

**State of Washington**  
**GROWTH MANAGEMENT HEARINGS BOARD**  
**FOR EASTERN WASHINGTON**

CITIZENS FOR GOOD GOVERNANCE, 1000  
FRIENDS OF WASHINGTON and CITY OF  
WALLA WALLA,

Petitioner,

v.

WALLA WALLA COUNTY, and the BOARD  
OF COUNTY COMMISSIONERS FOR WALLA  
WALLA COUNTY, its legislative body,

Respondents.

Case No. 01-1-0015c

And

Case No. 01-1-0014cz

FINAL DECISIONS AND  
ORDER

**I. PROCEDURAL HISTORY**

On July 5, 2001, CITIZENS FOR GOOD GOVERNANCE, a non-profit, unincorporated association, by and through their counsel, Jeffrey M. Eustis, and 1000 FRIENDS OF WASHINGTON, a Washington non-profit corporation, by and through its counsel, Steve Stuart, filed a Petition for Review regarding the adoption of Walla Walla County Ordinance 264, Walla Walla 2021 Comprehensive Plan, case No. 01-1-0013.

On July 20, 2001, CITY OF WALLA WALLA, by and through its counsel Tim Donaldson, filed a Petition for Review regarding the adoption of Walla Walla County Ordinance 264, Walla Walla 2021 Comprehensive Plan, case No. 01-1-0015.

The Board consolidated Case Nos. 01-1-0013 and 01-1-0015 under case No. 01-1-0015c.

On July 9, 2001, the City of Walla Walla, by and through their attorney Tim Donaldson, filed a Petition for review of Walla Walla County Amended Ordinance 259. (01-1-0014)

On November 2, 2001, Citizens for Good Governance and 1000 Friends, both Washington Non Profit Corporations, filed a petition for Review for Interim Zoning Controls-Ordinance 266. (01-1-0012).

The Board consolidated Case Nos. 01-1-0012 and 01-1-0014 under case No. 01-1-0014cz.

On February 21, 2002, Respondent Walla Walla County filed its Motion to Supplement the Record in the above captioned matter.

On March 11, 2002, the Board held a telephonic hearing to hear arguments pertaining to Respondents' Motion to Supplement the Record. On March 13, 2002, the Board issued an Order on Motions.

On March 20, 2002, the Board held a Hearing on the Merits in Walla Walla County. Immediately prior to the Hearing on the Merits, the Board heard additional Motions to Supplement the record with additional maps, aerial photos and other records. The documents were admitted in with limitations.

### **FINDINGS OF FACT**

1. Walla Walla County's land-use is primarily dominated by agricultural.
  2. On May 15, 2001, the County Commissioners adopted the Walla Walla County GMA Comprehensive Land Use Plan.
  3. On October 1, 2001, the Board of County Commissioners adopted interim zoning regulations to implement the newly adopted Comprehensive Plan designations.
  4. The County allows development of already platted lots within Rural Residential zone to continue at their present lot size, causing many such lots to remain at urban sizes, smaller than 5 acres.
  5. Rural Floating allows up to 98 new lots as small as 2-3 acres to be created near Mill Creek.
  6. Approximately 93% of the County's land base, or 721,040 acres, has been designated by the County as Agricultural Resource Lands of Long-Term Commercial Significance.
  7. The County did not prepare a specific written document for purposes of explaining how the rural element harmonizes the planning goals in RCW 36.70A.020 and meets the requirements of the GMA.
  8. The Blalock Orchard Rural Transition Area is located immediately west of the City of Walla Walla UGA.

### **III. LEGAL ISSUES**

The parties, in briefing their issues, combined 01-1-0014cz and 01-1-0015c and clustered the issues into subject areas. Because of the number, complexity, and the difficulty separating the issues, we are compelled to follow in like manner. References to Petitioners will be inclusive. Separating the Citizens for Good Governance, 1000 Friends of Washington and City of Walla Walla arguments will in most cases serve no purpose and will not be done in all issues.

**Issue 1:** Does the Rural Lands Sub-Element of the "Walla Walla County 2021 Comprehensive Plan" comply with the requirements of RCW 36.70A.070(5)?

**Petitioners' position:**

The Petitioners contend the Rural Lands Sub-Element does not comply with RCW 36.70A.070(5), because it does not include the required written record, required policies, and other requirements of the GMA.

The Petitioners point out RCW 36.70A.070(5)(a) requires the County to "develop a written record explaining how the rural element harmonizes the planning goals in RCW 36.70A.020 and meets the requirements of this chapter." The Petitioners contend no such record exists.

The Petitioners further contend the County's Rural Lands Sub-Element contains three comprehensive plan designations that fail to adequately control urban development by allowing lot sizes smaller than 5 acres. These designations are Rural Floating, Rural Residential, and Rural Transition (RAID). An estimate by Walla Walla County indicates these designations total 7,343 acres.

The Petitioners state the Rural Floating, the Rural Residential, and the Rural Transition zones (RAIDs) are also partially in environmentally sensitive areas in a manner that will damage the environment. All of this has been done without the required written explanation of how these provisions harmonize with GMA goals. The City of Walla Walla asserts that the County's Comprehensive Plan is not coordinated with the City/County Plan for the Walla Walla Urban Growth Area. The City and County adopted a mutual approach of dealing with growth in and around the City of Walla Walla. Despite this mutually adopted approach, the City contends the County's comprehensive plan completely disregards the concepts of layering growth outward and coordinating development with municipal utility availability.

**Respondent's position:**

The Respondent contends Walla Walla County has developed a written record explaining how the rural element of its Comprehensive Plan harmonizes the planning goals in RW 36.70A.020 and meets the requirements of the GMA. The County points out: First the plan strategy is to locate most new growth in existing UGAs, which reflects existing local circumstances, thereby "containing or otherwise controlling rural development" as required by RCW 36.70A.070(5)(c)(i) and (iii). Plan, p. 7-20.

The Respondent states the method employed includes adoption of varying degrees of land use designations, including very large lot requirements, as much as one dwelling unit per 120 acres.

Second, natural resource lands, including agricultural lands, are protected in several ways, including changing the existing agricultural zoning for the largest agricultural zone from one dwelling unit per 10 acres, to one dwelling unit per 40 acres. Agricultural lands are further protected by recognizing residential use is incompatible with agricultural use.

The Respondent states the Plan institutes the one dwelling unit per 40-acre designation for most of the County's designated agricultural lands. To protect resource lands, the County also prohibits any long platting on prime and unique agricultural lands, therefore not allowing these lands to be developed solely for residential use.

The Respondent points out clustering is allowed in the Primary Agricultural zone but is prohibited on prime agricultural lands as designated by the Soil Conservation Service, (now NCRS) in order to maintain their economic significance. The Respondent states these strategies protect "against conflicts with the use of agricultural... resource lands" as required by RCW 36.70A.070(5)(c)(iv).

The Respondent states there are no rural residential land designations below one dwelling unit per 5 acres, which reduces the "inappropriate conversion" of land into "sprawling, low density development" and assures "visual compatibility of rural development with the surrounding rural area..." per RCW 36.70A.070(5)(c)(ii)(iii). Rural Floating allows a 2-3 acre overlay. Because of significant development constraints, growth is expected in a range of only 18 to 98 new home sites. The two RAIDs designations have restrictions, in particular, water availability. The Respondent states these designations will allow for some affordable housing and protection of private property rights.

The Respondent claims urban sprawl is avoided by restrictive rural densities. Walla Walla County is primarily an agriculture-based county located in southeastern Washington, with 89.6% of the county zoned agricultural. The minimum densities range from 120 to 5 acres, with 83.7% at 40 acres, but with some clustering possible, with limitation. The AG zone makes up 748,239 acres out of the County's total acreage of 806,400.

Ordinance No. 64, Finding No. 17.1 (emphasis supplied).

The Respondent points to Comprehensive Plan Goal RS-2, which establishes as a prime directive the intent to "guide future development in the concentrated urban growth areas where adequate public facilities, utilities and services can be provided and the impact to resource lands can be minimized." The Respondent claims this policy works in conjunction with policies for rural lands, which impose low levels of intensity so as not to create demand for high levels of public services. Further, the Respondent claims the Plan prohibits the extension of urban services to rural lands.

The Respondent states the record demonstrates a great effort by the County to harmonize the conflicting GMA goals of protection of property rights and provisions of affordable housing, on the one hand, with prohibition on encouraging urban sprawl and the requirement to protect agricultural lands and the environment, including critical areas, on the other.

**Discussion:**

RCW 36.70A.070(5)(a) requires a written record explaining how the rural element harmonizes the planning goals in RCW 36.70A.020":

(5) Rural element. Counties shall include a rural element including lands that are not designated for urban growth, agriculture, forest, or mineral resources. The following provisions shall apply to the rural element:

(a) Growth management act goals and local circumstances. Because circumstances vary from county to county, in establishing patterns of rural densities and uses, a county may consider local circumstances, **but shall develop a written record explaining how the rural element harmonizes the planning goals in RCW 36.70A.020 and meets the requirements of this chapter...**(emphasis added).

The County drew the Board's attention to the items within the Comprehensive Plan and Regulations which they believe shows compliance with the requirement to have a

written record showing how the rural element harmonizes with the GMA goals:

- 1) The location of most new growth in existing UGAs, which they contend reflects existing local circumstances, thereby “containing or otherwise controlling rural development” as required by RCW 36.70A.070(5)c(i) and (ii).
- 2) Resource lands are protected in several ways within the Comprehensive Plan.
- 3) The County contends there is no rural residential land designations below one dwelling unit per 5-acres, which they believe reduces the “inappropriate conversion” of land into “sprawling, low density development” and assures “visual compatibility of rural development with the surrounding rural area....”
- 4) Urban sprawl is avoided by restrictive rural lot densities.

