BEFORE THE WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

JACK PETREE, FUTUREWISE, DEAN HAVERSTRAW, CAITAC USA CORP and ROBERT WIESEN, Petitioner, v. WHATCOM COUNTY, Respondent. and ERIC AND ROBIN HITZ, FUTUREWISE and DAN MCSHANE, Intervenors.	Case No. 08-2-0021c **FINAL DECISION AND ORDER**

I. SYNOPSIS OF THE DECISION

Petitioners Jack Petree, Robert Wiesen, and Caitac USA Corp challenge Whatcom County's designation of the Bellingham Urban Growth Area (UGA) adopted by Ordinance 2008-003 as being undersized and thereby insufficient to accommodate Bellingham's projected 20-year population growth. In contending that Bellingham's UGA is undersized, Petitioners' assertions are based on (1) the County's obligation to accept the City of Bellingham's Land Capacity Analysis (LCA) because it did not challenge the adoption of City's Comprehensive Plan, (2) the County's rejection of the City of Bellingham's LCA without showing its work, and (3) the County's reliance on a LCA that was fatally deficient. Petitioners also contend that the County failed to consider the goals of the Growth Management Act (GMA) when designating the Bellingham UGA and that the designation itself does not comply with several of the GMA's goals.

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Petitioners further challenge the consistency of the County's UGA designation with its comprehensive plan and County-wide Planning Policies and the lack of development regulations in the UGA to implement new UGA land use designations. Additionally, Petitioners claim that the King Mountain area should not have been added to the UGA because the County did not conduct an adequate environmental analysis.

This decision reiterates other decisions of this Board that have held it is a county's right and obligation to designate UGAs. In this instance, Whatcom County had no obligation to challenge Bellingham's comprehensive plan or LCA. After review of the recent Washington Supreme Court decision in *Thurston County v. Western Washington Growth Management Hearings Board*, the Board finds that upon a proper challenge to the validity of a UGA delineation, the County's Record must set forth an analytical analysis of assumptions utilized to make a UGA determination. That is, the County needs "to show its work" in developing its assumptions in order for a proper evaluation by the public and the Board as to whether or not the County's action in delineating the UGA complies with the GMA.

After our review of *Thurston County*, we find that to size the UGA in excess of the acreage required to accommodate the urban growth projection based upon any other reduction factor other than market factor is simply not authorized by the GMA.

The Board finds that both the County and the City's future assumptions of how growth will occur in the Bellingham UGA are imprecise. The Record also shows Bellingham's relatively low density, lack of sprawl reducing measures, inability to deliver urban services to a large part of the UGA, and its commitment to consider measures to increase density inside the UGA. For these reasons, the Board finds the County's choice of market factor and LCA assumptions are not clearly erroneous.

The Board also finds that other evidence in the record does not demonstrate that the Bellingham UGA designation was not guided by GMA goals nor is it inconsistent with the

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County's comprehensive plan policies or countywide planning policies related to urban growth.

Due to the programmatic nature of the County's environmental analysis, the County's action in designating the UGA constituted a non-project action and, as such, greater flexibility is allowed to achieve compliance with State Environmental Protection Act (SEPA). The Board concludes that the Final Environmental Impact Statement (FEIS) included a reasonably thorough discussion of the significant aspects of the probable environmental consequences of the actions taken to accommodate the projected population growth and its related environmental impacts. Therefore, Petitioners have not carried their burden of proof to establish that the County's FEIS failed to comply with the SEPA.

The Board finds an inconsistency between the County's comprehensive plan map and the text of its comprehensive plan and the comprehensive plan's land use designations for the UGA's URMX zone. The Board also finds a lack of development regulations to implement the comprehensive plan land use map's designations. However, because this is early in the planning period, this area is not served by urban services, and the County continues to hold this area at a density of one unit per five acres, the Board will not grant Petitioners' request for invalidity at this time.

II. PROCEDURAL HISTORY

See Appendix A.

III. PRELIMINARY MATTERS

A. City of Bellingham's *Amicus* Brief

Positions of the Parties

The City of Bellingham requests the Board grant it *amicus* status for the following reasons: (1) the substantial effect of this case's outcome on the City, (2) the City's familiarity with the issues, and (3) the substantial amount of time and resources the City expended on planning

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for this area. The City declares that the reason it did not file for intervenor status was because it believed the City's Resolution No. 2008-03 clearly stated its position. The City asserts the briefs of Petitioners misrepresent the City's position.[1]

Petitioner Petree objects to granting the City's *amicus* status because it shows the City's pattern of inconsistent action.[2] Petitioners Petree and Wiesen both assert that Bellingham's adopted Comprehensive Plan represents a legitimate change supported by legitimate planning and Bellingham Resolution 2008-03 conflicted with the City's adopted planning documents.[3] Both Petitioners state the City has reversed this action with Resolution 2008-17, which it passed to settle a challenge to Resolution 2008-03, and that Resolution 2008-17 stated Resolution 2008-03 did not have any regulatory effect nor did it modify the City's Comprehensive Plan or land supply analysis.[4]

Petitioners Petree and Wiesen further contend the *amicus* brief unwinds and repudiates a legitimate settlement with the Petitioners.[5] These Petitioners also claim that allowing the City to file an *amicus* brief now prejudices the Petitioners who did not have time to build a case against the City.[6]

Board Discussion

WAC 242-02-280 allows persons whose interests are substantially affected by a case before the Board to request, by motion, *amicus* status. This WAC provision also sets forth the needed components for such a motion including the applicant's interest, applicant's

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[1] City of Bellingham's Motion Requesting Amicus Status (August 7, 2008) at 2.
[2] Petitioner Petree's Response to the City of Bellingham's Amicus Brief at 1.
[3] Id. at 2 and Petitioner's Wiesen's Response to City of Bellingham's Motion Requesting Amicus Status at 1 and 2.
[4] Petitioner Petree's Response to the City of Bellingham's Amicus Brief at 2 and Petitioner's Wiesen's Response to City of Bellingham's Motion Requesting Amicus Status at 2.
[5] Petitioner Petree's Response to the City of Bellingham's Amicus Brief at 3 and Petitioner's Wiesen's Response to City of Bellingham's Motion Requesting Amicus Status at 3.
[6] Petitioner Petree's Response to the City of Bellingham's Amicus Brief at 3 and Petitioner's Wiesen's Response to City of Bellingham's Motion Requesting Amicus Status at 3 and 4.

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familiarity with the issues and scope of the argument presented, specific issues to which the brief will be directed, and the applicant's reason for believing additional argument is necessary. The applicant's brief can be filed no later than the deadline for the brief of the party it supports.

The Board agrees that Whatcom County's designation of the Bellingham UGA will have a substantial effect on the City of Bellingham and the City should be allowed to explain its position. Bellingham's motion fulfills the conditions set forth in WAC 242-02-280. Further, the Board does not conclude that granting the City *amicus* status would prejudice the Petitioners. The City filed its brief on the date that Whatcom County's response brief was due, so Petitioners were afforded the same amount of time to reply to the City's brief that they would have had if the City had been granted Intervenor status.

Conclusion: Based on the foregoing, the City of Bellingham's Motion for *Amicus* Status is GRANTED.

B. County's Motion to Strike

Positions of the Parties

Whatcom County moves to strike the issue of whether the County had to "justify in writing" its decision designating the Bellingham UGA in the manner required by RCW 36.70A.110(2). Whatcom County contends this issue was not identified in the Petitions for Review (PFR), the Prehearing Order, or the briefs for the Hearing on the Merits (HOM). Whatcom County asserts that it is unfair for Petitioners to be granted review of this issue by first presenting it at the HOM and in fact, RCW 36.70A.290(1) precludes the Board from considering an issue presented in this manner.[7]

Petitioner Wiesen responds that Whatcom County first raised the issue of whether the County had "justified in writing" its decision on the Bellingham UGA by arguing that the

[7] Motion to Strike Argument at 2.

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Thurston County[8] decision abrogated the necessity to "show your work" and in doing so, merged the need to "show your work" with the written justification requirement in RCW 36.70A.110(2).[9] Further Wiesen claims this issue was addressed in his brief when arguing whether Whatcom County was required to justify its use of a "safety factor" that reduced the City's safety factor.[10]

Petitioner Caitac joins in Petitioner Wiesen's Brief.[11]

Board Discussion

The Board agrees with both of Petitioners' arguments. Petitioners raised the issue of whether the County had shown its work in regard to the land capacity analysis and the market factor in their PFRs. In briefing, Petitioners have pointed out the differences between the County's and the City's land capacity analysis. In both of these instances, the Board finds that Petitioners sufficiently raised the issue of whether its decision on Bellingham UGA's designation needed to be "justified in writing" pursuant to RCW 36.70A.110(2). Additionally, when the County raised *Thurston County* as a defense of Petitioners' "show their work" argument, the "justified in writing" issue was placed before the Board. Further, during Board questions, the Board itself raised and discussed with the parties the "justified in writing" issue.

Conclusion: Based on the foregoing, the County's Motion to Strike is DENIED.

IV. BURDEN OF PROOF

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

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[8] *Thurston County v. WWGMHB,* Docket No. 80115-1, at 29 (Aug. 14, 2008, En Banc).
[9] Petitioner Wiesen's Response to County's Motion to Strike at 8 and 6.
[10] Id. at 7.
[11] Petitioner Caitac's U.S.A. Corp's Response to Whatcom County's Motion to Strike Argument at 1 and 2.

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

> Except as provided in subsection (5) of this section, comprehensive plans and development regulations, and amendments thereto, adopted under this chapter are presumed valid upon adoption. RCW 36.70A.320(1).

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

> The board shall find compliance unless it determines that the action by the state agency, county, or city is clearly erroneous in view of the entire record before the board and in light of the goals and requirements of this chapter. RCW 36.70A.320(3)

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

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

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

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

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V. ISSUES TO BE DISCUSSED

This matter challenges Whatcom County's adoption of Ordinance No. 2008-003 (Ordinance), which amended the Whatcom County Comprehensive Plan Map, Title 20 Zoning Map, and the Urban Fringe Subarea Plan. Petitioners raise a total of 23 issues. The discussion of these issues in Petitioners' briefs do not necessarily follow the order listed in the Prehearing Order. Petitioners Petree, Caitac, and Wiesen join in each others' briefs.

The challenges to Ordinance 2008-003 fall into these general categories:

- Public participation,
- Accommodating projected growth through its designation of the Bellingham UGA,
- Bellingham's land capacity analysis,
- "Show Your Work" regarding its land capacity analysis,
- Inconsistency of the designation of the Bellingham UGA with the Urban Fringe Subarea Plan (UFS) Plan, Whatcom County Comprehensive Plan, the Bellingham Comprehensive Plan, and Whatcom County's Countywide Planning Policies (CWPPs), and
- Appropriate analysis through the State Environmental Policy Act (SEPA) of lands added to the UGA.

The complete text of each issue statement appears in the discussion below.

VI. DISCUSSION OF THE ISSSUES

A. Public Participation and Docketing

1. Public Participation

Issue 1: Did the County fail to comply with the public participation process required by RCW 36.70A.020(11), RCW 36.70A.035, RCW 36.70A.070, and RCW 36.70A.140, in promulgating the Ordinance? (Wiesen 08-08; Haverstraw Pet/Ord; Caitac 08-12; Petree Pet/Ord 3.9)

Issue 9(a): Did the County fail to comply with the sequencing requirements of RCW 36.70A.110, RCW 36.70A.130(2), RCW 36.70A.020, RCW 36.70A.035, RCW 36.70A.070, RCW 36.70A.140, and RCW 36.70A.290(2), where, inter alia, the County: (a) determined the Ordinance's result first and, after doing so, created "facts" and a "record" to support that result?

The Board will discuss these two issues together.

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Positions of the Parties

Petitioner Caitac argues the lack of evidence in the Record of any response to Petitioners' concerns shows Whatcom County failed to respond to facts that Petitioners and members of public presented. Caitac claims Whatcom County made its decision on the Bellingham UGA first as no facts support its pre-ordained position.[12]

Whatcom County replies that the Record shows Caitac's pre-judgment claim is not supported by the Record and the County Council minutes reflect earnest debate on a myriad of issues.[13]

Board Discussion

Caitac's issue statement contends the County violated the GMA's public participation requirements set out in RCW 36.70A.140, RCW 36.70A.035, and RCW 36.70A.070 and the GMA's public participation goal, RCW 36.70A.020(11). For the adoption of comprehensive plans, development regulations and amendments to development regulations and comprehensive plans, such as the expansion of the Bellingham Urban Growth Area (UGA), RCW 36.70A.140 requires the County to establish a public participation program which provides for early and continuous public participation and denotes specific requirements for this program. RCW 36.70A.035 requires the County to provide for adequate public notice of proposed GMA actions. RCW 36.70A.070 provides that GMA actions, like this amendment, are to be conducted according to the County's public participation program. The pertinent part of RCW 36.70A.020(11) to this argument states that counties and cities should encourage the involvement of citizens in the process to develop comprehensive plans and development regulations. Caitac does not claim that Whatcom County did not follow its adopted public participation program or failed to give adequate notice. Instead, Caitac argues the County violated these requirements because it did not respond to the public's comments and made its decision ahead of the public process.

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[12] Petitioner Caitac's Prehearing Brief at 6 and 7.
[13] Whatcom County's Response Brief at 66.

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No provision of the GMA or the County's code is cited by Petitioner to support its position that the County is required to respond directly or specifically to public comments.[14] What the GMA requires is for adequate notice to be given, opportunities to comment provided according to the County's public participation procedures, and that the County make its decision in accordance with GMA goals and requirements. While many counties and cities document comments received and their response to them, it is not a requirement of RCW 36.70A.140, RCW 36.70A.035, or RCW 36.70A.070, nor does Caitac cite any provision of the Whatcom County Code which requires specific response. Even so, while the Record does not show that the County called out specifically the individual concerns of Caitac, the minutes of the County Council, especially those of the Planning and Community Development Committee, show that the County considered and discussed the concerns raised by these Petitioners.[15]

Likewise, the Board does not agree that the Record supports the allegation that the County made its decision ahead of the public process. In fact, the record supports the County's response that the County Council debated the recommendation from the Planning Commission of a zero percent market factor, discussion occurred on the definition of the market factor versus the safety factor, and debate took place on the range of the safety factor the County should adopt, including support for Bellingham's choices.[16]

Further, the GMA also does not give the Board authority to probe the thought processes of local decision makers. As this Board has stated:

> The Board has the authority to decide whether the County follows their established process, whether their decision was within the alternatives considered by the public, and whether their decision was consistent with the GMA.[17]

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[14] See *Better Brinnon v. Jefferson County*, WWGMHB Case No. 03-2-0007(Final Decision and Order, November 3, 2003).
[15] Exhibit 1347, Planning and Community Development Committee, June 19, 2007.
[16] Id.
[17] *Diehl v. Mason County,* WWGMHB 96-2-0023c(Order Denying Petitioner's Request to Supplement the Record, April 2,2003) quoted in *James Nelson v. San Juan County*, WWGMHB Case No. 06-2-0024c (Final Decision and Order, February 12, 2007) at 43.

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> …we will review the process by which the ordinance was adopted, as well as the ordinance itself for consistency with the GMA, but we will not second guess the motivations of the legislative body.[18]

Conclusion: Based on the foregoing, Petitioners have not demonstrated that the County has violated the public participation goals and requirements of the GMA.

2. Docketing

Issue 2: Did the County fail to comply with RCW 36.70A.470, where the County acted via the Ordinance without complying with docketing requirements and procedures? (Caitac 08-12; Petree Pet/Ord)

Positions of the Parties

Petitioner Caitac argues the Ordinance was not coordinated with other proposed County plan revisions in violation of RCW 36.70A.470 and Whatcom County Code (WCC) 20.10.030 and 20.10.040 that require the batching of proposed amendments for consideration once each year.[19]

The County responds that RCW 36.70A.470(2) requires the County to develop a procedure to allow citizens and others to suggest comprehensive plan and development regulations and that the County should consider suggestions for amendments on an annual basis. The County points out WCC 20.10.040 which establishes this docketing process and does not impose a duty for the County Council to consider or adopt amendments simultaneously.[20]

In its Reply brief, Caitac additionally argues RCW 36.70A.130(2) requires batching of amendments to prevent planning entities from acting in quasi-judicial roles when they should be acting in broad policy making roles.

Board Discussion

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[18] *James Nelson v. San Juan County*, WWGMHB Case No. 06-2-0024c(Final Decision and Order, February 12, 2007) at 43.
[19] Petitioner Caitac's Prehearing Brief at 43.
[20] Whatcom County's Response Brief at 35.

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Caitac cites RCW 36.70A.470(2), WCC 20.10.030 and WCC 20.10.040, all of which require the County to establish a docketing process to enable citizens and interested parties to suggest amendments to the County's Comprehensive Plan. While Petitioner declares that the County violated these provisions, evidence offered by the Petitioner shows the County did conduct the process to decide which amendments to consider for adoption in 2008.[21]

Petitioner is correct that RCW 36.70A.130(2) requires that annual amendments to a comprehensive plan should be considered concurrently so that the cumulative effect of the various proposals can be ascertained. However, the Board cannot consider this argument for two reasons. First, the issue statements in the Petition for Review and the Prehearing Order do not allege a violation of RCW 36.70A.130(2). The Prehearing Order establishes the issues that the Board will review and Petitioners were given the opportunity to review and revise their issue statements and submitted them to the Board.[22] The Board did not change the issue statements and gave the Petitioners another week after the Prehearing Order was issued to object or suggest corrections. Caitac did not respond. Second, a violation of RCW 36.70A.130(2) was first raised in Caitac's Reply Brief. The Board will not consider arguments that were not included in the Prehearing Order.

