State of Washington

GROWTH MANAGEMENT HEARINGS BOARD FOR EASTERN WASHINGTON

BENTON COUNTY FIRE PROTECTION DISTRICT NO. 1, a municipal corporation	
Petitioner	**Case No. 94-1-0023**
vs.	**FINAL DECISION AND ORDER**
BENTON COUNTY, CITY OF KENNEWICK and CITY OF RICHLAND,	
Respondents	
MILO BAUDER, ROBERT YOUNG, HAROLD THOMPSON and VICTOR JOHNSON,	
Intervenors	

Procedural History

On October 27, 1994, by and through its attorney, Clark B. Snure, the Benton County Fire Protection District No. 1 filed a Petition for Review with the Eastern Washington Growth Management Hearings Board appealing Resolution 94 245 which adopted interim urban growth areas, (IUGAs), on July 2, 1994 and was published on September 1,1994.

On November 1, 1994 the Board gave notice to the parties the prehearing conference would be held December 6, 1994 and that the hearing on the merits would be scheduled for March8, 1995.

On November 21, 1995, Brian J. Iller, attorney at law, filed a Motion to Intervene on behalf of Milo Bauder, Robert Young and Harold Thompson. An order granting Intervenor status was entered on November 22, 1994.

On November 28, 1994, Respondent Benton County filed its Index of the Record.

On December 5, 1994, Petitioner filed its Preliminary Index/List of Exhibits.

On December 6, 1994, the board held its prehearing conference. After determining that the Parties were unable to come to agreement regarding settlement of the case, the Board considered the scope of the legal issues. The Board decided the legal issues as presented in the Petition were too broad and Petitioner was given an opportunity to restate the issues. Subsequently, none of the Parties objected to the statement of issues. In discussing the record, Petitioner requested Benton County Resolution No. 94 245 and the Board of County Commissioners hearing minutes, not specifically listed in Respondents' Index, be added. The parties agreed that Respondents' index numbering system would be used; that Resolution No. 94 245 would replace Item No. 20 but would include the IUGA final map for Kennewick and Richland. An Item 21 would be added to include the minutes and the tape of the final adoption hearing. The motions and briefing schedule was adjusted forward to hold the Hearing on the Merits on March 29, 1995 in Kennewick, Washington. The Prehearing Order was issued on December 19, 1995.

On January 6, 1995, Petitioner Benton County Fire Protection District No. 1, by and through its counsel, Clark B. Snure, filed Petitioner's Motion to Admit SupplementalEvidence;

On January 6, 1995, Intervenors Bauder, Young, Thompson, and Johnson, by and through their counsel, Brian J. Iller, filed Motion to Dismiss Legal Issue No. 3 Re Authority to Annex and Joinder in Respondent Cities' Motion;

On January 9, 1995, Respondent, the Cities of Kennewick and Richland, by and through their attorneys, William L. Cameron and Thomas O. Lampson, respectively, filed Motion to Dismiss Made by Cities of Kennewick and Richland.

On January 24, 1995, the Board held a Motions Hearing. The Board denied Respondent Cities' request to dismiss; dismissed Legal Issue No. 3 regarding authority to annex and denied Petitioner's request to supplement the record.

The parties submitted their briefs and exhibits according to schedule and on March 29, 1995 the Board held its Hearing on the Merits in Kennewick, Washington at the Benton County Public Utility District Building at 2721 W.10th Avenue. All parties were present.

Findings of Fact

1. Benton County used the Office of Financial Management population forecast for the year 2012 to allocate population increases between cities and unincorporated areas in the county. The "Preliminary Benton County Population Allocations" indicate the 2012 population in the county may be reduced and the City of Kennewick's population increased correspondingly by the annexation of county islands within the Kennewick city limits. Exhibit 2.

2. The City of Kennewick adjusted its population to include residents receiving city utilities. For practical purposes, this amounted to the adjustment contemplated in the County’s population allocation. The City then determined the land required to meet the 2012 population forecast by extending current acres used ratios over a variety of categories, including low, medium and high density housing, commercial, industrial, parks/recreation, and open space areas. The total represents the area needed to accommodate the population forecast at current densities and use patterns. Exhibit 16.

