

1 BEFORE THE WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

2
3 DONNA MACOMBER, HAROLD W.
4 MACOMBER, HELEN GREEN and LARRY
5 HOROWITZ,

Case No. 06-2-0022

FINAL DECISION AND ORDER

6
7 Petitioners,

8 v.

9 CITY OF BELLINGHAM,

10
11 Respondent

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14 **I. SYNOPSIS OF DECISION**

15 The petition for review in this case challenges the adoption of the City of Bellingham's
16 Ordinance No. 2006-06-058, adopting a new comprehensive plan and repealing the 1995
17 Bellingham Comprehensive Plan.

18
19 Petitioners Donna Macomber, Harold Macomber, Helen Green and Larry Horowitz argue
20 that the City's treatment of its park and recreation level of service and park and recreation
21 lands to be acquired in its Comprehensive Plan fails to comply with the internal consistency
22 requirements of RCW 36.70A.070. Specifically, they allege that the Land Supply Analysis in
23 the Land Use Element of the Comprehensive Plan and the Capital Facilities Element are
24 inconsistent with the Park Plan and that Land Supply Analysis is inconsistent with the
25 Capital Facilities Element.
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28 In this decision, the Board concludes that that the Bellingham Comprehensive Plan is an
29 internally consistent document except for a discrepancy between the Existing Level of
30 Service (ELOS) standards recited in the Parks, Recreation and Open Space Plan (Park
31 Plan) and the ELOS utilized in the Capital Facilities Element. While Petitioners assert that
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1 the City adopted the level of service for parks proposed in the Park Plan (PLOS), the Board
2 finds that the PLOS was not adopted as the City's level of service for parks. Instead, the
3 2006 comprehensive plan explicitly adopts an ELOS of 42 acres per 1,000 residents. To
4 the extent that the Petitioners' claims rely upon the argument that the PLOS was adopted
5 when the Park Plan was incorporated into the comprehensive plan, those arguments fall.
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8 On the other hand, the Board finds that the ELOS expressly adopted in the comprehensive
9 plan is not uniformly used throughout the comprehensive plan. As a result, the Board finds
10 there is a lack of consistency between the Parks Level of Service (LOS) standard stated in
11 the adopted Capital Facilities Plan and the LOS standard as stated in the Park Plan and this
12 violates the internal consistency requirements of RCW 36.70A.070. The City indicates a
13 willingness to rectify this inconsistency.
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16 As to Petitioners' request for an invalidity determination, the Board finds that the lack of
17 consistency between adopted LOS standards does not substantially interfere with the
18 fulfillment of the goals of the Growth Management Act. For that reason, the Board declines
19 to impose invalidity.
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21 **II. PROCEDURAL HISTORY**

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23 On June 5, 2006 the Bellingham City Council passed Ordinance No. 2006-06-058 adopting
24 a new comprehensive plan and repealing the 1995 Bellingham Comprehensive Plan.¹ On
25 August 7, 2006 the Board received the Petition for Review filed by Donna Macomber,
26 Harold W. Macomber, Helen Green and Larry Horowitz (Petitioners). The Prehearing
27 Conference was held on August 31, 2006 and the Prehearing Order was issued on
28 September 1, 2006.
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¹ Record at 1.

1 Petitioners brought a motion to supplement the record below with thirteen e-mails generated
2 after Ordinance 2006-06-058 was adopted. The City filed a timely objection. On October
3 16, 2006 the Board issued an order denying the motion. Supplemental evidence compiled
4 after the decision of the local government has been made will be admitted only where such
5 additional evidence would be necessary or of substantial assistance to the board in
6 reaching its decision.²
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9 The Hearing on the Merits was held on December 14, 2006 in Bellingham, Washington. At
10 that hearing, Petitioners presented four exhibits that were not part of the official record in
11 this case. The exhibits were provisionally allowed, provided the City was granted one week
12 to file an objection. The City filed a timely objection.³ In that response, the City noted it was
13 willing to withdraw its objection to the admission of the exhibits, so long as its response to
14 Petitioners' additional exhibits was admitted as part of the record. Considering it is
15 appropriate for the City to present a written response to exhibits that were not part of the
16 record, the Petitioners' exhibits and the City's response are both admitted.
17

18 19 20 **III. ISSUES PRESENTED**

21 The following issues were raised in the Petition for Review in case No. 06-2-0022:

- 22 1. Did the City's treatment of its park and recreation level of service and park and
23 recreation lands to be acquired in its Comprehensive Plan fail to comply with the
24 internal consistency requirements of RCW 36.70A.070?
- 25 2. For the reasons set forth in Issue 1 above, does the Land Supply Analysis in the
26 Land Use Element of the Comprehensive Plan fail to comply with the internal
27 consistency requirements of RCW 36.70A.070 because it is inconsistent with the
28 Park Plan of the Comprehensive Plan?
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32 ² See, Friday Harbor v. San Juan County, WWGMHB No. 99-2-0010c, January 24, 2001 (Order on Motion to Supplement the Record).

³ City of Bellingham's Response to Petitioners' Hearing Exhibits.

