BEFORE THE WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

FUTUREWISE, Petitioner, v. SKAGIT COUNTY, Respondent, and MOUNT VERNON SCHOOL DISTRICT 320, WJY ASSOCIATES, and CITY OF MOUNT VERNON, Intervenors.	CASE NO. 05-2-0012c **CONSOLIDATED COMPLIANCE ORDER AND FINAL DECISION AND ORDER**

I. SYNOPSIS OF THE DECISION

A continuing challenge for Skagit County, home to some of the state's most valuable agricultural land, is how to conserve this valuable agricultural asset while providing an adequate land supply for its cities' commercial and industrial needs. This case illustrates this continuing tension especially in areas where agricultural lands are directly adjacent to urban growth areas (UGA). In response to a challenge by Futurewise, in September 2005, the Board found that the de-designation of adjacent agricultural parcels, one, 4.8 acres and the other 1.2 acres, both owned by WJY Associates, was compliant because the property did not meet the County's criteria for designation of agricultural land of long-term commercial significance. However, the Board also determined that the addition of the property to the Mount Vernon UGA did not comply with the Growth Management Act (GMA) or the Skagit County Code because the County had not shown that this property was appropriate for inclusion in the UGA.

After the City completed a land supply analysis and a study of its commercial and industrial needs, the County reaffirmed by resolution that the WJY property should remain part of the

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City's UGA. Futurewise objected to a finding of compliance on this action and also filed a new petition alleging that the property should not be included in the UGA because the County and the City still had not shown a need for these parcels in the UGA. Futurewise's petition also raised several other reasons for finding noncompliance, including the property is not characterized or adjacent to areas characterized by urban growth; includes a frequently flooded critical area; adding this property to the Mount Vernon UGA is not consistent with Skagit County's policy for locating urban growth in compact, well designed urban centers; and including the WJY property in the Mount Vernon UGA threatens the conservation of adjacent agricultural lands.

This decision finds the addition of the WJY property to the Mount Vernon UGA is not clearly erroneous. The property is adjacent to the City, an area characterized by urban growth. Additionally, the City and the County have shown a limited need for parcels the size of the WJY property within the County's current allocation for commercial and industrial lands to the Mount Vernon UGA based on the latest population projections from the Washington State Office of Financial Management (OFM). The Board also finds that no prohibition exists in RCW 36.70A.110 against including lands with critical areas in UGAs and that Futurewise has not carried its burden of proof that the addition of the WJY property violates the County's direction to locate urban growth in compact, well designed urban centers.

The Board expresses some concern about the impact of this UGA expansion on neighboring agricultural lands. While the current allocation for commercial and industrial lands to the City of Mount Vernon could encompass the WJY property and the City has shown a limited need for parcels of this size, the Board finds that adding these parcels to the UGA on a parcel by parcel basis without determining the planned location for all the uses identified in the City's commercial and industrial lands needs analysis, creates a very real threat to the conservation of adjacent agricultural lands. However, because the 4.8 acre parcel is isolated from the surrounding agricultural lands by roads on all sides, its inclusion in the UGA is not a clearly erroneous violation of RCW 36.70A.060, RCW

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36.70A.040, and RCW 36.70A.020 (8). The roads create a natural buffer around this relatively small parcel of land. Further, the 4.8 acre parcel does not significantly extend the UGA into the surrounding agricultural lands. While the 1.2 acre parcel is surrounded roads on three sides, it directly adjoins agricultural land to the south, where the County has chosen not to require a buffer to protect the adjacent agricultural lands from future incompatible urban uses. Here, the addition of this smaller parcel to the UGA generates more of an immediate threat to the adjacent agricultural lands. Nevertheless, the Board accepts Skagit County's stated commitment to halt the parcel by parcel expansion of the UGA so that this practice does not become a precedent for future additions to the UGA. The Board also considers important the County's other agricultural conservation measures such as its Right to Farm and notification requirements. In addition, the very small size of this parcel is a significant factor in the Board's determination that the addition of the 1.2 acre parcel also is not a clearly erroneous violation of the GMA agricultural conservation goals and requirements.

II. PROCEDURAL HISTORY

On September 22, 2005, the Board found, among other issues[1], that the expansion of the Mount Vernon UGA boundaries to include the WJY property in Ordinance 020050001 did not comply with the County's comprehensive plan policies for mapping changes for expanding UGA boundaries, SCC 14.18.020(5)(b), RCW 36.70A.020(2), and RCW 36.70A.110. In that same order, the Board found that Ordinance No. 020050001 complies with the County's comprehensive plan and RCW 36.70A.170, RCW 36.70A.060, and RCW 36.70A.020(8) in regard to the de-designation of the WJY property from AG-RL.

[1] In that same order, the Board also found that the de-designation of Mount Vernon School District Property and adding it to the Mount Vernon UGA did not comply with Skagit County's comprehensive plan policies, SCC 14.18.020(5)(d), RCW 36.70A.170, RCW 36.70A.020(2) and (8), and RCW 36.70A.060(4). On June 27, 2006, the Board found the County in compliance in regard to the School District Property, after the County removed this property from the Mount Vernon UGA.

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The Board granted the County three extensions of the compliance deadline on February 17, August 11 and November 17, 2006 in order for the County to analyze the City of Mount Vernon's buildable lands, to complete a study of the City's commercial/industrial lands, and conduct the necessary public process.

Skagit County adopted Resolution R20060450 on December 18, 2006 that affirmed the retention of the WJY property in the Mount Vernon UGA.

The County filed its Statement of Actions Taken on December 28, 2006. On January 24, 2007 Petitioner Futurewise filed Objections to a Finding of Compliance. Intervenors City of Mount Vernon and WJY Associates, and Skagit County's Response to Futurewise's Objections to a Finding of Compliance was filed on February 13, 2007.

On February 15, 2007, Futurewise filed a petition for review challenging that Resolution R20060450 did not comply with the goals and requirements of the GMA . This petition was captioned Case No. 07-2-0004.

On February 20, 2007, the Presiding Officer held a telephonic meeting with the parties in Case No. 05-2-0012. In that telephonic meeting, the parties agreed that no further briefing was needed on the petition for review and that the issues had been argued in the briefs filed for the compliance issue in Case No. 05-2-0012. Later on that date, the Board consolidated Case No. 07-2-0004 with Case No. 05-2-0012. This case was captioned as Case No.. 05-2-0012c.