3. Based upon the City of Kennewick's forecast need for additional land the City proposed its IUGA to the Benton County Planning Commission. Item 11, map 1.

4. In hearings before the Benton County Commissioners on the proposed IUGA for the City of Kennewick, there were five disputed areas, Areas A, B, C, D, and E. The Benton County Commissioners decreased the size of the proposed IUGA by removing all of Areas B, C, D and E, as well as approximately one-third of Area A from the City's adopted IUGA.

5. The City of Richland developed its IUGA land requirement by multiplying "future land needs acres per capita ratios" for a variety of uses, including low, medium and high density residential use, parks and recreation, open space and agriculture, commercial and industrial uses as well as undevelopable land. Their calculation, also, included two additional factors, a 70%buildout factor and a 25% safety factor. The City used a population forecast of 43,550 people which varied from the County’s allocation of 43,177. The Board finds that this variance in a 20 year planning cycle is insignificant.

6. In IUGA hearings before the Board of County Commissioners there were three disputed areas, Areas A, B and C. The Board of County Commissioners removed Areas A and B as well as part of Area C from the City of Richland's adopted IUGA. The Board finds that Area C, an area within the Hanford Reservation to the north of the city, should be differentiated from usual GMA considerations. This land has been used for industrial purposes on the Reservation and will continue to be so used under the jurisdiction of the City of Richland. The Department of Energy and the City are simply making an administrative adjustment because of the" mission" change at the Reservation.

7. The I-82-Badger Canyon Interchange extension area's inclusion in the City of Kennewick IUGA is in part the result of a boundary-line agreement between the Cities of Richland and Kennewick as well as Benton County. Exhibits 11 and 17.The Growth Management Act encourages this type of intergovernmental cooperation. WAC 365-195-500 et seq.

Discussion:

Standing.

Petitioner participated in the process both by appearing at a hearing and by submitting written materials regarding the matter on which a review is being requested. Having met the requirement of RCW 36.70A.280(2), Petitioner has standing before the Board.

Failure of Standing because Petitioner Did Not Raise Specific Issues Now Being Argued.

The Cities and Intervenor argue that Petitioner has no standing because it did not raise the specific issues now being argued in this case. The Board is able to resolve this case without deciding this issue. The Board, therefore, for reason of judicial conservatism need not decide this issue.

Burden of Proof--On the Record.

Petitioner has the burden of proving by a preponderance of the evidence that a plan does not comply with the Act. RCW36.70A.320. The initial burden of persuasion is met when a petitioner presents sufficient evidence which, standing alone, would overcome the presumption of validity. Once that level has been reached the burden of producing evidence tore but the initial showing does shift to the respondents. 9Wigmore Evidence 2489 (Chadbourn rev. 1981). Because the Board's review is "on the record", RCW36.70A.290(4), that rebuttal evidence must be contained in the record absent the rare instance of consideration of supplemental evidence.[FN1]

WAC 365-195-030 provides in part,

> ...Although the presumption of validity should discourage appeals, if the presumption is overcome in any case, the county or city will be required to demonstrate compliance with the act. Such a demonstration will be aided by a record which documents deliberations, shows data relied upon, and explains how conclusions were reached.

It should be noted there are weaknesses in the record. The document that demonstrates the County's allocation of the OFM population forecast was entitled "preliminary", no other allocation is in the record. Similarly, neither Petitioner nor any other participant for that matter, questioned the projected land requirements for the categories used in the IUGA determinations. For example, there are 1092acres of commercial land allocated in the Kennewick IUGA. This size allocation may or may not be supportable, but there is nothing in the record disputing it. The Board must make its determination on the record as it exists.

Unique Features of the Area.

This area is unique for several reasons. First, the proposed industrial land north of Richland is not a change in use. It was industrial land under the Department of Energy's control and will continue to be so under the City of Richland's control. Second, the area is semi-arid; development occurs only where there is available water. Third, while industrial work at the Hanford Reservation is the major employer, significant agricultural interests predate the Hanford reservation and continue to exist within the corporate boundaries of both Richland and Kennewick. These agricultural interests include both production or industrial agriculture and smaller farms. Indeed, the City of Richland leases sizable portions of its industrial land for production "circle irrigation" farming. Fourth, the City of Kennewick's effort to establish the I-82 Badger Canyon Gateway. This is a joint project with both Richland and the County. Exhibit 17.

