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 **ORDER ON MOTIONS FOR RECONSIDERATION**

The Board issued its Final Decision and Order (FDO) in the above-captioned matter on May 12, 2008. This matter comes before the Board upon both a Motion for Reconsideration of Skagit County[1] and a Motion for Reconsideration of Petitioners Friends of Skagit County and June Kite (Petitioners).[2] Petitioners filed opposition to the County's Motion and a related Motion to Strike.[3] The County filed a response in regards to Petitioners' Motion.[4]

In its motion, Skagit County contends the Board erred by referencing the Rural Reserve zoning district in Conclusion of Law I. The basis for the County's assertion is that this zoning district was not presented in the Petitioners' list of issues nor has Petitioner

[1] Skagit County Motion for Reconsideration (County Motion), filed May 21, 2008.
[2] Friends of Skagit County's Motion for Reconsideration and Motion for Board Authorization and Consideration of Petitioners' Post-Hearing Submittals (Petitioners' Motion), filed May 22, 2008.
[3] Petitioners Friend of Skagit County, June Kite, and Evergreen Islands' Opposition to Skagit County's Motion for Reconsideration and Petitioners' Motion to Strike (Petitioners' Opposition), filed May 27, 2008.
[4] Skagit County's Response to Motion for Reconsideration, filed May 30, 2008.

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Evergreen Islands (EI) established standing to challenge this subject matter.[5] Petitioners oppose the County's Motion, seeking to strike Page 4 of the Motion and contending the Board's ruling on the Rural Reserve zoning was correct as was its ruling in regard to standing.[6]

In their motion, the Petitioners request that the Board reconsider its decision denying Petitioners' submittal of post-hearing documents; its finding of compliance in regards to the Long CaRD Ordinance (Issue 8); its conclusion pertaining to standing (Issue 7); and its interpretation in regards to RCW 36.70A.115 (Issue 5). In addition, Petitioners contend the FDO contains typographical errors and seek a modification of the Compliance Schedule to allow for additional time and briefing.[7]

Motion for Reconsideration

A motion for reconsideration of a final decision of a Board is governed by WAC 242-02-832. It provides that a motion for reconsideration must be based on at least one of the following grounds:

(a) Errors of procedure or misinterpretation of fact or law, material to the party seeking reconsideration;
(b) Irregularity in the hearing before the board by which such party was prevented from having a fair hearing; or
(c) Clerical mistakes in the final decision and order.

WAC 242-02-832(2)

Skagit County's Motion for Reconsideration

With its Motion, the County asserts the Board's inclusion of a reference to the Rural Reserve zoning district (RRv), within Conclusion of Law I, was either a clerical error (WAC 242-02-832(2)(c)) or a misinterpretation of fact or law (WAC 242-02-832(2)(a)).[8] Skagit

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[5] *See,* County Motion.
[6] Petitioners' Opposition to County's Motion and Motion to Strike.
[7] *See,* Petitioners' Motion.
[8] County Motion, at 1.

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County argues that Petitioners did not challenge special uses permitted in non-LAMIRD rural zones, such as the RRv, and therefore, the Board's finding of non-compliance was in error.[9] In addition, the County contends Petitioner Evergreen Island never offered any evidence to demonstrate that it had standing to raise an issue based on the development regulations applicable to this zoning district.[10]

In response, Petitioners first assert that the Board should strike Page 4 of the County's Motion because it was missing from the copy served upon Petitioners and this failure was prejudicial.[11] As to the merits of the County's Motion, Petitioners contend the Board's inclusion of the RRv zoning district was correct because the ruling addressed Comprehensive Plan Policy 3C-2.1's requirement for all new more intensive commercial and industrial uses in the rural areas to be located in designated commercial Limited Areas of More Intense Development (LAMIRDs).[12] In regard to standing, Petitioners point out that the Board found EI had standing to raise the subject matter presented by Issues 1 and 2 and with their argument the County is seeking "issue-specific" standing.[13]