A compliance hearing/hearing on the merits was held in Mount Vernon on February 22, 2007. Keith Scully represented Petitioner Futurewise, Thomas Moser represented WJY Associates, City Attorney Kevin Rogerson represented the City of Mount Vernon, and Deputy Prosecutor Arne Denny represented Skagit County. All three Board Members attended.

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At the hearing, the parties confirmed on the record their statements that there was no need for further briefing for the issue raised in Case No. 07-2-0004. The Board also granted intervention to Skagit County, the City of Mount Vernon, and WJY Associates on the issues raised in the petition for review in Case No. 07-2-0004.

On March 2, 2007, in response to the Board's request, the County filed the following documents:

- Skagit County Planning Commission Deliberations (November 2, 2006)
- October 2, 2006 Memorandum from Kirk Johnson and Geraldine Hallberg to Interested Parties
- Integrated SEPA/GMA Report on Skagit County's 2003 Annual Amendments (July 8, 2004)
- Planning Commission's Recorded Motion on WJY Property (November 2, 2006)
- Mount Vernon Commercial and Industrial Needs Analysis (June 2006)

III. BURDEN OF PROOF

For purposes of board review of the comprehensive plans and development regulations adopted by local government, the GMA establishes three major precepts: a presumption of validity; a "clearly erroneous" standard of review; and a requirement of deference to the decisions of local government.

Pursuant to RCW 36.70A.320(1), comprehensive plans, development regulations and amendments to them are presumed valid upon adoption:

> Except as provided in subsection (5) of this section, comprehensive plans and development regulations, and amendments thereto, adopted under this chapter are presumed valid upon adoption.

RCW 36.70A.320(1).

This same presumption of validity applies when a local jurisdiction takes legislative action in response to a noncompliance finding, that legislative action is presumed valid. The statute

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further provides that the standard of review shall be whether the challenged enactments are clearly erroneous:

> The board shall find compliance unless it determines that the action by the state agency, county, or city is clearly erroneous in view of the entire record before the board and in light of the goals and requirements of this chapter.

RCW 36.70A.320(3)

In order to find the County's action clearly erroneous, the Board must be "left with the firm and definite conviction that a mistake has been made." *Department of Ecology v. PUD1*, 121 Wn.2d 179, 201, 849 P.2d 646 (1993).

Within the framework of state goals and requirements, the boards must grant deference to local governments in how they plan for growth:

> In recognition of the broad range of discretion that may be exercised by counties and cities in how they plan for growth, consistent with the requirements and goals of this chapter, the legislature intends for the boards to grant deference to the counties and cities in how they plan for growth, consistent with the requirements and goals of this chapter. Local comprehensive plans and development regulations require counties and cities to balance priorities and options for action in full consideration of local circumstances. The legislature finds that while this chapter requires local planning to take place within a framework of state goals and requirements, the ultimate burden and responsibility for planning, harmonizing the planning goals of this chapter, and implementing a county's or city's future rests with that community.

RCW 36.70A.3201 (in part).

In sum, the burden is on Futurewise to overcome the presumption of validity and demonstrate that any action taken by the County is clearly erroneous in light of the goals and requirements of Ch. 36.70A RCW (the Growth Management Act). RCW 36.70A.320(2). Where not clearly erroneous, and thus within the framework of state goals and requirements, the planning choices of local government must be granted deference.

IV. ISSUES TO BE DISCUSSED

Compliance Issue (Case No. 05-2-0012)**:** Does the expansion the Mount Vernon UGA boundaries to include the WJY property comply with the County's comprehensive plan

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policies for mapping changes for expanding UGA boundaries, SCC 14.18.020(5)(b),RCW 36.70A.020(2), and RCW 36.70A.110?

Issue on Petition for Review (Case No. 07-2-0004): Does the adoption of Skagit County Resolution R20060450, expanding the Mount Vernon UGA, fail to comply with RCW 36.70A.020 (1), (2), (8), (10), and (12), RCW 36.70A.040, RCW 36.70A.060, RCW 36.70A.110, RCW 36.70A.115, and RCW 36.70A.130, and the County's duty to show its work?

This issue may be divided into several parts:

Does the addition of the WJY property to the Mount Vernon UGA fail to comply with the GMA in the following ways:

- Direct urban growth to urban areas and reduce sprawl (RCW 36.70A.020(1) and (2),
- Locate urban growth areas in territory characterized by urban growth or adjacent to territory characterized by urban growth (RCW 36.70A. 110(1)),
- Include areas and densities sufficient to permit urban growth that is projected to occur in a county or city within the succeeding 20-year planning period (RCW 36.70A.110(2) and RCW 36.70A.115),
- Locate urban growth in areas characterized by urban growth that can be served by existing public facilities and services or in areas that can be served within the 20-year planning period with public facilities and services (RCW 36.70A.110(3),
- Protect the environment (RCW 36.70A.020(10),
- Conserve and enhance agricultural land, (RCW 36.70A.040, RCW 36.70A.060, and RCW 36.70A.020(8), and
- To be consistent with Skagit County's comprehensive plan (RCW 36.70A.130)?

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V. DISCUSSION OF THE ISSUES

A. Background and Overview

The September 22, 2005 Final Decision and Order found that, while the de-designation of the WJY property as an agricultural land of long-term commercial significance complied with the GMA, the County's record did not establish that it was appropriate to include the WJY property in the Mount Vernon UGA. The Board held that including it in the Mount Vernon UGA did not comply with RCW 36.70A.110, RCW 36.70A.020(2), and SCC14.18.020(5)(b) because the County did not comply with the GMA and Skagit County's development regulations that set out criteria that must be met before land can be considered appropriate for inclusion in the UGA. Futurewise's new petition for review contends that the addition of the WJY property to the Mount Vernon UGA still does not comply with the GMA.