Issue No. 1

1. The County, in adopting Resolution 94 245 did not comply with the requirements of the GMA, including RCW36.70A.020 and .110 and the requirements of 365-195 WAC.

A. The inclusion of land that is neither urban in character nor adjacent to urban lands in Benton County's IUGAs for Kennewick and Richland violates the following statutory and regulatory requirements of the GMA: RCW36.70A.020(1) and (2); RCW 36.70A.110(3); WAC365-195-010 (7)(c); WAC 365-195-335(1)(c), (e) and (f).

Position of Petitioner: Petitioner argues the IUGA boundaries for both the Cities of Richland and Kennewick were not "based upon" the OFM projections and the Biogas failed to include open space and greenbelt designations. Further, Petitioner argues the Biogas include territory that is neither characterized by urban growth nor is adjacent to territory already characterized by urban growth. By expanding the IUGA boundaries beyond the present boundaries of Richland and Kennewick the IUGAs violate RCW 36.70A.110 and are inconsistent with planning goals 1 and 2.

Position of the County: The County argues that Petitioner has failed to meet its burden of proof to show that land within IUGAs is not urban in nature or adjacent to land urban in nature. Regarding the Richland IUGA, no showing has been made that any of the land fails to meet the test. Similarly for Kennewick, Petitioner has provided evidence showing only that some of the land is not urban in nature. No showing has be made that this land is not adjacent to urban lands. Further, the County asserts this position is supported by the record.

Position of the Cities: The Cities argue the IUGAs in question are "based upon" the OFM population forecasts. They argue the disputed lands meet the “adjacent to urban lands" test and fulfill the GMA requirements.

Position of Intervenors: Intervenor adopts the Cities’ position.

Discussion

There are two aspects to this issue: first, whether the Board of County Commissioners' consideration of the IUGAs met the requirements of the GMA, and second, whether lands were included within the IUGAs that fail to meet the test of RCW36.70A.110(1) that such lands if they are located outside of a city must be either characterized by urban growth or be adjacent to territory already characterized by urban growth.

Procedural and Substantive Compliance.

In Save our Butte Save Our Basin Society v. Chelan County, EWGMHB Case No. 94-1-0001 at 509, this Board held that there were both procedural and substantive aspects to compliance with the planning goals of RCW 36.70A.020.Procedurally, the county legislative authority must “consider" these goals when they adopt IUGA boundaries. The Board agreed, however, with the Central Puget Sound Hearings Board, that there is no requirement for a “tangible procedural demonstration". Instead, the ultimate test of consideration of the goals was whether the County’s actions were substantively guided by the goals--whether their actions are consistent with the planning goals.[FN2]The Board holds the substantive compliance test also applies to urban growth area designations under RCW 36.70A.110.

The Board found that the advantage of this approach is that it deals with the heart of the question, the substantive element, instead of a possible pro forma procedural exercise. However, written findings of consideration or a record that carefully considers the planning goals from a procedural view are useful, if not essential in some cases, to make a determination of substantive compliance.

Substantive Compliance with GMA requirements.

This issue will be addressed in greater length under Issue No. 1D. The Board finds substantive compliance with GMA requirements regarding this issue.

Are IUGA lands characterized by or adjacent to urban growth?

In its recommendation to the Benton County Planning Commission, the County Planning Staff found five areas within the proposed Kennewick IUGA that were neither" urban" in character, nor "adjacent" to lands urban in character. Specifically, it found that portions of Area A and all of Areas B, C, D and E failed to meet either prong of the test. Exhibit 11, Map 2.

In designating the Kennewick IUGA, the Benton County Commissioners removed all of Areas B, C, D, and E as well as the eastern one-third approximately of Area A. The Planning Staff made an initial finding the western one-third approximately of Area A met the test because it fell within the commercial designation at the Badger Interchange. The western portion of Area A borders the I-82-Badger Canyon Interchange to the City. Exhibit 16.