Conclusion: Caitac has not carried its burden of proof in demonstrating that Whatcom County has violated RCW 36.70A.470(2) as they pertain to docketing.

B. Failure to enhance park and recreational facilities

Issue 4: Does the Ordinance fail to comply with RCW 36.70A.020(9) by failing to enhance recreational opportunities and develop parks and recreation facilities? (Haverstraw Pet/Ord 3.1)

Positions of the Parties

Petitioner Haverstraw states that Caitac has plans to develop a master planned community which would include a state-of-the-art youth soccer complex upon this area's inclusion in the

[21] Exhibit 1376.
[22] Prehearing Order at 4.

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Bellingham UGA. Haverstraw contends the Record establishes a substantial need for such a complex, strong community support, and that this type of complex cannot be built as part of infill development. Haverstraw further argues the County failed to consider RCW 36.70A.020(9), when it rejected the City's recommendation to include this area within Bellingham's UGA.[23]

The County maintains Haverstraw's arguments fail for several reasons. First, inadequate factual support exists that a youth soccer complex cannot be built absent adding Caitac's property to the UGA. According to the County, the only fact in the record is a letter from Haverstraw asserting this. Second, the County says Haverstraw does not address the presence of other large acreages in the designated UGA under single ownership, such as all of Queen Mountain and most of King Mountain. Finally, the County argues that Goal 9 does not require expansion of the UGA for construction of a soccer complex if UGA expansion is not otherwise necessary to accommodate the 20-year growth forecast.[24]

Board Discussion

The GMA contains goals to guide the development of comprehensive plans and development regulations. RCW 36.70A.020(9), the open space and recreation goal of the GMA, includes the direction to "enhance recreational opportunities.. and develop parks and recreation facilities". The challenged Ordinance adopted an expansion of the Bellingham's UGA. The implementation of RCW 36.70A.020(9) applies to the entire comprehensive plan and the entire UGA, not just to this expansion area of the UGA.

RCW 36.70A.020(9) is a GMA goal. Consideration of that goal needs to be grounded in the assessment of the UGA's capital facilities needs for recreational facilities as evidenced in the Record. Although the evidence in the Record shows a great desire for a soccer complex and that advocates believe there is a need for such a facility, there is no evidence in the Record that shows what the County's level of service for soccer fields is, whether a

[23] Petitioner's Haverstraw's Prehearing Brief at 1 and 2.
[24] Whatcom County's Response Brief at 60.

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deficiency for these recreational facilities exist, whether other suitable properties were considered and rejected, and that there is a need to expand the UGA in this location for just this single-purpose reason.

Conclusion: Petitioner Haverstraw has not carried his burden of proof that the adoption of Ordinance 2008-003 did not comply with RCW 36.70A.020(9).

C. Designation of the Bellingham UGA

All Petitioners[25] to this matter are concerned with how growth is being accommodated in Whatcom County, specifically as it pertains to the City of Bellingham's UGA. However, the Board reads the Petitioners' issues and arguments not solely as a concern for accommodating growth but, also questioning a key structural component within the GMA – the requirements for the sizing of a UGA. Petitioners' challenge is to Ordinance 2008-003, which amended the County's Comprehensive Plan Map, Title 20 Zoning Map, and the Urban Fringe Subarea Plan allowing for a minor expansion of the Bellingham UGA in order to accommodate the projected population growth. Petitioners' arguments that Whatcom County's designation of the Bellingham UGA violated the goals and requirements of the GMA include: (1) the failure of the County to adequately provide for the City's 20-year allocated population, (2) deficiencies in the County's land capacity analysis, and (3) a failure of the County to "show its work" for assumptions utilized to size the Bellingham UGA. The Board's discussion and analysis in regards to the Bellingham UGA relate in whole, or in part, to the following issues raised by Petitioners:

Issue 3: Does the Ordinance fail to comply with RCW 36.70A.100; RCW 36.70A.010; RCW 36.70A.020(1), (2), (4), (5) and (12); RCW 36.70A.110; RCW 36.70A.115; and 36.70A.210, because it is inconsistent with the requirement that the County and each city

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[25] Petitioners are Wiesen, Caitac, and Petree. Petree's assertion focuses not on the County's action in sizing the UGA but on the GMA's requirement for GMA planning to be consistent, specifically the County in regards to its own County-wide Planning Policies (CWPP) which required the County to size its UGA in a manner consistent with the City's adopted land supply analysis Thus, as to the specific issue of consistency, Petree's assertions will be addressed *infra.* See pages 54-55.

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within it accommodate the growth that is projected to occur for the planning period? (Wiesen 08-08; Petree Pet/Ord; Haverstraw Pet/Ord; Caitac 08-12)

Issue 5: Does the Ordinance fail to comply with RCW 36.70A.010, and RCW 36.70A.020(1) and (2), because the County failed to examine the extent to which the urban growth occurring within the County has been located within incorporated and unincorporated city UGAs as well as unincorporated County UGAs, and in failing to utilize best available data in determining how much land in each land use category will be needed to accommodate growth projected to occur in Bellingham and Whatcom County for the planning period? (Petree Pet/Ord 3.5)

Issue 6: Did the County fail to comply with RCW 36.70A.010; RCW.70A.020 (1), (2), (3), (4), (5), (11) and (12); RCW 36.70A.070; RCW 36.70A.110; RCW 36.70A.320; and RCW 36.70A.3201, where the County failed to consider and comply with GMA goals and requirements as part of its purported review conducted in connection with the Urban Fringe Subarea Plan, and the resulting Ordinance's findings and conclusions are conclusory, confusing, unsupported, internally inconsistent, incorrect, and inadequate, and where the likely result of the Ordinance is the very uncoordinated and unplanned growth and sprawl the GMA was promulgated to avoid? (Caitac 08-12; Petree Pet/Ord 3.1)

Issue 7: Does the Ordinance fail to comply with RCW 36.70A.110 because it incorporates an incomplete and erroneous land capacity review and evaluation? (Wiesen 08-08; Haverstraw Pet/Ord; Petree Pet/Ord,)

Issue 9(c): Did the County fail to comply with the sequencing requirements of RCW 36.70A.110, RCW 36.70A.130(2), RCW 36.70A.020, RCW 36.70A.035, RCW 36.70A.070, RCW 36.70A.140, and RCW 36.70A.290(2), where, inter alia, the County:

c. failed to timely appeal Bellingham's Ordinance 2006-06-058 adopting Bellingham's 2006 Comprehensive Plan, and unilaterally and without analysis, changed Bellingham's adopted land-supply methodology, disregarding this Board's decision in *Macomber, et al. v. City of Bellingham,* Case No. 06-2-0022, where this Board held that the City's land-supply analysis was valid? (Caitac 08-12)

Issue 10*:* Has the County failed to "show its work" in making the assumption that adequate capacity to accommodate projected urban growth exists with no UGA expansion beyond that contemplated in Ordinance No. 2008-003, in violation of RCW 36.70A.010; RCW 36.70A.100; RCW 36.70A.110; RCW 36.70A.115; and RCW 36.70A.020(1)(2)(4)(5) and (12)? (Wiesen 08-08; Haverstraw Pet/Ord Petree Pet/Ord 3.6; Caitac 08-12)

Issue 16: Did the County fail to comply with GMA sequencing requirements, including RCW 36.70A.110, as well as countywide planning policy C-2, by failing to timely appeal the City of

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Bellingham's 2006 adoption of the City's comprehensive plan and thereby tacitly accept the City's comprehensive plan and obligating itself to provide the UGA called for in the City's comprehensive plan? (Petree Pet/Ord 3.13) (in pertinent part)[26]

Issue 17: Does the Ordinance fail to comply with RCW 36.70A.070 in that it fails to:

a. appropriately consider the land-supply needs of the County and its cities and urban growth areas (UGA), including land-supply needs for housing, economic development, and environmental protection; and

b. consider the potential impacts of the Ordinance on other neighboring jurisdictions like Skagit County? (Wiesen 08-08; Haverstraw Pet/Ord; Caitac 08-12; Petree Pet/Ord 3.7)

Issue 19: Does the Ordinance fail to comply with RCW 36.70A.010, RCW 36.70A.020(11), and RCW 36.70A.110, where the County unilaterally altered Bellingham's land-supply methodology and analysis? (Caitac 08-12; Petree Pet/Ord)

Position of the Parties

Wiesen combines argument as to Issues 3, 7, and 10 and his argument is three-fold, alleging the Ordinance violates the GMA by (1) failing to size the Bellingham UGA to include areas and densities sufficient to permit the urban growth projected to occur in the succeeding 20 years; (2) altering the Bellingham UGA that the City adopted without showing the County's work; and (3) by relying on a land supply analysis that is fatally deficient.[27,28] Wiesen recognizes that although "subjective factors may be included in the UGA decision, such policy choices must be made in a measurable way and with sufficient documentation as to the rationale"[29] and it is the Record which "must provide support for the actions the jurisdiction has taken."[30] Wiesen contends the Record lacks facts, documentation, and analysis to support the County's decision; fails to explain or support the County's altering of the City's Land Supply Methodology Report, or in other words, its land capacity analysis

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[26] Compliance with CWPP C-2 is addressed infra at 54-55.

[27] Wiesen HOM Brief, at 1. This Petitioner's Brief focuses solely on Issues 3, 7, and 10 (*see* Footnote 43, at 11).

[28] Petitioner Haverstraw adopts by reference the HOM Brief of Wiesen. *Haverstraw HOM Brief,* at 1. Haverstraw provides no additional arguments in regards to UGA sizing and growth accommodation, rather the Haverstraw HOM Brief focuses on the provision of recreational facilities.

[29] Wiesen HOM Brief, at 13 (citing to *Tacoma v. Pierce County,* CPSGMHB Case No. 94-3-0001, FDO (July 5, 1994).

[30] Id. (citing to *McHugh v. Spokane County,* EWGMHB Case No. 05-1-0004, FDO (Dec. 16, 2005) and *Kitsap Citizens v. Kitsap County,* CPSGMHB Case No. 00-3-0019c, FDO (May 29, 2001)).

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(LCA); and fails to support the County's "untenable" land capacity assumptions.[31] Wiesen sets forth several premises to support his position including: (1) the County failed to appeal the City's LCA and, as a result, the assumptions contained within the City's LCA are presumed valid and the County was precluded from taking a different approach and departing from the findings of this LCA;[32] (2) the County failed to provide a LCA of its own which would "justify the ordinance;"[33] and (3) the County altered various City assumptions, including the safety factor and planned densities and, therefore, impermissibly usurped the City's prerogative to plan within its own city limits.[34]

Caitac combines briefing on Issues 3, 5, 6, 9(c) and 10 and contends that with Ordinance 2008-03 the County is encouraging sprawl and failing to serve the GMA's purpose of planning to accommodate growth.[35] Caitac's contentions are similarly founded, asserting: (1) the County's actions encourage sprawl by failing to accommodate growth; (2) the County erroneously concluded Bellingham's UGA did not need to be expanded despite evidence that the UGA was grossly undersized to accommodate projected residential and economic growth; and (3) the County erroneously rejected the City's land supply methodology without any justification.[36] However, Caitac's arguments differ from Wiesen's in two ways. First, Caitac focuses on an assumed requirement that the County was required to consider and balance the goals of the GMA and to document this consideration.[37] Second, Caitac asserts that the County's action does not comply with the GMA's goals including those pertaining to sprawl, housing, economic development, and the environment.[38]

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[31] Wiesen HOM Brief, at 14.
[32] Wiesen HOM Brief, at 15-16.
[33] Wiesen HOM Brief, at 28.
[34] Wiesen HOM Brief, at 29-45.
[35] Caitac HOM Brief, at 3.
[36] Caitac HOM Brief, at 1-2. This Petitioner's Brief references Issues 1,2, 3, 5, 6, 9, 10, 11, 12, 13, 15, 17, 18, and 22. Caitac adopts by reference the arguments and discussions contained in the HOM Briefs of Wiesen, Haverstraw, and Petree as they pertain to Issues 3, 4, 5, 7, 8, 9a-9c, 10, 14, 15, 16,17, 18, 19, 20, 21, 22, and 23. *Caitac HOM Brief,* at 3.
[37] Caitac HOM Brief, at 5-7.
[38] Caitac HOM Brief, at 8-20.

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In response, Whatcom County notes that it did not "build its own land supply analysis from scratch" but "for the most part, it utilized the land supply analysis that had been prepared by the City."[39] The County contends the GMA gives the authority and responsibility to set UGAs to counties and therefore, the City's LCA is not binding on the County and may be modified.[40] The County responds to what it sees as four arguments presented by the Petitioners: (1) past growth rates outside of the Bellingham UGA do not prove the UGA is too small;[41] (2) the City's LCA did not result in a recommendation for an "overly restrictive" UGA;[42] (3) the selected "safety factor," although modified from that of the City's, was reasonable and within the bounds of the County's discretion;[43] and (4) the County's LCA assumes realistic infill assumptions for the City of Bellingham.[44]

Briefs in support of Whatcom County were filed by Intervenors Futurewise and McShane.[45] Like Whatcom County, Futurewise asserts that (1) the power to designate UGAs lies with the County and, thus, the City's LCA does not create a directive the County must follow;[46] and (2) the County's assumptions, specifically the "safety factor" were reasonable and reflect a traditional "land availability factor."[47] McShane submits argument regarding (1) the "safety factor"[48] and (2) land supply constraints and sprawl.[49]

As noted *supra,* the City of Bellingham was granted *amicus* status in this proceeding and submitted briefing supporting the County's decisions regarding the City's UGA boundaries.[50]

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[39] Whatcom County Response, at 10.
[40] Whatcom County Response, at 47-49.
[41] Whatcom County Response, at 21-23.
[42] Whatcom County Response, at 24-38.
[43] Whatcom County Response, at 38-41.
[44] Whatcom County Response, at 41-47.
[45] Futurewise Response Brief in Support of Whatcom County (Futurewise Response); Dan McShane's Response Brief to Petree, Wiesen, and Caitac USA (McShane Response).
[46] Futurewise Response, at 7-12.
[47] Futurewise Response, at 13-21.
[48] McShane Response, at 2-4.
[49] McShane Response, at 5-6.
[50] City of Bellingham's Amicus Brief (Bellingham Amicus).

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The City recognizes that its LCA was a recommendation and that the County has discretion to modify the market factor utilized by the City.[51]

Petitioners filed Reply briefs. Within these replies, Petitioners responded to the facts and arguments raised by the County and reiterated those arguments previously made in the opening briefs.[52]

Board Discussion

Background –Designating UGAs

The arguments presented by all parties pertain to the overarching concept of accommodating growth and relate to the appropriate size of the Bellingham UGA – a UGA which must be sized to accommodate growth expected to occur within the 20-year planning horizon. Thus, a basic understanding of the requirements for UGAs is necessary to fully comprehend the issue before the Board. Under the GMA planning framework, jurisdictions were first required to designate natural resource lands and critical areas.[53] Once these lands were designated, the GMA then required counties to designate UGAs within which urban growth was to be encouraged and outside of which growth could occur only if it was not urban in nature.[54] The GMA defines "Urban Growth Areas" to be:

> [T]hose areas designated by a county pursuant to RCW 36.70A.110.[55]

And, the GMA further provides that "Urban Growth" is:

> [G]rowth which makes intensive use of land for the location of buildings, structures, and impermeable surfaces to such a degree as to be incompatible with the primary use of land for the production of … [agricultural products, forestry, mineral extraction] … [or] rural uses, rural development, and natural resource lands designated pursuant to RCW 36.70A.170.[56]

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[51] Bellingham Amicus, at 6-11.
[52] Wiesen Reply Brief; Caitac Reply Brief.
[53] RCW 36.70A.170*;* See *Redmond v. Central Puget Sound GMHB,* 136 Wn.2d 38 (1998).
[54] RCW 36.70A.110(1).
[55] RCW 36.70A.030(19).
[56] RCW 36.70A.030(18).