- 1 3. For the reasons set forth in Issue 1 above, does the Capital Facilities Element of the
2 Comprehensive Plan fail to comply with the internal consistency requirements of
3 RCW 36.70A.070 because it is inconsistent with the Park Plan of the Comprehensive
4 Plan?
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6 4. For the reasons set forth in Issue 1 above, does the Land Supply Analysis in the
7 Land Use Element of the Comprehensive Plan fail to comply with the internal
8 consistency requirements of RCW 36.70A.070 because it is inconsistent with the
9 Capital Facilities Element of the Comprehensive Plan?
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11 5. Does the lack of internal consistency as described in Issues 1-4 above substantially
12 interfere with the goals and requirements of the GMA?
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14 **IV. BURDEN OF PROOF**

15 For purposes of board review of the comprehensive plans and development regulations
16 adopted by local government, the GMA establishes three major precepts: a presumption of
17 validity; a “clearly erroneous” standard of review; and a requirement of deference to the
18 decisions of local government.
19

20 Pursuant to RCW 36.70A.320(1), comprehensive plans, development regulations and
21 amendments to them are presumed valid upon adoption:
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23
24 Except as provided in subsection (5) of this section, comprehensive plans and
25 development regulations, and amendments thereto, adopted under this chapter are
26 presumed valid upon adoption.
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28 RCW 36.70A.320(1). The statute further provides that the standard of review shall be
29 whether the challenged enactments are clearly erroneous:
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31 The board shall find compliance unless it determines that the action by the state
32 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.

1 RCW 36.70A.320(3)

2 In order to find the County's action clearly erroneous, the Board must be "left with the firm
3 and definite conviction that a mistake has been made." *Department of Ecology v. PUD1*,
4 121 Wn.2d 179, 201, 849 P.2d 646 (1993).
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7 Within the framework of state goals and requirements, the boards must grant deference to
8 local government in how they plan for growth:

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

17 RCW 36.70A.3201 (in part).

18 In sum, the burden is on Petitioners to overcome the presumption of validity and
19 demonstrate that any action taken by the City is clearly erroneous in light of the goals
20 and requirements of Ch. 36.70A RCW (the Growth Management Act). RCW 36.70A.320(2).
21 Where not clearly erroneous and thus within the framework of state goals and requirements,
22 the planning choices of local government must be granted deference.
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24

25 V. DISCUSSION

26 **Issue No. 1** Did the City's treatment of its park and recreation level of service and park
27 and recreation lands to be acquired in its Comprehensive Plan fail to comply with the
28 internal consistency requirements of RCW 36.70A.070?
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1 **Position of the Parties**

2 Petitioners assert that portions of the Land Use and Capital Facilities Chapters of the
3 Bellingham Comprehensive Plan violate the internal consistency requirements of RCW
4 36.70A.070 because the reduction for “developable park acres” in the Land Use Chapter’s
5 Land Supply Analysis is inaccurate and inconsistent with the actual number of “developable
6 park acres” adopted in the Park Plan Chapter. Petitioners reserve the specifics of this
7 argument for the later portions of their brief and discuss them more fully in their discussion
8 of Issues 2, 3, and 4.
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10
11 The City does not directly respond to Issue 1 *per se*, and instead addresses the more
12 particular issues of consistency among the Land Supply Analysis, the Park Plan and the
13 Capital Facilities Chapters of the Park Plan
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16 **Board Discussion**

17 As Issue #1 is a general issue of internal consistency, the Board will deal with this issue
18 within its discussion of Issues 2, 3, and 4, as have the parties.
19

20 **Conclusion:** For the reasons set forth in our analysis of Issues 2, 3, and 4 we conclude
21 that that the Bellingham Comprehensive Plan is an internally consistent document except
22 for a discrepancy between the ELOS standards recited in the Parks Plan and in the Capital
23 Facilities Element. This inconsistency is discussed further, below.
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25
26 **Issue No. 2** For the reasons set forth in Issue 1 above, does the Land Supply Analysis
27 in the Land Use Element of the Comprehensive Plan fail to comply with the internal
28 consistency requirements of RCW 36.70A.070 because it is inconsistent with the Park
29 Plan of the Comprehensive Plan?
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1 **Position of the Parties**

2 Petitioners allege that the Land Use Element is inconsistent with the Parks Recreation and
3 Open Space Plan (Park Plan) because, it utilizes the wrong figure for lands that must be
4 acquired for parks to accommodate the projected population increase over the 20-year
5 planning horizon. Petitioners allege that the correct figure is based on the proposed level of
6 service (PLOS) set out in the Park Plan, rather than on the existing level of service for parks
7 (ELOS) found in the Park Plan and the Capital Facilities Chapter of the comprehensive plan.
8 The Land Supply Analysis, Petitioners point out, is the basis upon which the City determines
9 if there is sufficient land for forecasted population growth. Petitioners argue that the City
10 has overstated its need for more developable parks land, thus inflating the amount of
11 developable lands needed overall within the Bellingham urban growth area (UGA) to
12 accommodate the projected population growth over the next twenty years.
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16 Petitioners argue that the amount of lands for parks that would be needed over the 20-year
17 planning horizon if the PLOS were utilized would be 1,896 acres. However, 2,080 acres of
18 parks land are needed if the ELOS is used.⁴ Of the acreage required for parks under the
19 PLOS, only 396 acres are required for developable parks, while the bulk of the acreage
20 (1,500 acres) are for resource conservancy uses, Petitioners urge. On the other hand,
21 using an ELOS of 42 acres per thousand residents, 1,226 acres are needed for developable
22 parks land and only 854 are needed for resource conservancy. Petitioners therefore claim
23 that the use of ELOS led the City to deduct 1,226 for developable park land from its
24 inventory of developable land instead of using PLOS and deducting only 396 acres for
25 developable park land.⁵ Petitioners point out that the PLOS standards of the Parks Final
26 Environmental Impact Statement “undeniably confirms that the PLOS recommendation to
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⁴ Petitioners’ Prehearing Brief at 8.