Positions of the Parties

Futurewise argues that Resolution R20060450 that affirms retention of both the 4.8 acre parcel and the 1.2 acre parcel comprising the WJY property does not comply with the Growth Management Act's criteria for inclusion in the UGA or Skagit County's Comprehensive Plan's policies for designation as commercial/industrial use. It gives the following reasons: (1) the WJY property is not characterized by urban growth nor adjacent to territory characterized by urban growth, (2) Skagit County and the City of Mount Vernon have not shown a need for commercial land in the sizes of the WJY parcels, (3) the addition of the WJY properties is inconsistent with Skagit County's comprehensive plan policies to encourage commercial growth in compact urban centers that are not accessible only by auto, (4) the County and the City ignored infill opportunities for commercial uses, (5) the WJY property is located in a floodplain, a critical area, making it inappropriate for inclusion in the UGA, and (6) designating urban uses adjacent to agricultural lands interferes with the conservation of agricultural lands and threatens their future use as agricultural lands.

Skagit County and Intervenors, the City of Mount Vernon and WJY Associates, respond that the record shows that adding the WJY property to the Mount Vernon UGA now complies

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with RCW 36.70A.110, RCW 36.70A.020(2) and SCC 14.18.020(5)(b), and is consistent with Skagit County's comprehensive plan policies for designating commercial lands. They maintain that the record shows how the commercial and industrial land needs are based on the Washington State Office of Financial Management's (OFM) latest population forecast. The inclusion of the WJY property, they argue, reflects the population allocation by the County to the City and the City has established the need for the WJY parcels for commercial/industrial use in the City's UGA. They also contend that the Board has already decided that the de-designation of the WJY property does not interfere with the conservation of resource lands.

We will discuss each of these arguments: first in regard to RCW 36.70A.110, the GMA's requirements for designating UGAs; followed by the allegations of violation of Skagit County's policies for designating UGAs; and finally other alleged GMA violations, RCW 36.70A.060 and RCW 36.70A.040, as failing to conserve agricultural lands.

B. GMA and Skagit County Requirements for Designating UGAs

RCW 36.70A.110 states in pertinent part:

> (1) Each county that is required or chooses to plan under RCW 36.70A.040 shall designate an urban growth area or areas within which urban growth shall be encouraged and outside of which growth can occur only if it is not urban in nature. Each city that is located in such a county shall be included within an urban growth area. An urban growth area may include more than a single city. An urban growth area may include territory that is located outside of a city only if such territory already is characterized by urban growth whether or not the urban growth area includes a city, or is adjacent to territory already characterized by urban growth, or is a designated new fully contained community as defined by RCW 36.70A.350.
>
> (2) Based upon the growth management population projection made for the county by the office of financial management, the county and each city within the county shall include areas and densities sufficient to permit the urban growth that is projected to occur in the county or city for the succeeding twenty-year period, except for those urban growth areas contained totally within a national historical reserve.
>
> Each urban growth area shall permit urban densities and shall include greenbelt and open space areas. …An urban growth area determination may include a reasonable

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> land market supply factor and shall permit a range of urban densities and uses. In determining this market factor, cities and counties may consider local circumstances. Cities and counties have discretion in their comprehensive plans to make many choices about accommodating growth…
>
> (3) Urban growth should be located first in areas already characterized by urban growth that have adequate existing public facility and service capacities to serve such development, second in areas already characterized by urban growth that will be served adequately by a combination of both existing public facilities and services and any additional needed public facilities and services that are provided by either public or private sources, and third in the remaining portions of the urban growth areas. Urban growth may also be located in designated new fully contained communities as defined by RCW 36.70A.350.

The GMA requires that counties planning according to RCW 36.70A.040 in collaboration with the cities within them determine both the need for land to accommodate the urban growth allocated by OFM and the location of this land. The GMA refers to this land as "territory". RCW 36.70A.110(1). The territory that may be included in the UGA must have certain characteristics. It must be either characterized by urban growth or adjacent to territory characterized by urban growth. RCW 36.70A.110(1). Further, this territory must be adequately served with existing urban facilities and services or plans must exist to serve the UGA within the planning period set out in the comprehensive plan. RCW 36.70A.110(3); RCW 36.70A.020(12). These requirements mean that planning for UGAs should be done in a comprehensive way so that the need for land in the UGA is well documented and the territory delineated. Therefore, the record for adopting the UGA should support both the need for and the location of the UGA.

Skagit County's code contains similar requirements. SCC 14.08.020(5)(b) requires:

> Any proposed urban growth area boundary changes shall be supported by and dependent on population forecasts and allocated urban population distributions, existing urban densities and infill opportunities, phasing and availability of adequate services, proximity to designated natural resource lands and the presence of critical areas.

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C. Adjacency to the UGA

Positions of the parties

Futurewise does not argue that failure to map the property that the City of Mount Vernon needs to add to its UGA to meet its commercial and industrial needs does not comply with RCW 36.70A.110 or that Resolution R20060450 does not comply with SCC 14.08.020(5)(b). Instead, it argues that the addition of the WJY parcels fails to comply with the locational requirements of RCW 36.70A.110 for two reasons: first, the parcels are not characterized by urban growth because they consist of undeveloped farmland and second, the uses in adjacent lands are not urban uses. Additionally, Futurewise points out that I-5 runs to the west and north of these parcels as well as through large areas of agricultural land of long-term commercial significance. It argues that I-5 should not be considered urban growth or this will allow extensive expansion of urban growth up and down the I-5 corridor.[2]

The County and Intervenors, on the other hand, maintain that the WJY property is adjacent to the Mount Vernon city limits – territory characterized by urban growth. They point out that the northern parcel is a natural extension of the City's UGA boundary and that the property is bounded on all sides by significant public roads, including a highway overpass and interchange. They assert that the property is within a 1000 foot radius of commercial development and uses comprising of a tractor and equipment business, a trucking enterprise, and an orchard and nursery. [3]

<u>Board Discussion</u>

An examination of the map showing the WJY property shows that the 4.8 acre parcel adjoins the Mount Vernon city limits and the 1.2 acre adjoins the larger WJY parcel, although the smaller parcel is separated from the larger parcel by the interchange. When

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[2]Objections to a Finding of Compliance at 5; October 4, 2006 Letter from Futurewise to David Hughes, Chair of Skagit County Planning Commission at 3.

[3] Intervenors City of Mount Vernon and WJY Associates and Skagit County's Response to Futurewise Objections to a Finding of Compliance at 7 and 8.

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the Board originally heard this case, this property was adjacent to the UGA but not within the city limits. Since then, this property has been annexed by the City.

