

1 BEFORE THE WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

2 ABENROTH, et al.,

3 Petitioners,

Case No. 97-2-0060c

4 v.

COMPLIANCE ORDER

5 SKAGIT COUNTY,

6 Respondent,

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10 SKAGIT COUNTY GROWTHWATCH,
11 CITIZENS TO PROTECT BAY VIEW RIDGE,
12 AND GERALD STEEL,

13 Petitioners,

CASE NO. 07-2-0002

14 v.

COMPLIANCE ORDER

15 SKAGIT COUNTY,

16 Respondent,

17 And

18
19 BOUSLOG INVESTMENTS, L.L.C., JBK
20 INVESTMENTS, L.L.C., and JOHN
21 BOUSLOG,

22 Intervenors

23
24 **I. SYNOPSIS**

25 This order addresses the last remaining issues in Skagit County’s 11-year effort to establish
26 a compliant non-municipal Bayview Ridge Urban Growth Area (UGA). These cases
27 illustrate how difficult it is to establish a non-municipal UGA, especially finding the capability
28 of providing urban services to the UGA with multiple non-County owned service providers.
29

30 On August 6, 2007 the Board issued a Compliance Order in the *Abenroth* case and a Final
31 Decision and Order in the *Skagit County Growthwatch* case. In that decision, the Board
32

1 also found that the Bayview Ridge Subarea Plan (Subarea Plan) addressed many of the
2 residential and commercial/industrial aspects of the Bayview Ridge UGA in a manner that
3 was compliant with the GMA.¹
4

5 The Board also found areas where the County continued to be noncompliant. The County
6 had not timely updated its comprehensive plan and must therefore use the planning period
7 of 1995-2015 in the Subarea Plan as well. The Subarea Plan, with its accompanying capital
8 facilities plan, must show how the UGA will be provided with urban levels of public services
9 by the year 2015, the planning period currently in effect. There were deficiencies with
10 respect to public sewer, fire services and park facilities. The Subarea Plan was not
11 consistent with the Skagit County Comprehensive Plan. The Subarea Plan also lacked
12 implementing development regulations that ensured that growth that occurred in the new
13 non-municipal UGA would be urban in nature.²
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16 The Board also found one development regulation that allowed for urban levels of
17 development on holding tanks rather than on public sewer noncompliant and invalid (SCC
18 14.28.105(13)). Later, when the County adopted interim regulations prohibiting
19 development without connection to public sewer, the Board lifted invalidity. On July 3, 2008,
20 the County adopted permanent regulations that replaced adopted SCC 14.28.030, a
21 concurrency regulation, and SCC 14.16.215 (3)(d), development standards requiring
22 development to connect to public sewer with one exception. That exception allows
23 development of one dwelling unit or an accessory structure on a lot that is more than 200
24 feet from a sewer line without connection to public sewer or replacement of an existing
25 septic tank when the structure is more than 200 feet from a sewer line. The regulations
26 include the provision that the dwelling unit or structure connect to sewer when the sewer
27 line is within 200 feet. Petitioners Skagit County Growthwatch, Citizens to Protect Bayview
28 Ridge, and Gerald Steel (collectively Skagit County Growthwatch) claim that these
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32 ¹ Compliance Order/Final Decision and Order at 2 (August 6, 2007).

² Id. at 2 and 3.

1 regulations do not comply with RCW 36.70A.020 (12) or the County's county-wide planning
2 policies.

3
4 This order finds that the County has brought the Subarea Plan and its implementing
5 development regulations into compliance with the GMA with one exception. Although the
6 County has appropriated funds to identify the necessary facilities to maintain its new Parks
7 Level of Service, the plan does not identify future park needs or identify their location or
8 capacity. The County therefore does not comply with RCW 36.70A.070(3)(b) and (c) for
9 park facilities.
10

11 The Board finds that the Subarea Plan and development regulations have achieved
12 compliance with RCW 36.70A.110, RCW 36.70A.020(2) and (12) for the following reasons.
13 The County has allocated population to the UGA and will accommodate it at urban
14 densities. The City of Burlington has shown how it will serve development within the
15 Bayview Ridge UGA over the 20-year planning period. The amended County development
16 standards, concurrency provisions, and Urban Reserve zoning densities of one dwelling unit
17 per 10 acres work with the actual on-the-ground land use pattern of large undeveloped lots
18 to create appropriate holding zones. The Subarea Plan, development standards,
19 development regulations and actual land use pattern together ensure urban development
20 will not take place before urban services arrive and urban development can be achieved
21 when they do.
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24
25 The Board acknowledges the hard work and persistence of County staff and the County
26 Commissioners for bringing the Bayview Ridge UGA into compliance with one exception. In
27 that instance, they have laid the groundwork for achieving compliance.
28

29 **II. PROCEDURAL HISTORY**

30 See Appendix A.

31 **III. BURDEN OF PROOF**

1 For purposes of Board review of the comprehensive plans and development regulations
2 adopted by local government, the GMA establishes three major precepts: a presumption of
3 validity; a “clearly erroneous” standard of review; and a requirement of deference to the
4 decisions of local government.

5
6 Pursuant to RCW 36.70A.320(1), comprehensive plans, development regulations and
7 amendments to them are presumed valid upon adoption:

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

11
12 This same presumption of validity applies when a local jurisdiction takes legislative action in
13 response to a noncompliance finding; that legislative action is presumed valid.

14
15 The statute further provides that the standard of review is whether the challenged
16 enactments are clearly erroneous:

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

20 RCW 36.70A.320(3)

21 In order to find the County’s action clearly erroneous, the Board must be “left with the firm
22 and definite conviction that a mistake has been made.” *Department of Ecology v. PUD1*,
23 121 Wn.2d 179, 201, 849 P.2d 646 (1993).

24
25 Within the framework of state goals and requirements, the Boards must grant deference to
26 local governments in how they plan for growth:

27
28 In recognition of the broad range of discretion that may be exercised by counties and
29 cities in how they plan for growth, consistent with the requirements and goals of this
30 chapter, the legislature intends for the boards to grant deference to the counties and
31 cities in how they plan for growth, consistent with the requirements and goals of this
32 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

1 take place within a framework of state goals and requirements, the ultimate burden
2 and responsibility for planning, harmonizing the planning goals of this chapter, and
3 implementing a county's or city's future rests with that community.
4 RCW 36.70A.3201 (in part).

5 In challenging the sufficiency of compliance efforts as well as in an initial petition for review,
6 the burden is on Petitioners to overcome the presumption of validity and demonstrate that
7 any action taken by the County is clearly erroneous in light of the goals and requirements of
8 Ch. 36.70A RCW (the Growth Management Act). RCW 36.70A.320(2). Where not clearly
9 erroneous, and thus within the framework of state goals and requirements, the planning
10 choices of local government must be granted deference.
11

12 **IV. ISSUES TO BE DISCUSSED³**

13
14 *Issue One:* Has Skagit County updated its comprehensive plan policies and development
15 regulations in the timeframe required by RCW 36.70A.130(4)? (COL G)

16 *Issue Two:* Does the Subarea Plan's Capital Facilities Plan (CIP) summarize projects and
17 funding for the six-year period following the establishment of the Bayview Ridge UGA as
18 required by RCW 36.70A.070(3)(d)? Is it now consistent with the most recent Skagit
19 County CIP and does it cover the same period to comply with RCW 36.70A.070? (COL I)

20 *Issue Three:* Does the Subarea Plan for the Bayview Ridge UGA contain an inventory of
21 sewer facilities needed to serve the UGA and meet the requirements of RCW
22 36.70A.070(3)(a)?

23 *Issue Four:* Does the Subarea Plan's Capital Facilities Element for school, fire service,
24 parks and sewer service comply with RCW 36.70A.070 (3) (b) and (c)? (COL N)

25 *Issue Five:* Does the six-year CIP for the Bayview Ridge Subarea comply with RCW
26 36.70A.070 (3) (d)? (COL O)

27
28 *Issue Six:* Does Skagit County's allocation of population and acreage to the Bayview Ridge
29 UGA now comply the requirements of RCW 36.70A.110 for urban growth areas to be sized
30 according to their population allocation? (COL S)

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32 ³ See Compliance Order/Final Decision and Order at 73 – 76.