⁵ *Ibid.*

1 acquire 1,896 total Park Acres, including 396 Developable Park Acres, represents the City's
2 adopted parkland acquisition strategy".⁶

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4 In reply, the City argues that the Petitioners' claim of inconsistency is based on the false
5 premise that the City adopted PLOS as its LOS. The City asserts that the Capital Facilities
6 Element of the Comprehensive Plan, the Park Plan, and the Land Supply Analysis all use
7 ELOS to calculate the number of park acres needed to accommodate projected population
8 growth.⁷

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11 The City acknowledges an inconsistency between the ELOS in the Capital Facilities
12 Element (CF-47 of the comprehensive plan) and that shown on page 115 of the Park Plan,
13 but suggests that this discrepancy "does not interfere with the ability of the physical aspects
14 of the City's Comprehensive Plan to coexist on the available land, or the ability of the Plan
15 to provide that adequate facilities are available when the impacts of development occur."⁸

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18 The City also argues that, to the extent the challenge to the Land Supply Analysis goes
19 beyond the internal consistency issues presented in the September 1, 2006 PreHearing
20 Order, the Board should not consider it.⁹

21
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23 **Board Discussion**

24 The City's Park Plan describes four different possible Level of Service (LOS) standards for
25 determining the additional park land and facilities needed by the City to meet future
26 population growth. These include the ELOS, PLOS, a composite proposed level of service
27 assuming financial contributions from other governmental entities (composite PLOS) and
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31 _____
32 ⁶ Petitioners' Prehearing Brief at 14.

⁷ City's Brief at 13-14.

⁸ City's Brief at 14.

⁹ City's Brief at 12.

1 the National Recreation & Park Association level of service (NRPA).¹⁰ The ELOS defines
2 “an existing standard for each type of park, recreation and open space provided with the
3 existing inventory.”¹¹ PLOS, in contrast, was developed through a public process that
4 suggested a proposed new level of service standard for parks by determining the quantity of
5 a particular type of facility that is considered to be surplus or deficient in quantity or
6 condition within the existing inventory.¹² Under the composite PLOS, the LOS standard is
7 the same as under PLOS, but the composite PLOS assumes less of a financial commitment
8 of the City and instead relies on a combination of City, Whatcom County, Port of
9 Bellingham, and Bellingham School District resources to meet the LOS requirements.¹³
10 Finally, the NRPA ratios have been developed over time by major park, recreation, and
11 open space departments across the country.¹⁴ Among the four, the City’s Park Plan gives
12 the most consideration to the ELOS and PLOS standards.
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16 There is no dispute that the City has the discretion to determine the level of service it will
17 provide for its parks facilities. This Board has long held that the Growth Management Act
18 “invests local government with wide discretion” in setting LOS standards.¹⁵ Instead, this
19 case revolves around which LOS standard the City adopted – the ELOS or the PLOS
20 recommended by the steering committee as a result of the public process.
21

22
23 The fundamental assumption behind Petitioners’ assertion of inconsistency between the
24 Land Use Element and the Park Plan is that the City adopted PLOS as its Parks Level of
25 Service (LOS) standard. According to Petitioners, the PLOS is 45.9 acres per thousand
26 residents. Thus, the 830 acre “error” between the 1,253 net developable residential acres in
27 the current inventory used in the Land Supply Analysis and Petitioner’s calculation of 2,083
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30 ¹⁰ Record at 2348-2352.

31 ¹¹ Record at 2352.

32 ¹² Record at 2352.

¹³ Record at 2378.

¹⁴ Record at 2348.

¹⁵ Achen v. Clark County, WWGMB, 95-2-0067, FDO, September 20, 1995.

1 net developable residential acres in the current inventory is found by subtracting 396
2 developable park acres from 1,226 acres of needed developable land identified in the Land
3 Supply Methodology Report.¹⁶ Yet, the 396 acres employed by Petitioners in arriving at the
4 figure of 2,093 net developable acres is found only in the PLOS standards.¹⁷ There, 396
5 acres is found as the total deficit of resource activities lands (230 acres), linear trails (25
6 acres), athletic fields (134 acres) and support facilities (7 acres) needed to achieve the
7 PLOS standard.
8

9
10 Absent the conclusion that the City adopted the PLOS, there is no basis to bring 396 acres
11 into the equation, and therefore no basis to find an 830 acre error in the City's calculation.
12 It is significant, therefore, that Petitioners have not established that the City adopted the
13 PLOS as its Park LOS. Instead, if we consider the documents formally adopted by the City,
14 it is clear that the City chose ELOS as its Parks LOS standard.
15

16
17 Ordinance 2006-06-058 adopted Chapter 5, the Capital Facilities Chapter of the
18 Comprehensive Plan.¹⁸ Chapter 5 clearly demonstrates an intent to "Maintain existing
19 levels of service for park, recreation, and open space facilities with special emphasis on
20 equitable distribution of park, recreation, and open space facilities throughout the county."¹⁹
21 Further, the Capital Facilities Element expressly adopts a level of service standard for parks
22 of 42 acres per 1,000 residents.²⁰
23

24
25 The City's planning documents consistently reference that, "based on the projected
26 population growth of the City by the year 2022, a total of 2,080 acres of additional park land
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30 _____
31 ¹⁶ Record at 721.