No party argues that the WJY property is itself characterized by urban growth. The issue is whether it is "adjacent to territory already characterized by urban growth" as provided in RCW 36.70A.110(1). In *Advocates for Responsible Development and John Diehl v. Mason County*, WWGMHB Case No. 06-2-0005, this Board said:

> "Territory …adjacent to territory" must therefore mean that the tracts of land are near, close or contiguous. It does not mean that every lot or parcel within the territory included must be contiguous to a lot or parcel already characterized by urban growth…

Advocates for Responsible Development and John Diehl v. Mason County, WWGMHB Case No. 06-2-0005 at 32 and 33.

The 4.8 parcel is adjacent to the city limits. The 1.2 acre parcel is adjacent to the larger parcel and is joined to the other by ownership. RCW 36.70.110(1) requires a city to be to part of a UGA. Land within an urban growth area (UGA) may be considered to be "characterized by urban growth" because it is designated for urban densities and uses. Even if those densities and uses have not yet been built out, the designation of land as part of a UGA is a decision to allow urban densities and uses. RCW 36.70A.110(2). Adding territory to a UGA which is adjacent to compliant UGA boundaries is therefore adding territory which is adjacent to territory already characterized by urban growth. As we have said in *Advocates for Responsible Development and John Diehl v. Mason County*, WWGMHB Case No. 06-2-0005, the addition of territory is not restricted to those parcels of land immediately abutting the UGA boundary. The WJY property, two parcels contiguous with one another and adjoining the UGA boundary on one side, is territory "adjacent to territory already characterized by urban growth".

Additionally, this land is not farmland. The Board agrees with Skagit County and Intervenors that this Board has found that the de-designation of these parcels as agricultural

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lands of long-term commercial significance complies with the GMA and the Skagit County comprehensive plan criteria.[4]

Conclusion: Because this land is not farmland and is adjacent to the Mount Vernon city limits, an area characterized by urban growth, inclusion of this property in the UGA complies with RCW 36.70A.110(1).

D. Need for the WJY Parcels in the UGA

Positions of the Parties

Futurewise argues that no new population information justifies the need for additional commercial and industrial land. [5] Even so, Futurewise does not claim that the City's population allocation is not based on the OFM's latest population projections. Nor does it challenge the analysis in the City's buildable lands analysis or the assumptions in the City of Mount Vernon Commercial and Industrial Needs Analysis, done for the City by Eric Hovee (Hovee Report). Instead, Futurewise contends that the WJY parcels do not fulfill the needs for commercial and industrial lands identified in the City's commercial and industrial needs analysis, which called for the addition of large parcels of undeveloped land. [6]

The County and Intervenors reply that the City has clearly shown the need for a considerable amount of commercial and industrial land. They point out that the City has been allocated 19,568 people, a 69 percent increase in its UGA population, in the 20 year planning horizon and 42 percent of the County's total population growth. To accommodate and support this increased allocation, the City considered the need for an increase in local jobs and translated this into adequate land area for commercial and industrial uses. [7] They

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[4] Final Decision and Order at 14. Agricultural lands of long-term commercial significance may not be included in a UGA unless the county or city has enacted a program authorizing transfer or purchase of development rights. RCW 36.70A.060(4)

[5] Objections to a Finding of Compliance at 3.

[6] Ibid at 3.

[7] Intervenors City of Mount Vernon and WJY Associates, and Skagit County's Response to Futureswise Objections to Finding of Compliance at 10 and 11.

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emphasize that the Hovee Report shows the City needs much more commercial/industrial land than it has been allocated, and the amount of available land for commercial/industrial development still falls below the amount of land currently allocated to the City for its projected commercial and industrial needs. [8]

Board Discussion

The record shows an increase in Mount Vernon's need for commercial and industrial land based on population allocations, a market factor and a holding factor. Futurewise has not challenged these assumptions. The Board's examination of the exhibits provided to the Board shows that the Hovee Report identified Mount Vernon's greatest need for commercial/industrial land is to add parcels of 10 acres or more to the UGA:

> "For commercial uses, this recommendation means that 93% of the newly assigned parcels should be larger than 10 acres; for industrial use it is recommended that 62 % of the parcels are in the 5-10 acre range and 21% are larger than 10 acres. Mount Vernon's existing inventory can accommodate demand for smaller infill sites; larger sites are needed to compliment this inventory and significantly impact growth in both jobs and local tax revenue.[9]

The County and Intervenors, at argument, asserted that while this statement would appear to support Futurewise's argument, the Hovee Report does not discount entirely the need for some additional smaller parcels of the size of the WJY property. The analysis shows the City has a total of 71 available parcels of land in the 1 to 5 acre range [10] currently available for commercial/industrial development. It also projects a need for an additional 12 parcels for industrial development in the three to five acre range and 5 more parcels for commercial development in the five acre range [11]. The Hovee Report does not show a need for parcels less than three acres in size, and says that parcels of less than an acre lack market viability for industrial uses.[12] This analysis supports the need, although small, for the 4.8 WJY

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[8] Ibid at 12.
[9] Exhibit A, City of Mount Vernon Commercial and Industrial Land Needs Analysis (September 2006) at iii.
[10] Ibid at 18.
[11] Ibid at 20, 21.
[12] Ibid at 16 and 20.

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parcel, and both parcels, if combined. [13] Combination of these parcels seems somewhat unlikely, given the isolation of the smaller parcel from the larger parcel by the interchange. If left to develop on its own, the commercial/industrial needs analysis does not support the need for 1.2 acre parcel for either commercial or industrial use. However, the Board will not substitute its judgment for the County, City, or the property owner about how this property will be used in the future and whether it will be developed as a combined parcel.