The Board believes the list the County has gathered is not what the legislature intended. The legislature recognized local circumstances are often different from other counties. Because of this, the legislature allows each county to vary its patterns of rural densities and uses, based upon the local circumstances. However, the County must explain in writing how the rural element so designed, harmonizes the planning goals in RCW 36.70A.020. The items listed by the County are examples of what has been done. They are items from various parts of the Comprehensive Plan, but are not the “written record explaining how the rural element harmonizes...” In fact, number 3, above, contends the maintenance of lot size below 5-acres reduces the “inappropriate conversion” of land into “sprawling, low density development”. Yet it is the existing smaller lots of less than 5 acres allowed in the Rural Residential and Rural Floating, which cause this Board concern. (See Rural Residential and Rural Floating issues below).

RCW 36.70A.020 lists 13 goals. The list given by the County touches on a few of these goals, but very little else. The written record required is for the purpose of explaining how the County’s rural element harmonizes with the planning goals. Giving the Board a list of what the County has done does not begin to satisfy the requirement of the written record sought by the legislature.

**Conclusion:**

The Board finds the County has failed to include a written record that was developed to explain how the rural element harmonizes the planning goals in RCW 36.70A, 020 and the requirements in RCW 36.70A.

### **A. RURAL RESIDENTIAL LANDS ISSUES**

**Issue 2:** Does the Rural Lands Sub-Element of the "Walla Walla County 2021 Comprehensive Plan" which unilaterally creates new "rural residential" future land use designation, not previously recognized by section 17.12.040 of the Walla Walla County Code and in violation of ¶12.1 of the "Countywide Planning Policies," allowing growth outside designated urban growth areas at a density greater than the "rural residential five acres" classification mutually adopted and applied by the City and County of Walla Walla to areas immediately inside the outer edge of the designated urban growth area comply with RCW 36.70A.210 and the purposes of RCW Ch. 36.70A, which require the county comprehensive plan to be developed and adopted within the framework of the "Countywide Planning Policies"? Case No. 01-1-0015 ¶3.18. (From the Joint Statement of Issues for Case Nos. 01-1-0012, 01-1-0013, 01-1-0014, and 01-1-0015).

**Issue 7:** Does creation of a "rural residential" future land use designation by the Rural Lands Sub-Element of the "Walla Walla County 2021 Comprehensive Plan" which permits development immediately beyond the outer edge of designated urban growth areas at an intensity which is not significantly different than that allowed in "rural conversion" areas adjacent thereto inside the designated urban growth area classified as "rural residential five acres" comply with goals Of RCW 36.70A.020 and the purposes of RCW Ch. 36.70A that comprehensive plans reduce inappropriate conversion of undeveloped land into sprawling, low-density development and encourage development in urban areas? Case No. 01-1-0015 ¶3.24. (From the Joint Statement of Issues for Case Nos. 01-1-0012, 01-1-0013, 01-1-0014, and 01-1-0015).

**Issue 16:** Does the "Walla Walla County 2021 Comprehensive Plan" comply with the Growth Management Act, RCW Ch. 36.70A as it relates to lands designated "rural residential"? Case No. 01-1-0015 ¶3.35. (From the Joint Statement of Issues for Case Nos. 01-1-0012, 01-1-0013, 01-1-0014, and 01-1-0015).

**Issue 4:** Does the provision within Chapter 7 of the Comprehensive Plan to allow lot sizes within the Rural Residential designation to be modified at the time of adoption of development regulations to reflect platting and land segregation that may have occurred between the adoption of the Comprehensive Plan and the adoption of development regulations violate RCW 36.70A.070 and .110 and the goals of the Act by allowing and encouraging growth at urban densities to occur outside of urban growth areas and beyond the logical outer boundary of existing areas with more intense rural

development and thereby thwart and undercut the Comprehensive Plan itself? (Appeal issue 4) (From the Joint Statement of Issues for Case Nos. 01-1-0012, 01-1-0013, 01-1-0014, and 01-1-0015).

**Issue 8 (01-1-0014cz)**: Does creation of a "rural residential" classification by Walla Walla County Amended Ordinance 259 which permits densities immediately beyond the outer edge of designated urban growth areas which are two times greater than that allowed in areas adjacent thereto inside the designated urban growth area classified as "rural residential five acres" comply with goals of RCW 36.70A.020, and the purposes of RCW Ch. 36.70A, that development regulations reduce inappropriate conversion of underdeveloped land into sprawling, low-density development? Case No. 01-1-0014 ¶3.13. (From the Joint Statement of Issues for Case Nos. 01-1-0012, 01-1-0013, 01-1-0014 and 01-1-0015).

**Issue 11 (01-2-0014cz)**: Does the "rural residential" classification by Walla Walla County Amended Ordinance 259 which permits urban growth outside designated urban growth areas in violation of the General Planning Goals, the Urban Growth Area section, the Contiguous and Orderly Development section, and the Rural Lands section, of the "Countywide Planning Policies," comply with RCW 36.70A.210, RCW 36.70A.040(4)(d), and the purposes of RCW Ch. 36.70A, which require the county comprehensive plan to be developed and adopted within the framework of the "Countywide Planning Policies" and development regulations that are consistent with and implement such comprehensive plan? Case No. 01-1-0014 ¶3.14. (From the Joint Statement of Issues for Case Nos. 01-1-0012, 01-1-0013, 01-1-0014 and 01-1-0015).

**Issue 13 (01-10014cz)**: Does the "rural residential" classification by Walla Walla County Amended Ordinance 259 which permits urban growth outside designated urban growth areas comply with RCW 36.70A.070, RCW 36.70A.110, and the purposes of RCW Ch. 36.70A, which prohibit urban growth in rural areas? Case No. 01-1-0014 ¶3.15. (From the Joint Statement of Issues for Case Nos. 01-1-0012, 01-1-0013, 01-1-0014 and 01-1-0015).

**Issue 15 (01-1-0014cz)**: Does a "rural residential" classification by Walla Walla County Amended Ordinance 259 which permits densities immediately beyond the outer edge of designated urban growth areas which are double that allowed by the "Walla Walla County 2021 Comprehensive Plan," and permits development which proceeds while Walla Walla County Amended Ordinance 259 remains in effect to override the comprehensive plan comply with RCW 36.70A.040, and the purposes of RCW Ch. 36.70A, which require the development regulations that are consistent with and

implement the comprehensive plan, and not vice-a-versa? Case No. 01-1-0014 ¶3.19. (From the Joint Statement of Issues for Case Nos. 01-1-0012, 01-1-0013, 01-1-0014 and 01-1-0015).

**Issue 18 (01-1-0014cz):** Does the “rural residential” classification created by Walla Walla County Amended Ordinance 259 substantially interfere with the fulfillment of the goals of RCW 36.70A so that a determination of invalidity should issue? Case No. 01-1-0014 ¶3.20. (From the Joint Statement of Issues for Case Nos. 01-1-0012, 01-1-0013, 01-1-0014 and 01-1-0015).

**Petitioners’ position:**

The Petitioners point out that all three Growth Management Hearings Boards have found comprehensive plan designations with minimum lot sizes smaller than five acres are urban designations, not rural. *City of Moses Lake v. Grant County*, Eastern Washington Growth Management Hearings Board (EWGMHB) Case No. 99-1-0016 Final Decision and Order, Western Washington Growth Management Hearings Board (WWGMHB) Case No. 95-2-0065 Second Order, Central Puget Sound Growth Management Hearings Board (CPSGMHB) Consolidated Case No. 95-3-0039, EWGMHB Case No. 01-1-0002c Amended Final Decision and Order).

The Petitioners also point out the State of Washington Court of Appeals agreed with the WWGMHB’s determination that densities of one dwelling unit per half-acre to 2.5 acres are urban and urban-like. The court also agreed that urban development, including development at these densities, is prohibited outside urban growth areas. *Diehl v. Mason County*, 94 Wn. App. 645, 655-57, 972 P.2d 543, 547-49 (1999).

The Petitioners point out the Rural Residential designation has a minimum lot size of 2 to 5 acres. Walla Walla County Comprehensive Plan 2001-2021 chapter 7, p. 119 (May 15, 2001). The Rural Residential designation is principally west of College Place, south of College Place and the City of Walla Walla, east of the City of Walla Walla, and west, north, and east of Touchet.

The Petitioners contend Rural Residential designations 2 to 5 acre minimum lot sizes will create urban sprawl within the rural area. The Petitioners also contend the Rural Residential designation is applied to areas poorly suited for these sprawling densities including farms and flood plains. Walla Walla Comprehensive Plan 2001-2021

chapter 7 p. 119. The Petitioners recognize that the EWGMHB upheld Ferry County's 2.5-acre minimum lot sizes in the rural area, but contend the Board allowed that density based on Ferry County's unique circumstances.

The Petitioners cite Rural Residential designation of Walla Walla County Comprehensive Plan 2001-2021 chapter 7, p. 119 (May 15, 2001) as providing in part that:

Rural Residential areas will eventually be zoned according to historic platting patterns, historic zoning, access, floodplain, water issues, land availability and the current built densities versus potential densities and others as needed. All of the above will be determined in relation to compliance and intent of GMA.

The Petitioners contend the use of historic platting patterns and other factors to set density is a further invitation to violate the Act. The historic patterns of less than one unit per five acres should not be an excuse to allow sprawl or urban density in rural areas. This size lot in rural areas has been consistently found noncompliant. While the County assigned a 5-acre minimum lot size to the rural residential designation, the County adopted an exception stating:

Modify the Rural Residential designation to have a 5 acre designation, and add the following policy: "At the time of adoption of the development regulations, the County shall recognize and zone currently developed and/or segregated portions of this area consistent with the area's existing lot size and density (i.e.: currently platted 1 acre will be zoned 1 acre.) Undeveloped and/or unplatted areas will be zoned at a density of 1 d/u per 5 acres." (Exhibit 00000015).

