

**BEFORE THE WESTERN WASHINGTON GROWTH
MANAGEMENT HEARINGS BOARD**

CITY OF SEDRO-WOOLLEY, FRIENDS OF SKAGIT
COUNTY, et al.,

Petitioners,

v.

SKAGIT COUNTY,

Respondent,

NO. 03-02-0013c

**COMPLIANCE
HEARING
ORDER**

I. SUMMARY

Four years ago the local governments of Skagit County informed the Board that they had chosen a system of interlocal agreements which would require the County to adopt and implement the cities' development regulations within the cities' respective Urban Growth Areas (UGAs). This system, they argued, would comply with the Growth Management Act (GMA) requirements for urban development, efficient timing and phasing of urban infrastructure and transference of governance within the municipal UGAs. The Board was not convinced that this proposed system would work, but gave the local governments the opportunity to update their interlocal agreements and show that the County would timely adopt City development regulations (DRs) and keep them current. Unfortunately, the local governments in Skagit County have been unable to put aside their differences and agree upon compliant development regulations applicable to lands within the municipal UGAs that are in the County's jurisdiction. We therefore conclude in this decision that we can wait no longer for the parties to agree upon the development regulations that will apply in the unincorporated portions of the County's UGAs; instead, in order to come into compliance, the County must adopt a set of development regulations which ensure development at urban

densities with concurrent urban infrastructure and transformance of governance within the unincorporated portions of the municipal UGAs.

In an earlier order in this case, dated May 17, 2004, we found that we do not have jurisdiction over the challenges to Resolution R20030160 raised by Sedro-Woolley in its Petition for Review regarding that Resolution (originally filed as WWGMHB Case No. 03-2-0013) because the Resolution is not a comprehensive plan, a development regulation or an amendment to either. However, we accept the resolution as evidence on the question of the County's compliance with the Board's prior orders.

II. HISTORY

Since this consolidated case has a very complex history, we will attempt to present a brief framework of historical perspective before proceeding with the decision.

A number of earlier cases dealt with the issues of transformance of governance and timely provision of urban infrastructure in Skagit County UGAs. These have been consolidated over time into the instant case:

1. *Abenroth v. Skagit County*, WWGMHB No. 97-2-0060c (“*Abenroth*”);
2. *Evergreen Islands v. Skagit County*, WWGMHB No. 00-2-0046c (“*Evergreen*”);
3. *City of Anacortes v. Skagit County*, WWGMHB No. 00-2-0049c (“*Anacortes*”); and
4. *Friends of Skagit County v. Skagit County*, WWGMHB No. 00-2-0050c (“*FOSC*”).

The earlier transformance of governance noncompliance issues in *Abenroth* were subsumed into *FOSC* (WWGMHB No. 00-2-0050c).

In the February 6, 2001 Final Decision and Order (FDO) in this case,¹ we stated:

¹ This case is a consolidation of *FOSC* (WWGMHB No. 00-2-0050c) with the new Petition for Review filed by the City in WWGMHB Case No. 03-2-0013. The consolidated case number containing both matters is WWGMHB Case No. 03-2-0013c.

The purpose of the Board's orders in *Abenroth* and the purpose for the GMA transformation of governance requirement is to assure that growth in the unincorporated UGAs will be at urban levels consistent and coordinated with the levels of the cities, since the UGAs will eventually become annexed into these cities. The County has chosen to assure this consistency and coordination through the adoption of the development regulations (DRs) of the cities, and the application of those DRs by the County in unincorporated UGAs.

WWGMHB Case No. 00-2-0050c, *FOSC v. Skagit County* (Final Decision and Order, February 6, 2001) at 4

Also consolidated into Case No. 00-50c was FOSC's petition for review re: City regulations, assigned Case No. 00-2-0038. In that petition for review, FOSC specifically raised the issue: "3.1.1 Whether Ordinance No. 17938 (relying on adoption of city regulations within municipal UGAs) allowed development in a leapfrog, sprawling manner without city annexation and city services, failing to comply with the Act?"

The proposed approach was a major concern to the Board because of the potential failure of the local governments to work together to make this approach effective and compliant. The cities joined the County in pleading that this would not be the case. We never found compliance on that issue, but we allowed the County and cities time to demonstrate that they could agree upon the appropriate development regulations within the unincorporated portions of the UGAs. We stressed that the mechanism of interlocal agreements, providing that the County would adopt City development regulations ("DRs"), could only be considered as an interim solution until the development regulations themselves were actually adopted. Further, this scheme could only comply with the Act's concurrency and transformation of governance requirements if the County imposed upon itself an ongoing obligation to timely adopt new or amended City DRs applicable to development within the unincorporated portions of the UGAs. In that regard, we stated:

Regarding the interim County implementation of City regulation, in order to achieve compliance the County must, within 30 days, adopt current City DRs and keep them current in the future.

WWGMHB Case No. 00-2-0050c, *FOSC v. Skagit County* (Final Decision and Order, February 6, 2001) at 6

The November 30, 2001 Compliance Order in *FOSC* held that the timely adoption of city regulations within the UGA still had not been achieved. Further, timely adoption of city development regulations alone would not bring the County into compliance. The County also needed to “negotiate and adopt updates to interlocal agreements to ensure that annexation will be facilitated to enable the required efficient timing and phasing of urban infrastructure extension and urban development within municipal UGAs. Also, the County must adopt provisions for urban development to occur when full urban infrastructure and services are available.” WWGMHB Case No. 00-2-0050c, *FOSC v. Skagit County* (Compliance Order, November 30, 2001) at 7-8.

