BEFORE THE WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

ABENROTH, et al., Petitioners, v. SKAGIT COUNTY, Respondent, SKAGIT COUNTY GROWTHWATCH, CITIZENS TO PROTECT BAY VIEW RIDGE, AND GERALD STEEL, Petitioners, v. SKAGIT COUNTY, Respondent, And BOUSLOG INVESTMENTS, L.L.C., JBK INVESTMENTS, L.L.C., and JOHN BOUSLOG, Intervenors	**Case No. 97-2-0060c** **COMPLIANCE ORDER – BAYVIEW RIDGE URBAN GROWTH AREA** **CASE NO. 07-2-0002** **FINAL DECISION AND ORDER**

I. SYNOPSIS

There are a number of urban growth areas (UGAs) in Skagit County but only one of them is not centered on a city. The Bayview Ridge UGA was initially established around the Bayview Airport (property owned by the Port of Skagit County). After a 1998 decision by this Board finding various aspects of the new UGA non-compliant, the original UGA was limited to encompass only the airport and airport-related uses.

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After further study and public participation, the County decided that it was important to utilize the Bayview Ridge UGA for projected urban residential growth as well as for commercial and industrial uses in addition to those related to the airport. In December 2006, the County Commissioners adopted the Bayview Ridge Subarea Plan (Subarea Plan) and Development Regulations to create a cohesive UGA encompassing an area of 3,633 acres. The purpose of the Subarea Plan and Development Regulations was to achieve compliance as to the Bayview Ridge UGA in the earlier case as well as to address the need to accommodate urban residential and commercial/industrial growth that the County felt could not be accommodated in the municipal UGAs.

Petitioners and Participants in this case have brought a number of challenges to the compliance of the Bayview Ridge UGA with the Growth Management Act (GMA) (Ch.36.70A RCW). In this decision, the Board finds that there are non-compliant portions of the Subarea Plan and that one development regulation in particular is invalid for allowing urban levels of development on holding tanks rather than on public sewer (SCC 14.28.105(13)). As is typical in establishing a UGA apart from an existing city, the provision of urban levels of service concurrent with urban levels of development is the biggest challenge for this UGA. However, the Board also finds that the Subarea Plan addresses many of the residential and commercial/industrial aspects of the Bayview Ridge UGA in a manner that is compliant with the GMA.

Key points in this decision are: the County has not timely updated its comprehensive plan and must therefore use the planning period of 1995-2015 in the Subarea Plan as well. The Subarea Plan, with its accompanying capital facilities plan, must show how the UGA will be provided with urban levels of public services by the year 2015, the planning period currently in effect. There are deficiencies at this time with respect to public sewer, fire and parks. To maintain consistency, the Subarea Plan must also use the population projections that are used in the comprehensive plan and size the Bayview Ridge UGA according to the 2015

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population projections and allocations for urban growth in the comprehensive plan. Where the County has used greater numbers for the new UGA, that is non-compliant with RCW 36.70A.110. Finally, the County must have development regulations that ensure that growth that occurs in the new non-municipal UGA is urban in nature. At this time, the County lacks such development regulations and that failure, too, fails to comply with RCW 36.70A.110.

II. PROCEDURAL BACKGROUND

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. 97-2-0063c relating to the Bayview Ridge UGA; and the issues raised in the 2007 petition for review which challenges Skagit County's adoption of the Bayview Ridge Subarea Plan (Subarea Plan) and Development Regulations by Ordinance 020060007 (*Skagit Growthwatch)*. [1]

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

On December 1, 2006, the Board of County Commissioners adopted the Bayview Ridge Subarea Plan (Subarea Plan) through Ordinance 020060007. The initial petition for review

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

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in the 2007 case was filed by Petitioners on February 5, 2007 and the Prehearing Conference in *Skagit Growthwatch* was held March 2, 2007. At the Prehearing Conference, Petitioners were represented by Gerald Steel and the County was represented by Deputy Prosecuting Attorney Arne Denney. An amended petition was filed to clarify the issues for review on March 7, 2007. On March 9, 2007, the Board issued its Prehearing Order in the 2007 case incorporating the issue statement from the amended petition for review. However, Petitioners were dissatisfied with this Prehearing order and requested a number of corrections.[2] As a result, the Board issued an Amended Prehearing Order on March 22, 2007, which sets out the issues for the 2007 case.

The compliance prehearing conference in the *Abenroth* case was held on February 6, 2007. Deputy Prosecutor Arne Denny and Planning Director Gary Christensen appeared for Skagit County. Ellen Bynum appeared for Friends of Skagit County, attorney John Groen attended for Drainage District 14, and attorney Jonathan Sitkin appeared for Bouslog Investments LLC, JBK Investments LLC, and John Bouslog. The parties agreed to coordinate the hearing on the compliance case (*Abenroth*) with the hearing on the new petition (*Skagit Growthwatch*).

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

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[2] Petitioners' Corrections to Prehearing Order, March 16, 2007.

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Bouslog Investments LLC, JBK Investments LLC, and John Bouslog also filed a notice of intent to participate in the *Abenroth* case.[3]

The County filed the Index to the County's Record for the adoption of the Bayview Ridge Subarea Plan on March 6, 2007. On March 19, 2007, Petitioners filed their Additions to the Index without objection. On March 23, 2007, Bouslog Investments LLC, JBK Investments LLC and John Bouslog filed their motion for intervention. Intervention was granted by order dated April 3, 2007. On April 3, 2007, Petitioners filed motions on Issue No. 1, to amend the schedule and for shortening time, and for an over-length brief.[4] The County conceded that it had not completed its update although working diligently on it.[5] On April 27, 2007, the Board issued its decision on Issue No. 1, finding the County had not complied with RCW 36.70A.130 (4) in completing its update of its comprehensive plan policies and development regulations.[6]

After correspondence with the parties, the dates for substantive motions were scheduled, with the opportunity for more time to be requested as needed.[7] On April 23, the Board issued its Order Clarifying Service Requirements And Denying Motion For Overlength Brief, noting that the Petitioners had not yet attempted to write a brief within page limitations.

On April 12 and April 16, 2007, the County filed motions to supplement the record.[8] These motions were granted.[9] On May 22, 2007, Skagit County filed a third motion to supplement

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[3] 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.
[4] Motion for Non Compliance on Issue 1; Motion for Amending Schedule and for Shortening Time; Motion for Overlength Brief and for Clarifying Service on Parties.
[5] Skagit County's Reply To Dispositive Motion For Finding Of Noncompliance With RCW 36.70A.130(4)(B) And Motion To Permit A Late Filing, April 17, 2007.
[6] Order on Issue No. 1- Failure to Timely Adopt Update Required by RCW 36.70A.130(4).
[7] April 11, 2007 letter to counsel from presiding officer.
[8] Skagit County's Motion to Supplement the Record; Skagit County's Second Motion to Supplement the Record.
[9] Order Granting Skagit County's Motions to Supplement the Record, April 30, 2007.

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the record together with its responsive brief.[10] Intervenors also filed a motion to supplement the record which was heard at the hearing on the merits.

The hearing on the merits was held June 6, 2007 at the Fire Station, 1901 North La Venture, Mount Vernon. Deputy Prosecutor Arne Denney and Jeraldine Hulberg appeared for Skagit County. Gerald Steel represented Petitioners in the *Skagit Growthwatch* case. June Kite and Ellen Bynum appeared for Friends of Skagit County. Attorney Jonathan Sitkin represented the Intervenors. All three Board members attended, Margery Hite presiding.

At the hearing, the Board heard argument concerning the County's third motion to supplement the record. Petitioners opposed the County's motion. The Board denied County's Exhibit 810, the Declaration of Jeraldine Hulberg. Ms Hulberg's declaration was a summary of capital facilities planning that has occurred since the adoption of the Subarea Plan and Development Regulations. The Board deems this not relevant to the County's adoption of the challenged Ordinance since it concerns planning that has occurred since that time. The Board admitted County's Exhibit 811, a map showing the floodplain designated for the Skagit River, subject to Petitioners' ability to correct the map with relevant information from FEMA post-hearing.

Intervenors also filed a motion to supplement the record with proposed Exhibits 800-801 and 803-809; and Exhibit 353, the environmental impact statement for the Bayview Ridge Subarea Plan and Development Regulations. Exhibit 353 was admitted with time allowed for Petitioners to make their response to it. Exhibits 800, 801, 807, 808 and 809 are incorporated by reference in the Subarea Plan and/or comprehensive plan and are therefore properly before the Board. The agreements and deeds/easements shown in Exhibits 803,

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[10] Skagit County's Third Motion to Supplement the Record, May 22, 2007.

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804, 805 and 806 have not been shown to be necessary or of substantial assistance to the Board and are therefore not admitted.

On June 13, 2007, Intervenors submitted copies of Exhibit 353 to the Board. Petitioners submitted no post-hearing response to any of the exhibits.

III. ISSUES PRESENTED

Compliance Issues:

Does the Bayview Ridge UGA now comply with the GMA requirements with respect to:

a. Allocation of urban population to the Bayview Ridge urban growth area
b. Sufficiency of urban services planned for the Bayview Ridge UGA
c. A record that demonstrates that the requirements for a UGA have been met ("show your work")

Issues from new petition for review:

1. Whether the County failed to review and update its Comprehensive Plan and the implementing development regulations (not including critical areas regulations) consistent with RCW 36.70A.130?
2. Whether the Bayview Ridge Subarea Plan ("Plan") fails to be internally consistent within itself and with the remainder of the Comprehensive Plan as required by RCW 36.70A.130 and -.070(preamble), consistent with the update requirements in RCW 36.70A.130 and consistent with the framework of the Countywide Planning Policies pursuant to RCW 36.70A.130 and -.210?
3. Whether the Plan fails to comply with RCW 36.70A.020(1),(2),(5) and (12) and -.130, -.110, -.115, and -.210 regarding comprehensive plans, including new subarea plans, providing for urban growth for the succeeding twenty-year period including the ancillary requirement to "show the work"?
4. Whether the Plan fails to comply with RCW 36.70A.020(1) ,(2), (5) and (12) and 36.70A.070, - .130, -.110, -.115, and -.210, by not providing adequate analysis of locations, capacities, needs, costs, and funding sources to provide urban public facilities and services?
5. Whether the Plan fails to comply with RCW 36.70A.020(1) ,(2), and (12) and 36.70A.070, - .130, -.110, -.115, and -.210 if, under close scrutiny, the UGA is inappropriate for urban residential growth that can be better accommodated in municipal UGAs?

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6. Whether Ordinance #O20060007 ("Ordinance") fails to comply with RCW 36.70A.020(1) ,(2), (5) and (12) and 36.70A.130, -.110, -.115, and -.210 by not adequately planning for transformance of governance?
7. Whether Ordinance #O20060007 ("Ordinance") fails to comply with RCW 36.70A.020(1) ,(2), (5) and (12) and 36.70A.130, -.110, -.115, and -.210 by not requiring efficient phasing of residential and non-residential growth during the twenty-year planning period in a UGA?
8. Whether the Plan fails to comply with RCW 36.70A.130, and -.070(1) by not designating the extent of uses and building intensities for the commercial and industrial districts in the text of the Plan?
9. Whether the Plan fails to comply with RCW 36.70A.130, and -.070(1) by not including an adequate review of drainage, flooding, and storm water run-off in the area and nearby jurisdictions and/or by not providing guidance for corrective actions to mitigate or cleanse those discharges that pollute waters of the state, including Puget Sound or waters entering Puget Sound?
10. Whether the Plan fails to comply with RCW 36.70A.020(1), (2), (5) and (12) and 36.70A.130, -.070, -.110, -.115, and -.210 by not requiring development to be truly urban?
11. Whether the Plan fails to comply with RCW 36.70A.020(1), (2), (5) and (12) and 36.70A.070, -.130, -.110, -.115 and -.210 by oversizing the UGA and by not reasonably accounting for infill development as a component to meet its commercial/industrial acreage need and its residential population target?
12. Whether the Plan fails to comply with RCW 36.70A.020(1) ,(2), and (12) and 36.70A.070, -.130, -.110, -.115, and -.210 by designating 303 residential developable acres in the UGA in the 2006 Plan on Page 2-5 that can accommodate population growth of 2,909 people by 2015 when the projected need on Page 7-6 of the Plan is only 1,182 new people between 2006 and 2015?
13. Whether the Plan fails to comply with RCW 36.70A.020(1), (2), (5) and (12) and 36.70A.070, -.130, -.110, -.115, and -.210 by having inadequate, ambiguous, unreliable, inconsistent and/or unfunded levels of service for public facilities and services (roads, police, sewer, parks, fire, garbage collection, storm sewers, etc.)?
14. Whether Plan Policy 6A-1.2 fails to comply with RCW 36.70A.020(1), (2), (5) and (12) and 36.70A.070, -.130, -.110, -.115, and -.210 by allowing an agreement to be signed to avoid concurrency?
15. Whether the Ordinance fails to comply with RCW 36.70A.020(1) ,(2), (5) and (12) and 36.70A.070, -.130, -.110, -.115, and -.210 by inadequately implementing CPP 12.9 in the Bayview Ridge Subarea?
16. Whether the Ordinance fails to comply with RCW 36.70A.020(1), (2), and (12) and 36.70A.070, -.130, -.110, -.115, and -.210 such that designation and allowance of residential urban development in the UGA (and related text and figures) should be found to not comply with the GMA?

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17. Whether the Ordinance fails to comply with RCW 36.70A.020(1), (2), (5) and (12) and 36.70A.070, -.130, -.110, -.115, and -.210 such that designation and allowance of non-accessory commercial urban development in the UGA (and related text and figures) should be found to not comply with the GMA?
18. Whether the Ordinance fails to comply with RCW 36.70A.020(1), (2), (5) and (12) and 36.70A.070, -.130, -.100, -.110, -.115, and -.210 such that designation and allowance of industrial urban development in the UGA (and related text and figures) outside of the Port property should be found to not comply with the GMA?
19. Whether Plan fails to comply with RCW 36.70A.020(9) and (10) and 36.70A.070, -.110, -.130, and -.210 by failing to designate adequate open space in the UGA including open space buffers over and adjacent to petroleum pipelines?
20. Whether the Plan fails to comply with RCW 36.70A.020(1), (5) and (12) and 36.70A.070, -.130, -.110, -.115, and -.210 by having the proposed ratio of employees to developable industrial acreage for purposes of transportation and other public facility and service planning much smaller than the existing ratio of employees to fully developed industrial acreage inside the UGA?
21. Whether the Plan's implementing development regulations fail to comply with RCW 36.70A.130 by not fully implementing in a consistent manner the Subarea Plan and Comprehensive Plan inside the UGA, or by implementing plan provisions found not in compliance with the GMA, or by not being timely reviewed and updated?
22. Whether the Plan and implementing development regulations ensure that the urban facilities and services necessary to support development in the unincorporated UGA will be adequate to serve that development at the established urban levels of service at the time of occupancy consistent with RCW 36.70A.020(12) and 36.70A.070, -.130, -.110, -.115, and -.210?
23. Whether any portion of the Ordinance found not to comply with the Act in Issues 2 to 22 above should also be found invalid under RCW 36.70A.302 for substantial interference with the fulfillment of Goals 1,2,5,6, 9, 10 and/or 12?

IV. BURDEN OF PROOF

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

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

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

RCW 36.70A.320(1).