These parties further contend, and the Hovee Report confirms, that in 2003, through a countywide process, the County allocated 98 additional commercial/industrial acres to Mount Vernon, but this additional acreage was never mapped. [14] The County explains that the assumptions in the Mount Vernon's 2006 needs analysis have not been adopted by the County. [15] Nevertheless, the County supports their contention that WJY's 6 acres is within the amount of acreage assigned to the City in 2003, even without taking into account the additional needed commercial/industrial land [16] which the Hovee Report now estimates to be 322 acres. [17] However, unlike the 2006 commercial/industrial needs analysis, the 2003 allocation does not specify the size of parcels that are needed. Nonetheless, the County maintains the addition of the WJY property to Mount Vernon UGA is a "step in the right direction in acknowledging the city's need for additional economic growth to support its sizable existing and allocated population".[18]

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[13] The Hovee Report at 20 shows the City needs 22 additional parcels in the 5 to 10 acre range for industrial. For commercial acreage, this report at 21 only breaks shows the needs for parcels five acres or more in five acre increments.
[14] August 8, 2006 Memorandum from Tess Jordan and Eric Hovee to Jana Hanson, Mount Vernon Commercial and Existing Parcel Size Summary (attached to complete City of Mount Vernon Commercial and Industrial Land Needs Analysis June 2006)) at 2.
[15] October 6, 2006 Memorandum from Kirk Johnson and Jeroldine Hallberg, Department Report on Compliance Measures for the Western Washington Growth Management Hearings Board Case No. 05-2-0012, Mount Vernon UGA Expansion to Include the WJY Property at 4.
[16] Ibid at 4
[17] August 8, 2006 Memorandum from Tess Jordan and Eric Hovee to Jana Hanson, Mount Vernon Commercial and Existing Parcel Size Summary at 4.
[18] October 6, 2006 Memorandum from Kirk Johnson and Jeroldine Hallberg, Department Report on Compliance Measures for the Western Washington Growth Management Hearings Board Case No. 05-2-0012, Mount Vernon UGA Expansion to Include the WJY Property at 5.

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As an alternative to adding more land to the UGA to meet its need for more commercial and industrial land, Futurewise points out that the City has 62 vacant parcels, totaling 133 acres, of the same size as WJY's parcels available within the City limits. Futurewise argues that the City has a surplus of residential land that could be rezoned to meet the need for parcels the size of the WJY parcel. The County and Intervenors answer this allegation that the County should have rezoned residential land for commercial/industrial uses by insisting that the City has a wide range of discretion in designating land for uses within the UGA and that residential lands cannot be simply redesignated for commercial uses without regard to the proximity of other residential lands.

The Hovee Report recognizes that the City's buildable lands analysis showed that Mount Vernon has a supply of residential land slightly in excess of what it needs. However, the Hovee Report discusses how highway access and highway visibility are key criteria for commercial and industrial development from a market perspective. This report also evaluates the usefulness of this residential land for commercial and industrial uses and concludes that this land, generally in the eastern part of the City, is undesirable for siting commercial or industrial development given its indirect access to transportation corridors, and as to commercial uses, its lack of highway visibility. [19] Additionally, RCW 36.70A.110 (2) provides that "cities and counties have discretion in their comprehensive plans to make many choices about accommodating growth."

Conclusion: The record shows a need, albeit small, for the WJY 4.8 acre parcel and both parcels, if combined, and that the properties are within the allocation for commercial and industrial land currently assigned to the Mount Vernon UGA. We find that the addition of these properties, based on need alone, in light of the entire record, is not a clearly erroneous violation of RCW 36.70A.110(2). Further, the record also gives a clear rationale for not rezoning excess residential property in the City to commercial and industrial uses.

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[19] City of Mount Vernon Commercial and Industrial Needs Analysis at 9 and 10.

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We find that the County's recognition of the City's choice to add property to the UGA rather than rezoning residential property is within the discretion of the City and the County, and complies with RCW 36.70A.110(2) and RCW 36.70A.115. We further find that the addition of the WJY parcels to the Mount Vernon UGA is consistent with SCC 14.08.020(5)(b)'s requirements that any proposed urban growth area boundary changes shall be supported by and dependent on population forecasts and allocated urban population distributions, and existing urban densities and infill opportunities.

E. UGAs and Floodplains

Positions of the Parties

Futurewise says that both WJY parcels are in the 100 year floodplain and therefore should not be included in the UGA.[20] The County and Intervenors respond that it is not entirely clear that the WJY property meets the criteria for a GMA critical area. Even if these parcels are critical areas, these parties maintain that Futurewise failed to cite any authority that prohibits the City from incorporating a floodplain or a frequently flooded critical area in a UGA. [21]

In its petition in Case No. 07-2-0004, Futurewise claims that the addition of the WJY property to the Mount Vernon UGA violates RCW 36.70A.020(10), the GMA's environmental protection goal.

Board Discussion

In its argument, Futurewise does not cite any requirement of the GMA that including a floodplain or a critical area in a UGA violates. We find nothing in RCW 36 70A.110 that prohibits the inclusion of a critical area or a floodplain in a UGA. What the GMA requires is designation and protection of critical areas, and there is no challenge or evidence that the County or Mount Vernon have not done that, or that this action fails to protect critical areas.

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[20] Objection to a Finding of Compliance at 4.

[21] Intervenors City of Mount Vernon and WJY Associates, and Skagit County's response to Futurewise Objections to a Finding of Compliance at 18 and 19.

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Conclusion: Futurewise has not met its burden of proof that inclusion of the WJY property in the UGA, even if it includes a floodplain or a frequently flooded critical area, does not comply the GMA, including RCW 36.70A.110, and RCW 36.70A.020(10)

F. Compliance with the County's Policies

Positions of the Parties

Futurewise contends that adding the WJY property to the UGA extends auto-dependent commercial development south of Mount Vernon. Futurewise asserts that this is not compact, well-designed urban development called for by Skagit County Comprehensive Plan Policy LU 7A - 5.1. Therefore, Futurewise concludes this addition to the UGA does not comply with the GMA requirements that the parts of a comprehensive plan be consistent with one another. Futurewise specifically cites RCW 36.70A.130 in its petition which requires parts of a comprehensive plan to be consistent.[22]

The City's staff report on adding the WJY property to the UGA maintains that the City has policies to encourage mixed used development, but providing only mixed used development does not produce the kind of revenue that the City needs to sustain its population allocation.[23]

Board Discussion

The Board's examination of the County's Urban Growth Area Policies shows that while LU 7A - 5.1 supports location of commercial and growth in compact centers, the general objective that this policy falls under is broader and expresses an overall purpose of encouraging the suitable location of industrial and commercial development:

> Encourage commercial and industrial development to locate in well-defined centers throughout the urban areas suitable to their type of business and the population they will serve. Prohibit new zoning that furthers the continuation of strip commercial development.