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The GMA states that each city within a county must be included within a UGA but a UGA may also include unincorporated areas if those areas are characterized by urban growth or are adjacent to areas already characterized by urban growth.[57] A definition of "characterized by urban growth" has been provided, with this phrase meaning:

> [L]and having urban growth located on it, or to land located in relationship to an area with urban growth on it as to be appropriate for urban growth.[58]

The size of the UGA is based on the GMA's requirement to include areas and a range of densities and uses, including greenbelts and open spaces, sufficient to permit the urban growth projected to occur for the succeeding 20-year period based on growth management population projections produced by the Office of Financial Management (OFM).[59] The GMA also provides that when determining the size of a UGA, a reasonable land market supply factor may be utilized and local circumstances may be considered in arriving at this market factor determination.[60] Recently, the Supreme Court provided clarity and further guidance as to the size of a UGA when the Court held:

> … [A]lthough the GMA does not explicitly limit the size of a UGA, to give meaning to the market supply factor provision and in light of the GMA goal of reducing sprawl, we hold *a county's UGA designation cannot exceed the amount of land necessary to accommodate the urban growth projected by OFM, plus a reasonable land market supply factor*.[61]

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[57] RCW 36.70A.110(3). The GMA reiterates urban growth should be located in UGAs and establishing the following hierarchy for location:

> *First*, in areas already characterized by urban growth that have adequate existing public facility and service capacities to serve such development;
> *Second*, in areas already characterized by urban growth that will be served adequately by a combination of both existing public facilities and services and any additional needed public facilities and services that are provided by either public or private sections; and
> *Third*, in the remaining portions of the urban growth area. *RCW 36.70A.110(3).*

[58] RCW 36.70A.030(18).
[59] RCW 36.70A.110(2).
[60] Id.
[61] *Thurston County v. WWGMHB,* Docket No. 80115-1, at 29 (Aug. 14, 2008, En Banc) (Emphasis added). The Court was addressing a previous holding by the Court of Appeals in *Diehl v. Mason County 94 Wn. App. 645 (1999)*, where the *Diehl* Court found the OFM population numbers set the minimum and maximum size of the UGA, essentially upholding previous Board cases which concluded the meaning of "sufficient" amounted to a not too little, not too much approach to GMA sizing.

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Thus, the GMA sets forth the framework for delineating the boundaries of a UGA.

Authority to Designate UGAs

1. Whatcom County Designates UGAs

It is Whatcom County that has the task of designating a UGA.[62] Therefore, in order to comply with the GMA and its stated duty, Whatcom County is required to size the Bellingham UGA to accommodate that portion of the OFM population allocated to the City and, if necessary, it may utilize a reasonable market factor. Nevertheless, coordination and consultation between a county and its cities underlies many aspects of the GMA, including the designation of UGAs. Therefore, the GMA requires counties to consult with each of its cities and attempt to reach agreement as to the location of the UGA.[63] However, if agreement cannot be reached, the County may designate a UGA as it deems appropriate so long as it justifies in writing its actions.[64,65] Thus, it is clear from the GMA that the ultimate responsibility for designating a UGA is that of Whatcom County and this Board has previously so held as is noted in *Building Association of Washington v. Clark County:*

> RCW 36.70A.110(2) places the ultimate responsibility of sizing urban growth areas with the County. This includes the designation of the urban growth boundary and assumptions used to base the size of the UGA.[66]

Conclusion: The language of the GMA is clear – the ultimate authority to size UGAs resides with counties and, therefore, any assertions set forth within arguments presented in relationship to Issues 3, 5, 6, 7, 10, 17, or 19 that purport otherwise are not supported by the plain language of the GMA.

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[62] RCW 36.70A.110(1): Each county … shall designate an urban growth area or areas …
[63] RCW 36.70A.110(2). The Board notes that this provision addresses the initial designation of UGAs. However, the Board finds and concludes these same provisions apply to future alterations of a UGA boundary.
[64] RCW 36.70A.110(2).
[65] *See Harader et al v. City of Winlock,* WWGMHB Case No. 06-2-0007, Final Decision and Order (Aug 30, 2006) (City has no ability or duty under the GMA to set or alter UGA boundaries); *Wells v. Whatcom County,* WWGMHB Case No. 97-2-0030 (Nov. 5, 1997)(County not a city has responsibility for UGA boundary); *Reading et al v. Thurston County,* WWGMHB Case No. 94-2-0019 (March 25, 1995).
[66] *Building Association of Washington v. Clark County*, WWGMHB Case No. 04-2-0038c (Amended Final Decision and Order, November 23, 2005) at 21.

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2. City of Bellingham Submits a Recommendation

One of the elements of the Petitioners' argument is that the City of Bellingham conducted an extensive analysis and review of its land use needs which resulted in a recommended size for the Bellingham UGA but, because the County did not challenge this action of the City, the County was precluded from altering the UGA in a manner which differed from that presented by the City.[67] The Board disagrees.

Under the GMA it is the responsibility and duty of Whatcom County to establish UGA boundaries. Although the GMA does require a county to consult with its cities as to boundary lines, as noted above, cities have no power, in and of themselves, to delineate UGAs. Cities are only capable of submitting a recommendation for the location of the UGA and filing any objection with Washington State Department of Community, Trade and Development (CTED) over the UGA designation or filing an appeal before the Board.[68]

Further, the record shows that the City clearly viewed its adoption of its expanded UGA as a recommendation to the County.[69] Although initial disagreement did occur between the County and the City as to the sizing of the UGA, the City ultimately accepted the County's delineations of the UGA boundaries, as demonstrated by City of Bellingham Resolution 2008-03.[70]

Conclusion: It is clear from RCW 36.70A.110(2) that Whatcom County has been given the authority to designate a UGA and was not bound to the recommendation presented by the City of Bellingham. In addition, the fact that the County didn't appeal the City's determination does not transform the City's recommendation into a binding mandate the

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[67] *See e.g.* Wiesen HOM Brief, at 15; Wiesen Reply Brief, at 4. In Wiesen's Reply Brief, the petitioner attempts to clarify his argument to not be one that suggests a county can only designate a UGA as proposed by a city but, rather his argument was that when a county bases its UGA designation on a LCA prepared by a city, it must have first appeal that plan if a county seeks to change factors utilized.

[68] RCW 36.70A.110(2); RCW 36.70A.280(1); .280(2)(a).

[69] Exhibit 133, Bellingham Comprehensive Plan at LU-24, Exhibit 179, Resolution 2006-15 at 4. *See also* City of Bellingham *Amicus* Brief.

[70] Also see Bellingham Amicus Brief, at 3-4.

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County was forced to follow. Nor does this alter the County's ultimate authority to designate UGAs.[71] The Record shows that the initial disagreement between the County and the City was resolved and the City ultimately accepted the County's delineations of the UGA boundaries *prior to* the County's adoption of the challenged Ordinance. Assertions set forth by Petitioners as to Issues 3, 5, 6, 7, 9(c), 10,16, 17, and 19 in this regard are not supported by the clear language of the GMA.

"Showing Your Work"

With Issue 10, Petitioners contend Whatcom County has failed to "show its work" in making the assumption that adequate capacity to accommodate projected urban growth exists given the UGA expansion authorized by Ordinance 2008-003. All Petitioners, whether via their own arguments or by incorporating the arguments of fellow Petitioners, asserted the County failed to justify how it came to its decision when sizing the Bellingham UGA.[72] The underpinning for this assertion is the County's reliance on a land supply methodology report prepared by the City of Bellingham which recommended a larger UGA than was ultimately adopted by the County, with the County modifying some of the assumptions without, according to Petitioners, showing why these modifications were done. In response to this assertion, the County appears not to dispute that it should demonstrate how it sized the UGA and sets forth its land capacity analysis process.[73]

Based on the statutory framework and the procedural guidelines established by Washington State Department of Community Trade and Economic Development (CTED), the Growth

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[71] The Board does not agree with Petitioner Wiesen that the decisions in the May 31, 2005 Final Decision and Order in *Irondale v. Jefferson County*, WWGMHB Case No. 04-2-0022 and March 12, 1995 Final Decision and Order in *Sky Valley v. Snohomish County*, CPSGMHB Case No. 95-1-0068c (Final Decision and Order, March 12, 1996) are applicable here and do not support the position that the County needed to appeal the City's adoption of its land supply analysis. Likewise, Petitioner Wiesen misconstrues the August 28, 2007, Order Finding Compliance in *Macomber v. City of Bellingham,* WWGMHB Case No. 06-2-0022 in which he claims the Board upheld the City's land capacity analysis. In that decision, the Board found the City of Bellingham had remedied the previous inconsistencies between the level of service that it had established in its park element and its capital facilities element, based on its land capacity analysis but did not rule on assumptions Bellingham used for its recommendations on sizing its UGA.[71]

[72] *See e.g., Petree HOM Brief,* at 13 and *Caitac HOM Brief,* at 37.

[73] *See* County Response Brief, at 9-47.

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Boards have concluded that the GMA requires counties to designate UGAs which include areas and densities sufficient to permit the OFM projected twenty-year population growth and, in doing so, the County may utilize a reasonable market factor which respects local circumstances. In order to analyze whether the County has properly designated the UGA, all three Growth Management Hearings Boards have historically required a record which contains supporting documentation of these decisions – an evidentiary record that has been termed "Show Your Work".

Less than a week prior to the Hearing on the Merits in this matter and the same day Petitioners' Reply briefs were due, the Supreme Court issued its decision in *Thurston County v. Western Washington Growth Management Hearings Board* (*Thurston County*) which addressed the "Show Your Work" requirement as it relates to the market factor.[74] The question related to Issue 10 then becomes whether the Board's "Show Your Work" requirement was ever authorized by the GMA or, as Petitioners to this matter asserted at oral argument, the Court's holding in *Thurston County* did not abrogate the requirement but rather the case stands for the proposition that the County must support its actions in the record below to prevent *post hoc* analysis. A similar assertion was recently before the Board in *Panesko, et al. v. Lewis County,* in which the Board explained:[75]

> The phrase "show your work" was first used by the Central Puget Sound Growth Management Hearings Board to describe the explicit documentation of factors and data used by counties when undertaking the sizing of UGAs.[76] Because UGA sizing relies primarily on mathematical calculations and numerical assumptions, the Board concluded that such a showing of work was required in order to demonstrate the analytical rigor and accounting that supported the sizing and designation of UGAs; without which both the Board and interested citizens would have no criteria against which to judge a

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[74] *Thurston County v. WWGMHB,* Docket No. 80115-1 (Aug. 14, 2008 En Banc).
[75] *Panesko, et al v. Lewis County,* WWGMHB Case No. 08-2-000, at 7-10, Order on Reconsideration (Sept. 11, 2008)(Internal Footnote Citations retained, Emphasis in Original).
[76] *Association of Rural Residents v. Kitsap County,* CPSGMHB Case No. 93-3-0010, Final Decision and Order, at 35 (1994). The Eastern Washington Growth Management Hearings Board has also adopted this requirement – *see Knapp, et al v. Spokane County,* EWGMHB Case No. 97-1-0015c, Final Decision and Order (1997).

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County's UGA delineation.[77] This requirement was subsequently adopted by this Board, however, it has since been clarified that requiring the record support a jurisdiction's actions does not amount to "justification" nor does it result in a shifting of the burden; the burden remains on the petitioner to demonstrate the analysis was clearly erroneous.[78]

The Board recognizes that, as with all legislative enactments, comprehensive plans and development regulations are presumed valid upon adoption.[79] However, a presumption is not evidence; its efficacy is lost when the opposing party adduces *prima facie* evidence to the contrary.[80] Therefore, the presumption of validity accorded to legislative enactments is not conclusive but rebuttable. In order to overcome the presumption, a petitioner must persuade the Board that the jurisdiction's action was clearly erroneous and to do so it must present clear, well-reasoned legal argument supported by appropriate reference to the relevant facts, statutory provisions, and case law which establishes that the GMA's requirements have not been met. Once a petitioner has overcome the presumption, the responding jurisdiction must then present evidence to contradict a petitioner's allegations.[81]

The Board recognizes the Supreme Court's holding that a requirement for the County to identify and prospectively justify its market factor in its comprehensive plan distorts the presumption of validity afforded to such enactments. **Thus, this Board finds that a local jurisdiction planning under the GMA is not required to explicitly identify or set forth a prospective justification for a market factor within its comprehensive plan.** However, the Board does not read the Court's holding in *Thurston County* as transforming the presumption of validity into a conclusive

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[77] *Futurewise et al v. Lewis County,* WWGMHB Case No. 06-2-0003, Final Decision and Order (2006); *See coordinated cases Klein v. San Juan County,* WWGMHB Case No. 02-0008, *Ludwig et al v. San Juan County,* WWGMHB Case No. 05-2-0019c, *Campbell et al v. San Juan County,* WWGMHB Case No. 05-2-0022c, Compliance Order/Final Decision and Order (2006); *Master Builders Association v. Snohomish County,* CPSGMHB Case No. 01-3-0016, Final Decision and Order (2001); *Hensley, et al v. Snohomish County,* CSPGMHB Case No. 03-3-0009c, Final Decision and Order (2003); *McAngus Ranch, et al v. Snohomish County,* CPSGMHB Case No. 99-3-0017, Final Decision and Order (2000).

[78] *See coordinated cases Abenroth v. Skagit County,* WWGMHB Case No. 97-2-0060c and *Skagit County Growthwatch v. Skagit County,* WWGMHB Case No. 07-2-0002, Final Decision and Order (2007)(citing to *Port Townsend v. Jefferson County,* WWGMHB Case No. 94-2-0006, Final Decision and Order (1994)); *See also Hensley, et al v. Snohomish County,* CSPGMHB Case No. 03-3-0009c, Final Decision and Order (2003).

[79] RCW 36.70A.320(1).

[80] *Bates v. Bowles White & Co,* 56 Wn.2d 374, 378 (1960) (citing *Kay v. Occidental Life Ins. Co*., 28 Wn. (2d) 300, 183 P. (2d) 181 (1947); *Gardner v. Seymour*, 27 Wn. (2d) 802, 180 P. (2d) 564 (1947)).

[81] *Wells v. WWGMHB,* 100 Wn. App. 657, 661 (2000).

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presumption. The presumption of validity is rebuttable and remains as such. This very fact was noted by the Supreme Court when it stated:[82]

> *Once a petitioner challenges* the size of a county's UGA, the county may explain whether the difference between supply and demand is due to a land market supply factor or other circumstances. If the county asserts a land market supply factor was used in designating the UGA boundaries, the *petitioner may argue the factor employed was clearly erroneous and unreasonable based on the facts in the record*...

Therefore, the purpose and function of the Board's "show your work" requirement is, and in this Board's view has always been, a demonstration by the County upon challenge of the facts and evidence supporting its action in response to a petitioner's *prima facie* case. There is no distortion of the presumption of validity or a shifting of the burden; the presumption is rebuttable by evidence and legal argument for which the County must present contrary evidence from the Record. Without having the ability to review supporting evidentiary documentation, the Board's ability to determine whether a jurisdiction has complied with the GMA would be irretrievably compromised. Therefore, the Board is not asking for the County to demonstrate it has complied with the GMA rather it is only requiring the County respond to assertions made by the petitioner that the County's actions were non-compliant with the GMA.

The Board notes that unlike the matters before the Supreme Court in *Thurston County* and the Board in *Lewis County*, the "work" requested to be "shown" by the Petitioners in this case does not pertain to just the County's determination of the market factor utilized but also to other land use capacity methodologies/assumptions which allegedly differ from the City's.

Conclusion: As to Petitioners' position in Issue 10 that Whatcom County was required to "Show its Work," the Board finds that upon a proper challenge to the validity of a UGA delineation, the County's Record must contain an analytical analysis for assumptions utilized to make a UGA determination. That is, the County needs "to show its work" in developing its assumptions in order for a proper evaluation by the public and the Board of

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[82] *Thurston County v. WWGMHB,* Case No. 80115-1, at 32 (2008) (In relevant part, internal citations omitted, emphasis added).

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whether or not the County's action in delineating the UGA complies with the GMA. Here, Petitioners have set forth a *prima facie* case contending that the Bellingham UGA is inappropriately sized and, therefore, Whatcom County's Record must show the needed analysis. The determination as to whether or not the County has actually "Shown its Work" is discussed below.

Land Capacity Analysis

As noted above, all Petitioners raise issues[83] pertaining to the adequacy of the County's Land Capacity Analysis. At the heart of the required analysis for determining the appropriate size of the UGA is a Land Capacity Analysis (LCA)[84] in which the County determines if a UGA has sufficient capacity to absorb the projected growth. The LCA is a critical mechanism for the sizing of a UGA because it is utilized to determine how much urban land is needed. It is prospective – looking forward over the coming 20 years to see if there is enough land within the UGA to accommodate the growth that has been allocated to the area. However, part of this determination of how much land is available is filled with assumptions or "educated guesses" that lack absolute certainty and this uncertain nature was artfully explained to the Bellingham City Council by the Assistant City Attorney:

> The level of detail should not be misinterpreted as meaning that the land supply analysis is a series of precise calculations resulting in an absolute correct result. Many of the calculations are based on assumptions about how land will develop over the next twenty years. These assumptions are a required part of the analysis, but ultimately are an educated attempt to predict the future behavior of property owners.[85]

This lack of precision permeates the entire process because the assumptions are largely qualitative, reach into the distant future, and reasonable people can disagree about them. Here, Petitioners have challenged the County's determination as to the size of the

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[83] Issues 3, 5, 7, and 17.

[84] The term Land Capacity Analysis (LCA) will be utilized by the Board. The document can go by a variety of names – Land Supply Analysis, Land Quantity Analysis, Urban Land Analysis, Land Supply Methodology Report – but no matter what the document is called it serves the same purpose – to review the supply and demand of land in order to accommodate growth.

[85] Exhibit 1302, April 10, 2006 Memo from Alan A. Marriner to Bellingham City Council.

