

1 BEFORE THE WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

2 KATHLEEN HEIKKILA and GLEN COOK,

3
4 Petitioner,

5 v.

6
7 CITY OF WINLOCK,

8 Respondent.
9

CASE NO. 09-2-00013c

FINAL DECISION AND ORDER

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12 **I. SYNOPSIS**

13 The Petitioners challenged the adoption of the City of Winlock's Ordinance Nos. 943 and
14 945 together with the related environmental review. Those ordinances constituted a revision
15 of the City's development regulations and zoning map.
16

17 The Board finds that challenges to the public participation process, the consideration and
18 adoption process and allegations of a failure of the development regulations to implement
19 the comprehensive plan have not been established with one exception: the failure of the
20 regulations to implement WCP Policy 2.6.2 regarding greenbelts.
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23 The Board concludes that the City is out of compliance with RCW 36.70A.130 as it has not
24 reviewed its comprehensive plan and revised it, if necessary, pursuant to GMA
25 requirements.
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27 Finally, while the Board has determined the SEPA review timing has not been shown to be
28 clearly erroneous, Winlock did fail to comply with SEPA provisions related to reliance on
29 prior environmental documents to satisfy environmental review requirements. Consequently,
30 issuance of a Determination of Non-Significance in October 2008 was clearly erroneous.
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II. PROCEDURAL HISTORY

Glen Cook (Cook) filed a Petition for Review (PFR) on March 13, 2009. This matter was assigned Case No. 09-2-0008. Kathleen Heikkila (Heikkila) filed a PFR on March 20, 2009, and an amended PFR on April 20, 2009. This matter was assigned Case No. 09-2-0009. Cook filed a second PFR on June 15, 2009, which was assigned Case No. 09-2-0013. These cases were consolidated under Case No. 09-2-0013c.¹ Both Cook and Heikkila's PFRs challenge provisions of the City of Winlock's (Winlock or the City) Ordinance Nos. 943 and 945 (the Ordinance, Ordinances, or development regulations) which constituted a complete revision of the City's development regulations and zoning map, and also adopted critical areas regulations.

The Hearing on the Merits (HOM) was held in Winlock, Washington on August 27, 2009. Cook appeared through his attorney, Clydia J. Cuykendall. Heikkila appeared *pro se*. The City appeared through its attorney, Mark C. Scheibmeir. Board members James McNamara, Nina Carter and William Roehl were present with Mr. Roehl presiding.

III. PRELIMINARY MATTERS

Petitioner Cook filed a motion on July 7, 2009,² by which he requested the Board allow an additional exhibit - a petition signed by approximately 400 Winlock business owners and citizens which had been presented to the City Council on December 8, 2009. The Board did not issue an order on that motion prior to the time of the HOM but noted at the HOM that it would do so in the Final Decision and Order (FDO).

RCW 36.70A .290 (4) provides: (Emphasis added)

The Board shall base its decision on the record developed by the city, county, or the state *and supplemented with additional evidence if the board determines that such additional evidence would be necessary or of substantial assistance to the board in reaching its decision.*

¹ Order of Consolidation and Notice of Hearing and Preliminary Schedule, June 18, 2009.

² Petitioner Cook's Motion To Add Exhibit.

1 The Board finds that admitting the exhibit would not be necessary or of substantial
2 assistance to the Board. Furthermore, most, if not all, land use decisions give rise to
3 conflicting opinions. This petition was presented to the Winlock City Council prior to
4 adopting the challenged actions and, therefore, the Board presumes that those conflicts
5 were addressed and determined by the City Council. The Board's role is not to supplant
6 the City Council's decision; its role is to determine if those decisions comply with the Growth
7 Management Act. Petitioner Cook's Motion to Supplement the Record is denied.
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10 **IV. PRESUMPTION OF VALIDITY, BURDEN OF PROOF,
11 AND STANDARD OF REVIEW**

12 Pursuant to RCW 36.70A.320(1), comprehensive plans and development regulations, and
13 amendments to them, are presumed valid upon adoption.³ This presumption creates a high
14 threshold for challengers as the burden is on the petitioners to demonstrate that any action
15 taken by Winlock is not in compliance with the GMA.⁴
16

17 The Board is charged with adjudicating GMA compliance and, when necessary, invalidating
18 noncompliant plans and development regulations.⁵ The scope of the Board's review is
19 limited to determining whether Winlock has achieved compliance with the GMA only with
20 respect to those issues presented in a timely petition for review.⁶ The GMA directs that the
21 Board, after full consideration of the petition, shall determine whether there is compliance
22 with the requirements of the GMA.⁷ The Board shall find compliance unless it determines
23 that Winlock's action is clearly erroneous in view of the entire record before the Board and in
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28 ³ RCW 36.70A.320(1) provides: [Except for the shoreline element of a comprehensive plan and applicable
29 development regulations] comprehensive plans and development regulations, and amendments thereto,
30 adopted under this chapter are presumed valid upon adoption.

31 ⁴ RCW 36.70A.320(2) provides: [Except when city or county is subject to a Determination of Invalidity] the
32 burden is on the petitioner to demonstrate that any action taken by a state agency, county, or city under this
chapter is not in compliance with the requirements of this chapter.

⁵ RCW 36.70A.280, RCW 36.70A.302.

⁶ RCW 36.70A.290(1).

⁷ RCW 36.70A.320(3).

1 light of the goals and requirements of the GMA.⁸ In order to find Winlock’s action clearly
2 erroneous, the Board must be “left with the firm and definite conviction that a mistake has
3 been committed.”⁹

4
5 In reviewing the planning decisions of cities and counties, the Board is instructed to
6 recognize “the broad range of discretion that may be exercised by counties and cities” and
7 to “grant deference to counties and cities in how they plan for growth.”¹⁰ However,
8 Winlock’s actions are not boundless; their actions must be consistent with the goals and
9 requirements of the GMA.¹¹

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11 Thus, the burden is on Petitioners to overcome the presumption of validity and demonstrate
12 that the challenged action taken by Winlock is clearly erroneous in light of the goals and
13 requirements of the GMA.

14
15 Both Petitioners have asserted the City violated the State Environmental Policy Act (SEPA),
16 Chapter 43.21C RCW. Unlike the GMA, which at RCW 36.70A.320(3) directs the Board to
17 use a “clearly erroneous” standard of review, SEPA does not have a parallel provision.

18 Court cases dealing with an affirmative threshold determination (Determination of
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22 ⁸ RCW 36.70A.320(3).

23 ⁹ *City of Arlington v. CPSGMHB*, 162 Wn.2d 768, 778, 193 P.3d 1077 (2008)(Citing to *Dept. of Ecology v. PUD*
24 *District No. 1 of Jefferson County*, 121 Wn.2d 179, 201, 849 P.2d 646 1993); See also, *Swinomish Tribe, et al*
25 *v. WWGMHB*, 161 Wn.2d 415, 423-24, 166 P.3d 1198 (2007); *Lewis County v. WWGMHB*, 157 Wn.2d 488,
26 497-98, 139 P.3d 1096 (2006).

27 ¹⁰ RCW 36.70A.3201 provides, in relevant part: In recognition of the broad range of discretion that may be
28 exercised by counties and cities consistent with the requirements of this chapter, the legislature intends for the
29 boards to grant deference to counties and cities in how they plan for growth, consistent with the requirements
30 and goals of this chapter. Local comprehensive plans and development regulations require counties and cities
31 to balance priorities and options for action in full consideration of local circumstances. The legislature finds that
32 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.

¹¹ *King County v. CPSGMHB*, 142 Wn.2d 543, 561, 14 P.2d 133 (2000) (Local discretion is bounded by the
goals and requirements of the GMA). See also, *Swinomish*, 161 Wn.2d at 423-24. In *Swinomish*, as to the
degree of deference to be granted under the clearly erroneous standard, the Supreme Court has stated: The
amount [of deference] is neither unlimited nor does it approximate a rubber stamp. It requires the Board to give
the [jurisdiction's] actions a “critical review” and is a “more intense standard of review” than the arbitrary and
capricious standard. *Id.* at 435, Fn.8.

1 Significance (DS)) apply an “arbitrary and capricious” standard while those dealing with
2 negative threshold determinations (Determination of Non-Significance (DNS) or Mitigated
3 DNS) generally apply the same standard of review utilized by the Board, the “clearly
4 erroneous” standard.¹² The reasoning for the different standards when addressing
5 affirmative as opposed to negative threshold determinations was set forth by the Court in
6 *Norway Hill Preservation* and is linked to the important role a threshold determination plays
7 in the SEPA process. However, when reviewing Winlock’s determination, the Board must
8 accord substantial weight to its decision to issue a DNS and not require an EIS.¹³
9

10 **V. BOARD JURISDICTION**

11
12 The Board finds that the Petition for Review was timely filed, pursuant to RCW
13 36.70A.290(2). The Board finds that Petitioners have standing to appear before the Board,
14 pursuant to RCW 36.70A.280(2).¹⁴ The Board finds that it has jurisdiction over the subject
15 matter of the petition pursuant to RCW 36.70A.280(1).
16

17 **VI. DISCUSSION OF THE ISSUES**

18 In 2005, the City of Winlock began the process of updating its Comprehensive Plan to
19 reflect the recent expansion of its Urban Growth Area (UGA) easterly from the City limits
20 along State Route 505 to Interstate 5. As part of this update process, the City issued an
21 Environmental Impact Statement (EIS) addressing the environmental impacts of the
22 updated Comprehensive Plan and the expanded UGA. The City enacted its updated
23 Comprehensive Plan with the adoption of Ordinance 892 in January 2006.
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29 ¹² See e.g. Affirmative DS (requiring EIS) is reviewed under arbitrary and capricious standard – *Short v.*
30 *Clallam County*, 22 Wn.App. 825, 830 (1979); DNS/MDNS is reviewed under clearly erroneous standard -
31 *Murden Cove v. Pierce County*, 41 Wn.App. 515, 523 (1985); *Norway Hill v. King County*, 87 Wn.2d 267, 275
(1976); *Anderson v. Pierce County*, 86 Wn.App.290 (1997).

32 ¹³ RCW 43.21C.090.

¹⁴ The Board’s determination of standing as to Petitioners’ SEPA claims is set forth in its June 1, 2009 Order
on Motions, Case 09-2-0009c (Consolidated to 09-2-0013c) as modified by the June 30, 2009 Order on
Reconsideration, Case 09-2-0013c.