The middle one-third of Area A is the area in dispute. Petitioner has presented evidence that this land is not urban in character. Respondents do not contest this, but provide evidence that the land is adjacent to land urban in character. This middle area is composed of several parcels, but the primary concern centered upon an orchard. County Planner Phil Mees addressing an orchard located in this section stated:

> "... given the owners' preference and the fact that the area is being surrounded by urban development and there is a project to extend water and sewer down to the interchange, basically we concluded that more planning problems would be solved by including it than by excluding it." Exhibit 21 at pp.-5.

The portion of Area A included within the Kennewick IUGA meets the test of being adjacent to land that is urban in character. It notes, also, that these are not one-dimensional problems as Mr. Mees points out and that lines must be drawn that account for a variety of legitimate concerns.

Regarding Richland's IUGA proposal, the planning staff found that two areas failed to meet the "urban" or “adjacent" tests. These areas were removed from the designation. Also, a third area,

the territory north of Richland, was an area of concern. The Board finds that this does not violate the GMA. First, the area for inclusion was reduced by the County Commission, and second, the Board found that this was industrial land under the authority of the Department of Energy being transferred to the City due the Department's mission change. The use of this land is unchanged. See Finding of Fact No. 6, supra.

Finding: The Board finds that the IUGAs are in substantive compliance with the requirements of the Act. Specifically, the disputed lands meet the test of" adjacent to land urban in character" as required by RCW 36.70A.110(3).

1B. The inclusion of lands not presently served by or capable of being served by urban services within Benton County's designated IUGAs for Kennewick and Richland violate the following statutory and regulatory requirements of the GMA: RCW 36.70A.020(1) and (12); RCW 36.70A.110(3); WAC365-195-070(5); WAC 365-195-335(1)(e) and (f).

Central to Petitioner's argument is the concept that the IUGAs for Kennewick and Richland are expansively drawn. This area will be considered in greater depth under issue 1D, but Petitioner has not made this showing.

Petitioner has failed to show by a preponderance of the evidence that these lands cannot be served with urban services. Petitioner admits that the County planning staff concluded that Area A in Kennewick could be served. Petitioner's Brief at p. 20. The record contains evidence that the sewer and water service capacities have adequate reserves. Exhibits 4 and 5. The Cities can supply urban services.

Finding: The Board finds that Petitioner has failed to show by a preponderance of the evidence that lands within the IUGAs are not capable of being served or that, if these lands are served, service levels for the Cities will fall below unacceptable minimum level.

C. The inclusion of commercially viable agricultural lands within Benton County's designated IUGAs for Kennewick and Richland violates the following statutory and regulatory requirements of the GMA: RCW 36.70A.020(8); WAC365-195-010(7)(e).

None of the Parties addressed whether the disputed agricultural lands are designated resource lands. The Board will assume that the disputed agricultural lands are not designated resource lands under RCW 36.70A.170(1). It should be noted, however, that even resource lands are not precluded from inclusion within an IUGA under certain circumstances. RCW 36.70A.060(4).

Planning Goal No. 8, the enhancement of natural resource-based industries, does not prevent productive agricultural lands from inclusion within an IUGA. Both Richland and Kennewick

currently have "production" agriculture as well as smaller farms within their corporate limits. The City of Richland leases sizable portions of its industrial land for production "circle irrigation" farming and it planned for agricultural areas in its urban growth area requirements calculation. Exhibit 10.[FN3] The record shows that agriculture can and does successfully exist within the current city boundaries. There is no reason to believe that agricultural lands to the extent they are included within these IUGAs cannot continue to be successfully farmed.

WAC 365-195-010(7)(e) concerns the need to designate and conserve agricultural and other types of resource lands. Petitioner has made no showing nor has it suggested that the agricultural lands it is concerned about, those in Area A in Kennewick's IUGA, meet the test of RCW 36.70A.170 (1) for designation. Even if this were the case, this does not prevent their inclusion within the IUGA as noted above.

Finding: The Board finds that Petitioner has not shown that the adopted IUGAs for Richland and Kennewick violate either RCW 36.70A.020(8) or WAC 365-195-010(7)(e).