The more general transformance of governance and concurrent urban infrastructure issues from *Evergreen* and *Anacortes* were also later subsumed into this case, WWGMHB Case No. 03-2-0013c.

(2) *Evergreen*

In the November 30, 2001 Compliance Order in this case at 19, the Board noted that it would “track County progress toward transformance of governance, timely annexations, and efficient phasing of urban infrastructure and development through the remands in Cases 00-2-0050c and 00-2-0049c.”

(3) *Anacortes*

In the July 25, 2003 Compliance and Lifting of Invalidity Order, the Board noted that the City of Anacortes’ ongoing concerns regarding transformance of governance and development within the UGA would be resolved in Case No. 00-2-0050c.

After all of the above were consolidated into *FOSC*, the compliance issues in *FOSC* were later consolidated with the new Petition for Review filed by Sedro Woolley (originally WWGMHB Case No. 03-2-0013) into the current case, 03-2-0013c, *City of Sedro-Woolley, et al. v. Skagit County*

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

Ordinances and Resolutions adopted in response to a finding of noncompliance are presumed valid. RCW 36.70A.320.

The burden is on petitioners to demonstrate that the action taken by Skagit County is not in compliance with the requirements of the Growth Management Act (GMA, Act). RCW 36.70A.320(2).

Pursuant to RCW 36.70A.320(3), we “shall find compliance unless [we] determine that the action by [Skagit County] is clearly erroneous in view of the entire record before the board and in light of the goals and requirements of [the GMA].” In order to find the County’s action clearly erroneous, we must be “left with the firm and definite conviction that a mistake has been made.” *Department of Ecology v. PUD 1*, 121 Wn.2d 19, 201 (1993).

IV. ISSUE RAISED REGARDING RESOLUTION R20030160

In their Petition for Review filed in WWGMHB Case No. 03-2-0013c, Petitioners challenge Skagit County Resolution R20030160. Skagit County Resolution R20030160 was adopted on May 12, 2003. It sets forth the reasons that the Skagit County Board of County Commissioners decided not to adopt the City’s development regulations pertaining to sewer infrastructure in the unincorporated Sedro Woolley UGA. Index No. 1059. We have already held that Resolution R20030160 is not

subject to Board jurisdiction because it is neither a comprehensive plan amendment nor a development regulation or an amendment to it:

While we believe that the Resolution is pertinent to the question of compliance and the request for invalidity in *Friends of Skagit County v. Skagit County*, WWGMHB Case No. 00-2-0050c, we agree with the County that it does not form the basis for a new petition for review.

Sedro Woolley v. Skagit County, WWGMHB Case No. 03-2-0013c (Order Dismissing Issues Raised in the 2003 Petition for Review, May 17, 2004).

This opinion therefore deals with the County's compliance efforts in response to the Board's prior orders.

V. COMPLIANCE ISSUES

Compliance Issue 1: Has the County achieved compliance with its current approach to ensure transformance of governance, timely annexations, and efficient phasing of urban infrastructure and development within the municipal UGAs?

The most pressing situation challenging Skagit County's compliance with its current approach comes from Sedro-Woolley's situation within its UGA outside its city limits. We will deal with the specifics of that predicament first.

Sedro-Woolley's Position

The City argues that the County's failure to adopt all of its development regulations for land outside the city limits but within the Sedro Woolley UGA fails to ensure the transformance of governance that the cities and the County have agreed will happen. The land in Sedro-Woolley's UGA outside its city limits is primarily residential, and has no infrastructure. The City points out that it will basically be annexing debt if development in that area is allowed to continue without the requirement for concurrent infrastructure. When ongoing development is allowed by short plat without requiring infrastructure improvements and is scattered throughout the municipal UGA, the City says there is, and will be, no way to finance GMA-required urban infrastructure

because the only feasible way for the City to fund sewers (which are the biggest concern and are needed to make urban densities possible) is through Utility Limited Improvement Districts (ULIDs). In order to use that method, 60% of the owners in the affected area must approve. Most of the land in the unincorporated Sedro-Woolley UGA is already divided into five-acre lots or smaller. The City contends that it will be impossible to put together enough critical mass for a successful sewer ULID without the participation of fairly major subdivisions. Further, according to the City, if a waiver of protest for a ULID is allowed in lieu of providing connection to the sewer at the time of development, it lasts only ten years. This makes it extremely difficult for the City (who has the responsibility for providing infrastructure in its UGA over a 20-year time frame) to be able to finance that infrastructure. The City points out that it found that its regulations in place prior to the adoption of Ordinance 1428-02 that allowed for shadow platting and resulted in one-acre lots made it almost impossible for the City to put together future ULIDs or annexations. The City also argues that it is not realistic to expect the ratepayers of a small city like Sedro Woolley to finance sewer extensions in the UGA.

The City acknowledges that street infrastructure can be done incrementally, but explains that the County, through its variance process, is not requiring developers of short plats to put in street improvements or any other incremental improvements as they develop. The County also refuses to adopt the City's impact fee ordinance to support infrastructure development, despite the interlocal agreement that requires the County to adopt the City's development regulations.

The City admits that Sedro-Woolley's interlocal agreement with the County currently allows shadow platting, but notes that it also requires that the County adopt City ordinances imposing impact fees and requiring incremental infrastructure improvements to guarantee concurrency and urban development within the UGA. The

City contends that its ordinances are GMA compliant since no one (including the County) appealed the City concurrency DRs to the Board.