1 However, despite the GMA's requirement to have development regulations to implement a
2 comprehensive plan's goals and policies, the City did not begin the update process for its
3 development regulations concurrently with its Comprehensive Plan update. After
4 consideration of the existing regulations, which were comprised of approximately 12
5 separate ordinances, the City "decided to comprehensively update all of its regulations to
6 allow for a seamless fit between development in the new UGA and the existing City, and
7 create a more sophisticated approach toward planning than in the past."¹⁵ This
8 comprehensive update of the development regulations began in February 2008.
9

10
11 The City's update process involved contracting with consulting planners and numerous
12 workshops, open houses, and meetings of the Planning Commission. During this process
13 various drafts of the development regulations were presented to the Planning Commission
14 and made available for public review and comment. The Planning Commission's work
15 culminated with a public hearing on October 1, 2008, where it unanimously voted to forward
16 the draft development regulations to the City Council.¹⁶
17

18 In conjunction with this draft of the proposed development regulations, pursuant to SEPA,
19 the City prepared an Environmental Checklist and, on October 15, 2008, issued a
20 Determination of Non-Significance (DNS).¹⁷
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23 From October 2008 to January 2009, the Winlock City Council held workshops and public
24 hearings on the development regulations. As a result of these meetings, modifications
25 were made to the proposed regulations. On January 12, 2009, after conducting a
26 workshop on the final draft of the development regulations, the City Council unanimously
27 approved Ordinance No. 943 which repealed previously enacted land use regulations and
28 adopted the new, comprehensive Development Regulations and a Zoning Map.
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¹⁵ City's Response Brief, at 2.

¹⁶ Exhibit 15, Minutes of Oct. 1, 2008 Planning Commission Hearing.

¹⁷ Exhibits 111 and 112.

1 In March 2009, Petitioners filed PFRs challenging the City's adoption of Ordinance No. 943
2 and the related environmental review. Subsequent to these filings, on April 13, 2009, the
3 City re-adopted the Zoning Map via Ordinance No. 945. Both Petitioners, Heikkila by an
4 amendment to her existing PFR and Cook by the filing of a new PFR, included Ordinance
5 No. 945 in their challenges.¹⁸
6

7 The issues presented by Petitioners in this appeal raise GMA and SEPA challenges. In
8 regards to the GMA, Petitioners allege the development regulations are inconsistent with
9 and fail to conform with various goals and policies of the City's Comprehensive Plan, violate
10 public participation requirements, and place unnecessary restrictions and burdens on
11 businesses. In addition, Heikkila contends Winlock failed to update its Comprehensive
12 Plan and development regulations by the statutory deadline of December 1, 2008. As for
13 SEPA, both Petitioners claim the environmental review process was flawed based primarily
14 on an inadequate Environmental Checklist. The Board will address each of these
15 assertions in turn.
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18 **1. Failure to Act**

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20 **Heikkila Issue 5:** *Did the City of Winlock fail to comply with RCW 36.70A.130 because the*
21 *City Council failed to take legislative action to review and update its comprehensive plan by*
22 *December 1, 2008, according to the schedule established in RCW 36.70A.130(4)(b) and*
23 *(5)(c)?*

24 If the Board were to determine that the City has a non-compliant Comprehensive Plan, there
25 would be no need to address the question of whether the newly adopted development
26 regulations implement a non-compliant Plan's goals and policies. Consequently, the Board
27 elects to first address Heikkila's Issue 5. The GMA requires not only that a jurisdiction's
28 comprehensive plan comply with the GMA but also its development regulations.¹⁹ If
29 development regulations are adopted which are intended to implement a non-compliant
30 comprehensive plan then they also, by implication, are non-compliant with the GMA.
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¹⁸ Heikkila Amended PFR, filed April 20, 2009; Cook PFR Case No. 09-2-0013, filed June 15, 2009.

¹⁹ RCW 36.70A.040.

1 While the Board does find, as set forth below, that the City is in violation of RCW
2 36.70A.130 for failure to review and revise its comprehensive plan by December 1, 2008,
3 the Board cannot conclude that the 2005 Comprehensive Plan fails to comply with the GMA
4 - it is a validly adopted comprehensive plan which the Board views as an annual update
5 adopted in early 2006.
6

7 Having said that, Heikkila's Issue 5 alleges a failure of the City to adopt its seven year
8 comprehensive plan update on a timely basis as required by RCW 36.70A.130. This issue,
9 as it relates to Winlock, has a convoluted history. In *Harader, et al. v. Winlock*, WWGMHB,
10 Case Number 06-2-0007,²⁰ the Board considered a similar challenge based on RCW
11 36.70A.130 which addressed the City's adoption of comprehensive plan revisions in early
12 2006 (the "2005 Comprehensive Plan").²¹ In that case the Board initially held that Winlock
13 had failed to meet its update requirements as there was "no public notice that the
14 [36.70A.130] review and revision was under consideration nor was there a finding in any
15 ordinance of the review that had taken place or that revisions were or were not undertaken
16 as a result".²² Subsequent to that order, the Legislature granted some jurisdictions,
17 including Winlock, an additional three years (until December 1, 2008) to review and revise
18 their comprehensive plans and development regulations.²³ As a result, the Board found the
19 City was in compliance with the GMA and closed the case.²⁴ The December 1, 2008 review
20 and revise compliance deadline has come and gone and Heikkila now states that the "City
21 has taken no further action to review or update its comprehensive plan."²⁵
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25 In response, the City concedes it has not enacted a new ordinance which includes findings
26 that the 2005 Comprehensive Plan actually was a completed RCW 36.70A.130 update.
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29 ²⁰ Petitioner Heikkila was a party to Case 06-2-0007.

30 ²¹ *Harader, et al v. Winlock*, Final Decision and Order (August 30, 2006).

31 ²² *Harader*, FDO at 2.

32 ²³ See RCW 36.70A.130(5)(c)

²⁴ December 5, 2007, Order Dismissing Non-Compliance as to Winlock and Closing Case. With its motion to dismiss, Winlock specifically argued that it was not required to complete its RCW 36.70A.130 review/revise until December 2008 and, therefore the Board's holding in the August 2006 FDO could not be upheld.

²⁵ Petitioner Heikkila's Prehearing Brief at 18.

1 The City states it, and all affected agencies, have regarded the 2005 plan as complete and
2 further states that "Heikkila is hard-pressed to find reasons for additional updating of the
3 plan".²⁶
4

5 ***Board Analysis and Findings***

6 Heikkila is not "hard-pressed." The requirement of RCW 36.70A.130 is clear - Winlock was
7 required to review and revise, if necessary, its comprehensive plan by December 1, 2008.²⁷
8

9 While it adopted a revised comprehensive plan in early 2006, there has been no action
10 taken by the City to address the concerns raised in the previous matter before the Board;
11 concerns which appear to remain as review of the 2005 Comprehensive Plan in this case
12 reflects many of the same facts. As with the prior case, there is no evidence in the Record
13 reflecting that there was public notice that the .130 mandated review and revision was under
14 consideration nor was there a finding in any ordinance (1) of the review that had taken place
15 or (2) that revisions were or were not undertaken as a result. In this regard, the Board finds
16 the City of Winlock, pursuant to RCW 36.70A.130, is out of compliance with the requirement
17 to review its comprehensive plan and revise it, if necessary, pursuant to all requirements of
18 the GMA.
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21 Furthermore, the City concedes it has not enacted a new ordinance to reflect the fact that
22 the 2005 Comprehensive Plan was its mandated update. However, the 2005 Plan can still
23 be considered by the Board as merely an annual comprehensive plan revision and, on that
24 basis, the Board can review subsequently adopted development regulations for consistency
25 as addressed in the Petitioners issue statements below.
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32 ²⁶ Respondent City of Winlock's Prehearing Brief at 35.

²⁷ In fact, in the 2006 Case, the City argued they were not required to update their comprehensive plan until 2008 and thus what was adopted in 2006 wasn't intended to be the RCW 36.70A.130 update.

1 **Conclusion**

2 The Board concludes that the City of Winlock has failed to update its Comprehensive Plan
3 in accordance with all GMA requirements by December 1, 2008 as required by RCW
4 36.70A.130.

5
6 **2. Public Participation**

7 **Cook Issue 3:** *There was a defective public participation and review process used by the*
8 *City to adopt Ord. 943 and enact the accompanying rezone, and was not compliant with*
9 *RCW 36.70A.035(2), WAC 365-195-600, and 365-195-630.*

10
11 **Heikkila Issue 4:** *Did the City of Winlock adoption of its development code and zoning map*
12 *in January, 2009, fail to comply with the requirements of RCW 36.70A.120 and 36.70A.140*
13 *because the Mayor, City Council, and City Attorney discouraged discussions concerning the*
14 *development code and zoning map at open public meetings of the Planning Commission*
15 *after November 5, 2008, and also discouraged public comment from the Planning*
16 *Commission to the Council after November 5, which was inconsistent with Policies 2.11.2*
17 *and 3.2.1 of the comprehensive plan and thereby failed to provide for open discussion and*
18 *continuous public participation; and does this result in a substantial interference with the*
19 *fulfillment of GMA goals, specifically RCW 36.70A.020(11)?*

20
21 **Heikkila Issue 6:** *Did the City of Winlock adoption of its zoning map in January, 2009, fail to*
22 *comply with the requirements of RCW 36.70A.140 because the City failed to inform the*
23 *public that the new zoning map changed the future land use map adopted by the*
24 *comprehensive plan and thereby failed to provide effective notice for public participation?*

25 Cook's Issue 3 and Heikkila's Issues 4 and 6 raise claims of defective or inadequate public
26 participation. Cook argues that the City's public participation process violated RCW
27 36.70A.035(2) and underlying sections of the Washington Administrative Code (WAC),
28 including WAC 365-195-630(2).²⁸ Heikkila, as to Issue 4, argues that the City discouraged
29 continuous public participation after November 5, 2008, in violation of RCW 36.70A.120 and
30 .140.²⁹ In regards Issue 6, Heikkila alleges an additional violation of RCW 36.70A.140

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²⁸ Petitioner Cook's Prehearing Brief at 24 and 32.

²⁹ Petitioner Heikkila's Pre Hearing Brief at 11.

1 resulted from the City's failure to ". . . inform the public that the new zoning map changed
2 the comprehensive plan map . . ."30

3
4 **Board Analysis and Findings**

5 RCW 36.70A.140, in relevant part, requires jurisdictions to adopt plans for public
6 participation:

7 Each county and city that is required or chooses to plan under RCW 36.70A.040
8 shall establish and broadly disseminate to the public a public participation
9 program identifying procedures providing for early and continuous public
10 participation in the development and amendment of comprehensive land use
11 plans and development regulations implementing such plans. The procedures
12 shall provide for broad dissemination of proposals and alternatives, opportunity
13 for written comments, public meetings after effective notice, provision for open
14 discussion, communication programs, information services, and consideration of
and response to public comments.