This same presumption of validity applies when a local jurisdiction takes legislative action in response to a noncompliance finding; that legislative action is presumed valid. Petitioners argued at the hearing on the merits that the burden is on the County to show that it has achieved compliance as ordered by the Board in the Final Decision and Order. This is not correct. The only time that the burden of proof shifts to the County is when the County is subject to a determination of invalidity.[11] In a compliance hearing such as this one, the burden is on the Petitioners to show that the adoption of the Subarea Plan fails to comply with the GMA.

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

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

RCW 36.70A.320(3)

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

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

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

[11] RCW 36.70A.320(2) and (4).

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

V. DISCUSSION

While the issue statement includes over 25 issues, the Board considers that many of those issues overlap, and this is confirmed by the briefing of the parties. Therefore, the Board will group the issues by topic and discuss those together.

A. Update Compliance - Issue No. 1

The Board has ruled on motion that the County has failed to timely complete its update of comprehensive plan policies and development regulations as required by RCW 36.70A.130(1)(2) and (4). Order on Issue No. 1 – Failure to Timely Adopt Update Required by RCW 36.70A.130(4), April 27, 2007. That order is incorporated herein by reference and made part of this final decision and order.

B. Inconsistency - Issue No. 2

The allegations of inconsistency in Issue No. 2 are addressed in the various subject headings below, as they must be addressed to specific provisions of the Subarea Plan.

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C. Planning Period and Show Your Work - Issues No. 3 and Compliance Issue (c)

Issue 3: Whether the Plan fails to comply with RCW 36.70A.020(1),(2),(5) and (12) and -.130, -.110, -.115, and -.210 regarding comprehensive plans, including new subarea plans, providing for urban growth for the succeeding twenty-year period including the ancillary requirement to "show the work"?

Compliance Issue (c): Does the Bayview Ridge UGA now comply with the GMA requirements with respect to:

(c) A record that demonstrates that the requirements for a UGA have been met ("show your work")?

Planning Period – Petitioners raise an overall challenge to the Subarea Plan by alleging that the Subarea Plan fails to provide for urban growth for the "succeeding twenty-year period".

From the outset, then, Petitioners mistake the obligation of the County in adopting its Subarea Plan for Bayview Ridge. It is true, and the Board has already found, that the County has not completed its seven-year update of its comprehensive plan policies and development regulations as required by RCW 36.70A.130 (Issue 1). However, it does not follow that the County may never amend its comprehensive plan in the meantime and if it does, that the amendments must address the subsequent twenty-year period. There is no GMA provision that directly bars amendments to the comprehensive plan until the mandatory update is completed and, in this case, the County adopted its Bayview Ridge Subarea Plan to achieve compliance on a longstanding issue before this Board.

Amendments to the comprehensive plan, such as this Subarea Plan, must conform to the existing comprehensive plan and use the same planning period. If they did not, the planning period in the Subarea Plan would be inconsistent with the comprehensive plan in violation of RCW 36.70A.070 and 36.70A.080(2).

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The twenty-year planning period referenced by Petitioners in Issue 3 is established in the comprehensive plan as a whole and is not altered by the adoption of a subarea plan. The adoption of new population projections is the triggering event for the revision of the planning period in the comprehensive plan, rather than the revision of the planning period being triggered by the adoption of a subarea plan.[12]

"Show Your Work" – Petitioners argue in a general way that the County has not "shown its work" on the Bayview Ridge UGA. Where this is raised in a specific challenge, the Board considers it below. However, it is important to understand that the requirement to "show your work" applies where the GMA expressly requires certain kinds of analysis to have taken place. For instance, RCW 36.70A.110(2) requires the county or city to include "areas and densities sufficient to permit the urban growth that is projected to occur in the county or city for the succeeding twenty-year period". As part of its analysis, the county or city must "show its work" as it comes to its decisions about where and how to allocate growth.[13] Therefore, the "work" will be in the record of the County's action and Petitioners may challenge the basis for the County's decisions by putting relevant portions of the work before the Board.

However, this principle is not the same thing as shifting the burden of proof. It is not "justify your work". The burden remains on the Petitioner to demonstrate that the County's analysis is clearly erroneous. Where there is an absence of proof that the County's legislation fails to comply with a provision of the GMA, then it is the Petitioners who have not met their burden, rather than the County.

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[12] RCW 36.70A.130(3)(a) and (b) requires revisions every ten years for UGAs to account for subsequent 20 year growth. RCW 36.70A.110(2) requires the OFM population projections to be utilized to provide for areas and densities sufficient for urban growth in the succeeding twenty-year period. RCW 36.70A.115 requires sufficient land capacity consistent with the twenty-year population forecast.

[13] *Port Townsend v. Jefferson County,* WWGMHB Case No. 94-2-0006 (Final Decision and Order, August 10, 1994).

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Conclusion: The use of the comprehensive plan planning period (1995-2015) for the Subarea Plan is necessary to maintain consistency between the comprehensive plan and the Subarea Plan as required by RCW 36.70A.070 and 36.70A.080(2).

D. Capital facilities and utilities planning – Issues 4, 9 and Compliance Issue (b)

Issue 4. Whether the Plan fails to comply with RCW 36.70A.020(1), (2), (5), and (12) and RCW 36.70A.070, RCW 36.70A.130, RCW 36.70A.110, RCW 36.70A.115, and RCW 36.70A.210 by not providing adequate analysis of locations, capacities, needs, costs and funding sources to provide urban public facilities and services?

Issue 9. Whether the Plan fails to comply with RCW 36.70A.140 and RCW 36.70A.070(1) by not including adequate review of drainage, flooding and storm water runoff in the area and nearby jurisdictions and/or by not providing guidance for corrective actions to mitigate those discharges that pollute waters of the state, including Puget Sound or waters entering Puget Sound?

Compliance Issue (b): Does the Bayview Ridge UGA now comply with the GMA requirements with respect to:

(b) Sufficiency of urban services planned for the Bayview Ridge UGA?

Positions of the Parties

Petitioners argue that detailed capital facilities planning required by RCW 36.70A.070(3) is nonexistent. Petitioners say that the required missing parts of this capital facilities plan include the failure to list existing facilities, to denote what facilities are actually in place, and that the capital facilities plan should include capital facilities and financing for six years beyond 2006 (the year the plan was adopted). Petitioners contend that the County has not completed the GMA required identification of capital facilities with its necessary pipelines and appurtenances and their costs that need to be identified for the 20-year life of the plan. Petitioners maintain that the County does not have agreements with providers that services

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will be provided, and notes particularly that no agreement with the City of Burlington exists to guarantee sewer service.[14]

Skagit County argues that public facilities owned by other public entities do not need reiteration in the County's plan. The County cites the September 9, 1995 Final Decision and Order in *Achen v.Clark County,* WWGMHB Case No. 95-2-67c and several Central Puget Sound Hearings Board cases [15] to support its position.[16] The County says that the plan shows that the City of Burlington will provide sewers, Skagit County Public Utility District (PUD) #1 will provide water, and the Burlington-Edison School District will provide schools.[17] The County admits that not all the elements exist in the various documents on which it relies and that they need to be included in the plan. While this omission may merit a finding of noncompliance, the County maintains that because of its concurrency requirements that did not allow development unless water, sewer, fire and police services are available, it does not merit an invalidity finding. The County declares its storm water plan fulfills the capital facilities requirement.

Intervenor states that the County adopted a capital facilities plan in 2000, and updated it in to 2003 to show needed facilities and funding until 2008. The Intervenor asserts that the needed information for a capital facilities plan are contained in either the County's adopted CIP or the Bayview Ridge CIP. Because different service providers are on different planning schedules than the County, the CIPs of these entities and the County are not totally consistent, Intervenor explains, and concedes that some need updating to show service to the Bayview Ridge UGA during the planning period. [18]

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[14] Petitioners' Opening Brief at 24.
[15] *Bremerton v. Kitsap County*, CPSGMHB Case No. 95-3-0009c, CPSGMHB Case No. 95-3-00030c and CPSGMHB Case No. 95-e-0039c
[16] Skagit County's Response at 21.
[17] Ibid at 21.
[18] Intervenor's Brief at 11.

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Friends of Skagit County (FOSC) urged at the hearing on the merits that there are unfinished drainage projects without funding and no agreement about who will provide them. FOSC also noted that the efforts to clean up Puget Sound will like result in new requirements for storm-water management.

Board Discussion

As we have decided in Issue 3 above, the planning period for the Subarea Plan must be the same as the planning period in the comprehensive plan to maintain consistency between the Subarea Plan and the comprehensive plan. Therefore, the failure of the County to plan for the next twenty years of capital facilities from the date that the Bayview Ridge UGA was adopted in 2006 is not fatal.

However, there are certain consequences to using an outdated planning period when attempting to establish a residential UGA. One is that since all of the needed capital facilities for the new UGA must be shown to be provided within the planning period, there may be a very short timeframe to accomplish the capital facilities build-out necessary for the new residential UGA. The plan must show how this build-out will be accomplished in the limited time-frame of the remaining planning period. Further, new capital facilities require a funding mechanism for at least six years and this requirement applies regardless of whether the underlying planning period is timely or not [19].

In addition, we note that the County's choice to adopt the Subarea Plan at this point does not exempt the Subarea Plan from review when the County does conduct its seven-year update. This will be important for internal consistency and to ensure that the Subarea Plan conforms to the overall County strategy for the accommodation of urban growth. RCW 36.70A.130(1),(2)(a) and (4)(b). Therefore, a twenty year plan for the capital facilities for the Bayview Ridge UGA will be required with the update.

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[19] RCW 36.70A.070(3)(d)

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Nevertheless, the County has chosen to adopt the Subarea Plan under the existing comprehensive plan planning period. We review the capital facilities plan for the Subarea Plan in that light.

RCW 36.70A.070(3)(b) requires a forecast of the future needs for capital facilities; and (c) requires the proposed locations and capacities of expanded or new capital facilities. RCW 36.70A.110(3) requires (in the pertinent part) that urban growth should be located first in areas already characterized by urban growth that have adequate existing public facility and service capacities to serve such development, second in areas already characterized by urban growth that will be served adequately by a combination of both existing public facilities and services and any additional needed public facilities and services that are provided by either public or private sources, and third in the remaining portions of the urban growth areas. The Board has long held that these two requirements read together obligate counties and cities to include in the comprehensive plan's capital facilities element the proposed locations, capacities, and funding for the twenty-year planning period covered by the comprehensive plan.[20]

The Bayview Ridge Subarea Plan is a component of the 1998 Skagit County Comprehensive Plan ("comprehensive plan" or "plan") and the capital facilities plan for the Bayview Ridge Subarea needs to be consistent with the capital facilities element contained in Skagit County Comprehensive Plan. This includes the six-year funding plan for capital improvements, often abbreviated "CIP". The County adopted a six-year capital facilities funding plan (CIP) in 1999, and then it was amended in 2003 to cover the years from 2003 to 2008. Information in both plans can be used to help meet the capital facilities planning

[20] See *Cotton v. Jefferson County,* WWGMHB Case No. Case No. 98-2-0017 (Amended Final Decision and Order, April 5, 1999), Irondale Community Action Neighbors v. Jefferson County, WWGMHB Case No. 03-2-0010 and WWGMHB Case No. 04-2-0022 (Compliance Order and Final Decision and Order, May 31, 2005) and Ludwig v. San Juan County, WWGMHB Case No. 05-2-0019c, Final Decision and Order and Compliance Order (Eastsound UGA), June 20, 2006).

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requirements of RCW 36.70A.070(3). The Subarea Plan represents that Skagit County has done this to meet the capital facilities planning requirements for the Bayview Ridge UGA. [21]

Petitioners' claim that the capital facilities planning for Bayview Ridge does not meet RCW 36.70A.070(3) (a) – (d). (Issue 4). RCW 36.70A.070(3) requires (in pertinent part):

> (a) An inventory of existing capital facilities owned by public entities, showing the locations and capacities of the capital facilities; (b) a forecast of the future needs for such capital facilities; (c) the proposed locations and capacities of expanded or new capital facilities; (d) at least a six-year plan that will finance such capital facilities within projected funding capacities and clearly identifies sources of public money for such purposes…

RCW 36.70A.070(3).

The urban services that need to be provided to a UGA are defined as:

> Urban governmental services" or "urban services" include those public services and public facilities at an intensity historically and typically provided in cities, specifically including storm and sanitary sewer systems, domestic water systems, street cleaning services, fire and police protection services, public transit services, and other public utilities associated with urban areas and normally not associated with rural areas.

RCW 36.70A.020(20)

We will address the challenged compliance of the capital facilities element with the requirements of RCW 36.70A.070(3) by subsection, and the utilities element with the requirements of RCW 36.70A.070(4).

1) Inventories with proposed locations and capacities (RCW 36.70A.070(3)(a))

First, we will discuss Petitioners' claim that the Bayview Ridge Subarea Plan does not have the necessary components to fulfill the requirements of RCW 36.70A.070(3)(a), an inventory of existing public facilities, showing their locations and capacities. The Subarea Plan explains that the County provides sheriff services directly; park facilities in cooperation with

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[21] Bayview Ridge Subarea Plan at 7-1

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the Port of Skagit County; and storm drainage facilities with the drainage districts.[22] Water is provided by PUD No. 1; sewer by the City of Burlington; and fire protection by several fire districts. [23] The Skagit County 2003-2008 Capital Facilities Plan provides an inventory of the County's existing park and sheriff facilities, including capacities and locations. The Bayview Ridge Sub-Area Plan includes an inventory of existing transportation facilities.[24] The Bayview Ridge Stormwater Management Plan Phase adopted by Skagit County on April 16, 2007 contains an inventory of existing storm water facilities with locations and capacities.[25]

While the County contends that it does not need to include non-county owned facilities in its CIP, the Subarea Plan references the plans of other public entities as part of the Subarea Plan's capital facilities element and plan.[26] Additionally, the 2003 – 2008 Skagit County CIP includes an inventory of diking and fire district facilities in the subarea. [27] The Burlington-Edison School District as well as water system plans serving Skagit County, including PUD. No.1,[28] are incorporated and referenced in the 2003-2008 CIP. The CIP also notes where these plans are. [29] The Bayview Ridge Watershed Management Plan Phase 1 includes a list of an inventory of existing facilities for the subarea. [30]

The Water System Plan for Public Utility District No. 1 of Skagit County, Volume 1 contains a description of the existing facilities serving Bayview Ridge in 2001.[31] The burden of proof

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[22] Subarea plan at 7-6 – 7-15.
[23] Exhibit 807 at 3-11, 4-9, 4-12, 4-17.
[24] Subarea plan at 6-4 and Figure 9.
[25] Exhibit No. 333 at Chapter 4 and Appendix A, Exhibit No. 379.
[26] Bayview Ridge Subarea Plan at 7-5.
[27] Exhibit 807 at 4-2, 4-6, 4-9 and 4-17and Appendix D.
[28] PUD No.1 plans are included in the Skagit County Coordinated Water System Plan that is adopted as part of the Skagit County Comprehensive Plan. See City of Anacortes v. Skagit County, Case No. 07-2-0002 (Order to Dismiss Petition for Lack of Jurisdiction, July 2, 2007)
[29] Ibid at 4-23 and 4-27.
[30] Bayview Ridge Watershed Stormwater Management Plan Phase 1 at Chapter 4 an Appendix A.
[31] The Water System Plan for Public Utility District No. 1 of Skagit County, Volume 1 at 4-17 -4-19.

