BEFORE THE WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

Friends of Skagit County, June Kite, and Evergreen Islands, Petitioners, v. Skagit County, Respondent. And The City of Anacortes, Intervenor.	Case No. 07-2-0025c **COMPLIANCE ORDER**

This matter comes before the Board following the submittal of Skagit County's Compliance Report.[1] The Compliance Report describes Skagit County's (County) response to the Board's May 12, 2008 Final Decision and Order (FDO) and subsequent Order on Reconsideration. In that FDO and Order on Reconsideration the Board found that portions of the County's Comprehensive Plan, maps and development regulations adopted under Ordinance No.O20070009 were not compliant with the Growth Management Act (GMA) as set forth in the FDO and as described further below.

I. SYNOPSIS OF DECISION

The Board finds that the County has cured the areas of non-compliance identified in the FDO. In particular, the Board finds in this order that the County's amendments to SCC

[1] Compliance Report on Partial Compliance and Requires for Partial Rescission of Invalidity, filed 10/29/08. In addition the County filed a First Progress Report on August 13, 2008 detailing its compliance efforts.

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14.04.020 for "owner/operator caretaker quarters" as well as amendments to SCC 14.16.130(4)(b) further limit the size and scope of employee housing, and to SCC 14.16.130(4)(b) ensures that housing allowed by administrative special use shall not be for permanent residential uses. These provisions adequately address the areas of noncompliance identified in the FDO. The Board also concludes that the County's amendments to Comprehensive Plan Policies 3C-1.4 and 3C-2.1, along with changes to SCC 14.16.300(4), .310(4) and .320(4) have remedied this inconsistency between the comprehensive plan and development regulations and cured that area of noncompliance. The County's amendments to CP Policy 3C-2.18(b) bring that policy into compliance with the GMA and cause this policy to no longer substantially interfere with the goals of the GMA. Finally, the Board concludes the County's deletion of CP Policy 3C -6.4, has brought the Plan into compliance with the GMA so that the elimination of this policy removes its substantial interference with the goals of the GMA.

II. PERTINENT PROCEDURAL HISTORY

The matter came before the Board at a Hearing on the Merits of the Petitions for Review on March 27, 2008.

On May 12, 2008 this Board issued its FDO and, while finding that the Petitioners had not carried their burden of proof with regard to certain issues, found the County out of compliance with the GMA in several regards, including: 1) SCC 14.16.140(3) allowed new caretaker quarters or owner/operator housing in the Small Scale Recreation and Tourism (SRT) zone in Type II Limited Areas of More Intense Rural Development (LAMIRDs) in conflict with CP Policy 3B-1.6 and in violation of RCW 36.70A.070(5)(d)(ii); 2) CP Policies 3C-1.4 and 3C-2.1 which discourage commercial and industrial uses in residential areas were not supported by consistent development regulations as required by RCW 36.70A.040; 3) the County deviated from the GMA requirements for LAMIRDs by allowing the addition of new uses or areas that were developed *after* 1990 if they serve the same function as other Rural Centers that were existing as of July 1,1990; 4) Policy 3C -6.4

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allowed designation of new LAMIRDs that are contiguous to existing LAMIRDs even though Industrial LAMIRDS need to be isolated as required RCW 36.70A.070(5)(d)(iii); and 5) Policy 3A-2.2 failed to distinguish between rural and resource lands. The Board held that by referring to "rural" rather than to "rural and resource" areas, this plan policy implied that no growth should occur in the resource areas of the County. This resulted in an inconsistency with Skagit Countywide Planning Policy 1.2.

On December 29, 2008, the Board held a telephonic compliance hearing. Petitioners Friends of Skagit County, June Kite, and Evergreen Islands (collectively the "Petitioners") were represented by Gerald Steel. Ms. Jill Olson represented the County and was accompanied by Carly Raucho, Planner for Skagit County. Board members James McNamara and William Roehl attended. Board member Holly Gadbaw did not attend but reviewed the transcript of the hearing.