The City points out that no such exception, or policy, exists for identically platted areas inside the urban growth area. They see no effort made to reconcile or explain this lack of coordination, and, in addition, no analysis is provided to determine how far such areas of intensive "exception" zoning may extend outside the Walla Walla UGA.

The Petitioners cite EWGMHB Case No. 99-1-0016 *City of Moses Lake v. Grant County*, Final Decision and Order where the Board ruled that 8,717 acres of one housing unit per 2.5 acres residential zoning density as applied to the rural Grant County was noncompliant and invalid.

The Petitioners summarized the pertinent section of the *City of Moses Lake v.*

*Grant County, supra*, as follows:

These designations will allow the inappropriate conversion of undeveloped land in the rural areas into sprawling low-density development, along with the conversion of prime agricultural soils into sprawling low-density development. The element also includes no provisions assuring visual compatibility of rural development with the surrounding rural area.

The Petitioners contend for issues 8, 11, 13, 15 and 18 of Case No. 01-1-0014cz, the core problem is the minimum lot size set by Amended Ordinance 259 for the Rural Residential zone of 2.5 to 5 acres. Amended Ordinance 259, Section 2 (May 7, 2001). The Petitioners again contend as above, uses with densities of more than one housing unit per five acres are urban and prohibited in the Rural Area unless in LAMIRDs and this zone is not purported to be a LAMIRD (RAID).

**Respondent's position:**

The Respondent cites the vision for rural lands in Walla Walla County is as follows:

- Preserve rural-based economies and traditional lifestyles by not creating more small rural residential building lots, and
- Enhance the rural sense of community and quality of life. (Comprehensive Plan, p. 7-106)

The Respondent states that although the Planning Commission recommended the Rural Residential designation be at a varying minimum density of two to five acres for single-family homes, after considering public comments, the Commissioners established a one dwelling unit per five acre (1DU/5A) zoning designation throughout the 4,665 – acre district. The Board of County Commissioners stated in the Comprehensive Plan, Land Use Map – 2 (Rural Residential designation: 1DU/5 acres) in Ordinance No. 264, attachment C, Finding 17.5.1, 17.5.2, that it “finds it appropriate to modify the Rural Residential designation to have a five-acre designation. . . .”

The Respondent states the record shows that with exception of the two RAIDs, all of rural Walla Walla County is zoned at five acres or above. The Respondent also states as to the other designations, 4% of the County is government-owned, with no allowable residential development; 2.6% of the County is at a minimum lot size of one dwelling unit per 120 acres; 84% is at one dwelling unit per 40 acres; two other categories, General Agriculture and Agriculture Residential, have minimum lot sizes of one dwelling

unit per 20 acres and one per 10 acres, respectfully; the Rural Agriculture designation has a minimum lot size of five acres; and Rural Remote has a minimum lot size of 20 to 40 acres, with a limited overlay of 2 to 3 acre parcels for under 100 new homes.

The Respondent states the "one size fits all" density definitions of urban and rural areas have posed difficulties for rural counties because of longstanding development patterns and preferences.

The Respondent states Walla Walla County is obligated to provide for a variety of rural densities, and, while taking into account local circumstances, Walla Walla County has complied with the GMA.

**Discussion:**

The County has designated an area immediately next to Walla Walla's UGA as Rural Residential. In this area the stated minimum lot size is one dwelling unit (du) per 5-acres. However, the County has decided to allow existing undeveloped platted lots to retain their existing lot size. Many of these are plats containing undeveloped lot sizes smaller than 5 acres.

The number of undeveloped platted lots in the Rural Residential under the 5-acre minimum is not known. The County submitted a map with a summary of lot sizes in this area. Eighty-three percent (83%) of the Rural Residential zone, 1199 lots, are 5 acres or smaller. The balance is made up of lots larger than 5 acres. Later, the County filed an affidavit, which estimated that the remaining undeveloped platted lots less than 5 acres, were approximately 135.

The effect of the County's action here would be to continue the existing zoning at urban density in the face of statutory direction to prohibit urban growth in the Rural Element. The continuation of urban densities creates an impermissible pattern of urban growth in the rural area. Lot density, in conflict with the overall 5-acre zoning, will have a substantial impact on the density of this rural area.

The County contends that it is the existing zoning and is appropriate in this situation both to protect private property and to avoid non-compliant zoning. Nowhere in the Plan is there a discussion of how this would harmonize with the GMA's goals. The fact that such zoning existed prior to the adoption of the Plan is no excuse to continue it. The size of many preexisting platted lots is not at rural density. Where possible, the County must change what has been happening before if it violates the GMA. We addressed a

similar issue in *City of Moses Lake v. Grant County*, Case No. 99-01-0016, Final Decision and Order, May 23, 2000. In that case this Board spoke of preexisting patterns:

This does not mean the County can or must ignore what has occurred in the Past. The past patterns cannot be easily undone. The landowners affected by those pre-GMA development activities are protected, for better or worse, by the fact that their uses, although nonconforming with future planning and zoning, are legal. They are also protected by the fact that their fully completed development permit applications are vested. Nonetheless, the County cannot base its future planning for new growth on its past development practices if those past practices, as here, do not comply with the GMA or the CPPs. What was once permissible is no longer so. The GMA was passed to stop repeating past mistakes in the future. The GMA contemplates quite a different future. The past practices cannot be the pattern for the future. As a consequence, the future land use map must show land use as anticipated because of GMA goals and requirements.

Allowing previous lot sizes to exist on vacant land just because that is what they are now platted for, ignores what the GMA is trying to do. Anything below 5-acre lot size is out of compliance for the remaining undeveloped lands in this rural area.

**Conclusion:**

The Petitioners have demonstrated to the Board that the actions of the County here are clearly erroneous. The reduction of lot size below 5 acres in Rural Residential is not in compliance with the GMA. The Petitioners have carried their burden of proof.

**B. RURAL TRANSITION LANDS ISSUES (RAIDS)**

**Issue 1 (01-1-0014cz):** Do Amended Ordinance 259 and Ordinance 266 violate RCW 36.70A.110 and the goals of the Growth Management Act (the "Act") where it allows growth at urban densities to occur outside of urban growth areas on lands that are inappropriate for urban growth? (From the Amended Prehearing Order for Case No. 01-1-0014cz).

**Issue 2 (01-1-0014cz):** Do Amended Ordinance 259 and Ordinance 266 violate RCW 36.70A.110 and the goals of the Act where it designates lands as Rural Transition (½ acre minimum lot size) on the alternative grounds that a ½ acre minimum lot size is inconsistent with densities allowed beyond urban growth areas and that such density is inappropriate for lands that are already served by urban governmental services? (From the Amended Prehearing Order for Case No. 01-1-0014cz).

**Issue 6:** Does the creation of a “rural transition” future land use designation by the Rural Lands Sub-Element of the “Walla Walla County 2021 Comprehensive Plan which permits development immediately beyond the outer edge of designated urban growth areas at an intensity which is up to ten times greater than that allowed in “rural conversion” areas adjacent thereto inside the designated urban growth area classified as “rural residential five acres comply with the goals of RCW 36.70A.020 and the purposes of RCW Ch. 36.70A that comprehensive plans reduce inappropriate conversion of undeveloped land into sprawling, low density development and encourage development in urban areas? Case No. 01-1-0015 ¶3.23. (From the Joint Statement of Issues for Case Nos. 01-1-0012, 01-1-0013, 01-1-0014, and 01-1-0015).

**Issue 10:** Do the Rural Lands Sub-Element of the “Walla Walla County 2021 Comprehensive Plan” and the “rural transition” future land use designations which permit urban growth outside designate urban growth areas comply with RCW 36.70A.070, RCW 36.70A.110, and the purposes of RCW Ch. 36.70A, which prohibit urban growth in rural areas? Case No. 01-1-0015 ¶3.28. (From the Joint Statement of Issues for Case Nos. 01-1-0012, 01-1-0013, 01-1-0014, and 01-1-0015).

**Issue 13:** Do the Rural Lands Sub-Element of the “Walla Walla County 2021 Comprehensive Plan” and the “rural transition” future land use designation provisions of the Rural Lands Sub-Element of the “Walla Walla County 2021 Comprehensive Plan” comply with the requirements of RCW 36.70A.070(5)(d)? Case No. 01-1-0015 ¶3.30. (From the Joint Statement of Issues for Case Nos. 01-1-0012, 01-1-0013, 01-1-0014, and 01-1-0015).

**Issue 14:** If RCW 36.70A.070(5)(d) authorizes Walla Walla County to unilaterally disregard the “Countywide Planning Policies” and allow intensive development in rural areas, does the “rural transition” classification created by Walla Walla County Amended Ordinance 259 which permits intensive development in an area over half the size of the entire area available for development in the designated urban growth area (718.8 net buildable acres in the rural transition area versus 1,337 vacant acres available for buildout in the urban growth area), comply with that statute’s requirements there be only limited areas of intensive rural development? Case No. 01-1-0014 ¶3.18. (From the Joint Statement of Issues for Case Nos. 01-1-0012, 01-1-0013, 01-1-0014, and 01-1-0015).

**Issue 15:** Do the “rural transition” future land use designation provisions of the Rural Lands Sub-Element of the “Walla Walla County 2021 Comprehensive Plan” comply with the requirements of RCW 36.70A.070 (5)(d) which permit infill, development, or redevelopment only of commercial, industrial, residential, or mixed-use areas in

existence at the time of adoption of Walla Walla County Resolution number 90-449 on October 30, 1990, when there is an absence of findings regarding the location and type of areas in existence at that time? Case No. 01-1-0015 ¶3.31. (From Joint Statement of Issues for Case Nos. 01-1-0012, 01-1-0013, 01-1-0014, and 01-1-0015).