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Bellingham UGA, presenting their interpretation of facts and legal arguments which assert the County failed to show why it "selectively adopted and rejected components of the City's Land Supply Methodology Report without any of its own independent analysis or verification"[86] and, in some regards, assert that the assumptions utilized by the City of Bellingham are more viable than those utilized by the County. Petitioners have set forth a *prima facie* challenge and it is now up to the County to respond to these assertions in order to support its decision in sizing the Bellingham UGA.

Bellingham UGA "Market" Factor

What is ultimately under challenge is the County's LCA and whether, with this analysis, the County has *sized* the Bellingham UGA to accommodate the urban growth projected to occur in the next 20 years, which is its ultimate duty and responsibility under the GMA. As noted *supra,* Whatcom County was not required to utilize the LCA prepared by the City nor was it required to adopt the UGA boundaries as recommended by the City. Now that the sizing of its UGA has been challenged and Petitioners have presented fact and argument which sufficiently question the County's action, the County needs to provide the analysis which supports the sizing of the City's UGA so that the Board may review that action for compliance with the GMA.

Petitioners' challenge in this matter pertains primarily to assumptions made in regards to the "safety factor" or "market factor" and also includes assumptions related to planned densities, the lack of zoning regulations, the amount of land needed for parks and public facilities, particularly stormwater facilities, and the future availability of vacant or re-developable lands. The Board reiterates that its role is not to determine whether one assumption is better than another assumption or to substitute its judgment for that of the County. Rather, its role is to ensure that the County's actions comply with the goals and requirements of the GMA, in this case – that the Bellingham UGA is sized to accommodate its allocated

[86] Wiesen HOM Brief, at 14.

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population projections. The adopted projected population growth allocated to the Bellingham UGA for the 2002-2022 planning period is 31,600 people.[87]

Pursuant to RCW 36.70A.190, the Department of Community, Trade, and Economic Development (CTED) has been authorized to adopt technical assistance and procedural criteria in order to facilitate the adoption and implementation of compliant comprehensive plans and development regulations. CTED's procedural guidelines for designating UGAs are found at WAC 365-195-335, with these guidelines reiterating the GMA's dictate that counties are the final arbitrator of a UGA's size and boundary. As for technical assistance, not only does CTED provide assistance and guidance in planning and achieving effective solutions to managing growth and development, but in order to perform this function CTED has prepared several resource documents for jurisdictions to utilize when designating UGAs including: *Issues in Designating Urban Growth Areas: Part I: Providing Adequate Urban Land Supply, Art & Science in Designation Urban Growth Areas, Part II: Suggestions for Criteria and Densities,* and *Buildable Lands Program Guidelines.*[88]

A Summary of UGA Land Supply was prepared by Whatcom County.[89] The Board sees this document as representative of the County's LCA. The LCA indicates the total acreage for vacant and underdeveloped lands (both in regards to residential land as well as commercial and industrial), subtracts for critical areas, infrastructure, and public uses, and then reduces the net buildable acreage by a "market availability factor" (16 percent for residential, 25 percent for commercial/industrial) to arrive at the net available buildable acreage. Based on this analysis, the Bellingham UGA has 1,205 acres of net available residential lands and 710 acres of net available commercial/industrial lands. The LCA utilizes an overall planned

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[87] Ordinance 2008-003, at 5 (Finding of Fact 31).

[88] The first two resource documents were both drafted by the CTED in 1992, the third in 2000. The parties to these proceedings rely primarily on *Part I* of the CTED guidance documents which is found as Index 131. Pursuant to WAC 242-02-660, the Board takes Official Notice of CTED's 2000 document. The Board recognizes that Whatcom County is not a "Buildable Lands" County as provided for in RCW 36.70A.215. However, the County selected to base its urban land supply analysis on the updated information contained within CTED's Buildable Lands document.

[89] Index 152, Appendix D.

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density of 11 dwelling units/acre (du/acre) and an average household size of 2.10 persons/du which results in the UGA capability of providing residential capacity for a population of 31,624, a surplus in population accommodation of 23 acres. As for commercial/industrial land, the LCA establishes a projected need of 694 acres, resulting in a surplus of 16 acres.

A key contention of the Petitioners in this matter is the use of a "safety factor." CTED's 1992 Methodology was relied on by the City of Bellingham and the use of a safety factor is supported by the Petitioners. This methodology sets forth six steps for providing adequate land supply in the UGA.[90] This six-step system permits adjustments to the total land acreage based on "suitability," "availability," and "safety". Although a realistic approach, the Board notes this methodology was established *prior* to the Legislature's adoption of EHB 1305 which amended the GMA to include the provision of a reasonable land market supply factor and, therefore, if the Legislature had wished for cities and counties to utilize such a variety of factors to adjust the available land supply as was addressed by the CTED publication it would have amended the GMA accordingly.[91] This, the Legislature did not do and, therefore, by the GMA's own terms, a UGA may be adjusted only to reflect a reasonable land market supply factor.

In addition, the Board reads the GMA as authorizing the use of a reasonable land market supply factor which is intended to reduce the total net buildable acreage of land within a UGA by a set percentage to account for the fact that not all buildable land will be developed

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[90] CTED's 1992 documents contains 6 steps: 1: Identify vacant, partially-used, and under-utilized land (Gross Available Land Supply); 2: Determine development limitations (e.g. critical areas); 3: Determine lands for public purpose (e.g. infrastructure such as right-of-way, utilities; schools, parks); 4: Determine lands suitability for development (e.g. social/economic reasons – historic lands, resource lands, market constraints); 5: Determine lands availability for development (e.g. withheld from development for investment or personal reasons); and 6:Provide additional land area where uncertainty is high (e.g. a safety factor to account for inherent uncertainties).

[91] *See* EHB 1305 (1995 c 400 (partial veto), passed April 20, 1995). Pursuant to WAC 242-02-660, the Board takes Official Notice of this legislative enactment. The Board assumes the Legislature is well informed on growth management issues and thus, the Legislature was aware of CTED's 1992 Methodology at the time of amendment.

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within the 20-year planning horizon. Whether a jurisdiction calls this adjustment a land availability factor, a market factor, a safety factor, or a cushion – it serves the same purpose. The Board recently articulated the purpose of a market factor in *Panesko v. Lewis County*, explaining:[92]

> A market factor represents the estimated percentage of net developable acres contained within a UGA that, due to fluctuating market forces, is likely to remain undeveloped over the course of the 20-year planning period. The market factor recognizes that not all developable land will be put to its maximum use because of such things as owner preference, cost, stability, quality, and location and, therefore, the GMA permits jurisdictions to include within a UGA not only the area necessary to accommodate projected growth but allows as a —safety factor - the market factor – expressed as a percentage related to total acreage.

Support for this interpretation can be seen in the Supreme Court's recent holding in *Thurston County* when the Court noted:[93]

> A market factor represents the estimated percentage of net developable acres contained within a UGA that, due to idiosyncratic market forces, is likely to remain undeveloped over the course of the twenty-year planning cycle.

Thus, Petitioners' contention that Bellingham was permitted to use a "land availability factor" intended to reflect that not all developable land will be available for development and a "safety factor" intended to provide for an excess of land so as to assure affordability is not supported by the GMA. To size the UGA in excess of the acreage required to accommodate the urban growth projection based upon any other reduction factor other than market factor is simply not authorized by the GMA.

If a jurisdiction chooses to utilize a market factor, it must be reasonable. In dispelling the Boards' historical 25 percent baseline market factor, the Supreme Court stated that the reasonableness of a market factor depends on local circumstances and may therefore vary from jurisdiction to jurisdiction.[94] According to the Record, Whatcom County utilized a 10

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[92] *Panesko, et al v. Lewis County,* WWGMHB Case No. 08-2-0007c, FDO at 19-20 (Aug. 15,2008).
[93] *Thurston County,* Docket 80115-1, at 31.
[94] *Thurston County,* Docket 80115-1, at 32.

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percent market factor in comparison to the 25 percent "combined" market factor utilized by the City of Bellingham.[95] Petitioners assert that the City's factor is supported by a comprehensive analysis which included consideration of downtown infill development, waterfront redevelopment, second home purchasers, and ability to extend utilities to enable annexation and that similar analysis was not performed by the County, resulting in an arbitrary selection of a market factor. What Petitioners misconstrue is that all assumptions utilized when developing a LCA are, by their very nature, "educated guesses" and as such are open to varying analysis.

The City of Bellingham reduced the land supply estimates within the UGA based on two premises – a "land availability factor" and a "safety factor." The "land availability factor" is based on an overall effective reduction of eight percent in land availability due to a loss of infill capacity due to the following factors including: (1) underdeveloped land within the City in areas where the zoning does not provide for minimum densities (2) resistance by property owners to development, (3) the likelihood of partially developed property to re-develop, and (4) the low densities being achieved in the URMX zone currently. [96] Similarly, the other portion of the City's combined market factor – labeled as a "safety factor" - is based on a list of "uncertainties and unknowns" such as (1) the length of time clean-up of the waterfront might take, (2) the amount of downtown re-development, (3) competition for land in the downtown area for residential, commercial, and industrial uses, (4) speed of development in the UGA, and (5) a need to lessen constraints on available land to keep land more affordable and provide for more housing choice.[97] Varying percentages were utilized to reduce the available land supply, ranging from zero percent to 25 percent, to reflect these uncertainties without any quantitative analysis to show how the City determined these percentages. The Board sees the City's market factor percentage as simply a rough

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[95] The combined effect of the City's two factors – 8 percent for "land availability" and 17 percent for "safety" – totaling 25 percent. *See Index 141,* at 6-10.
[96] Exhibit 141, at 6-7.
[97] Id. at 8-10.

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assumption in much the same way the Petitioners see the County's market factor as speculative.

Within the Ordinance's Findings, the County noted that allowing for a reduction in land based on historic underbuilding understates the land's future development potential. The Ordinance also notes a basis for the County's differences with other City assumptions including (1) the City's ability to sustain its level of service for parks; (2) the County's assumption that existing public facilities could accommodate a higher percentage of new growth; (3) single-family homes on existing lots and ADUs would need less of a land reduction factor for storm water facilities than the City assumed; and (4) the County's assumption that more partially developed land and units in "Old Town" would develop. Even so, the Ordinance confirmed listed uncertainties, such as the level and speed of development, did warrant a "modest" market factor which the County determined was 10 percent.[98] The Record shows the County's consideration of varying percentage levels for the market factor[99] and the Board, giving due deference to the County's discretion in planning decisions as required by RCW 36.70A.320 and .3201, does not conclude that a 10 percent market factor is unreasonable in light of local circumstances relevant to the Bellingham UGA.

In making its assumptions, the City looked to its past performance and existing regulations. In contrast, the County looked prospectively to the future potential for land within the UGA if the City were to include additional sprawl reducing measures such as minimum densities in residential neighborhoods, provisions to allow for accessory dwelling units,[100] the prohibition of allowing single-family dwelling units in multi-family zones, and restructuring of the City's TDR program to achieve higher densities – all of which were actions recommended to

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[98] Exhibit 1432 at 8 and 9 (Finding of Facts 47 and 49).
[99] *See e.g.* Index 1241 presenting three scenarios with market factors ranging from zero percent to 25 percent; Index 1243; Index 1244; Index 1246; Index 1330.
[100] RCW 36.70A.400 requires that cities with a population of over 20,000 to include provisions for accessory dwelling units in their development regulations. It is not unreasonable, therefore, to expect that Bellingham to do this.

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Bellingham by CTED in order to increase City densities and address capacity shortfalls.[101] At the time of enactment of Ordinance 2008-003, the County recognized that the City of Bellingham had failed to implement the strategies suggested by CTED[102] and for that reason, the Petitioners argue, the County cannot rely on them when calculating land needs. The City's policies also support these kinds of actions.[103]

The Board further notes Petitioners' concern over Bellingham's prerogative to plan for the level of density it desires within the City's borders. However, when raising this concern Petitioners reference the City's "recommended safety factor" which, according to the City's own analysis, is not based on permitted densities but rather on unknowns and uncertainties related to the speed and level of development, both for housing and employment, a trend for second home purchases, and housing affordability. Although a UGA boundary drawn smaller than Bellingham may have originally recommended will undoubtedly entail changes in how the City will accommodate its allocated growth, this does not displace the City's authority to plan within its borders. Given the GMA's directive to counties to assign UGA boundaries, it is a statutorily permissible restraint.

As the Board has noted *supra,* planning for a UGA is prospective – looking 20 years into the future. The Ordinance and the EIS note that although Bellingham is the 11th most populous city in the state, it ranks 26th in density of 44 cities over 20,000.[104] The Ordinance further notes that the City's current density is 2,741 people per square mile and the City's plan would increase the density to 3,623 people per square mile, or approximately 5.66 people per acre. [105] Additionally, the City acknowledged that currently about 40 percent of the UGA does not have access to a city water and sewer line.[106] County-wide planning policies

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[101] Exhibit 1432, Ordinance 2008-003 at 7, Exhibit 1302.
[102] Exhibit 1432, Ordinance 2008-003 at 7.
[103] Exhibit 141, Bellingham's Comprehensive Plan at F-5 – F-8, LU-29.
[104] Exhibit 1432 at 5.
[105] Id.
[106] 179 at 16 (Finding of Fact 65).

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prohibit development at urban densities until services can be delivered.[107] Further, as noted *supra*, Bellingham delivered a Resolution to the County *prior* to the County's adoption of the Ordinance, which clearly stated that Bellingham supported the County's determination to adopt a smaller UGA than originally recommended.[108] With this City Resolution Bellingham also committed to considering changes to its plan and development regulations required to accommodate growth within the City's UGA in the upcoming year after the County's decision.[109] Therefore, based on the prospective planning aspect of the UGA, the relative low density currently being achieved in the City of Bellingham, the lack of sprawl reducing measures in Bellingham's current development regulations, the inability of the City to deliver urban services to a large portion of the UGA, and the City's commitment to consider measures to enable the achievement of Whatcom County's assumptions as to the Bellingham UGA, the Board does not find it clearly erroneous for the County to base its land capacity assumptions on measures not yet adopted by the City. Further, the City has time to implement these measures and has made a commitment to consider making these measures a reality early in the planning period.

Conclusion: The Board finds and concludes that Whatcom County's selected market factor is permissible under the GMA, RCW 36.70A.110(2), and is reasonable in light of local circumstances. Although the County selected a market factor that was less than the one recommended by the City of Bellingham and advocated by the Petitioners, the County's action was not clearly erroneous in light of the GMA's directive for Whatcom County to delineate UGA boundaries which accommodate the 20-year projected population growth. Therefore, Petitioners have failed to carry their burden of proof that the City's land capacity analysis does not comply with RCW 36.70A.110 as set forth in Issues 3, 5, 6, 7, and 17.

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[107] County Comprehensive Plan at C-7 (CWPP F-12) and 5-2.
[108] Exhibit 1456.
[109] Id.

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In addition, in regards to Petitioners' Issue 10 which alleged that the County failed to "Show its Work," the Board's review of the County's Land Capacity Analysis and the related Record, contains the necessary analysis to satisfy the County's duty in this regard.

D. Failure to Consider or Be Consistent with GMA Goals

Issue 6: Did the County fail to comply with RCW 36.70A.010; RCW.70A.020 (1), (2), (3), (4), (5), (11) and (12); RCW 36.70A.070; RCW 36.70A.110; RCW 36.70A.320; and RCW 36.70A.3201, where the County failed to consider and comply with GMA goals and requirements as part of its purported review conducted in connection with the Urban Fringe Subarea Plan, and the resulting Ordinance's findings and conclusions are conclusory, confusing, unsupported, internally inconsistent, incorrect, and inadequate, and where the likely result of the Ordinance is the very uncoordinated and unplanned growth and sprawl the GMA was promulgated to avoid? (Caitac 08-12; Petree Pet/Ord 3.1)

In this section, the Board will address whether the County considered and was guided by Goals 1, 2, 3, 4, 5, and 12 as raised in this issue statement as well as in other issue statements where violations of RCW 36.70A.020 are alleged. Goal 11 is discussed in the public participation section *supra.* Although not specifically raised within this issue statement, the Board notes Goal 9 is discussed in the open space/recreation section *supra.*

1. **Consideration of GMA Goals**

Positions of the Parties

Caitac asserts that the Record does not show Whatcom County considered the goals of the GMA, as required by RCW 36.70A.020, and is supported by various Western and Central Puget Sound Growth Management Hearings Boards' cases.[110] In response to Caitac's

[110]Caitac's Prehearing Brief at 7, 41 and 42. To support this assertion, Caitac cites to the CPSGMHB's holding in *Gutschmidt v. Mercer Island,* Case No. 92-3-0006, and contends this case requires the Record to contain evidence that the County considered the GMA's goals, repeatedly using the word "documentation" or contending the Record was devoid of any meaningful discussion. However, in *Gutschmidt* the CPSGMHB noted that although it supported CTED's recommendation that a CP should include a section addressing the statutory goals and such a recommendation was a practical one, it was not a mandatory requirement. Rather, the Board stated that it "*strongly recommends that the document itself or a part of the underlying record contain such a discussion, so that there can be no question that planning goals were 'considered' … whether a local jurisdiction decides to explicitly consider the planning goals in writing remains in the jurisdiction's discretion … whether the planning goals are just mentally considered or discussed in writing, the hurdle that the document in question must clear is achieving compliance with the GMA*."