15 As is evident, this section of the GMA requires local jurisdictions to adopt public participation
16 programs. However, Heikkila has not raised a challenge based on the City's failure to
17 establish such a program, the features of that program, or the City's failure to follow its
18 adopted public participation program.³¹ Rather, she alleges the City failed "to inform the
19 public that the new zoning map changed the (comprehensive plan's) future land use map".³²
20 Heikkila's Issue 6 which asserted failure to inform the public is not within the purview of the
21 .140 mandate. Consequently, the Board finds that Heikkila has not established a violation
22 of RCW 36.70A.140.
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25 Heikkila's Issue 4 also raises a challenge based on RCW 36.70A.120,

26 Each county and city that is required or chooses to plan under RCW 36.70A.040
27 shall perform its activities and make capital budget decisions in conformity with
28 its comprehensive plan. RCW 36.70A.120.
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31 ³⁰ Id. at 20.
32 ³¹ See *Spraitzer v. Island County*, Case No. 08-200023, FDO Nov. 10, 2008. In addition, unless adopted by one of the challenged Ordinances, such an assertion would undoubtedly be untimely and barred by RCW 36.70A.290.

1 and she lists those portions of the City's Comprehensive Plan which she alleges were
2 violated.³³ Clearly this issue pertains to public participation and does not involve capital
3 budget decisions. The question is whether it involves "activities" as that term is used in
4 .120. While the Western Board has not addressed this question directly, the Central Board
5 held in *Senior Housing Assistance Group (SHAG) v. Lynnwood*:³⁴

6
7 RCW 36.70A.120 requires that GMA planning jurisdictions "shall perform its
8 activities. . . in conformity with its comprehensive Plan." . . . SHAG . . . contends
9 that while "activity" is not defined in the GMA, the term certainly encompasses
10 any development regulations. The Board agrees that adoption of a permanent
11 development regulation, or amendments thereto, would be a "planning activity"
12 as that term is used in .120.

13 Here the challenges presented with Heikkila's Issue 4 are directed at the public participation
14 process involved in developing the Ordinances and the allegation is that the process
15 violated two sections of the City' Comprehensive Plan.³⁵ The Board finds such a challenge
16 is within the Board's purview³⁶ and that issue is addressed below.

17
18 Cook's Issue 3 sets forth a public participation challenge based on RCW 36.70A.035(2),
19 WAC 365-195-600 and 365-195-630. WAC 365-195-600(1), in essence, repeats the RCW
20 36.70A.140 requirement for jurisdictions to adopt public participation programs. As noted in
21 relation to Heikkila's .140 challenge, the adoption of such a program is not before the Board
22 as this has not been challenged by either Petitioner.

23
24 Cook contends Winlock violated various provisions of WAC 365-195-600(2), such as failing
25 to: fully use the Planning Commission as a liaison; distribute drafts of proposals and
26 alternatives in a timely manner, and; maintain a summary of public comments within the
27

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29 _____
30 ³³ Petitioner Heikkila's Pre-Hearing Brief at 20.

31 ³⁴ *SHAG, et al v. City of Lynnwood*, CPSGMHB Case No.01-3-0014, Order on Motions (Aug. 3, 2001).

32 ³⁵ Petitioner Heikkila's Pre-Hearing Brief at 11.

³⁶ The Western Board stated in *Friends of Guemes* while reviewing a claim under .120 that a change in ferry
schedules was not within the purview of .120: "Here again, the Board finds that the Resolution is not a
comprehensive plan amendment or a development regulation", thus implying that development regulations are
in fact "planning activities".

1 record.³⁷ However, the recommendations set forth in WAC 365-195-600(2) are just that -
2 suggestions of possible choices a jurisdiction may elect to use in providing for adequate
3 public participation and, as such, Winlock was not required to follow these
4 recommendations.

5
6 Cook also argues the development regulations establish a process for Comprehensive Plan
7 amendments which would violate public participation requirements. He argues that process,
8 established by Winlock Code Section 2.020.010,³⁸ would be contrary to the requirements of
9 RCW 36.70A.035(2) and WAC 365-195-630(2)³⁹. Cook suggests the Type III process
10 (involving hearing examiner review) would allow for comprehensive plan map amendments
11 to be considered at any time contrary to WAC 365-195-630(2) which limits the consideration
12 of such amendments to once a year, requires that they be considered by the legislative
13 body, and that they be considered concurrently so as to evaluate cumulative effects.

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16 The City states that reference to a Type III process being applicable to any comprehensive
17 plan map amendment was a "scrivener's error" and would be corrected along with other any
18 other errata subsequently discovered.⁴⁰

19
20 First of all, RCW 36.70A.035(2) does not address public participation in the manner
21 suggested by Cook. This provision of the GMA addresses the need for additional
22 opportunity for public review and comment if the legislative body considers a change after
23 the time for public review. Furthermore, Cook fails to brief this issue and, therefore, it is
24 deemed abandoned.⁴¹

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28 ³⁷ Cook Prehearing Brief, at 24-32.

29 ³⁸ "The boundaries of the comprehensive plan map designations and zoning districts established on maps by
30 this title, the classification of uses herein, or other provisions of this title may be amended as provided herein
31 through a Type III process." Ord. 943, Sec. 2.020.010.

32 ³⁹ Petitioner Cook's Prehearing Brief at 32, 33.

⁴⁰ Respondent City of Winlock's Prehearing Brief at 26.

⁴¹ *WEC v. Whatcom County*, Case No. 95-2-0071, FDO, Dec. 20, 1995. Cook's brief contains but a single
sentence regarding .035 (2): "RCW 36.70A.035(2) also requires these changes be reviewed by the legislative
body as a Type IV process."

1 In regards to the alleged violation of WAC 365-195-630(2), that code section does provide
2 that comprehensive plan amendments are to be considered no more than once a year and
3 that the amendments are to be considered concurrently so the cumulative effects can be
4 ascertained. Winlock Code Section 2.020.010 primarily refers to development regulation
5 and zoning map amendments which are not covered by the annual review requirements of
6 WAC 365-195-630(2). However, it does appear the Winlock Code language would arguably
7 allow for comprehensive plan map boundaries to be adjusted through a Type III process.
8 Whether or not the language of Winlock City Code 2.020.010 was a scrivener's error, as
9 suggested by the City, the City should correct it. As noted elsewhere in this decision,
10 although the provisions of WAC 365-195 are generally seen as recommendations and
11 therefore not susceptible in and of themselves to a finding of non-compliance, WAC 365-
12 195-630(2) restates the requirements of RCW 36.70A.130(2)(a) and (b) which provide for
13 annual limits on comprehensive plan amendments and concurrent consideration of them.
14 Cook, however, has not alleged a violation of RCW 36.70A.130(2) and the Board will not
15 address violations not raised in a Petition for Review.⁴² Therefore, although Cook raises a
16 valid concern, he has failed to base that concern on a provision of the GMA upon which the
17 Board could base a finding of non-compliance.⁴³
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21 The public participation challenge raised in Heikkila's Issue 4 is based on RCW 36.70A.120.
22 She alleges the public process violated two provisions of the City's Plan:

- 23 • WCP Policy 2.11.2: Encourage citizen participation throughout the land use
24 planning and administration process
- 25 • WCP Policy 3.2.1: Winlock shall conduct public business in a fair and open
26 manner, and encourage the public to participate in all phases of the planning
27 process

28
29 A review of the public participation provided by the City illustrates an extensive, lengthy
30 process incorporating many of the recommendations set forth in the GMA and WAC 365-
31

32 _____
⁴² RCW 36.70A.280 and .290, WAC 242-02-210(2)(c).

⁴³ The Board views this violation as only tangentially involving public participation.

1 195-600. The Planning Commission spent approximately eight months drafting and
2 reviewing the development regulations. That process was preceded by publication and
3 posting of a notice of commencement of the process.⁴⁴ The approximately twelve regular
4 Planning Commission meetings were posted.⁴⁵ Open house notices were posted, published
5 and mailed to every utility customer.⁴⁶ Public hearings were published and posted.⁴⁷ The
6 Planning Commission forwarded the Draft Development Regulations to the City Council in
7 October 2008. Upon receiving the Draft Development Regulations, the Council held a
8 workshop on October 27, 2008 that was published and posted as were two subsequent
9 public hearings held in November and December.⁴⁸ The Council also allowed comment on
10 the Draft Development Regulations at its regular meetings in November and December,
11 2008 and in January, 2009.⁴⁹

12
13
14 While both Cook and Heikkila argue the City discouraged Planning Commission
15 involvement *after* the Planning Commission forwarded the Draft Development Regulations
16 to the City Council, once the Commission took action to send the proposal to the City
17 Council, it was properly before that body and the Planning Commission's role was complete.
18 The Council could have referred the Development Regulations back to the Planning
19 Commission but chose not to and adopted them with Ordinance No. 943 on January 12,
20 2009 after making further revisions.

21
22
23 Heikkila and Cook are clearly dissatisfied with the final version of the development
24 regulations, but it is not the Board's role to second-guess the City Council's decision.
25 Rather, the role of the Board, in regards to the RCW 36.70A.120 issue, is to ensure the City
26 met the GMA requirements of providing adequate public participation in accordance with the
27 cited Comprehensive Plan policies. The Record illustrates a lengthy, well publicized
28

29
30 _____
31 ⁴⁴ Exs. 54, 55

32 ⁴⁵ Ex. 59

⁴⁶ Exs. 69, 70, 71

⁴⁷ Ex. 77

⁴⁸ Exs. 81, 83

⁴⁹ Exs. 43, 45

1 regulation development process that did not violate the referenced Comprehensive Plan
2 policies. The Board finds Cook and Heikkila have failed to meet their burden of proof to
3 establish any public participation violations of RCW 36.70A.035(2), WAC 365-195-600,
4 WAC 365-195-630(2), RCW 36.70A.120, or RCW 36.70A.140.

5
6 **Conclusion**

7 Cook and Heikkila have failed to meet their burden of proof to establish any public
8 participation violations of RCW 36.70A.035(2), WAC 365-195-600, WAC 365-195-630(2),
9 RCW 36.70A.120 , or RCW 36.70A.140.