D. The inclusion of land in excess of that required to support the Office of Financial Management projected population increases within Benton County's designated IUGAs for Kennewick and Richland violates the following statutory and regulatory requirements of the GMA: RCW 36.70A.110(2) and (3); WAC 365-195-070(5); WAC 365-195-335(1)(d); WAC365-195-335 (3)(b).

Position of Petitioner. Petitioner asserts that the adopted IUGAs, not based upon the OFM population forecasts, were overly expansive. Expansive IUGAs violate the GMA because they allow development in areas that would be prohibited within correctly sized UGAs. The County's policy of "expand now and contract later" after full analysis violates the GMA and has been rejected by the other two boards. Further required "greenbelt" and "open space" designations have not been made.

Position of Respondent. Respondent argues that IUGAs are to be granted more leeway than FUGAs. Because other factors may influence IUGA size, Petitioner has failed to show that the maximum amount of land that may be included in an IUGA has been exceeded.

Position of the Cities. The Cities argue that the IUGAs are based upon the OFM population forecast. Additionally that IUGAs clearly allow for other factors, for instance, public facility needs and safety margins to prevent land cost inflation due to a too-limited land supply.

Position of Intervenors. Petitioner cannot show that the IUGAs are not based upon the OFM forecast.

Discussion.

The size limitation imposed by the "based upon" language of RCW 36.70A.110, the designation of an insupportable, overly expansive IUGA violates the GMA.[FN4] A county cannot adopt an "expand now contract later" IUGA that allows unwarranted annexation, annexation which would not be allowed if the IUGA were properly sized. As Petitioner pointed out, however, this is a concern only for expansive IUGAs, since this problem cannot occur in cases where an IUGA is conservatively drawn.

The crux of this case is whether the IUGAs of Richland and Kennewick are overly expansive to the point of violating RCW 36.70A.110.

The Board found in finding of fact no. 1 that the County allocated the OFM population forecast for 2012. This allocation envisioned a modification in the City of Kennewick's population figures to account for the inclusion of current county residents that lived in islands of county land within the city boundary. Since Kennewick provided city services to these areas, there inclusion in the City's planning was logical.

Petitioner argues that both Kennewick and Richland failed to base their IUGAs upon the OFM 20 year population forecast. The Board is not persuaded. Richland used an estimated population of 43,550 instead of the 43,177population figure in the County's OFM population allocation. This is a one percent variation on a 20 year planning forecast.[FN5]This difference is insignificant for planning purposes. Similarly after adjusting for the "island" county residents, Kennewick used an estimated population figure that was 2.1 per cent greater than the County's OFM population allocation.[FN6]This, also, is an insignificant variance considering the planning cycle. Substantively this variance does not constitute a violation of the GMA.

Kennewick considered the OFM population forecast and developed a land requirement plan to size its IUGA. This plan considered the need for low (4 units per acre), medium (13units per acre) and high (27 units per acre) residential development, commercial and industrial land, public facilities and schools, parks and recreation, open space and right-of-way lands. The City determined its proposed land requirement by application of "existing acres used rations". This matched existing densities with the proposed IUGA densities.

Richland's process was similar. It considered the land requirements of low, medium and high density residential development, parks and recreation, public uses, schools, commercial and industrial uses, open space and agricultural uses[FN7],right-of-way and undevelopable lands. Their calculation included to additional factors, a 70% build out factor and a25% safety factor. [FN8] It used a different formula than Kennewick, future land needed acres per capita, and

modified some of the ratios slightly, but the difference in reality is small. The resulting IUGA largely matched the City's existing density.

The Benton County Commissioners reduced the size of both proposed IUGAs. thereby increasing their densities. The record fails to indicate the exact acreage reduction, but in Kennewick's case it was in excess of 1000 acres and approximately this amount for Richland.

Petitioner argues, also, the phrase "Each urban growth area shall permit urban densities and shall include greenbelts and open space areas" under RCW 36.70A.110(2) imposes a duty to designate these areas which the Cities allegedly have failed to do. The Board believes that in the context of IUGAs this is properly interpreted to mean to plan for or to provide sufficient land to meet the legitimate requirements of these uses. Both Cities planned for open spaces and, while the term greenbelts was not used, both Cities planned for parks and recreational areas. It should be noted that the Act does not define either of these terms.