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claim that consideration of the goals of the GMA must be reflected in the Record, the County maintains that the GMA contains no such procedural requirement. The County cites *Association of Rural Residents v. Kitsap County (Rural Residents)*[111] to support its argument. [112]

Board Discussion

RCW 36.70A.020 states:

> The following goals are adopted to guide the development and adoption of comprehensive plans and development regulations of those counties and cities that are required or choose to plan under RCW 36.70A.040. The following goals are not listed in order of priority and shall be used exclusively for the purpose of guiding the development of comprehensive plans and development regulations…

In regard to its claim that RCW 36.70A.020 requires the Record to show the County considered the goals of the GMA, Caitac cites *Berschauer v. City of Tumwater (Berschauer)*[113] and *Whatcom Environmental Council v. Whatcom County (Whatcom Environmental Council)*[114] to support its position. To bolster its position the County cites *Rural Residents*. *Whatcom Environmental Council* does not specifically address the question of consideration of GMA goals but rather found Whatcom County out of compliance because no evidence in the record supported its decision. The Central Puget Sound Growth Management Hearings Board has been explicit in holding that the Record need not demonstrate consideration of GMA goals:

> …no tangible procedural demonstration will be instituted nor will the Board attempt to read the collective minds of the County's elected officials or staff to determine whether they considered the GMA's planning goals…Instead, the ultimate test of consideration of the goals remains to determine whether the County's actions were

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[111] *Association of Rural Residents v. Kitsap County,* CPSGMHB Case No. 93-3-0010 (Final Decision and Order, June 3,1994).
[112] Whatcom County's Response Brief at 71.
[113] *Berschauer v. City of Tumwater*, WWGMHB Case No. 94-2-0002 (Final Decision and Order, July,1994).
[114] *Whatcom Environmental Council v. Whatcom County*, WWGMHB Case No. 94-2-0009 (Final Decision and Order, November, 1994).

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> substantively guided by those goals---whether the actions comply with the planning goals. [115]

In *Berschauer*, this Board said:

> We analyze Petitioner's assertions on non-compliance in the context of the following framework. (1) Is the plan the result of considered application of appropriate goals and requirements of the Act?... (3) Was the deliberation and decision-making process reasoned? (a) Is the plan supported by reasoned choices based upon appropriate factors actually contained or considered in the record?[116]

The Record before the Board in this matter demonstrates that the subject matter of the cited GMA goals was before the Whatcom County Council and that discussion occurred. Even though the County Council did not refer to specific goals, the minutes of the County Council's Planning and Development Committee show that the County was concerned about considering the appropriate goals of the GMA when designating a UGA, including sprawl, affordable housing, housing choice, concurrency for transportation and other capital facilities, protecting critical areas and conserving resource lands.[117] For example, the August 8, 2008 minutes of the County's Planning and Development Committee reflect the issue raised by Caitac in regard to sprawl:

> McShane asked about development in the County. They are seeing high permit numbers. He asked if there is information on the numbers of permits that are in either suburban enclaves or existing urban growth areas. Hart said that they do now and he will distribute that information.[118]

However, as our colleagues at the Central Board noted, the ultimate test of whether the County considered the goals is in the determination of whether the challenged action was

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[115] *Rural Residents* at 14 and 15. This decision specifically clarifies the Board's holding in *Gutschmidt* which is cited by Caitac to assert that the Central Board held that documentation of consideration of GMA goals.
[116] *Berschauer* at 3.
[117] Exhibit 1347, Planning and Community Development Committee, December 12, 2006, at 9 (housing); June 19, 2007 at 11 and 12 (economic development); December 1, 2007 at 5, May 1, 2007 at 6-7, May 22, 2007 at 4 and 5, and May 8, 2007 at 3 (concurrency); May 5, 2007 at 5 (resource lands); May 8, 2007 at 4 and 5 (transportation); March 3, 2007 at 5 (neighborhood character); May 1, 2008 at 2-5 (environmental protection).
[118] Exhibit 1347, Planning and Community Development Committee, August 8, 2006, at 6 and 7.

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guided by those goals. The Board's determination as to whether the County's decision was guided by the goals of the GMA is set forth below.

Conclusion: The Board finds that although the GMA requires Whatcom County to consider the enumerated planning goals of RCW 36.70A.020 in order to guide the development of the Comprehensive Plan and related Development Regulations, nothing in the GMA requires a specific delineation of such consideration. The Record before the Board clearly demonstrates the GMA's goals, although not explicitly referenced, were before the County Council during the process that led to the adoption of Ordinance 2008-03 and deliberation and contemplation as to the issues related to the goals occurred. The Board further finds that the consideration of the GMA's goals is ultimately determined by an evaluation as to whether or not the County's action was guided by the GMA's goals, as required by RCW 36.70A.020. However, the Board concludes that the GMA does not set forth a substantive requirement for such consideration. Rather the determination as to whether or not Whatcom County considered the goals is whether their action was guided by the goals as required by RCW 36.70A.020.

2. **Planning within the Guidance of GMA Goals**

Caitac attacks the designation of the Bellingham UGA on the grounds that it does not comply with GMA goals, particularly in relationship to directing growth to urban areas, sprawl reduction, affordable housing, economic development, and environmental protection goals. Caitac states this is because the County has essentially adopted the Final Environmental Impact Statement's (FEIS) Alternative One, the No-action Alternative. Caitac bases this allegation on Bellingham's lack of adoption of measures to increase infill and the County's minimal expansion of the UGA. According to Caitac, the FEIS describes the No-Action Alternative as sprawl-producing, because it will push growth from Bellingham, the largest employment center, into the unincorporated areas of the County and other county UGAs, increasing traffic congestion, air pollution, and pressure on resource lands, and

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threatening critical areas.[119] Caitac supports its argument by pointing out that school district populations in other parts of Whatcom County are increasing at a greater rate than the Bellingham School District. Caitac also points to the fact that permits issued between 2003-2005 numbered 3,319 in unincorporated parts of the County outside of UGAs and accommodated 5,310 persons, 2.5 percent more than was projected.[120]

The County responds that it did not adopt exactly any one of the alternatives set forth in the FEIS, but says the alternative it adopted was closest to Alternative 4.[121] The County argues Petitioners cite no sources to show that the UGA's size is driving up land prices or causing high growth rates in the UGA. The County counters that other reasons could account for growth outside of UGAs, including the natural attractiveness of those areas, grandfathered lots in rural areas and resource lands, oversized UGAs elsewhere, failure of rural zoning and agricultural conservation measures to conserve agricultural land, lack of minimum densities in city UGAs, and the development of suburban enclaves.[122]

Board Discussion

To evaluate whether or not the County complied with GMA goals, the Board needs to consider how the County complied with GMA requirements that support these goals. As noted *supra* in the Board's discussion as to the sizing of the Bellingham UGA, the Board found Whatcom County complied with RCW 36.70A.110, the requirements for designating UGAs, therefore, it follows that the County most likely complied with RCW 36.70A.020(1) and (2).

Below the Board will consider if other evidence presented by Petitioners demonstrates the Bellingham's UGA designation failed to comply with RCW 36.70A.070(1), (2), (4), and (5). However, the Board notes no argument raised by Petitioners that challenges the County's failure to comply with Goal 12, the GMA's concurrency goal, and the issue statements do

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[119] Petitioner's Caitac's Prehearing Brief at 14 and 15.
[120] Id. at 17 and 18.
[121] *Whatcom* County's Response Brief at 74 and 75.
[122] Id. at 22 and 23.

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not contain any reference to RCW 36.70A.020(10), the environmental protection goal. As such, the Board concludes Petitioners have abandoned any claim in relationship to a violation of Goal 12 and are barred from raising Goal 10 as a violation of this provision of the GMA was not asserted within Petitioners' issues.

RCW 36.70A.020(1) states:

> Encourage development in urban areas where adequate public facilities and services exist or can be provided in an efficient manner.

RCW 36.70A.020(2) states:

> Reduce the inappropriate conversion of undeveloped land into sprawling, low-density development.

Caitac argues that because the County essentially adopted Alternative One – No Action Alternative, which the FEIS states cannot provide for Bellingham's anticipated 20 year growth, the County's action will promote sprawl. The Board does not view the County's decision the same way Caitac does. While the County did not adopt Alternative Four in its entirety, it did not adopt Alternative One - the No-action Alternative. The Bellingham UGA that the County adopted was based on assumptions which combined aspects of Alternative Two - the Infill Alternative, with Alternative Four –Infill and Adjusted UGA, by adding some, but not all of the five-year review areas, and an additional area, in order to accommodate projected growth. The FEIS advises that Alternative Two meets UGA requirements and it also shows that Alternative Two causes the least impact on sprawl followed by Alternative Four.[123] Likewise, the FEIS shows that Alternative Two and Alternative Four had the least impacts on air pollution, water supply, and other environmental considerations.

Additionally, development in compliant UGAs other than the Bellingham UGA does not constitute sprawl. Whether these UGAs are compliant with the GMA is not before the Board at this time, and they can be considered appropriate places for urban growth according to RCW 36.70A.110, and RCW 36.70A.020(1) and (2). Further, while Caitac notes permit data

[123] FEIS at 2.3, 2.4, 2.6, and 2.9.

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for a three year period of time shows that permits outside the UGA have increased more than they have inside the UGAs, a County staff report indicates that between 1995 and 2002, 88.3 percent of the County's growth has occurred within city UGAs, while only 11.7 percent has occurred in unincorporated parts of the County, including its two non-municipal UGAs. [124]

Similarly, the Board is not convinced that the data regarding growth in school districts not associated with the City of Bellingham shows there is a direct link between the size of the Bellingham UGA and sprawl because of the lack of housing opportunities. The Board agrees with the County that there are other reasons families with children are choosing to live in areas not served by the Bellingham School District and that school district boundaries are comprised of areas that do correspond to UGA boundaries.

Conclusion: On review of this additional evidence, the Board finds that Petitioners failed to demonstrate that the size of the Bellingham UGA does not comply with RCW 36.70A.020(1) and .020(2).

Housing (Goal 4)

Positions of the Parties

The arguments that Caitac makes about sprawl also apply to its position on housing choices and housing affordability. Caitac also argues that the County's action reduces the choices for single-family housing that a larger UGA would have given. Additionally, Caitac and Wiesen attack the County's assumption on how much land will be available for multi-family housing and its affordability. Both of these Petitioners base their assertions on (1) the County's alleged faulty assumption about the waterfront area's capability to be developed during the planning period due to the time and money it will take to clean up the site's toxic waste, (2) their contention that the demand for second homes will reduce Bellingham's multi-family housing supply, and (3) their reliance on the past performance of downtown

[124] Exhibit 153 at 9.

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housing development and lack of available lots in the downtown area.[125] To buttress its claim concerning the lack of affordable housing and need to increase land supply to provide for more affordable housing, Caitac claims that a 2005 report shows that, at that time, Bellingham had only a three month supply of housing, ranking 43rd in the state for housing supply.[126]

Whatcom County replies that its assumption on how to accommodate housing choices and affordability is based on smaller, more affordable lots and an increase in multi-family housing.[127] As to the availability of land for multi-family housing in the waterfront and downtown areas, the County says its agrees that uncertainty about the development of downtown and the waterfront exists and that is why a 10 percent market factor was utilized in the County's LCA. The County emphasizes that there will be opportunities to review these uncertainties as it completes its 10-year update next year and during the required seven-year review.[128] In regard to second homes, the County maintains that the percentage used by Petitioners to estimate demand for second homes represents the demand for second homes countywide, including resort-oriented areas near the water and the mountains like Blaine, Birch Bay, and Columbia Valley where the demand for second homes is greater.[129] As for the 2005 housing report indicating a short supply of housing, the County states that this is a three-month "snapshot in time" and does not relate the supply to housing prices. [130]

Board Discussion

RCW 36.70A.020 (4), the GMA's housing goal, states:

> Encourage the availability of affordable housing to all economic segments of the population of this state, promote a variety of residential densities and housing types, and encourage preservation of existing housing stock.

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[125] Wiesen's Prehearing Brief at 23 and 24.
[126] Caitac's Prehearing Brief at 39.
[127] *Whatcom* County's Response Brief at 72.
[128] Id at 40.
[129] Id. at 30.
[130] Id. at 23.

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As stated *supra,* the Board views the County's choice for the Bellingham UGA designation as a combination of Alternative Two-Infill and Alternative Four - Infill and UGA Adjustment. The Boards notes the FEIS concludes Alternative Three, Expansion without Infill, would have the least impact on housing prices due to a less restricted land supply, but it would have the most impact on sprawl. The FEIS discusses how Alternative Two could provide housing on smaller lots and a wide variety of relatively affordable housing types, but also might have the most impact on housing prices due to more constraint on the land supply.[131] Alternative Four - Infill and UGA Adjustment option falls in the middle of these alternatives as far as impacts on housing. The Board acknowledges that the County choice does not include all the scenarios that Alternative Four analyzed, but notes the County's choice assumes more infill measures will be adopted and includes less land than the scenarios analyzed. The FEIS presents a classic GMA dilemma, the difficult responsibility that local governments face in trying to harmonize GMA goals. That is why the 10-year review of UGAs and the seven-year review of comprehensive plans are so important, so cities and counties can weigh this delicate balance.

Caitac and Wiesen argue that land supply in the Bellingham UGA does not meet RCW 36.70A.020(4), the GMA's housing goal, as to range of housing choices, particularly for single-family housing, and does not ensure enough available land and affordable housing options. For the Board to determine this, it must know what goals the City and County have set for themselves. Caitac argues the goal of most people is single-family home ownership and the County's UGA designation will limit that choice. However, the goals that the County and the City must meet are the goals that the set out in their comprehensive plans. Here, the goal that is discussed and documented in Bellingham's plan is that two thirds of future housing needs will be met by multi-family units.[132] Caitac does not point out the City's or the County's goals for affordability and how the designation of the Bellingham UGA deters the City or the County from meeting the County's or City's goals.

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[131] FEIS at 2.10 and 2.9
[132] Index 141, Bellingham's Comprehensive Plan, LU-15.

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Caitac and Wiesen assert the goal Bellingham has set for a mix of housing types is not possible due to County's faulty assumptions about how quickly the downtown and waterfront areas will develop and how much land will be available for development in the downtown area based on past performance. Petitioners do not fault the City for using a 25 percent combined land availability and market factor, but conclude the County's 10 percent market factor is not realistic.

The County and the City differed on how to define this uncertainty. Again, the Board finds this a case of dueling assumptions about predicting uncertainty in determining future land supply, where the Board must decide how much weight to give to reality versus possibility when evaluating the market factor. For instance, until the costs of waterfront clean-up are known, it is hard to predict how this will affect affordability of waterfront area units and the relationship to affordability of housing within the County as a whole. The Record shows eight percent of the housing county-wide is for second homes, and the data included in the work on Whatcom County's population forecasts recognizes that a large number of second homes occur in the Birch Bay, Columbia Valley, Blaine, and Point Roberts study areas.[133] On that basis, the Board is not convinced by Petitioners' contention that the County should have assumed that eight percent of the new multi-family units built in Bellingham will be used as second homes thereby decreasing the UGA's housing supply. Further, while the 2005 report on evaluating housing supply is an indicator that housing supply is something the County should continue to evaluate, it is not proof that Bellingham does not have an adequate housing supply.

Conclusion: The FEIS points out that housing affordability and supply will continue to be an issue that Bellingham and the County will need to vigilantly assess, the progress of housing development in the downtown and waterfront areas needs the County's and City's careful scrutiny, and the infill measures assumed by the County and which the City has committed to consider need to be implemented. Here, Petitioners have failed to

[133] Exhibits 132 at 4 and 5, and Exhibit 141, Appendix 3 at 9.

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demonstrate how the County and City are falling short of adopted housing goals or how the County's choice of a market factor for recognizing these uncertainties will not succeed in providing an adequate and affordable supply for all types of housing over the 20-year planning period. For these reasons, the Board concludes that Petitioners have not carried their burden that the designation of the Bellingham UGA does not comply with RCW 36.70A.020(4).

Economic Development

Positions of the Parties

Caitac contends that Whatcom County has also failed to provide for Bellingham's industrial and commercial growth because it did not consider the following factors: (1) the loss of several job producing properties, (2) pressure from residential uses for land due to an inadequate supply will decrease the City's commercial and industrial land supply, and (3) the inadequacy of Whatcom County's assumption that tall buildings will accommodate the City's residential, jobs, and commercial needs during the planning period.[134]

The County affirms that its LCA evaluated commercial and industrial land needs and, if the Board finds its residential LCA compliant, its LCA for Bellingham's commercial and industrial needs must also be compliant.

Board Discussion

RCW 36.70A.020 (5), the GMA's economic development goal, states:

> Encourage economic development throughout the state that is consistent with adopted comprehensive plans, promote economic opportunity for all citizens of this state, especially for unemployed and for disadvantaged persons, promote the retention and expansion of existing businesses and recruitment of new businesses, recognize regional differences impacting economic development opportunities, and encourage growth in areas experiencing insufficient economic growth, all within the capacities of the state's natural resources, public services, and public facilities.