1 *Issue Seven:* Is Skagit County's allocation of population in the Bayview Ridge UGA now
2 consistent with the rest of Skagit County's comprehensive plan and within the subarea plan
3 itself to now comply with RCW 36.70A.070? (COL T)

4 *Issue Eight:* Does the Subarea Plan ensure that new residential development within the
5 new UGA will occur at urban densities in order to comply with RCW 36.70A.110 and Goals
6 1 and 2 of the GMA (36.70A.020(1) and (2))? (COL U)

7 *Issue Nine:* Has Skagit County corrected the Subarea Plan's Policy 6A-1.2(a) which
8 allowed exceptions to level of service (LOS) standards and allowed a LOS to be degraded
9 indefinitely and are therefore not compliant with RCW 30.70A.070(6)? (COL W)

10 *Issue Ten:* Does Skagit County still allow broad grant of administrative discretion to vary
11 from the established LOS created by Subarea Plan's Policy 6A-1.2(c) that is noncompliant
12 with RCW 36.70A.070(6)? (COL X)

13 *Issue Eleven:* Do Skagit County's development regulations (SCC14.16.215(3)(d) and SCC
14 14.38.030) to require urban services at the time of urban development and comply with
15 RCW 36.70A.020(12)?⁴

16 *Issue Twelve:* Does Skagit County's exemption to the general requirement for hook-up to
17 public sewer as a condition of approval fail to comply with RCW 36.70A.020(12)? (Order
18 Re:Invalidity (July 2, 2008)).

19 V. DISCUSSION OF THE ISSUES

20 A. Issues on Which Petitioners Do Not Contest Compliance

21 For all of the following issues in this section, Petitioners offer no objections.
22

23 ***Issue One: Has Skagit County failed to update its comprehensive plan policies and***
24 ***development regulations in the time required by RCW 36.70A.130(4)? (COL G)***

25 The Board's August 6, 2007 Compliance Order/Final Decision and Order found Skagit
26 County had not adopted an update to its comprehensive plan and development regulations
27 as required by RCW 36.70A.130(4).⁵ On September 10, 2007 the County adopted
28 Ordinance 020070009 that approved amendments to the County's countywide planning and
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32 ⁴ See Order Re: Invalidity at 5.

⁵ Compliance Order/Final Decision and Order at 11.

1 comprehensive plan policies, development regulations and zoning code.⁶ Petitioners do not
2 contend the County has not complied with this requirement.

3
4 **Conclusion:** Based on the adoption of Ordinance 020070009 and lack of Petitioners'
5 objections to a finding of compliance, the Board finds that the County has adopted an
6 update to comprehensive plan policies, development regulations, and zoning code and now
7 complies with RCW 36.70A.130(4).
8

9 **Issue Two: Does the Subarea Plan's CIP summarize projects and funding for the six-**
10 **year period following the establishment of the Bayview Ridge UGA as required by**
11 **RCW 36.70A.070(3)(d)? Is it is now consistent with the most recent Skagit County**
12 **CIP and does it cover the same period to comply with RCW 36.70A.070? (COL I)**

13 **Issue Five: Does the six-year CIP for the Bayview Ridge UGA comply with RCW**
14 **36.70A.070 (3) (d)? (COL O)**

15 The County says that it has shifted its planning period for the Subarea Plan and the Skagit
16 County Comprehensive Plan from 1995-2015 to 2005-2025. The County says the Subarea
17 Plan's Chapter Seven is the CIP for the Bayview Ridge Subarea which supplements and
18 expands the County's CIP for the Bayview Ridge UGA and uses the same timeframe.⁷ The
19 County adopted a new six-year CIP for 2008-2013 on December 7, 2007.⁸ The record
20 shows that both the Countywide CIP and the Bayview Ridge Subarea Plan's CIP use the
21 same timeframe.⁹ Also, the Bayview Ridge Subarea CIP covers the appropriate six years
22 of the planning period. Further, the Bayview Ridge UGA's Subarea Plan's CIP includes
23 county-owned and non-county owned capital facilities and shows how these facilities will be
24 financed within projected funding capacities and clearly identifies sources of public money
25 for such purposes.
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31 ⁶ Exhibit 775.

⁷ Skagit County's Compliance Report at 4.

⁸ Exhibit 456.

⁹ Exhibit 447 at Chapter 7 Temporary Page 31, Exhibit 456.

1 **Conclusion:** The Skagit County CIP and the Bayview Ridge Subarea Plan's CIP now use
2 the same timeframe, 2008-20013. Therefore, these two parts of the County's
3 comprehensive plan now comply with RCW 36.70A.070, that section of the GMA that
4 requires consistency among elements of a comprehensive plan. The Subarea Plan's CIP
5 includes county-owned and non-county owned capital facilities needed for the development
6 of the Bayview UGA and includes a six-year financing plan for these facilities, and therefore
7 complies with RCW 36.70A.070 (3)(d).
8

9
10 **Issue Three: Does the Subarea Plan contain an inventory of sewer facilities needed**
11 **to serve the UGA and meet the requirements of RCW 36.70A.070(3)(a)? (COL J)**

12 The Board found a discrepancy existed in the City of Burlington's Comprehensive
13 Wastewater Plan that the Subarea Plan's Capital Facilities Element needed to clarify. The
14 Board held,

15 ...while the sewer plan's map shows existing and proposed facilities, the text of
16 the plan says the facilities to serve the Bayview Ridge are "basically complete" or
17 "started". Without this clarifying information, this inventory is not complete and
18 therefore non-compliant with RCW 36.70A.070(3)(a).¹⁰

19
20 The City of Burlington is the Bayview Ridge UGA's sewer service provider, and its plan is
21 clearly referenced in the Bayview Ridge Subarea Plan.¹¹ The City adopted a 2007
22 Supplement to the Burlington Sewer Plan explaining what facilities will serve the UGA¹², and
23 an updated sewer map, delineating the existing sewer infrastructure in the UGA.
24

25 **Conclusion:** Based on 2007 Supplement to the Burlington Sewer Plan and the updated
26 sewer map delineating existing infrastructure in the Bayview Ridge UGA, the Board finds the
27 clarifying information has been added concerning an inventory of existing sewer facilities to
28 serve the Bayview Ridge UGA in order to comply with RCW 36.70A.070(3)(a).
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32 ¹⁰ Final Decision and Order/Compliance Order at 22 – 26.

¹¹ Exhibit 447 at Temporary Page 4.

¹² Exhibit 397, Exhibit 384.

1 **Issue Four: Does the Subarea Plan's Capital Facilities Element for parks, schools,**
2 **fire facilities, and sewer service comply with RCW 36.70A.070 (3) (b) and (c)? (COL N,**
3 **Conclusions, Final Decision and Order, p.26) Does Skagit County has consistent**
4 **levels of service for parks in its 2008-2013 CIP and in the Bayview Ridge Subarea**
5 **Plan? (Compliance Order/Final Decision and Order at 54 and 55)**

6 The August 6, 2007 FDO/Compliance Order held that neither the Subarea Plan nor Skagit
7 County's Capital Facilities Plan contained complete information about the proposed
8 locations and capacities of the needed parks, schools, fire, and sewer facilities to serve the
9 Bayview Ridge UGA over the 20-year planning period so as to comply with RCW
10 36.70A.070(3)(b) and (c).¹³

11
12 Parks. The August 6, 2007 FDO/Compliance Order concluded the following in regard to the
13 identification of parks facilities needed to maintain the County's Level of Service (LOS) and
14 the consistency of the Bayview Ridge Subarea Plan's LOS with the County's CIP:

15 The Bayview Ridge Subarea Plan fails to contain the possible locations of park
16 facilities needed to maintain the Parks LOS until 2015. ..

17 The Bayview Ridge Subarea Plan and the 2003- 2008 Skagit County CIP contain
18 different levels of service for park land. Neither the subarea plan nor the CIP explain
19 this inconsistency. Without this explanation, the Bayview Ridge Subarea Plan is
20 inconsistent with the County CIP and does not comply with RCW 36.70A.070.¹⁴

21 The County says it changed the way it determines Level of Service (LOS) for parks which
22 was not reflected in the 2006 Subarea Plan.¹⁵ The County has now updated both capital
23 facilities plans to reflect this new methodology and LOS.¹⁶ The old methodology identified a
24 need for a 25 acre community park. With the adoption of its new methodology for
25 determining LOS, the County has not identified the locations for its park facilities, but has
26 appropriated \$46,000 to re-assess location and size for park facilities in conjunction with
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31 ¹³ Final Decision and Order/Compliance Order at 26.

32 ¹⁴ Compliance Order/Final Decision and Order at 54.

¹⁵ Skagit County's Compliance Report at 5 and 6.