Two other local situations must be addressed, the "industrial" land north of Richland and theI-82-Badger Canyon Interchange. Part of the concern with expansive IUGAs is that they both encourage sprawl and subject rural lands to development that would not occur but for the IUGA designation. The designation precipitates a use change. This is not the case for the land north of Richland. It is located between the Batelle Northwest Laboratories, one of the Hanford Reservation's prime contractors, and the"300" area on the Reservation. It has been and will continue to be part of this nuclear industrial area. There is no change in use. The only difference is that the City of Richland and the Department of Energy desire to transfer "management" of this area to the City because of a mission change at the Reservation.

The I-82-Badger Canyon Interchange should be considered an element of Kennewick's "community vision" encouraged by WAC 365-195-335(3)(b). The City has long desired this gateway. It concluded a boundary agreement with the City of Richland and worded with the County on highway improvements.[FN9] This type of intergovernmental cooperation is a primary objective of the GMA.

As the Board found in the Chelan Case, each community is both given discretion and encouraged to create its own "vision of urban development". Its "community vision" is constrained in two ways. First, a community must provide adequate public facilities and services. Implementation of its plan may not decrease current service levels below locally established minimum standards. RCW36.70A.020(12). Second, "sprawl" is to be discouraged. RCW 36.70A.020(2).

In this case, the Gateway intersection is a legitimate "community vision". It looks appropriate on the map, follows natural boundaries, and its inclusion appears necessary to meet the land requirements for the IUGA. The record indicates that several individual property owners living in

the area disapproved of the Gateway plan. This, however, is a political question. There is no indication in the record that the public participation process was inadequate.

The record indicates that the communities can meet the service provision requirements. There is no indication that sewer and water systems are inadequate. The City of Richland, indeed, appears to have substantial reserve capacity. Exhibit10. Water and sewer lines are currently adjacent to the northern edge of area A in Kennewick's IUGA and are to be incorporated into the Gateway road improvements. The Cities have planned for a variety of residential densities and have the ability to control "sprawl" through zoning and control of the water supply. As noted above, this is a semi-arid area, that cannot develop without water--the supply of which the Cities control.

There are a variety of factors that each community should consider and evaluate in the process of designating an urban growth area. The precise set of factors will depend upon the particular circumstances of each community. At the Hearing on the Merits, the "look and feel" of the Cities was discussed. Agriculture is and has been a significant influence in both Cities, which they desire to retain along with the open feeling that it engenders. There is no reason that this historic "look and feel" within reason cannot be part of a community's vision.

An IUGA must be based upon the OFM population forecast. In determining an IUGA's size, the residential land requirements for the area must be considered along with legitimate other factors including industrial land, open spaces, parks and recreation areas, undevelopable land, and greenbelts as well as legitimate safety factors that provide protection against inflationary land prices caused by an overly restrictive designation. The requirements of each of these factors are totaled to determine the size of an IUGA. "The community's proposed urban growth area should encompass a geographic area which matches the amount of land necessary to accommodate likely growth." WAC365-195-335 (3)(e)(v). The Board reaffirms that the size of an urban growth area should equal the area required under the OFM growth projection plus the area required to realize a jurisdiction's "vision of urban development" that can be realized over the next twenty years. This definition allows a community to achieve its legitimate needs, while prohibiting "sprawl". The Board holds that this is the meaning of RCW 36.70A.110(2).

The inclusion of supportable land use factors grants substantial discretion to each jurisdiction designating an IUGA, yet provides a yardstick that ties and constrains the designation to the OFM population forecast. In this case the Cities both considered a matrix of factors and made determinations of the acreage required to accommodate each factor. The County Commissioners removed from both proposed IUGAs certain lands they considered to be excessive.

The Board views these IUGA designations to be supportable middle positions. While they could have been drawn more conservatively, they are not overly expansive. This case is different that the Chelan case. In Chelan, the IUGA contained three times the land required for the proposed

development and failed to provide any basis for its expansive designation.

The record fails to show that the proposed land use requirements were excessive. Such a showing might be possible if petitioner or other participants in the process had disputed the proposed land use requirements. This did not happen. The record shows that the Board of County Commissioners made every requested reduction with one exception, the middle portion of Area A in the proposed Kennewick IUGA. As the Board has noted previously, the record justifies their inclusion of this area.