**Issue 16:** Do the “rural transition” future land use designation provisions of the Rural Transition Policies of the Rural Lands Sub-Element of the “Walla Walla County 2021 Comprehensive Plan” comply with RCW 36.70A.070(d)’s mandate to minimize and contain existing area and uses at levels in existence at the time of adoption of Walla Walla County Resolution number 90-449 on October 30, 1990, when there is an absence of findings regarding levels in existence at that time? Case No. 01-1-0015 ¶3.32. (From the Joint Statement of Issues for Case Nos. 01-1-0012, 01-1-0013, 01-1-0014, and 01-1-0015).

**Issue 19:** Does the “Walla Walla County 2021 Comprehensive Plan” comply with the Growth Management Act, RCW 36.70A as it relates to lands designated “rural transition”? Case No. 01-1-0015 ¶3.35. (From the Joint Statement of Issues for Case Nos. 01-1-0012, 01-1-0013, 01-1-0014, and 01-1-0015).

**Issue 3 (01-1-0014cz):** Does Walla Walla County Amended Ordinance 259 which unilaterally creates new “rural transition” classification, not previously recognized by section 17.12.040 of the Walla Walla County Code and in violation of ¶12.1 of the “Countywide Planning Policies,” allowing growth outside designated urban growth areas at a density greater than the “rural residential five acres” classification mutually adopted and applied by the City and County of Walla Walla to areas immediately inside the outer edge of the designated urban growth area comply with RCW 36.70A.210, RCW 36.70A.040, and the purposes of RCW Ch. 36.70A, which require the county comprehensive plan to be developed and adopted within the framework of the “Countywide Planning Policies” and development regulations that are consistent with and implement such comprehensive plan? Case No. 01-1-0014 ¶3.11. (From the Joint Statement of Issues for Case Nos. 01-1-0012, 01-1-0013, 01-1-0014 and 01-1-0015).

**Issue 7 (01-1-0014cz):** Does creation of a “rural transition” classification by Walla Walla County Amended Ordinance 259 which permits densities immediately beyond the outer edge of designated urban growth areas which are ten times greater than that allowed in areas adjacent thereto inside the designated urban growth area classified as “rural residential five acres” comply with goals of RCW 36.70A.020, and the purposes of RCW Ch. 36.70A, that development regulations reduce inappropriate conversion of undeveloped land into sprawling, low-density development? Case No. 01-1-0014 ¶3.13. (From the Joint Statement of Issues for Case Nos. 01-1-0012, 01-1-0013, 01-1-0014

and 01-1-0015).

**Petitioners' position:**

The Petitioners point out the Rural Transition zone's minimum lot sizes is ½ acre to 1 acre. (Walla Walla County Comprehensive Plan 2001-2021 chapter 7, p.120 May 15, 2001). While the County claims Rural Transition is an area of more extensive rural development (RAID) as allowed under RCW 36.70A.070(5), the Petitioners contend it does not qualify.

The Petitioners cite the EWGMHB Case No. 99-1-0019 *Jim Whitaker v. Grant County*, Final Decision and Order in which the Board ruled, "[a]reas of more intensive rural development are not 'mini-UGAs' or a rural substitute for UGA and they are subject to the limitations of RCW 36.70A.070(5)(d)(iv). The County must minimize and contain existing areas or uses of more intensive rural development."

The Petitioners contend the Rural Activity Center Comprehensive plan designation is intended to be a rural UGA and rather than being limited to existing areas, is designed for expansion. Policy RL47 provides (in full):

Because RACs are essentially recognized communities with a logical existing boundary, if growth does occur within a RAC to a certain established degree, provide methodology for eventual adjustment of the boundaries. This methodology should theoretically be developed in a similar manner to that of Urban Growth Areas but should recognize that these areas are not under the statutory provisions that guide amendments to the UGA. This methodology should be developed with the development regulations that implement this plan. (Adopted Comprehensive Plan Chapter 7, p. 148 (May 15, 2001).

The Petitioners observe the Rural Transition designation is applied to two unincorporated rural areas. The first is north of College Place and west of the City of Walla Walla. The second is along Sun Harbor Road near the Columbia River. Walla Walla County estimates that 1,198 acres are in this designation.

The Petitioners states the County's Comprehensive Plan provides that the land within the designation "fall under the statutory definition of 'Limited Areas of More Intensive Rural Development' (LAMIRD) and meet the requirements of 36.70A.070(5) (a) – (d) and all subsections therein." The Petitioners contend this designation does not comply with the requirements for LAMIRDs and the two areas constitute urban

development within the rural area.

The Petitioners state the Rural Transition RAID boundaries violate RCW 36.70A.070(5)(d)(iv) because they include undeveloped land and agricultural land.

The Petitioners cite EWGMHB Case No. 99-1-0019 Final Decision and Order, *James A. Whitaker v. Grant County* where the Board said in part:

While the Board recognizes that (d)(iv) provides that "some accommodation may be made for infill of certain 'existing areas' of nonconsistent development in the rural area, that infill is to be 'minimized' and 'contained' within a 'logical outer boundary.'"

The Petitioners contend the County is required to base LAMIRD boundaries on the development existing at the time the County begins planning under the GMA. The Petitioners further contend the County should provide the public with access to a land use inventory or aerial photographs showing the existing development in the LAMIRDs in 1990. The Petitioners claim the County has not shown their work, as they have not found any reference to either 1990 land use inventory maps or aerial photographs. The Petitioners state this data is particularly important given the size of the RAID near Walla Walla and College Place.

The Petitioners claim the aerial photo of the Walla Walla area does not show that the LAMIRD near College Place and Walla Walla fits the definition of a LAMIRD as onion fields and other farm fields can be seen in this area. The 1996 photo includes six years of growth beyond what can be considered in designating the RAID boundary.

The Petitioners also claim the Rural Transition RAIDs violates RCW 36.70A.(5)(c) as they do not contain sprawl or assume visual compatibility with the surrounding rural area.

The Petitioners go on to claim the Rural Element does not include any policies to ensure that development in the Rural Transition RAIDs will comply with RCW 36.70A.070 (5)(c)(i), (ii), and (iii) as they do not contain and control development or reduce inappropriate conversion of undeveloped land because they include vacant land and farmland. The Petitioners claim the plat maps of Blalock Orchards and Sun Harbor Estates offered by the County do not show the built environment, only the old lot lines.

The Petitioners state that while the 1,198 acres in the Rural Transition RAIDs include both developed and undeveloped lands, the County provides no evidence of how

many acres are now developed or how many acres were developed in 1990, the time they began planning under the GMA.

The Petitioners further claim as in the above issue that no map or use inventory is available for Rural Transition RAIDs. The Petitioners state RCW 36.70A.(5)(a) requires such data when it provides that the county "shall develop a written record explaining how the rural element harmonizes the planning goals in RCW 36.70A.020 and meets the requirements of this chapter". The Petitioners claim designating a LAMIRD without the data and findings violates the GMA.

The City speaks again of the County's failure to coordinate. The City contends the "layering" of densities as agreed between the City and the County worked until the designation of the Blalock area as a Raid with ½ to 1-acre minimum lot size. The City points out that as one moves outward from the City westward, you pass through a "residential" area with City zones, R-60, R-70, R-96 or RM lot sizes. As one gets a little farther out, there is a "rural conversion" area with less intensive five-acre minimum lot sizes. At the outer boundary of the UGA, the intensity of development increases ten fold to ½ to 1 acre minimum lot size.

The City believes this action violates the Countywide Planning Policies and disregards its duty to coordinate. The City contends the Blalock area is not coordinated with the plan adopted for the immediately adjacent UGA, because it makes the layering-out growth strategy meaningless for the northwesterly portion of Walla Walla UGA and promotes leapfrogging of development over the UGA's "rural conversion area.

The City also contends that the Blalock "rural transition" region is simply an impermissible rural substitute for an urban growth area. It is attached to both the Walla Walla City UGA and the College Place UGA. The City further points to the fact that prior to removal of the Blalock area from the Walla Walla City UGA by County Ordinance 253, the City's UGA contained 3,036 acres of residential land, of which 1337 acres were vacant and buildable. The Blalock region is over 37% of the size of the entire Walla Walla City UGA and creates over 53% as much buildable area. The County map showing the area demonstrates that the Blalock region is no more restricted in its extent than the City of College Place including its whole urban growth area. The City contends that the Blalock region's creation of one of the largest development areas in the County, rivaling even the designated urban growth areas in size and extent, is clearly erroneous.

**Respondent's position:**

The Respondent states the Rural Transition zone was established to recognize "areas where some platting to smaller lots already exists in subdivisions and along arterials and where some services and infrastructure may be located." Plan, p 7-120. The Respondent contends lands within this designation fall within the definition of "limited areas of more intensive rural development," and is authorized under RCW 36.70A.070(5)(d).

The Respondent contends the legislature in 1997 amended the GMA to allow more extensive rural development now codified at RCW 36.70A.070(5)(d). These amendments significantly altered the range of rural development techniques available to Counties, representing "a major shift towards rural development, and a concession to rural counties."

As a result of the 1997 amendments, the Respondent contends that commercial, industrial, residential, shoreline, or mixed-use areas of more intensive rural development are not subject to the GMA's requirements to assure "visual compatibility of rural development with the surrounding rural area" and to reduce the "inappropriate conversion of undeveloped land into sprawling, low-density development in the rural area." RCW 36.70A.070(5)(d)(i).

The Respondent states the majority of the Blalock Orchards Rural Transition area has been developed consistent with this smaller parcel platting pattern. Sun Harbor Estates was also previously platted into smaller land parcels and is mostly built out. The Respondent contends the County has placed significant development constraints within this designation, including very little water availability. Comprehensive Plan Policy RL-31 states:

The creation of new lots should be prohibited unless they will be connected to a public water system. Plan, p 7-141.