Board Discussion

First, as to Petitioners' Motion to Strike. Petitioners move to strike Page 4 of the County's Motion, arguing that this page was missing from the copy received by the Petitioners. The Board notes that the original copy received at the Board's office contained Page 4 but that additional copies erroneously omitted this page, undoubtedly a clerical error during copying of the Motion.[14] Generally, once notified of such an error a party will correct the error by promptly providing the missing page. This, the County has not done. Although the Board did receive this page with the original filing, a key recipient was the Petitioners so that they

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[9] *Id.* at 1-2.
[10] County Motion, at 3.
[11] Petitioners' Opposition, at 2.
[12] *Id.* at 2-3.
[13] *Id.* at 3-4.
[14] The Board further notes that Skagit County generally provides an electronic version (e-mail) of its filings to both the Board and the Petitioners. This does not appear to have been done with the filing of this motion. If such an electronic filing had occurred, Petitioners' motion would have been without merit since any alleged prejudice from non-receipt of the printed page would have been cured by its availability in electronic format.

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could adequately respond to the arguments presented. **Therefore, Petitioners' Motion to Strike Page 4 of the County's Motion for Reconsideration is GRANTED.**

Second, the County's Motion for Reconsideration. With their Motion, the County seeks two things: (1) removal of the reference to the RRv zoning district from Conclusion of Law I and (2) reversal of the Board's determination that EI had standing to raise the issues it presented, specifically as the argument relates to special uses within RRv zone.

EI's participation in this matter was limited to Legal Issues 1, 2, and 13, with Legal Issues 1 and 2 going to the merits of the County's LAMIRD provisions.[15] The Board determined that EI had standing to assert these issues because it had commented on a variety of LAMRID-based issues during the adoption process including the creation of new and/or expanded LAMIRDs, the intensification of density, boundaries, and the expansion of uses.[16] The County challenges this determination.

In the briefing for the Hearing on the Merits, the crux of Petitioners' argument was that CP Policy 3C-2.1 required new, more intensive, commercial and industrial rural development to be located in a LAMIRD and, by allowing these types of uses via a special use permit in rural residential zones (SCC 14.16.300(4), Rural Intermediate; .310(4), Rural Village Residential; and .320(4), Rural Reserve), the County acted inconsistently with its own comprehensive plan (CP) policy and with the GMA's requirements for LAMIRDs. Thus, the issue was not based on an assertion that the special uses for the RRv zone were inappropriate; rather the issue alleged that the County's LAMIRD provision were not being appropriately implemented when commercial and/or industrial type uses were potentially being allowed outside of a LAMIRD in residential areas.

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[15] Friends of Guemes Island, Friends of Skagit County, and June Kite joined in on these two issues. In the May 12, 2008 FDO, the Board found that Friends of Guemes Island failed to establish standing but concluded that Evergreen Islands and Friends of Skagit County did have standing in regards to the subject matter raised with Legal Issues 1 and 2; Skagit County only challenges the Board's determination as to Evergreen Island. *See,* FDO, at 16-21; County's Motion, at 3.

[16] FDO, at 18.

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Therefore, the Board finds no error in its conclusion that SCC 14.16.320(4) is inconsistent with Policy 3C-2.1 because it allows for commercial or industrial uses to be located in rural residential areas. As noted *supra,* the issue was not whether the uses permitted by the County's development regulations for LAMIRDs were consistent, but whether the County's implementing development regulations, particularly SCC 14.16, were consistent with the County's comprehensive plan. Although the specific issue of special uses was not raised by EI during the comment period, it did provide comments in regards to the subject matter of LAMIRDs, specifically as to areas, uses, densities, intensities, and boundaries and therefore have standing to raise Legal Issue 1.