¹⁶ Exhibit 456 at 94, Exhibit 447, Bayview Ridge Subarea Plan, Capital Facilities Plan at Temporary page 10.
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1 airport safety requirements, school playfield needs, open space indicators, open space
2 urban /rural separators, and its Planned Unit Development Ordinance.¹⁷

3
4 RCW 36.70A.070(3) says (in pertinent part):

5 A capital facilities plan element consisting of; (b)... a forecast of the
6 future needs for such capital facilities; (c) the proposed locations and
7 capacities of expanded or new capital facilities...

8 It is commendable that the County has appropriated funds to plan for park facilities for the
9 Bayview Ridge UGA. Nevertheless, the County has not included a forecast of future
10 Bayview Ridge UGA's park needs or proposed locations and capacities of needed park
11 facilities.
12

13 **Conclusion:** The County's 2008-2013 CIP and the Subarea Plan both use the same LOS
14 for parks facilities. Therefore, the Subarea Plan's LOS complies with RCW 36.70A.070.
15 The County has made a financial commitment to reassess Bayview Ridge UGA's park
16 needs sizes and location, but has not established park facility needs based on its new LOS
17 or proposed locations and capacities of future facilities . Thus, the Board finds the County
18 has not achieved compliance with RCW 36.70A.070(b) and (c).
19
20

21 Schools. The August 6, 2007 FDO/Compliance Order concluded:

22 From the information provided in both the Subarea Plan and the Burlington-Edison
23 School District CIP, adopted in 2006, proposed facilities and funding methods are not
24 analyzed for the 20-year planning period. From the information provided in both the
25 Subarea Plan and the Burlington-Edison School District CIP, adopted in 2006,
26 proposed facilities and funding methods are not analyzed for the 20-year planning
27 period.¹⁸

28 The School District added Appendix 5 to its capital facilities plan that the County
29 incorporated into its CIP that projects its needs (shows its deficiencies) until 2025.¹⁹ The
30

31 ¹⁷ Exhibit 447, Bayview Ridge Subarea Plan, Capital Facilities Plan at Temporary page 10.

32 ¹⁸ Final Decision and Order at 26.

¹⁹ Exhibit 457.

1 Bayview Ridge Subarea Plan estimates the population of the Bayview Ridge UGA over the
2 20-year planning period will generate 711 new elementary school students and 183 new
3 high school students. To accommodate the new elementary school students, the Subarea
4 Plan states 21 new classrooms will be needed.²⁰ Based on the average size of Burlington
5 Edison elementary schools, the Subarea Plan projects the equivalent of a new elementary
6 school will be needed to accommodate the elementary students generated by the Bayview
7 Ridge UGA and more high school capacity.²¹
8

9
10 The School District six-year capital facilities plan identifies the School District will need a
11 new elementary school and more capacity at the high school in the next six years to
12 accommodate its growth in enrollment in the District. The School District six-year plan
13 includes the task of identifying a location for a new elementary school and new high school.
14 It also states that in the interim students may be housed in portables until permanent
15 facilities are built. The School District plans for future additions through a combination of
16 impact fees, bond issues, and state matching funds.²²
17

18 **Conclusion:** The Subarea Plan and the County's 2008-20013 Capital Facilities Plan
19 identify the long-term needs of the School District in general and the Bayview Ridge UGA
20 specifically which complies with RCW 36.70A. 070 (3)(b). The six-year capital facilities plan
21 includes identifying locations for a new elementary school and new high school capacity.
22 The Board has recognized the difficulties of planning for 20-year school facilities given the
23 complex formula for funding school facilities.²³ Additionally, the Compliance Report states
24 the County has changed its zoning to allow for a school to be sited in the UGA, if in the
25 future the District indicates a need to do so and Ordinance 020080007 confirms this.²⁴
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29 _____
30 ²⁰ Exhibit 447 at Chapter 7, Temporary Page 26.

31 ²¹ Exhibit 447 at Temporary Page 26, Exhibit 456 at Exhibit B, p. 4.

32 ²² Exhibit 446, Exhibit B, p. 5.

²³ See *Building Association of Clark County v. Clark County*, WWGMHB Case No. 04-2-0038c (Amended Final Decision and Order, November 23, 2006) at 28.

²⁴ Skagit County's Compliance Report at 7, Exhibit 445.

1 Therefore, based on the planning effort to identify locations for needed additional school
2 capacity included in the six –year plan, the Subarea Plan’s description of how the District
3 will meet needs of students while pursuing permanent capacity, and the difficulties of
4 identifying locations of future school facilities for the 20-year planning period, the Board
5 finds the County’s approach to complying with RCW 36.70A.070(3)(c) is not clearly
6 erroneous.
7

8 Fire Facilities. The August 6, 2007 FDO/Compliance Order concluded:
9

10 Neither the Bayview Ridge Subarea Plan nor the Skagit County CIP 2003-2008
11 project all of the costs, and financing needed to ensure that the LOS for parks or fire
12 services will be maintained over the 1995-2015 planning period nor do these plans
13 comply with RCW 36.70A.070(3)(b) and (c) for parks or fire protection. This fails to
14 comply with RCW 36.70A.070(3)(b) and (c).²⁵

15 The Subarea Plan states that the County has set a LOS for fire protection services at an
16 ISO rating of five or better, which the Subarea Plan explains is based on a number of
17 factors including training, equipment, water availability and response capacity.²⁶

18 Skagit County’s LOS includes both operational and capital needs. RCW 36.70A.070(3)(b)
19 and (c) requires the County to estimate its 20-year projected capital facilities needs and
20 include the proposed locations and capacities of needed capital facilities to meet those
21 needs in their plans.
22

23 The Subarea Plan says that to maintain an effective LOS the fire districts will need
24 increases in equipment, training and manpower. According to the plan, fire hydrants will
25 need to be placed when urban densities occur to provide for adequate volume and pressure
26 for fire fighting needs.²⁷ The Subarea Plan’s Capital Facilities Plan 2008-2013 contains a
27 general description of Bayview Ridge’s fire facilities needed improvements to maintain its
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29
30

31 ²⁵ Final Decision and Order/Compliance Order at 26.

32 ²⁶ Exhibit 447 at Temporary Page 15. The Bayview Ridge Subarea Plan does not identify what ISO means.

²⁷ Id at Temporary Page 16.

1 LOS, the capital facilities needs for the three fire districts that serve the Bayview Ridge UGA
2 for the Comprehensive Plan's current planning period, financing for District 6, and a
3 statement that District 2 needs no additional capital facilities from 2008-2013.²⁸ The
4 Subarea Plan also reports that the optimum district boundaries to serve the UGA are still
5 being discussed among the fire districts. The record includes an agreement signed by all
6 the districts that serve the Bayview Ridge UGA that commits each fire district to provide aid
7 to the others when necessary.²⁹

9
10 **Conclusion:** The agreement signed by all three fire districts that serve the Bayview Ridge
11 UGA demonstrates that fire fighting services will be provided to the UGA. It appears from
12 the general description in the Subarea Plan that the Bayview Ridge UGA has the needed
13 capital facilities to serve the UGA over the life of the plan.³⁰ SCC 14.28.110, Appendix A,
14 (6) requires fire hydrants be installed with the extension of water lines. Based on the
15 foregoing, the Board finds the Subarea Plan for fire facilities complies with RCW 36.70A.070
16 (3)(b) and (c).

17
18 Sewers. The August 6, 2007 FDO/Compliance Order held,

19
20 Skagit County's Capital Facilities Element needs to provide costs and funding
21 information for any proposed or incomplete sewer projects. Without this clarification
22 and/or cost and funding information about proposed or existing projects, the
23 information about sewer service for the Bayview Ridge UGA does not comply with
24 RCW 36.70A.070(3)(b) and (c).³¹

25 As discussed *supra* and as clearly referenced in the Subarea Plan³², the City of Burlington,
26 the entity that provides sewer service to the Bayview Ridge UGA, adopted a supplement to
27 its sewer plan which discusses how sewer service will be provided to the Bayview Ridge
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31 ²⁸ Id at Temporary Page 17.

32 ²⁹ Exhibit 382.

³⁰ Exhibit 447 at Chapter 7, Temporary Pages 14-16.

³¹ Compliance Order/Final Decision and Order at 26.

³² Exhibit 447 at Chapter 7, Temporary Page 4.