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is on the Petitioner to show that this list of facilities serving Bayview Ridge UGA is incorrect which they have failed to do.

The City of Burlington (Revised) Sanitary Sewer and Comprehensive Western Plan Map shows existing sewer main lines and capacities to serve the Bayview Ridge UGA.[32] The City of Burlington 2005 Wastewater Plan states that the Bayview Ridge Urban Growth Area and Sewer Service Area boundaries are adjusted to reflect the final action planned in 2005 for the Bayview Ridge Urban Growth Area.[33] However, a discrepancy exists in the City of Burlington's Comprehensive Wastewater Plan that the Skagit County Capital Facilities Element needs to clarify. While the sewer plan's map shows existing and proposed facilities, the text of the plan says the facilities to serve the Bayview Ridge are "basically complete" [34] or "started". [35] Without this clarifying information, this inventory is not complete and therefore non-compliant with RCW 36.70A.070(3)(a).

Existing facilities with their locations and capacities are included in the Burlington-Edison School District 100's Six-year Capital Facilities Plan adopted in 2006, covering the years 2006 -2011. [36]

The Board has previously held that the comprehensive plan should either contain the relevant information from non-county owned capital facilities or reference the information clearly so that is accessible to the public.[37] This the County has done.

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[32] Exhibit 294.
[33] Ibid at 6.
[34] Ibid at 6.
[35] Ibid at 14.
[36] Burlington-Edison School District 100' Six-year Capital Facilities Plan (April 2006) at 4.
[37] Stephen f. Ludwig v. San Juan County, WWGMHB Case No. 05-2-0019c (Final Decision and Order, Compliance Order, April 19, 2006)

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The County argues that public facilities not owned and operated by the County do not need to be included in the County's capital facilities plan and that *Achen* supports its position. However, the Board finds that *Achen* reaches a different conclusion:

> The language of that statute involves facilities owned by "public entities" and does not limit capital facilities planning to only those facilities owned by the County. Public facilities that are owned by cities and are covered in a different comprehensive plan do not need reiteration in a County's plan. Other facilities owned by "public entities" do need to be included in order to adequately assess and fulfill the requirements of RCW 36.70A.070(3)…
>
> Clark County further argued that if such a requirement existed it would merely incorporate the capital facilities plans of other public entities. This argument misses the point. The overall purpose of the capital facilities element of a comprehensive plan is to see what is available, determine what is going to be needed, figure out what that will cost, and determine how the expense will be paid. A simple incorporation of some other entity's plan without then reviewing the entire program in a coordinated manner to ensure consistency and achieve the goals and requirements of the Act would not be in compliance.

Achen v. Clark County, WWGMHB 95-2-0067, Final Decision and Order (September 20, 1995) at 59.

The Board in *Achen* did not conclude that it was not necessary to include public facilities owned by other entities in the County's comprehensive plan when the County relies upon them to fulfill the requirements of RCW 36.70A.070(3) as the County argues, and we do not reach that conclusion here either. Under RCW 36.70A.070(3)(a), the capital facilities element must show an inventory of the existing capital facilities for Bayview Ridge. Here, the plans of other entities are included and, except for the City of Burlington's sewer plan, Petitioners have not met their burden of proof that they are not sufficient.

Conclusion: Except for sewer service, Petitioners have not carried their burden of proof that the County has not complied with the requirements of RCW 36.70A.070(3)(a). In order to comply with RCW 36.70A.070(b) and (c), the Skagit County Capital Facilities Element needs to clarify the City of Burlington sewer facilities that exist to serve the Bayview Ridge

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UGA. The Subarea Plan fails to comply with RCW 36.70A.070(3)(a) as to the inventory of existing sewer capital facilities to serve the subarea.

2) Forecast of Future Needs and Proposed Locations, Capacities, and Financing of Future Needs for the 20-year planning period (RCW 36.70A.070(3)(b) and (c))

Petitioners contend that the County has not identified capital facilities and the necessary pipelines and appurtenances; their capacities and costs for future needs as are necessary to meet these requirements of the GMA. The County argues that this is not required for non-county owned facilities.

For this issue, the record shows that the analysis of the capital facilities needs over the life of the plan is mixed. The Skagit County Capital Facilities 2003 to 2008 CIP does not contain any analysis of future needs beyond 2008. The Bayview Ridge Subarea Plan does this for some, but not all facilities.

Public Safety. For public safety needs, the County defines its level of service as one commissioned officer per 1000 population or per 100 acres of commercial or industrial property, whichever is higher. The Subarea Plan concludes that no deficiencies exist for the 2001 – 2006 period and that the County will need an additional 6.5 officers to maintain the current LOS for the UGA in 2015.[38]

Parks. The Subarea Plan discusses the UGA's park land needs to 2015, and the facilities and possible locations of some, but not all the facilities needed to maintain its LOS until 2015. Funding sources in the years beyond 2006 are not projected. [39]

Water. The Subarea Plan includes an analysis of the quantity of water needed to serve Bayview Ridge to 2015, discusses improvements to storage facilities and concludes that it

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[38] Bayview Subarea Plan at 7-9
[39] Bayview Ridge Subarea Plan at 7-7 to 7-9

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has capacity to serve Bayview Ridge until 2015. The Subarea Plan also states that the PUD's plan includes water system improvements to serve the UGA by the year 2020. [40], and the Water System Plan for Public Utility District No.1 of Skagit County confirms this. [41] The PUD plan is incorporated in the 2003-2008 Skagit County CIP by virtue of its being part of the Skagit County Coordinated Water System Plan that has been adopted as part of the County's comprehensive plan. [42] While no exhibit provided by any party provides specific information on the PUD's proposed improvements with locations, capacities and financing, the Table of Contents to the PUD's plan indicates that proposed improvements and financing are included in the plan.[43] Again, it is the Petitioners' burden to provide evidence from the County's adopted plan to show that PUD capital facilities plan is inadequate and incomplete as to planned locations and capacities of water delivery systems to serve the UGA.

Storm water. Skagit completed and adopted an extensive stormwater management plan in April 2007[44] to manage storm water runoff in the 11,277 acre Bay View Ridge Watershed. The Bayview Ridge UGA comprises 3,663 acres or about 32 per cent of the watershed.[45] Resolution R20070227 that adopted the Bay View Ridge Stormwater Plan: Phase 1 avers that this plan addresses the Bayview Ridge Urban Growth Area and the slightly larger subarea plan boundary. The storm water plan contains a capital facilities plan of proposed projects and their cost estimates for Phase 1. These facilities are scheduled to be completed in 2011.[46] The stormwater plan indicates that these projects are the ones necessary "to reduce or eliminate existing and /or future flooding conditions within the

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[40] Bayview Ridge Subarea Plan at 7-11.
[41] Water System Plan for Public Utility District No.1 of Skagit County at 1-4.
[42] Exhibit 807 at 4-23, *City of Anacortes v. Skagit County and the Department of Ecology,* WWGMHB Case No. 07-2-0003 (Order Dismissing Petition for Review for Lack of Subject Matter Jurisdiction , July 2, 2007) at 21.
[43] Exhibit 155 at i and ii.
[44] Exhibit 333 and Exhibit 379
[45] Exhibit 333 at 2.1
[46] Exhibit 333 at 8.1

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Bayview Ridge UGA".[47] The adopting resolution states Skagit County will bear the costs of the improvements and that these will be funded through various legally authorized means, not limited to development contributions and the Skagit County Drainage Utility.[48] The plan indicates that maintenance of the storm drainage facilities should be the responsibility of the drainage districts and those agreements have yet to be finalized.

Schools. The Burlington-Edison School District needs are projected until 2015 in the Subarea Plan. The Subarea Plan references the School District's current six-year capital facilities plan [49] The Burlington-Edison School District No. 100's Six –Year Capital Facilities Plan covers the years 2006-2011 and discusses future projects with their locations and their capacities, and lists costs and funding sources through 2011. [50]

Fire Protection. The Subarea Plan includes a discussion of the long-term needs of the Fire Districts serving the UGA, but does not incorporate any facilities or other capital expenses needed to maintain the LOS until 2015. Fire District No. 6, one of the fire districts serving the UGA's whose capital facilities plan is incorporated into the County's 2001-2008 CIP includes improvements needed in the years 2001-2006. Also, the plan discusses that the Fire Districts' negotiations on how to serve the UGA have not been completed.[51] Commitments to serve the UGA must be in place to ensure that the UGA's fire service LOS can be maintained over the life of the plan. [52]

Sewer Service. The Subarea Plan explains that the Bayview Ridge UGA is in the City of Burlington's western service area.[53] This is confirmed by the City of Burlington's 2005

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[47] Ibid
[48] Exhibit 379 at 2
[49] Subarea Plan at 7-12.
[50] The Burlington-Edison School District No. 100's Six –Year Capital Facilities Plan at 5-8.
[51] Subarea Plan at 7-10
[52] *Ibid*.
[53] Subarea Plan at 7-13

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Comprehensive Wastewater Management Plan[54] The City of Burlington (Revised) 2005 Sanitary Sewer and Comprehensive Plan Wastewater Plan Map shows locations and proposed capacities of main sewer lines to serve the UGA.[55] This plan also says that the construction projects to serve the Bayview Ridge UGA are "basically complete". [56] Appendix E to City of Burlington 2005 Comprehensive Wastewater Plan also states that a project has been started to replace a pump station and construct a new 24 inch force main and that the completion of these projects will allow the City to serve the anticipated needs of the "western service area".[57] The Subarea Plan does summarize the City's improvements to its treatment plant that provides treatment capacity to serve the entire UGA.[58] From the information provided on the sewer map, in the plan's introduction and summary, and Appendix E, it is difficult to determine what projects that serve the UGA are actually completed. If the projects are completed, particularly the pump station and force main needed to serve the Bayview Ridge UGA, no financing information is needed. However, if they are not, projected costs and funding information is needed in the plan. No information in the record shows any costs or funding or is there any indication where the reader can find this information. To comply with RCW 36.70A.070(3)(b) and (c), this information needs to readily accessible and understandable to public.

Conclusion: The CIPs in the comprehensive plan overall and in the Subarea Plan supply some, but not all, of the requirements to comply with RCW 36.70A.070(3)(b) and (c).

- Police - Information provided on capital facilities for public safety services complies with RCW 36.70A.070(3)(b) and (c).
- Water - Petitioners have not carried their burden of proof that the water service to be delivered by the PUD No.1 does not meet this requirement.

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[54] City of Burlington's 2005 Comprehensive Wastewater Management Plan, Exhibit 800, at 6 and 15
[55] Exhibit 800
[56] Ibid at 6 and 15.
[57] Exhibit 800 at Appendix E.
[58] Ibid at 7-13

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- Parks and Fire - Neither the Bayview Ridge Subarea Plan nor the Skagit County CIP 2003-2008 project all of the costs, and financing needed to ensure that the LOS for parks or fire services will be maintained over the 1995-2015 planning period nor do these plans comply with RCW 36.70A.070(3)(b) and (c) for parks or fire protection. This fails to comply with RCW 36.70A.070(3)(b) and (c).
- Schools - The Bayview Ridge Subarea Plan does not contain the necessary requirements to comply with RCW 36.70A.070(3)(b) and (c). The Burlington-Edison School District CIP covers the six-year period from 2006 to 2011. From the information provided in both the Subarea Plan and the Burlington-Edison School District CIP, adopted in 2006, proposed facilities and funding methods are not analyzed for the 20-year planning period. For School Facilities, the Subarea Plan and the Burlington Edison CIP does not contain the necessary information to comply with RCW 36.70A.070(3)(b) and (c).
- Sewer - The Skagit County's Capital Facilities Element does not clarify which facilities listed as proposed or incomplete in other parts the City of Burlington's Comprehensive Wastewater Plan have been completed as the introduction to the plan suggests, are incomplete as Appendix E states, or are proposed as the City's sewer service map indicates. Skagit County's Capital Facilities Element needs to provide costs and funding information for any proposed or incomplete sewer projects. Without this clarification and/or cost and funding information about proposed or existing projects, the information about sewer service for the Bayview Ridge UGA does not comply with RCW 36.70A.070(3)(b) and (c).
- Stormwater – The Bay View Ridge Stormwater Plan: Phase 1 and Resolution that adopted the plan fulfill the requirements of RCW 36.70A.070(3)(b) and (c) for storm drainage facilities for the Bayview Ridge UGA.

3) Six-Year Capital Facilities Plan – RCW 36.70A.070(3)(d)

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The Bayview Ridge Capital Facility Plan contains a six-year capital facilities plan that summarizes projects from 2001-2006 to support the UGA's growth. The County's most recent CIP does not satisfy the requirement for "a six-year plan that will finance such capital facilities" as required by RCW 36.70A.070(3)(d) because "such facilities" as are added through the Bayview Ridge Capital Facilities Plan were not the subject of the County's 2001-2006 CIP. There is no six-year plan for financing capital facilities needed to support the Bayview Ridge UGA, beginning with its adoption in December 2006. Further, RCW 36.70A.070 requires that the plan be an internally consistent document. In addition, the Plan relies upon outdated information for fire and parks facilities and therefore is not consistent with the requirements of RCW 36.70A.070 (3)(d) which requires at least a six-year plan that will fund such capital facilities within projected funding capacities and clearly identifies sources of public money for such purposes.

Therefore, there must be a capital facilities funding plan for both Bayview Ridge and the County as a whole to cover the six-year period from the date of the establishment of the Bayview Ridge UGA so that both plans are consistent. The absence of such a CIP fails to comply with RCW 36.70A.070(3)(d).

***Conclusion*:** The Bayview Ridge Capital Facilities Plan does not summarize projects and funding for the six-year period following the establishment of the Bayview Ridge UGA as required by RCW 36.70A.070(3)(d). Furthermore, it is not consistent with the most recent Skagit County CIP, which should also cover the same period, so it does not comply with RCW 36.70A.070.

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4) Utilities Element – RCW 36.70A.070(4)

Position of the Parties

Petitioners allege that the utility analysis in Chapter 8 of the Subarea Plan does not provide the general locations, proposed locations and capacities of all utilities as required by RCW 36.70A.070(4).[59]

Board Discussion

RCW 36.70.070 (4) requires :

> A utilities element consisting of the general location, proposed location, and capacity of all existing and proposed utilities, including, but not limited to, electrical lines, telecommunication lines, and natural gas lines.

RCW 36.70A.070(4).

The Bayview Ridge Subarea Plan discusses the utility providers for the Bayview Ridge UGA: Puget Sound Energy (electricity), Cascade Natural Gas, Verizon (telephone), cellular telephone service, internet providers, and cable television. The Subarea Plan states that no capacity problems exist for electricity or natural gas, two utilities required to be included in a Utilities Element. The Subarea Plan explains that RCW 80.36.090 requires telecommunication services to be provided on demand; therefore, telephone service providers will provide facilities to accommodate whatever growth patterns occur.[60]

The Skagit County Comprehensive Plan's Utility Element says maps showing the major locations of the electricity and natural gas facilities serving Skagit County are included in the Skagit County supplemental map portfolio. The Utility Chapter also states that information relating to Utility Element requirements is contained in the plans of the utility providers. [61] The burden is on Petitioners to show that this map portfolio and the utility providers' plans

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[59] Petitioners' Opening Brief at 16.
[60] Bayview Ridge Subarea Plan at 8-1
[61] Skagit County Comprehensive Plan at 10-1

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are inadequate to meet the requirements for RCW 36.70A.070(4) regarding the Bayview Ridge UGA.