10
11
12 **3. State Environmental Policy Act (SEPA)**

13 **Cook Issue No. 2:** *The SEPA review done to analyze the impacts of the significant*
14 *land use changes implemented through the Ord. 943 Development Code was wholly*
15 *deficient and not in compliance with the requirements of Chapter 43.21C RCW*

16 **Heikkila Issue No. 7:** *Did the City of Winlock fail to comply with RCW 43.21C.020, RCW*
17 *43.21C.030, RCW 43.21C.031, and RCW 43.21C.034 when the City issued a Determination*
18 *of Nonsignificance based on an Environmental Checklist Review in which the City failed to*
19 *correctly reply that the revised zoning map is inconsistent with the comprehensive land use*
20 *plan and does not comply with the Growth Management Act (Section B-8-L, Section D*
21 *introduction, and Section D-7), failed to accurately list current zoning (Section B-8-E), failed*
22 *to identify places or objects listed on the historical preservation registers (Section B-13-A),*
23 *failed to describe landmarks or evidence of historic or cultural importance (Section B-13-B),*
24 *inaccurately referred to impact fees for public services such as police, fire protection,*
25 *schools, and public works (Section B-15-B), failed to list service providers for electricity,*
26 *natural gas, refuse service, and telephone (Section B-16-B), and failed to address*
27 *cumulative impacts of impervious surfaces (Section B-1-G), cumulative impacts of*
28 *emissions to the air (Section B-2-A), cumulative impacts on surface water (Section B-3-B, B-*
29 *3-C, B-3-E, and B-3-F under "Surface"), cumulative impacts of water runoff (Section B-3-A*
30 *and B-3-B under "Water Runoff"), cumulative impacts on vegetation (Section B-4-B),*
31 *cumulative impacts of environmental health hazards (Section B-7A-A and B-7A-C),*
32 *cumulative impacts of noise (Section B-7B-A, B-7B-B, and B-7B-C), cumulative impacts on*
agriculture (Section B-8-B), cumulative impacts on structures (Section B-8-D), cumulative
impacts on housing (Section B-9-A and B-9-C), cumulative impacts of light and glare
(Section B-11-A and B-11-B, and B-11-D), cumulative impacts on recreational opportunities
(Section B-12-C), cumulative impacts on landmarks of historical or cultural importance
(Section B-13-C), cumulative impacts on public streets and highways (Section B-14-F and

1 *B-14-G), cumulative impacts on historical or cultural sites (Section D-4), and cumulative*
2 *impacts of demands on local streets and State Route 505 (Section D-6)?*

3 SEPA requires that an agency make a threshold determination whether to require
4 preparation of an Environmental Impact Statement (EIS) before taking any major action
5 having a probable, significant, adverse environmental impact.⁵⁰ As required by WAC 197-
6 11-315, Winlock prepared a Non-Project⁵¹ Environmental Checklist to assist it in making a
7 threshold determination for the amendment of its development regulations and zoning map;
8 this was completed on October 9, 2008.⁵² In making a threshold determination, the
9 responsible official must (1) review the environmental checklist, (2) determine if the proposal
10 is likely to have a “probable significant adverse environmental impact”, and (3) consider
11 mitigation measures that the applicant will implement as part of the proposal.⁵³ If the
12 responsible official determines there will be no probable significant adverse environmental
13 impacts a Determination of Non-Significance (DNS) is issued and the preparation of an EIS
14 is not required.⁵⁴ On October 15, 2008, Winlock issued its DNS which concluded that the
15 proposed action would “not have a significant adverse impact on the environment as it is for
16 a non-project environmental checklist.”⁵⁵

17
18
19
20 Cook alleges the City failed to conduct SEPA review contemporaneously with the initial
21 review of the proposed amendments⁵⁶ and also, that the City failed to withdraw the DNS
22 when notified of errors.⁵⁷ In addition, both Cook and Heikkila challenge the sufficiency of
23
24
25

26 ⁵⁰ RCW 43.21C.033; WAC 197-11-310.

27 ⁵¹ WAC 197-11-774 defines a Non Project action as being an action which is different or broader than a single
28 site specific project and includes such things as plans, policies, and programs. Non-Project actions are still
29 required to conform to SEPA unless categorically exempt and, at least in regards to Non-Project EISs, the lead
30 agency has more flexibility in preparing an EIS because there is normally less detailed information available on
31 the environmental impacts.

32 ⁵² Exhibit 112.

⁵³ WAC 197-11-330(1)(a)-(c).

⁵⁴ WAC 197-11-340(1).

⁵⁵ Exhibit 111.

⁵⁶ Cook's Prehearing Brief at 21.

⁵⁷ Cook's Prehearing Brief at 24.

1 the Environmental Checklist and, in correlation, the adequacy of the DNS upon which is it
2 premised.⁵⁸ The Board will address each of these in turn.

- 3
- 4 • Timely SEPA review

5 Cook cites WAC 197-11-055 in support of his assertion that the City failed to conduct SEPA
6 review contemporaneously with the initial review of the proposed amendments, with the City
7 simply scrambling at the last minute to fulfill basic requirements.⁵⁹ Cook further cites a
8 1993 Supreme Court holding, *King County v. Boundary Review Board*,⁶⁰ for the proposition
9 that Winlock was required to conduct SEPA review early in the process so as not to
10 succumb to the snowballing effect of virtually unstoppable administrative inertia.⁶¹

11
12 In response, Winlock notes that it started the SEPA review process as soon as draft
13 development regulations were adopted by the Planning Commission.⁶² The City contends
14 that without these draft regulations, there was nothing to be reviewed under SEPA and
15 Cook cites no law that requires SEPA review to begin before the legislation has been
16 drafted.⁶³

17 18 19 **Board Analysis and Findings**

20 The overarching legislative intent of SEPA is to give decision-makers sufficient information
21 regarding the environmental impacts of a proposed action so as to facilitate a reasoned
22 decision. To accomplish this, SEPA requires, at the earliest possible time, the integration of
23

24
25 ⁵⁸ Cook's Prehearing Brief at 22-23; Heikkila Prehearing Brief, at 21-22

26 ⁵⁹ Cook's Prehearing Brief at 22. Cook cites WAC 197-11-055(1) in his Prehearing Brief and adds -055(2) in
27 his Reply Brief.

28 ⁶⁰ 122 Wn.2d 648, 663-664 (1993).

29 ⁶¹ *King County*, 122 Wn.2d at 663-664. The Board finds little assistance from the Court's holding in *King*
30 *County*. In *King County*, the challengers of the DNS did not contend environmental review was untimely
31 rather they asserted the City of Black Diamond had failed to consider the environmental effects of future
32 development of the proposed annexation properties, with the City responding that consideration of these
effects was premature and speculative. The DNS under challenge was issued one day after the City's Notice
of Intent to Annex and, although the Court noted that inertia generated by the initial decision may carry a
project forward, no arguments were presented regarding the timing of the DNS in relationship to the Notice of
Intent. This is the question before the Board with Cook's argument.

⁶² Winlock Response Brief, at 17-18.

⁶³ Winlock Response Brief, at 17-18.

1 the SEPA process with agency activities.⁶⁴ In addition, to further SEPA's goals, the lead
2 agency is required to prepare a threshold determination at the earliest possible point in the
3 planning and decision-making process.⁶⁵ It should be noted that although a bulk of the
4 activity occurred before the Planning Commission, the final decision-maker in Winlock is its
5 City Council as the Planning Commission has only recommendation authority.⁶⁶
6

7 As Cook correctly notes, SEPA review is to begin early in the process but it is only required
8 to begin when a proposal's environmental impacts can be *reasonably identified and*
9 *meaningfully evaluated*.⁶⁷ Clarification as to the timing for SEPA review is set forth in WAC
10 197-11-055(2)(a), which provides: (Italics in original; additional emphasis in underline)
11

12 (2)(a) A proposal exists when an agency is presented with an application or
13 has a goal and is actively preparing to make a decision on one or more
14 alternative means of accomplishing that goal *and* the environmental effects
15 can be meaningfully evaluated.

- 16 (i) The fact that proposals may require future agency approvals or
17 environmental review shall not preclude current consideration, as long
18 as proposed future activities are specific enough to allow some
19 evaluation of their probable environmental impacts.
20 (ii) Preliminary steps or decisions are sometimes needed before an action
21 is sufficient definite to allow meaningful environmental analysis.

22 For development regulations adopted pursuant to the GMA, guidance can also be drawn
23 from WAC 197-11-220(3), which defines "Proposed GMA action" as: (Emphasis added)

24 A proposal for a GMA action⁶⁸ that has been issued for public and interagency
25 comment. It does not include drafts, preliminary drafts, or other materials or
26 processes that have been used to develop GMA documents or elements of

27
28 ⁶⁴ WAC 197-11-055(1).

⁶⁵ WAC 197-11-055(2).

29 ⁶⁶ Heikkila Exhibit 485, Ordinance 393 establishing Planning Commission and granting it recommendation
30 authority. See also, current Winlock City Code 1.020.010 - Planning Commission; 1.02.030(D) – Type IV
31 applications require City Council approval, where appropriate, upon receipt of a recommendation from the
32 Planning Commission.

⁶⁷ WAC 197-11-055(2) provides that the lead agency shall prepare a threshold determination "when the
principal features of a proposal and its environmental impacts can be reasonably identified."

⁶⁸ WAC 197-11-220(4) defines "GMA Action" as (in relevant part): policies, plans, and regulations adopted or
amended ... Actions do not include preliminary determinations on the scope and content of GMA actions...

1 GMA documents. Such drafts are not considered a "proposal" as defined in
2 WAC 197-11-784.

3
4 Thus, not only does SEPA provide that the environmental review process is to commence
5 when environmental impacts can be reasonably identified and their effects meaningfully
6 evaluated, but SEPA expressly recognizes that preliminary decisions occur prior to the
7 commencement of environmental review. Cook contends SEPA review was to commence
8 "with the initial review of the proposed Development Regulations."⁶⁹ According to Cook,
9 the City did not commence SEPA review until eight months after the Planning Commission
10 had its first public draft and public hearing.⁷⁰ In this regard, it would appear Cook contends
11 SEPA review should have begun in February 2008. However, nothing in SEPA requires
12 environmental review to commence at this early stage of development. Nor does Cook
13 provide the Board with a reference to anywhere in the Record of a proposal for which
14 meaningful evaluation of environmental impacts and their effects could have been
15 conducted at that point in time.

16
17
18 A basic characteristic of the legislative process and an undeniable fact is that modifications
19 to any proposal will probably occur as the process continues. Therefore, in order to
20 determine environmental impacts and their effect, Winlock needed to determine the
21 applicable zoning and related land use regulations, such as permitted uses, and this did not
22 occur until a final draft of the development regulations was prepared. Without this final
23 draft, the environmental impacts and effects would continue to fluctuate as modifications are
24 made to previous drafts. The question for the Board then becomes, when was there a final
25 draft of Winlock's proposed development regulations available which was sufficiently definite
26 so as to permit meaningful evaluation of the environmental impacts/effects of the proposal
27 so as to trigger SEPA review.

28
29
30
31 ⁶⁹ Cook Prehearing Brief, at 21.

32 ⁷⁰ Cook Reply Brief, at 9. The initial review of amendments to the development regulations occurred in
February 2008 when the City's Planning Consultant met with the Planning Commission to discuss the project
and set an anticipated date of late July or early August for a draft of the regulations. The Board cannot
conclude, based on the fact that no proposal was available, SEPA review was triggered.