Sedro-Woolley further complains about the County's variance procedures:

Every short plat, for which a variance from sanitary sewer and full street infrastructure is sought, will result in a hearing examiner deciding, between the City taxpayers and ratepayers or the developer, who will pay for urban infrastructure, and when they will pay for it. The decision is not based on a consistent, comprehensive development code which is measurable against a comprehensive plan adopted through a regulated process of public participation. Rather, every permit will involve a variance based on inconsistent City and County ordinances. Only the City ordinance will be supported by a compressive (sic) plan and infrastructure planning for the area at issue. Planning will be performed on a permit-by-permit basis, rather than by reference to DRs consistent with a GMA compliant comprehensive plan. This critical defect makes the County's failure to adopt Ordinance 1428-02 and its progeny a non-compliant decision.

Sedro-Woolley June 23, 2003 Memorandum for Compliance Hearing, etc. at 14

Sedro-Woolley argues that Exhibits 960 and 995 (the records of proceedings of the Skagit County Board of County Commissioners (BOCC) meetings of March 11 and March 25, 2003, (when the BOCC voted to not adopt Sedro-Woolley Ordinance 1428-02) and County Resolution R20030160 itself demonstrate that the goal of the BOCC is to not adopt GMA-compliant DRs requiring sanitary sewer and annexation as a condition for short plats in the unincorporated UGA. Sedro-Woolley claims that the BOCC has made it clear that subdivision by short plat will continue to be permitted in the unincorporated Sedro-Woolley UGA without provision for annexation, without urban infrastructure, and without sanitary sewer. The BOCC has also made it clear that they will not collect impact fees nor impose the stricter City DRs in the Sedro-

Woolley unincorporated UGA. Sedro-Woolley June 23, 2003 Reply Brief, Case No. 00-2-0050c at 3.

Sedro-Woolley contends that the County and Sedro-Woolley are at a total impasse.

Id. at 6. After months of additional negotiations, in its March 9, 2004 Reply, Sedro-Woolley again pointed out the County's insistence on changing the provision that the City and the County had been negotiating, would have allowed development of a one-acre lot on a five-acre parcel through the use of the County's Conservation and Reserve Development regulations. The City says that although the language in the County's latest proposal is somewhat unclear, the County proposed shadow platting to a density of at least four units an acre, together with requiring a means for identifying the future location of infrastructure, instituting mechanisms for future participation of lot owners in ULIDs or other infrastructure financing methods, and allowed no more than one unit per acre to be constructed on these plats. Only development that was more intense than this would be required to annex to the City. The City maintains that the County's most recent proposal is not consistent with CP Policy 7A-2.2, nor compliant with the Board's previous orders or the GMA. Sedro-Woolley states:

It is going to be very difficult, as a practical matter, for the City of Sedro-Woolley to require annexation and finance infrastructure (sewer) if its unincorporated UGA is divided into 1 acre lots prior to annexation. Even Skagit County argues that short plats of small lots like these cannot afford to construct infrastructure as a condition of development. The fractured development patterns that will result from the County proposal will deprive the City of the financing options that larger developments provide, to help pay for a larger block of infrastructure. (Sewer in particular must by its nature be constructed as a system from the center out, and cannot be built in unconnected pieces. Loosing (sic) the impetus of extending sewer to larger developments will shift most of the cost to non-developers, as a practical matter.) If the Board allows Skagit County to scatter short

plats of 1 acre lots – without sewer and streets – throughout the unincorporated UGA, the new owners will have little incentive to annex on their own, and the primary means of financing sewer and street following annexation will be from increased utility rates and general tax revenue; it won't happen.

Sedro-Woolley March 9, 2004 Reply at 5-6

Sedro-Woolley further points out, even if it agreed to the County's proposal, the City's and the County's joint action would not render short plats without infrastructure GMA compliant.

County's Position

The County reminded us at the hearing that Sedro-Woolley defended the current approach of ensuring concurrency and transformance of governance before this Board. The problem is that there are greater funding problems than were anticipated ten years ago.

The County explains that on March 21, 2000, the BOCC made clear that it would adopt only those city development regulations that it believes are GMA compliant. (Ex. No. 1008, Sec. 6). The County has chosen not to adopt a few ordinances because it believes they are not in compliance with the GMA and would cause problems for transformance of governance within the unincorporated UGAs. June 16, 2003 Response Brief at 6. The County further explains that it will not adopt Sedro-Woolley's impact fee ordinance until Sedro-Woolley has agreed to an updated interlocal agreement since the most recent Sedro-Woolley Capital Facilities Plan is dated 1998 and fails to adequately show how Sedro-Woolley will extend infrastructure to the UGA to serve the growing population. *Id.* at 7. The County goes on to say:

It is the failure of the County and the City to achieve an updated Interlocal Agreement which has prevented the adoption of Sedro-Woolley's impact fee ordinance.

County's June 16, 2003 Response Brief at 8

As to the refusal to adopt Sedro-Woolley's Interim Ordinance 1428-02, the County argues that the City's ordinance amounts to a moratorium on short subdivisions, which actually discourages development within the Sedro-Woolley UGA. The County argues that this violates the affordable housing goal of the GMA (RCW 36.70A.020(4)) as well as the goal of encouraging urban development within the UGAs (RCW 36.70A.020(1)).

The County further points out that the City abandoned the shadow-platting strategy that had been agreed to between the City and County and did that unilaterally, without consulting the County. This, the County counters, means that the City was the one to abandon the interlocal agreement, not the County. County's June 16, 2003 Responding Brief for Compliance Hearing, Case No. 00-2-0050c, at 8-10.

If continued noncompliance is to be found, the County argues, it should not be blamed on the County alone, since success of the chosen process requires the cities to cooperate also. The County states, "The GMA does not empower this Board to find the County not in compliance for being unable to force Mount Vernon or Sedro-Woolley into agreements." *Id.* at 12.