***Conclusion*:** Petitioners have not carried their burden of proof that Skagit County has not complied with RCW 36.70A.070 (4) in regard to the Bayview Ridge UGA.

E. UGA residential allocation and sizing – Issues 5, 11, 12, 16 and Compliance Issue (a).

Compliance Issue (a): Does the Bayview Ridge UGA now comply with the GMA requirements with respect to:

(a) Allocation of urban population to the Bayview Ridge urban growth area?

Issue 5: Whether the Plan fails to comply with RCW 36.70A.020(1) ,(2), and (12) and 36.70A.070, - .130, -.110, -.115, and -.210 if, under close scrutiny, the UGA is inappropriate for urban residential growth that can be better accommodated in municipal UGAs?

Issue 11: Whether the Plan fails to comply with RCW 36.70A.020(1), (2), (5) and (12) and 36.70A.070, -.130, -.110, -.115 and -.210 by oversizing the UGA and by not reasonably accounting for infill development as a component to meet its commercial/industrial acreage need and its residential population target?

Issue 12: Whether the Plan fails to comply with RCW 36.70A.020(1) ,(2), and (12) and 36.70A.070, -.130, -.110, -.115, and -.210 by designating 303 residential developable acres in the UGA in the 2006 Plan on Page 2-5 that can accommodate population growth of 2,909 people by 2015 when the projected need on Page 7-6 of the Plan is only 1,182 new people between 2006 and 2015?

Issue 16: Whether the Ordinance fails to comply with RCW 36.70A.020(1), (2), and (12) and 36.70A.070, -.130, -.110, -.115, and -.210 such that designation and allowance of residential urban development in the UGA (and related text and figures) should be found to not comply with the GMA?

Positions of the Parties

Petitioners argue that all of the urban residential growth proposed during the life of the 2000 Comprehensive Plan (1995-2015) can easily be accommodated in the already-large

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municipal urban growth areas (UGAs) in Skagit County.[62] Petitioners cite to the 2003 Skagit County Growth Management Population Allocation Technical Committee Recommendations which find an estimated residential land capacity for municipal UGAs to be 43,974 people.[63] With a total urban growth of 18,588 between 2005 and 2015 assumed in the existing comprehensive plan, Petitioners argue that the existing municipal UGAs have the capacity to accommodate that growth. [64]

Petitioners also argue that even assuming there is a need for additional residential urban lands outside the municipal UGAs the Bayview Ridge UGA is oversized.[65] Petitioners base this assertion on the comprehensive plan identification of growth in the Bayview Ridge UGA from 2,710 in 2005 to 3,420 in 2015. This additional demand, Petitioners argue, is for accommodating 710 people. Using a 25% market factor and an assumption of 4 units per acre and 2.4 persons per unit, Petitioners' assert that the demand is for 74 acres.[66] For that reason, Petitioner asserts, the proposed 307 acres of residential land in the Bayview Ridge UGA is excessive "and should lead to sprawling leapfrog development in violation of GMA goals 1 and 2."[67]

The County responds that Countywide Planning Policy (CPP) 1.1 assigns 3,420 residents to Bayview Ridge.[68] Because of geographical factors, the County states, none of the existing municipal UGAs except Mount Vernon are able to expand.[69] The County also argues that the OFM population projections through 2025 for Skagit County project additional growth of

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[62] Opening Brief of Skagit County Growthwatch, Citizens to Protect Bay View Ridge, and Gerald Steel at 16.
[63] Ex. I-400
[64] *Ibid.*
[65] Opening Brief of Skagit County Growthwatch, Citizens to Protect Bay View Ridge, and Gerald Steel (Petitioners' Opening Brief) at 17.
[66] *Ibid.*
[67] *Ibid.*
[68] Skagit County's Response at 5.
[69] *Ibid* at 5-6.

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about 30,000 people.[70] To preserve productive farmland from conversion to residential use, the County urges, it is appropriate to channel growth to the Bayview Ridge, which is neither in the flood plain nor prime farmland.[71]

While the County admits that it has not completed its update, it states that the 2015 OFM population projections for Skagit County were the basis for the CPP 1.1 allocation of 3,420 residents to the Bayview BR-R zone of the UGA.[72] The County argues that it has not adopted the population allocations of CPP 1.1 in the Subarea Plan but simply based the size of the UGA on the allocated population.[73] Therefore, the County argues that the population allocations of CPP 1.1 are not subject to challenge.[74]

Intervenors are owners of a majority of the residentially-zoned lands in the Bayview Ridge UGA. They argue that the residential population allocation to the Bayview Ridge UGA is proper for the same reasons urged by the County.[75] Intervenors point out that the Bayview Ridge UGA is adjacent to the approved portion of the UGA that contains the Port of Skagit County property and therefore meets the requirements of RCW 36.70A110(1).[76] Further, they assert that Petitioners are attempting a collateral attack on the infill analysis in the comprehensive plan and the countywide planning policies (CPPs), which is already settled.[77]

Board Discussion

Although there was some confusion on this score at the hearing, there do not appear to have been any changes to the comprehensive plan population allocation figures since 2000,

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[70] *Ibid* at 6.
[71] *Ibid* at 6-7.
[72] *Ibid* at 8.
[73] *Ibid* at 9.
[74] *Ibid* at 8.
[75] Intervenors' Response Brief at 20.
[76] *Ibid* at 21.
[77] *Ibid.*

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the date of the current comprehensive plan.[78] The population allocation figures for residential lands in the urban growth areas in the County were adopted in the County's comprehensive plan and are found at Table 3-4 of the Comprehensive Plan for the planning period 1995-2015. That plan has not been timely updated (Issue #1) nor has it been amended to utilize new figures.

The GMA requires the comprehensive plan to be "an internally consistent document and all elements shall be consistent with the future land use map."[79] Since the Bayview Ridge Subarea Plan is part of the County's comprehensive plan, it must use the same population figures as those found in the comprehensive plan.[80] As a result, the Board agrees with the County that the urban residential population allocations in the Subarea Plan should be the same as shown in the comprehensive plan.

In challenging the size of the Bayview Ridge UGA, Petitioners argue first that the boards apply a high level of scrutiny to UGAs that are both outside city limits and seek to include land in the UGA that does not have urban development.[81] However, the burden of proof is not changed by virtue of the fact that the County has adopted a non-municipal UGA.[82] Because non-municipal UGAs may extend urban growth to areas that do not already have a governmental structure for the provision of urban levels of service, the boards must review them to ensure that they are planned to provide urban levels of service to populations and uses at urban densities.[83] As this Board stated in its Final Decision and Order in this case, there must be measures in place to "ensure development is truly urban in nature and efficiently phased." However, this does not mean that non-municipal UGAs are suspect;

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[78] Skagit County Comprehensive Plan on-line at skagitcounty.net.
[79] RCW 36.70A.070 (preamble)
[80] RCW 36.70A.080(2)
[81] Petitioners' Opening Brief at 10.
[82] Boards do not have authority to change the burden of proof.
[83] See, e.g., *Irondale, et al. v. Jefferson County,* WWGMHB Case No. 04-2-0022, Final Decision and Order at 15-16, May 31, 2005.

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legislative enactments adopting them are entitled to the same presumption of validity as are all others.[84] This is true whether the enactments were adopted to achieve compliance on remand or whether they were adopted without an order of noncompliance.[85]

In the Final Decision and Order issued in this case, the Board found that the County had delineated several over-sized UGAs and that the municipal UGAs (as opposed to the non-municipal UGAs of Bayview Ridge and Big Lake) were large enough to accommodate virtually all of the urban residential needs for twenty years.[86] This finding is based in RCW 36.70A.110, which requires that UGAs be sized to accommodate the projected growth that is allocated to them:

> Based upon the growth management population projection made for the county by the office of financial management, the county and each city within the county shall include areas and densities sufficient to permit the urban growth that is projected to occur in the county or city for the succeeding twenty-year period, except for those urban growth areas contained totally within a national historical reserve.

RCW 36.70A.110(2)(in pertinent part)

The comprehensive plan allocates residential growth to "Burlington/County" in the amount of 3,420 (see Table 3-4) to the year 2015. This allocation was intended for the Bayview Ridge UGA.[87] The Board found this allocation of residential urban growth noncompliant in 1998.[88] The County has returned to the Board with a Subarea Plan that again allocates this residential urban growth to Bayview Ridge; this time, the Subarea Plan discusses the need for this allocation by reviewing the capacity of five major municipal UGAs to accommodate this projected growth[89]. After concluding, in consultation with those cities, that most of them

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[84] RCW 36.70A.320
[85] The burden only shifts to the County if there is an outstanding determination of invalidity. RCW 36.70A.320(2).
[86] Final Decision and Order, January 23, 1998.
[87] Subarea Plan at 6-7.
[88] Final Decision and Order, January 23, 1998.
[89] Subarea Plan at 6.

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could not accommodate extra growth due to environmental and infrastructure limitations, the County turned to Bayview Ridge.[90]

The question for the Board is not whether urban residential growth can be "better accommodated" in the County's municipal UGAs (Issue No. 5) or whether the County has shown that infill opportunities are not available (Issue 11). Rather, the question is whether the allocation of urban residential population to the Bayview Ridge UGA complies with the requirements of RCW 36.70A.110 for proper allocation of urban growth at urban densities with necessary urban levels of service. [91] It is true that urban growth must be assessed on a countywide basis, rather than on a UGA by UGA basis since urban growth is allocated for the county as a whole. However, the County did not revise its allocations to the municipal UGAs when it adopted the Subarea Plan; rather it reviewed the capacity of those UGAs to absorb the urban growth originally allocated to the Bayview Ridge and Big Lake UGAs and determined that they could accommodate only half of the allocation originally intended for the Big Lake UGA.[92] The County therefore allocated all of the original Bayview Ridge UGA population to the Bayview Ridge UGA, and hopes to be able to also accommodate the remaining allocation originally intended for the Big Lake UGA in the new non-municipal UGA. [93] This was important, the Subarea Plan concludes, to avoid shifting too much of the population growth to the rural areas: "As Skagit County residents value its agricultural history and seeks[sic] to protect agricultural lands, the County seeks to identify lands outside current municipal UGAs that are suitable for urban residential development."[94] Petitioners appear to claim that the County must prove that this choice is compliant because the Board found that the record lacked justification for the residential portion of the Bayview

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[90] *Ibid* at 6-7.
[91] Intervenors responded to the claim that the residential area was not adjacent to a UGA by pointing out that the residential area was adjacent to the approved UGA for the Port of Skagit property. Petitioners essentially abandoned their claim by failing to reply to that argument.
[92] Subarea Plan at 7.
[93] *Ibid*.
[94] *Ibid.*

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Ridge UGA in the original Final Decision and Order in this case. As we said earlier, this is an erroneous view of the burden of proof in a compliance case. The County has presented a record here for its choice to allocate residential growth to the Bayview Ridge UGA and has therefore "shown its work". The Petitioners must show that the analysis for that choice is clearly erroneous.

Petitioners rest their claim that the residential portion of the Bayview Ridge UGA is over-sized on the fact that the projected population growth in the comprehensive plan for the Bayview Ridge UGA was 2,710 for 2005 and 3,420 for 2015.[95] However, this ignores the analysis of existing residential development in the Subarea Plan. That analysis concludes that there are 681 homes and a population of 1,634 people currently in the Bayview Ridge UGA.[96] This, the County notes, is a result of down-zoning the area to rural development standards in response to the Board's earlier ruling in 1998.[97] Since urban levels of growth were not allowed after 1998, the projections for how that would occur over time embodied in the comprehensive plan are not applicable. For that reason, the County analyzed existing residential development. Utilizing the projected residential population of 3,420 for 2015 in the comprehensive plan, the County subtracted 1,634 as the existing residential population and concluded that the Bayview Ridge UGA should house 1,786 new residents by 2015.[98] This, as computed in the Subarea Plan, is assumed to be at densities of four dwelling units per acre and an average of 2.4 persons per household for approximately 186 acres of land.[99] Adding approximately 46 acres due to a 25% market factor yields a need for 233 acres of residential land.[100]

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[95] Petitioners' Opening Brief at 17.
[96] Subarea Plan at 5-1.
[97] *Ibid* at 5-2.

[98] Subarea Plan at 5-3.
[99] *Ibid*.
[100] *Ibid*.

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We find that Petitioners have not shown that this computation is clearly erroneous and so we find that the allocation of 1,786 new residents to the Bayview Ridge UGA to 2015 in conformity with the population allocations shown in the comprehensive plan complies with the GMA. We also find that the inclusion of 233 acres of land for new residential development complies with the requirements of RCW 36.70A.110 to size a UGA in accordance with its population allocation.

However, for some unexplained reason, the County went on to add an additional 211 residents, apparently by working backwards from an area of 705 acres to reach the population figure that would justify the entire acreage.[101] The County's analysis gives no other reason for adding this population nor does it show how this total population of 3,631 squares with the allocation in the comprehensive plan of 3,420. Issue 12 takes issue with the use of 307 acres of developable land for residential purposes found in Table 1A of the Subarea Plan. As shown on page 5-3 of the Subarea Plan, the County's analysis shows a need for 233 acres of developable residential land. However, to the extent that the Subarea Plan allocates an additional 211 residents (a total population of 3,631) to the Bayview Ridge UGA to 2015 and an additional 45 acres (or 74 additional developable acres on page 2-5 and Appendix A) the Subarea Plan fails to comply with the requirements of RCW 36.70A.110 for urban growth areas to be sized according to their population allocation. It further violates the requirements of RCW 36.70A.070 for an internally consistent comprehensive plan because the population allocation to the Bayview Ridge UGA in the comprehensive plan differs from the population allocation for the same non-municipal UGA in the Subarea Plan.

Conclusion: The allocation of 1,786 new residents to the Bayview Ridge UGA to 2015 and the inclusion of 233 acres of land for new residential development comply with the

[101] *Ibid*. While the Subarea Plan at 5-3 includes 23 acres for the community center, the County notes in its brief that actually the property zoned for a community center is zoned BR-CC and is within the industrial zone. See Skagit County's Response at 16.

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

F. **Transformance of Governance – Issue 6**

Issue 6. Whether Ordinance #020060007 (Ordinance) fails to comply with RCW 36.70A.020(1), (2), (5), and (12) by not adequately planning for the transformance of governance?

Positions of the Parties

Petitioners point out that the Bayview Ridge UGA is three quarters of a mile from the City of Burlington and that the City is providing sewer and some fire service. Because 36.70A.110(4) requires that cities should be the primary providers of urban services, the County has not provided the necessary plan for the transformance of governance, Petitioners contend.[102]

The County says that Petitioners allege a nonspecific problem of transformance of governance and do not mention annexation, which the County says bears mentioning.[103] The County declares that annexation to the City of Burlington is not possible because the three quarters of a mile separating the Bayview Ridge UGA and the City consists of

[102] Opening Brief of Skagit County Growthwatch Citizens to Protect Bayview Ridge, and Gerald Steel at 24.
[103] Skagit County's Response at 15

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designated agricultural lands and floodplain. The County maintains that the GMA requires phasing and capital facilities planning, not transformance of governance.[104]

Intervenor asserts that neither annexation nor incorporation is required to achieve the transformance of governance. Intervenor agrees with the County that efficient timing of infrastructure must occur and argues that the County's concurrency regulations provide for this.[105]

Board Discussion

While other concerns about the City of Burlington capability or commitment to provide sewer service to the Bayview Ridge UGA are addressed in other parts of this order, this section deals with the issue of whether planning for transformance of governance to the City of Burlington is required by RCW 36.70A.110.