Conclusion: Petitioners' Motion to Strike Page 4 of the County's Motion for Reconsideration is **GRANTED.**

After considering the arguments raised by Skagit County in its Motion for Reconsideration and the Petitioners' Response to this Motion, the Board finds no error in law or fact with the conclusions set forth in the May 12, 2008 FDO. Skagit County's Motion for Reconsideration is **DENIED.**

Petitioners' Motion for Reconsideration

With its Motion, Petitioners seek reconsideration of the Board's decisions in regard to: (1) denial of Post-Hearing Submittals; (2) finding compliance in regard to the Long CaRD Ordinance, Issue 8; (3) denial of standing for FOSC and June Kite in regard to Natural Resource Lands, Issue 7; and (4) interpretation of RCW 36.70A.115, Issue 5.[17] In addition, Petitioners state that the FDO contains typographical errors and seeks a modification of the Compliance Schedule to allow for additional time for filing of objections and for the ability to file a reply to any response filed by the County in regard to Petitioners' objections.[18]

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[17] *See,* Petitioners' Motion.
[18] *Id.* at 11.

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In response to Petitioners' Motion, Skagit County asserts that Petitioners fail to substantiate the grounds for any reconsideration of the Board's FDO.[19] The County contends it did not commit to submitting specific documents, most notably documents Petitioners assumed should have been submitted and, Petitioners allege no error of fact or law in regard to the Long CaRD ordinance; are simply re-arguing prior arguments for the rural lands analysis; have not established standing for June Kite in regard to map amendments or LAMIRDs; and fail to identify alleged typographical errors.

Board Discussion

Petitioners set forth several items for reconsideration; the Board will address each item in turn.

- Compliance Schedule

In the May 12, 2008 FDO, the Board established November 17, 2008 as the deadline for Skagit County to file its Compliance Report and Index to the Compliance Record. From this date, the Board granted Petitioners a deadline of December 1, 2008 for the filing of any objections which provides for a response period of 14 calendar days. Petitioners now request an additional 14 days, seeking a December 15, 2008 deadline to respond citing the need to secure copies via public disclosure requests and prepare objections.

As these Petitioners and the attorney representing them have been before this Board on several occasions, they should be well aware that it is the general practice of the Board to provide 10-14 calendar days for a party to respond to a Compliance Report.[20] With the exception of the Thanksgiving Holiday, which encompasses two days, the Board sees nothing which merits the granting of 14 additional days for the filing of objections. **Therefore, the Petitioners' request to modify the Compliance Schedule to allow for additional time in regard to the filing of Objections to the County's Compliance**

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[19] Skagit County's Response to Motion for Reconsideration, filed May 30, 2008.

[20] This time schedule is in accord with our colleagues at the Central Puget Sound and Eastern Washington Growth Management Boards, both of which permit 14 days for the filing of objections to a jurisdiction's Compliance Report.

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Report is DENIED except that 2 additional days are granted to account for the Thanksgiving holiday and the date for response for objections will be advanced two days.

Petitioners also request the Board amend the Compliance Schedule to include a provision for the filing of a reply to the County's Response to Petitioners' Objections. Petitioners assert that since it has the burden of proof, it is "not fair" to provide Petitioners with only one opportunity to supply argument.

As with the schedule for the filing of objections, it is not the practice of this Board to permit a reply brief by a petitioner to a jurisdiction's response to objections during the compliance period of a case.[21] The Board recognizes that in matters of non-compliance, as opposed to invalidity, the burden remains on a petitioner; however this alone does not merit the suspension of the Board's long-standing practice especially given the opportunity for Petitioners' to voice opposition during the County's adoption process and at the Compliance Hearing itself and to subsequently file a Petition for Review if needed. **Therefore, the Petitioners' request to modify the Compliance Schedule to allow for the filing of a Reply Brief to any response filed by the County in regards to Petitioners' Objections is DENIED.**

Conclusion: Petitioners' Motion to Modify the Compliance Schedule is **DENIED, except to the extent that two additional days are added to the date for filing an objection to account for the Thanksgiving holiday. The date for response for objections will be advanced two days.**

- Typographical Errors

Petitioners contend that the FDO contains typographical errors but, with the exception of reference to the first paragraph of the FDO, fails to provide specific citation to any alleged

[21] The Board notes that while our colleagues at the Eastern Washington Board permit the filing of such a reply, our colleagues at the Central Puget Sound Board do not.