1 Planning Commission minutes denote discussions related to the development regulations
2 starting in February 2008 and culminating in October 2008, with various Planning
3 Commission workshops and open houses also being held to discuss the regulations.⁷¹
4 The Record presented to the Board contains various drafts of the development regulations,
5 with portions of the regulations submitted between February 2008 and June 2008 and a
6 complete draft of three chapters of the proposed development regulations presented in June
7 2008.⁷² Therefore, by the end of June 2008, a first draft of the proposed regulations had
8 been developed. But, as noted *supra*, a draft for a proposed action does not necessarily
9 trigger SEPA review unless the proposal has been developed to a level of specificity so as
10 to reasonably identify environmental impacts and to meaningfully evaluate their effects. The
11 preliminary nature of this draft is seen in subsequent meetings of the Planning Commission,
12 all of which reveal lengthy discussion regarding the maps and changes to be considered to
13 the zoning.⁷³
14
15

16 A complete draft of the development regulations was prepared and presented to the
17 Planning Commission at its October 1, 2008 meeting and the Planning Commission
18 unanimously approved a motion to pass the Draft Development Code to the City Council.⁷⁴
19 It is this draft that the Environmental Checklist and DNS was based on and these
20 environmental documents were available for consideration by the City Council. In light of
21 the entire Record, the Board finds that it was this draft that triggered SEPA because the
22 zoning and land use regulations were sufficiently definite to provide for the reasonable
23 identification of environmental impacts and the meaningful evaluation of their effects.
24
25

26
27 ⁷¹ See Exhibits 2, 4, 5, 6, 11, 13, and 15 (Planning Commission Meetings): Exhibits 57, 58, 60 – 64, 66, 68, 72,
28 74, and 75 (Planning Commission Workshops); Exhibits 69, 70 , and 71 (Planning Commission Open House

29 ⁷² Index of the Record – Exhibit 90 (Chapter 1 – 2/13/08); Exhibit 91 (Chapter 2 – 4/16/08); Exhibit 92 (Chapter
30 2 – 5/21/08); Exhibit 93 (Chapter 3 – 6/4/08); Exhibit 93 (Chapter 3 – 6/18/08); Exhibit 95 (Chapters 1, 2, and 3
31 – 6/23/08).

32 ⁷³ Exhibit 11 – Planning Commission Minutes at 7 (7/16/08)(Noting a “lengthy discussion” regarding changes
to zoning and maps); Exhibit 13 – Planning Commission Minutes, at 11 (9/3/08)(Discussions related to what
types of uses to be allowed in the downtown area, changes for commercial zoning); Exhibit 14 – Planning
Commission Minutes (Discussions related to commercial and MX zoning, freeway development, industrial
development but see specifically Page 31 – noting that changes to the regulations and map are forthcoming)

⁷⁴ Exhibit 95 – entitled “Draft #2” and dated 9/23/08; Exhibit 15 at 33.

1 **Conclusion**

2 The Board finds the timing of the City's SEPA review was not clearly erroneous as review
3 was commenced when a draft version of the development regulations was at a sufficiently
4 definite level of specificity so as to provide for reasonable identification and meaningful
5 evaluation of environmental impacts and their effects, as required by WAC 197-11-055.
6

- 7 • Withdrawal of DNS

8 Cook contends that he advised the City of various deficiencies in its DNS with the filing of a
9 comment letter on October 31, 2009. According to Cook, once the City was notified of these
10 deficiencies, SEPA mandated the withdrawal of the DNS.⁷⁵ In support of this assertion,
11 Cook cites two SEPA rules which provide: (In relevant part)
12

13 WAC 197-11-340(2)(f): The responsible official shall reconsider the DNS
14 based on timely comments ... if the responsible official determines that
15 significant adverse impacts are likely, withdraw the DNS or supporting
16 documents ...

17 WAC 197-11-340(3)(a): The lead agency shall withdraw a DNS if:

- 18 ...
- 19 (iii) The DNS was procured by misrepresentation or lack of material
20 disclosure ...

21 **Board Analysis and Findings**

22 The Board agrees with Cook that with the use of the word "shall," these SEPA provisions
23 are mandatory. However, the mere filing of a comment letter does not automatically require
24 the withdrawal of a DNS. Rather, withdrawal is only mandated if (a) the responsible official
25 determines significant impacts⁷⁶ are likely, (b) the DNS was procured by misrepresentation,
26 or (c) there was a lack of material disclosure.
27

28 **A. Significant Impacts**
29
30
31

32 ⁷⁵ Cook Prehearing Brief, at 24 (Citing Exhibit 129).

⁷⁶ SEPA defines "Significant" as meaning having a "reasonable likelihood of more than a moderate adverse impact on environmental quality." WAC 197-11-794(1).

1 As noted *supra*, RCW 43.21C.090 requires the Board accord substantial weight to Winlock's
2 determination to issue a DNS which, by its very title, denotes that Winlock did not find the
3 impacts of the proposed amendments to its development regulations were significant.
4 Cook, neither in his briefing nor in the October 2008 comment letter, provides evidence of
5 how the environmental impacts of Winlock's proposed development regulations rise to a
6 level of significance.
7

8 To meet his burden of proof, Cook must present actual evidence of probable, significant,
9 adverse impacts resulting from the proposed action.⁷⁷ With the October 2008 comment
10 letter, Cook submits comments related more to an analysis of consistency of the
11 development regulations in relationship to the comprehensive plan, focused primarily on
12 economic viability. As the parties should be well aware, SEPA is concerned with the broad
13 questions of environmental impact and effects, not economic interests such as individual
14 property rights, property values, and the restrictions of the use of property.⁷⁸
15
16

17 Thus, without evidence demonstrating significant adverse environmental impacts, Winlock
18 was not required to withdraw the DNS pursuant to WAC 197-11-340(2)(f).
19

20 *B. Misrepresentation or Lack of Material Disclosure*

21 As to erroneous or missing information, the key question is whether this information had any
22 bearing on Winlock's determination of whether a DS, DNS, or MDNS should be issued.
23 That determination is based on whether Winlock found the proposed action would have
24 probable, significant, adverse environmental impacts.
25
26

27 Most of the information Cook alleges was erroneous relates to economic viability,
28 inconsistency with the existing Comprehensive Plan, and impact on existing uses from the
29 restrictions established by the proposed development regulations. As noted *supra*, these
30

31 ⁷⁷ *Boehm v. City of Vancouver*, 111 Wn.App. 711, 719 (2002)

32 ⁷⁸ See e.g. *Kurcera v. WA State Dept. of Transportation*, 140 Wn.2d 200, 212-213 (2006)(quoting *Snohomish County Property Rights Alliance v. Snohomish County*, 76 Wn.App. 44, 52-53 (1994)); *Harris v. Pierce County*, 84 Wn. App. 222, 231 (1996).

1 are not SEPA concerns. Cook does contend, without support, the responses contained in
2 the Environmental Checklist appear to focus on the UGA properties; a confusing statement
3 given the fact that the Winlock UGA is comprised of both incorporated lands (within the City
4 limits)⁷⁹ and unincorporated lands (outside the City limits but within the UGA boundary) and
5 its development regulations apply throughout.⁸⁰
6

7 As for the historic buildings, Cook contends the Environmental Checklist fails to mention any
8 of Winlock's historically significant buildings and therefore the City should have withdrawn
9 the DNS.⁸¹ While the failure to list historic buildings may be a true statement, the question
10 posed by the Environmental Checklist is: *Are any places or objects listed on the historical*
11 *preservation registers known to be on or near the site?* The phrase "listed on the historical
12 preservation registers" is important as the question doesn't simply ask generally about
13 historical structures but limits consideration to those which are actually listed on a register.
14 Cook submits no evidence that any structure within Winlock has, in fact, been placed on a
15 historical preservation register.
16
17

18 **Conclusion**

19 Therefore, finding no misrepresentation as to the significance of environmental impacts or
20 the lack of material disclosure for the same, the Board finds no violation of WAC 197-11-
21 340(3)(a)(iii).
22

- 23 • Adequacy of Environmental Checklist and Disclosure of Probable Impacts

24 The crux of both Petitioners' claims relates to the adequacy of the Environmental Checklist
25 and, in correlation, the DNS that was issued based on the Checklist. An environmental
26 checklist is an informational document utilized to assist the responsible official in making the
27
28

29 ⁷⁹ RCW 36.70A.110(1) Each city that is located in [a county required or chooses to plan under the GMA] shall
30 be included within a UGA.

31 ⁸⁰ Since a City's authority stops at its jurisdictional boundaries, as provided in Lewis County Code 17.15.025(2),
32 Lewis County and Winlock have entered into an Interlocal Agreement by which Winlock's Comprehensive Plan
and Development Regulations apply within the UGA, with some exceptions and limitations.

⁸¹ Exhibit 129, citing the Comprehensive Plan's reference to Winlock having several buildings eligible for the
historical register.

1 threshold determination as to whether further environmental review is necessary (i.e. the
2 need for an Environmental Impact Statement (EIS)).⁸² One of the primary functions of the
3 Environmental Checklist is to help determine if the project or proposal has a probable
4 **significant** adverse environmental impact by identifying potential impacts. A complete and
5 accurate Environmental Checklist provides a solid foundation for the environmental review
6 process. However, the items in the Environmental Checklist are not weighted and the
7 mention of one or many adverse environmental impacts does not necessarily mean that the
8 impacts of a proposal are significant so as to require an EIS.⁸³

10
11 The Washington State Department of Ecology (Ecology) has developed a standardized,
12 generic Environmental Checklist which is intended to address the environment
13 encompassed by SEPA.⁸⁴ The City of Winlock utilized this form along with the
14 Supplemental Sheet for Non-Project Actions.⁸⁵ In reviewing these allegations, the Board
15 takes seriously the fact that the burden of proof is on the Petitioner for SEPA challenge and
16 the direction given by RCW 43.21.090 that decisions on environmental determinations of
17 local governments must be given substantial weight.

19 ***Board Analysis and Findings***

20
21 The Board first notes that in their response briefing as well as at the HOM,⁸⁶ Winlock stated
22 that in conjunction with its 2005 Comprehensive Plan Update, it:⁸⁷

23 [U]nderwent an exhaustive environmental review to examine every “probable
24 significant environmental impact” that might occur as a result of the urban
25 development of the SR 505 corridor and the I-5 interchange. [Therefore] [A]ll
26 of the potential impacts raised by Ms. Heikkila are addressed in the earlier
27 EIS. The City is not required to duplicate this exhaustive effort.

28 ⁸² WAC 197-11-315.

29 ⁸³ WAC 197-11-315(5)

30 ⁸⁴ WAC 197-11-960; WAC 197-11-444. Ecology is the agency charged with developing rules in regards to
31 SEPA. With the adoption of a standardized Environmental Checklist, the Board can only conclude that this
document encompasses all of SEPA’s requirements in regards to preparation for a Threshold Determination.