The County contends that the solution is to relook at the boundaries of the Sedro-Woolley UGA in the 2005 update to see if those UGA boundaries need to be reduced.

Board Discussion On Sedro-Woolley UGA Only

On May 12, 2003, the BOCC formalized its rejection of Sedro-Woolley ordinances by adopting Resolution R20030160. In Skagit County Resolution R20030160, the County rejected the new Sedro-Woolley ordinance for a variety of reasons. The County found that the City's ordinance was unfair to small property owners, requiring them to absorb large infrastructure costs or wait twenty years to develop their property:

Whereas in July 2002, the City of Sedro-Woolley submitted for adoption Ordinance Nos. 1427-02 and 1428-02. Among other things, Interim Ordinance No. 1428-02 (as most recently renewed by Ordinance No. 1437-02) requires landowners or developers who create new lots, whether by short plat, subdivision, binding site plan, or Planned Unit Development, to install urban sewer and street infrastructure, or provide funding through bonding or payment for such installation; and

Whereas, the same infrastructure installation requirement currently exists in Sedro-Woolley Code for the creation of subdivisions of more than four lots. Ordinance No. 1428-02 would extend those requirements to short subdivisions, the creation of between two and four lots. Development on existing single lots of record is not subject to the infrastructure requirement. Ordinance No. 1428-02 already has been adopted by Sedro-Woolley for implementation within the city limits; adoption by the County would extend those requirements to the unincorporated Sedro-Woolley UGA; and

...

4. Ordinance No. 1428-02 only affects subdivisions of four lots or fewer. Larger subdivisions already are required to provide urban infrastructure. Because of their larger size, they have greater financial resources to do so. *The short subdivision process was originally created to allow small subdivisions to proceed without incurring major infrastructure costs.* According to testimony at the public hearing, between 1998 and the present (date of the hearing), there were only six short subdivisions completed in the Sedro-Woolley unincorporated UGA, accounting for only seven new buildable lots, for an average of 1.4 lots per year. A much larger amount of new development is caused by new single family residences on existing lots, which are exempt from the infrastructure extension requirements. If Ordinance No. 1428-02 is adopted, short plats will no longer be an option for landowners, developers, or new home buyers. The ordinance will become a defacto moratorium on small land divisions within the unincorporated portion of the UGA, and another factor leading to rising housing costs, contrary to the GMA goal

of providing affordable housing particularly within urban areas. The ordinance will also jeopardize Sedro-Woolley's commitment, along with the other urban areas, to accepting 80 percent of the County's new growth per Countywide Planning Policy 1.2.

5. It is simply unrealistic to expect landowners and small developers in the unincorporated UGA to pay to connect two- to four-lot subdivisions to the nearest urban infrastructure, which in some cases may be a half-mile away. Such extensions and hookups can cost into the hundreds of thousands of dollars, an amount which simply cannot be amortized across a four-lot subdivision.

6. The Ordinance could require *property owners in the outer portion of the unincorporated UGA to wait 20 years* before they are able to develop their property, if that is how long it takes the City to extend sewer to that portion of the UGA. That is unfair and unreasonable to those property owners. They should at least have the option to develop their property now without installing urban infrastructure, provided they sign an agreement to meet the city standards when infrastructure has been extended by the city to their portion of the UGA.

...

8. Since the 1999 Interlocal Agreement, the County has adopted City development regulations for application within the unincorporated UGA to assure that development in the unincorporated UGA would be consistent with that within the incorporated City limits. County residents living in the unincorporated UGA lack political representation within the City because it is the City that controls the regulations under which they develop. Such residents typically are not informed about or invited to comment on regulations adopted by the City. That leaves County Commissioners as the sole elected representatives of these residents. *If the City adopts an ordinance that is unreasonable, even if the County has previously pledged to adopt city ordinances generally, it is the Commissioners' responsibility not to approve that ordinance for*

implementation within the unincorporated UGA. Because of the reasons set forth in these findings, in this case it is inappropriate for the County to adopt this Ordinance.
Resolution R20030160 at 1-5 (emphasis added)

We have dealt with a similar issue regarding the BOCC concern that it is not fair for small property owners on the periphery of the UGA who want to divide and develop their land to have to wait years for a large developer or the City to extend sewer services. In the March 28, 2003 Final Decision and Order in Case No. 02-2-0010, *Cedardale Property Owners v. City of Mount Vernon*, we stated:

There are parameters to the City's obligation to see that infrastructure is provided within the UGA. By creating the UGA boundaries that it has the City (in partnership with the County) has committed to public facilities necessary to support the planned development within the UGA. However, the time-frame for providing those facilities is the twenty-year horizon of the Comprehensive Plan, not the six-year horizon of the Capital Improvements Plan.

We repeat that finding here. If the land owners on the periphery of the UGA had not been included in the UGA, they could not have subdivided their property into lots smaller than five acres at any time. Therefore, it is not unreasonable for those property owners on the periphery to wait to the end of the 20-year planning period to subdivide their property into lots smaller than five-acre. The previous records in these cases indicate that there are a multitude of preexisting small lots within the Skagit County cities and their UGAs. If Sedro-Woolley cannot currently provide urban infrastructure to the periphery of its UGA, the development should go to another UGA where urban infrastructure is already available or can efficiently be provided. The County's position is not compliant with the GMA as to concurrency and transformance of governance within the Sedro-Woolley UGA because it would allow development through subdivisions at greater than rural densities but at less than urban densities, without annexation, without urban infrastructure, and without any realistic

certainty that urban infrastructure will soon be able to be provided, or if it ever could be.