1 UGA over the life of the plan.³³ The City also adopted an updated sewer map that shows
2 existing as well as proposed facilities to serve the Bayview Ridge UGA.³⁴

3
4 **Conclusion:** Based on the City of Burlington's Supplement to its Sewer Plan and its
5 updated sewer map, the added clarification to its sewer plan by the City of Burlington shows
6 that sufficient sewer service will be provided to the Bayview Ridge UGA over the 20 year life
7 of the plan so that Subarea Plan for sewer service now complies with RCW
8 36.70A.070(3)(b) and (c). Furthermore, the County has clearly referenced the Burlington
9 Sewer Plan and the 2007 Supplement to this plan in the Subarea Plan's Capital Facilities
10 Chapter.
11

12
13 **Issue Six: Does Skagit County's allocation of population and acreage to the Bayview**
14 **Ridge UGA now comply the requirements of RCW 36.70A.110 for urban growth areas**
15 **to be sized according to their population allocation? (COL S)**

16 **Issue Seven: Is Skagit County's allocation of population in the Bayview Ridge UGA**
17 **now consistent with the rest of Skagit County's comprehensive plan and within the**
18 **subarea plan itself to now comply with RCW 36.70A.070? (COL T)**

19 The August 6, 2007 FDO/Compliance Order held:

20 However, to the extent that the Subarea Plan allocates an additional 211
21 residents to 2015 (a total population of 3,631) to the Bayview Ridge UGA and an
22 additional 45-74 acres (depending upon which figures are used in the Subarea
23 Plan), the Subarea Plan fails to comply with the requirements of RCW
24 36.70A.110 for urban growth areas to be sized according to their population
25 allocation. The addition of population in the Subarea Plan beyond that in the
26 comprehensive plan further violates the requirements of RCW 36.70A.070 for an
27 internally consistent comprehensive plan; as does the inconsistent use of
28 population and residential land figures in the Subarea Plan itself.³⁵

28 The County explains that the population allocation for the Bayview Ridge UGA for 2025 is
29 5600. Because this is 2180 people more than the 2015 allocation, the County says it had to
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31 ³³ Exhibit 397.

32 ³⁴ Exhibit 384.

³⁵ Compliance Order/Final Decision and Order at 36.

1 expand the UGA to accommodate the additional population growth for the 20-year
2 population horizon. The County declares based on statements in the Subarea Plan's
3 Housing Element that the urban residential area should have a minimum of 4 to 6 dwelling
4 units an acre, but should have no more than that based on proximity to the airport.³⁶
5

6 The County has recomputed its land capacity analysis for the Bayview UGA to
7 accommodate its 2025 projected population. Using 2.5 persons per household, to
8 accommodate the Bayview Ridge population, the UGA would need 2240 homes, which
9 means that it would need an additional 1519 homes added to the current 721 dwelling units.
10 The County added its Urban Reserve zone to the UGA to accommodate its 2025 projected
11 growth. At a minimum of 4 units an acre, the addition of this land does not accommodate
12 the projected growth, but with the purchase of farmland density credits, density could be
13 increased to six dwelling units per acre which would accommodate 26 percent more than
14 the population estimate.³⁷ Additionally the County has designated its urban reserve zone at
15 one dwelling unit per 10 acres within the UGA to phase growth within the UGA over the
16 planning period.³⁸ The County has also committed to re-examining its density requirements
17 for the Urban Reserve zone during its next seven-year update.³⁹
18
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21 **Conclusion:** The County re-allocated population to the Bayview Ridge UGA based on its
22 new population and conducted a new land capacity analysis. This makes the Subarea Plan
23 consistent with the County comprehensive plan and complies with RCW 36.70A.070. The
24 land capacity analysis shows that even with the addition of the urban reserve area to the
25 UGA, at four dwelling units per acre, this amount of land cannot accommodate the Bayview
26 Ridge projected population. Even so, the County's development regulations allow for the
27 purchase of farmland density credits that could increase densities to six units an acre. If
28
29

30
31 ³⁶ Skagit County's Compliance Report at 8. Also see SCC 14.16.030 and SCC 14.16.340(1).

³⁷ Exhibit 405.

³⁸ SCC 14.16.350, SCC 14.16.030.

³⁹ Exhibit 447 at 5.3.

1 development occurred at that density, there could be 26 percent more land than is needed.
2 Even if densities at the maximum possible are achieved in the UGA, the amount of extra
3 land is not excessive. Further, it is unlikely that all parcels will purchase a farmland density
4 credit.

5
6 Additionally, the County has committed to keeping densities in the urban reserve area in
7 the UGA at one dwelling unit per 10 units acres until the next update required by RCW
8 36.70A.130(4). This is a density that will not preclude the eventual development of urban
9 density or, alternatively, it will allow the area to be returned to the rural area if future updates
10 to the County's comprehensive plan determine this area is not needed to accommodate the
11 UGA's projected growth or if the County determines it cannot provide urban services to this
12 area.
13

14
15 Based on the foregoing, the County's population allocation to the Bayview Ridge UGA
16 complies with RCW 36.70A.070 and RCW 36.70A.110.
17

18 ***Issue Eight: Does Bayview Ridge Subarea Plan ensure that new residential***
19 ***development within the new UGA will occur at urban densities to comply with RCW***
20 ***36.70A.110 and Goals 1 and 2 of the GMA (RCW 36.70A.020(1) and (2)) to encourage***
21 ***urban growth and reduce sprawl? (COL U)***

22 The August 6, 2007 FDO/Compliance Order concluded the following,
23

24 Although the County aspires to have urban densities in the Bayview Ridge
25 Subarea Plan, it has no ability to foreclose development within the new UGA at
26 less than urban densities. It may be that the new PRD ordinance for the
27 Subarea will address this concern, but at this point, there is no regulation to
28 meet it. This fails to comply with RCW 36.70A.110.⁴⁰

29 The County has amended its code to now include a minimum density requirement of four
30 dwelling units per acre.⁴¹ As noted *supra*, the code also includes a provision where a
31

32 ⁴⁰ Compliance Order/Final Decision and Order at 41.

⁴¹ SCC16.340(5).
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1 property owner can increase densities to six dwelling units per acre with the purchase of a
2 farmland density credit.⁴² The County allows a variance from the minimum density
3 requirements in cases where critical areas or an existing structure make minimum densities
4 infeasible.

5
6 **Conclusion:** Based on SCC14.16.340 (5) and SCC 14.16.340(5)(a), the Board finds that
7 development regulations for the Bayview Ridge UGA provide for minimum urban densities
8 and now comply with RCW 36.70A.110. The allowance of a variance from these
9 requirements is reasonable and could be offset by SCC 16.340(5)(a), the purchase of
10 farmland density credits, so that minimum densities can be achieved.
11

12
13 **Issue Nine: Has Skagit County corrected Policy 6A-1.2(a) which allowed exceptions**
14 **to level of service (LOS) standards allow a LOS to be degraded indefinitely and are**
15 **therefore not compliant with RCW 30.70A.070(6)? (COL W)**

16 **Issue Ten: Does Skagit County still allow broad grant of administrative discretion to**
17 **vary from the established LOS created by Policy 6A-1.2(c) that is noncompliant with**
18 **RCW 36.70A.070(6)? (COL X)**

19 The August 6, 2007 FDO/Compliance Order held:

20 The exceptions to LOS standards created by Policy 6A-1.2(a) allow a LOS to be
21 degraded indefinitely and are therefore not compliant with RCW 30.70A.070(6)'s
22 mandate to prohibit development if the development causes the level of service
23 to decline below adopted LOS standards unless improvements or strategies are
24 made "concurrent with development." The broad grant of administrative
25 discretion to vary from the established LOS created by Policy 6A-1.2(c) also is
26 noncompliant with RCW 36.70A.070(6) since it does not contain sufficient
27 direction to assure that the exceptions still meet the requirements for
transportation concurrency.⁴³

28 The County has removed the subsections to Policy 6.A 1.2 that created the exceptions, so
29 that the policy now reads:
30

31
32 ⁴² SCC 16.340 (5)(a).

⁴³ Compliance Order/Final Decision and Order at 57.

1 Proposed projects that decrease the level of service below the planned level,
2 because of their planned contribution, shall be denied unless concurrent
3 improvements are made to prevent a decrease in the level of service below the
4 planned level for that location.⁴⁴

5 **Conclusion:** With the elimination of the exceptions that allow a transportation LOS to
6 degrade indefinitely and the administrative authority to vary from an established LOS, Policy
7 6 A 1.2 now complies with RCW 36.70A.070(6).