The record supports the Board of County Commissioners' decision. The adopted IUGAs are in compliance with the requirements of the Act. The Board reaffirms its "show your work" requirement in situations where substantiial local discretion ix exercised. For instance, a community may successfully support an IUGA that on its face appears excessive if it can show that the proper factors were considered and adequately addressed.

Finding: The Board finds that Petitioner has failed to show by a preponderance of the evidence that the IUGAs adopted for Richland and Kennewick in Resolution 94 245violate the Act.

1E. The failure of Benton County's IUGAs for Kennewick and Richland to comply with Benton County-wide Planning Policies violates the following statutory and regulatory requirement of the GMA: WAC 365-195-010(4); WAC365-195-335 (3)(a).

While WAC 365-195-010(4) requires consistency with county-wide planning policies and WAC 365-195-335(3)(a) recommends that UGAs should be guided by the applicable county-wide planning policies, Petitioner, however, has failed to show that the designated IUGAs for Richland and Kennewick violate the Benton County-wide planning policies (BCWPP). Discussion under Issue No. 2.

Finding: The Board finds that Petitioner has failed to show non-compliance with WAC 365-195-010(4) and WAC365-195-335 (3)(a).

Issue No. 2

The County, in adopting Resolution No. 94 245did not comply with the requirements of, and is inconsistent with, the provisions of the adopted Benton County-Wide Planning Policies (BCWPP).

Issue 2 is broken into sub-issues that mirror the sub-issues of Issue No. 1. For the same factual reasons that the Board found in Issue No. 1, Petitioner has failed to show, by a preponderance of the evidence, violations of the BCWPPs. Under sub-section A, the Board found that the disputed

lands qualified as lands "adjacent to urban lands" and therefore failed to violate the BCWPPS Numbers 1.1, 1.2, 5, 9 and 18. Similarly, the Board found that all the included lands could be provided with urban services at adequate levels and did not violate of BCWPPs Numbers 1.1, 1.2, 5, 9, and 18. The inclusion of commercially viable agricultural lands in and of itself does not violate BCWPPs Numbers 2 and 9. And finally, since Petitioner failed to show inclusion of land in excess of the OFM population forecast requirement, there was no violation of BCWPPs Numbers 3 and 4.

Finding: Petitioner has failed to show by a preponderance of the evidence a violation of the BCWPPs.

NOW, THEREFORE, having reviewed the file and exhibits in this case, considered the briefs submitted by the parties, heard testimony, and having entered the foregoing Findings of Fact and Conclusions, the Board makes the following

FINAL DECISION AND ORDER

The Board finds that Resolution 94 245 is incompliance with the requirements of the Growth Management Act. The Petition is denied.

This is a Final Order under RCW 36.70A.300 for purposes of appeal.

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SO ORDERED this 25th day of April, 1995.

EASTERN WASHINGTON

GROWTH MANAGEMENT HEARINGS BOARD

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Judy Wall, Presiding Officer

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Graham Tollefson, Member

Tom Williams, Member

FN1

Berschauer v. City of Tumwater, WWGPHB No. 94-2-0002 at530 (Code Publ.)

FN2

Association of Rural Residents v. Kitsap County, CPSGMHB, Case No, 93-3-0010 at 515.

FN3

It might be possible to argue that Planning Goal No. 8 is violated if an IUGA is so conservatively sized that productive agricultural lands within the IUGA are rendered useless by forecast growth.

FN4

Save Our Butte Save Our Basin Society v. Chelan County, EWGMHB at 422.

FN5

The reliability of the OFM forecasts for some counties have been questioned and OFM is working on updating their forecasts.

FN6

Percentage variation is derived from exhibits 2 and 16.

FN7

The "circle irrigation" farm lands in the north-west section of Richland has an industrial component. Some of this land may provide the secondary, but important use of waste-water disposal for processing plants in the area.

FN8

Richland's approach followed the method suggested in Benton County-Wide Planning Policy No. 4. Exhibit 1

FN9

This boundary agreement followed years of dispute in the area.