[134] Petitioner Caitac's Prehearing Brief at 13 and 14.

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Caitac's allegations about factors the County and City did not consider when determining its commercial and industrial land supply needs is another attack on the market or safety factors that the City and the County used. The record on land available for industrial and commercial land is somewhat unclear. The City's land supply analysis shows Bellingham needs 694 acres to accommodate commercial/industrial land. In determining its land supply, the County's land supply analysis shows it used a 25 percent land availability factor to account for the uncertainties which reduced the land supply from 1,205 to 710 acres.[135] A County staff report also has a graph depicting a surplus, albeit small, of commercial and industrial lands.[136] However, an analysis of the numbers presented in Appendix D shows that the City has a surplus of 266 acres of available commercial/industrial land, 40 acres more than Petitioners asserted were needed by the City.

Vacant/Undeveloped:	1830 acres
Less critical areas/infrastructure/public use:	<550 acres>
Net Buildable Acreages	1280 acres
Less 25% market factor	<320 acres>
Net Available Acreage:	960 acres

As with the assumptions about land supply for affordable housing, while the Petitioners have presented the Board with reasons why they believe that the market factor should be more, the Board has no way of assessing exactly what the market factor should be and what percentage should be assigned to this uncertainty. Here the County has accounted for uncertainty and has shown that it has adequate supply of commercial/industrial land.

Conclusion: Petitioners have failed to carry their burden of proof that the County's supply of industrial and commercial land is inadequate, which is the grounds for their argument that the County is not encouraging economic development. Therefore, on the basis of this

[135] Exhibit 152, Appendix D.
[136] Index 152 – Graph: UGA Net Available Buildable Commercial/Industrial.

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argument, the Board finds that Petitioners have not demonstrated that the designation of the Bellingham UGA is not guided by RCW 36.70A.020(5).

E. Sequencing/Inconsistencies

1. **Failure to adopt policies and regulations to implement Ordinance/Inconsistencies Among the UFS Comprehensive Plan Land Use Map, UFS Plan, and Development Regulations**

Issue 9(b): Did the County fail to comply with the sequencing requirements of RCW 36.70A.110, RCW 36.70A.130(2), RCW 36.70A.020, RCW 36.70A.035, RCW 36.70A.070, RCW 36.70A.140, and RCW 36.70A.290(2), where, inter alia, the County (b) adopted the Ordinance and accompanying maps without the necessary explanatory text or "a plan, scheme, or design for each" element mandated by the statute, and the necessary development regulations and planning policies that would allow their implementation.

***Issue 11 (in relevant part)*:** Does the Ordinance fail to comply with the internal consistency requirement of RCW 36.70A.070, because it is internally inconsistent as a document and is also inconsistent with provisions of the County's comprehensive plan, including:

a. The text of the Urban Fringe Subarea Plan, which has not been updated…
d. The plan's land use designations and other measures affecting density. (Wiesen 08-08; Caitac 08-12; Haverstraw Pet/Ord 3.2; Petree Pet/Ord)

***Issue 15*:** Does the Ordinance fail to comply with RCW 36.70A.070, RCW 36.70A.100, and RCW 36.70A.210, where the Ordinance does not include development regulations or planning policies that would allow its implementation or include a "plan, scheme, or design" for the same? (Petree Pet/Ord 3.12; Caitac 08-12)

The Board will discuss these issues together. Additionally, in their arguments addressing Issues Three and Ten, Petitioners contend that the County's land capacity analysis and its failure to show its work does not comply with RCW 36.70A.115 because Whatcom County has not adopted development regulations to implement the URMX zone. Further, in arguments claiming the designation of the Bellingham UGA is not consistent the County's comprehensive plan and county-wide planning policies, they raise the issue of noncompliance with RCW 36.70A.115. The Board will address that part of their arguments here.

Positions of the Parties

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Petitioners' Positions

Petitioner Caitac contends that the Ordinance failed to adopt any text, zoning, or development regulations to implement the Ordinance as required by WAC 365-195-810 and gives no indication when it will do so. As an example of inconsistencies between the Plan and text, Caitac points to the Dewey Valley Planning Area map attached to the Ordinance which shows urban uses and the plan which describes a rural area. As an example of the failure to adopt development regulations, Caitac's points to the adoption of a URMX 6-12 zone which Caitac alleges doesn't exist in any planning document nor in the zoning code. Caitac asserts that comprehensive plan or zoning designations without regulations to implement them are meaningless.[137]

Petitioner Wiesen argues the failure to adopt the URMX zoning designations that the County relies on to accommodate growth in the Bellingham UGA does not comply with RCW 36.70A.110 and RCW 36.70A.115. Wiesen maintains RCW 36.70A.110 requires that UGAs include areas and densities sufficient to provide for projected growth and RCW 36.70A.115 requires that "taken collectively…comprehensive plans and/or development regulations provide sufficient capacity of land suitable for development." [138]

County's Position

To answer Caitac's claim that failure to amend the text creates inconsistencies in the Subarea Plan, the County asserts this Petitioner has not established the failure to make corresponding changes in the text actually created inconsistencies in the Urban Fringe Subarea Plan (UFS Plan or UFSP). The County says when King and Queen Mountain were included in the Bellingham UGA, they were given a URMX designation, which is described in the UFS Plan with policies to support this designation, therefore, it is not necessary to add new policies.[139]

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[137] Petitioner Caitac's Prehearing Brief at 25 -27.
[138] Petitioner Wiesen's Prehearing Brief at 41.
[139] Whatcom County's Response Brief at 58 and 59.

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Responding to Caitac's charge that the lack of development regulations to implement the URMX zone is a violation of RCW 36.70A.070, the County contends RCW 36.70A.070 requires consistency between the mandatory elements of a comprehensive plan and the lack of development regulations is not a matter of internal consistency but one of external consistency. According to the County, external consistency is required to ensure development regulations are consistent with comprehensive plans and since the zoning map did not cause a change in comprehensive plan policies, no internal or external consistency exists.

As for the lack of implementing development regulations, the County replies it does not question that development regulations need to be consistent with the comprehensive plan. However, the County argues Caitac only cites WAC 365-195-810 which is guidance from CTED and fails to cite any language from the GMA which sets forth this requirement.

The County maintains that since the UGA is expanded to accommodate growth over the 20-year planning period, the entire UGA does not need to be designed for growth during the first year of the planning period. The County further argues it has policies that prohibit urban growth in the UGA before urban services are available and the UFS Plan contemplates that the URMX zone will be held to a one dwelling unit per five acre density until urban services are available. The County states that this is not a sequencing issue, but a question of whether development regulations are consistent with comprehensive plans.[140]

Board Discussion

Inconsistencies between the maps and the text

RCW 36.70A.070 states (Emphasis added, in pertinent part):

> The comprehensive plan of a county or city that is required or chooses to plan under RCW 36.70A.040 shall consist of a map or maps, and descriptive text covering objectives, principles, and standards used to develop the comprehensive plan. *The plan shall be an internally consistent document and all elements shall be consistent with the future land use map*. … (emphasis added)

[140] Whatcom County's Response Brief at 63 -65.

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An examination of the maps attached to the Ordinance show that the Comprehensive Plan Land Use Map and Official Zoning Map are one and same.[141] The Dewey Valley Planning Area map shows urban uses[142] while the text of the Dewey Valley Planning Area describes rural uses and does not describe the comprehensive plan and zoning map adopted land use designations. [143] The lack of text to describe the adopted comprehensive land use map designations and the inconsistency between the comprehensive land use map and the UFS Plan does not comply RCW 36.70A.070.

The UFS Plan was adopted in 1997[144] and the policies do not appear to have been amended since then. The UFS Plan is a Sub-Area Plan for Whatcom County's Comprehensive Plan and, as such, is considered an element of the Comprehensive Plan for which consistency is required.[145] From an examination of this plan element, the Board finds that the policies are general and intended to guide the expansion of the Bellingham urban growth area and apply to that process today as it did in 1997. In the one area that Caitac calls to our attention - the URMX land use designation - the policies appear to be as appropriate now as they were then to guide development in the area. However, the description of the URMX designation calls for a *minimum* of four dwelling units per acre (dua)[146] while the land use maps adopted by the Ordinance appear to provide for *at least* six dua.[147] Increasing densities in this zone is one of the critical assumptions in Whatcom County's land capacity analysis. While USF Plan policies prevent development of this area until urban services are available, which could be sometime in the future, the UFS Plan should indicate what density will ultimately be required. The URMX map land use designation and the text of the UFS Plan are not consistent in this regard.

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[141] Exhibit 1432, Ordinance 2008-003, Exhibit A at Maps 1-16.
[142] Id. at Map 9.
[143] Exhibit 128.
[144] UFS Plan at 1.
[145] RCW 36.70A.080(2) provides: A comprehensive plan may include, where appropriate, subarea plans, each of which is consistent with the comprehensive plan.
[146] UFS Plan, Policy 2.2 at 11.
[147] Exhibit 1432, Ordinance 2008-003, Exhibit A at Maps 1-16.

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Lack of County Implementing Regulations

Likewise, the URMX comprehensive plan and zoning map designations appears to allow a *maximum* density of 10 dwelling units per acre in some URMX zones and 24 units in others.[148] The County concedes that it has not yet adopted the corresponding zoning regulations. The County is correct that this is a question of external consistency. A more appropriate citation for the violation in Petitioners' issue statements would be RCW 36.70A.040 or RCW 36.70A.130(1)(d). Wiesen's references to RCW 36.70A.110 and RCW 36.70A.115 are more on point, although RCW 36.70A.110 requires that the comprehensive plan show that the land use designations include the densities and intensities to provide for the UGA's projected population. The comprehensive plan map and the zoning map show the appropriate densities. Nevertheless, as Wiesen points out, without the appropriate zoning designations these areas cannot achieve densities on which the County's urban growth areas rely.[149] Similarly, Caitac is correct that these land use designations cannot be instituted without corresponding development regulations.

The Board recognizes the County most likely has time to institute these changes to the text and the zoning code before urban development is likely to occur in these areas. Still, Petitioners make the appropriate argument that an inconsistency exists between the comprehensive land use map and the Urban Fringe Subarea Plan, and there is a lack of implementing development regulations. RCW 36.70A.115 requires that the comprehensive plan and development regulations provide for densities that achieve the UGA's projected population. In this instance, unlike the Bellingham regulations that the County is relying on to achieve the densities to accommodate growth in the UGA, the County has control over instituting these development regulations, and should have done so at the time of plan adoption. Even so, this failure is not enough to find the designation of the Bellingham UGA noncompliant, since the County's comprehensive plan and zoning map shows its

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[148] Exhibit 1432, Exhibit C, WCC 2024.
[149] Petitioner Wiesen's Prehearing Brief at 46.

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commitment to establish these densities. Nevertheless, the County needs to establish development regulations to implement the URMX zone.

Conclusion: Based on the foregoing, the comprehensive plan map and text of the UFS Plan are not consistent, and thus do not comply with RCW 36.70A.070. The lack of development regulations to implement the adopted densities in the URMX zone does not comply with RCW 36.70A.115.

2. **Inconsistencies with the Ordinance and Inconsistencies Of the Ordinance with the Whatcom County Comprehensive Plan (CP)**

Issue 11 (in relevant part): Does the Ordinance fail to comply with the internal consistency requirement of RCW 36.70A.070, because it is internally inconsistent as a document and is also inconsistent with provisions of the County's comprehensive plan, including: b. Urban Fringe Subarea Plan policies 1.01,1.05, 1.08, 1.11, and 1.12; and c. Comprehensive Plan goals 2A, 2C, 2R, 2T, 2DD, 4F, 4K, and 9D, and policies 2A-7, 2N-1, 2P-1, 2T-4, 2DD-1, 4F-1, 4F-3, 9D-3, 9D-4, 9D-5, and 4K-2.

Ordinance Inconsistencies

Positions of the Parties

Petitioner Caitac argues that the Ordinance is inconsistent as a document because it refers to the ten-year update of UGAs, contains baseless conclusions, merely adopts maps, and uses illogical recitals to justify minimal expansion of the UGA. Caitac repeats many of the same arguments that it previously used to attack the County's actions adopted by the Ordinance which are addressed in other parts of this order.[150]

The County responds the GMA does not require internal consistency within the adopting ordinance.[151]

Board Discussion:

[150] Petitioner Caitac's Prehearing Brief at 22-25.
[151] Whatcom County's Response Brief at 51 and 52.

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The Board agrees with the County. RCW 36.70A.070 requires consistency among elements of the comprehensive plan, not between the provisions of the adopting ordinance. The Board knows of no provision of the GMA that requires provisions of an adopting ordinance to be consistent, and the Petitioners fail to direct the Board to any other provision of the GMA which sets forth such a requirement.

Conclusion: Caitac has failed to carry its burden of proof that RCW 36.70A.070 requires the Ordinance itself to comply with the consistency requirements of the GMA.

3. Inconsistencies with Whatcom County Countywide Planning Policies (CWPPS)

Issue 12: Does the Ordinance fail to comply with RCW 36.70A.070, RCW 36.70A.080, RCW 36.70A.115, and RCW 36.70A.210, where the Ordinance is internally inconsistent as a document, as well as inconsistent with Whatcom County's County-wide Planning Policies; Urban Fringe Subarea Plan text, goals, and policies; and Comprehensive Plan goals, policies, and land use designations and other measures that affect density, as these County documents pertain to matters that include housing, economic development, and protection of rural lands and the environment? (Petree Pet/Ord 3.2)

***Issue 13*:** Does the Ordinance fail to comply with RCW 36.70A.210 and RCW 36.70A.100, because it is inconsistent with countywide planning policies C.1, C.2, C.3.a, C.3.b, C.4, C.5, D.5, F.11, G.1, H.1 and K.1? (Wiesen 08-08; Haverstraw Pet/Ord 3.3; Caitac 08-12; Petree Pet/Ord)

Inconsistencies with UFS Policies, Whatcom County Comprehensive Plan Policies, and Countywide Planning Policies (CWPPs) - Policies for Accommodating Growth

Positions of the Parties

Caitac argues that because the Ordinance does not accommodate Bellingham's future growth, it is inconsistent with *all* the goals and policies in the County's plans relating to the requirement to accommodate future growth and CWPP C. 2.[152]

Whatcom responds that all of Caitac's charges of external and internal consistencies depend on Caitac's assumed premise that the approved UGA expansion does not provide

[152] Petitioner Caitac's Prehearing Brief at 28 and 29.

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enough land to accommodate expected growth. According to the County, because the UGA is not undersized, Caitac's arguments must fail.[153]

Board Discussion

CWPP C.2 requires:

> The size of urban growth areas should be consistent with adopted local policies and capital facilities plans.

The Board has found *supra* that Whatcom County, in adopting Ordinance 2008-03, allowing for a minimal expansion of the Bellingham UGA did accommodate Bellingham's 20-year projected growth.

Conclusion: Because the Board has found that the County's designation of the Bellingham UGA accommodates the City's projected growth, Caitac has failed to demonstrate that the action adopted by the Ordinance is inconsistent with UFS Plan Policies, Whatcom County Comprehensive Plan Policies, and CWPP C.2, relating to accommodating Bellingham's future urban growth.

Inconsistencies Related to CWPPs for Providing Affordable Housing and Range of Housing Types

Petree does not provide the Board with any specific references to any policies in the UFS Plan, the County's Comprehensive Plan, or the CWPPs. With the exception of CWPP C.2 which is addressed *supra,* Petree fails to cite a single policy to support the allegation asserted in Issue 12. The Board concludes that Issue 12 is not only not specific enough for the Board to analyze, but Petitioners appear to have abandoned the basis for this issue except for a single CWPP.

Caitac claims the minimal expansion of the UGA bars Bellingham from providing affordable housing and is not consistent with CWPP G.1 through G.4 Caitac maintains the County was presented with testimony regarding the significant shortage of housing types, especially

[153] Whatcom County's Response Brief at 58 and 59.

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affordable and single-family housing, which would occur within the UGA if the Ordinance was adopted. Caitac alleges the County excluded most of the land from the UGA that the City was counting on to provide a significant share of its single-family homes and cites its earlier argument that the lack of development regulations to implement the URMX zone results in the loss of even more housing units.[154]

The County argues that these arguments are just "bootstrap" arguments to Petitioners previous arguments challenging the County's LCA.[155]

Board Discussion

Petitioners present the Board with a laundry list of CWPPs with which they allege the County's action in designating the Bellingham UGA is not consistent. However, the only policy that is cited in the issue statement that is subsequently discussed in Caitac's HOM Brief is CWPP G.1. Therefore, this is the only policy the Board will discuss and the Board assumes Caitac has abandoned all claims in relationship to the other CWPPs. CWPP G.1 states:

> The county and the cities shall develop a definition for affordable housing. They should take actions to ensure a balance of housing and economic growth consistent with each jurisdictions' employment base and diverse income levels and to reduce commuting times and traffic congestion.