8
9 **B. Issues On Which Petitioners Contest Compliance**

10 **Issue Eleven: Does SCC 14.28.105(13) still fail to comply with RCW 36.70A.110,**
11 **requiring urban levels of service for urban development, and the concurrency goal**
12 **(Goal 12)? (COL Z)**

13 **Issue Twelve: Does Skagit County's exemption to the general requirement for hook-**
14 **up to public sewer as a condition of approval fail to comply with RCW**
15 **36.70A.020(12)? (Order Re: Invalidity (July 2, 2008)).**

16 Background

17 The Board's August 6, 2007 FDO/Compliance Order held:

19 Petitioners identify a development regulation that is inconsistent with needed
20 capital facilities for the new UGA. Petitioners point to SCC 14.28.105(13)
21 regarding public sewer. They argue that it allows an urban use to be constructed
22 in the Bayview Ridge UGA if no sewer is available. The Board finds this
23 development regulation is inconsistent with the claim that urban services are
24 available now. SCC 14.28.105(13) allows urban levels of development without
25 concurrent urban levels of public sewer service. This fails to comply with RCW
26 36.70A.110 and Goal 12 of the GMA, the concurrency goal.⁴⁵

27 SCC 14.28.105(13) allows urban levels of development, both residential and
28 industrial, on holding tanks. Not only does this development regulation fail to
29 comply with RCW 36.70A.110, as we have found, but it also substantially
30 interferes with the fulfillment of Goal 12, in that it does not ensure that public
31 facilities and services necessary to support development will be adequate to serve
32 the development at the time the development is available for occupancy. Urban

⁴⁴ Exhibit 447, Bayview Subarea Plan at Chapter 6, Temporary Page 12.

⁴⁵ Compliance Order/Final Decision and Order at 62.

1 levels of development require urban levels of service and key among urban
2 services is public sewer. The exemption to the general requirement for hook-up
3 to public sewer as a condition of approval found in SCC 14.28.105(13) is therefore
4 invalid.⁴⁶

5 On March 6, 2008, the Board issued an Order Rescinding Invalidity. The Board found that
6 the adoption of interim regulations that did not allow for development without connection to
7 public sewer cured substantial interference with Goal 12 of the GMA. Because the interim
8 ordinance was due to expire in six months, the Board required a progress report that
9 described the steps the County had taken to adopt permanent regulations or extend the
10 interim ordinance and scheduled another hearing for May 28, 2008.

11
12 On May 28, 2008, immediately before the hearing, Skagit County e-mailed Ordinance
13 020080005 that indicated it was an ordinance recommended by the Planning Commission
14 that would adopt permanent regulations regarding connection to public sewer in the
15 Bayview Ridge UGA. Later, on June 3, 2008, Skagit County submitted Ordinance
16 020080005 that showed it had adopted the permanent regulations regarding connection to
17 sewer.⁴⁷

18
19 On July 2, 2008, the Board issued an Order Re: Invalidity, in which the Board declined to
20 reimpose invalidity. The Board determined it would consider compliance on this issue after
21 the compliance hearing on all the issues in this case.⁴⁸

22
23 *Do the County's amended regulations comply with GMA goals and requirements and the*
24 *County's Countywide Planning Policies?*

25
26 The County replaced noncompliant and invalid SCC 14.28.105(13) with SCC 14.16.215
27 (3)(d) and Chapter 14.28.030. The County says it codified them in this manner because
28 SCC 14.16.215 consists of development standards, while SCC 14.28.030 is a concurrency
29

30
31 _____
32 ⁴⁶ Compliance Order/Final Decision and Order at 64 and 65.

⁴⁷ Ordinance 020080005 at 3.

⁴⁸ Order Re: Invalidity at 3.

1 requirement mandating connection to public sewer in the Bayview Ridge UGA. The County
2 asserts that these regulations bring the County into compliance with the GMA because
3 these provisions no longer allow urban levels of development without connection to the
4 public sewer system.⁴⁹ The County's new sewer connection requirements, codified at SCC
5 14.16.215(3)(d), require connection to public sewer unless the proposed development is a
6 single-family dwelling unit or residential accessory use that is greater than 200 feet from a
7 sewer line. Owners who qualify for this exception must sign "an agreement to connect" that
8 runs with the land confirming the owner will connect to public sewer when it is available.
9

10
11 The County emphasizes that this provision is limited solely to existing lots of record either
12 with a failed existing septic system or new single-family residence and does not apply to any
13 lands proposed to be subdivided or any commercial and industrial properties. The County
14 further points out only 17 parcels potentially could take advantage of this single-family
15 exception. The County points to Exhibit 453, a map showing developed and undeveloped
16 parcels in the UGA, and asserts that the 17 undeveloped parcels include large single owner
17 parcels, which will likely be subdivided after the development of the Planned Unit
18 Development (PUD) ordinance. Therefore, the County concludes if these parcels are
19 developed as part of a PUD they would be required to connect to sewers. According to the
20 County, removing the single-ownership properties from the likelihood of developing on
21 septic systems leaves 11 parcels which could take advantage of the exception, and nine of
22 these are in the Urban Reserve zone.⁵⁰
23
24

25 Skagit County Growthwatch objects to the exception to the public sewer connection
26 requirement for several reasons. First, Petitioner contends that this exception discourages
27 urban development without full urban services, does not allow for orderly and contiguous
28 growth throughout the UGA and allows for development without connection to urban
29 services. Petitioners say this violates RCW 36.70A.020(12) as well as Skagit County's
30

31
32 ⁴⁹ County's Compliance Report at 14.

⁵⁰ Skagit County's Compliance Report at 13 and 14.

1 Countywide Planning Policies (CPPs), which are part of Skagit County's Comprehensive
2 Plan. According to Petitioners, the CPPs that the Ordinance violates are CPPs 2.1, 12.1,
3 12.5, 12.6, and 12.7, which all require connection to urban services at the time of
4 development.⁵¹

5
6 Petitioners maintain that all seventeen parcels shown on Exhibit 453 represent the vast
7 majority of buildable residential lands in the UGA which can take advantage of the
8 exception. Petitioners also argue that future properties that might be added to the UGA
9 could take advantage of this exception allowing unlimited expansion of existing septic
10 systems to accommodate accessory residential uses.⁵²

11
12 The County replies that Petitioners ignore how limited this exception is and confuse urban
13 development in the UGA with any development in the UGA. The County explains that urban
14 levels of development require subdivision of large parcels, which requires connection to
15 public sewer. The County contrasts this to a property owner either with an existing house or
16 a property owner who wants to build one house on their property without subdividing.
17 Property owners in these situations would not be required to connect to public sewer if the
18 entire property is greater than 200 feet from the sewer line.⁵³

19
20
21 The County asserts that requiring all development to connect to sewers without excepting
22 new and existing structures that are a certain distance from sewer lines would result in an
23 effective moratorium for landowners who choose not to subdivide, including existing homes
24 on failed septic tanks. The County maintains extending a sewer line to one single-family
25 house in many cases would be cost prohibitive and it is only providing a reasonable
26 option.⁵⁴

27
28
29
30
31 ⁵¹ Skagit County Growthwatch Objection at 4 and 5.

⁵² Id. at 5 and 6.

⁵³ Skagit County Response to Skagit County Growthwatch Objections to a Finding of Compliance at 3.

⁵⁴ Id. at 3 and 4.

1 RCW 36.70A.110(1) requires Skagit County to accommodate the growth that is allocated to
2 the Bayview Ridge UGA. RCW 36.70A.110(2) requires the UGA accommodate urban
3 growth at urban densities. To accommodate growth at urban densities urban services,
4 including public sewer, are needed. RCW 36.70A.110(3) requires that growth be
5 accommodated in an orderly manner. Growth inside and outside UGAs must be consistent
6 with GMA goals, including Goal 1 - encouraging urban growth to areas where adequate
7 public services are available, Goal 2 - reducing the inappropriate conversion of
8 undeveloped land into sprawling, low density development, and Goal 12 - ensuring
9 adequate public services are available at the time of development.
10

11
12 The Board has interpreted these requirements to mean the following:

13 ...allowing new development to occur in a UGA prior to the availability of urban
14 services requires a delicate balancing of two principles. On one side of the
15 equation, the new development cannot be at urban densities because urban
16 services are not yet available. On the other side of the equation, new
17 development at non-urban densities must not preclude the eventual achievement
18 of urban densities when urban services become available. Where a UGA is
19 developed at non-urban densities and intensities due to a lack of adequate urban
20 services, then it is unlikely to ever become urban in nature. Counties and cities
21 need to ensure that new development which is not yet served by urban services
22 does not become permanent sprawl or environmentally damaging if capital
23 facilities planning assumptions do not come to fruition or if growth does not occur
24 when and how it was expected.⁵⁵

25 Petitioners claim that the County's amended development standards do not comply with
26 RCW 36.70A.020(12) or the following countywide planning policies (CPPs). CPP 2.1
27 requires contiguous and orderly development and provision of urban services within urban
28 growth boundaries; 12.1 requires public facilities and services to be integrated and
29 consistent with locally adopted plans and regulations; CPP 12.5 requires lands designated
30 for urban growth have an urban level of regional public facilities prior to or concurrent with

31 ⁵⁵ *Advocates for Responsible Development and John Diehl v. Mason County*, WWGMHB Case No. 06-2-
32 0005(Compliance Order on Plan and Development Regulations –Sewer in the Belfair UGA, November 14,
2007).