We agree with the County that one solution is to re-examine the Sedro-Woolley UGA boundaries in light of the possibility that the City is unable to realistically meet its twenty-year goal of providing urban service levels within the UGA as the boundaries are currently drawn.

We also agree with the City that the current development regulations allow inappropriate urban development since there is inadequate provision for urban services in the unincorporated portions of the Sedro-Woolley UGA. If further short platting is allowed now creating more lots smaller than five acres without urban infrastructure, it could jeopardize the ability of the City and the County to revise those boundaries based on the work to be done during the 2005 updates. If that work shows that Sedro-Woolley cannot provide infrastructure needed for urban development within its UGA, even if the urban growth boundary is pulled back to the City limits, the creation of a plethora of new smaller lots outside the UGA would be contrary to RCW 36.70A.020(2), the GMA's sprawl reduction goal.

The record in this case also shows that the County's suggestion of returning to shadow platting without requiring infrastructure improvements or providing other methods for paying for them such as impact fees within the residential districts of the Sedro-Woolley UGA would not ensure that urban services can be provided concurrently with urban development and thus would not comply with RCW 36.70A.020(12). There may be situations where shadow platting with some required interim infrastructure or through a system that ensures infrastructure can be provided would comply with concurrency requirements. But that is not the case here.

Under the circumstances of this case where this issue has been before the Board for many years, the County must be aware that its actions in formally refusing to adopt the City's ordinances would affect its ability to achieve compliance here. The County has not brought forward an alternative plan for achieving compliance – it has simply rejected the City's ordinance. Under these circumstances, it is clear that agreement will not be reached and, indeed, that the original scheme to ensure transformance of governance and provision of concurrent infrastructure in the UGAs to be determined by interlocal agreements was flawed.

Board Discussion On Compliance Countywide

The provision of urban levels of service to urbanized areas is a central requirement of the GMA. RCW 36.70A.020(12) provides:

Public facilities and services. Ensure that those public facilities and services necessary to support development shall be adequate to serve the development at the time the development is available for occupancy and use without decreasing current service levels below locally established minimum standards.

UGAs are those areas of a county in which urban levels of development are expected to occur. Urban levels of densities are typically at least four dwelling units per acre. Rural densities are, as all three growth hearings boards have held, densities no greater than one dwelling unit per five acres. When higher than rural densities are allowed, they must be located either in a limited area of more intense rural development (“LAMIRD”) or in an urban growth area.

Urban growth areas do not necessarily begin at urban levels of density, in part because they are often designed to include areas outside the incorporated cities and towns for future growth. The aim is to first direct growth to those parts of the UGA that have urban services or to which they can be provided, and to ensure that those parts of the

UGAs that do not have urban services or to which they can not be provided at the present time are eventually developed at urban densities and with urban standards of service. (RCW 36.70A. 110 (3)).

Here, the County has designated UGAs, including unincorporated areas surrounding the four major cities in Skagit county, where urban growth is to occur. Since the County has jurisdiction over the unincorporated portions of the UGAs, it is up to the County to adopt development regulations to reach the GMA goals for containing urban growth and ensuring that urban levels of service can be provided within the unincorporated areas. Because the County and cities have decided that each city will eventually annex all of the surrounding unincorporated area in its UGA, the original scheme had been for the County to adopt each city's development regulations for application within the unincorporated UGAs surrounding each city respectively,

We have held that efficient phasing of urban infrastructure is the key component to transference of governance from a county to a city. Assurance of annexation should occur before urban infrastructure is extended within the unincorporated portions of a UGA because the extension of services is the primary inducement that cities have to bring unincorporated areas within their jurisdiction into their cities. If land is not appropriate for urban development (due to the inability to provide for urban services), it should be left out of a UGA. *Abenroth v. Skagit County*, WWGMHB Case No. 97-2-0060 (Final Decision and Order, January 23, 1998).

We also believe we have made clear in our previous decisions that the County's current approach, which facilitates further subdivision within the UGAs without provisions for urban levels of infrastructure, fails to comply with the Act.

In its June 16, 2003 Response Brief on compliance, the County acknowledged that the Board's previous orders had required the County to (1) timely adopt current city DRs to be effective within UGAs and keep them current in the future and (2) accomplish transference of governance and efficient phasing of urban infrastructure with UGAs via amendments to existing interlocal agreements with the cities. County's June 16, 2003 Response Brief at 1.

However, the County's decision to only adopt those City DRs it deems appropriate for application within the City UGAs makes the scheme unworkable for ensuring compliance with the Act. The Board has always had a serious concern as to whether this scheme would ever be workable. In this case, where the County has elected to pick and choose among the City's development regulations, it is clearly not going to work. Therefore, the Board must look at the actual development regulations in place in the unincorporated portions of the municipal UGAs and determine if these are compliant with the GMA.

We look first to the development regulations in the Sedro-Woolley UGA, because the City has challenged their adequacy. The City points out that there are no provisions for impact fees, no restrictions on the ability to develop commensurate with the provision of urban levels of service (especially sewer), and a variance system that allows development without meeting City requirements for roads and sidewalks. The Sedro Woolley development regulations adopted by the County as applicable in the unincorporated areas of the Sedro Woolley UGA do not adequately implement the County's and cities' choice of urban growth areas under the GMA because they do not assure that urban development densities occur in tandem with urban levels of service, and because the existing development regulations provide no incentive for property owners to agree to annexation or, indeed, for the City to be willing to take them. Skagit County Ordinance 18375. The development regulations adopted by the County

for that portion of the Sedro-Woolley UGA within its jurisdiction do not accomplish efficient phasing of infrastructure or facilitate annexation.