This issue is similar to the issue discussed *supra* regarding whether the Bellingham UGA designation complied with RCW 36.70A.020(2), the GMA's sprawl reducing goal. Again, in evaluating whether or not the Bellingham UGA is achieving this balance the Board needs more definition on the goals for balancing housing that the County and City hope to achieve, and the diversity in income levels that the City and County are trying to accommodate. In their arguments discussed *supra* regarding how the size of the adopted Bellingham UGA promotes sprawl and does not encourage urban growth in urban areas, Petitioners pointed out that Bellingham has most of the employment base and more single-

[154] Petitioner Caitac's Prehearing Brief at 29 and 30.
[155] Whatcom County's Response Brief at 58 and 59.

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family housing is being dispersed to rural areas and other municipal UGAs. In that discussion, the Board addressed how Alternative Two - Infill and Alternative Four - Infill and Adjusted UGA, which the County adopted in part, will make transit more feasible, and will reduce traffic congestion more than the other alternatives.

Conclusion: Based on the information in the record, Petitioners have not carried their burden of proof that the designation of the Bellingham UGA does not comply with CWPP G.1.

4. **Inconsistencies with Bellingham's Plan**

Issue 17(b): Does the Ordinance fail to comply with RCW 36.70A.070 in that it fails to:

b. consider the potential impacts of the Ordinance on other neighboring jurisdictions like Skagit County? (Wiesen 08-08; Haverstraw Pet/Ord; Caitac 08-12; Petree Pet/Ord 3.7)

Issue 18: Does the Ordinance fail to comply with RCW 36.70A.100, because it is inconsistent with the City of Bellingham's comprehensive plan? (Wiesen 08-08; Haverstraw Pet/Ord; Caitac 08-12; Petree Pet/Ord 3.7)

Issue 20: Does the Ordinance fail to comply with RCW 36.70A.070, RCW 36.70A.100,RCW 36.70A.115, and RCW 36.70A.210, as well as countywide planning policy C-3b, by failing to provide a consistent means or method to resolve disputes among jurisdictions relating to inconsistencies in collection and analysis of data? (Petree Pet/Ord 3.10)

Positions of the Parties

Caitac contends that the designation of the Bellingham UGA adopted by the Ordinance violates RCW 36.70A.100 which requires coordination and consistency between plans of cities and counties that share common borders or related regional issues. Caitac's main contention is Whatcom County's designation of the UGA makes Bellingham's Comprehensive Plan unworkable because it eliminates the land from the UGA where Bellingham intended to locate most of its single-family housing. Caitac also argues here that Bellingham could not unilaterally change the County's safety factor and the County's

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adopted UGA's lack of a safety factor greatly reduces the amount of land for single-family housing.[156]

Petitioners, at oral argument, said attempts to reconcile the two plans, particularly the land capacity analysis failed, and that the Resolution adopted by the City should not be considered because it was adopted by the Bellingham City Council without public participation.

Board Discussion:

The CWPP C-3b raised by Petitioners states:

> The determination of each Urban Growth Area shall be based upon a land needs analysis that incorporates reasonable market factors and addresses the ability of the area to provide for urban levels of density and services. Urban areas shall permit a range of densities and uses. In recognition of local diversity, the market factor and range of densities used may be different among each Urban Growth Area.

RCW 36.70A.100 require the plans of neighboring cities and counties to be coordinated and consistent. Compliance with RCW 36.70A.115 and RCW 36.70A.070 are discussed elsewhere in this order. CWWP C-3.b requires Whatcom County's UGAs to be based on reasonable market factors and the Board has previously determined that the market factor utilized by Whatcom County in its LCA for the Bellingham UGA was reasonable in light of local circumstances. The Board has also decided that the County has the authority to designate UGAs and determine the land capacity analysis. The Record before the Board shows that Whatcom County and the City of Bellingham made attempts to reconcile their differing land capacity analyses, but in the end those attempts failed. As discussed *supra,* the Board determined that the County's process did not violate the process for working with cities on UGAs described in RCW 36.70A.110, and how before the County adopted the Ordinance, the City pledged in Resolution 2008-03 to work on the consideration of measures to implement the County-designated UGA.

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[156] Petitioner's Caitac's Opening Brief at 32 and 33.

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As to Petitioners' assertion that the City's plan and the County's plan are not coordinated and consistent as RCW 36.70A.100 requires, the Board notes that coordination and consistency does not equate to plans being mirror images. Therefore, the Board finds that because the County has the authority to designate UGAs, which has been found compliant *supra*, it is the City's obligation to modify its plan to ensure consistency. To hold otherwise would distort the authority given to the County by the GMA in regard to UGA designation because it would require counties to designate a UGA pursuant to a city's demands.

The Board finds no argument that addresses consistency with other plans such as Skagit County.

Conclusion: Petitioners have failed to carry their burden of proof that the County has not complied with RCW 36.70A.100 or CWPP C-3.b in the designation of the UGA adopted by the Ordinance.

F. Environmental Review of Need for UGA Expansion

***Issue 21*:** Does the Ordinance fail to comply with RCW 36.70A.110 because the land it adds to the Bellingham Urban Growth Area is not suitable for urban growth? (Wiesen 08-08; Haverstraw Pet/Ord; Caitac 08-12; Petree Pet/Ord)

***Issue 22*:** Did the County fail to comply with RCW 36.70A.010, RCW 36.70A.110, RCW 36.70A.020, RCW 43.21C.020, RCW 43.21C.030, RCW 43.21C.031, and RCW 43.21C.034, where the Ordinance adds land to Bellingham's UGA: that was not considered or analyzed in the July 1, 2004, joint City-County Final Environmental Impact Statement (FEIS); for which appropriate environmental review as not been conducted, and where the County disregards impacts associated with its failure to appropriately expand the City of Bellingham's UGA, as identified in the FEIS? (Caitac 08-12; Petree Pet./Ord 3.11)

The Board shall discuss these issues together.

Failure to consider the environmental impacts for King Mountain

Positions of the Parties

Petree argues that when Whatcom County adopted ~~of~~ the Ordinance it violated the State Environmental Policy Act "SEPA" because it added land to the Bellingham UGA for which

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the County failed to conduct the necessary environmental review. [157] More specifically, Petree states that the EIS set forth a number of urban growth alternatives and evaluated the environmental impacts associated with five separate five-year review areas.[158] The Ordinance added two areas to the UGA – Queen Mountain and King Mountain. Queen Mountain is one of the County's five-year review areas. However, the Ordinance also added a portion of a non-five year review area referred to as King Mountain.[159] Petree asserts much of the King Mountain Area that was added to the UGA was outside of the scope of the EIS. The County's failure to analyze the portion of the King Mountain Area included in the Ordinance as part of the EIS before adding it to the UGA is the basis for Petree's challenge.

The County, citing WAC 197-11-442 (2), contends the environmental impact statement (EIS), being programmatic in nature, was only required to discuss the potential impacts in the level of detail appropriate to the scope of a non-project proposal and to the level of planning for the proposal.[160] The County further suggests the EIS analysis was not specific to any of the potential five-year review areas.[161] Rather, the County contends the EIS focused on four potential growth scenarios and the impacts that would result from following one of the scenarios or a variation of them. Furthermore, the County states that even though the analysis was not specific to King Mountain, there were numerous references to King Mountain in the EIS. Those references include mention of slope stability, erosion features, potential as a wildlife corridor, the existence of Spring Creek, and other features. Finally, the County points out that a significant portion of the King Mountain Area was included in the analysis of the Stewart-Smith five year review area.

Board Discussion

RCW 43.21C.020, RCW 43.21.030, and RCW 43.2lC.031 cited by Petitioner require that counties shall include a report on legislation and major actions affecting the environment

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[157] Petree Prehearing Brief at 2.
[158] Id. at 3.
[159] Whatcom County Ordinance No.2008 – 003.
[160] Whatcom County Response Brief, at 73.
[161] Id. at 75.

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and analyze significant environmental impacts. The Washington courts (and Growth Management Hearings Boards) review an EIS under the rule of reason, which requires the EIS to contain a "reasonably thorough discussion of the significant aspects of the probable environmental consequences" of a proposed action.[162] Additionally, an agency's determination of adequacy of an EIS shall be afforded substantial weight[163]. Further, just as with the other GMA challenges, Petitioner must carry the burden that the County's SEPA analysis is clearly erroneous.[164]

Where a governmental action involves a non-project proposal, greater flexibility is allowed to achieve substantial compliance with SEPA. In that regard, WAC 197-11-442 provides in pertinent part as follows:

> (2)The lead agency shall discuss impacts and alternatives in the level of detail appropriate to the scope of the non-project proposal and to the level of planning for the proposal. Alternatives should be emphasized. In particular, agencies are encouraged to describe the proposal in terms of alternative means of accomplishing a stated objective (see WAC 197-11-060 (3)). Alternatives including the proposed action should be analyzed at a roughly comparable level of detail, sufficient to evaluate their comparative merits.
>
> (3)If the non-project proposal concerns a specific geographic area, site specific analyses are not required, but may be included for areas of specific concern. The EIS should identify subsequent actions that would be undertaken by other agencies as a result of the non-project proposal, such as transportation and utility systems.
>
> (4)The EIS's discussion of alternatives for a comprehensive plan . . . shall be limited to a general discussion of the impacts of alternate proposals for policies contained in such plans. . . The EIS content may be limited to a discussion of alternatives which have been formally proposed or which are, while not formally proposed, reasonably related to the proposed action.

The Board finds that the EIS was designed to provide an environmental review and evaluation of four alternative growth management scenarios in relationship to the

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[162] *Citizens Alliance to Protect Our Wetlands v. City of Auburn*, 126 Wn.2d. 356, 362.
[163] RCW 43.21C.090.
[164] See *Durland v. San Juan County,* WWGMHB Case No. 00-2-0062c(Final Decision and Order, July 10, 2001).

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Bellingham UGA.[165] The goal of those scenarios was to accommodate Bellingham's projected population growth. The four scenarios were:

1.) No action: Assumes existing plans and zoning regulations will accommodate Bellingham's projected population.

2.) Infill: Increase density in Bellingham and the existing UGA to accommodate projected growth.

3.) Adjusted UGA: Assumes existing plans and zoning regulations within the City and UGA and an adjustment of UGA boundaries to increase the land supply to accommodate projected growth.

4.) Infill and Adjusted UGA: Increase density in Bellingham and the existing UGA and adjust UGA boundaries to accommodate projected growth.[166]

Thus, the analysis in the EIS was intended, in part, to provide Whatcom County with information in anticipation of the possible adoption of a new UGA boundary for the City of Bellingham. That information addressed, in a general nature, the environmental impacts that could be expected under the four growth management scenarios. The EIS addressed impacts to, among other things, the earth, agricultural land, air quality, water resources, plants and animals, natural and scenic resources, environmental health, accommodation of population and housing needs, transportation, utilities, and related concerns.

While it is true that the EIS addressed the five-year review areas, it examined environmental impacts in a very limited fashion. However, the description of the alternatives in the EIS was focused on the four growth accommodation scenarios, not the listed five-year review areas.[167] While the five–year review areas did not include all of King Mountain, a significant portion of the added King Mountain area was included in the Stewart-Smith Five Year Review Area analysis. King Mountain was also referenced throughout the EIS.[168]

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[165] Exhibit 129, pg. 1 – 1.
[166] Exhibit 129 (FEIS), Chapter 1, page 1-2.
[167] Id. at Chapter 4,pgs.4-43 through 4-50.
[168] id. at pgs. 3-1,3-2,3-4,3-5,3-42,3-56,4-18,4-125.

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Initially, the Board is mindful of RCW 43.21C.090 which provides that the County's action is to be afforded substantial weight. With that statute in mind the Board concludes that the EIS included a reasonably thorough discussion of the significant aspects of the probable environmental consequences of the actions taken to accommodate the projected population growth and its related environmental impacts. The Ordinance constituted a non-project action and, as such, greater flexibility is allowed to achieve compliance with SEPA. The EIS addressed impacts and alternatives at a level of detail appropriate to the scope of the proposal and to the level of planning being considered.[169] Furthermore, WAC 197-11-442(3) makes clear that site specific analysis is not required for a non-project proposal.

Conclusion: Based on the foregoing, the Board finds that Petitioners have not carried their burden of proof that the County's environmental analysis for the Bellingham UGA did not comply with RCW 43.21C.020 and RCW 43.21.030.

Lack of Analysis of Final UGA Designation Scenario

Caitac argues the Ordinance Whatcom County adopted did not adopt any of the scenarios analyzed for Alternative Four by the FEIS, and therefore because the County did not adopt any of the scenarios analyzed, the Bellingham UGA adopted by Ordinance 2008-003 does not comply with SEPA.[170] As noted *supra,* the Ordinance discloses that the designation of the Bellingham UGA most closely resembles the FEIS's Alternative Four – Infill and Adjusted UGA.

A stated goal of the FEIS was to provide an environmental assessment of a range of reasonable alternatives to accommodate projected population growth.[171] As stated in Section 1.8 of the FEIS, "Various elements of the alternatives are not mutually exclusive and may be combined in a preferred alternative, to be determined through the public process."

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[169] WAC 197-11-442(2).
[170] Petitioner's Caitac Prehearing Brief at 14 and 15.
[171] FEIS introduction, chapter 1, section 1.1.

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Alternative Four proposes a combined emphasis on infill development as described in Alternative Two and the inclusion of one or more 5-Year Review Areas *or other areas* as described in Alternative Three. Alternative Three similarly includes a reference to "other appropriate areas" and contains the following reference: ". . . this alternative *may also consider other areas* for UGA inclusion as deemed appropriate."[172]

According to RCW 36.70A.035, as long as an option chosen is within the scope presented by the environmental documents, the proposal can be considered by the County without further public process. As discussed *supra* the County chose an option that included Alternative Two, which the FEIS analysis advised complied with the GMA, and part of Alternative Four – Infill and Adjusted UGA that added land to the UGA. While the part of King Mountain that was added was not included in the FEIS analysis, the related impacts were generally addressed, and the amount of land added to the GMA was within the scope of the alternatives analyzed in the FEIS.

The Petitioners' Issue Statements set forth allegations that the expansion of the UGA not only violated SEPA but also raise the issue that it does not comply with RCW 36.70A.110. All Petitioners have devoted the majority of their briefs to arguing that the County's designation of the Bellingham UGA does not provide enough buildable land. In arguing that the land added is not an "appropriate" addition to the UGA, the Board addressed Petitioners' contention that because of inadequate environmental analysis for King Mountain, it should not be added to the UGA. However, the Board discerns no argument that the addition of land that was added and was not needed to accommodate Bellingham's projected growth violates RCW 36.70A.110(3).

Conclusion: Even though the action designating the Bellingham UGA was not the same as any of the scenarios analyzed for the Infill and Adjusted UGA alternative, the proposal eventually adopted by the County was within the scope of the scenarios analyzed by the

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[172] FEIS at 1-13 (Emphasis added).

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FEIS. Therefore, the Board finds that Petitioners have failed to carry their burden of proof that the designation of the Bellingham UGA does not comply with RCW 43.21C.020, RCW 43.21C.030, RCW 43.21C.031, RCW 43.21C.034, and RCW 36.70A.110.

G. Abandoned Issues

***Issue 8*:** Does the Ordinance fail to comply with RCW 36.70A.130(3), and be guided by RCW 36.70A.020(1) and (2), because it incorrectly sequences the required review of UGAs by deciding on an isolated UGA expansion in advance of the required countywide assessment at a time when the County was overdue in completing its 10-year review? (Wiesen 08-08; Haverstraw Pet/Ord; Petree Pet/Ord)

Issue 14: Does the Ordinance fail to comply with the GMA consistency requirements of RCW 36.70A.070, RCW 36.70A.100, and RCW 36.70A.210 by its inconsistent use of base years? (Caitac 08-12; Petree Pet/Ord)

At argument, Petitioner Petree stated that he had abandoned his argument regarding sequencing listed as Issue 8 in the Prehearing Order and argued in his brief. Petitioner Petree is the only petitioner to raise this issue. Similarly, the Board can find no argument addressing the inconsistent use of base years raised in Issue 14.

An issue not addressed in a petitioner's brief is considered abandoned.[173]

Conclusion: Petitioner abandoned Issue 8. Petitioners did not address Issue 14, therefore it is considered abandoned.

H. Invalidity

***Issue 23*:** Does continued validity of the Ordinance substantially interfere with the goals of RCW ch. 36.70A? (Wiesen 08-08; Haverstraw Pet/Ord; and Caitac 08-12; Petree Pet/Ord)

Positions of the Parties

Petitioner Petree argues that the Ordinance should be held invalid because the County failed to perform any environmental review of the King Mountain Area prior to adding it to the UGA. Additionally, Petree contends that the failure to adopt development regulations for

[173] See *WEC v. Whatcom County*, WWGMHB 95-2-0071 (Final Decision and Order, December 12, 1995).