1 development ; CPP 12.6 requires allowance of development when and where all public
2 facilities are adequate and development can be adequately served by regional public
3 facilities without reducing levels of service elsewhere; and CPP 12.7 that public facilities and
4 services needed to support development shall be available concurrent with the impacts of
5 development.⁵⁶ The Board observes these CPPs mirror GMA requirements discussed
6 above, including RCW 36.70A.020(12) that states:
7

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

12 As the County points out, urban growth in UGAs is expected to occur over 20 years.
13 Therefore, the Board finds the GMA does not require the County to provide urban services
14 immediately to the entire UGA or prohibit the County from providing reasonable options for
15 development in the UGA before they arrive. Nevertheless, these options must be provided
16 consistent with GMA requirements and goals.
17

18 The County's development regulations require connection to public sewer with one
19 exception.⁵⁷ The County's development regulations allow development on septic systems in
20 the UGA before the arrival of a necessary urban service sewer only on existing lots or to
21 replace an existing failing septic tank. This exemption does not apply to subdivisions and
22 commercial and industrial development.⁵⁸ Also, part of the Bayview Ridge UGA is
23 designated an Urban Reserve Zone where the density is one dwelling unit per ten acres.⁵⁹
24

25 The Bayview Ridge UGA's land use pattern in its Residential Zone is one of very large
26 undeveloped lots, many in single ownership and with several developed subdivisions on
27
28

29
30
31 ⁵⁶ Skagit County Growthwatch Objection at 5.

32 ⁵⁷ SCC 14.16.215(3)(d) and SCC 14.28.030 (3).

⁵⁸ Id. at SCC 14.16.215 (3) (d)(i) and (ii).

⁵⁹ Exhibit 447 at Attachment E at SCC 14.16.030.

1 smaller lots. The largest of these subdivisions appears to be developed on public sewer.⁶⁰
2 The great majority of these undeveloped lots appear to be 40 acres or more. Several
3 smaller undeveloped parcels owned by Bouslog Investments appear to be at least five
4 acres in size. Allowing development of one dwelling unit in this UGA on lots ranging from a
5 little over five acres to over 40 acres on a septic system does not allow for urban growth
6 before urban services are available. These regulations applied to the undeveloped large
7 lots in the UGA's Residential Zone as well as the regulation limiting development to one
8 dwelling unit per ten acres in the Urban Reserve Zone most likely will preserve enough land
9 on these lots to accommodate future urban densities and future utility extensions.
10

11
12 SCC 14.15.215 (3)(d) also includes the requirement that development on septic systems
13 connect to sewers when they are within 200 feet. This requirement and the other conditions
14 on the sewer exceptions, the actual lot sizes in the Residential Zone, and the required lot
15 sizes in the Urban Reserve Zone must be viewed together with the prohibitions on
16 subdivisions and commercial and industrial development without connection to public sewer
17 and the mandate for a minimum density in future subdivisions of at least four dwelling units
18 per acre.
19

20
21 **Conclusion:** The Board has found, *supra*, that the County has allocated population to the
22 UGA and shown how it will accommodate it at urban densities and the City of Burlington has
23 shown how it will serve development within the Bayview Ridge UGA. Those findings
24 combined with these amended County development standards and concurrency provisions
25 work with the actual on-the-ground land use pattern in the Bayview Ridge UGA to provide
26 that future development in the UGA will be consistent with RCW 36.70A.110, RCW
27 36.70A.020(1), (2), and (12).
28
29
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32

⁶⁰ Exhibit 453.
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1 This same reasoning causes the Board to find that Petitioners have not carried their burden
2 of proof that the County's amended development standards and concurrency requirements
3 do not comply with RCW 36.70A.020(12) and the County's CPPs.
4

5 *Do the County's regulations allow for misinterpretation and misapplication to thwart GMA*
6 *goals and requirements?*
7

8 Petitioners also allege that measuring the 200 feet from the existing sewer line to the
9 structure allows for much mischief in interpretation. Petitioners provide an example to show
10 how this exception could cause a large number of parcels to participate in the exception.
11 Petitioners cite two small parcels in the urban reserve zone that are approximately 320 by
12 120 feet. According to Petitioners, if public sewer was extended to the northerly parcel, the
13 southerly parcel could use the exemption if they built a house on the back half of the
14 property. This would mean there would be a 60-foot extension to the property and a 140
15 foot extension to the back half of 330 foot property. The failure of the second parcel to
16 extend sewer would cascade down the street.⁶¹
17
18

19 The County replies the scenario painted by Petitioners relies on misinterpretation of the
20 code amendment. The County acknowledges SCC 14.16.215(3)(d) provides that an
21 applicant for a development permit for a single-family house not associated with a land
22 division that is more than 200 feet from a sewer line is not required to connect to public
23 sewer. However, in its scenario, the County says Petitioner relied on SCC 14.16.215(3)(d)(i)
24 that allows only existing structures that are 200 feet from the sewer line the exemption from
25 connecting to public sewer. The County emphasizes that there is a higher burden for
26 development of new structures to connect to sewer than existing structures already on
27 septic systems.⁶² The County also asserts in Petitioners' scenario, the property owner
28 would be within 200 feet and would be required to connect. The County further declares
29
30
31

32 ⁶¹ Skagit County Growthwatch Objection at 7.

⁶² Skagit County 's Response to Skagit County Growthwatch's Objections at 5 and 6.

1 the existence of sewer on neighboring properties has no bearing on sewer connection
2 requirements for urban development because urban development will require sewer
3 connection.⁶³

4
5 The Board agrees with the County that the scenario created by Petitioners would not
6 prevent eventual connection to sewer. The Board finds that allowing a homeowner to
7 replace an existing septic tank without extending a sewer line neither creates new urban
8 growth nor is a clearly erroneous violation of RCW 36.70A.110 and RCW 36.70A.020(2)
9 and (12). This connection policy also does not make it cost prohibitive or provide a
10 disincentive to correcting problems that would exist with or without a UGA, and is an
11 appropriate harmonizing of GMA goals. Further, the Board has found, *supra*, that the
12 County's amended sewer connection standards, concurrency requirements, zoning
13 regulations, and existing land use pattern provide appropriate holding zones until
14 development occurs and make it unlikely that Petitioners' scenario will occur in the UGA
15 now or if the UGA expands.

16
17
18 *Does the GMA require the County to choose a more restrictive option?*

19
20 Petitioners state that the County has several options for financing sewers and ensuring
21 development in the UGA has public sewer including requiring when one property owner
22 connects to sewer that sewer lines and easements be designed to facilitate adjacent owner
23 connection with or without reimbursement of the first property owner. Another method
24 would be requiring the establishment of a Local Improvement District financed by the two
25 largest property owners before development could occur.⁶⁴

26
27
28 The Board has held that the County needs to ensure that development that is not urban that
29 occurs before advent of urban services cannot prevent urban growth or the delivery of future
30

31
32 ⁶³ Id. at 4.

⁶⁴ Skagit County Growthwatch Objection at 6 and 7.