32 ⁸⁵ Exhibit 112.

⁸⁶ Because of the reference to the 2005 EIS, at the HOM the Presiding Officer requested a copy of the EIS
which was subsequently provided to the Board by the City.

⁸⁷ City Response Brief, at 38-39.

1 Both Cook and Heikkila, in their reply briefs, respond to this assertion by stating that there is
2 no citation anywhere in the Record to reliance upon a previous SEPA process.⁸⁸

3
4 While it is true that SEPA permits the use of previously prepared environmental documents
5 in order to evaluate a proposed action's impacts, SEPA also establishes requirements for
6 when and how the analysis contained in those previous documents can satisfy SEPA
7 requirements.⁸⁹ First, SEPA requires that the lead agency review the content of the prior
8 document in order to determine if the information and analysis is relevant and adequate in
9 regards to environmental considerations.⁹⁰ Second, SEPA provides various methods by
10 which previous review can be utilized, including adoption, incorporation by reference,
11 addendum, and supplementation.⁹¹ However, regardless of the method employed, all
12 require both a determinative review and clear notice of the reliance on the previous
13 document.⁹²

14
15
16 In reviewing the DNS issued by Winlock and its accompanying notice, no reference is made
17 to any previously prepared environmental documents relied on for review of the impacts of
18 the proposed development regulations.⁹³ In fact, the DNS states:⁹⁴

19
20 This determination was made based upon the lead agency's review of the
21 environmental checklist.

22 In reviewing the Environmental Checklist, the Board finds no citation to the EIS prepared in
23 conjunction with the 2005 Comprehensive Plan Update or a description of its relevant
24

25
26
27 _____
28 ⁸⁸ Cook Reply, at 8-9; Heikkila Reply at 14-15.

29 ⁸⁹ See SEPA Part Six – Using Existing Environmental Documents, WAC 197-11-600 to 197-11-640.

30 ⁹⁰ RCW 43.21C.034.

31 ⁹¹ WAC 197-11-600(4)(a)-(e).

32 ⁹² See e.g., WAC 197-11-630(2) requires that when adopting an environmental document the agency must identify the document and state why it is being adopted, using the adoption form provided in 197-11-965; WAC 197-11-635(2) states material incorporated by reference shall be cited, its location identified, and its relevant content briefly described.

⁹³ Exhibit 111, DNS; Exhibit 110 Notice of DNS.

⁹⁴ Exhibit 111, DNS.

1 content. Within the Record, the Board finds no adoption form nor does Ordinance No. 943
2 or Ordinance No. 945 make any reference to the 2005 EIS.⁹⁵

3
4 SEPA requires both substantive and procedural compliance with its mandates. Therefore, it
5 is not possible for the Board to address the question of whether the 2005 EIS and the 2008
6 Environmental Checklist adequately addressed the probable impacts of the development
7 regulations until the City has completed the review required by SEPA. Winlock states that it
8 was not required to duplicate the environmental review it undertook for the 2005 EIS, but it
9 failed to properly cite any reliance on the analysis contained in that document during the
10 present adoption process. The Board can only conclude that Winlock did not perform a
11 complete environmental review for the development regulations as required by SEPA when
12 adopting the two ordinances challenged in this matter.
13

14 15 **Conclusion**

16 The Board concludes Winlock failed to comply with RCW 43.21C and WAC 197-11,
17 specifically as to those provisions related to the reliance on existing environmental
18 documents to satisfy environmental review requirements. Thus, the issuance of the
19 October 15, 2008 DNS was clearly erroneous because of this failure. The DNS and its
20 accompanying Environmental Checklist are remanded to Winlock to perform the necessary
21 environmental review for the development regulations pursuant to SEPA. Although the level
22 of SEPA analysis is for Winlock to determine, the Board reminds the City to take into
23 consideration the relevant concerns raised by Petitioners during these proceedings when
24 undertaking the review.
25
26

27 **4. Internal Inconsistency**

28 With their original and amended PFRs, Petitioners set forth four issues which focus on the
29 consistency of the adopted Ordinances (the development regulations and zoning map) with
30 the City's Comprehensive Plan or with the failure of those Ordinances to implement the
31
32

⁹⁵ Exhibit 172, Ordinance 943 Whereas No. 11; Exhibit 173, Ordinance 945.
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1 Comprehensive Plan. Cook addresses the alleged conflicts between the Comprehensive
2 Plan' s goals and policies as these relate to downtown business development and the newly
3 adopted regulations as they affect the downtown area. Heikkila raises similar conflicts,
4 although on a broader scale. As the focus is similar, the Board will discuss the arguments
5 together after setting out the specifics addressed by each Petitioner and the City's
6 response.
7

- 8 • Petitioner Cook

9
10 **Cook Issue 1:** *The Ord. 943 development regulations pertaining to the Commercial C-1*
11 *zone are in conflict with the goals stated in the City's Comprehensive Plan due to the*
12 *unnecessary restrictions and other burdens placed on the businesses located in downtown*
13 *Winlock in violation of RCW 36.70A.040 and WAC 365-195-800.*

14 **Cook 2nd PFR Issue 5:** *By virtue of the fact that Winlock's city-wide rezone has now been*
15 *enacted through Ord. 945, and said rezone and accompanying zoning map was created for*
16 *the purpose of establishing the zoning districts set forth in the previously-enacted Ord. 943,*
17 *the Ord. 945 rezone and zoning map is likewise in conflict with the goals stated in the City's*
18 *Comprehensive Plan, in violation of RCW 36.70A.040 and WAC 365-195-800.*

19 Cook argues the Ordinances (Nos. 943 and 945) are not consistent with and fail to
20 implement the 2005 Winlock Comprehensive Plan in violation of RCW 36.70A.040 and
21 WAC 365-195-800.⁹⁶ More specifically, Cook focuses on Comprehensive Plan goals and
22 policies which address Winlock's "Downtown Core", the character and businesses of which
23 Cook states the Comprehensive Plan clearly intends to enhance, including:⁹⁷
24

- 25 • **Land Use Goal 2:** Accommodate the city's expected population growth in a
26 manner that maintains or improves the community's character . . .
- 27 • **Land Use Goal 8:** Retain and enhance the identity of existing commercial
28 nodes.

29 Policy 2.8.3: Encourage redevelopment of the downtown commercial core as a
30 land- intensive commercial node.
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⁹⁶ Petitioner Cook's Prehearing Brief at 4.

⁹⁷ Id. at 5 and following pages.

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- **Land-use Goal 11:**

Policy 2.11.6: Identify and encourage the preservation of lands, sites, and structures that have historic or archaeological significance.

- **Economic Development & Downtown Revitalization Goal 2:** Support existing businesses and new business development in the downtown core.

Policy 4.2.1: The City of Winlock will work closely with interested organizations to promote economic development of the downtown core.

- **Citizen Participation, Property Rights, and Procedural Goal 4:** Provide greater certainty in the development approval process, and to avoid unnecessary cost and delay.

Policy 3.4.2 Winlock shall adopt clear and objective zoning, environmental and land division standards that ensure development, consistent with the goals and policies of this plan

Cook asserts that the development regulations not only fail to implement these goals, but, in fact, serve to impede realization of them. He further asserts there is no evidence in the record that the downtown related goals were even considered during the drafting of the development regulations.⁹⁸ Cook also points to the fact that most permitted uses under the prior zoning code were changed to conditional uses within the C-1 downtown zone and some prior permitted uses are now prohibited. Cook states that "[F]or the new zoning to not accommodate the Downtown Core businesses defies the [Comprehensive Plan] goals."⁹⁹ As to Cook's specific business, he asserts some of his traditional sales would be prohibited¹⁰⁰ (e.g. assembly of yard products such as tractors, mowers and, barbecues.) He argues the restrictions on his business fail to even meet the land-use goals of the Comprehensive Plan such as Goals 8 and 2 cited above.¹⁰¹

⁹⁸ Id. at 6

⁹⁹ Id. at 8

¹⁰⁰ Id.

¹⁰¹ Id. at 9

1 Furthermore, Cook states that the C-1 zoning creates less certainty for business owners,
2 adds cost and possible delay, and conflicts with the City's Citizen Participation, Property
3 Rights, and Procedural Goal 4. Cook cites several examples of a lack of certainty, and
4 refers to estimated costs of the Conditional Use process and the "attendant appeal
5 process".¹⁰² Finally, Cook argues that the nonconforming use regulations will be a major
6 source of confusion and will possibly be subjectively interpreted. He questions why
7 properties and uses were made nonconforming in the first place if, in fact, the newly
8 enacted code will allow for those uses to expand, rebuild and transfer ownership.¹⁰³
9

10
11 The City counters that the correct approach to determine whether there is consistency
12 between the development regulations and the comprehensive plan is to first examine how
13 the new development regulations apply and then compare them to the Comprehensive
14 Plan.¹⁰⁴ The following is a compilation of the City's view as to how the development
15 regulations affect the downtown core area:¹⁰⁵
16

- 17 • Where previously there had been a commercial zone for the downtown
18 (Downtown Core, or DC) and a separate commercial zone for adjoining
19 commercial neighborhoods (General Commercial) the two are now merged
20 into one, "Downtown Commercial" or C1.
- 21 • All Development Regulations are now contained in a single ordinance and
22 uniform policies are applied to all zoning districts.
- 23 • Development is classified into one of four "types" with Type I and Type II
24 development handled by City staff, Type III development addressed by
25 Winlock's Hearing Examiner, and Type IV (legislative) actions addressed by
26 the City Council.
- 27 • The list of commercial uses has been expanded although many are now
28 conditional uses.

31 ¹⁰² Id. at 13

32 ¹⁰³ Id. at 15-19

¹⁰⁴ Respondent City of Winlock's Prehearing Brief at 8

¹⁰⁵ Id.

- 1 • General retail sales are permitted outright in C1 up to 25,000 square feet but
2 the sale of hardware (such as Mr. Cook) is conditionally permitted up to
3 100,000 square feet.
- 4 • Nonconforming uses (uses that are no longer permitted or conditional) are
5 protected through new nonconforming use regulations.

6 The City acknowledges that the development regulations must be consistent with and
7 implement its comprehensive plan. This is set forth in both the title and provisions of RCW
8 36.70A.040 as well as in WAC 365-195-210:

9 RCW 36.70A.040: ...Development regulations must implement
10 comprehensive plans.

11 RCW 36.70A.040(4)(d): ... each city ...shall adopt a comprehensive plan
12 under this chapter and development regulations that are consistent with and
13 implement the comprehensive plan

14 WAC 365-195-210: "Consistency" means that no feature of a plan or
15 regulation is incompatible with any feature of a plan or regulation.
16 Consistency is indicative of capacity for orderly integration or operation with
17 other elements in a system.