Until the County adopts development regulations that address these fundamental concerns, the Board is unable to find that the County has adopted development regulations to ensure that urban levels of growth and urban service levels are provided in the unincorporated portions of the Sedro-Woolley UGA. RCW 36.70A.110(2) and (3).

We must then look to the development regulations applicable to other UGAs within the County's jurisdiction to determine whether they are compliant with the GMA. The County adopted a different set of development regulations with respect to each UGA, depending upon which city is expected to eventually annex the unincorporated area. However, these regulations do not actually address the phasing of urban infrastructure for those regions, or the transference of governance from county to city. The County's Proposed Permanent Development Regulations Within the Burlington, Concrete, Mount Vernon and Sedro-Woolley Unincorporated Urban Growth Areas (Ex. 1301) tacitly acknowledges this lack. The draft permanent development regulations envision an ordinance that will address the need to transition the urban growth areas from county jurisdiction to city jurisdiction as urban development occurs.² However, that draft has not been adopted and is not before us for review.

Anacortes argues persuasively that interlocal agreements that are not incorporated into the County's comprehensive plan or incorporated by reference into the County's development regulations cannot meet GMA requirements. The history of this case

² While the substance of the final permanent development regulations is not before the Board, the interlocal agreement between the County and the cities sets out the fundamental issues to be addressed in the ultimately adopted development regulations.. These include minimum lot size, phasing of urban services, annexation agreements, infrastructure development standards, urban levels of service, annexation requirements, impact fees, and permit processing..

shows in grim detail just how a reliance upon interlocal agreements can lead to gaps in the regulatory framework. Some inherent drawbacks to the reliance upon interlocal agreements are that they are contracts among local governments that may or not be subject to public or board review; they are dependent on good relations among local governments; they are built on commitments between local elected officials that may not last from election to election; and they are not themselves regulations that apply to citizens in regulating land use without corresponding comprehensive plan policies or development regulations

Three years ago, FOSC argued that the interlocal agreement scheme could not ensure compliance with the Act. We have now given Skagit County and the cities more than three years to work together to make their chosen means of compliance work. It is obvious after considering all of the arguments presented above that FOSC was right; that the County needs to adopt new compliant DRs that it is willing to implement within the UGAs that ensure transformance of governance, development at urban densities, infrastructure to support that development, and prevention of sprawl to be compliant with RCW 36.70A.110, RCW 36.70A. 020(2) and RCW 36.70A. 020(12).

Conclusion: The County has failed to adopt development regulations within the municipal UGAs generally and the Sedro Woolley UGA in particular, which comply with the GMA requirements for transformance of governance and efficient phasing of urban infrastructure within the UGAs.

Compliance Issue 2: Should Invalidity Be Found?

Sedro-Woolley states that the County has failed to achieve any meaningful compliance with the GMA goals of urbanization, concurrency, and transformance of governance in the unincorporated UGA. “The position of the City of Sedro-Woolley is that the system of interlocal agreements is broken, cannot be repaired, and should be found

invalid on a county-wide basis, with the severest sanctions imposed on the County.”
February 17, 2004 Memorandum of the City of Sedro-Woolley at 1.

Sedro-Woolley concludes its request for invalidity with a request that this Board impose invalidity if the County’s interim ordinance limiting subdivision to parcels of no greater density than one dwelling unit per five acres were to be repealed or allowed to expire. Sedro-Woolley March 9, 2004 Reply Memorandum at 11

The County, in its March 1, 2004 Reply Brief, responds that Sedro-Woolley has not presented evidence of substantial interference with the goals of the Act throughout all UGAs in the County. The County further argues that Sedro-Woolley’s request to invalidate all of the UGAs outside City limits, would encourage more development in rural areas and therefore causes more interference with the goals of the Act than leaving the current interim ordinance provisions in effect.

Sedro-Woolley has asked that we invalidate Chapter 7 of the County CP in its entirety and Policy 7A-2.2 in particular. At the hearing and on page 10 of the County’s March 31, 2004 supplemental brief, the County argues that we have no jurisdiction to invalidate provisions that were never challenged.

CP Chapter 7 restates CPP 12.7 which provides that public facilities needed to support development shall be available concurrent with impacts. It further states that the County shall coordinate with cities and have updated interlocal agreements. CP 7A-2.2 limits development to one dwelling unit per five acres without urban infrastructure.

In addition to the County’s concerns about the Board’s jurisdiction over them, Chapter 7 and CP 7A-2.2 do not appear to be the problem. The County’s failure to take actions consistent with the plan is the failing that might be seen as egregious.

However, the local governments in this case agreed to a stipulation that the County would temporarily limit subdivision in the contested areas to no smaller than five-acre lots while a GMA-compliant solution was being negotiated. Even though that negotiation has not been successful, the County has readopted those interim provisions.

At the hearing, we asked the parties to brief the question of what development regulations would be in place if the County allows this interim ordinance to expire. The parties agree that even though there is no reversionary clause, the previously adopted permanent Ordinance 18375 (adopted August 31, 2001) would govern. Sedro-Woolley points out that Ordinance 18375 would allow the short plat applications now waiting at the County's counter to vest in the Sedro-Woolley UGA under DRs which allow development without waivers of protest for future sanitary sewer and street infrastructure. This ordinance also does not adopt Sedro-Woolley's impact fee ordinance. That is why Sedro-Woolley requests that if the interim ordinance is not readopted and kept in effect, immediate invalidity should be imposed.