Objective 5, Chapter 7, Skagit County Comprehensive Plan

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[22] Objections to a Finding of Compliance at 4.
[23] Exhibit B, City of Mount Vernon Post-Hearing Submission at 3.

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Under this Objective, other Urban Growth Area policies call for the following: (1) attracting commerce and industrial growth to designated areas, (2) ensuring an adequate supply of industrial land (3) following and encouraging development in compliance with jurisdictional planning to meet the region's needs, including its economy, employment, and shopping services. [24]

City plan policies should be consistent with the County's plan policies for commercial and industrial lands. RCW 36.70A.100. City policies call for the following: (1) provision of adequate land for commercial and industrial development to provide jobs to augment the City's tax base, (2) ensuring the amount of land for retail/commercial uses based on site characteristics, market demand, community need, and adequate facilities and services, and (3) providing for pedestrian, bicycle, and public transit access along identified arterials and encouraging intensive commercial development at major nodes on the street and transit network to reduce auto dependency.[25] We find no inconsistency between the County's and the City's policies.

Further, Futurewise does not offer any evidence to show how future development of this property violates the compact commercial/industrial development called for in Skagit County's plan.

Conclusion: We find that Petitioner has not sustained its burden of proof that adding the WJY property to the Mount Vernon UGA is inconsistent with LU 7A- 5.1 and we find that this action is not a clearly erroneous violation of RCW 36.70A.130.

G. Proximity to Designated Natural Resource Lands

Positions of the Parties

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[24] Skagit County Comprehensive Plan Policies 7A. 5.1. – 5.3

[25] City of Mount Vernon Comprehensive Plan Policies LU - 25.3.1, ED - 1.2.5, and ED - 1.2.7

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Futurewise also argues that the expansion of the UGA into agricultural lands of long-term commercial significance "creates the likelihood that farmers in this area will disinvest in their properties, leading to further agricultural conversion."[26] Futurewise asserts that urban uses are "incompatible with farming", and Skagit County has not incorporated any regulations to assure that the use of the WJY property would not interfere with the continued use of the surrounding agricultural lands for agriculture. [27] The failure to conserve agricultural lands of long-term commercial significance, Futurewise asserts, fails to comply with the requirements to conserve farmland in RCW 36.70A.040 and 36.70A.060, as well as Goal 8 of the GMA (the natural resource industries goal).

The City, County and WJY argue that the Board has disposed of this question by finding that the de-designation of the WJY property as agricultural land of long-term commercial significance complies with the GMA.[28]

Board Discussion

The County, City and WJY's argument that the Board has already disposed of this issue over-reads the Board's conclusion in the Final Decision and Order. The Board found that changing the designation of the WJY property (so that it is no longer considered agricultural land of long-term commercial significance) was compliant; the Board did not find that inclusion of those lands in the UGA was compliant. Therefore, while it is settled that the WJY lands themselves are not agricultural lands of long-term commercial significance, the Board has not determined whether the designation of the WJY property as urban lands complies with the GMA requirements to conserve and enhance agricultural lands.

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[26] Futurewise Comment Letter to Dave Hughes, Chair of Skagit County Planning Commission, October 24, 2006

[27] Objections to a Finding of Compliance at 6.

[28] Intervenors City of Mount Vernon and WJY Associates and Skagit County's response to Futurewise's Objections to a Finding of Compliance at 8.

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We have found that the two parcels may be treated as a combined parcel for purposes of determining the need for commercial lands of that size. (See discussion under V.(D) above) We will also, therefore, consider their combined impact on agricultural lands in determining whether the County's decision to include them in the Mount Vernon UGA complies with GMA requirements for the conservation and enhancement of agriculture.

The facts of this UGA expansion show a small acreage added to the Mount Vernon UGA at the convergence of a number of public roads. The concern raised is the impact of expanding the UGA into the adjacent farmland. The Mount Vernon city limits extend to the eastern boundary of I-5 where it borders the WJY property. The mitigated determination of nonsignificance prepared for the comprehensive plan amendment required a 75 foot landscaping buffer on the eastern portion of the property, to protect the "rural and agricultural character of the land to the east."[29] Therefore, while the eastern boundary of the 4.8 acre lot abuts designated agricultural lands, it is separated from those lands by Cedardale Road and buffered with a 75 ft landscaping strip. We note that this is less protection for natural resource lands than is normally required under SCC 14.16.810(7), which specifies 200 ft. setbacks for all lands abutting natural resource lands. Nevertheless, the County code provides this flexibility with specific conditions to protect adjacent farming operations, and farmers in the immediate area still have some protection through Skagit County's Right to Farm Ordinance and periodic notification of adjacent property owners. See SCC Code 14.16.810(7), 14.16.870, and Chapter 14.38 SCC. The rationale given for this reduction in the setback requirement is that "Requirement of a full 200 ft. buffer would severely limit use of the property due to its irregular shape and narrow width."[30]

The City has already extended its city limits to the west of the WJY property. The agricultural lands to the east abut the city limits at their northern edges and, with the inclusion of the WJY property, at least one of the agricultural parcels abuts the Mount

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[29] Integrated SEPA/GMA Report, 2003 Annual Comprehensive Plan Amendment Cycle at 19.
[30] *Ibid* at 18.

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Vernon UGA on its western boundary. From the maps, it is easy to see the pressure that the addition of the WJY property to the UGA will put on the agricultural lands in the neighborhood of the WJY property, as they too become adjacent to the UGA. Adding the WJY property to the UGA on a parcel by parcel basis, without an overall plan for locating the new UGA boundaries to meet the City's commercial and industrial needs in a comprehensive way, could create a domino effect. The same argument of adjacency to the UGA and need for more commercial/industrial land could easily apply to other agricultural lands, since many of them will be adjacent to the new UGA boundaries

By expanding the UGA on a parcel-by-parcel basis, the County is failing to plan for growth and to balance the goals of the GMA as it determines where future urban growth should occur. The property owners and the public have no idea where urban growth will extend to accommodate the need for commercial and industrial lands set out in the Hovee Report. Thus, the expansion here is extended with no certainty that the abutting agricultural lands will be conserved.