32 ¹⁷ Record at 2350.

¹⁸ Record at 4.

¹⁹ Record at 377.

²⁰ Bellingham Comprehensive Plan, Capital Facilities Chapter, CF-47 (Index No. 0376)

1 will be needed.”²¹ The 2080 acre figure is key because this is shown in the Park,
2 Recreation and Open Space Plan as the acreage needed to maintain the ELOS.

3
4 In addition, the Land Supply Methodology Report was formally adopted as Exhibit D.3 to
5 Ordinance 2006-06-058.²² The 2,080 acre figure referenced in the text of the Land Supply
6 Methodology Report ²³ forms the basis for the “City of Bellingham Land Analysis Summary
7 Table”²⁴ . That table, adopted by the Bellingham City Council as part of the ordinance
8 under appeal, notes that 1,226 developable park acres are needed. The figure of 1,226 is
9 the result of subtracting 703 acres of conservancy lands and 150 acres of activity areas and
10 trail corridors from 2,080 acres of park lands needed overall to maintain the ELOS over the
11 twenty-year planning horizon.²⁵ It is not disputed that the 2,080 acre deficit is based on the
12 ELOS requirements of the City.²⁶

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16 Accordingly, the Bellingham City Council’s adoption of the Land Supply Methodology Report
17 and the Capital Facilities chapter demonstrates that the City Council intended to adopt
18 ELOS as its Parks Level of Service standard. There is no basis to find that the City Council
19 adopted PLOS. That being the case, the alleged inconsistency between the Land Use
20 Element (primarily the Land Supply Analysis) and the Park Plan, to the extent it is
21 predicated upon the assumption that the City adopted PLOS as its Parks Level of Service
22 Standard, does not exist.

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24
25 With regard to the City’s argument that Petitioners are foreclosed from making a broader
26 challenge to the Land Supply Analysis than was presented in the issues contained in the
27 Prehearing Order, the City is correct that RCW 36.70A.290(1) limits the issues before the
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30 ²¹ Record at 741.

31 ²² Record at 4.

32 ²³ Record at 721.

²⁴ Record at 93.

²⁵ Record at 742.

²⁶ Petitioners’ Prehearing Brief, at 5.

1 Board.²⁷ However, it is apparent that the basis of Petitioners' concern with the City's Land
2 Supply Analysis is that it is based on the alleged miscalculation of the residential land
3 supply by 830 acres and that this results in a failure to comply with the internal consistency
4 requirements of RCW 36.70A.070.²⁸ Therefore, the Board finds that this issue is before it.
5 This issue, however, is based on the assumption that the City adopted PLOS when it
6 incorporated the 2002 Steering Committee's PLOS recommendations into the City's
7 comprehensive plan.²⁹ As we have concluded that the City adopted ELOS as its Parks LOS
8 standard, this challenge is not supported by the record.
9

10
11 **Conclusion:** Petitioners' argument that there is an inconsistency between the Land Supply
12 Analysis in the Land Use Element and the Park Plan with regard to the treatment of park
13 acres to be acquired is based on the premise that the City adopted PLOS as its Parks LOS
14 standard. However, there is insufficient evidence to accept that conclusion. Instead, it is
15 clear that the City adopted ELOS as its Parks LOS standard.
16

17
18 Based on the foregoing, Petitioners have not carried their burden of proof to demonstrate
19 that a lack of internal consistency exists between the Land Supply Analysis in the Land Use
20 Element and the Park Plan in violation of RCW 36.70A.070.
21

22
23 However, although we do not find that Petitioners' analysis of developable acreage of park
24 land demonstrates an internal inconsistency in the plan, we do find that there are
25 inconsistencies between the ELOS as stated in the Park Plan, the
26 Land Use Methodology Report and the Capital Facilities Element. This inconsistency is
27 discussed in Issues Four and Five, below.
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31 ²⁷ Advocates for Responsible Development, et al. v. Mason County, WWGMHB, 06-2-0005, FDO August 14,
32 2006.

²⁸ Petitioners' Prehearing Brief, at 17.

²⁹ Petitioners' Prehearing Brief, at 14.

1 **Issue No. 3** For the reasons set forth in Issue 1 above, does the Capital Facilities
2 Element of the Comprehensive Plan fail to comply with the internal consistency
3 requirements of RCW 36.70A.070 because it is inconsistent with the Park Plan of the
4 Comprehensive Plan?
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7 **Position of the Parties**

8 Petitioners note that the LOS stated in the Capital Facilities element is 42 acres/1,000
9 residents. Petitioners claim that this is at odds with the LOS standard adopted in the Park
10 Plan where they identify a total Parks LOS of 45.9 acres per 1,000. This LOS of 45.9
11 acres/1,000 is based on the sum of a watershed LOS of 13.9 acres per 1,000 and a non-
12 watershed LOS of 32.0 acres per 1,000.³⁰ Noting that watershed and non-watershed
13 acquisitions are financed through a separate watershed fund, Petitioners claim the City
14 cannot effectively budget its acquisition costs, as acquisition of these lands are financed
15 from different funds.
16

17
18 The City responds that Petitioners' calculation of the number of acres of future park land
19 needed to accommodate future growth is flawed in that it is based on the false assumption
20 that the City adopted PLOS as its Parks LOS standard.
21

22
23 **Board Discussion**

24 While there is ample evidence that the City adopted the ELOS of either 42 or 47.49
25 acres/1,000³¹ there is no evidence that it attempted to adopt a 45.9 acres/1,000 LOS
26 standard, as Petitioners allege.
27

28 Petitioners' argument that the City adopted a Parks LOS standard of 45.9 acres/1,000 is
29 predicated upon the assumption that the City adopted the PLOS.³² Petitioners state in their
30

31 _____
32 ³⁰ Petitioners' Prehearing Brief, at 18.