RCW 36.70A.110(3) requires (in pertinent part) that urban growth should be located first in areas already characterized by urban growth that have adequate existing public facility and service capacities to serve such development, second in areas already characterized by urban growth areas…

RCW 36.70A.110(4) requires that in general, cities are the units of local government most appropriate to provide urban governmental services. In general, it is not appropriate that urban governmental services be extended to or expanded in rural areas except in those limited circumstances shown to be necessary to protect basic public health and safety and the environment and when such services are financially supportable at rural densities and do not permit urban development.

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[104] *Ibid*.
[105] Intervenor's Response Brief at 16 and 17.

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The great majority of unincorporated urban growth areas are adjacent to cities and are expected to eventually become part of cities. The Growth Boards have long recognized that cities, when they are able, should be the providers of urban services and that annexation is a key part of providing for orderly growth in UGAs. [106] Nevertheless, this Board has also has found that RCW 36.70A.110 (3) allows counties to designate non-municipal UGAs that are not contiguous to cities as long as urban services can be provided to these UGAs in an efficient and timely manner and urban densities can be achieved. [107]

Where there is no adjacency between an urban growth area and a municipality, there is no reason to provide for transformance of governance for that UGA from the County to a municipality.

***Conclusion*:** The City and the Bayview Ridge UGA are noncontiguous. Intervening agricultural land and flood plain make intervening land unsuitable for urban growth. In these circumstances RCW 36.70A.110(3) and (4) do not require the City and County to plan for the transformance of governance.

G. Assuring Urban Levels of Development - Issues 7, 8, and 10

Issue 7: Whether Ordinance #O20060007 ("Ordinance") fails to comply with RCW 36.70A.020(1) ,(2), (5) and (12) and 36.70A.130, -.110, -.115, and -.210 by not requiring efficient phasing of residential and non-residential growth during the twenty-year planning period in a UGA?

Issue 10: Whether the Plan fails to comply with RCW 36.70A.020(1), (2), (5) and (12) and 36.70A.130, -.070, -.110, -.115, and -.210 by not requiring development to be truly urban?

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[106] See *City of Sedro Wooley v. Skagit County*, WWGMHB Case No. 03-2-0013c (Compliance Order, June 18,2004) and *City of Tacoma v. Pierce County*, CPSGMHG Case No. 94-2-0001 (Final Decision and Order, July 5, 994)

[107] *Michael Durland v. San Juan County,* WWGMHB Case No. 00-2-0062c (Final Decision and Order, May 7, 2001) and *Town of Friday Harbor v. San Juan County*, WWGMHB Case No. 99-2-10c (Compliance Order, May 7, 2001 and October 15, 2002) at 5 and 12 respectively, *Fred Klein v. San Juan County*, WWGMHB Case No. 02-2-0008 (Final Decision and Order, October 15, 2002), and *Irondale Community Action Neighbors v. Jefferson County*, WWGMHB Case No 03-2-0010c (Final Decision and Order, August 22, 2003) at 1.

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Positions of the Parties:

Petitioners claim that the Bayview Ridge UGA does not have measures in place to ensure development is truly urban and efficiently phased.[108] In particular, Petitioners argue that there are no minimum densities for residential development in either the Subarea Plan or the development regulations which will allow low-density suburban residential development.[109] Petitioners also argue that RCW 36.70A.070(1) requires the County to designate the extent of uses and building intensities.

The County responds that a policy that imposes a minimum density for residential areas is not needed.[110] Because almost all of the land in the BR-R zone is within Airport Safety Zone 6, the County urges that the maximum residential density is 5.19 dwelling units per acre.[111] Further, the County argues that the interplay between market factors, minimum sizes, and the requirement of an average density of four dwelling units per acre establishes a reasonable cap on "urban sprawl".[112]

Intervenors emphasize that no "long subdivisions" are allowed until the PRD ordinance is adopted.[113] The clear goal, Intervenors argue, is "to have a minimum of 4 units per acre density averaged over a whole area with a variety of housing stocks as allowed by plan and development regulations, consistent with the Airport Land Use Compatibility Study."[114]

Board Discussion

The essential nature of an urban growth area is that it contains growth that is urban in nature. [115] The County does not dispute this but asserts that it is not necessary to have

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[108] Petitioners' Opening Brief at 19.
[109] *Ibid* at 20.
[110] Skagit County's Response at 12.
[111] *Ibid*.
[112] *Ibid*.
[113] Intervenors' Response Brief at 24.
[114] *Ibid.*
[115] RCW 36.70A.110

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minimum densities in this new UGA to achieve urban growth. At argument, both the County and the Intervenors emphasized the importance of the PRD ordinance (still in drafting stages) in assuring urban densities in the Bayview Ridge UGA. Intervenors also point out that the residential lands that have been designated for future residential development in the UGA are primarily in the ownership of Intervenors who have every intention of developing in accordance with the PRD ordinance.

However, what is before the Board at present is a UGA which had no residential component prior to this time and which is centered, not on an existing city, but on an airport. Urban levels of service have largely been planned for the area but the only disincentives to residential development at less than urban densities are hypothetical market forces. Although the plan calls for a minimum of four dwelling units per acre, there are no adopted regulations to ensure that. There is no regulation to preclude the development of suburban housing at the kind of densities – 1 dwelling unit per half acre or even less intense development – which characterize "sprawl". It takes only a common familiarity with the housing market to question the assumption that luxury houses on large lots with urban services cannot command a sufficient price to make their construction worth the effort.

Providing urban levels of service to non-urban development encourages rather than discourages such suburban sprawl. Designating an area a UGA but allowing non-urban densities of residential development fails to meet the urban density requirements for UGAs. Without some mechanism to assure minimum urban densities, the new residential portions of the UGA are all too likely to become suburban sprawl. Although the County aspires to have urban densities in the Bayview Ridge Subarea Plan, it has no ability to foreclose development within the new UGA at less than urban densities. It may be that the new PRD ordinance for the Subarea will address this concern, but at this point, there is no regulation to meet it. This fails to comply with RCW 36.70A.110.

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In Issue 7, Petitioners allege that phasing of development so that it can only occur when urban services are available is missing here.[116] However, Petitioners failed to respond to the County's arguments on this point and do not, therefore, meet their burden of proof.[117] As the County and Intervenors point out, phasing is one mechanism for achieving urban densities concurrent with needed urban levels of service but phasing itself is not a GMA requirement.

Conclusion: The failure to ensure that new residential development within the new UGA will occur at urban densities fails to comply with RCW 36.70A.110 and Goals 1 and 2 of the GMA (36.70A.020(1) and (2)) to encourage urban growth and reduce sprawl. (Issue 10) However, the Petitioners have failed to meet their burden of proof that phasing, other than as discussed in the concurrency discussion below, has not been provided.(Issue 7)

H. Commercial and Industrial Lands – Issues 8, 11, and 18.

Issue 8: Whether the Plan fails to comply with RCW 36.70A.130 and -.070(1) by not designating the extent of uses and building intensities for the commercial and industrial districts in the text of the Plan?

Issue 11: Whether the Plan fails to comply with RCW 36.70A.020(1), (2), (5) and (12) and 36.70A.070, -.130, -.110, -.115 and -.210 by oversizing the UGA and by not reasonably accounting for infill development as a component to meet its commercial/industrial acreage need and its residential population target?

Issue 18: Whether the Ordinance fails to comply with RCW 36.70A.020(1), (2), (5) and (12) and 36.70A.070, -.130, -.100, -.110, -.115, and -.210 such that designation and allowance of industrial urban development in the UGA (and related text and figures) outside of the Port property should be found to not comply with the GMA?

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[116] Petitioners' Opening Brief at 20.
[117] Skagit County's Response at 13-14

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Positions of the Parties

Petitioners assert that there is no valid analysis to justify the commercial and industrial acreage allocated to the Bayview Ridge UGA.[118] Petitioners argue that the calculation of commercial/industrial acreage is based on a projected increase in workers in the UGA from 1,456 in 1998 to 3,301 in 2015.[119] Petitioners dispute the need for 777 acres of developable commercial/industrial lands.[120]

Petitioners also argue that the lack of minimum intensities for commercial and industrial development will cause sprawling low density development to occur.[121] Further, Petitioners assert that there is no policy preventing or discouraging conversion of industrial land or allowing non-industrial uses on industrial lands.[122] They point to Policies 3A-1.5, 3A-1.9, and 4A-2.6 of the Subarea Plan.[123] Petitioners urge that RCW 36.70A.070(1) requires the land use element to designate uses for commerce and industry, and to include building intensities, which is not accomplished in the Subarea Plan.[124]

The County responds that the area in the pre-existing industrial and aviation zones is not open to challenge.[125] The property in the pre-existing industrial zone, the County argues, was subject to a prior settlement agreement and Stipulation and Order.[126] Since the County has fully complied with the terms of both, the County urges, it is not subject to review.[127] The Stipulation and Order, the County maintains, allowed the county to permit industrial and other uses throughout Bayview's industrial zone. "The county's ordinances thus permitted agriculture, offices, accessory retail sales, manufacturing, warehousing, repair and storage

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[118] Petitioners' Opening Brief at 18.
[119] *Ibid,* citing to Subarea Plan at 8-2.
[120] Petitioners' Opening Brief at 19.
[121] *Ibid* at 20.
[122] *Ibid* at 21.
[123] *Ibid.*
[124] *Ibid* at 25.
[125] Skagit County's Response at 16.
[126] *Ibid.*
[127] *Ibid.*

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facilities, research and development facilities, wireless services, and "other light industrial uses.""[128]

As for the allocation of new commercial/industrial lands, the County notes that CPP 1.1 was amended in 2000 to allocate 750 acres of needed acres of commercial/industrial lands to Bayview Ridge.[129] The ordinance challenged here only adds a net change of 73 acres (because approximately 34 acres were deleted from the northeast corner of the light industrial zone when it was re-zoned to urban reserve), the County claims.[130]

Moreover, the County asserts that Petitioners' attacks on the size of the industrial area are based on faulty calculations. The County states it has relied on data provided by E.D. Hovee and Company as the basis for the county's overall need for commercial and industrial lands.[131]

Board Discussion

Petitioners' challenge to the amount of commercial and industrial lands allotted to the Bayview Ridge UGA is based in RCW 36.70A.110 – the requirements for proper sizing of UGAs for urban uses and densities. However, the first issue with the allocation of new commercial/industrial lands to the Bayview Ridge UGA in the Subarea Plan is consistency with the comprehensive plan. The Subarea Plan is part of the comprehensive plan and must be consistent with the determinations already made there. [132]

In 2000, the County revised its allocations of commercial and industrial lands in the comprehensive plan. The comprehensive plan provides that a total of 3,330 acres of new

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[128] *Ibid.*
[129] *Ibid* at 17.
[130] *Ibid.*
[131] *Ibid* at 19.
[132] RCW 36.70A.080(2)

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commercial and industrial lands would be required in the urban areas through 2015.[133] However, only 2,926 acres of new commercial/industrial lands are allocated in Table 3-5 because 410 acres allocated to Bayview Ridge were found out of compliance by this Board.[134] Table 3-5 of the comprehensive plan shows a total of 750 acres of new commercial/industrial land allocated to Bayview Ridge.[135]

According to the Subarea Plan, 750 acres of new commercial/industrial lands are added to the existing land use in the Bayview Ridge UGA (as of 2001).[136]

To the extent that the Petitioners are challenging the allocation of a total of 750 acres of new commercial/industrial acres to the Bayview Ridge UGA, that challenge is not timely. The comprehensive plan adopted that allocation in 2000. The County maintains that the analysis upon which that allocation was based was the Hovee Report on countywide needs for commercial/industrial lands through 2015. For the Petitioners to challenge the basis for that analysis now would be to re-open a comprehensive plan amendment that was adopted many years ago. Therefore, this challenge to the allocation of 750 acres of new commercial/industrial lands to the Bayview Ridge UGA is not timely.

Petitioners' claim that industrial lands may be converted to non-industrial uses relies upon Subarea Plan Policies 3A-1.5, 3A-1.9 and 4A-2.6. These policies encourage mixed use development, especially the mix of commercial and light industrial uses with residential units in a PRD. While it is important to preserve the industrial lands needed for the future, Petitioners have failed to show how a mix of uses, especially in a PRD, would contravene any goal or requirement of the GMA. As the County points out, the development regulations

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[133] *Ibid* at 3-9.
[134] *Ibid.*
[135] Skagit County Comprehensive Plan at 3-11.
[136] Subarea Plan, Table 2-1 and Table 5-1..

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limit the uses in the industrial zones to industrial and related uses. SCC 14.16.180 and 14.16.190.

Conclusion: The sizing of the Bayview Ridge UGA to include 750 acres of new commercial/industrial land is consistent with the allocation for that purpose adopted in the comprehensive plan in 2000. The challenge to that allocation is not timely. It therefore complies with RCW 36.70A.070 and 36.70A.080(2). The Petitioners have failed to sustain their burden of proof in showing that the County's policies encouraging mixed use development violate the GMA.

I. LOS standards for roads, fire, law enforcement, sewer, and parks are inadequate – Issue 13

Issue 13: Whether the Plan fails to comply with RCW 36.70A.020(1), (2), (5) and (12) and 36.70A.070, -.130, -.110, -.115, and -.210 by having inadequate, ambiguous, unreliable, inconsistent and/or unfunded levels of service for public facilities and services (roads, police, sewer, parks, fire, garbage collection, storm sewers, etc.)?

In Section D, we discussed whether the information in the Bayview Ridge Subarea Plan, Skagit County's 2003-2008 CIP, or the plans of various non-county service providers that are needed to support development in the UGA and that are incorporated or referenced in the 2003-2008 CIP showed that services could be provided and funded over the 20-year planning period We found that some, but not all plans were adequate or reliable in that regard. Here we will discuss Petitioners' claim that the level of service standards set for services that the County says it will provide in its county-wide planning policies are ambiguous, inadequate to serve urban development or inconsistent and violate RCW 36.70A.070 .

Positions of the Parties

Roads

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Petitioners point out that while the Subarea Plan refers to an LOS standard for County Roads and Intersections of Levels D and E respectively, the Comprehensive Plan adopts an LOS of C for Roads and D for intersections, an apparent inconsistency.[137]

The County responds that, while the Subarea Plan notes that "Based on the Highway Capacity Manual method, the proposed LOS for Skagit County Roads and Intersections is Levels D and E, respectively",[138] the LOS actually adopted is that set out in the Comprehensive Plan, i.e LOS C for streets and LOS D for intersections.

Petitioners assert that LOS standards for fire, law enforcement, sewer, and parks are inadequate and do not ensure that urban facilities and services will be available at time of occupancy.[139]

Fire

With regard to fire services, Petitioners assert that the County cannot meet the urban fire LOS standard in the Bayview Ridge UGA as set out in Table 7-1.