The Respondent claims there are only 110 public system water connections available to parcels within the Rural Transition designation. In addition to the water constraints, there are also critical area and Shoreline Management Act limitations.

The Respondent states the infill development of the undeveloped portions of the Blalock Orchards RAID is also minimized and contained. The Respondent further states the Rural Transitions policies in the Comprehensive Plan further limit and contain growth within a Rural Transition area by restricting residential development to areas where soil

conditions can handle the cumulative long-term impacts of on-site sewage disposal without adversely impacting ground and surface water, by prohibiting the creation of new lots unless connected to a public water system, and by requiring commercial and industrial uses to go through a conditional use permit process with review criteria that considers the historic use of the property and adjoining properties, the availability of public service, and the impacts to the public road serving the site. Plan Policies RL-30 through RL-33, p. 7-141, 142.

The Respondent states Sun Harbor Estates RAID's boundaries are also well-defined by an historically platted residential subdivision that is mostly built out and developed long before the enactment of the GMA.

The Respondent states the Petitioners are correct that the total acreage for the two RAIDs exceeds 1000 acres but claims this total acreage includes the developed and undeveloped portions of the Rural Transition RAIDs which is mostly developed, and what development potential remains in these areas is constrained, practically and as the result of Comprehensive Plan policies limiting growth in these areas. The lack of water supply will have the practical effect of limiting new and infill development in the RAIDs.

The County portrays the City's argument as boiling down to the issue of whether or not a County can locate a RAID next to the UGA. The County argues that there is no prohibition of the location of such a RAID if it otherwise qualifies.

### **Discussion:**

RCW 36.70A.110(1) provides in pertinent part:

Each county that is required or chooses to plan under RCW 36.70A.040 shall designate an urban growth area or areas within which urban growth shall be encouraged and **outside of which growth can occur only if it is not urban in nature** . . . . (Emphasis added.)

While still recognizing rural areas are to be very different from urban areas, the legislature allowed reasonable and necessary exceptions and flexibility for compact rural development with their legislative action in 1997. The Legislature amended RCW 36.70A.030, adding a new subsection, which provides:

RCW 36.70A.030(14) "Rural character" refers to the patterns of land use and development established by a county in the rural element of its comprehensive plan:

(a) In which open space, the natural landscape, and vegetation

predominate over the built environment;

(b) That fosters traditional rural lifestyles, rural-based economies, and opportunities to both live and work in rural areas;

(c) That provides visual landscapes that are traditionally found in rural areas and communities;

(d) That is compatible with the use of the land by wildlife and for fish and wildlife habitat;

(e) That reduces the inappropriate conversion of undeveloped land into sprawling, low-density development;

(f) That generally do not require the extension of urban governmental services; and

(g) That are consistent with the protection of natural surface water flows and ground water and surface water recharge and discharge areas.

The Legislature at the same time amended RCW 36.70A.070, which clarified the legislature's continuing intent to protect rural areas from low-density sprawl, while providing some accommodation for infill of certain "existing areas" of more intense development in the rural area. That infill is to be "minimized" and "contained" within a "logical outer boundary." With such limitations and conditions, more intense rural development in areas where more intense development already exists could constitute permissible compact rural development. Without such limitations and conditions, more intense rural development would constitute an impermissible pattern of urban growth in the rural area. The amended section provides as follows:

RCW 36.70A.070(5) Rural element. Counties shall include a rural element including lands that are not designated for urban growth, agriculture, forest, or mineral resources. The following provisions shall apply to the rural element:

(a) Growth management act goals and local circumstances. Because circumstances vary from county to county, in establishing patterns of rural densities and uses, a county may consider local circumstances, but shall develop a written record explaining how the rural element harmonizes the planning goals in RCW 36.70A.020 and meets the requirements of this chapter. (Emphasis provided).

(d) Limited areas of more intensive rural development. Subject to the requirements of this subsection and except as otherwise specifically provided in this subsection (5)(d), the rural element may allow for limited areas of

more intensive rural development, including necessary public facilities and public services to serve the limited area as follows:

(i) Rural development consisting of the infill, development, or redevelopment of existing commercial, industrial, residential, or mixed-use areas, whether characterized as shoreline development, villages, hamlets, rural activity centers, or crossroads developments. A commercial, industrial, residential, shoreline or mixed-use area shall be subject to the requirements of (d)(iv) of this subsection, but shall not be subject to the requirements of (c)(ii) and (iii) of this subsection. An industrial area is not required to be principally designed to serve the existing and projected rural population;

...

(iv) A county shall adopt measures to minimize and contain the existing areas or uses of more intensive rural development, as appropriate, authorized under this subsection. Lands included in such existing areas or uses shall not extend beyond the logical outer boundary of the existing area or use, thereby allowing a new pattern of low-density sprawl. Existing areas are those that are clearly identifiable and contained and where there is a logical boundary delineated predominately by the built environment, but that may also include undeveloped lands if limited as provided in this subsection. The county shall establish the logical outer boundary of an area of more intensive rural development. In establishing the logical outer boundary the county shall address (A) the need to preserve the character of existing natural neighborhoods and communities, (B) physical boundaries such as bodies of water, streets and highways, and land forms and contours, (C) the prevention of abnormally irregular boundaries, and (D) the ability to provide public facilities and public services in a manner that does not permit low-density sprawl;

(v) For purposes of (d) of this subsection, an existing area or existing use is one that was in existence:

(A) On July 1, 1990, in a county that was initially required to plan under all of the provisions of this chapter; (Emphasis added.)

The GMA, as amended, still prohibits urban growth in the rural area. See RCW 36.70A.070(5)(d)(ii), (iii), (iv), and RCW 36.70A.110(1). Areas of more intensive rural development are not "mini-UGAs" or a rural substitute for a UGA and they are subject to the limitations of RCW 36.70A.070(5)(d)(iv). The County must minimize and contain

existing areas or uses of more intensive rural development. RCW 36.70A.070(5)(d)(iv). The Act states that, even the "innovative techniques" for rural development must not allow urban growth. RCW 36.70A.070(5)(b). However, a pattern of more intensive rural development, as limited by the provisions of RCW 36.70A.070(5)(d), does not constitute urban growth in the rural area. RCW 36.70A.030(17). Therefore, unless the RAID designation, as presently configured, satisfies the provisions of RCW 36.70A.070(5)(d), it does not comply with the requirements of the Act. RCW 36.70A.070(5)(d)(iii).

While the Board recognizes that RCW 36.70A.070(5) provides that "some accommodation may be made for infill of certain 'existing areas' of more intense development in the rural area, that infill is to be 'minimized' and 'contained' within a 'logical outer boundary.'" *Bremerton CPSGMHB Case No. 95-3-0039c* (coordinated with Case No. 97-3-0024c), Finding of Noncompliance, at 24.

The County argued that its decision to establish RAIDs is justified by its consideration of local circumstances, as permitted by RCW 36.70A.070(5)(a). This provision allows counties, in developing the rural element of the plan, to consider local circumstances "in establishing patterns of rural densities and uses." However the County provides no written record of the local circumstances identified. The quote referred to by the County in their brief, speaks of the Blalock area being characterized by land uses which include small-scale farms, single-family homes, limited commercial uses and open space. (See Ordinance No. 264, Attachment C in the record). Very little more is found that might relate to the creation of the boundaries of the RAID and what is included therein. The County has failed to properly limit the area of the RAID.

Also, if the County used local circumstances to guide them in the development of the rural element, there must be "a written record explaining how the rural element harmonizes the planning goals in RCW 36.70A.020 and meets the requirements of [the GMA]." RCW 36.70A.070(5)(a). The County has made no attempt to explain in writing how the rural element harmonizes the planning goals. Absent the Act's mandated written explanation, the County has not complied with RCW 36.70A.070(5)(a).

Further the County failed to give this Board any clear statement of the area existing at the time Walla Walla County opted into the GMA, October 30, 1990. It is this date that is to be used to limit the boundaries of a RAID. The Findings of Fact adopted by the County contain no analysis of areas existing in the Blalock region by actual lot sizes due

to common ownership of adjacent platted parcels and are devoid of findings regarding uses as of October 30, 1990, relying instead solely upon historic platting and current uses to justify its "rural transition" region.

The Blalock area now allows lots as small as ½ acre. This is urban density requiring urban services. The RAIDs were not to be rural UGAs.

In addition to the County's failure to follow the steps found in the GMA for the designation of Rural Areas of More Intensive Development (RAID), the Board finds that the County erred due to the RAID's proximity to the City of Walla Walla. The Blalock area is up against the UGAs of both the City of Walla Walla and College Place. The 1997 Legislative amendment allowing RAIDS was clearly done to let the county do something with unincorporated concentrations of urban-like growth apart from existing cities. However, RCW 36.70A.110(3) provides that Urban Growth Areas should be first located in areas already characterized by urban growth that have adequate existing public facilities and service capacities to serve such development. Second, UGAs should include areas already characterized by urban growth that will be served adequately by a combination of both existing public facilities and services and any additional needed public facilities and services that are provided by either public or private sources. Here, Walla Walla County did not include the Blalock Orchards area within the City of Walla Walla's UGA. Instead, the County chose to place Blalock Orchard in a RAID up against the City of Walla Walla's UGA.

In *City of Tacoma v. Pierce County*, Case No. 99-3-0023c, Final Decision and Order, June 26, 2000, the Central Puget Sound Growth Management Hearings Board dealt with this same issue.