³¹ The issue of ELOS standards of 42 vs. 47.49 acres/1,000 is discussed below.
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1 brief that “Based on the PLOS recommendations and a projected population in 2002 of
2 113,055, the Park Plan establishes the following park level-of-service (Park LOS),
3 expressed in terms of acres per 1,000 people: Total Park LOS: 45.9.”³³ But nowhere in
4 the City’s adopted planning documents is a standard of 45.9 acres/1,000 expressly
5 discussed, much less adopted. Instead, the 45.9 acres/1,000 is one derived by Petitioners
6 themselves from the figures used in the PLOS analysis.
7

8
9 **Conclusion:** As we have determined that the City adopted ELOS as its Parks LOS
10 standard, the PLOS standard of 45.9 acres/1,000 is not inconsistent with the adopted
11 elements of the Comprehensive Plan. We agree with the City that the discussion of the
12 PLOS standard in the Park Plan is a consideration of options and does not violate the
13 internal consistency requirements of RCW 36.70A.070.
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16 **Issue No. 4** For the reasons set forth in Issue 1 above, does the Land Supply Analysis
17 in the Land Use Element of the Comprehensive Plan fail to comply with the internal
18 consistency requirements of RCW 36.70A.070 because it is inconsistent with the Capital
19 Facilities Element of the Comprehensive Plan?
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22 **Position of the Parties**

23 In support of their contention that the Land Supply Analysis in the Land Use Element is
24 inconsistent with the Capital Facilities Element, Petitioners point to the discrepancy between
25 the 42 acres/1,000 ELOS standard found in the CFP (page CF-47 of the Comprehensive
26 Plan), and the 47.49 acres/1,000 ELOS standard found in the Land Supply Analysis.
27 Petitioners argue that with multiple LOS standards it is impossible for the City to accurately
28 determine the number of park acres to acquire or budget for.³⁴
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32 ³² Table 1, page 8 of Petitioners’ Prehearing Brief.

³³ Petitioners’ PreHearing Brief, at 5.

³⁴ Petitioners’ Prehearing Brief, at 19-20.

1 The City responds that it has not adopted multiple LOS standards and has in fact adopted a
2 single ELOS as its Parks LOS standard.

3
4 At the hearing on the merits, the City presented an exhibit entitled "Reconciliation of ELOS
5 Ratios in Park Plan"³⁵. This reconciliation notes that the ELOS standard found on page 91
6 of the Park Plan³⁶ was calculated in 2002. It used a beginning population of 78,040 for the
7 City based on 2000 census data and includes the unincorporated portion of the Bellingham
8 UGA as well as the City itself. Dividing the 3,289 acres of parks by the 2000 City and UGA
9 population resulted in an ELOS of 42.15 acres/1,000. On the other hand, the ELOS
10 standard found on page 115 of the Park Plan³⁷ was calculated in 2004 using a population
11 for the City (and not including the UGA) of 69,260 based on 2002 OFM population data.
12 Dividing the same 3,289 acres of parks by this population figure produces an ELOS
13 standard of 47.49 acres/1,000.
14
15

16 17 **Board Discussion**

18 In examining the documents adopted as part of the Comprehensive Plan adoption, the
19 Board finds that there is a disparity, or at the very least a clear possibility for confusion in the
20 public's mind as to what the City adopted as its ELOS.
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22
23 For example, while the Capital Facilities Plan recites that the level of service for resource
24 conservancies lands is 14.25 acres per 1,000 residents³⁸, the Park Plan states that the
25 standard for the same category of land use shall be 16.06 acres per 1,000.³⁹ Likewise, the
26 figures for all other categories of park land differ between the Capital Facilities Element and
27 the Park Plan (resource activities - 15.06 vs. 16.97/1,000; linear trails - 5.06 vs. 5.71/1,000;
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30 _____
31 ³⁵ Exhibit 9 to "City of Bellingham's Index to Hearing Exhibits" submitted at Hearing on the Merits.

32 ³⁶ Record at 2352.

³⁷ Record at 2376.

³⁸ Record at 376.

³⁹ Record at 716 et seq.