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typographical error. Petitioners note that in the first paragraph of the FDO the Board erroneously referenced Evergreen Islands (EI) when the correct reference should be Friends of Skagit County (FOSC).

When filing a motion for reconsideration, the burden is on the moving party to articulate not only the reason for its motion but where in the Board's FDO the alleged error(s) had been made. To simply state that there are errors within the FDO is not enough. The Board did review the one specific citation Petitioners did provide, the reference to EI as opposed to FOSC in the first paragraph. The FDO reads:

> In this Order the Board finds that while Petitioner Evergreen Islands (EI) has standing to raise issues regarding LAMIRDs and Petitioner Evergreen Islands has standing to raise issues regarding the County's urban/non-urban growth allocation policy, CP Policies 3A-1.1, 3A-2.2, non-urban growth allocations (Issue 5), the Long CaRD policy in this case, Petitioners lack standing to bring the remaining issues in this case.[22]

Petitioners are correct that the Board found Evergreen Islands had standing to raise only the legal issues pertaining to LAMIRDs, Petitioner Friends of Guemes Island failed to demonstrate standing on any issue and was dismissed as a party in this matter, and, therefore, it was Friends of Skagit County and June Kite alleging the balance of the issues. The first sentence of the opening paragraph of the FDO should read:

> In this Order the Board finds that while Petitioner Evergreen Islands (EI) has standing to raise issues regarding LAMIRDs and ***Petitioners Friends of Skagit County and June Kite (collectively, FOSC)*** have standing to raise issues regarding…(corrected language in ***bold italics***)

Conclusion: The Board will note the error specifically cited to by the Petitioners in their Motion but finds there is no need to amend and reissue the May 12, 2008 FDO to reflect this error. Petitioners have failed to provide adequate citation to any other alleged error and the Board will not address such unsupported allegations.

- Post-Hearing Submittals

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[22] FDO, at 1.

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Petitioners seek the Board's reconsideration of its decision to deny the admission of unauthorized documents submitted subsequent to the Hearing on the Merits (HOM) by Petitioners.[23] Petitioners contend that the Board has the authority to take official notice of these documents and should have used these materials when reviewing the County's provisions for allowed uses and building areas in Type 1 LAMIRDs.[24] Petitioners further argue that the preclusion of these documents prevented it from having a fair hearing on these issues and, due to the County's failure to provide the information as requested by the Board, prevented Petitioners from making its own request to provide the information.[25]

Board Discussion

Petitioners misunderstand the Board's holding in regard to these documents. The fact that the Board *may* take official notice of legislative enactments, including related attachments, is not the issue. The issue is the unauthorized submittal of post-hearing documents. In response to a request made at the HOM, the County did submit additional documents and these documents were reviewed and considered by the Board in making its final determination in this matter. In the FDO, the Board concluded that just because Petitioners believed the documents submitted by the County were not sufficient, this belief did not authorize Petitioners to file unsolicited and competing documents after the conclusion of the HOM without prior authorization of the Board as provided in WAC 242-02-810.[26] The Board will not allow for the submittal of unauthorized materials.

In regard to Petitioners' assertion that the Board's denial prevented it from having a fair hearing on the issues the submittals pertained to, Petitioners are reminded that its case is presented in briefing (opening and reply) and at oral argument, with the evidence supporting such argument to be provided at that time. If the information contained within these documents was so vital to the Petitioners' case, these documents should have been

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[23] May 12, 2008 FDO, at 9-10.
[24] Petitioners' Motion, at 1-2.
[25] *Id.* at 2.
[26] FDO, at 9-10.

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submitted with the briefing or, in the alternative, the Petitioners should have moved for authorization to file additional documents subsequent to the HOM.