The Board also finds that the County erred regarding the RAID's proximity to the City's UGA. The County's hierarchy of rural centers provides that RACs be located no closer than five miles from a UGA; and that Rural Neighborhood Centers be located no closer than two miles from a UGA. Tacoma PHB, at 39-42. Without explanation as to UGA proximity requirements, this RAID is located within 360 feet of the UGA, which is the present city limits for the City of Tacoma. Designation of a RAID in this location fosters the low-density sprawl that RAIDs are required to avoid. Proximity to the UGA alone suggests to the Board that *if the area were to be urban*, adjustments to the UGA would be a more appropriate means of accomplishing this objective. Based upon the record and the discussion above, the Board finds that the RAID

boundaries established by Map amendment M-7 do not comply with RCW 36.70A.070(5)(d). (See p. 8).

Because the County has not followed the GMA requirements for a RAID, has not developed a written record explaining how the rural element harmonizes the planning goals in the GMA, has not adequately shown this Board data in the record of how the 1990 boundaries of the developed area were determined and have located this RAID virtually up against the City's UGA, the Board is compelled to find the Rural Transition zone out of compliance.

**Conclusion:**

The Board finds that the Blalock Orchards Rural Transition zone as presently configured, constitutes an impermissible pattern of urban growth in a rural area. The Board determines this designation does not satisfy the exception to the prohibition of urban growth in rural areas provided by RCW 36.70A.070(5)(d). In addition, the County has failed to explain in writing how the Rural Transition zone harmonizes the planning goals of the GMA as required by RCW 36.70A.070(5)(a). However, the Board does not find the Petitioners have carried their burden as to Sun Harbor Road, the Rural Transition zone near the Columbia River.

The Board concludes that the County's Rural Transition zone of Blalock Orchards, as presently configured, is clearly erroneous and fails to comply with the requirements of the GMA. The Petitioner has carried its burden of proof.

**C. RURAL FLOATING LANDS ISSUES**

**Issue 3:** Does the "rural floating" future land use designation by the Rural Lands Sub-Element of the "Walla Walla County 2021 Comprehensive Plan" which permits development beyond the outer edge of designated urban growth areas at an intensity which is up to two and one-half times greater than that allowed in "rural conversion" areas inside the designated urban growth area classified as "rural residential five acres" comply with goals of RCW 36.70A.020 and the purposes of RCW Ch. 36.70A that comprehensive plans reduce inappropriate conversion of undeveloped land into sprawling, low-density development and encourage development in urban areas? Case No. 01-1-0015 ¶3.26. (From the Joint Statement of Issues for Case Nos. 01-1-0012, 01-1-0013, 01-1-0014, and 01-1-0015).

**Issue 5:** Do the Rural Land Sub-Element of the "Walla Walla County 2021 Comprehensive Plan" and the "rural floating" future land use designations, which permit

urban growth outside designated urban areas comply with RCW 36.70A.070, RCW 36.70A.110, and the purposes of RCW Ch. 36.70A, which prohibit urban growth in rural areas? Case No. 01-1-0015 ¶3.28. (From the Joint Statement of Issues for Case Nos. 01-1-0012, 01-1-0013, 01-1-0014, and 01-1-0015).

**Issue 6:** Do the “Walla Walla County 2021 Comprehensive Plan,” the Rural Lands Sub-Element of the “Walla Walla County 2021 Comprehensive Plan,” and provisions relating to the “rural floating” future land use designation comply with the requirements of RCW 36.70A.050, RCW 36.70A.170, RCW 36.70A.172, RCW 36.70A.060, and the purposes of RCW Ch. 36.70A which require designation and protection of critical areas? Case No. 01-1-0015 ¶3.34. (From the Joint Statement of Issues for Case Nos. 01-1-0012, 01-1-0013, 01-1-0014, and 01-1-0015).

**Issue 7:** Does the “Walla Walla County 2021 Comprehensive Plan” comply with the Growth Management Act; RCW Ch. 36.70A as it relates to lands designated “rural floating”? Case No. 01-1-0015 ¶3.35. (From the Joint Statement of Issues for Case Nos. 01-1-0012, 01-1-0013, 01-1-0014, and 01-1-0015).

### **Petitioner’s Position:**

The Petitioners claim beginning on page 9 of the analysis of the Rural Residential designation, the EWGMHB and the Court of Appeals have held that residential densities in the less than five units per acre violate the GMA.

The Petitioners claim the Rural Floating designation has a minimum lot size of 2 to 3 acres. Walla Walla County Comprehensive Plan 2001-2021 Chapter 7, p.118 (May 15, 2001). The Rural Floating designation is principally applied to the Mill Creek Valley and Canyon sides immediately east of the City of Walla Walla. Walla Walla County Comprehensive Plan 2001-2021, Chapter 7, Map Land Use 2, and Chapter 7, Map Land Use 3 (May 15, 2001). The area is also on the aerial photo, Supplemental Document 1 in the Citizens for Good Governance Motion to Supplement the record. The Petitioners claim significant farming activity takes place in this area. Walla Walla County estimates that 1,480 acres are in this designation. The Petitioners claim this minimum lot size will create urban sprawl within a rural area and violate the GMA.

The Petitioners claim the Rural Floating designation is applied to areas particularly poorly suited to urban sprawl. The Comprehensive Plan provides that:

Lands designated as Rural Floating areas characterized by unique topographically constraints. These lands fall within corridors defined by steep

slopes. Creeks and streams are present and the flood plain and soil types affect available buildable area. Existing lot sizes are generally 1-10 acres in size, although larger parcels in agricultural use are not uncommon. Walla Walla County Comprehensive Plan 2001-2021 Chapter 7, p.118 (May 15, 2001).

The Petitioners claim this is not a description of easy to develop land well suited to urban densities. This is land that is not suited for development, should have very low densities, and should actually be given an agricultural designation.

The City in a letter to the County Commissioners said increased residential development along Mill Creek will reduce water in the creek due to the construction of exempt wells, reducing the in-stream flows needed for fish survival and requiring the City to increase the amount of water it allows to flow in the creek, thereby reducing its water supply.

The Petitioners claim applying this kind of urban density to the rural area will harm the environment. They also claim RCW 36.70A.070(5)(5)(iv) requires the rural element to protect "critical areas, as provided in RCW 36.70A.060, and surface water and ground water resources."

The Petitioners claim substantial evidence shows development in the Rural Floating designation will harm the environment and surface and ground water resources, by building in hazardous areas and dewatering the stream, therefore violating the GMA.

The Petitioners claim the Stipulation and Agreed Order of June 12, 2000, requires Walla Walla to preclude the approval of land use proposals that would be inconsistent with the proposed Comprehensive Plan, which provide for minimum lot sizes of 40 acres in the Primary Agriculture designation. Adopted Comprehensive Plan Ch. 7, p. 75 (May 15, 2001).

**Respondent's position:**

The Respondent states the Rural Floating designation consists only of the Mill Creek Canyon and is characterized by unique topographical constraints. These lands fall within corridors defined by steep slopes. Existing lot sizes within the Rural Floating designation generally range from one to ten acres in size, although larger parcels also exist. The Respondent states significant critical area constraints, including steep slopes, rivers and

streams, and a designated flood plain, limit the likelihood of small parcels.

The Respondent points out the designation for the Rural Floating zone is one dwelling unit per 20 acres. Dependent upon site-specific analysis, it is possible to short plat some parcels to a two or three-acre minimum lot size.

The Respondent states County Ordinance No. 205 establishes a special RF-2 plat application for Mill Creek Canyon. This designation requires a special site-specific "RF-2" review process, with the "floating" two to three acre minimum lot density approved only if the established criteria per County Ordinance No. 205 are met. Otherwise, the Rural Remote 20 acre minimum lot size applies.

The Respondent states the County requires adequate protections to critical areas, flood plains and rivers and streams before a two or three-acre lot short plat is approved. Ordinance No. 205 does not allow a shift of density as the result of critical area compliance; only if sufficient land is available to allow a two to three-acre building lot after imposition of critical area protections, will the nonstandard "overlay" be applied.

The Respondent states neither the act nor the Board decisions have imposed a per se prohibition on densities less than five acres in rural areas. The Respondent believes the proper inquiries include whether a variety of rural densities have been achieved, whether average rural densities are low, and whether local circumstances support the rural designations.

The Respondent states a blanket prohibition on designations of less than five acres in rural areas would directly contravene the purpose, intent, and meaning of the provisions in the GMA governing county planning in rural areas.

The Respondent cites the 1996 Annual Report of the Land Use Study Commission, which was later adopted into law:

The Growth Management Hearings Board has adopted a general rule that densities of less than one dwelling unit per five acre in the rural areas would constitute impermissible sprawl. Many rural areas, however, have an existing land supply of preexisting low density lots. In a free market society, it is not possible to dictate that people must live in the urban area. People may choose to live in the rural area for many reasons such as lifestyle, schools, housing cost, traffic, safety and amenities.

The Respondent further cites *Smith et al. v. Lewis County*, WWGMHB Case No. 98-2-0011c where the Superior Court (holding that "variety of rural densities" intended by

Legislature includes densities less than 1DU/5 acres as well as densities greater).

The Respondent states Walla Walla County is allowed to take into account the unique local circumstances within its Rural Floating designation. The County is obligated to balance all GMA goals, including protection of private property rights, and not simply focus on the goal of reducing urban sprawl.

The Respondent states the County has provided for a reasonable variety of rural densities by balancing “priorities and options for action in full consideration of local circumstances,” which include historical development patterns in rural areas, obvious development constraints, little current development activity in the rural residential designations, a desire to protect resource lands, and the availability of an annual audit to assess the success of the Plan’s strategies for the rural element as specified by RCW 36.70A.3201.

### **Discussion:**

In issues 3 and 5, Petitioners allege the Rural Floating zone will result in urban type sprawl. The Board shares the concerns expressed by Petitioners regarding lots as small as 2 acres in the rural areas. While the Act does allow for a variety of densities in rural areas, the densities must preserve the rural character of the area. The Board notes that the approval process allows lots as narrow as 200 feet. Houses on multiple adjacent lots only 200 feet wide is urban and will not preserve the rural character of the area.