III. PRELIMINARY MATTERS

The May 12, 2008 FDO in this case directed the County to cure the areas of non-compliance by November 12, 2008.[2] In its Compliance Report the County claimed that the amendments could not be adopted to meet the compliance deadline due to scheduling constraints of the Planning Commission and Board of County Commissioners. Instead, the ordinance adopting the measures intended to bring the County into compliance with the GMA was adopted on December 2, 2008. In response, Petitioners took note of the County's failure to meet the November 12 deadline, as well as the County's failure to request an extension of that compliance date. In consequence, they requested that the County should be found in continued non-compliance on all issues, and in continued invalidity regarding CP Policies 3C2-18(b) and 3C-6.4.[3] However, at the Compliance Hearing Petitioners withdrew this objection, noting that there would be no benefit in the delay of compliance proceedings under these circumstances.

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[2] FDO at 57.
[3] Petitioners' Objections at 1.

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RCW 36.70A.300(3) requires the Board to set a compliance schedule in the FDO, setting forth a deadline by which the Respondent must achieve GMA compliance. It is expected that the Respondent in all cases before the Board shall comply with that schedule, or seek an extension. It is unfortunate that in this case the County exceeded the time provided by the Board to adopt amendments to achieve GMA compliance. Nevertheless, this does not appear to be a case where the County was attempting to delay or avoid compliance, but rather the failure to achieve compliance was due to difficulty scheduling this matter before the County Planning Commission and Board of County Commissioners. Furthermore, the delay was a matter of some three weeks and the ordinance in question was adopted prior to the date set for the compliance hearing. The Board agrees with the parties that there is no sense in entering a finding of continued non-compliance when we have before us the measures the County has adopted to achieve compliance. To do so would only needlessly delay review of the merits of Ordinance #O20080012. Therefore, while the County is reminded of its obligation to comply with the Board's compliance schedule, we decline to make a finding of continuing non-compliance or continuing invalidity based on a brief delay in the adoption of Ordinance #O20080012.

IV. BURDEN OF PROOF

After a board has entered a finding of non-compliance, the local jurisdiction is given a period of time to adopt a legislative enactment to achieve compliance. RCW 36.70A.300(3)(b). After the period for compliance has expired, the board is required to hold a hearing to determine whether the local jurisdiction has achieved compliance. RCW 36.70A.330(1) and (2). For purposes of board review of the comprehensive plans and development regulations adopted by local governments in response to a non-compliance finding, the presumption of validity applies and the burden is on the challenger to establish that the new adoption is clearly erroneous. RCW 36.70A.320(1),(2) and (3).

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If a finding of invalidity has been entered, the burden is on the local jurisdiction to demonstrate that the ordinance or resolution it has enacted in response to the finding of invalidity no longer substantially interferes with the goals of the GMA. RCW 36.70A.320(4).

In order to find the City's action clearly erroneous, the Board must be "left with the firm and definite conviction that a mistake has been made." *Department of Ecology v. PUD1*, 121 Wn.2d 179, 201, 849 P.2d 646 (1993). In this case, the Board found that SCC 14.16.140(3), and Comprehensive Plan Policies 3C-1.4, 3C-2.1, 3C-2.18(b), 3C-6.4 were not compliant with the GMA, and that there was an inconsistency between Policies 1.2 and 3A-2.2. The Board also found that Comprehensive Plan Policies 3C-2.18(b) (Rural Centers) and 3C-6.4 (Rural Marine Industrial) substantially interfered with GMA goals 1 and 2. On remand, the County bears the burden of demonstrating that the provisions of these Policies no longer substantially interfere with these goals.

As to the other areas of non-compliance, the Board did not find that they substantially interfered with the goals of the GMA, and therefore the burden of proving lack of compliance remains with the Petitioner and Intervenors.

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

> In recognition of the broad range of discretion that may be exercised by counties and cities in how they plan for growth, consistent with the requirements and goals of this chapter, the legislature intends for the boards to grant deference to the counties and cities in how they plan for growth, consistent with the requirements and goals of this chapter. Local comprehensive plans and development regulations require counties and cities to balance priorities and options for action in full consideration of local circumstances. The legislature finds that while this chapter requires local planning to take place within a framework of state goals and requirements, the ultimate burden and responsibility for planning, harmonizing the planning goals of this chapter, and implementing a county's or city's future rests with that community.
> RCW 36.70A.3201 (in part).

In sum, the burden is on the Petitioner to overcome the presumption of validity and

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

V. ISSUES TO BE DISCUSSED

Whether the County has achieved compliance with the GMA with regard to those areas found to be non-compliant in the Board's May 12, 2008 FDO?