However, contrary to what Futurewise alleges, Skagit County does have regulations to protect agricultural lands of long-term significance from incompatible uses. In this Board's May 19, 2005 Compliance Order (Lot Aggregation) in *Evergreen Islands v. Skagit County*, WWGMHB Case No. 00-2-0046c, the Board said:

> The County's solid agricultural conservation measures including large minimum lot sizes for Agricultural[31] and Forest Resource Lands, buffering requirements for lands adjacent to agriculture, Right to Farm Ordinance, and periodic notification to property owners of adjacent agricultural activity help mitigate the effects of lots that will be developed under this ordinance.

Evergreen Islands v. Skagit County, WWGMHB 00-2-0046c (Compliance Order – Lot Aggregation) at 25.

While adding a 6 acre combined parcel of land to the UGA may seem to have insignificant impacts on adjacent agricultural land, it is the parcel by parcel process by which the County

[31] The County has had large minimum lot sizes for agricultural since 1973.

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chose to add the WJY property that most threatens agricultural lands of long-term commercial significance that are adjacent to UGAs. Many parcels of agricultural lands of long-term commercial significance adjoin UGAs in Skagit County. Although the County has enacted regulations to protect the adjacent agricultural lands from incompatible uses, we find that the study offered by Futurewise raises legitimate concerns that the lack of certainty this creates in the continued status of neighboring agricultural lands threatens their continued conservation. [32]

This is not to say that the County could not make a decision to extend the Mount Vernon UGA boundaries into agricultural lands. Based on the OFM population forecast and an assessment of the needs for additional lands within the UGAs, the County could establish new UGA boundaries in accordance with RCW 36.70A.110. In that process, the County would be required to balance all the GMA goals and requirements, including the goal and requirements to conserve agricultural lands of long-term commercial significance.[33] However, until the 20-year planning decisions are made with respect to the agricultural lands which will be conserved, incremental UGA encroachments into designated agricultural lands act to discourage rather than encourage their conservation.

The County considers this comprehensive plan amendment to be the last to be accepted until the 20-year planning assessment is made. At argument, the County informed the Board that it had called an informal halt to the process of extending the UGA on the basis of individual property owner requests[34]. Even though no legislation or formal policy direction has been adopted which would prohibit future parcel-by-parcel incursion into designated agricultural lands, we trust that Skagit County will act in accordance with the statements that they made at the compliance hearing. As was the concern of some of the planning

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[32] Exhibit C attached to Objections to a Finding of Compliance (Nelson, Preserving Farmland in the Face of Urbanization)
[33] RCW 36.70A.040, 36.70A.060, 36.70A.170 and 36.70A.020(8)
[34] Minutes from the Skagit County Planning Commission, Exhibit 165 (Attachment 1 to Skagit County's Second Post-Hearing Submission, March 2, 2007) at 8 and 9 also discusses this.

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commission members, we share the concern that this extension of the Mount Vernon UGA not have precedential effect. In addition, we agree that the property acreage involved is very small and has, at this point, a de minimus impact. Provided this expansion has no precedential value, we do not find it clearly erroneous for failing to conserve agricultural lands.

Conclusion: Because the WJY property is bounded by major roads on three sides, the impact of urban densities and uses on the surrounding agricultural lands is somewhat mitigated. The size of the property is also relatively small (6 combined acres). However, without a commitment to halt this parcel-by-parcel extension of UGA boundaries into the designated agricultural lands, the failure to clearly demarcate where future UGA growth may extend into farmlands would have a negative impact on surrounding agriculture. Skagit County represents that it has announced a halt to adding land to the UGA on a parcel by parcel basis. Taken together, we find that the small size of the acreage, the presence of roads as three of the boundaries of the property, and the County's commitment to halt further incursions into agricultural lands until an assessment of the need for UGA lands is balanced against the other goals and requirements of the GMA (especially those for conservation of agricultural lands) prevent this UGA expansion from being clearly erroneous. For these reasons, the Board finds that the addition of the WJY property to the Mount Vernon UGA is not a clearly erroneous violation of RCW 36.70A.060 and RCW 36.70A.040, and is consistent with SCC14.08.020 (5)(b)'s direction to consider proximity to designated natural resource lands.

Overall Conclusion: The WJY property is adjacent to the Mount Vernon city limits. The record shows a need, albeit small, within the County's current allocation for commercial/industrial lands for a combined small parcel of such acreage. Even if the WJY property contains a frequently flooded critical area, RCW 36.70A.110 does not prohibit the addition of the WJY property for this reason. The addition of the WJY property is not inconsistent with Skagit County's comprehensive plan policies. For these reasons, the

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addition of the WJY property to the Mount Vernon UGA complies with RCW 36.70A.110(1) and (2), RCW 36.70A.020(1)(2), and (10), RCW 36.70A.115, and RCW 36.70A.130, and is consistent with SCC 14.08.020 (5)(b).

Additionally, the Board recognizes that the County both lacks an adopted process to examine additions to the UGA in a comprehensive way and has not yet delineated the location of future additions to the UGA. These failings threaten the conservation of agricultural lands because they create uncertainty in farmers who need to know if they should plan for the future agricultural use of their property. Nonetheless, due to the County's announced commitment to halt the process of parcel by parcel additions to the UGA, the County's protections for agricultural lands of long-term commercial significance, the isolation by roads of the 4.8 parcel and the small size of the 1.2 acre parcel, the Board finds that the addition of the WJY property is not a clearly erroneous violation of RCW 36.70A.060, RCW 36.70A.040, RCW 36.70A.110(3), RCW 36.70A.020(8), and SCC 14.080.020(5)(b) Finally, while the Petition for Review alleges a violation of RCW 36.70A.020(12), Petitioner did not provide argument or evidence to support this allegation.

VI. FINDINGS OF FACT

1. Skagit County is a county located west of the crest of the Cascade Mountains which is required to plan according to RCW 36.70A.040.

2. Petitioner Futurewise is an organization that participated in writing and orally in the adoption of Resolution R20060450.

3. Skagit County adopted Resolution R20060450 on December 18, 2006 that affirmed the retention of the WJY property in the Mount Vernon UGA.

4. WJY's property comprises two parcels, a 4.8 parcel and 1.2 acre parcel.

5. The 4.8 parcel adjoins the Mount Vernon city limits and the 1.2 acre adjoins the larger parcel.

6. The WJY property is not agricultural land of long-term commercial significance under the County's adopted designation criteria. The Board's September 22, 2005 decision

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found the de-designation of this property as agricultural land of long-term commercial significance complies with the GMA and the Skagit County's comprehensive plan's designation criteria.