Respondent argues the provisions allowed in the Rural Floating zone were to balance the goals of GMA, reduce sprawl, and to protect private property rights. The Board applauds the County’s actions to change the existing 10-acre minimum lot size to 20 acres, but feel the allowance of a 2-3 acre “overlay” zone is inconsistent with that change. The Board also finds it does not protect the property rights of either existing residents or vacant property owners in the area. Such small, narrow lots will degrade the rural character, reducing the appeal of the area as a place to live, to the detriment of present and prospective residents.

Petitioners’ Issue 6 addresses concerns about critical area protection, particularly water supply for the City of Walla Walla. Petitioners cite several sources, which cause the Board concern for protecting these critical areas. Respondent has failed to adequately address these concerns. (See Petitioners Position, above and their brief.)

Petitioners' Issue 7 is non-specific and it is included in with the other issues and is not addressed separately.

The Board reviewed the "streamlined" application process for approval of a site-specific lot plan for the rural floating zone, and note our concerns below:

- (1) Very minimal criteria for evaluating the appropriateness of the application.
- (2) Very little information supplied upon which to evaluate the property.
- (3) A very short time frame for review of the application, precluding a thorough evaluation of the site.

Having said this, the Board acknowledges the work of the residents in this zone to protect both the rural character of the area, and legitimate property rights, including potential for further development. However, more work needs to be done. The Board recognizes the possibility of unique circumstances in this zone, and the potential to increase protection of critical areas. While not drawing a "bright line" test of a minimum 5-acre lot size for this rural area, any criteria applied must ensure protection of critical areas and the rural character of the area. While not addressing minimum lot sizes here, The Board finds that minimum lot widths of 200 feet are not in keeping with a desirable rural character.

**Conclusion:**

The Rural Floating zone fails to maintain the rural character of this area and fails to adequately evaluate impacts to critical areas and is not in compliance with the GMA. The Petitioners have carried their burden of proof and have shown that the actions of the County are clearly erroneous.

**D. AGRICULTURE LANDS**

**Issue 1 (01-1-0014cz):** Does Amended Ordinance 259 violate ¶13 of the Stipulation and Agreed Order of June 12, 2000, by failing "to preclude the approval of land use proposals that would be inconsistent with the proposed comprehensive plan" or even the adopted comprehensive plan by allowing a minimum size of 20 acres within the Primary Agriculture zone while the draft comprehensive plan provided for a minimum lot size of 80 acres and the adopted comprehensive plan requires a minimum lot size of 40 acres? (Appeal issue 3) (From the Joint Statement of Issues for Case Nos. 01-1-0012, 01-1-0013, 01-1-0014 and 01-1-0015).

**Issue 2 (01-1-0014cz):** Are the designations for agricultural and rural lands within Amended Ordinance 259 and Ordinance 266 inconsistent with WAC 365-190-050(1) and

(2) where they have not been based upon the land-capability classification system or upon consideration of the classification of prime and unique farmland soils of the U.S. Department of Agriculture Soils Conservation Service (USDASCS)(now Natural Resource Conservation Service)(NRCS)? (Appeal issue 4) (From the Joint Statement of Issues for Case Nos. 01-1-0012, 01-1-0013, 01-1-0014, and 01-1-0015 and the Amended Prehearing Order for Case No. 01-1-0014cz [Issue 4]).

**Issue 3:** Are the designations for agricultural and rural lands under the Comprehensive Plan inconsistent with WAC 365-190-050(1) and (2) where they have not been based upon the land-capability classification system or upon consideration of the classification of prime and unique farmland soils of the U.S. Department of Agriculture Soils Conservation Service (now Natural Resource Conservation Service)(NRCS)?

**Petitioner's position:**

**A. Petitioners contend Comprehensive Plan and Use Designation Does Not Satisfy the Obligation under GMA to Properly Designate Agricultural Lands in the First Place.**

The Petitioners claim there are two agricultural lands designations. One being of long term commercial significance and the other a designation for agriculture lands beyond these previously designated under RCW 36.70A.170.

The Petitioners further claim not all agricultural lands designated within a comprehensive plan are the same. Lands that are part of the designations of lands of Long Term Commercial significance cannot be changed to other uses without some properly based determination that they are no longer suitable Agricultural Lands of Long Term Commercial Significance.

The Petitioners claim those lands within comprehensive plan agricultural districts that had never been designated as Agricultural Lands of Long Term Significance could be re-designated for non-agricultural land uses without conflicting with the requirements of RCW 36.70A.060 and RCW 36.70A.170.

The Petitioners contend that because the County has designated over 764,000 acres in some form of agriculture, but only 23,000 acres as Long Term Commercial Significance, that the balance of 741,000 acres would be free to be designated for non-agricultural uses.

**B. The Petitioners contend the County's Argument That It Has Discretion to Ignore the GMA's Minimum Guidelines is not Supported By**

## **the GMA, WACs or Case Law.**

The Petitioners claim the Office of Community Development (OCD) minimum guidelines require a jurisdiction take action before a County identifies and classifies its agricultural lands of long-term commercial significance and after these lands are classified and identified. WAC 365-190-050.

The Petitioners claim a jurisdiction does have greater discretion in how it designates its agricultural lands after it has adhered to the minimum guidelines by thoroughly identifying the location of its lands of long-term commercial significance. The Petitioners also claim the County is first required to adhere to standards with respect to classifying soils that have been developed by the United States Department of Agriculture (U.S.D.A.) WAC 365-190-5-050(1).

The Petitioners also claim this requirement of minimum guidelines ensures that a County has as thorough an understanding as possible of its agricultural resource lands before making decisions that will direct the future of these lands.

The Petitioners believe the County failed to follow the minimum guidelines yet the County purports GMA Compliance through the agricultural "designation" of 93% of the County's land. The Petitioners believe this process is the basis for all that follows; the County's subsequent actions in establishing density limits cannot be sure to preserve and conserve these lands.

The Petitioners believe the County's decisions regarding its agricultural lands were made without benefit of the objective, empirical data of on-the-ground soil and farmland conditions required through its agricultural preservation "mandate".

The Petitioners believe the County's failure to comply with the GMA and OCD minimum guidelines in designating its agricultural resource lands has resulted in a Comprehensive Plan that is flawed and therefore non-compliant for at least the following four reasons:

1. Because the minimum-acre zoning imposed is inadequate to preserve agricultural lands over the long-term (particularly when 83% of the county is zoned for 40-acre minimum lot sizes when the average farm size is 954 acres. (**Adopted Comprehensive Plan, Table RS-2, May 15, 2001**)
2. Because the County (apparently) identifies only 3% of its

farmland as “prime”.

3. Because without the underlying understanding of the quality of its farmland, any and all zoning overlays are ephemeral and carry no guarantee of long term protections; and,

4. Because the Rural Residential zone with its 2-5 minimum acre lot size includes several acres of undeveloped NRCS prime soil lands. See soils maps prepared by Richard Bradley, attached to Petitioners motion to supplement the record.

The Petitioners believe the difference between what the County has done, and what it should have done, is the difference between superficial agricultural zoning and real protection of valuable resource lands.

**C. The Petitioners contend the County’s Inconsistent and Shifting Use of Undefined Terminology and Inconsistent Reference to Acreage Amounts Preclude any Meaningful Review of the County’s Actions.**

The Petitioners claim the terminology used by the County changes from page to page and section to section. The Petitioners claim the County is not precise in the use of terms and fails to provide clear, agreed-upon definitions of terms. Acreage amounts are also inconsistent between the record, the Comprehensive Plan, and Respondent’s brief. The Petitioners show as an example, the acreage within the County that is “devoted” to agricultural is variously identified as comprising 604,000 acres (Resource Lands Technical Advisory Committee Report, Respondent’s Exhibit 8, p.2); 764,000 acres in agricultural use (Comprehensive Plan, 7-25); “[o]ver 600,000 acres [are] devoted to agricultural crop production. (Comprehensive Plan, p.1-62); [o]ver 710,000 acres in either farm production or farm-related accessory 7 uses (Id); “[o]ver 90% of the land in Walla Walla County is designated as Agricultural Lands of Long-term Commercial Significance, representing approximately 764,000 acres. (Comprehensive Plan, Findings of Fact 15.1, Respondent’s Exhibit 2); and “approximately 721,000 acres” designated as “natural resource agricultural lands” (Respondent’s Brief, p.45).

The Petitioners show by example, references to:

- “Agricultural Lands of Primary Significance,” (Resource Lands Technical Advisory Committee Report, Respondent’s Exhibit 8, p.1);
- “Prime Farmland,” *Id.*, p. 2

- “Prime Agricultural Lands” (Resource Lands Technical Advisory Report, Respondent’s Exhibit 9, p.1C)
- “Lands identified as prime or unique,” *Id.*, p.2
- “Primary Agricultural,” Comprehensive Plan, p.7-75
- “Prime and Unique Agricultural Lands,” *Id.*, p.7-83, 84
- “Prime and Unique Soils,” Comprehensive Plan, Findings of Fact 15.4.4, Respondent’s Exhibit 2

The Petitioners believe the Board, without any clear understanding of these terms, cannot conclude the County complied with the GMA and the minimum guidelines in designating its agricultural lands of long-term commercial significance. This leads to failure to protect and preserve agricultural lands of long-term commercial significance.

**D. The Petitioners contend the County Failed to follow the Step-by-Step Process Required by the GMA and OCDs Minimum Guidelines in Classifying and Designating Its Lands of Long-Term Commercial Significance.**

The Petitioners cite from OCD guidelines making clear the primary importance given to the first steps of the process. The Petitioners claim the County only with full knowledge of the resource lands within its borders can then make reasoned and informed choices regarding the land on which the resources exist.