Has the County removed the risk of substantial interference with the goals of the GMA such that the Board's earlier finding of invalidity regarding Comprehensive Plan Policies 3C-2.18(b) (Rural Centers) and 3C-6.4 (Rural Marine Industrial) should be rescinded?

VI. DISCUSSION

The Board's May 12, 2008 FDO remanded portions of the County's Comprehensive Plan and development regulations to the County for compliance with the GMA.

On remand, the County took a number of steps to achieve compliance by adopting Ordinance No. O20070009, adopting amendments to the Skagit County Comprehensive Plan and Skagit County Code on December 2, 2008.

A. Caretaker Quarters in the Small Scale Recreation and Tourism District

In the May 12, 2008 FDO the Board found that "SCC 14.16.140(3) allows new caretaker quarters or owner/operator housing in the Small Scale Recreation and Tourism (SRT) zone in Type II LAMIRDs in conflict with CP Policy 3B-1.6 and in violation of RCW 36.70A.070(5)(d)(ii)."[4] In response, the County added a new general definition in SCC 14.04.020 for "owner/operator caretaker quarters" as well as amendments to SCC

[4] FDO at 30. The Board recognizes that it cited SCC 14.16.140 in error. The correct citation should have been to SCC 14.16.130.

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14.16.130(4)(b) to further limit the size and scope of employee housing. Under the new definition, "owner operator/employee housing" provides:

> One dwelling unit, accessory to a primary use, for persons who live on premises for the purposes of managing, operating, maintaining, or guarding a primary non-residential use. Quarters may be occupied by either the owner of the principle use and his/her immediate family, or employees of the owner as well as their immediate family members.

In addition, SCC 14.16.130(4)(b) has been amended to ensure that housing shall not be for permanent residential uses by making the following changes:

> In remote areas only, such as east of Concrete and on saltwater islands without ferry service, employee housing sufficient to operate the SRT operation, <u>provided that such housing shall not be for permanent residential use and is limited in size and quantity to only that necessary to house active, existing employees. Any employee housing shall be incidental in scale to the primary SRT use.</u>

Petitioners object to the County's efforts to reach compliance in this regard. They allege that the County has merely changed the name of the allowed new residential development from "owner operator dwelling unit" to "owner operator caretaker quarters". Petitioners assert that RCW 36.70A.070(5)(d)(ii) does not permit new residential development, including "owner operator/caretaker quarters".[5]

In response, the County argues that the GMA's prohibition on residential development in Type II LAMIRDs is intended to prevent the exploitation of a permitted use, such as a cabin, to achieve a type and density of residential development that is inconsistent with the GMA.[6] The County suggests that an interpretation of the GMA that would preclude any new residential use in the SRT zoning designation, specifically a single accessory dwelling unit for caretaker or owner, would be a draconian interpretation of the law that defies common

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[5] Petitioners' Objections at 2.
[6] Counties response to objections at 4.

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sense.[7] Further, the County argues that this interpretation would be inconsistent with the business model of the small rural resort or recreation area where owners and operators need to be able to meet guests and customers' normal and emergency needs and/or provide security on a 24-hour basis.

The Board notes that RCW 36.70A.070(5)(d)(ii) is primarily concerned with allowing small-scale recreational or tourist uses within LAMIRDs. While this section contains a prohibition on new residential development, this appears to be designed to ensure that the jurisdiction does not permit low-density sprawl. Providing limited allowances for caretaker residences does not undermine that intent. In the FDO, the Board expressed the concern that the County had no limitation on the size or scope of "caretaker quarters". The County has addressed that concern by providing that such housing is limited in size and quantity to only that necessary to house active existing employees. While Petitioners insist that even a single new caretaker's residence would violate RCW 36.70A.070(5)(d)(ii), the Board concludes that a more reasonable interpretation of that statute would allow an accessory dwelling unit for the security and operation of small scale recreational or tourist uses allowed in Type II LAMIRDs.

***Conclusion*:** The County's amendments to SCC 14.04.020 for "owner/operator caretaker quarters" as well as amendments to SCC 14.16.130(4)(b) further limit the size and scope of employee housing, and to SCC 14.16.130(4)(b) ensures that housing allowed by administrative special use shall not be for permanent residential uses. The provisions adequately address the area of noncompliance identified in Conclusion of Law G, in the FDO.