In response, the County merely offers that "Should the information in the capital facilities plan be insufficient, this can be addressed on remand."[140]

Intervenors provide more a detailed response and note that Skagit County Fire Protection District #6's 2001 Capital Facilities Plan was incorporated into the Bayview Ridge UGA Subarea Plan. Petitioners argue that these studies show that with the projects shown on Table 7-7 planned to be completed by 2006, necessary facilities are in place to provide urban levels of fire protection services.

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[137] Petitioners' Opening Brief at 27.
[138] Bayview Ridge Subarea Plan at 6-8.
[139] Petitioners' Opening Brief at 21 et seq.
[140] Skagit County's Response at 27.

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Police

Petitioners argue that the analysis of needed sheriff officers is inconsistent with the acreage calculations in the Subarea Plan, noting that the 13.4 officers needed in 2015 is incorrectly based on 1,327 acres of commercial/industrial development, instead of 2,064 developed acres shown in Table 1-A in Appendix A.

Next, while acknowledging that the County has a surplus of commissioned deputies to meet the law enforcement LOS standard for the Bayview Ridge UGA, Petitioners argue that there is no stated agreement between the Sheriff and the County that the officers needed will be assigned to the UGA.

As noted above, as with regard to fire protection services, the County's response to police services is that "Should the information in the capital facilities plan be insufficient, this can be addressed on remand."[141]

Intervenors suggest that funding for police is assured since a no-protest agreement for the funding of necessary facilities is required as a condition of development.[142]

Sewer

Petitioners maintain that the County has not adopted sewer level of service standards and that the standards adopted by its sewer service provider, the City of Burlington, are inadequate to serve urban industrial development.[143]

In response, Intervenors argue that the capital facilities projects identified by the City of Burlington, the provider of sewer services in this case, were complete or nearly complete in 2005[144] and that under the County development regulations, no urban development can be approved without public sewer services being available.

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[141] Skagit County's Response at 27.
[142] Intervenors' Response Brief at 15.
[143] Petitioners' Opening Brief at 23.
[144] Intervenors' Response Brief at 11.

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Parks

Petitioners assert the County's failure to meet the LOS for park (either the 14.5 acre/1,000 standard of the County Capital Facilities Plan, or the 17.3 acre/1,000 standard of the 1998 Comprehensive Park and Recreation Plan) is in violation of RCW 36.70A.070(3)'s requirement to address parks in the capital facilities plan. Petitioner claims the County is not meeting and will not meet these standards.

In response, the County argues that the Subarea Plan complies with 36.70A.070(3) by providing an inventory of existing capital facilities at 7-6 and 7-7, with the remainder of the .070(3) requirements met elsewhere in the Subarea Plan, identifying needed parks, costs and financing.

Board Discussion

WAC 365-195-510 (2) advises that each comprehensive plan should designate those public facilities in addition to transportation facilities for which concurrency is required. WAC 365-195-510 (3) says that the concept of concurrency is based on the maintenance of levels of service with respect to each of the public facilities to which concurrency applies. The Bayview Ridge Subarea Plan sets the LOS for water, sewer, police, stormwater, fire, and parks. [145] We find that these LOS standards are specific.

Roads

The reference to the Highway Capacity Manual standard in the Subarea Plan does not create an inconsistency. That reference was apparently included to note what the LOS would be using the methodology contained in that reference work.

It is clear from the plain language of Subarea Plan that that there is no inconsistency between the LOS standard for streets and intersections as set out in the Subarea Plan and

[145] Bayview Ridge Subarea Plan at 7-5 and 7-6.

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the Comprehensive Plan. In both cases, the County has adopted a LOS standard of C for streets and D for intersections. As noted in the Subarea Plan:

> "The Bayview Ridge Subarea Plan adopts the LOS standards for streets and intersections *as adopted in the Skagit County Comprehensive Plan***.** These standards currently are LOS C for streets and LOS D for intersections."[146] (emphasis added)

Fire

In reviewing the portions of the capital facilities elements of the Subarea Plan relevant to fire protection, it is apparent that more work remains to be done. The subarea plan notes that "Negotiations are *on-going* and annexations have been initiated to ensure a coordinated approach to delivery of fire protection services"[147], "'the optimum configuration of district boundaries to protect final build-out of the Bayview Ridge UGA is *under discussion*"[148], "Negotiations ensuring a coordinated approach to delivery of fire protection serves are *in process*"[149].

While some of the information relied upon in the plan is out of date[150] this may not necessarily be a problem. Intervenors argue, and it has not been disputed, that the capital projects identified by the Fire District and the County to serve at urban levels in the Bayview Ridge UGA have been completed.[151] If so, and we have no reason to doubt the assertion, the subarea plan should reflect this condition, and not rely on outdated information. For example, the subarea plan notes that "The district is planning to replace an aid unit in the year 2001."[152] Certainly by now the County knows whether this is an accurate assumption.

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[146] Ibid. at 6-9.
[147] Bayview Ridge Subarea Plan at 7-10.
[148] Ibid.
[149] Ibid.
[150] For example, Table 7-7 "Planned Fire Protection Projects" relies upon estimated costs in 1997 and 1999 dollars.
[151] Intervenors' Response Brief at 13.
[152] Bayview Ridge Subarea Plan at 7-10.

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Thus, while we do not find noncompliance in this area, we suggest that the Subarea Plan be updated with more current information.

Police

With regard to the alleged discrepancy in the analysis of sheriff officers needed in the Subarea, we agree that the County's methodology for calculating future industrial and commercial acreages (upon which the police services LOS is based) is less than obvious, the discrepancies are slight and non-material. While Table 7-5 indicates that developed commercial and industrial property is planned to increase from 601 acres in 2001 to 1,327 acres in 2015 (and increase of 726 acres), other sections of the plan support an allocation of 750 additional acres to commercial industrial uses.[153] Petitioners err by including the 754 acres of airport zoned property within the calculation of industrial/commercial acreage for purposes of calculating LOS, despite the fact that Table 7-1 provides that LOS is based on population or commercial/industrial property. Intuitively, as well, it is apparent that acres of runway and surrounding open areas do not place a high demand on police services. Finally, the Subarea Plan reflects that there is currently a surplus of commissioned deputies available in the Sheriff's Office available to serve the Bayview Ridge Subarea.[154]

The County and Intervenors' assertion that concurrency for police services will be met by compliance with SCC 14.28.040(2)(g) is difficult to understand. LOS for police services is expressed as the number of officers needed per 1,000 residents or per thousand acres of developed commercial or industrial property.[155] Yet, SCC 14.28.040(2)(g), with its requirement for participation in "future LID or other pro rata sharing of costs to upgrade or install additional urban standard public facilities and services", is more suited for funding physical improvements than the funding of police services. Police services are not dependant merely on facilities but on adequate funding for personnel and operations.

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[153] See, for example, Tables 2-2 and 3-2.
[154] Ibid. at 7-9
[155] Bay7view Ridge Subarea Plan at 7-5.

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However, Intervenors are correct that SCC 14.28.040(2)(6) (when read in conjunction with SCC 14.28.030 (3)) provides for the denial of project permit approval where police services cannot meet the established LOS standard. This, therefore, does comply with RCW 36.70A.070.

As noted above, Petitioners argue that there is no stated agreement between the Sheriff and the County that the officers needed will be assigned to the UGA. This is not a reasonable objection. Unlike UGAs that must depend on other units of government as service providers, here the County will be utilizing another County department to provide services. We must assume that all units of County government will make available resources available to provide the LOS that the County has legislatively established.

Sewer

Petitioners are incorrect in asserting that sewer level of service standards have not been established. The Bayview Ridge Subarea Plan provides that LOS standards for sewer will be provided by each sewer provider.[156] In this case the provider is the City of Burlington.[157] While Petitioners take exception to the use of a 500 gallons per acre per day LOS standard, they have not carried their burden of proof to establish that it is inadequate. Local jurisdictions are required to establish an objective baseline to determine minimum LOS standards for public facilities and services.[158] However, in establishing LOS standards, local government is invested with wide discretion as to the proper level[159]. Here, the Bayview Ridge Subarea Plan indicates that Phase II of the City of Burlington waste-water treatment plan expansion project will provide sufficient capacity to treat sufficient flows through 2015. Petitioners have failed to demonstrate that this LOS is so ambiguous as to totally avoid concurrency requirements.[160]

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[156] Ibid. at 7-5, Table 7-1.
[157] Ibid. at 7-12.
[158] RCW 37.70A.020(12).
[159] Achen v. Clark County, 95-2-0067 (FDO, 9-20-95).
[160] See *Butler v. Lewis County*, WWGMHB Case No. 99-2-0027c(Final Decision and Order, 6-30-00).

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Parks

The Subarea Plan acknowledges that the Parks LOS is not currently being met, as there are no parks in the Subarea[161]. The Subarea Plan identifies needed parks, costs and financing. It notes a current unmet need for 15.8 acres of parks and year 2015 need for approximately 65 acres of parks/recreation and open space lands. To this extent, it complies with RCW 36.70A.070(3)'s requirement to provide an inventory of existing capital facilities and a forecast of future needs., However, as noted above, it does not contain the proposed locations and capacities of all the facilities needed to maintain its LOS until 2015. Table 7-4 "Planned Park Projects 2001-2006" is already out of date in 2007 and relies on 1998 cost data for proposed parks projects. Reliance upon such outdated information is not consistent with the requirements of RCW 36.70A.070(3) for capital facilities which requires at least a six-year plan that will fund such capital facilities within projected funding capacities and clearly identifies sources of public money for such purposes.

Our review of the Bayview Ridge Capital Facilities Chapter and the 2003-2008 Skagit County CIP show that the County has set a LOS of 17.3 acres per 1000 population as the LOS for park land for the Subarea [162] and a LOS of 13.2 acres per 1000 in the 2003-2008 CIP. [163] While there is nothing in the GMA that forbids the County from setting different level of service standards for different areas of the County, the County's CIP should explain this and it does not. This inconsistency, without an explanation, does not comply with RCW 36.70A.070.

Conclusion:

- ***Roads -*** There is no inconsistency between the LOS standard for streets and intersections as set out in the Subarea Plan and the Comprehensive Plan. In both

[161] Bayview Ridge Subarea Plan at 7-6 – 7-7.
[162] Bayview Ridge Subarea Plan at 7-6
[163] Capital Facilities Plan 2003-2008 at 3-9, Exhibit 807.

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cases, the County has adopted a LOS standard of C for streets and D for intersections

- **Fire -** Some of the information relied upon in the plan is out of date. Although this does not rise to the level of noncompliance in this area, the Subarea Plan should be updated with more current information to reflect the capital projects that have been completed.
- **Police -** The discrepancies in the County's methodology for calculating future industrial and commercial acreages (upon which the police services LOS is based) are slight and non-material. SCC 14.28.040(2)(6) and SCC 14.28.030 (3) provide for the denial of project permit approval where police services cannot meet the established LOS standard, thereby complying with the challenged sections of the GMA.
- **Sewer -** The Bayview Ridge Subarea Plan indicates that Phase II of the City of Burlington waste-water treatment plan expansion project will provide sufficient capacity to treat sufficient flows through 2015. Petitioners have failed to demonstrate that the adopted sewer LOS is not an adequate standard for industrial urban development.
- **Parks -** The Bayview Ridge Subarea Plan and the 2003- 2008 Skagit County CIP contain different levels of service for park land. Neither the subarea plan nor the CIP explain this inconsistency. Without this explanation, the Bayview Ridge Subarea Plan is inconsistent with the County CIP and does not comply with RCW 36.70A.070. We have found earlier in this order that the Bayview Ridge Subarea Plan fails to contain the proposed locations of park facilities needed to maintain the Parks LOS until 2015. While providing an inventory of existing facilities and a forecast of future needs, the Bayview Ridge Subarea Plan fails to contain the possible locations of park facilities needed to maintain the Parks LOS until 2015.

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Petitioners have not sustained their burden of proof that the Subarea Plan LOS standards or RCW 36.70A.020 (1) and (2) are inadequate or ambiguous so that they do not support urban growth or reduce sprawl. We find that the Bayview Ridge LOS for Roads is consistent with those set in Skagit County's comprehensive plan. However, the Board finds that the County's 2003-2008 CIP and the Bayview Ridge UGA parks LOS are inconsistent and do not comply with RCW 36.70A.070.

J. Subarea Plan Policy 6A-1.2 exceptions (a), (b) and (c) do not comply with the GMA – Issue 14

> Issue 14: Whether Plan Policy 6A-1.2 fails to comply with RCW 36.70A.020(1), (2), (5) and (12) and 36.70A.070, -.130, -.110, -.115, and -.210 by allowing an agreement to be signed to avoid concurrency?

Position of the Parties

Petitioners argue that the exceptions to the transportation concurrency requirements created by Subarea Plan Policy 6A-1.2 exceptions (a), (b) and (c) conflict with the intent of transportation currency and violate GMA goal 12.

Intervenors counter that the Subarea Plan and development regulations (SCC 14.28 et seq.) comply with the GMA as they provide that a development may be allowed if transportation improvements or strategies to accommodate the impacts are in place at the time of development, or if a financial commitment is in place to complete the improvements.

Board Discussion

Goal 12 of the GMA requires local governments to ensure that public facilities and services be adequate to serve the development at the time that it is available for occupancy and use without decreasing current service levels below locally established minimum standards.[164]

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[164] RCW 36.70A.020(12). See also, WAC 365-195-210.

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Once a local government adopts concurrency policies, implementing development regulations must be adopted that prohibit new development from causing previously established LOS standards to be violated.[165] An exception exists if transportation improvements or strategies to accommodate the impacts of development are made concurrent with development. "Concurrent with development" means that improvement or strategies are in place at the time of development or that a financial commitment is in place to complete the improvements or strategies within six years.[166]

Petitioners argue, and we concur, that the exceptions to a decrease in the level of service allowed by Policy 6A-1.2 violate GMA. Policy 6A-1.2(a) creates an exception to transportation LOS standards if the proponents make a fair share contribution to a regional improvement in the case of sites located where regional improvements are the only means to improve or maintain the level of service existing prior to the development. The exception contains the further limitation that the improvement must be planned for construction within five years.

The difficulty with this exception is that it allows a reduction below the adopted LOS where there is no reasonable assurance the regional improvement will be constructed. While the exception provides that regional improvements must be planned for construction within five years, there is no requirement to show how these improvements will be funded. A strategy must be in place to show how these planned improvements for maintaining the LOS will be funded and constructed within six years before such an exception is permissible. An exception to the lowering of LOS standards where the proponent "sign[s] an agreement to perform at a future date" is also non-compliant as it allows the LOS to be lowered indefinitely with no assurance of when the needed improvement will be constructed and the adopted LOS restored.

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[165] RCW 37.70A.070(6). See also, Achen v. Clark County, 95-2-0067, FDO ,(9-20-95).
[166] RCW 36.70.070 (6)(b).

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It is noteworthy that, among the strategies noted at WAC 365-195-835 to address insufficient capacity to accommodate development, the following is provided for transportation deficiencies:

> (i) In the case of transportation, an ordinance must prohibit development approval if the development causes the level of service of a transportation facility to decline below the standards adopted in the transportation element of the comprehensive plan unless improvements or strategies to accommodate the impacts of development are made concurrent with development.

Policy 6A-1.2(a) allows the LOS to be degraded indefinitely and is therefore not compliant with RCW 30.70A.070's mandate to prohibit development if the development causes the level of service to decline below adopted LOS standards, unless improvements or strategies are made "concurrent with development." While SCC 14.28 does prohibit development for which there is no concurrency, that prohibition is undercut by the exceptions created by Policy 6A-1.2(a).