Conclusion: Petitioners had the chance to make its case or request an opportunity to respond to the County's submission, and the preclusion of the documents offered as supplemental evidence did not create such an irregularity as to prevent Petitioners' from being afforded a fair and impartial hearing. **Therefore, the Petitioners' request for the Board to take official notice of Petitioners' Post-Hearing Submittals and, subsequently, reconsider its ruling in regard to allowed uses and building areas in Type 1 LAMIRDS is DENIED.**

- Issue 8 – Long CaRD Ordinance

With its Motion, Petitioners contend the Board erred when it found that the County, in maintaining the underlying residential zoning density and providing for protections such as setbacks and screening, adequately protected the rural character with the Long CaRD Ordinance, SCC 14.18.330. Petitioners specifically question whether the Long CaRD includes sufficient protections to preserve rural character as the Board concluded in the FDO.[27]

Board Discussion

Petitioners are incorrect in asserting that a "14-acre parcel" would get 14 homes on one-acre lots within the Rural Reserve zone. According to the County's code for this zoning district, a minimum parcel size of 10 acres is required for a Long CaRD with an underlying density of 2 du/10 acres or 1 du/5 acres – a rural, not urban density, which is consistent with preserving the rural character. Therefore, a 14-acre parcel would need to maintain that underlying gross density and could provide for only 2 residences on one-acre parcels with

[27] Petitioners' Motion, at 4 (citing to FDO, at 48).

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the balance of the site – 12 acres – retained as open space.[28] Likewise, Petitioners' assertion of "100 houses on 100 acres" fails for the same reasons. For 100 homes to be built on 100 acres, an originating parcel of 500 acres would be required within the Rural Reserve zone and 400 acres would be maintained as open space. In addition, no more than 14 homes are permitted in a cluster; therefore, the 100 homes would be distributed amongst eight clusters with a *minimum* separation of 25 feet. If those same 100 homes were built on 5,000 square foot lots,[29] this would leave some 488 acres in open space.

Given that RCW 36.70A.070(5)(b) provides "*counties may provide for clustering*, density transfer, design guidelines, conservation easements, and other innovative techniques *that will accommodate appropriate rural densities and uses that are not characterized by urban growth and are consistent with rural character"* there is no inherent error in the County's clustering program provided for in the Long CaRD. (emphasis added) The Board acknowledges that the clustered design of the development appears denser when viewed in isolation, but because it is required to maintain the underlying density it is nonetheless a rural density when viewed in the context of the entire parcel; therefore, preserving rural character.

Any Long CaRD development would also be required to satisfy various requirements which include sizing requirements for water and on-site sewage systems; avoidance of critical areas and buffers; minimization of impacts to NRL operations; setbacks of a minimum of 25 feet from a public roadway for cluster pods, a minimum 200 foot setback from adjacent Natural Resource Land designated parcels; and screening via existing topography or vegetation or an approved Landscaping Plan.[30] Petitioners allege that these requirements are not sufficient, pointing specifically to the requirement for screening via existing vegetation or an approved landscape plan. Petitioners assert existing grasses could

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[28] Under the Long CaRD provisions, in order to have 14 homes on 14 acres the development proposal would need to start with a 60-acre parcel. Maintaining the underlying gross density of 1 du/5 acres would result in 14 acres of residential lots and 46 acres of open space.
[29] SCC 14.18.310(7)(a): 5000 square feet is minimum lot size for detached residences.
[30] *See* SCC 14.18.310 (General Approval Provisions) and 14.18.330 (Long CaRD provisions).

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qualify as existing vegetation; the provisions of SCC 14.16.830 [Landscape Requirements] are not applicable to the typical Long CaRD in a Rural Reserve zone; and screening is not required between clusters.[31] The Board disagrees.