B. Comprehensive Plan Polices 3C-1.4 and 3C-2.1 in Conflict with Special Uses Allowed in Rural Areas in SCC 14.16.300(4), 14.16.310(4) and 14.16.320(4).

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[7] Id.

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In the FDO, the Board noted that the purpose of the Rural Intermediate (RI) designation, as stated in CP Policy 3C-1.4 and SCC 14.16.330 is similar: "The purpose of the Rural Intermediate district is to provide and protect land for residential living in a rural atmosphere, taking priority over resource land uses." The Board also noted, CP Policy 3C-1.4 provides " . . . taking priority over resource land uses *and commercially oriented special uses*" (emphasis added).[8] The Board found this policy conflicts with the provisions in SCC 14.16.300(4) that allow numerous commercial uses in the RI zone as a special use.

Therefore, the Board found that CP Policies 3C-1.4 and 3C-2.1 which discourage commercial and industrial uses in residential areas were not supported by consistent development regulations as required by RCW 36.70A.040. The Board also found that Policy 3C-2.1 regarding uses in rural commercial and industrial designations was in conflict with SCC 14.16.300(4), 14.16.310(4) and 14.16.320(4) which allowed new more intensive commercial and industrial uses in the Rural Intermediate, Rural Village Residential, and Rural Reserve by special use permit. We found that many of the uses allowed in this manner directly conflicted with the stated purpose of such areas, and thus created a conflict between the Comprehensive Plan's policies and the related development regulations.

In response, the County revised Comprehensive Plan Polices 3C-1.4 and 3C-2.1

> Policy 3C-1.4 was revised to read:
>
> The purpose of the Rural Intermediate designation is provide and protect land for residential living in a remote atmosphere, taking priority over, <u>but not precluding, limited nonresidential uses appropriate to the density and character of this designation</u>, ~~resource land uses and commercially oriented special uses~~. Long term open space retention and critical area protection are encouraged.
>
> Policy 3C-2.1 now reads:

[8] FDO at 30.

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New rural commercial and industrial uses ~~will be located~~ should be located principally within designated commercial areas to avoid the proliferation of commercial businesses throughout the rural area. However, certain limited commercial uses, resource-related uses, home based businesses and other non-residential uses may be permitted if carefully reviewed, conditioned and found to be compatible with rural areas. To encourage efficient use of land, the broadest range of commercial and industrial uses should be allowed in areas already accommodating such use and development, with greater limitations placed upon such uses within areas devoted predominantly to residential use (i.e. Rural Intermediate, Rural Village Residential and Rural Reserve areas). ~~To encourage efficient use of land, priority consideration will be given to the siting of new rural commercial and industrial uses in areas of existing development. In order of priority, these are Rural Village and existing Rural Centers, followed by already developed sites in the rural area, and only lastly by wholly undeveloped sites in the rural area.~~ Comprehensive Plan and Zoning designations ~~permitting~~ devoted principally to commercial and industrial uses in the unincorporated portions of the county are:

a. Rural Village Commercial
b. Rural Center
c. Rural Freeway Service
d. Small-Scale Recreation and Tourism
e. Natural Resource Industrial
f. Rural Marine Industrial
g. Major Industrial Developments
h. Master Planned Resorts
i. Small-Scale Business
j. Rural Business

~~The Home Based Business special use also permits certain rural commercial activities.~~

In response, Petitioners argue that the County's policy changes are not sufficiently clear to ensure that more intensive non-residential uses are not permitted by special use permit in the Rural Intermediate, Rural Village Residential, and Rural Reserve zones.[9] They argue that many of the non-residential special uses permitted by the County in SCC 14.16.300(4), 14.16.310(4), and 14.16.320(4) are inherently more intensive uses that should only be allowed by LAMIRD designation.[10]

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[9] Petitioners' Objections at 6.
[10] Id.