We share Sedro-Woolley's concern about the potential negative impact of short plat proposals already at the County's permit counter vesting if current interim provisions are allowed to lapse. However, we note that the County has readopted the interim ordinance and kept it in effect even though negotiations have failed. We also note that as long as the creation of new lots smaller than five acres is forbidden, there is no showing of substantial interference with the goals of the GMA such as to form a basis for a finding of invalidity under RCW 36.70A.302. We have no reason to believe that the County would show bad faith and allow such restrictions to lapse, creating a window of opportunity for more small short plats to vest while compliant DRs are being developed. We therefore decline to invoke invalidity at this time.

However, we are keenly aware that the interim ordinance does not achieve compliance in itself; it is temporary and it fails to address transformance of governance or to direct growth to the municipal UGAs instead of to rural and resource lands. We are concerned that the limited development regulations applicable in the Sedro-Woolley unincorporated UGA, if allowed to apply in place of the County's interim ordinance, would substantially interfere with Goals 1, 2, and 12 of the GMA. RCW 36.70A.020. Therefore, we are reluctant to set a compliance deadline beyond the date of the interim ordinance.

At the same time, the County proposes that the resolution of the conflict between the County and Sedro-Woolley lies in re-adjustment of the boundaries of the Sedro-Woolley UGA. The County suggests using the required update process of City and County comprehensive plans and development regulations pursuant to RCW 36.70A.130 as a mechanism for reconsidering the Sedro-Woolley UGA boundaries. The deadline for Skagit County and the cities in Skagit County to complete this process in December 1, 2005. (RCW 36.70A.130 (4)).

The County's compliance obligations are long overdue and it would not be appropriate to just postpone them because of the update deadline. Further, while the County now argues that the Sedro-Woolley UGA may be too large, it is of concern to the Board that Resolution R20030160 appears to reflect a different perspective – one that promotes higher densities without appropriate infrastructure in that same UGA. It is not at all clear, therefore, that the County has chosen to reduce the size of the Sedro-Woolley UGA as a way to manage development in the UGAs. In addition, the lack of compliant development regulations applies to the unincorporated portions of all the UGAs, not just the Sedro-Woolley UGA. We may well be back to the same dilemma regarding development regulations in the unincorporated UGAs after the update process. For these reasons, the County's obligation to achieve compliance with

respect to development regulations applicable in the unincorporated portions of the UGAs cannot be suspended pending the update process.

Whatever approach the County adopts, the Board needs assurance that sprawl will be prevented in the UGAs during the planning process. The interim ordinance is one method for assuring that sprawl does not occur while proper development regulations are being developed. The County may propose other ways. However, the Board must be assured that the County is utilizing either the interim ordinance or some other County action to prevent sprawl during the period needed to achieve compliance.

The Board will set a hearing schedule to monitor the County's progress in achieving compliance by developing a compliant set of development regulations that prevents sprawl, provides for concurrent infrastructure, and provides for the transformation of governance in the unincorporated portions of the UGAs. The hearing schedule will also allow the Board to monitor the extent to which the County maintains its interim protections against inappropriate sprawl.

VI. FINDINGS OF FACT

(1) Skagit County is a county located west of the crest of the Cascade Mountains that is required to plan pursuant to RCW 36.70A.040.

(2) This case is a consolidation of several previous cases, or parts of cases, regarding issues of transformation of governance and timely provision of urban infrastructure within UGAs outside of city limits. The previous cases are *Abenroth v. Skagit County*, WWGMHB Case No. 97-2-0060c; *Evergreen Islands v. Skagit County*, WWGMHB Case No. 00-2-0046c; *City of Anacortes v. Skagit County*, WWGMHB Case No. 00-2-0049c; and *Friends of Skagit County v. Skagit County*, WWGMHB Case No. 00-2-0050c.

(3) The current parties to this case all have achieved participatory standing by orally and/or in writing having expressed their views before the Planning Commissioner and/or Board of County Commissioners with respect to the issues discussed in this decision.

(4) The County was first found to be out of compliance with the GMA with respect to development regulations applicable in the unincorporated portions of the County's UGAs in the Final Decision and Order issued in this case on February 6, 2001. We held that:

The purpose of the Board's orders in *Abenroth* and the purpose for the GMA transformance of governance requirement is to assure that growth in the unincorporated UGAs will be at urban levels consistent and coordinated with the levels of the cities, since the UGAs will eventually become annexed into these cities. The County has chosen to assure this consistency and coordination through the adoption of the development regulations (DRs) of the cities, and the application of those DRs by the County in unincorporated UGAs.

WWGMHB Case No. 00-2-0050c, *FOSC v. Skagit County* (Final Decision and Order, February 6, 2001) at 4

(5) We further held in the same decision that the County and the cities' chosen interlocal agreement approach (relying on County adoption of City regulations within municipal UGAs:

- (a) could only be considered an interim solution, and
- (b) must require that the County impose upon itself an ongoing obligation to timely adopt the City DRs.

(6) The Board's November 30, 2001 compliance order in this case found that the County continued to be non-compliant with the GMA, although the Board allowed the County time to work with the cities in the County to develop regulations addressing

transformance of governance and appropriate urban levels of growth in the unincorporated portions of the Skagit County UGAs.

(7) In spite of interlocal agreements that require the adoption of city development regulations and keeping them current, several of the cities and the County have failed for three years to update their interlocal agreements to ensure transformance of governance and concurrent provision of urban infrastructure within the UGAs.

(8) By failing to incorporate interlocal agreements into the County's comprehensive plan or incorporating them by reference into the County's development regulations, the County has failed to implement their provisions.

(9) Further, the interlocal agreement scheme has failed to lead to compliant development regulations in the unincorporated portions of all of the municipal UGAs.