SCC 14.18.300(3) requires cluster pods to be screened from "public roads *and* from other clusters pods." If existing vegetation is used, the purpose is to *screen* the development. Therefore, existing grasses would not be adequate to accomplish this expressed purpose. In addition, SCC 14.16.830 sets forth Skagit County's requirements for landscaping which apply to all subdivisions.[32] SCC 14.16.830 specifically provides that Type I, Type II, and Type III landscaping may be applied as a condition for a discretionary land use application which a Long CaRD is.[33] Therefore, during the review process the proposed Long CaRD will be reviewed for conformity to the County's development regulations including SCC 14.18.300(1)(c) which notes that one of the purposes of the CaRD provisions is to "retain the rural landscape, character, and lifestyle."

Conclusion: After considering the arguments raised by Petitioners in its Motion for Reconsideration and the County's Response to this Motion, the Board finds no error in law or fact with the conclusions set forth in the May 12, 2008 FDO. **Therefore, Petitioners' Motion for Reconsideration in regard to the Board's holding that the County's Long CaRD provisions, SCC 14.18.330, complies with the GMA is DENIED.**

- Issue 7 – Natural Resource Lands (Standing)

Petitioners contend the Board erred when it determined Petitioners did not have standing to raise this issue because the Board failed to consider the individual standing of June Kite, looking only at Friends of Skagit County's standing.[34]

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[31] Petitioners' Motion, at 5-6.
[32] SCC 14.16.830(2); SCC 14.18.000(4).
[33] SCC 14.16.830(4)(a)(ii)(B) – Type I; SCC 14.16.830(4)(b)(ii)(b) – Type II; SCC 14.16.830(4)(c)(ii)(B) – Type III.
[34] Petitioners' Motion, at 7.

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In its original briefing in regards to standing on this issue, Petitioners point to Exhibits 218/41, 218/45, 460/94, 460/220, 460/259, and 460/260. With its Motion for Reconsideration, Petitioners point only to Exhibit 218/41 to support the standing, individually, of June Kite. As the Board found in the May 12, 2008 FDO, the GMA does not require issue-specific standing rather standing relates to the subject matter of concern. But, the Board does require that a petitioner's participation be reasonably related to the issue presented to the Board in the Petition for Review, as modified by the Pre-Hearing Order.

Legal Issue 7 questions "Whether the designations and zones where the County has failed to designate and zone natural resource lands that meet natural resource land designation criteria" violated the GMA. No specific designations or zones are noted in the issue statement itself but three sections of land are – Sections 28, 29, and 33 in T33N R4E W.M. In their HOM opening brief, Petitioners reference one land use designation (Rural Resource), one zoning district (Rural Reserve), five tax parcels, and specifically stated:

> *When the County designated its [NRL] in 1996 it considered vested subdivision permits as a reason to not consider a property for [designation]. [With the 2007 CP] the County did not again review the lands it had previously excluded because of vested permits. The County should be directed to review all of the potential natural resource lands that it previously excluded because of vested permits to determine if these properties are now appropriate for resource land designations because the properties were not developed … the County simply failed to review for resource land qualification those parcels that had previously been excluded because of vested subdivision permits.*[35]

In their Reply brief, Petitioners stated:

> *…the County failed to reapply its [NRL] designation policies to those lands that were previously excluded from [NRL] designation because of vested permits for those cases where the property was not ultimately developed.*[36]

Although Petitioners point to several parcels of land and assert that these parcels satisfy the County's criteria for designation set forth in CP Policy 4C-1.1, the impetus for this appeal

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[35] FOSC HOM Brief, at 20-21.
[36] FOSC Reply Brief, at 13.

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was the County's update of its Comprehensive Plan and development regulations as required by RCW 36.70A.130 and, from the briefing presented to the Board, the crux of Petitioners argument as it pertained to natural resource lands was the County's failure to re-evaluate lands that had previously been excluded based on vested rights during this review. This is how the Board understood this issue and, based on the County's response, is how the County understood the issue as well. Thus, in regard to standing, the question before the Board is whether or not the petitioners, either FOSC or June Kite, raised the need for the County to re-evaluate those lands that had been previously excluded due to vested permits for potential NRL designation during the update process.