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The County, in reply, argues that the FDO identified an inconsistency between the County's Comprehensive Plan policies and development regulations, and the Petitioners have not argued that any inconsistency remains. With regard to Petitioners' arguments that the new policy is not sufficiently clear, the County argues that policy language that requires that new commercial uses must be "appropriate to the density and character of the designation" and "conditioned and found to be compatible with rural areas" is sufficiently clear to limit non-residential uses to those consistent with rural areas and character.[11]

The County points out that, although Petitioners argue that "more intensive uses" must be located in LAMIRDs, the Rural Intermediate (RI) and Rural Village Residential (RVR) zones are in fact indentified in the County Comprehensive Plan as LAMIRDs.[12] As to the Rural Reserve (RRv) zone which is not a LAMIRD, the County argues that Petitioners have failed to establish that uses allowed in this zone are inconsistent with the uses that were in existence in 1990. The County argues that the commercial uses allowed in this zone are not inherently more intensive uses, and include uses such as kennels, outdoor outfitters, stables and riding clubs. See, eg. SCC 14.16.320.

The Board concurs with the County that "There is not, however, a blanket prohibition within the GMA on non-residential uses that are *less* intensive and consistent with rural character outside of LAMIRDs." The rural areas of counties, outside of LAMIRDs, are not reserved for purely residential uses. Instead, rural development can consist of "a variety of uses and residential densities".[13] It is only "more intensive rural development" that the GMA requires to be contained in specially designated LAMIRDs. Petitioners' argument at the compliance hearing that even uses such as grange halls[14] or cemeteries, both allowed in the County's

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[11] County's Response to Objections at 6.
[12] Id. at 6; citing to CP Rural Element, Policies 3B-1.2 and 3B-1.5.
[13] RCW 36.70A.030(16).
[14] The National Grange of the Order of Patrons of Husbandry, also simply styled the Grange, is a fraternal organization for American farmers that encourages farm families to band together for their common economic and political good. A more appropriate rural use than one that fosters farming does not readily come to mind.

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RRv zone, would be inappropriate in a rural area is unpersuasive. Further, Petitioner's characterization of these as inconsistent with rural zones based on their commercial nature misinterprets the original basis for the finding of noncompliance contained in the FDO. At oral argument Petitioners relied upon the statement in the FDO where the Board stated:

> With regard to EI's allegation that requirements for commercial and industrial LAMIRDs are not met because the County allows commercial and industrial uses by special use permit in rural residential zones the Board agrees that Policy 3C-2.1 on rural commercial and industrial designations is in conflict with SCC 14.16.300(4), 14.16.310(4) and 14.16.320(4) which allow new more intensive commercial and industrial uses in the Rural Intermediate, Rural Village Residential, and Rural Reserve by special use permit.[15]

From this, Petitioners concluded that the Board found noncompliance based on the allowance of commercial and industrial uses in the RI, RVR, RRv zones. In fact, it was not that the County allowed commercial and industrial land uses in those zones that the Board found noncompliant with the GMA, but that doing so was inconsistent with County Plan Policies that discouraged such uses in these zones. Further, some of the commercial and industrial uses were of the intensity that should be confined to LAMIRDs As the Board noted:

> Many of the uses allowed in this manner directly conflict with the stated purpose of such areas, and thus create a conflict between the comprehensive plans policies and the related development regulations.[16]

As a consequence, the Board found that the CP policies 3C-1.4 and 3C-2.1 were inconsistent with the County's development regulations. The County has now amended those policies to provide that non-residential uses are not precluded in the RI zone. The County also reviewed the uses that were allowed in these residential zones, eliminated the more intensive uses and subjected the limited commercial uses that are allowed in the RI, RVR and RRv zones to Hearing Examiner review and conditions to ensure compatibility with

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[15] FDO at 31.
[16] Id.

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these zones. These amendments have addressed the inconsistencies the Board found noncompliant with the GMA.

Conclusion: The County's amendments to Comprehensive Plan Policies 3C-1.4 and 3C-2.1, SCC14.16.300, SCC14.16.310, and SCC14.16.320 have remedied the inconsistency between the Comprehensive Plan and development regulations and cured the area of noncompliance identified in Conclusions of Law H and I, in the FDO.