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the King Mountain area would allow this area to develop at rural densities as opposed to urban densities. Petree maintains that these rural densities should not be allowed to vest.[174]

The County responds that the URMX zone applied to the King Mountain Area is a conscious decision by the County and City to hold the property at rural zoning until such time as the City is prepared to extend public facilities and services, annex property, and apply Bellingham's urban zoning. Further, the County asserts this property is not immediately needed to accommodate urban growth but is required solely to address demand over the next 20 years. Whatcom County states that its rural zoning does not permit lots smaller than five acres, and while this is not ideal for further parcelization and urban development, it does not preclude it from occurring in the future when urban densities can be achieved. The County points out that this property is in single ownership, so not likely to be subdivided. For these reasons, the County argues the Board should not impose invalidity.[175]

Board Discussion

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

In this Final Decision and Order, the only challenged actions that the Board has found noncompliant with the GMA were the County's comprehensive plan map and the text of the UFS subarea plan-were not consistent so did not comply with RCW 3670A.070 and the County's failure to adopt development regulations for the ultimate implementation of the URMX zone violated of RCW 36.70A.115. The County states that this area is not served by urban services. County policies prohibit areas without urban services from developing at

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[174] Petitioner Petree's Prehearing Brief at 14 and 15.
[175] Whatcom County's Response Brief at 79.

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urban densities.[176] The Board has found in the past that it is appropriate to keep land in rural densities until urban services can be delivered.[177] While the Board agrees with the County's statement that a density of less than one unit per five acres would be better at assuring full build out of urban densities in the future, this Board has found that one dwelling unit per five acres is an appropriate density to hold land in the UGA for future urban development until urban services arrive.[178] Petitioner Petree has not shown that vesting at such densities would preclude future urban development in the URMX zone.

Conclusion: Petitioner has failed to demonstrate that an imposition of invalidity is needed at this time to prevent development that would result in the preclusion of urban development in the future once the necessary public facilities and services are available. The Board declines to impose invalidity at this time.

VI. FINDINGS OF FACT

1. Whatcom County is a county located west of the crest of the Cascade Mountains that is required to plan pursuant to RCW 36.76A.040.
2. Whatcom County passed Resolution 2008-007 (Resolution) that asserted that it had completed the review of its UGAs as required by RCW 36.70A.130(3) and Ordinance 2008-003 (Ordinance) that amended the comprehensive plan and zoning maps to show amendment to the Urban Fringe Subarea Plan and the Bellingham UGA on February 12, 2008.
3. Petitioners Wiesen, Caitac, Haverstraw, and Petree filed timely petitions for review.
4. Intervenors Hitz, Futurewise, and Dan McShane filed motions requesting intervention.
5. Petitioner Caitac offers no evidence to show how the adoption of the Ordinance violates RCW 36.70A.470.

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[176] CWPP F-12.
[177] See *Advocates for Responsible Development and John Diehl v. Mason County* (Compliance Order on Plan and Development Regulations –Sewer in the Belfair UGA (November 11, 2007) at 15 and 16.
[178] See *Ludwig v. San Juan County*, WWGMHB Case No.05-2-0019c (Final Decision and Order/Compliance Order (Lopez Island UGA), April 19, 2006).

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6. No evidence in the record shows what the City of Bellingham's level of service is for soccer fields, whether a deficiency for these recreational facilities exists, whether other suitable properties were considered and rejected, and whether there is a need to expand the UGA in this location for these reasons.
7. City Resolution 2006-15, entitled (in pertinent part), "A Resolution Recommending Amendments to the Whatcom County Urban Fringe Subarea Plan (UFS) and Bellingham's Urban Growth Area(UGA)," demonstrates the City was making a recommendation to Whatcom County regarding its urban growth boundary.
8. Although initial disagreement did occur between the County and the City, the City ultimately accepted the County's delineations of the UGA boundaries, as demonstrated by City of Bellingham Resolution 2008-003.
9. The adopted projected population growth allocated to the Bellingham UGA for the 2002-2022 planning period is 31,600 people.
10. CTED's 1992 Methodology for providing adequate land supply in a UGA recommended a six-step system and was relied on by the City of Bellingham.
11. This six-step system permits adjustments to the total land acreage based on "suitability," "availability," and "safety".
12. CTED's methodology was established *prior* to the Legislature's adoption of EHB 1305 which amended the GMA to include the provision of a reasonable land market supply factor.
13. According to the Record, the County utilized a 10 percent market factor in comparison to the 25 percent "combined" market factor utilized by the City.
14. The City's own analysis is not based on permitted densities but rather on unknowns and uncertainties related to the speed and level of development, both for housing and employment, a trend for second home purchases, and housing affordability.
15. The Ordinance and the EIS note that although Bellingham is the 11th most populous city in the state, it is 26th in density of 44 cities over 20,000.

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16. The City's current density is 2,741 people per square mile and the City's plan would increase the density to 3,623 people per square mile, or approximately 5.66 people per acre.
17. The City acknowledged that currently it is capable of providing public facilities and services in only about 40 percent of the UGA.
18. CWPP F-12 prohibits development at urban densities until services can be delivered.
19. In City Resolution 2008-003, the City committed to considering changes to its plan and development regulations required to accommodate growth in the City's UGA in the year after the County's decision.
20. The Record before the Board in this matter demonstrates that the subject matter of the cited GMA goals was before the Whatcom County Council and that discussion occurred.
21. The UGA that the County adopted was based on FEIS assumptions that combined aspects of Alternative Two - the Infill Alternative with Alternative Four –Infill and Adjusted UGA, by adding some, but not all of the five-year review areas, and an additional area.
22. The FEIS analysis states that Alternative Two meets UGA requirements.
23. The FEIS also shows that Alternative Two has the least impact on sprawl allowed by Alternative Four.
24. Alternative Two and Alternative Four also show that these alternatives have the least impacts on air pollution, water supply, and other environmental considerations.
25. A County staff report indicates that between 1995 and 2002, 88.3 percent of the County's growth has occurred in city UGAs, while 11.7 percent has occurred in unincorporated parts of the County, including its two non-municipal UGAs.
26. The FEIS discusses how Alternative Two – Infill would provide housing on smaller lots and wide variety of relatively affordable housing types, but also might have

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the most impact on housing prices due to more constraint on the land supply. However, this alternative has the least impact on sprawl and the environment.

27. The FEIS points out that while Alternative Three- Expansion without Infill, has the least impact on housing prices due to a less restricted land supply, it has the most impact on sprawl. Alternative Four - Infill and UGA Adjustment option falls in the middle of these alternatives as far as impacts on sprawl and housing.
28. The goal that is discussed and documented in Bellingham's plan is that two thirds of future housing needs will be met by multi-family units.
29. Caitac does not point out the City's or the County's goals for affordability or how the designation of the Bellingham UGA deters the City or the County from meeting the County's or City's goals.
30. Until the costs of clean-up are known, it is hard to predict how this will affect affordability of Waterfront area units and determine how this will affect the County and the City's affordability goals.
31. The record shows eight percent of the housing countywide is for second homes, and information included with Whatcom County's population forecasts recognize that a large number of second homes occur in the Birch Bay, Columbia Valley, Blaine, and Point Roberts study areas.
32. The record shows that the County accounted for uncertainty in considering the amount of land needed for commercial and industrial land in its UGA and provided enough land to accommodate those needs for the next 20 years.
33. The Dewey Valley Planning Area map shows urban uses while the text of the Dewey Valley Planning Area describes rural uses and does not describe comprehensive plan and zoning map adopted land use designations. The description of the URMX designation calls for a minimum of four dwelling units per acre while the land use maps adopted by the Ordinance appear to provide for at least six dwelling units per acre.

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34. The URMX comprehensive plan and zoning map designations allow maximum densities of 10 to 24 dwelling units per acre. The County concedes that it has not yet adopted the corresponding zoning regulations.
35. The FEIS was designed to provide an environmental review and evaluation of four alternative growth management scenarios: 1) No Action, 2) Infill, 3) Adjusted UGA, and 4) Infill and Adjusted UGA.
36. The analysis in the FEIS was intended in part to provide Whatcom County with information in anticipation of possible adoption of a new UGA boundary for the City of Bellingham.
37. While the FEIS addressed the five-year review areas, it examined environmental impacts in a very limited fashion. However, the description of the alternatives in the FEIS was on the four growth accommodation scenarios, not the listed five-year review areas.
38. While the five–year review areas did not include all of King Mountain, a significant portion of the added King Mountain area was included in the Stewart-Smith Five Year Review Area analysis. King Mountain was also referenced throughout the FEIS.
39. The Ordinance constituted a non-project action.
40. The FEIS stated, "Various elements of the alternatives are not mutually exclusive and may be combined in a preferred alternative, to be determined through the public process ..”
41. Alternative Four proposes a combination of emphasis on infill development as described in Alternative Two and inclusion of one or more Five--Year Review Areas *or other areas* as described in Alternative Three.
42. Alternative Three similarly includes a reference to "other appropriate areas". Alternative Three includes the following reference: ". . . this alternative *may also consider other areas* for UGA inclusion as deemed appropriate." (emphasis added).

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43. Even though the designation of the Bellingham UGA that the County adopted was not the same as-any of the scenarios analyzed for the Infill and Adjusted UGA alternative, the proposal eventually adopted by the County was within the scope of the scenarios analyzed by the FEIS.

44. At argument, Petitioner Petree stated that he had abandoned his argument regarding sequencing listed as Issue 8 in the Prehearing Order and argued in his brief.

45. The Board can find no argument addressing the inconsistent use of base years raised in Issue 14.

46. Petitioner Petree has not shown that vesting at densities that would preclude future urban development is imminent in the URMX zone.

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

VII. CONCLUSIONS OF LAW

A. The Board has jurisdiction over the parties and subject matter of this case.

B. Petitioners have standing for the issues that they have raised.

C. Intervenors have been given leave to participate on the issues raised by Petitioners Caitac and Wiesen.

D. Petitioner Caitac has not carried its burden of proof that the County has violated RCW 36.70A.470(2).

E. Petitioner Haverstraw has not carried his burden of proof that the County failed to comply with RCW 36.70A.020(9).

F. Whatcom County has been given the authority to designate a UGA and was not bound to the recommendation presented by the City of Bellingham pursuant to RCW 36.70A.110(2).

G. Petitioners have set forth a *prima facie* case contending that the Bellingham UGA is inappropriately sized.

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H. Whatcom County's selected market factor is reasonable in light of local circumstances pursuant to RCW 36.70A.110(2) and RCW 36.70A.3201.

I. Petitioners have failed to carry their burden of proof that the City's land capacity analysis does not comply with RCW 36.70A.110(2).

J. The County's Land Capacity Analysis and the related Record, contains the necessary analysis to satisfy the County's duty to "show its work" pursuant to RCW 36.70A.110.

K. The GMA does not set forth a substantive requirement for specific consideration of GMA goals. What the GMA requires is that the Board's determination of whether or not Whatcom County considered the goals shall be based on whether its action was guided by the goals as required by RCW 36.70A.020.

L. Petitioners have not demonstrated that the size of the Bellingham UGA does not comply with RCW 36.70A.020(1), (2), (4) and (5).

M. Petitioners have not demonstrated how the County and City are falling short of adopted housing goals, and how the County's choice of a market factor for cushioning these uncertainties will not succeed in providing an adequate and affordable supply of all types of affordable housing. For those reasons, Petitioners have not shown that the designation of the Bellingham UGA does not comply with RCW 36.70A.020(4).

N. Petitioners have failed to demonstrate that Whatcom County's LCA is not adequate to meet its 20-year demand for industrial and commercial needs. They have therefore not carried their burden of proof that the designation of the Bellingham UGA does not comply with RCW 36.70A.020(5).

O. The lack of text to describe the adopted comprehensive land use map designations and the inconsistency between the comprehensive land use map and the Subarea Plan does not comply with RCW 36.70A.070.

P. The lack of development regulations to implement the adopted densities in the URMX zone does not comply with RCW 36.70A.115.

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Q. The Board knows of no provision of the GMA that requires provisions of an adopting ordinance to be consistent.

R. Caitac has not carried its burden of proof that the adopting Ordinance itself must comply with the consistency requirements of the GMA.

S. Because the Board has found that the County's designation of the Bellingham UGA accommodates the City's future growth, Caitac has not demonstrated that the action adopted by the Ordinance is inconsistent with UFS Plan, policies, Whatcom County Comprehensive Plan Policies, and CWPP C.2, relating to accommodating Bellingham's future urban growth.

T. Based on the information in the record, Petitioners have not carried their burden of proof that the designation of the Bellingham UGA does not comply with CWPP G.1.

U. Petitioners have not carried their burden of proof that the County has not complied with RCW 36.70A.100 or CWPP C-3.b. in designating the Bellingham UGA.

V. The FEIS included a reasonably thorough discussion of the significant aspects of the probable environmental consequences of the actions taken to accommodate the projected population growth and its related environmental impacts.

W. The FEIS addressed impacts and alternatives at a level of detail appropriate to the scope of the proposal and to the level of planning being considered.

X. Petitioners have not carried their burden of proof that the County's environmental analysis for the Bellingham UGA did not comply with RCW 43.21C.020, RCW 43.21.030, RCW 43.21C.031, or RCW 43.21C.034.

Y. Petitioner Petree has abandoned Issue 8 and Issue 14 is considered abandoned.

Z. Petitioner Petree has not demonstrated that an imposition of invalidity is needed at this time to prevent development that would preclude future urban development.

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

VIII. ORDER

Whatcom County must take legislative action to make its comprehensive plan and comprehensive plan/zoning map consistent with its comprehensive plan pursuant to RCW 36.70A.070 and its URMX zoning regulations consistent with its comprehensive plan/zoning map pursuant to RCW 36.70A.115 within 180 days according to the following schedule:

Item	Date Due
Compliance Due on	**May 12, 2009**
Statement of Actions Taken and Index to Compliance Record Deadline	May 26, 2009
Objections to a Finding of Compliance Deadline	June 9, 2009
Response to Objections Deadline	June 30, 2009
Compliance Hearing	July 9, 2009

ENTERED this 13th day of October, 2008.

_____
Holly Gadbaw

_____
James McNamara

_____
William P. Roehl

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

<u>Reconsideration</u>. Pursuant to WAC 242-02-832, you have ten (10) days from the mailing of this Order to file a petition for reconsideration. Petitions for reconsideration shall follow the format set out in WAC 242-02-832. The original and

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three copies of the petition for reconsideration, together with any argument in support thereof, should be filed by mailing, faxing or delivering the document directly to the Board, with a copy to all other parties of record and their representatives. Filing means actual receipt of the document at the Board office. RCW 34.05.010(6), WAC 242-02-330. The filing of a petition for reconsideration is not a prerequisite for filing a petition for judicial review.

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

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

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

APPENDIX A

Case No. 07-2-0009.

On August 27, 2007, the Board issued Order on Petitioner's Motion in *Robert Wiesen v. Whatcom County,* WWGMHB Case No. 07-2-0009. That order found that Whatcom County had failed to review its UGA boundaries, the densities permitted within the UGA boundaries, and the extent to which urban growth occurring within the county has located within each city and unincorporated portions of the UGAs within the timeframe established by RCW 36.70A.130(3).[179] That order established February 25, 2008 as the compliance deadline for review of the County's UGAs.

[179] *Robert Wiesen v. Whatcom County,* WWGMHB Case No. 07-2-0009 (Order on Motions, August 27, 2007) at 7. In *Wiesen v. Whatcom County,* WWGMHB 06-2-0008, the Board decided that Whatcom County had ten

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Whatcom County passed Resolution 2008-007 (Resolution) that asserted that it had completed the review of its UGAs as required by RCW 36.70A.130(3) and Ordinance 2008-003 (Ordinance) that amended the comprehensive plan and zoning maps to show amendment to the Urban Fringe Subarea Plan and the Bellingham UGA on February 12, 2008.

Case No. 08-2-0021c

Robert Wiesen and Caitac, filed petitions for review challenging Resolution 2008-007 and Ordinance 2008-003 on March 10, and March 13, 2008. The Board consolidated these cases to become WWGMHB Case No. 08-2-0012c on March 20, 2008. Dean Haverstraw and Futurewise, filed petitions for review challenging both the Resolution and Ordinance on April 11, 2008 and Jack Petree filed a petition for review challenging those same actions on April 14, 2008. The new petitions were consolidated with WWGMHB Case No. 08-2-0012c and with WWGMHB Case No. 07-2-0009 to become WWGMHB Case No. 08-2-0021c.

The Board granted the motions of Dan McShane, Futurewise, and Erin and Robin Hitz to intervene.

The Board received a stipulation from the County and Petitioners that stipulated among other things that the County was not in compliance in regard to its 10-year review of UGAs and that the Petitioners would withdraw challenges to the 10-year review. The County and Petitioners could not agree on a compliance schedule. After a compliance hearing the Board issued an order finding the County in noncompliance with regard to its 10-year UGA review, dismissed challenges in the petitions related to the 10-year review, and set a compliance date of June 30, 2009.[180]

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years from the date of designation of its UGAs to complete review of its UGAs and the densities within them. That deadline for the review of Whatcom County's UGAs was established as May 23, 2007.

[180] Order Finding Noncompliance with RCW 36.70A.130(3), Dismissing Issues Related to Resolution 2008-007, and Setting a Compliance Schedule (July 2, 2008).

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A prehearing order was issued on July 1, 2008, as well as an order allowing Petitioners to supplement the record with some requested items and denying other items' addition. All parties and intervenors submitted timely briefs, except for Robin and Erin Hitz who did not submit a brief. The City of Bellingham moved for amicus status the day the County's brief was due. This order grants the City amicus status.

A hearing was held in Bellingham, WA on August 20, 2008.

After the hearing the County moved to strike portions of Petitioners' HOM argument. This order denies that motion.

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