We also find Policy 6A-1.2(c) noncompliant. This exception from the concurrency requirement for "Other exceptions . . . if consistent with the policy intent" is unduly broad and could lend itself to an abuse of administrative discretion.

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

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K. Issue: Implementation of CPP 12.9 in the Subarea Plan – Issue 15

Issue 15: Whether the Ordinance fails to comply with RCW 36.70A.020(1) ,(2), (5) and (12) and 36.70A.070, -.130, -.110, -.115, and -.210 by inadequately implementing CPP 12.9 in the Bayview Ridge Subarea?

Positions of the Parties

Petitioners argue that CPP 12.9, requiring new development to pay its share of new infrastructure through impact fees, or as a condition of development through the environmental review process, is not implemented in the Subarea Plan. Petitioners assert that although this issue is addressed in Subarea Plan Policies 7A-1.2 (infrastructure), 7A-3.1 (impact fees) and referenced on page 7-18, the Subarea Plan makes payment of a developer's share of infrastructure or impact fees *optional*. Petitioners argue that, since not every new development goes through the environmental review process, an impact fee ordinance is required.[167]

The County responds by pointing out its authority to impose impact fees under Chapter 14.30 SCC and SEPA mitigation under RCW 43.21C.060.[168] It further notes that, while CPP 12.9 does not specifically mention the use of voluntary agreements for the payment of impact fees, "CPP 12.9 must allow them" as they are allowed by statute and do not conflict with the intent of CPP 12.9.[169] The County also notes that it employs "facility concurrency fees" which "are impact fees under another name".[170] Finally, the County notes its use of agreements by which a developer agrees "not to protest a future LID or other pro rata sharing of costs to upgrade or install additional urban public facilities and services identified in the Subarea Plan process for the Bayview Ridge UGA within 20 years, including but not

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[167] Petitioners' Opening Brief at 25-26.
[168] Skagit County's Response, at 28.
[169] Ibid.
[170] Ibid.

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limited to fire/emergency and police/sheriff services and facilities." SCC 14.28.105(5). The County also notes a similar requirement for streets, water service, storm drainage and sanitary sewer at SCC 14.28.105(1)-(4). Intervenors point to similar provisions.[171]

Board Discussion

CPP 12.9 provides:

> New development shall pay for or provide for its share of new infrastructure through impact fees or as a condition of development through the environmental review process.

CPP 12.9 provides alternative means by which new development can be made to shoulder its share of the cost of new infrastructure: impact fees *or* SEPA mitigation. Adoption of an impact fee ordinance is not mandatory under state law, but is optional.[172] A local jurisdiction is not required to have in place authority to impose mitigation measures under both an impact fee ordinance and SEPA. Even were both in place, it would still be required to elect which of the two sources of authority to apply in a particular instance since it could not impose mitigation for system improvements under both and impact fee ordinance and SEPA. In fact, any sort of this overlap is prohibited by law. RCW 82.02.100 provides that a person required to pay SEPA impact fees for system improvements shall not be required to pay an impact fee under RCW 82.02.050 through 82.02.090.

While, in fact, the County has authorized the collection of impact fees at SCC 14.30, it is free to mitigate impacts to infrastructure under SEPA instead. Although Petitioners claim that some development might avoid the type of environmental review that would subject it to the payment of SEPA mitigation, it has not presented any evidence regarding the nature and extent of SEPA exemptions allowed by the county. Nor do Petitioners offer evidence to

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[171] Intervenors' Response Brief, at 26.
[172] See, RCW 82.02.050

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demonstrate how a project that is SEPA exempt would have an impact on the local infrastructure that would not be addressed by the County's existing mitigation measures.

Conclusion: Therefore, we find that the Petitioner has not carried its burden to demonstrate that the County does not have adequate means in place to implement CPP 12.9.

L. Abandoned Issues – Issues 17 and 19.

Petitioners failed to brief or argue Issue 17: Whether the Ordinance fails to comply with RCW 36.70A.020(1), (2), (5) and (12) and 36.70A.070, -.130, -.110, -.115, and -.210 such that designation and allowance of non-accessory commercial urban development in the UGA (and related text and figures) should be found to not comply with the GMA?

Petitioners also failed to brief or argue Issue 19: Whether Plan fails to comply with RCW 36.70A.020(9) and (10) and 36.70A.070, -.110, -.130, and -.210 by failing to designate adequate open space in the UGA including open space buffers over and adjacent to petroleum pipelines?

Petitioners are deemed to have abandoned both issues. *OEC v. Jefferson County,* WWGMHB Case No. 94-2-0017 (Final Decision and Order, February 16, 1995).

M. Development regulations – Issue 21 and 22

Issue 21: Whether the Plan's implementing development regulations fail to comply with RCW 36.70A.130 by not fully implementing in a consistent manner the Subarea Plan and Comprehensive Plan inside the UGA, or by implementing plan provisions found not in compliance with the GMA, or by not being timely reviewed and updated?

Issue 22: Whether the Plan and implementing development regulations ensure that the urban facilities and services necessary to support development in the unincorporated UGA will be adequate to serve that development at the established urban levels of service at the time of occupancy consistent with RCW 36.70A.020(12) and 36.70A.070, -.130, -.110, -.115, and -.210?

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Positions of the Parties

Petitioners argue that the failure of the County to do a compliant capital facilities plan should make the Subarea Plan Development Regulations invalid.[173] Bayview DR (development regulation) 14.28.105(13) "allows urban development regulations to be implemented with wastewater placed in holding tanks", Petitioners allege.[174] Further, Petitioners claim that the Table of Land Use Districts in DR 14.16.030 fails to clearly prescribe maximum and minimum densities for residential development.[175] Petitioners also fault the non-industrial uses such as offices allowed in the light industrial zone (DR 14.16.180); and the absence of standards for assessing sound impacts on residents.[176] Petitioners also list other development regulations they assert are inconsistent with requirements for capital facilities elements.[177]

The County responds that Petitioners point out a number of minor errors that can easily be addressed.[178] However, the County urges that including restaurants and taverns as permissible uses in industrial zones is not clearly erroneous.[179] There is no evidence, or even a good argument, the County asserts, that allowing restaurants in the commercial zones will lead to a wholesale conversion of industrial lands.[180] The County also notes that it has an adequate noise ordinance (SCC 14.16.840(5)).

Board Discussion

Petitioners' shotgun approach to issues relating to development regulations makes it difficult for the Board to follow their objections; further, it is unclear why the objections to certain development regulations, e.g. allowing holding tanks for wastewater in the new UGA, were

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[173] Petitioners' Opening Brief at 28.
[174] *Ibid.*
[175] *Ibid.*
[176] *Ibid.*
[177] *Ibid* at 29.
[178] Skagit County's Response at 24
[179] Skagit County's Response at 20.
[180] *Ibid.*

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not raised in conjunction with the arguments on Subarea Plan policies on the same subjects.

Petitioners appear to request that the Board impose invalidity on all the development regulations for the Subarea Plan because there is not a compliant capital facilities plan. The Board declines to accept a universal principle that a non-compliant capital facilities plan necessitates invalidating all development regulations. Petitioners must specify the development regulations that are alleged to be non-compliant and invalid and show how each fails to comply with the requirements and goals of the GMA.

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

Moreover, connection to public sewer is expressly envisioned to take as long as twenty years:

> As a condition of any development approval, and for all property owned by the same owner in the UGA, the property owner agrees for all property owned in said UGA not to protest an LID or other pro-rata sharing in any costs to upgrade and extend public sewer to the property within 20 years. Credit for prior contributions and improvements that are included in the Subarea facilities plan shall be provided as set forth in subsection (6) below.

SCC 14.28.105(13)(e).

There must be urban levels of sanitary sewer provided to the entire UGA by 2015 (the end of the planning period), not within twenty years of the date of subsequent approval of development on holding tanks. This is because the designation of areas for urban growth

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must ensure that urban services are available when the urban growth occurs. The UGA boundaries may only extend as far as urban levels of service are ensured for the planning period. If urban services cannot be provided in the planning period, then the areas which cannot be served should not be designated for urban growth, i.e. included in the UGA.[181]

Moreover, if urban levels of service will not be provided at the time of development, development must be phased so that there are not urban levels of development until urban services are provided. In the meantime, the development that does occur within the UGA must allow for eventual urban densities, typically by platting and locating initial growth so that higher densities will be available as urban services are available.

SCC 14.28.105(13) clearly allows urban development without ensuring that public sewer will be available in the planning period, and allows for development that could preclude the urban development for which the UGA is designated. SCC 14.28.105(13), therefore, fails to comply with RCW 36.70A.110, requiring urban levels of service for urban development, and Goal 12, the concurrency goal.

Conclusion: Petitioners' claim that all development regulations applicable to the Bayview Ridge UGA are non-compliant is not sustained. However, SCC 14.28.105(13) allows urban levels of development without concurrent urban levels of public sewer service. This provision fails to comply with RCW 36.70A.110, requiring urban levels of service for urban development, and the concurrency goal (Goal 12) RCW 36.70A. 020.

N. Invalidity – Issue 23

Issue 23: Whether any portion of the Ordinance found not to comply with the Act in Issues 2 to 22 above should also be found invalid under RCW 36.70A.302 for substantial interference with the fulfillment of Goals 1,2,5,6, 9, 10 and/or 12?

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[181] *Irondale Community Action Neighbors v. Jefferson County*, WWGMHB Case No. 04-2-0022 (Final Decision and Order, May 31, 2005.

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Positions of the Parties

Petitioners allege that the noncompliant provisions of the Subarea Plan and development regulations substantially interfere with the fulfillment of Goals 1, 2, 5 and 12.[182] The County and Intervenors argued at the hearing on the merits that any non-compliant matters could be resolved without the necessity for an invalidity determination.

Board Discussion

A finding of invalidity may be entered when a board makes a finding of noncompliance and further includes a "determination, supported by findings of fact and conclusions of law that the continued validity of part or parts of the plan or regulation would substantially interfere with the fulfillment of the goals of this chapter." RCW 36.70A.302(1) (in pertinent part).

We have held that invalidity should be imposed if continued validity of the noncompliant comprehensive plan provisions or development regulations would substantially interfere with the local jurisdiction's ability to engage in GMA-compliant planning. See *Butler v. Lewis County,* WWGMHB Case No. 99-2-0027c (Order Finding Noncompliance and Imposing Invalidity, February 13, 2004).

In this case, there are two areas in which the potential for vesting of applications for development in the Bayview Ridge UGA before compliance is achieved is of concern to the Board. The first of these is with respect to urban development without public sewer. SCC 14.28.105(13) allows urban levels of development, both residential and industrial, on holding tanks. Not only does this development regulation fail to comply with RCW 36.70A.110, as we have found, but it also substantially interferes with the fulfillment of Goal 12, in that it does not ensure that public facilities and services necessary to support development will be adequate to serve the development at the time the development is available for occupancy. Urban levels of development require urban levels of service and

[182] Petitioners' Opening Brief at 30.

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key among urban services is public sewer. The exemption to the general requirement for hook-up to public sewer as a condition of approval found in SCC 14.28.105(13) is therefore invalid.

The second area of concern is the absence of development regulations to ensure minimum densities for residential development in the new UGA. To the extent that residential development applications may vest during the compliance period granted in this order, the Board is concerned about less-than-urban levels of development. The County states that its goal is at least 4 dwelling units per acre in the Bayview Ridge UGA and that development regulations to ensure minimum densities are not required because of this goal. While we have found that the failure to ensure urban residential densities fails to comply with RCW 36.70A.110, the Board will not impose invalidity at this time because of the County's goal of urban residential densities and the Intervenors' assertion that the residential development on their property will be pursuant to the new planned residential development (PRD) ordinance. On the record before us, we do not find that a remand with an order to achieve compliance is insufficient to enable the County to pursue proper planning under the Act.

However, if circumstances change such that development applications during the pendency of the County's compliance efforts are likely to vest in ways that will substantially interfere with the achievement of the goals and requirements of the GMA, we will entertain a motion to impose invalidity on provisions of Ordinance 020060007, the Bayview Ridge Subarea Plan and/or the development regulations that we have found noncompliant in this final decision and order. RCW 36.70A.330(4). Such a motion may be brought at any time until compliance has been found but must be accompanied by documents indicating the conditions justifying a finding of invalidity.

VI. FINDINGS OF FACT

1. Skagit County is located west of the crest of the Cascade mountains and is required to plan pursuant to RCW 36.70A.040.

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2. On December 1, 2006, the Board of County Commissioners adopted the Bayview Ridge Subarea Plan (Subarea Plan) and Development Regulations through Ordinance 020060007.
3. The initial petition for review of Ordinance 020060007 was filed by Petitioners Skagit County Growthwatch, Citizens to Protect Bayview Ridge, and Gerald Steel on February 5, 2007
4. Petitioners Skagit County Growthwatch, Citizens to Protect Bayview Ridge, and Gerald Steel participated in the adoption of Skagit County Ordinance 020060007 through written comments.
5. Ordinance 020060007 was adopted to achieve compliance on the Bayview Ridge UGA issues remaining in *Abenroth et al. v. Skagit County, et al.,* WWGMHB Case No. 97-2-0060c.
6. Friends of Skagit County participated as Petitioners in *Abenroth et al. v. Skagit County, et al.,* WWGMHB Case No. 97-2-0060c and filed a notice of intent to participate in the compliance issues related to the Bayview Ridge UGA.
7. Intervenors Bouslog Investments LLC, JBK Investments LLC, and John Bouslog participated in the adoption of Ordinance 020060007 and are owners of property included in the Bayview Ridge UGA.
8. The Board has ruled on motion that the County has failed to timely complete its update of comprehensive plan policies and development regulations as required by RCW 36.70A.130(1)(2) and (4). Order on Issue No. 1 – Failure to Timely Adopt Update Required by RCW 36.70A.130(4), April 27, 2007. That order is incorporated herein by reference and made part of this final decision and order.
9. The Bayview Ridge Subarea Plan is a component of the 1998 Skagit County Comprehensive Plan ("comprehensive plan" or "plan").
10. The County adopted a six-year capital facilities funding plan (CIP) in 1999. The most recent amendment of the CIP was adopted in 2003 to cover the years from 2003 to 2008.

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11. The Subarea Plan explains that the County provides sheriff services directly; park facilities in cooperation with the Port of Skagit County; and storm drainage facilities with the drainage districts. Water is provided by PUD No. 1; sewer by the City of Burlington; and fire protection by several fire districts.
12. The Skagit County 2003-2008 Capital Facilities Plan(CIP) provides an inventory of the County's existing park and sheriff facilities, including capacities and locations. The Sub Area Plan contains the transportation facilities inventory.
13. The 2003 – 2008 Skagit County CIP includes an inventory of diking and fire district facilities in the subarea.
14. The plan for the Burlington-Edison School District as well as water system plans serving Skagit County, including PUD. No.1,[183] are incorporated and referenced in the 2003-2008 CIP.
15. The Water System Plan for Public Utility District No. 1 of Skagit County, Volume 1 contains a description of the existing facilities serving Bayview Ridge in 2001.
16. The City of Burlington 2005 Wastewater Plan states that the Bayview Ridge Urban Growth Area and Sewer Service Area boundaries are adjusted to reflect the final action planned in 2005 for the Bayview Ridge Urban Growth Area.
17. A discrepancy exists in the City of Burlington's Comprehensive Wastewater Plan. While the sewer plan's map shows existing and proposed facilities, the text of the plan says the facilities to serve the Bayview Ridge UGA are "basically complete" [184] or "started".