1 urban services from occurring. As discussed, *supra*, the Board finds that the County
2 regulations and development pattern prevent this from happening. While the County could
3 require development in the UGA to occur using the methods that Petitioners suggest, the
4 Board's authority does not include imposing a method of compliance on the County, but is
5 confined to determining whether the County has adopted a ~~compliant~~ method of providing
6 for urban services and appropriate development in the Bayview Ridge UGA that complies
7 with the goals and requirements of the GMA.⁶⁵ This the County has accomplished.
8

9 10 **VI. FINDINGS OF FACT**

- 11 1. Skagit County is located west of the crest of the Cascade Mountains and is
12 required to plan pursuant to RCW 36.70A.040.
- 13 2. Skagit County adopted Ordinance-020080005 on July 3, 2008.
- 14 3. On September 2, 2008 Petitioner Skagit County Growthwatch, Citizens to Protect
15 Bayview Ridge, and Gerald Steel filed timely objections to a finding of compliance
16 on Ordinance 020080005, action taken by Skagit County to comply with the
17 Board's August 6, 2007 Compliance Order/ Final Decision and Order.
- 18 4. On September 10, 2007 the County adopted Ordinance 020070009 that approved
19 amendments to the County's countywide planning and comprehensive plan
20 policies, development regulations and zoning code.
- 21 5. The record shows that both the Countywide CIP and the Bayview Ridge Subarea
22 Plan's CIP use the same timeframe.
- 23 6. The Bayview Ridge Subarea CIP covers the appropriate six years of the planning
24 period. Further, the Bayview Ridge UGA's Subarea Plan's CIP includes county-
25 owned and non-county owned capital facilities and shows how these facilities will
26 be financed within projected funding capacities and clearly identifies sources of
27 public money for such purposes.
28
29
30
31

32 ⁶⁵ See *ICCGMC v. Island County*, WWGMHB Case No. 98-2-0023(Final Decision and Order, June 2, 1999)
and *Diehl v. Mason County* (WWGMHB Final Decision and Order, September 18, 1997).

- 1 7. The City of Burlington, the Bayview Ridge UGA's sewer service provider, adopted
2 a 2007 Supplement to the Burlington Sewer Plan explaining what facilities will
3 serve the Bayview Ridge UGA, and an updated sewer map, delineating the
4 existing sewer infrastructure in the Bayview Ridge UGA.
- 5 8. The Subarea Plan's Capital Facilities Element clearly references the Burlington
6 Sewer Plan and the 2007 Supplement as a basis for the capital facilities element.
- 7 9. The School District added Appendix 5 to its capital facilities plan that the County
8 incorporated into its CIP that projects its needs (shows its deficiencies) until 2025.
- 9 10. The Bayview Ridge Subarea Plan estimates the population of the Bayview Ridge
10 UGA over the 20-year planning period will generate 711 new elementary school
11 students and 183 new high school students.
- 12 11. The Subarea Plan projects the equivalent of a new elementary school will be
13 needed to accommodate the elementary students generated by the Bayview
14 Ridge UGA.
- 15 12. The School District six-year plan includes the task of identifying a location for a
16 new elementary school and new high school. It also states that in the interim
17 students may be housed in portables until permanent facilities are built.
- 18 13. The Subarea Plan says that to maintain an effective LOS the fire districts will
19 need increases in equipment, training and manpower.
- 20 14. The record includes an agreement signed by all the districts that serve the
21 Bayview Ridge UGA that each fire district will provide aid to the others when
22 necessary.
- 23 15. The Subarea Plan does not include parks needs for the Bayview Ridge UGA or
24 proposed locations or capacities of park facilities to serve the UGA.
- 25 16. The population allocation for the Bayview Ridge UGA for 2025 is 5600. Because
26 this is 2180 people more than the 2015 allocation, the County says it had to
27 expand the UGA to accommodate the additional population growth for the 20-year
28 population horizon.
- 29
- 30
- 31
- 32

- 1 17. The UGA will have a minimum density based on the Subarea Plan's Housing
2 Element that states that the urban residential area should have a minimum of 4 to
3 6 dwelling units an acre. SCC and SCC 14.16.030 and SCC 14.16.340(1) also
4 require this density.
5
6 18. The County cannot increase the minimum density requirements within the
7 Bayview Ridge UGA to accommodate this additional growth due to density limits
8 required by proximity to an airport.
9
10 19. Using 2.5 persons per household, to accommodate the Bayview Ridge
11 population, the UGA would need 2240 homes, which means that it would need an
12 additional 1519 homes added to the current 721 dwelling units.
13
14 20. The County added its Urban Reserve zone to the UGA to accommodate its 2025
15 projected growth. At a minimum of 4 units an acre, the addition of this land does
16 not accommodate the projected growth, but with the purchase of farmland density
17 credits density could be increased to six dwelling units per acre which would
18 accommodate 26 percent more than the population estimate.
19
20 21. Policy 6.A 1.2 now reads, "Proposed projects that decrease the level of service
21 below the planned level, because of their planned contribution, shall be denied
22 unless concurrent improvements are made to prevent a decrease in the level of
23 service below the planned level for that location".
24
25 22. On March 6, 2008, the Board issued an Order Rescinding Invalidation. The Board
26 found that the adoption of interim regulations that did not allow for development
27 without connection to public sewer cured substantial interference with Goal 12 of
28 the GMA.
29
30 23. Skagit County adopted Ordinance 020080005 that adopted permanent
31 regulations regarding connection to sewer on June 3, 2008.
32
33 24. The County replaced noncompliant and invalid SCC 14.28.105(13) with SCC
34 14.16.215 (3)(d) and Chapter 14.28.030.

- 1 25. The County's new sewer connection requirements, codified at SCC
2 14.16.215(3)(d), require connection to public sewer unless the proposed
3 development is a single-family dwelling unit or residential accessory use that is
4 greater than 200 feet from a sewer line. Owners who qualify for this exception
5 must sign "an agreement to connect" that runs with the land confirming the owner
6 will connect to public sewer when it is available.
- 7
- 8 26. The County's development regulations allow development on septic systems in
9 the UGA before the arrival of a necessary urban service sewer only on existing
10 lots or to replace an existing failing septic tank. This exemption does not apply to
11 subdivisions and commercial and industrial development.
- 12 27. Part of the Bayview Ridge UGA is designated an Urban Reserve Zone where the
13 density is one dwelling unit per ten acres.(SCC 14.16.215(3)(d) and SCC
14 14.28.030 (3)).
- 15
- 16 28. The Bayview Ridge UGA's land use pattern in its Residential Zone is one of very
17 large undeveloped lots, many in single ownership and with several developed
18 subdivisions on smaller lots. The largest of these subdivisions appears to be
19 developed on public sewer. The great majority of these undeveloped lots appear
20 to be 40 acres or more. Several smaller parcels owned by Bouslog Investments
21 appear to be at least five acres in size.
- 22
- 23 29. Any Finding of Fact later determined to be a Conclusion of Law is adopted as
24 such.

25 VII. CONCLUSIONS OF LAW

- 26
- 27 A. The Board has jurisdiction over the parties and subject matter of these cases.
- 28 B. Petitioners Skagit County Growthwatch, Citizens to Protect Bayview Ridge, and
29 Gerald Steel have standing to raise objections to a finding of compliance.
- 30 C. The County has adopted an update to comprehensive plan policies, development
31 regulations, and zoning code and now complies with RCW 36.70A.130(4).
32

- 1 D. The Skagit County CIP and the Bayview Ridge Subarea Plan's CIP now use the
2 same timeframe, 2008-2013. Therefore, these two parts of the County's
3 comprehensive plan now comply with RCW 36.70A.070.
4 E. The Bayview Ridge Subarea Plan's CIP complies with RCW 36.70A.070 (3)(d).
5 F. The inventory of existing sewer facilities to serve the Bayview Ridge UGA complies
6 with RCW 36.70A.070 (3)(a).
7
8 G. The Bayview Ridge Subarea Plan's CIP for park facilities does not comply with RCW
9 36.70A.070(b) and (c).
10 H. The Bayview Ridge Subarea Plan and the County's 2008 Capital Facilities Plan
11 identifies the long-term needs of the School District in general so that the Bayview
12 Ridge UGA capital facilities plan for schools complies with RCW 36.70A. 070 (3)(b).
13 I. The County's approach to identifying future facilities and capacities for school
14 facilities for the Bayview Ridge UGA is not a clearly erroneous violation of RCW
15 36.70A.070 (3)(c).
16
17 J. Bayview Ridge Subarea Plan's CIP for fire facilities is not a clearly erroneous
18 violation of the RCW 36.70A.070 (3)(b) and (c).
19 K. The added clarification to its sewer plan by the City of Burlington, incorporated by
20 reference by the County, shows that sufficient sewer service will be provided to the
21 Bayview Ridge UGA over the 20 year life of the plan so that Bayview Ridge UGA
22 complies with RCW 36.70A.070(3)(b) and (c).
23
24 L. The County's population allocation to the Bayview Ridge UGA complies with RCW
25 36.70A.110.
26 M. The Bayview Ridge Subarea Plan and development regulations provide for minimum
27 urban densities and now comply with RCW 36.70A.110.
28 N. Policy 6 A 1.2 now complies with RCW 36.70A.070(6).
29 O. The City of Burlington's sewer plan to serve the Bayview UGA, the County's
30 requirements for minimum densities of at least four dwelling units per acre, Urban
31 Reserve densities combined with these amended County development standards in
32

1 14.16.215 (3) (d) (i) and (ii) and concurrency provisions in 14.28.030 work with the
2 actual on-the-ground land use pattern in the Bayview Ridge UGA to provide that
3 future development in the UGA will be consistent with RCW 36.70A.110, RCW
4 36.70A.020(1), (2), and (12) and the County's CPPs .