(10) Sedro-Woolley and the County are at odds over the type of development regulations that should apply in the Sedro-Woolley UGA. Sedro-Woolley enacted City Ordinance 1428-02 because it feels that development is occurring in the unincorporated portions of the City's UGA without reasonable assurance that the City will be able to provide sewer and water at urban levels of service to those developments. City Ordinance 1428-02 precludes development unless the developer pays for the extension of city services to the development. The ordinance is interim in nature while the City updates its capital facilities plan to determine the feasibility of providing urban infrastructure to the entire Sedro-Woolley UGA in the 20-year planning period.

(10) Skagit County made it clear in public meetings and in Resolution R20030160, that subdivision of lots in the unincorporated portion of the Sedro Woolley UGA will

be permitted to densities of one dwelling unit per acre without prior annexation and without sanitary sewer and other urban infrastructure. The BOCC also made it clear that it would not collect Sedro-Woolley's impact fees nor impose the stricter City DRs in the Sedro-Woolley unincorporated UGA. Resolution R20030160 states in part, "If the City adopts an ordinance that is unreasonable, even if the County has previously pledged to adopt city ordinances generally, it is the Commission's responsibility not to approve that ordinance for implementation within the unincorporated UGA."

(11) After several years of negotiation, Sedro-Woolley and Skagit County remain at an impasse as to the above issues.

(12) The land in Sedro-Woolley's UGA outside its City limits is primarily residential and has no infrastructure. When ongoing development is allowed by short plat and scattered throughout the municipal UGA to the outer edge without provision for urban levels of service, there is, and will be, no practical way to finance GMA-required urban infrastructure.

(13) Outside of the UGAs, residential development is allowed at rural densities. Densities of greater than one dwelling unit per five acres are not rural densities.

(14) The County allows subdivisions of land within the unincorporated UGAs to non-rural densities because the UGAs are expected to develop at urban density levels and urban levels of service.

(15) However, the County also permits such subdivisions without provision for sewer or water at urban levels of service such as the City of Sedro Woolley would require within its own boundaries.

(17) The County refuses to impose Sedro-Woolley's traffic impact mitigation fees as would be required by the City if the same development were to occur within the municipal boundaries.

(18) The County refuses to adopt the City's development regulations that impose traffic impact mitigation fees within the Sedro-Woolley UGA.

(19) The County has not adopted development regulations within the unincorporated Sedro Woolley UGA to address the need for urban levels of service in the UGA in place of the regulations adopted by the City.

(20) If further short platting is allowed now without concomitant provision for urban levels of service, more lots will be created within Sedro-Woolley's UGA that exceed rural densities and lack urban levels of service .

(21) If capital facilities planning for the 2005 updates shows that Sedro-Woolley cannot provide infrastructure needed for urban development within its UGA, the choice to retract the urban growth boundary to the City limits would be impaired by the creation of new, smaller lots within the UGA prior to revision of the UGA boundaries.

(22) Without development regulations to address the need for urban levels of service and the transformance of governance in the unincorporated areas of the Sedro Woolley UGA, inappropriate development will occur through subdivisions without provision for urban infrastructure and annexation, or any realistic certainty that urban infrastructure and annexation will be able to be provided as required within the UGAs within the twenty-year planning horizon.

(23) The County's decision to only adopt those City DRs it deems appropriate for application within the City UGAs makes the scheme of achieving transformation of governance by adopting city development regulations in the unincorporated UGAs unworkable.

VII. CONCLUSIONS OF LAW

A. This Board has jurisdiction over the parties in this case.

B. The Board has subject matter jurisdiction over the compliance issues consolidated into this case.

C. The County has failed to adopt development regulations within the municipal UGAs generally and the Sedro Woolley UGA in particular, which comply with the GMA requirements for transformation of governance and efficient phasing of urban infrastructure within the UGAs, as required by the Growth Management Act including RCW 36.70A.110, RCW 36.70A. 020(2), and RCW 36.70A. 020 (12) The County's development regulations applicable to the unincorporated portions of its UGAs fail to comply with the GMA.

VIII. ORDER

The County shall adopt development regulations in compliance with the GMA according to this Final Decision and Order within 180 days of the date of this order. These development regulations must facilitate the transformation of governance and phasing of infrastructure concurrently with development in the unincorporated portions of the County's UGAs.

Further, during the compliance period extended by this or subsequent order, the County shall continuously keep in place protections that prevent non-rural levels of development in the unincorporated portions of the Sedro-Woolley UGA until such time as this Board finds the permanent development regulations are compliant with the

GMA. The County shall report to the Board upon the measures it has adopted to ensure that such development does not occur in the interim according to the following schedule.

August 3, 2004	Compliance deadline for adoption of measures to prevent non-rural levels of development during the compliance period
August 16, 2004	Report due to Board on adopted protection measures
December 15, 2004	Compliance deadline for adoption of development regulations providing for transformance of governance and effective phasing of infrastructure within the unincorporated portions of the county UGAs.
January 6, 2005	Compliance Report due to the Board on development regulations adopted to effect transformance of governance and infrastructure phasing in UGAs.
January 27, 2005	Petitioners' Brief deadline (objections to a finding of compliance)
February 17, 2005	County's Response deadline
February 24, 2005	Petitioners' Reply deadline (optional)
March 10, 2005	Compliance Hearing

This is a Final Order under RCW 36.70A.300(5) for purposes of appeal.

Pursuant to WAC 242-02-832(1), a motion for reconsideration may be filed within ten days of issuance of this final decision.

So ORDERED this 18th day of June 2004.

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

Nan A. Henriksen, Board Member

Holly Gadbow, Board Member

Margery Hite, Board Member