1 athletic fields/playgrounds - 3.93 vs. 4.43/1,000; recreation centers/pools - 0.02 vs.
2 .03/1,000; special use facilities; 3.65 vs. 4.12/1,000; and support facilities/yards - 0.17 vs.
3 0.19/1,000.)
4

5 The two differing ELOS standards are present not only in the Park Plan, but they also form
6 the basis for the Land Supply Methodology Report.⁴⁰ That is, the 1,226 acres of
7 “developable park acres needed” as shown at the top of the seventh column of the Land
8 Supply Analysis Summary Table⁴¹ was arrived at by taking the 2,080 acre total deficit
9 shown in the “Existing Level of Service Requirements table in the Park Plan⁴² and
10 subtracting 703 acres of resource conservancy lands and 150 acres of activity areas and
11 trail corridors. Thus, as the ELOS standards that form the basis of the Land Supply
12 Methodology Report also came from the Park Plan, this presents another set of ELOS
13 standards that are at odds with those shown in the Capital Facilities Plan. The Land Supply
14 Methodology Report was *likewise* adopted by the City as part of Ordinance 2006-06-058.⁴³
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18 The Board finds that this disparity does create a lack on internal consistency in the
19 Comprehensive Plan. A member of the public or a future member of City’s planning staff
20 trying to ascertain the actual ELOS standard might well be confused by this disparity. Even
21 if the public correctly determines that the City adopted the ELOS, rather than PLOS, should
22 they then refer to the ELOS standards adopted in the Capital Facilities Element, those
23 shown on page 115 of the Park Plan, or those shown on pages 91 through 97 of that plan?
24 While the Board finds that only those ELOS standards shown in the Capital Facilities
25 Element were clearly adopted by the City, the presence of other standards for ELOS in the
26 Park Plan misstates that LOS standard and creates an inconsistency within the
27 Comprehensive Plan.
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31 ⁴⁰ Record at 742.

32 ⁴¹ Record at 732.

⁴² Record at 2376.

⁴³ Record at 4.

1 While some of the disparities between the stated ELOS standards appear minor, in the
2 aggregate they produce a difference of 42.14 vs. 47.49 acres per 1,000. The City has
3 submitted that this disparity is not significant since it actually uses an ELOS of 28 acres per
4 1,000.⁴⁴ That is, if one subtracts from the 2,080 acre total deficit the 703 acres needed for
5 resource conservancy (and set aside through critical area ordinances) as well as subtracting
6 150 acres of activity areas and trail corridors, there is a resulting deficit of 1,227 acres.
7 When this acreage is divided by the population growth of 47,795 residents expected by the
8 year 2022, the actual standard needed to maintain the Parks ELOS to the year 2022 is 28
9 acres per 1,000 residents.⁴⁵ Yet, nothing in the record provides guidance as to where or
10 how an ELOS of 28 acres per 1,000 residents is to be applied. With either an ELOS of
11 42.14 or 47.49 acres per 1,000 it is apparent that these numbers form an aggregate of land
12 needed for resource conservancies lands, resource activities, linear trails, athletic
13 fields/playgrounds, recreation centers/pools, special use facilities and support
14 facilities/yards. Therefore, using either of these ELOS standards it would be possible to
15 ascertain if the City had a deficiency in its acreage of linear trails, for example. Because
16 there is nothing to explain how the 28 acres per 1,000 is to be distributed amongst the
17 various categories of park lands, its utility as an ELOS standard is limited.
18
19
20
21

22 The fact that the City in fact applies an ELOS that can be found *neither* in the Park Plan nor
23 the Capital Facilities Element is not a satisfactory response. Instead, it merely adds further
24 confusion to determining the appropriate ELOS standard.
25

26 This lack of clarity between an ELOS of 42.15 and 47.49 exists not only between the Capital
27 Facilities Element and the Park Plan but *within* the Park Plan as well. While the ELOS for
28 various land use categories shown on pages 91-97⁴⁶ of the Park Plan correspond to those
29
30

31 _____
32 ⁴⁴ City's Brief at 14.

⁴⁵ City's Brief at 10.

⁴⁶ Record at 2352-2358.

1 shown in the Capital Facilities Element,⁴⁷ they differ from those shown on the table of ELOS
2 requirements at page 115 of the Park Plan.⁴⁸

3
4 The City's explanation for the disparity between the ELOS figures of 42.15 and 47.49
5 acres/1,000 is that the 2004 update of the Park Plan failed to update the population data
6 throughout the plan. If this is the case, the City can readily correct this disparity by using a
7 uniform figure for the population projection throughout the comprehensive plan. As the City
8 acknowledged at the hearing, this conflict can be resolved by updating the Park Plan based
9 on the most current population figures for the City.
10

11
12 **Conclusion:** There is a disparity between the ELOS as stated in the Parks and Open
13 Space Plan (Park Plan), the Land Use Methodology Report and the Capital Facilities
14 Element. Each of these documents was formally adopted by the Bellingham City Council
15 as parts of the City's Comprehensive Plan. This disparity is likely due to the City's failure to
16 properly update population data at the time of the 2004 Park Plan update. The use of
17 inconsistent ELOS standards in the comprehensive plan documents could well lead to
18 confusion as to the actual parks ELOS standard and is in violation of the internal
19 consistency requirements of RCW 36.70A.070.
20
21

22
23 **Issue No. 5** Does the lack of internal consistency as described in Issues 1-4 above
24 substantially interfere with the goals and requirements of the GMA?
25

26 **Position of the Parties**

27 Based on their conclusion that the City has underestimated its net developable residential
28 land by 830 acres, Petitioners assert that the City's residential land supply can in fact
29 accommodate its entire growth forecast. Petitioners suggest that by unnecessarily
30

31
32 ⁴⁷ Record at 376.

⁴⁸ Record at 2376.

1 expanding the UGA it will needlessly urbanize rural lands and therefore substantially
2 interfere with Goals 1 and 2 of the GMA which require development in urban areas and
3 reduction of sprawl.