18 The City insists that the development regulations are entirely consistent and further points
19 out that it is the Petitioner's burden to prove inconsistency. The City disputes Cook's
20 assertion that the conditional use process is unnecessary and would be expensive. It
21 argues that a conditional use *shall* be approved upon meeting four conditions and such uses
22 will be reviewed by an independent hearing examiner following a public hearing. The City
23 states that the intent behind the conditional use process is to ensure proposed uses are
24 compatible with permitted or existing uses within the zoning district so as to prevent negative
25 effects on these uses and businesses.¹⁰⁶ The City also argues that its nonconforming use
26 provisions are extremely liberal and would allow continuation without approval, expansion
27 and sale to a third party.¹⁰⁷

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¹⁰⁶ Respondent City of Winlock's Prehearing Brief at 10.

¹⁰⁷ Id. at 11

1 • **Petitioner Heikkila**

2 **Heikkila Issue 1:** *Did the City of Winlock adoption of Section 2, Chapters 2.010, 2.020,*
3 *2.030, 2.040, 2.050, 2.060, and 2.070, of its Development Code fail to comply with*
4 *requirements of RCW 36.70A.040(4)(d) and 36.70A.130(1)(d) because rezoning much of*
5 *the land along the SR-505 corridor from Residential Transitional to Mixed Use, a*
6 *commercial zone; changing the Downtown Core zone regulations to be more restrictive,*
7 *cumbersome, and costly; including the downtown core and Progress Square in the same*
8 *zone classification; changing the definition of Mixed Use; and rezoning areas previously*
9 *zoned Mixed Use are contrary to and inconsistent with Sections 1.1, 1.2, 2.3.3, and 4.1,*
10 *Goal 4.2, and Policies 2.2.5, 2.6.2, 2.6.7, 2.7.1, 2.8.1, 2.8.2, 2.8.4, 2.12.4, 3.1.2, 3.4.1,*
11 *3.4.2, 3.4.5, 4.1.3, 4.2.1, 4.2.2, and 4.3.3 of the comprehensive plan; and does this result in*
12 *a substantial interference with the fulfillment of GMA goals, specifically RCW 36.70A.020(5),*
13 *RCW 36.70A.020(6), and RCW 36.70A.020(13)?*

14 **Heikkila Issue 2:** *Did the City of Winlock adoption of its Zoning Map fail to comply with*
15 *requirements of RCW 36.70A.070 (preamble) and 36.70A.120 because rezoning much of*
16 *the land along the SR-505 corridor from Residential Transitional to Mixed Use, a*
17 *commercial zone; changing the Downtown core zone regulations to be more restrictive,*
18 *cumbersome, and costly; including the downtown core and Progress Square in the same*
19 *zone classification; changing the definition of Mixed Use; and rezoning areas previously*
20 *zoned Mixed Use are contrary to and inconsistent with Sections 1.1, 1.2, 2.3.3, and 4.1,*
21 *Goal 4.2, and Policies 2.2.5, 2.6.2, 2.6.7, 2.7.1, 2.8.1, 2.8.2, 2.8.4, 2.11.2, 2.12.4, 3.1.2,*
22 *3.4.1, 3.4.2, 3.4.5, 4.1.3, 4.2.1, 4.2.2, and 4.3.3 of the comprehensive plan; and does this*
23 *result in a substantial interference with the fulfillment of GMA goals, specifically RCW*
24 *36.70A.020(5), RCW 36.70A.020(6), and RCW 36.70A.020(13)?*

25 These two issues allege violations of RCW 36.70A.040(4)(d), .130 (1)(d), .070 (Preamble),
26 and .120 and raise similar conflicts to those alleged by Cook between the comprehensive
27 plan and the development regulations. In essence, all of the alleged violations relate to
28 what both Petitioners state is the failure of the development regulations and the zoning map
29 to implement and be consistent with the City's Comprehensive Plan. Heikkila also argues,
30 as did Cook, that the inconsistencies arise from the failure of the City Planning Commission
31 and Council to consider the Comprehensive Plan while formulating the development
32 regulations. Heikkila further argues the City failed to consider the current development

1 regulations when drafting Ordinance 943.¹⁰⁸ She points to several instances which she
2 alleges reflect inconsistencies including:

- 3 • Zoning approximately 253 acres along SR-505 as "Mixed-Use" when the
4 Comprehensive Plan states new residential growth "[W]ill primarily occur. . .
5 on approximately 253 acres of land along the SR 505 corridor . . ."
- 6 • A Comprehensive Plan policy which requires landscaped greenbelts for
7 commercial uses along SR-505, which is not reflected as a requirement under
8 the development regulations
- 9 • A Comprehensive Plan policy discouraging strip development, which Heikkila
10 argues is not met
- 11 • A Comprehensive Plan policy seeking to clearly distinguish between
12 downtown, neighborhoods and freeway commercial nodes which Heikkila
13 suggests is not met by combining the Progress Square area and downtown in
14 a single zoning classification
- 15 • A failure to support existing downtown businesses and encourage new
16 downtown business development.¹⁰⁹

17
18 The City responds as follows:

- 19 • The mixed-use zoning (MX) along SR-505 meets the comprehensive plan
20 goals by both providing for additional residential growth (as required by CP
21 Policies 1.1 and 1.2 and by providing for additional commercial and light
22 industrial growth as suggested by CP Policy 2.6.2).
- 23 • The City does not respond to Heikkila's argument that the Ordinance fails to
24 implement the 20 foot landscaping requirement of the Comprehensive Plan
25 other than to repeat the Comprehensive Plan requirement.
- 26 • As to the strip development assertion, the City states that the required mix of
27 uses within the MX zone prevents such development.
- 28 • As to Heikkila's challenge to combining the downtown core and the former
29 General Commercial zone, the City states there is nothing in the
30 Comprehensive Plan which is inconsistent with that decision. Further, the
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¹⁰⁸ Heikkila's Prehearing Brief at 3

¹⁰⁹ Id. at 4-9

1 City states the Comprehensive Plan identifies both of these zones as a
2 common area of general retail and consequently zoning them similarly is not
3 inconsistent.

- 4 • The City again disagrees with the assertion that the Ordinance fails to support
5 downtown businesses and to encourage development there. It states that its
6 goal is to encourage an attractive, pedestrian friendly downtown and that
7 requires encouraging some types of businesses and discouraging others.¹¹⁰

8 **Board Analysis and Findings**

9 The role of the Growth Management Hearings Boards is not to second guess a jurisdiction's
10 determination of how to implement the goals and policies contained within its
11 comprehensive plan but to assure consistency with the goals and policies of the Growth
12 Management Act (GMA). That assurance, in this instance, requires that adopted
13 development regulations be consistent with and implement the jurisdiction's comprehensive
14 plan.
15

16
17 Two cases cited by the City, *Leenstra v. Whatcom County* and *Ray v. Olympia*, expand
18 upon the meaning of that requirement:

19 In making a determination whether there is consistency between various parts
20 of a local jurisdiction's planning policies and regulations, this Board has held
21 that *consistency means that no feature of the plan or regulation is*
22 *incompatible with any other features of the plan or regulation.* Said another
23 way, *no feature of one plan may preclude achievement of any other feature of*
24 *that plan or any other plan.* It is not essential that each land use decision
25 address each goal or policy so long as no enactment precludes the County's
26 ability to achieve other adopted goals or policies. . . .¹¹¹

27 A finding of inconsistency requires a showing of actual conflict between
28 competing provisions of a city's planning policies and development
29 regulations. There is no inconsistency if it is possible for a particular
30 development to meet the requirements of both sets of policies or regulations.
31 Moreover, a city's planning goals cannot be examined in isolation from one
32 another. . . .¹¹²

¹¹⁰ Respondent City of Winlock's Prehearing Brief at 32.

¹¹¹ *Leenstra v. Whatcom County*, WWGMHB 03-2-0011, FDO at 15 (September 26, 2003).

¹¹² *Ray v. Olympia*, WWGMHB 02-2-0013, FDO (June 11, 2003)

1 In the context of this case, the questions before the Board might be phrased as follows:

2 *Do the development regulations implement the comprehensive plan goals and*
3 *policies?*

4 *Do any of the development regulation's features preclude achievement of any*
5 *of the Comprehensive Plan policies?*

6 The related critical question is whether Petitioners have shown actual conflict between
7 Winlock's Comprehensive Plan policies and its new development regulations or a failure of
8 those development regulations to implement the Plan.
9

10 The overarching thrust of both Cook and Heikkila's arguments in relation to these issues is
11 that the development regulations fail to implement (and, in Cook's case, serve to impede
12 realization of) the cited Comprehensive Plan goals and policies. That analysis requires a
13 review of the specific instances of conflict the Petitioners pointed out in their briefs and at
14 the Hearing on the Merits.
15

16 A fundamental question posed by the Petitioners' challenges is whether it can be said that
17 increasing the number of uses and the number and type of conditional uses is inconsistent
18 with the downtown development revitalization goals? First of all, it would be inappropriate to
19 consider individual comprehensive plan goals in isolation from one another or to consider
20 individual development regulations without looking at all related comprehensive plan
21 policies. While a specific development regulation may not appear to foster fulfillment of a
22 specific planning goal, it may clearly serve to carry out a different comprehensive plan goal.
23 Thus, for example, while a significant increase in the number of conditional uses may
24 arguably conflict with Winlock Goal 4 (to provide greater certainty and avoid unnecessary
25 cost/delay), it may foster achievement of Goal 4.3 (promote urban design in downtown
26 Winlock, which expresses the City's heritage and future).
27
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30 Perceived inconsistencies between a specific development regulation and specific, isolated
31 comprehensive plan goals does not violate RCW 36.70A.040. Rather, an .040 violation
32 results if the development regulations preclude attainment of planning goals/policies. It

1 cannot be said that increasing the number of permitted and conditional uses "precludes" the
2 attainment of downtown economic vitality, "precludes" infill, or "precludes" supporting
3 existing business.

4
5 It likewise cannot be said that the C-1 zoning amendments, which increased the size of the
6 C-1 zone to include both the downtown and an area to the east, together with increasing
7 prohibited uses and conditional uses precludes providing greater certainty in the
8 development approval process. Those goals may still be achieved. It may be true that
9 increasing the number of conditional uses may increase the cost and timing of the approval
10 process, but it is not the role of the Board to assess whether that is an "unnecessary"
11 increase, particularly in light of the goals to "promote urban design in downtown Winlock,
12 which expresses the city's heritage and future".¹¹³

13
14
15 Finally, it cannot be said that restricting existing businesses or making them non-conforming
16 precludes revitalization of downtown, precludes infill, or precludes a development process
17 that is clear, objective and predictable.

