, 2009, 120 days** from the date issued.  
25 The following schedule for compliance, briefing and hearing shall apply:
- 26 • The County shall file with the Board by **July 13, 2009, an original  
and four copies** of a **Statement of Actions Taken to Comply**  
(SATC) with the GMA, as interpreted and set forth in this Order. The  
SATC shall attach copies of legislation enacted in order to comply. The  
County shall simultaneously serve a copy of the SATC, with  
attachments, on the parties. **By this same date, the County shall  
file a "Remanded Index," listing the procedures and materials  
considered in taking the remand action.**

- 1 • By no later than **July 27, 2009**<sup>134</sup>, Petitioners shall file with the Board  
2 an **original and four copies** of their Comments and legal arguments  
3 (Petitioners' Compliance Brief) on the County's SATC. Petitioners shall  
4 simultaneously serve a copy of their Comments and legal arguments on  
5 the parties.
- 6 • By no later than **August 10, 2009**, the County and Intervenors shall  
7 file with the Board an **original and four copies** of their Response to  
8 Comments and legal arguments (Respondent's and Intervenor's  
9 Compliance Brief.) The County and Intervenors shall simultaneously  
10 serve a copy of such on the parties.
- 11 • By no later than **August 17, 2009**, Petitioners shall file with the Board  
12 an **original and four copies** of their Reply to Comments and legal  
13 arguments (Petitioners' Optional Compliance Reply Brief.) Petitioners  
14 shall serve a copy of their brief on the parties.
- 15 • Pursuant to RCW 36.70A.330(1) and WAC 242-02-891<sup>135</sup> the Board  
16 hereby schedules a **telephonic Compliance Hearing for August  
17 24, 2009, from 10:00 a.m. to 11:30 a.m. The compliance  
18 hearing shall be limited to consideration of the Legal Issues  
19 found noncompliant and remanded in this FDO.** The parties will  
20 call **360-407-3780 followed by 775739 and the # sign.** Ports are  
21 reserved for: Mr. Smith, Ms. Hinkle, and Mr. Dimmitt. If additional ports  
22 are needed please contact the Board to make arrangements.

23  
24 If the County takes legislative compliance actions prior to the date set forth in  
25 this Order, it may file a motion with the Board requesting an adjustment to this  
26 compliance schedule.

---

24 <sup>134</sup> July 27, 2009, is also the deadline for a person to file a request to participate as a "participant" in the  
25 compliance proceeding. See RCW 36.70A.330(2).

26 <sup>135</sup> 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 Pursuant to RCW 36.70A.300 this is a final order of the Board.

2 **Reconsideration:**

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

9 **Judicial Review:**

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

13 **Enforcement:**

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

19 ///

21 ///

22 ///

24 ///

1 **Service:**

2 **This Order was served on you the day it was deposited in the United States mail.**

3 **RCW 34.05.010(19)**

4 **SO ORDERED** this 6<sup>th</sup> day of March 2009.

5 EASTERN WASHINGTON GROWTH MANAGEMENT  
6 HEARINGS BOARD

7 \_\_\_\_\_  
8 Joyce Mulliken, Board Member

9 \_\_\_\_\_  
10 John Roskelley, Board Member

11 \_\_\_\_\_  
12 Raymond L. Paolella, Board Member

13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26