C. Establishment of New Rural Centers in Areas Developed After July 1, 1990 Under Comprehensive Plan Policy 3C2-18(b)

In the May 12, 2008 FDO the Board found that:

> Policy 3C-2.18(b) clarifies that any new Rural Centers must in a commercial area that is predominated by the built environment that existed on July 1, 1990. This would be compliant if it stopped there. However, the County deviates from the GMA requirements for LAMIRDs by allowing the addition of new uses or areas that were developed *after* 1990 if it serves the same function as other Rural Centers that were existing as of July 1, 1990. That is not consistent RCW 36.70A.070(5)(d)(v) and the GMA makes no provision for adding new areas to a LAMIRD on the basis that they "serve substantially the same function" as the County provides here.[17]

The Board also held that this policy was invalid because it substantially interfered with goals 1 and 2 of the GMA.[18]

In response, the County has amended Policy 3C-2.18(b) to eliminate the potential to expand LAMIRDs to include areas developed after July 1, 1990. As revised, the policy reads:

> Any new Rural Center designations shall meet the following criteria:
>
> a. No change.
>
> b. The commercial area existed predominantly as an area or use of more intensive commercial development on July 1, 1990. ~~Limited exceptions may be provided, where uses were areas that developed after July 1, 1990 circumstantially the same function as other rural centers that were existing commercial areas. As of July 1, 1990.~~

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[17] FDO at 38.
[18] FDO at 50.

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c. – h. No change.

Petitioners have not objected to this amendment as a means of curing non-compliance and invalidity.

Having removed the language which the Board had found non-compliant, we conclude that Policy 3C-2.18(b) is now compliant with the GMA. Furthermore, because the County has removed this language, it has met its burden of showing that this Comprehensive Plan provision no longer substantially interferes with the goals of the GMA.

***Conclusion*:** The County's amendments to CP Policy 3C-2.18(b), previously held to be non-compliant by Conclusion of Law O of the FDO, have brought the Plan into compliance with the GMA and this policy no longer substantially interferes with the goals of the GMA.

D. Establishment of New Rural Marine Industrial (RMI) Designations on Lands Contiguous to Existing Areas of RMI Zoning Under Comprehensive Plan Policy 3C-6.4

In the May 12, 2008 FDO the Board found that:

> In addition, we find noncompliant policy 3C -6.4. This policy allows designation of new LAMIRDs that are contiguous to existing LAMIRDs Industrial LAMIRDS need to be isolated as required RCW 36.70A.070(5)(d)(iii).[19]

In response, the County has deleted this language from its Comprehensive Plan.[20] Petitioners have not objected to this amendment as a means of curing non-compliance and invalidity.

Because the County has removed policy 3C -6.4 from its Comprehensive Plan it has cured this area of non-compliance. In addition, it has met its burden of showing that this Comprehensive Plan provision no longer substantially interferes with the goals of the GMA.

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[19] FDO at 38.

[20] See Ex. 802 to County Compliance Report.

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***Conclusion*:** The County's deletion of CP Policy 3C -6.4, previously held to be non-compliant by Conclusion of Law P of the FDO, has brought the Plan into compliance with the GMA and this policy no longer substantially interferes with the goals of the GMA.

E. Inconsistencies Between Countywide Planning Policy 1.2 and Comprehensive Plan Policy 3A-2.2

In the May 12, 2008 FDO the Board held that RCW 36.70A.030(16) draws a clear distinction between urban, rural and resource lands and that Comprehensive Plan Policy 3A-2.2 fails to distinguish between rural and resource lands. The Board held that by referring to "rural" rather than to "rural and resource" areas, the plan policy implied that no growth should occur in the resource areas of the County. This resulted in an inconsistency with Skagit Countywide Planning Policy 1.2.[21]

In response, the County has amended CP Policy 3A-2.2 to indicate that resource areas are part of the non-urban area. The policy now reads:

> The rate of development in rural and resource areas should be in accordance with adopted Countywide Planning Policies stating that urban areas should accommodate 80 percent of new population growth, with the remaining 20 percent locating in ~~the rural area~~ non-urban areas. Monitor the pace of development in conjunction with the maintenance of data describing the inventory of available buildable land.

Petitioners have not objected to this amendment as a means of curing non-compliance and the Board concurs with the County that this addresses the area of non-compliance indentified in the FDO.

Conclusion: The County's amendments to CP Policy 3A-2.2 previously held to be non-compliant by Conclusion of Law Q of the FDO, have brought the Plan into compliance with the GMA and this policy no longer substantially interferes with the goals of the GMA.