5 P. Any Conclusion of Law later determined to be a Finding of Fact is adopted as such.
6

7 **VIII. ORDER**

8 Based on the foregoing Findings of Facts and Conclusions of Law, the Board finds that
9 Skagit County has not brought the Bayview Ridge Subarea Plan regarding park facilities
10 into compliance with RCW 36.70A.070 (3)(b) and (c). For all other areas where the Board
11 had made a finding of noncompliance in its August 6, 2007 Final Decision and Compliance
12 Order and its July 2, 2008, Order Re: Invalidity, the County's actions have cured these
13 areas of noncompliance in regard to the Bayview Ridge UGA. The County must bring the
14 remaining area of noncompliance into compliance within 180 days according to the following
15 schedule:
16

17 Item	Date Due
18 Compliance Due on	June 22, 2009
19 Statement of Actions Taken and Index to 20 Compliance Record Deadline	July 6, 2009
21 Objections to a Finding of Compliance Deadline	July 20, 2009
22 Response to Objections Deadline	August 3, 2009
23 Compliance Hearing	August 11, 2009

24 Entered this 23rd day of December, 2008.
25
26

27 _____
28 Holly Gadbow, Board Member

29 _____
30 James McNamara, Board Member
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William Roehl, 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 mailing of this Order to file a petition for reconsideration. Petitions for reconsideration shall follow the format set out in WAC 242-02-832. The original and 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. **Filing means actual receipt of the document at the Board office.** RCW 34.05.010(6), WAC 242-02-330. The filing of a petition 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, 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.

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

Appendix A

The issues here come before the Board in two cases: the remaining compliance issues from the 1997 case of *Abenroth et al. v. Skagit County*, WWGMHB Case No. 97-2-0060c relating to the Bayview Ridge UGA; and the issues raised in the 2007 petition for review filed by Skagit County Growthwatch, Citizens to Protect Bayview Ridge, and Gerald Steel (Skagit County Growthwatch, collectively) which challenged Skagit County's adoption of the

1 Bayview Ridge Subarea Plan (Subarea Plan) and development regulations . Petitioners
2 have also challenged the failure of the County to timely update its comprehensive plan and
3 development regulations as required by RCW 36.70A.130(1),(2) and 4(b). The County
4 admitted that it is still working on its update and the Board entered a decision on motion that
5 the County was not in compliance on this issue (Issue No.1).
6

7 In its January 23, 1998 Final Decision and Order in the 1997 *Abenroth* case, this Board
8 found the designated non-municipal UGA at Bayview Ridge outside the property of the Port
9 of Skagit to be non-compliant with the Growth Management Act (GMA) and imposed
10 invalidity. On June 10, 1998 the Board declined to lift invalidity (Order Re: Bayview Ridge
11 UGA) but later the parties stipulated to a rescission of invalidity. Over the past ten years,
12 the many issues presented in the 1997 *Abenroth* case have been found compliant and
13 closed, with only the compliance of the Bayview Ridge UGA remaining an open compliance
14 topic.
15

16
17 On December 1, 2006, the Board of County Commissioners adopted the Bayview Ridge
18 Subarea Plan (Subarea Plan) through Ordinance 020060007. The initial petition for review
19 in the 2007 case was filed by Petitioners on February 5, 2007.
20

21 In an effort to confine the service obligations to only those past participants interested in the
22 Bayview Ridge UGA portion of the *Abenroth* case, all parties of record in that case were
23 served with notice that they must submit a form indicating their intention to participate in the
24 case to remain as parties. Skagit Growthwatch, Citizens to Protect Bayview Ridge, and
25 Gerald Steel filed a notice of intent to participate on February 28, 2007. Friends of Skagit
26 County (June Kite, representative) filed its notice of intent to participate on March 7, 2007.
27 Bouslog Investments LLC, JBK Investments LLC, and John Bouslog also filed a notice of
28 intent to participate in the *Abenroth* case.⁶⁶
29
30

31
32 ⁶⁶ The cities of Concrete and Hamilton also filed notices of intent to participate but did not brief any issues or
appear at the hearing on the merits.

1 On August 6, 2007 the Board issued a Compliance Order in the *Abenroth* case and a Final
2 Decision and Order in the *Skagit County Growthwatch* case. In that decision, the Board
3 found that there are non-compliant portions of the Subarea Plan and that one development
4 regulation in particular is invalid for allowing urban levels of development on holding tanks
5 rather than on public sewer (SCC 14.28.105(13)). However, the Board also found that the
6 Subarea Plan addresses many of the residential and commercial/industrial aspects of the
7 Bayview Ridge UGA in a manner that is compliant with the GMA.⁶⁷
8
9

10 Other key areas of noncompliance addressed in that decision were the following. The
11 County had not timely updated its comprehensive plan and must therefore use the planning
12 period of 1995-2015 in the Subarea Plan as well. The Subarea Plan, with its accompanying
13 capital facilities plan, must show how the UGA will be provided with urban levels of public
14 services by the year 2015, the planning period currently in effect. There were deficiencies
15 with respect to public sewer, fire and parks. To maintain consistency, the Subarea Plan
16 must also use the population projections that are used in the comprehensive plan and size
17 the Bayview Ridge UGA according to the 2015 population projections and allocations for
18 urban growth in the comprehensive plan. Where the County has used greater numbers for
19 the new UGA was non-compliant with RCW 36.70A.110. Finally, the County must have
20 development regulations that ensure that growth that occurs in the new non-municipal UGA
21 is urban in nature. At this time, the County lacks such development regulations and that
22 failure, too, failed to comply with RCW 36.70A.110.⁶⁸
23
24
25

26 On August 30, 2008, the Board issued Order Amending Compliance Order to correct a
27 factual error that the Board's determination that the PUD No. 1 Water System Plan was
28 incorporated into the County Comprehensive Plan through the Skagit County Coordinated
29 Water System Plan was in error. However, the PUD No.1 Water System Plan was adopted
30

31
32 ⁶⁷ Compliance Order/Final Decision and Order at 2.

⁶⁸ Id. at 2 and 3.
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1 into the Plan through the 2003-2008 Capital Facilities Plan. This factual error did not change
2 the Board's conclusion.

3
4 On March 6, 2008, the Board issued an Order Rescinding Invalidity. The Board found that
5 the adoption of interim regulations that did not allow for development without connection to
6 public sewer cured substantial interference with Goal 12 of the GMA. Because the interim
7 ordinance was due to expire in six months, the Board required a progress report that
8 described the steps it had taken to adopt permanent regulations or extend the interim
9 ordinance and scheduled another hearing for May 28, 2008.
10

11 On May 28, 2008, immediately before the hearing, Skagit County e-mailed Ordinance
12 020080005 that indicated it was an ordinance recommended by the Planning Commission
13 that would adopt permanent regulations regarding connection to public sewer in the
14 Bayview Ridge UGA. Later, Skagit County submitted the permanent regulations that were
15 adopted June 3, 2008.⁶⁹ On July 2, 2008, the Board issued an Order Re: Invalidity, in
16 which the Board declined to reimpose invalidity and for which Petitioner Skagit County
17 Growthwatch did not request another finding of invalidity. The Board determined it would
18 consider compliance after the compliance hearing on all the issues in this case.⁷⁰
19

20 The County submitted its compliance report on August 11, 2008. Petitioners filed a timely
21 objection to a finding of compliance on September 2, 2008. On September 24, 2008,
22 Skagit County submitted its response to this objection. The Board held a telephonic
23 compliance hearing on October 1, 2008. Deputy Prosecutor Jill Olsen represented Skagit
24 County. Gerald Steel represented Petitioners. All three Board Members attended. Holly
25 Gadbaw presided.
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32 ⁶⁹ Ordinance 020080005 at 3.

⁷⁰ Order Re: Invalidity at 3.
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