18
19 The development regulations establish those uses which are permitted outright, those which
20 are allowed with conditions, and those which are prohibited. While conditional uses are
21 subject to review, the development regulations include standards for approval and list
22 examples of the type of conditions which may be imposed. While such a system
23 necessarily is more subjective than allowing specific uses outright, the Board cannot
24 assume the City would interpret or apply those standards in an arbitrary or a "politically
25 motivated" manner as Cook's suggests.

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28 As stated previously, the key question with these issues is whether the development
29 regulations implement Comprehensive Plan goals and policies, or preclude attainment of
30 them. While it can be fairly argued that some of the development regulations may make it
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¹¹³ Economic Development and Downtown Revitalization Goal 3.
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1 more difficult to achieve specific goals, the Petitioners have not shown that any of those
2 regulations thwart achievement of them. The goals cannot be viewed separately from one
3 another and when considered in their entirety, the Board cannot conclude that the
4 Petitioners have established that the regulations fail to implement the Comprehensive Plan;
5 with one exception.

6
7 WCP Policy 2.6.2 specifically requires that commercial, light industrial and manufacturing
8 uses along SR-505“ . . . shall be required to have at least 20 feet of landscaped greenbelt
9 along the front of SR-505.”¹¹⁴ A review of the development regulations fails to reveal
10 implementing requirements.

11
12 Other than as stated in regards to greenbelts, the Petitioners have not established that the
13 Development Regulations fail to implement the Comprehensive Plan goals and policies or
14 preclude their attainment.

15
16
17 **Conclusion**

18 Petitioner Cook and Petitioner Heikkila have failed to meet their burden of proof to establish
19 that the Ordinances violate RCW 36.70A.040, WAC 365-195-800, RCW 36.70A.130(1)(d),
20 RCW 36.70A.070 (preamble) and RCW 36.70A.120 with the exception of the failure to
21 implement WCP Policy 2.6.2 requiring greenbelts along SR-505 which violates RCW
22 36.70A.130(1)(d).

23
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25 **5. Interim Zoning Regulations**

26 **Cook Issue 4:** *The rezone of Petitioner’s property from “DC – Downtown Core” to “C-1 –*
27 *Commercial,” and in fact the entire City-wide rezone, is procedurally flawed in violation of*
28 *RCW 36.70A.040.*

29 Cook's Issue 4 alleges a violation of the RCW 36.70A.040(2) requirement that all
30 jurisdictions required to plan under .040 comply with all requirements of the GMA.

31 Specifically, he argues that the City failed to comply with RCW 36.70A.390, thus violating
32

¹¹⁴ Ex. 174, pg. 3956
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1 RCW 36.70A.040. RCW 36.70A.390 requires that a governing body enacting, among other
2 things, interim zoning maps or interim zoning ordinances, hold a public hearing within 60
3 days of adoption.

4
5 Apparently it is Cook's allegation that the City failed to adopt the zoning map when it
6 adopted Ordinance 943, its new development code, in January 2009. Thereafter, in April
7 2009, the City adopted Ordinance 945 which enacted the zoning map and subsequently
8 published notice of the adoption of that ordinance. Cook argues that the published notice
9 makes no reference to Ordinance 943 and the effective date of the ordinance is impossible
10 to determine. Cook then states that the City failed to conduct the hearing required by RCW
11 36.70A.390 when adopting an interim zoning ordinance, thus "leaving its citizens in the dark
12 as to whether the referenced zoning map was an interim zoning map or not"¹¹⁵

13
14
15 The City responds by stating the zoning map was adopted in January 2009 as part of
16 Ordinance 943 and that it became effective on the effective date of that Ordinance. The
17 City's position is that it readopted the zoning map with Ordinance 945 as it believed Cook
18 was challenging adoption of the development regulations and zoning map with a single
19 ordinance.
20

21 ***Board Analysis and Findings***

22 The evidence in the Record appears to indicate that the zoning map was adopted with both
23 Ordinances. Even if the zoning map was not adopted until April 2009 with the adoption of
24 Ordinance 945, Cook has failed to establish a violation of RCW 36.70A.040 and .390. The
25 City never adopted an interim zoning ordinance or an interim zoning map. Rather, with
26 Ordinance No. 943 it adopted permanent, not interim, development regulations.
27 Consequently, RCW 36.70A.390 does not apply and no violation of RCW 36.70A.040
28 occurred.
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¹¹⁵ Petitioner Cook's Prehearing Brief at 34.
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1 **Conclusion**

2 Petitioner Cook has failed to demonstrate a violation of RCW 36.70A.040.

3
4 **6. Planning Activities in Conformance with Comprehensive Plan**

5 **Heikkila Issue 3:** *Has the City of Winlock failed to comply with requirements of RCW*
6 *36.70A.120 because the City failed to perform its activities in accordance with Policies*
7 *2.11.6, 3.2.4, 5.6.13, 7.3.1, 7.3.2, and 8.1.1 of the comprehensive plan; and does this result*
8 *in a substantial interference with the fulfillment of GMA goals, specifically RCW*
9 *36.70A.020(11) and 36.70A.020(13)?*

10 Here, Heikkila raises an additional issue related to RCW 36.70A.120: whether the City's
11 planning activities, that is, the development of Ordinances 943 and 945, violated specific
12 policy sections of the City's Comprehensive Plan. The sections of the Comprehensive Plan
13 (WCP), the alleged violations, and the City's response are set forth below:

- 14
- 15 • WCP Policy 2.11.6: "Identify and encourage the preservation of lands, sites,
16 and structures that have historic or archaeological significance."

17 Heikkila states the City does not have a copy of any list of potentially historically significant
18 sites/buildings.

- 19
- 20 • WCP Policy 3.2.4: "Winlock shall conduct public workshops so that public
21 officials and the general citizenry may mutually benefit from each other's
22 experience, knowledge and vision of the city's future."

23 Heikkila states public comment is rarely allowed at public workshops and inconsistently at
24 City Council meetings.

- 25
- 26 • WCP Policy 5.6.13: "Provide for a community education program regarding
27 sources of non-point pollution."

28 Heikkila states she finds no record of a community education program regarding non-point
29 pollution.

- 30
- 31 • WCP Policy 7.3.1: "Support the local Historic Preservation Commission in any
32 way possible to identify and register historic building and sites."

Heikkila states there is no support for a local Historic Preservation Commission.

- 1 • WCP Policy 7.3.2: "The City of Winlock will seek funding to develop and maintain
2 a complete inventory of historic buildings and sites."

3
4 According to Heikkila, the City has made no attempt to seek funding for developing and
5 maintaining a historic building/site inventory.

- 6 • WCP Policy 8.1.1: "The City of Winlock shall plan for and develop a city-wide
7 interconnected system of trails that link schools, parks, and other public facilities
8 with residential and mixed use areas."

9 Heikkila states there is no evidence of planning for a city-wide interconnected system of
10 trails.

11
12 The City responds by suggesting that Heikkila misunderstands the role of the
13 Comprehensive Plan. Rather, the City argues that development regulations are not
14 required to carry out every goal within the plan. Instead, the City states that its new
15 regulations must not prevent those goals from being accomplished in the future.¹¹⁶
16

17
18 ***Board Analysis and Findings***

19 Ordinances 943 and 945 constitute development regulations which are controls placed on
20 development or land use activities.¹¹⁷ Not all comprehensive plan policies require
21 development regulations for implementation. Such is the case with the policies cited by
22 Heikkila. Development regulations are unnecessary to implement those policies. By way of
23 example, community education programs can be instituted at the direction of the City
24 Council or Mayor and a decision to allow public comment at City Council workshops/
25 meetings is within the Council's prerogative. Furthermore, nothing contained within the
26
27

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29 ¹¹⁶ Respondent City of Winlock's Prehearing Brief at 33.

30 ¹¹⁷ "Development regulations" or "regulation" means the controls placed on development or land use activities
31 by a county or city, including, but not limited to, zoning ordinances, critical areas ordinances, shoreline master
32 programs, official controls, planned unit development ordinances, subdivision ordinances, and binding site
plan ordinances together with any amendments thereto. A development regulation does not include a decision
to approve a project permit application, as defined in RCW 36.70B.020, even though the decision may be
expressed in a resolution or ordinance of the legislative body of the county or city. RCW 36.70A.030(7).

1 Ordinances precludes implementation. The lack of specific implementation tools for the
2 listed policies does not constitute a violation of RCW 36.70A.120.

3
4 **Conclusion**

5 Petitioner Heikkila has failed to demonstrate a violation of RCW 36.70A.120.
6

7 **VII. ORDER**

8 The City is hereby ordered to bring its Comprehensive Plan/Development Regulations into
9 compliance with the Growth Management Act and to comply with applicable SEPA
10 provisions related to reliance on prior environmental documents all pursuant to this decision
11 within 180 days. The following schedule shall apply:
12

13

<u>Item</u>	<u>Date Due</u>
Compliance Due on identified areas of noncompliance	April 5, 2010
Compliance Report/Statement of Actions Taken to Comply and Index to Compliance Record	April 19, 2010
Objections to a Finding of Compliance	May 3, 2010
Response to Objections	May 17, 2010
Compliance Hearing	May 25, 2010 @ 10:00 am

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22 Entered this 8th day of October, 2009.

23
24 _____
William P. Roehl, Board Member

25
26 _____
James McNamara, Board Member

27
28 _____
Nina Carter, Board Member

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

2 **Reconsideration.** Pursuant to WAC 242-02-832, you have ten (10) days from the
3 mailing of this Order to file a petition for reconsideration. Petitions for
4 reconsideration shall follow the format set out in WAC 242-02-832. The original and
5 three copies of the petition for reconsideration, together with any argument in
6 support thereof, should be filed by mailing, faxing or delivering the document directly
7 to the Board, with a copy to all other parties of record and their representatives.
8 **Filing means actual receipt of the document at the Board office.** RCW 34.05.010(6),
9 WAC 242-02-330. The filing of a petition for reconsideration is not a prerequisite for
filing a petition for judicial review.

10 **Judicial Review.** Any party aggrieved by a final decision of the Board may appeal the
11 decision to superior court as provided by RCW 36.70A.300(5). Proceedings for
12 judicial review may be instituted by filing a petition in superior court according to the
13 procedures specified in chapter 34.05 RCW, Part V, Judicial Review and Civil

14 **Enforcement.** The petition for judicial review of this Order shall be filed with the
15 appropriate court and served on the Board, the Office of the Attorney General, and all
16 parties within thirty days after service of the final order, as provided in RCW
17 34.05.542. Service on the Board may be accomplished in person, by fax or by mail,
18 but service on the Board means **actual receipt of the document at the Board office**
within thirty days after service of the final order.

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

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