4
5 The City responds that “the use of the slightly higher ELOS in the Land Supply Analysis
6 does not interfere with the ability of the physical aspects of the City’s Comprehensive Plan
7 to be coexist on the available land, or the ability of the Plan to provide that adequate
8 facilities are available with the impacts of development occur”.⁴⁹ At most, the City asserts,
9 the higher ELOS in the Land Supply Analysis may provide a “cushion” of available land for
10 park facilities.
11
12

13 **Board Discussion**

14 A board may determine that part or all of a comprehensive plan or development regulations
15 are invalid if the board:(a) Makes a finding of noncompliance and issues an order of remand
16 under RCW 36.70A.300 and (b) Includes in the final order a determination, supported by
17 findings of fact and conclusions of law, that the continued validity of part or parts of the plan
18 or regulation would substantially interfere with the fulfillment of the goals of this chapter.⁵⁰
19
20

21 The board will declare an ordinance invalid only if it substantially interferes with the goals of
22 the GMA.⁵¹ We have held that invalidity should be imposed if continued validity of the
23 noncompliant comprehensive plan provisions or development regulations would
24 substantially interfere with the local jurisdiction’s ability to engage in GMA-compliant
25 planning.⁵²
26
27
28
29

30 ⁴⁹ City’s Brief, at 14.

31 ⁵⁰ 36.70A.302 (1).

32 ⁵¹ Dawes v. Mason County, WWGMHB 96-2-0023, FDO, December 5, 1996; 36.70A.302

⁵² See, Vinatieri v. Lewis County, WWGMHB 03-2-0020c, and Irondale Community Action Neighbors v. Jefferson County, WWGMHB 04-2-0022,

1 Here the Board concludes that Petitioner's claimed 830 acre error is not supported by the
2 record. The figure of 830 acres was arrived at by first making the incorrect assumption that
3 the City adopted PLOS. As we determined that the City adopted ELOS, there is no basis
4 for finding that the City underestimated its net developable residential land by 830 acres.
5 Thus this cannot be used as a basis for a finding of invalidity. As invalidity can be imposed
6 only where noncompliance has been found, the only issue as to invalidity is whether the
7 internal inconsistencies found in the LOS standards would likely lead to inconsistent action
8 during the pendency of the compliance period. There has been no showing that that would
9 be the case. Therefore we decline to impose invalidity.
10

11
12 **Conclusion:** Although we find that the City has created an internal inconsistency among its
13 adopted planning documents between an ELOS of 42.15 and 47.49 acres/1,000, we do not
14 find that this conflict substantially interferes with the fulfillment of the goals of the GMA.
15 While the different standards may be a source of some confusion, it is an error that can be
16 easily corrected and they are not likely to preclude GMA-compliant planning to be
17 undertaken by the City.
18

19 20 21 **VI. FINDINGS OF FACT**

- 22 1. Bellingham is a city located west of the crest of the Cascade Mountains that is
23 required to plan pursuant to RCW 36.70A.040.
- 24 2. On June 5, 2006 the City adopted Ordinance 2006-06-05, adopting a new
25 Comprehensive Plan that included Land Use, Capital Facilities, and Park, Recreation
26 and Open Space Elements.
- 27 3. Ordinance 2006-06-05 also adopted by reference the "Land Supply Methodology
28 Report, City of Bellingham, 2006."
- 29 4. Petitioners challenged the adoption of Ordinance 2006-06-058 in the Petition for
30 Review filed in this case.
- 31 5. Petitioners participated orally and in writing in the adoption of Ordinance 2006-06-
32

1 058.

2 6. The City's Park, Recreation and Open Space Plan (Park Plan) describes different
3 possible level of service (LOS) standards for determining the additional park land and
4 facilities needed by the City to meet future population growth.

5 7. Existing Level of Service (ELOS) defines "an existing standard for each type of park,
6 recreation and open space provided with the existing inventory."
7

8 8. Proposed Level of Service (PLOS) was developed through a public process that
9 suggested a proposed new level of service standard for parks by determining the
10 quantity of a particular type of facility that is considered to be surplus or deficient in
11 quantity or condition within the existing inventory.

12 9. The 830 acre difference between the 1253 net developable residential acres, claimed
13 to exist in the Land Use chapter and Petitioner's calculation of 2,083 net developable
14 residential acres, is found by subtracting 396 developable park acres from 1226 acres
15 of needed developable land identified in the Land Supply Methodology Report.

16 10. The 396 acres of developable park land is found only in the PLOS standards.

17 11. The claimed 830 acre under-estimation of the City's net developable residential land
18 is based on the assumption that the City adopted PLOS as its parks LOS standard.

19 12. The record does not show that the City adopted the PLOS standard set out in its
20 Park Plan as its Parks LOS standard.
21

22 13. Absent a finding that the City adopted the PLOS, there is no basis to find an 830
23 acre error in the City's calculations of park land inventory.
24

25 14. The basis of Petitioners' argument that the City adopted a parks LOS standard of
26 45.9 acres/1,000 is the assumption that the City adopted the PLOS.

27 15. Nowhere in the City's adopted planning documents is a standard of 45.9
28 acres/1,000 expressly discussed.
29

30 16. The new Capital Facilities Element of the Bellingham Comprehensive Plan adopts
31 an ELOS standard of 42.15 acres/1,000 for parks.
32

1 17. The ELOS standard shown in the Capital Facilities Element of the Comprehensive
2 Plan was based on a combined City/unincorporated UGA year 2000 population of
3 78,040.