As for FOSC's standing, as was noted in the May 12, 2008 FDO, the Board reviewed the presented exhibits for reference to a re-evaluation as to NRL designation for lands previously excluded based on vested permits and found no reference. As for June Kite's standing, Exhibits 460/94 and 460/220 both are authored by Ms. Kite as a member of FOSC but, as noted above, make no reference to the issue presented to the Board for resolution.[37] The only comment submitted by June Kite as an individual was Exhibit 218/41 and, like the other exhibits, makes no reference to a re-evaluation of the NRL designation based on vested rights but more specifically addresses the 80/20 urban-rural split and the ability of the County to meet this allocation.

Conclusion: After considering the arguments raised by Petitioners in its Motion for Reconsideration and the County's Response to this Motion, the Board finds and concludes that FOSC and June Kite failed to adequately demonstrate participation standing in regards to the issue presented by the Petitioners' briefing for Legal Issue 7. Therefore, the Board finds no error in its May 12, 2008 FDO determination to dismiss Legal Issue 7. **Petitioners' request for the Board to reverse its ruling on standing on Legal Issue 7 is DENIED.**

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[37] All other comments submitted by Ms. Kite are as a member of FOSC and, just as an organization may not rely on the comments of an individual member acting on their own behalf to establish standing, neither may a member rely on comments he or she submitted on behalf of an organization to demonstrate standing.

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- Issue 5 – Interpretation of RW 36.70A.115

Petitioners reiterate that RCW 36.70A.115 requires a Needs and Capacity Analysis for rural lands (Rural Analysis) similar to the Needs and Capacity Analysis required for UGAs by RCW 36.70A.110. Petitioners point out that, given prior Growth Board cases, the use of the word "sufficient" in this provision of the GMA requires such an analysis to ensure that the County has the capacity to accommodate the 20 percent growth it has allocated to rural areas.

Board Discussion

Petitioners allege that the Board erroneously interpreted RCW 36.70A.115 when it found that this section of the GMA did not require a Needs and Capacity Analysis for Rural Lands similar to the one required by RCW 36.70A.110 for UGAs.[38] Because of some confusion arising from terminology utilized in the parties' original briefing and subsequent motions, the Board first needs to clarify the distinction between a Land Capacity Analysis and a Buildable Lands Report.

A *Land Capacity Analysis* (LCA) is a requirement arising from RCW 36.70A.110 for all counties planning under the GMA. This section of the GMA relates to the designation of UGAs and the requirement that each UGA shall include areas and densities sufficient to permit the urban growth that is projected to occur in the county or city for the succeeding 20-year period. The LCA is a critical mechanism for the sizing of a UGA because it is utilized to determine how much urban land is needed. Therefore, in contrast to the Buildable Lands Report, the LCA is prospective – looking forward over the coming 20 years to see if there is enough land within the UGA to accommodate the growth that has been allocated to the area. In certain counties, the LCA is now underscored by the Buildable Lands Report required by RCW 36.70A.215.

[38] Petitioners' Motion, at 10.

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A *Buildable Lands Report* (BLR) is a requirement arising from RCW 36.70A.215 for six counties and their cities – Clark, King, Kitsap, Pierce, Snohomish, and Thurston. Any other county may prepare a BLR, but it is not required. The primary purpose of the BLR is to review whether a county and its cities are achieving urban densities within the UGAs by comparing growth and development assumptions, targets, and objectives set forth in the countywide planning policies and comprehensive plans with actual growth and development that has occurred over the past five years in the county and its cities. The BLR is retrospective – looking back over the past five years of development to see how well the county and its cities have performed. The information developed through the BLR provides important information for updating and, perhaps, revising a County's Land Capacity Analysis. RCW 36.70A.215 does not apply to Skagit County nor, has the County chosen to adhere to the procedures set forth in the section of the GMA.