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[183] PUD No.1 plans are included in the Skagit County Coordinated Water System Plan that is adopted as part of the Skagit County Comprehensive Plan. See City of Anacortes v. Skagit County, Case No. 07-2-0002 (Order to Dismiss Petition for Lack of Jurisdiction, July 2, 2007)
[184] Ibid at 6.

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18. Existing facilities with their locations and capacities are included in the Six-year Capital Facilities Plan of Burlington-Edison School District 100, adopted in 2006, and covering the years 2006 -2011.
19. The Subarea Plan discusses the UGA's park land needs to 2015, and the facilities and possible locations of some, but not all the facilities needed to maintain its LOS until 2015. Funding sources in the years beyond 2006 are not projected.
20. The Subarea Plan includes an analysis of the quantity of water needed to serve Bayview Ridge to 2015, discusses improvements to storage facilities and concludes that it has capacity to serve Bayview Ridge until 2015.
21. The Subarea Plan also states that the PUD's plan includes water system improvements to serve the UGA by the year 2020, and the Water System Plan for Public Utility District No.1 of Skagit County confirms this.
22. The PUD plan is incorporated in the 2003-2008 Skagit County CIP by virtue of its being part of the Skagit County Coordinated Water System Plan that has been adopted as part of the County's comprehensive plan.
23. Skagit County completed and adopted an extensive stormwater management plan in April 2007 to manage storm water runoff in the 11,277 acre Bay View Ridge Watershed. The Bayview Ridge UGA comprises 3,663 acres or about 32 per cent of the watershed.[185]
24. The storm water plan contains a capital facilities plan of proposed projects and their cost estimates for Phase 1. These facilities are scheduled to be completed in 2011. The stormwater plan indicates that these projects are the ones necessary "to reduce or eliminate existing and /or future flooding conditions within the Bayview Ridge UGA".
25. Resolution R20070227 states Skagit County will bear the costs of the storm-water improvements and that these will be funded through various legally authorized

[185] Exhibit 333 at 2.1

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means, not limited to development contributions and the Skagit County Drainage Utility.

26. The Burlington-Edison School District No. 100's Six –Year Capital Facilities Plan covers the years 2006-2011 and discusses future projects, with their locations and their capacities, and lists costs and funding sources through 2011.
27. The Subarea Plan discusses the fire facility needs of UGA until 2015, but neither the Subarea Plan or the 2003-2008 Skagit County CIP include capital facility projects for fire facilities over the 20 year planning period.
28. The plan discusses that negotiations on how to provide the UGA fire services have not been completed.
29. The Bayview Ridge Capital Facility Plan contains a six-year capital facilities plan that summarizes projects from 2001 -2006 to support the UGA's growth. The County's most recent CIP does not satisfy the requirement for "a six-year plan that will finance such capital facilities" as required by RCW 36.70A.070(3)(d) because "such facilities" as are added through the Bayview Ridge Capital Facilities Plan were not the subject of the County's 2003-2008 CIP.
30. The Skagit County Comprehensive Plan's Utility Element says maps showing the major locations of the electricity and natural gas facilities serving Skagit County are included in the Skagit County supplemental map portfolio. The Utility Chapter also states that information relating to Utility Element requirements is contained in the plans of the utility providers.
31. It is clear from the plain language of Subarea Plan that that there is no inconsistency between the LOS standard for streets and intersections as set out in the Subarea Plan and the Comprehensive Plan. In both cases, the County has adopted a LOS standard of C for streets and D for intersections.
32. SCC 14.28.040(2)(6) (when read in conjunction with SCC 14.28.030 (3)) provides for the denial of project permit approval where police services cannot meet the established LOS standard.

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33. The comprehensive plan allocates residential growth to “Burlington/County” in the amount of 3,420 (see Table 3-4) to the year 2015. This allocation was intended for the Bayview Ridge UGA.
34. The Subarea Plan discusses the need for this allocation to the Bayview Ridge UGA by reviewing the capacity of five major municipal UGAs to accommodate this projected growth. After concluding, in consultation with those cities, that most of them could not accommodate extra growth due to environmental and infrastructure limitations, the County determined to allocate that growth to Bayview Ridge.
35. There are 681 homes and a population of 1,634 people currently in the Bayview Ridge UGA.
36. Utilizing the projected residential population of 3,420 for 2015 in the comprehensive plan, the County subtracted 1,634 as the existing residential population and concluded that the Bayview Ridge UGA should house 1,786 new residents by 2015.
37. At densities of four dwelling units per acre and an average of 2.4 persons per household, the net need for new residential development in the Bayview Ridge UGA is approximately 186 acres of land. Adding approximately 46 acres due to a 25% market factor yields a need for 233 acres of residential land.
38. In addition, the Subarea Plan adds another 211 residents, apparently by working backwards from an area of 705 acres to reach the population figure that would justify the entire acreage. The County’s analysis gives no other reason for adding this population nor does it show how this total population of 3,631 squares with the allocation in the comprehensive plan of 3,420.
39. The City and the Bayview Ridge UGA are noncontiguous. Intervening agricultural land and flood plain make intervening land unsuitable for urban growth.
40. The Bayview Ridge UGA is a UGA which had no residential component prior to this time and which is centered, not on an existing city, but on an airport.
41. Although the plan calls for a minimum of four dwelling units per acre, there are no adopted regulations to ensure that.

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42. Without some mechanism to assure minimum urban densities, the new residential portions of the UGA are likely to become suburban sprawl.
43. Table 3-5 of the comprehensive plan shows a total of 750 acres of new commercial/industrial land allocated to Bayview Ridge prior to the adoption of Ordinance 020060007. The Bayview Ridge UGA has been sized to accommodate those 750 acres of new commercial/industrial land.
44. Subarea Plan Policies 3A-1.5, 3A-1.9 and 4A-2.6 encourage mixed use development, especially the mix of commercial and light industrial uses with residential units in a PRD. The development regulations for the Bayview Ridge UGA limit the uses in the industrial zones to industrial and related uses. SCC 14.16.180 and 14.16.190.
45. The LOS standard for streets and intersections in the Bayview Ridge UGA as set out in both the Subarea Plan and the Comprehensive Plan is an LOS standard of C for streets and D for intersections.
46. Some of the information relied upon in the plan to set an LOS for fire service is out of date.
47. For fire services, the Subarea Plan notes that "'the optimum configuration of district boundaries to protect final build-out of the Bayview Ridge UGA is *under discussion*" and "Negotiations ensuring a coordinated approach to delivery of fire protection serves are *in process*"
48. SCC 14.28.040(2)(6) and SCC 14.28.030(3) provide for the denial of project permit approval where police services cannot meet the established LOS standard.
49. The Subarea Plan reflects that there is currently a surplus of commissioned deputies available in the Sheriff's Office available to serve the Bayview Ridge Subarea.
50. As to sewer service, the Bayview Ridge Subarea Plan indicates that Phase II of the City of Burlington waste-water treatment plan expansion project will provide sufficient capacity to treat sufficient flows through 2015.

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51. Subarea Plan Table 7-4 “Planned Park Projects 2001-2006” is already out of date in 2007 and relies on 1998 cost data for proposed parks projects.

52. Policy 6A-1.2(a) creates an exception to transportation LOS standards if the proponents make a fair share contribution to a regional improvement in the case of sites located where regional improvements are the only means to improve or maintain the level of service existing prior to the development. The exception contains the further limitation that the improvement must be planned for construction within five years.

53. Policy 6A-1.2(a) allows a reduction below the adopted LOS where there is no reasonable assurance the regional improvement will be constructed. While the exception provides that while regional improvements must be planned for construction within five years, there is no requirement that there be a strategy for funding these improvements.

54. Subarea Policy 6A-1.2(c) creates another exception from the concurrency requirement for “Other exceptions . . . if consistent with the policy intent”.

55. CPP 12.9 provides:

> New development shall pay for or provide for its share of new infrastructure through impact fees or as a condition of development through the environmental review process.

56. Petitioners failed to brief or argue Issues 17 and 19.

57. Petitioners do not offer evidence to demonstrate how a project that is SEPA exempt would have an impact on the local infrastructure that would not be addressed by the County’s existing mitigation measures

58. SCC 14.28.105(13) allows urban levels of development without concurrent urban levels of public sewer service.

59. While the Subarea Plan indicates that the City of Burlington has sewer capacity to serve the UGA, no evidence exists in the record about how and when the residential areas in particular will be served.

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60. SCC 14.28.105(13) allows urban development in the Bayview Ridge UGA without ensuring that public sewer will be available when that urban development occurs and allows for development that could preclude the urban development for which the UGA is designated.

Findings of Fact Related to Determination of Invalidity

61. SCC 14.28.105(13) generally requires that any development in the Bayview Ridge UGA connect to public sewer as a condition of approval.
62. However, SCC 14.28.105(13) contains an exception to the requirement to connect to public sewer that allows urban levels of development, both residential and industrial, on holding tanks if there is no sewer line within 200 feet.
63. The exemption to the requirement for public sewer in SCC 14.28.105(13) does not ensure that public facilities and services necessary to support development will be adequate to serve the development at the time the development is available for occupancy.
64. Urban levels of development require urban levels of service and key among urban services is public sewer.

VII. CONCLUSIONS OF LAW

A. The Board has jurisdiction over the parties and subject matter of WWGMHB Case Nos. 97-2-0060c and 07-2-0002.

B. Petitioners Skagit Growthwatch, Citizens to Protect Bayview Ridge and Gerald Steel have standing to bring the petition in WWGMHB Case No. 07-2-0002.

C. Participant Friends of Skagit County has standing to participate WWGMHB Case No. 97-2-0060c.

D. Petitioners Skagit Growthwatch, Citizens to Protect Bayview Ridge and Gerald Steel have standing to participate WWGMHB Case No. 97-2-0060c.

E. The petition in WWGMHB Case No. 07-2-0002 was timely filed.

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F. Intervenors Bouslog Investments LLC, JBK Investments LLC, and John Bouslog have standing to participate in WWGMHB Case No. 97-2-0060c and WWGMHB Case No. 07-2-0002.

G. Skagit County has failed to update its comprehensive plan policies and development regulations in the time required by RCW 36.70A.130(4).

H. The use of the comprehensive plan planning period (1995-2015) for the Subarea Plan is consistent between the comprehensive plan and the Subarea Plan as required by RCW 36.70A.070 and 36.70A.080(2).

I. The Bayview Ridge Capital Facilities Plan does not summarize projects and funding for the six-year period following the establishment of the Bayview Ridge UGA as required by RCW 36.70A.070(3)(d). Furthermore, it is not consistent with the most recent Skagit County CIP, which should also cover the same period, so it does not comply with RCW 36.70A.070.

J. The Subarea Plan complies with RCW 36.70A.070(4) in regard to the Bayview Ridge UGA. With the exception of public sewer service, the Subarea Plan for the Bayview Ridge UGA, complies with the requirements of RCW 36.70A.070(3)(a).

K. The capital facilities element for the Bayview Ridge UGA storm water facilities complies with RCW 36.70A.070(1).

L. The capital facilities element for the Bayview Ridge UGA storm-water drainage and public safety facilities complies with RCW 36.70A.070 (3)(b) and (c).

M. The capital facilities element for the Bayview Ridge UGA water provider, Skagit County PUD No. 1, complies with RCW 36.70A. 070 (3) (b) and (c).

N. The Bayview Ridge UGA capital facilities element for fire districts and the Burlington Edison School District do not comply with RCW 36.70A.070 (3) (b) and (c).

O. The six-year CIP for the Bayview Ridge Subarea does not comply with RCW 36.70A.070 (3) (d).

P. Petitioners have not carried their burden of proof that the County has set inadequate, ambiguous, unreliable, inconsistent levels of service that do not comply with RCW 36.70A.020(1), (2), (5) and (12) and 36.70A.070, -.130, -.110, -.115, and -.210.

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Q. The Utility Element of Bayview Ridge Subarea Plan, combined with County's Comprehensive Plan, complies with RCW 36.70A.070 (4).

R. The allocation of 1,786 new residents to the Bayview Ridge UGA to 2015 and the inclusion of 233 acres of land for new residential development comply with the requirements of RCW 36.70A.110 to size a UGA in accordance with its population allocation.

S. The allocation of an additional 211 residents to 2015 (a total population of 3,631) to the Bayview Ridge UGA and an additional 45-74 acres fails to comply with the requirements of RCW 36.70A.110 for urban growth areas to be sized according to their population allocation.

T. The addition of population in the Subarea Plan beyond that in the comprehensive plan and the inconsistent use of population and residential land figures in the Subarea Plan itself violates the requirements of RCW 36.70A.070 for an internally consistent comprehensive plan; as does.

U. The failure to ensure that new residential development within the new UGA will occur at urban densities fails to comply with RCW 36.70A.110 and Goals 1 and 2 of the GMA (36.70A.020(1) and (2)) to encourage urban growth and reduce sprawl.

V. The sizing of the Bayview Ridge UGA to include 750 acres of new commercial/industrial land is consistent with the allocation for that purpose adopted in the comprehensive plan in 2000. It therefore complies with RCW 36.70A.070 and 36.70A.080(2). The challenge to the allocation itself is untimely. RCW 36.70A.290(2).

W. The exceptions to level of service (LOS) standards created by Policy 6A-1.2(a) allow a LOS to be degraded indefinitely and are therefore not compliant with RCW 30.70A.070(6).

X. The broad grant of administrative discretion to vary from the established LOS created by Policy 6A-1.2(c) also is noncompliant with RCW 36.70A.070(6).

Y. The County has adequate means in place to implement CPP 12.9 in compliance with RCW 36.70A.070 and Goal 12 (RCW 36.70A.020(12)).

Z. SCC 14.28.105(13) fails to comply with RCW 36.70A.110, requiring urban levels of service for urban development, and the concurrency goal (Goal 12).

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AA. The exemption to the general requirement for hook-up to public sewer as a condition of approval found in SCC 14.28.105(13) substantially interferes with the fulfillment of Goal 12 and is therefore invalid.

VIII. ORDER

The County is required to achieve compliance in accordance with this decision within 180 days of the date of this order. However, if the County wishes to pursue compliance in conjunction with its update of its comprehensive plan policies and development regulations pursuant to RCW 36.70A.130, the Board will entertain a motion within 30 days of the date of this order for an alternative schedule.

Unless changed by subsequent order, the following shall be the schedule for compliance in the coordinated cases:

Compliance Due	February 6, 2008
Compliance Report (County to file and serve on all parties)	February 13, 2008
Any Objections to a Finding of Compliance Due	March 6, 2008
County's Response Due	March 27, 2008
Compliance Hearing (location to be determined)	April 4, 2008

The Board incorporates the findings and conclusions of its Order on Issue No. 1-Failure to Timely Adopt Update Required by RCW 36.70A.130(4), April 27, by reference in this final decision and order.

Dated this 6th day of August, 2007.

_____
Margery Hite, Board Member

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Holly Gadbaw, Board Member

James McNamara, Board Member

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

Reconsideration. Pursuant to WAC 242-02-832, you have ten (10) days from the 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)

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