7. The City of Mount Vernon completed a lands supply analysis and studied its needs for commercial and industrial land (Hovee Report) in the summer of 2006.

8. The Hovee Report shows an increase in Mount Vernon's need for commercial and industrial land based on population allocations, a market factor and a holding factor.

9. Futurewise does not challenge the assumptions in the Hovee Report.

10. The Hovee Report shows the City has a total of 71 available parcels of land in the 1 to 5 acre range currently available for commercial/industrial development.

11. The Hovee Report projects a need for an additional 12 parcels for industrial development in the three to five acre range and 5 more parcels for commercial development in the five acre range.

12. The Hovee Report confirms that in 2003 the County allocated 98 additional commercial/industrial acreage to the Mount Vernon UGA, but this additional acreage was never mapped.

13. The addition of the WJY property is within the Mount Vernon UGA's allocation for commercial and industrial land.

14. The Hovee Report also evaluates the usefulness of existing residential lands within the Mount Vernon city limits for commercial and industrial uses and concludes that this land, generally in the eastern part of the City, is undesirable for siting commercial or industrial development given its indirect access to public highways, and for commercial uses, lack of visibility.

15. Futurewise does not offer any evidence that demonstrates that future development of the WJY property violates the compact, well designed commercial/industrial development called for in Skagit County's Plan Policy LU 7A-5.1.

16. WJY's northeastern 4.8 acre lot, is completely bounded by I-5, Hickox Road and Cedardale Road.

17. While the eastern boundary of the 4.8 acre lot abuts designated agricultural lands, it is separated from those lands by Cedardale Road and buffered with a 75 ft landscaping strip.

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18. The southeastern lot is bounded by I-5 to the west, Hickox Road to the north, and Cedardale Road to the east. Additionally, this 1.2 acre lot is bordered to the south by designated agricultural lands of long-term commercial significance. In granting the comprehensive plan amendment requested by the owners of the WJY property, no buffer was required by the County on the southern side of the property.

19. The County's agricultural conservation measures include buffering requirements for lands adjacent to agriculture, Right to Farm measures, and periodic notification to property owners of adjacent agricultural activity. SCC Code 14.16.810(7), 14.16.870, and Chapter 14.38 SCC.

20. Parcel-by-parcel expansion of the UGA into designated agricultural lands of long-term commercial significance without a long-term plan for locating new urban growth creates uncertainty in farmers about the continued use of their lands for agriculture.

21. At argument, the County informed the Board that it had called an informal halt to the process of extending the UGA on the basis of individual property owner requests. The minutes of the November 2, 2006 Skagit County Planning Commission meeting also confirms this commitment.

22. Futurewise did not raise any arguments that adding these parcels to the Mount Vernon UGA does not comply with RCW 36.70A.020 (12).

23. Any Finding of Fact hereafter determined to be a Conclusion of Law is hereby adopted as such.

VII. CONCLUSIONS OF LAW

A. The Board has jurisdiction over the parties and subject matter of this case.

B. Petitioner Futurewise has standing to challenge R20060450.

C. The addition of the WJY property to the Mount Vernon UGA complies with RCW 36.70A.110, RCW 36.70A. 020(1) and (2), RCW 36.70A.115, based on the record establishing a need for commercial lands of this size within the Mount Vernon UGA.

D. Petitioner has not carried its burden of proof pursuant to RCW 36.70A.320 that the addition of the WJY parcels to the Mount Vernon UGA violates the environment goal of the GMA. RCW 36.70A.020(10).

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E. Petitioner has not carried its burden of proof pursuant to RCW 36.70A.320 that the addition of the WJY property is inconsistent with Skagit County's Comprehensive Plan Policy LU 7A - 5.1 and thus noncompliant with RCW 36.70A.130.

F. The addition of the WJY property to the Mount Vernon UGA is not a clearly erroneous violation of the GMA goal and requirements for the conservation of agricultural resource lands (as alleged by Petitioners) and the County's requirements for consideration of impacts on natural resource lands (SCC 14.08.020(5)(b)), RCW 36.70A.060, RCW 36.70A.040, and RCW 36.70A.020(8).

G. Petitioner has not carried its burden of proof pursuant to RCW 36.70A.320 that the addition of the WJY property to the Mount Vernon UGA does not comply with the public facilities and services goal of the GMA. RCW 36.70A.020(12).

H. Any Conclusion of Law hereafter determined to be a Finding of Fact is hereby adopted as such.

VIII. ORDER

In accordance with the above Findings of Fact and Conclusions of Law, the Board determines that Resolution R20060450 COMPLIES with the Growth Management Act.

This decision resolves the last remaining compliance issue in former Case No. 05-2-0012. This case also decides all of the issues raised in the Petition for Review in Case NO. 07-2-0004. Therefore, consolidated Case No. 05-2-0012c is now CLOSED.

Entered this 5th day of April 2007.

_____
Holly Gadbaw, Board Member

_____
Margery Hite, Board Member

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_____
James McNamara, Board Member

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

Reconsideration. Pursuant to WAC 242-02-832, you have ten (10) days from the date of mailing of this Order to file a petition for reconsideration. The original and three copies of a motion for reconsideration, together with any argument in support thereof, should be filed with the Board by mailing, faxing, or otherwise delivering the original and three copies of the motion for reconsideration directly to the Board, with a copy to all other parties of record. Filing means actual receipt of the document at the Board office. RCW 34.05.010(6), WAC 242-02-240, and WAC 242-02-330. The filing of a motion for reconsideration is not a prerequisite for filing a petition for judicial review.

Judicial Review. Any party aggrieved by a final decision of the Board may appeal the decision to superior court as provided by RCW 36.70A.300(5). Proceedings for judicial review may be instituted by filing a petition in superior court according to the procedures specified in chapter 34.05 RCW, Part V, Judicial Review and Civil Enforcement. The petition for judicial review of this Order shall be filed with the appropriate court and served on the Board, the Office of the Attorney General, and all parties within thirty days after service of the final order, as provided in RCW 34.05.542. Service on the Board may be accomplished in person or by mail, but service on the Board means actual receipt of the document at the Board office within thirty days after service of the final order. A petition for judicial review may not be served on the Board by fax or by electronic mail.

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

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