The Board concludes that a LCA and a BLR are vital tools to be utilized by a county and its cities when managing growth within the community. Both of these documents serve to provide crucial information so as to ensure a UGA is properly sized to accommodate the growth that the GMA mandates that a jurisdiction must provide for. The Board disagrees that the word "sufficient" in RCW 36.70A.115 should be found to mean "not too much and not too little" as previous Board cases have found in relationship to RCW 36.70A.110. This is primarily because RCW 36.70A.110 goes to the establishment of an urban growth boundary and the ability of the area within the boundary to accommodate the allocated growth and to provide for urban facilities and services. The Board does not find that RCW 36.70A.115 mandates the same type of analysis for rural areas. To conclude RCW 36.70A.115 requires a LCA like Petitioners assert, is essentially finding the GMA requires a county to size *both* its UGA and its rural areas which would be contrary to various provisions of the UGA which require that development be encouraged in urban areas and that sprawling, low-density development be reduced. In other words, the emphasis and focus as to capacity applies to the urban growth areas.

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The Board reads RCW 36.70A.115 as requiring a coordinated effort between a county and its cities to ensure that the adoption of subsequent amendments to comprehensive plans and development regulations, when taken collectively, will not adversely impact the supply of land needed to address allocated housing and employment growth for which the County and cities have planned.

Conclusion: The Board finds no error in its May 12, 2008 FDO determination in regards to Legal Issue 5. After considering the arguments raised by Petitioners in its Motion for Reconsideration and the County's Response to this Motion, the Board concludes that RCW 36.70A.115 does not require a Rural Lands Capacity Analysis as asserted by the Petitioners. Petitioners Motion for Reconsideration as to Legal Issue 5 is **DENIED**.

ORDER

1. Skagit County's Motion for Reconsideration in regard to the Board's reference to the Rural Reserve zoning district in Conclusion of Law I is DENIED.
2. Skagit County's Motion for Reconsideration in regard to the Board's determination that Petitioner Evergreen Islands had standing to challenge the uses permitted within the Rural Reserve zoning district is DENIED.
3. Petitioners' Motion to Strike Page 4 of the County's Motion for Reconsideration is GRANTED.
4. Petitioners' Motion for Reconsideration of the Board's denial of its Motion for Submittal of Post-Hearing Materials is DENIED.
5. Petitioners' Motion for Reconsideration of the Board's conclusion that Skagit County's Long CaRD provisions, SCC 14.18.330 [Legal Issue 8], complied with the GMA is DENIED.
6. Petitioners' Motion for Reconsideration of the Board's conclusion that Petitioners, Friends of Skagit County and/or June Kite, failed to adequately demonstrate standing on Legal Issue 7 is DENIED.

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7. Petitioners' request for the Board to analyze whether the County appropriately designated natural resource lands [Legal Issue 7], is DENIED because Petitioners failed to establish standing on this issue.
8. Petitioners' Motion for Reconsideration of the Board's conclusion that RCW 36.70A.115 does not require a Rural Lands Needs and Capacity Analysis [Legal Issue 5] is DENIED
9. Petitioners' Motion for Reconsideration based on typographical errors is noted. With this Order, the Board recognizes the error contained within the first sentence of the first paragraph of the May 12, 2008 FDO and modifies it accordingly. However, Petitioners failed to adequately cite to any additional errors and therefore no further corrections will be made.
10. Petitioners' Motion for Reconsideration of the Compliance Schedule to allow for additional response time and briefing is DENIED except that two additional days are allowed to account for the Thanksgiving holiday. The date for response for objections will be advanced two days, and the revised compliance schedule shall apply:

Item	Date Due
Compliance Due	**November 12, 2008**
Compliance Report and Index to Compliance Record	November 17, 2008
Objections to a Finding of Compliance	December 3, 2008
Response to Objections	December 17, 2008
Compliance Hearing	December 29, 2008

ENTERED this 18th day of June, 2008.

James McNamara, Board Member

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Holly Gadbaw, Board Member

(Board Member William Roehl was not a member of the Board at the time of the issuance of the May 12, 2008 Final Decision and Order and therefore did not take part in this Order on Motion for Reconsideration)

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

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)

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