4 18. Dividing the 3,289 acres of parks by the 2000 City and UGA population resulted in
5 an ELOS standard of 42.15 acres/1,000.

6 19. In adopting the Park Plan, the City utilized an ELOS standard of 47.49 acres/1,000.

7 20. The ELOS standard found on page 91 of the Park Plan was calculated in 2002. It
8 used a beginning population of 78,040 for the City and the unincorporated portions of its
9 UGA based on 2000 census data.

10 21. The ELOS standard found on page 115 of the Park Plan was calculated in 2004
11 using a population for the City of 69,260 based on 2002 OFM population data and did
12 not include the population in the unincorporated area of the Bellingham UGA.

13 22. While the Capital Facilities Plan recites a level of service for resource conservancies
14 park lands, the Park Plan states a different standard for the same category of park land.

15 23. Likewise, the standards for resource activities, linear trails, athletic
16 fields/playgrounds, recreation centers/pools, special use facilities and support
17 facilities/yards as stated in the Park Plan are different from those stated in the Capital
18 Facilities Element.

19 24. While some of the disparities between the ELOS as stated in the Park Plan and the
20 Capital Facilities Element appear minor, in the aggregate they produce a difference of
21 42.14 vs. 47.49 acres per 1,000 residents.

22 25. The lack of consistency between the ELOS standards found in the Capital Facilities
23 Plan and those found in the Park Plan bears the potential for causing confusion in the
24 public with regard to the City's Parks LOS standard.

25 26. Any Finding of Fact hereafter determined to be a Conclusion of Law is hereby
26 adopted as such.
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VII. CONCLUSIONS OF LAW

1. This Board has jurisdiction over the parties to this action.
2. This Board has jurisdiction over the subject matter of this action.
3. Petitioners have standing to raise the issues in the Petition for Review.
4. The Petition for Review in this case was timely filed.
5. The City's discussion of the PLOS standard in the Parks, Recreation and Open Space plan does not violate the internal consistency requirements of RCW 36.70.070.
6. Although PLOS was discussed in the Parks, Recreation and Open Space (Park Plan) plan, the City adopted the ELOS standard.
7. There is no internal inconsistency between the discussion of a PLOS standard of 45.9 acres/1,000 and the adopted elements of the Comprehensive Plan.
8. Petitioners have not carried their burden of proof to demonstrate a lack of internal consistency between the Land Supply Analysis in the Land Use Element and the Park Plan.
9. Although the City adopted ELOS as its parks LOS standard, there is a lack of consistency between the ELOS standard of 42.15 acres/1,000 stated in the adopted Capital Facilities Plan and the ELOS standards set out in the Park Plan.
10. This lack of consistency between the ELOS standard stated in the adopted Capital Facilities Plan and those stated in the Park Plan fails to comply with the internal consistency requirements of RCW 36.70A.070.
11. The lack of consistency between adopted ELOS standards does not substantially interfere with the fulfillment of the goals of the Growth Management Act.
12. There is no basis for finding that the City underestimated its net developable residential land by 830 acres. Thus this cannot be used as a basis for a finding of invalidity.
13. It has not been demonstrated that the internal inconsistencies found in the LOS standards would likely lead to inconsistent development during the pendency of the compliance period.
14. Any Conclusion of Law hereafter determined to be a Finding of Fact is hereby adopted as such.

1 **VIII. ORDER**

2 The City is ordered to bring its Comprehensive Plan into compliance with the Growth
3 Management Act pursuant to this decision within 120 days. Compliance shall be due no
4 later than June 5, 2007. The following schedule for compliance, briefing and hearing shall
5 apply:
6

Item	Date Due
Compliance Due	June 5, 2007
Compliance Report and Index to Compliance Record	June 12, 2007
Objections to a Finding of Compliance	June 26, 2007
Response to Objections	July 10, 2007
Compliance Hearing	July 24, 2007

7
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14
15 DATED this 31st day of January, 2007.

16
17
18 _____
19 James McNamara, Board Member

20
21 _____
22 Margery Hite, Board Member

23
24 _____
25 Holly Gadbow, Board Member
26

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

28
29 **Reconsideration. Pursuant to WAC 242-02-832, you have ten (10) days from the**
30 **mailing of this Order to file a petition for reconsideration. Petitions for**
31 **reconsideration shall follow the format set out in WAC 242-02-832. The original and**
32 **three copies of the petition for reconsideration, together with any argument in**
support thereof, should be filed by mailing, faxing or delivering the document directly
to the Board, with a copy to all other parties of record and their representatives.

1 Filing means actual receipt of the document at the Board office. RCW 34.05.010(6),
2 WAC 242-02-330. The filing of a petition for reconsideration is not a prerequisite for
3 filing a petition for judicial review.

4
5 **Judicial Review.** Any party aggrieved by a final decision of the Board may appeal the
6 decision to superior court as provided by RCW 36.70A.300(5). Proceedings for
7 judicial review may be instituted by filing a petition in superior court according to the
8 procedures specified in chapter 34.05 RCW, Part V, Judicial Review and Civil
9 Enforcement. The petition for judicial review of this Order shall be filed with the
10 appropriate court and served on the Board, the Office of the Attorney General, and all
11 parties within thirty days after service of the final order, as provided in RCW
12 34.05.542. Service on the Board may be accomplished in person, by fax 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.

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