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[21] FDO at 40.

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VII. FINDINGS OF FACT

1. Skagit County is a county located west of the crest of the Cascade Mountains that is required to plan pursuant to RCW 36.76A.040.
2. On September 10, 2007 the County adopted Ordinance O20070009, adopting Skagit County's seven year update of its Comprehensive Plan and development regulations.
3. On November 13, 2007, the board received two PFRs. The first PFR was filed by Friends of Skagit County and June Kite and was assigned Case No. 07-2-0024. The second PFR was filed by Evergreen Islands and was assigned Case No. 07-2-0025. These were consolidated as Case No. 07-2-0025c.
4. In the Board's May 12, 2008 Final Decision and Order (FDO) and subsequent Order on Reconsideration the Board found several areas of noncompliance and invalidity, as detailed in Procedural History section of this order, and incorporated by reference into these findings of fact.
5. On December 2, 2008 the Skagit County Board of County Commissioners signed Ordinance #O20080012, adopting amendments to the Skagit County Comprehensive Plan and Skagit County Code in response to the findings of noncompliance.
6. The County added a new general definition to SCC 14.04.020 for "owner/operator caretaker quarters" as well as amendments to SCC 14.16.130(4)(b) to further limit the size and scope of employee housing.
7. SCC 14.16.130(4)(b) has been amended to ensure that housing shall not be for permanent residential uses.
8. The County revised Comprehensive Plan Policy 3C-1.4 to provide that the purpose of the Rural Intermediate designation is to provide and protect land for residential living in a remote atmosphere, taking priority over, but not precluding, limited nonresidential uses appropriate to the density character of this designation.
9. Policy 3C-2.1 was revised to place limitations on commercial uses in rural areas.
10. The County reviewed the uses that were allowed in the RI, RVR, and RRv residential zones, eliminated the more intensive commercial uses and subjected the commercial

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uses that are allowed in these zones to Hearing Examiner review and conditions to ensure compatibility with these zones.

11. The County has amended Policy 3C-2.18(b) to eliminate the potential to expand LAMIRDs to include areas developed after July 1, 1990.
12. The County has deleted Policy 3C-6.4 from its Comprehensive Plan.
13. The County has amended CP Policy 3A-2.2 to indicate that resource areas are part of the non-urban area.
14. Any Finding of Fact later determined to be a Conclusion of Law is adopted as such.

VIII. CONCLUSIONS OF LAW

A. The Board has jurisdiction over the parties and subject matter of this petition for review.

B. Petitioners have standing to participate in this compliance proceeding.

C. The County's amendments to SCC 14.04.020 for "owner/operator caretaker quarters" as well as amendments to SCC 14.16.130(4)(b) to further limit the size and scope of employee housing, and to SCC 14.16.130(4)(b) to ensure that housing allowed by administrative special use shall not be for permanent residential uses has adequately addressed the area of noncompliance identified in Conclusion of Law G, in the FDO.

D. The County's amendments to Comprehensive Plan Policies 3C-1.4 and 3C-2.1, along with changes to SCC 14.16.300(4), .310(4) and .320(4) have remedied the inconsistency between the comprehensive plan and development regulations and cured the area of noncompliance identified in Conclusions of Law H and I, in the FDO.

E. The County's amendments to CP Policy 3C-2.18(b), previously held to be non-compliant by Conclusion of Law O of the FDO, have brought the Plan into compliance with the GMA and this policy no longer substantially interferes with the goals of the GMA.

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F. The County's deletion of CP Policy3C -6.4, previously held to be non-compliant by Conclusion of Law P of the FDO, has brought the Plan into compliance with the GMA and this policy no longer substantially interferes with the goals of the GMA.

G. The County's amendments to CP Policy 3A-2.2 previously held to be non-compliant by Conclusion of Law Q of the FDO, have brought the Plan into compliance with the GMA and this policy no longer substantially interferes with the goals of the GMA**.**

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

IX. ORDER

The Board having found the County's Comprehensive Plan and development regulations to be in compliance with the requirements of the GMA, this case is CLOSED.

Entered this 21st day of January 2009.

_____
James McNamara, Board Member

_____
Holly Gadbaw, Board Member

_____
William Roehl, Board Member

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

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

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

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

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