**E. The Petitioners contend the County Failed to Use Land Capability Classification Systems as Required by WAC 365-190-050(1).**

The Petitioners believe the record before the Board is insufficient to conclude the County followed the minimum guidelines. The County gives no mention of the Land Classifications Capability System in either the adopted Comprehensive Plan or in the Findings of Fact accompanying adopted Ordinance 264.

**F. The Petitioners further contend the County Has Failed to Adequately Consider Prime and Unique Soils in Designating Its Land of Long Term Commercial Significance as Required by WAC 365-190.050(2).**

The Petitioners state the minimum guidelines also require a County to consider the location of “prime and unique” soils, pursuant to the guidelines of the United States

Soil Conservation Service, USSCS, while going through the process of identifying and designating agricultural lands of long term commercial significance. WAC 365-190-050 (2).

The Petitioners state the County cannot support using the USSCS guidelines anywhere in the record. The only mention in the record of "prime and unique soils" is in the report of the Resource Lands Technical Advisory Committee where the terms are listed under the heading, "Criteria" Respondent's Brief, Exhibit 8, p.1.

The Petitioners state this is an area where the terms have changed leaving anyone reading the record unsure of what the County meant.

The Petitioners agree with the County in that they are under no obligation to adopt the work or the recommendations of the Advisory Committee, but they are required to create a reviewable record to justify deviations from the work of the Advisory Committee to show that decisions made were the result of a clear and deliberative process.

The Petitioners state the County is required to review its resource land designations upon adoption of the Comprehensive Plan but there is no evidence the County did this. The Petitioners state the County's position is not supported in the Comprehensive Plan.

The Petitioners claim there is no evidence in the Record or the Comprehensive Plan of any deliberation explaining why the 66,000 acres was reduced by 2/3's to 23,000 acres. The Petitioners further claim in Findings of Fact 15.4.4 for Ordinance 264, "[t]he Report resulted in 23,000 acres in the County designated as "Prime and Unique soils." Respondent's Brief, Exhibit 2.

The Petitioners claim the County has erred when stating in the Comprehensive Plan that "Agricultural Lands of Unique Significance" were designated by the Advisory Committee when their report did not identify any acreage figure for unique soils or farmland.

The Petitioners state this lackadaisical way of addressing resource lands fails to approach the procedural rigor contemplated by the agricultural lands protection mandate of the GMA.

**G. The Petitioners contend the County's Minimum Lot Size Designations do not Protect and Conserve Agricultural Lands of Long**

## **Term Commercial Significance.**

The Petitioners claim the Respondent apparently ignores the findings of its own Resource Lands Technical Advisory Committee that concluded 10 and 20 acre minimum lot sizes in the County's agricultural zones are "no longer effective" to preserve agricultural lands due to changing economics and conditions. (see Ex A-7 in Record).

The Petitioners claim the County cannot point to any evidence in the record to indicate additional studies or deliberations it might have taken to refute this finding. The Petitioners also claim the County fails to demonstrate how allowing for a 40 acre minimum lot size on 84% of its agricultural resource lands serves the agricultural protection mandate of the GMA when the average sized farm in the County is 954 acres. The Petitioners state while the average size of the farm is not determinative, the County must at least explain the discrepancy in the record.

The Petitioners claim the County offers no explanation in the record for ignoring this finding and establishing such small minimum lot sizes in the vast majority of agricultural lands where the average farm is 954 acres. Walla Walla County Comprehensive Plan 2001-2021, Table RS-2. Nor does the County explain how allowing minimum lot sizes of 1- 20 acres in the agricultural lands will comply with the GMA's mandate to conserve these areas of vital economic importance to Walla Walla County.

The Petitioners cite the EWGMHB case No. 94-1-0015 Final Decision and Order, *Save our Butte v. Chelan County*, where the Board considered the work of regional planning and policy expert Arthur C. Nelson in his report entitled, *Economic Critique of U.S. Prime Farmland Preservation Policies*, Journal of Rural Studies, Vol. 6 No. 2, 1990. Dr. Nelson, in describing such small minimum lot zoning stated:

The effect of such zoning...is to remove farmland from production and allow non-farm development adjacent to viable farming operations everywhere.

The Report goes on to state:

Allowing small acre development in agricultural resource lands fails to conserve these lands in two ways. First, the land used for the development is taken out of production, and second, the effects of non-compatible uses on existing farms weaken them. Chelan at p.9.

The Petitioners claim individuals purchasing 10-20 acres of land are doing so in order to

enjoy a rural lifestyle and not to continue farming the land. The Petitioners believe zoning to accommodate these small lot sizes violates the GMA's mandate to conserve agricultural lands.

The Petitioners cite RCW 36.70A.060 which requires the County to plan in such a way "to assure the conservation of agricultural ...lands designated..." and to assure that the use of lands adjacent to agricultural... lands shall not interfere with the continued use, in the accustomed manner and in accordance with best management practices, of these designated lands for the production of food, agricultural products, or timber, or for the extraction of minerals."

The Petitioners further cite from the Board's Chelan case:

Some people want to live in a rural setting and if that requires buying 10 acres when what they really want is 2 to 5 acres, they will do it. If the only alternative is buying in an agricultural zone, this will remove agricultural lands. The Growth Management Act, however, specifically differentiates between agricultural resource lands and rural lands. Chelan County residents who desire a rural lifestyle should have the opportunity to purchase rural home sites in rural areas that do not have long-term commercial value as agricultural land. The record fails to show how many acres of rural non-resource private land exists in the County, but there is no indication of insufficiency. Chelan at p.10

The petitioners claim Walla Walla County has nothing in the record to show that rural lands are inadequate to absorb people seeking a rural lifestyle. The Petitioners further claim allowing for people or families with no plans to farm to move into the agricultural lands on lot sizes that are 1% - 4% of the size of the average farm in the County does not assure conservation of Agricultural lands and is therefore not compliant with the GMA.

The Petitioners claim since small agriculture minimum lot sizes will not protect agricultural lands they frustrate the natural resource industries goal # 8. The Petitioners request invalidation of Amended Ordinance No.259 Primary Agriculture zone, General Agriculture zone, Agricultural Residential zone, and Rural Agricultural zone minimum lot sizes. They also request invalidation for Ordinance No. 266 General Agricultural zone and Agricultural Residential zone minimum lot size.

### **Respondent's position**

The Respondent states four arguments of the Petitioner they believe have fatal

factual and analytical errors:

1. The County did not base its designations of agricultural lands upon the land-capability classification system of the USDA Soil Conservation Service as required by WAC 365-190-050, because only 23,000 acres are designated as "Exclusive Agriculture." 1000 Friends, p.27.
2. Failure to classify as "Exclusive Agriculture" all land that the USDA Soil Conservation ("SCS") identified in 1964 as prime or unique shows that the County did not consider the classification of prime and unique farmland soils as mapped by the SCS. 1000 Friends, p. 2.
3. Because the Resource Lands Technical Advisory Committee designated 66,000 acres as "primary agriculture," and then the County, reduced "primary agriculture" to 23,000 acres, the County cannot be adequately protecting agricultural lands. 1000 Friends, p.36.
4. Although the County has designated nearly 88% of the county's land base as agricultural lands with minimum lot sizes of 40 acres or 120 acres, the County has failed to protect and conserve agricultural lands since the additional 5% of lands it designates as agricultural lands have minimum acreage requirements of 10 and 20 acres. 1000 Friends, p.40.

Walla Walla County argues that their designation of agricultural lands complies with the GMA for the following reasons:

- a) The County used the land capability classification system of the USDA Soil Conservation Service and considered the SCS classifications of Prime and Unique soils.
- b) The County has no duty to designate all Prime and Unique lands as Agricultural Lands of Long-term Commercial Significance.
- c) The County had no duty to follow the recommendations of the Resource Lands Technical Advisory Committee.
- d) Contrary to the arguments of the Petitioners, the County has designated approximately 721,040 acres, or about 93% of the County's land base, as Agricultural Lands of Long-term Commercial Significance.

The County argues Petitioners have miss-read the county ordinance, and Petitioners have erroneously stated the "County only designates 23,000 acres as

Agricultural Lands of Long-term Commercial Significance,” and all of their challenges to the County’s agricultural designations are based on that blatant error. The County further argues designation of the 20-acre minimum lot size for the Agricultural Residential zone (25,617 acres) is a reflection of existing development patterns, and a recognition of “a change in production and crop types, a leaning toward orchard, vineyard and specialty crops that thrive in irrigated areas and that facilitates the use of smaller lot sizes.” Respondent Brief P. 48.

The County also argues allowing clustering within the Agriculture zones not listed as prime agricultural lands will work to conserve agricultural lands and is a specifically listed innovative zoning technique endorsed by the GMA. (RCW 36.70A.177(2)(6)).

The Respondent states the Petitioners wrongly assert the minimum acreage requirement of 20 acres for the General Agricultural designation and 10 acres for the Agricultural Residential designation “ are inadequate to protect and conserve agricultural lands in the County and thus fail to comply with the GMA,” citing a general study, and presenting no proof of relevance to the Walla Walla County situation.

The Respondent states the Petitioners provide no facts that these lands are presently dedicated to agricultural use or, if in such use, will revert to a purely residential use. The general study the Petitioners cite to is not part of the record.

The Respondent states the Petitioners ignore that the County has required minimum lot sizes of 20 acres for 837 acres of land in Walla Walla County, and a 120 acre minimum for another 21,096 acres.

The Respondent states there are many existing 10-acre lots in the Residential Agriculture designation of the County, and they cannot simply ignore existing development patterns.

The Respondent states the areas where 10-acre lots are allowed are in primarily irrigated lands. They believe there is viability in having a home site and enough productive land to grow small-scale irrigated crops on, and not every lot should exist solely for the use of corporate or large-scale farm operations.

The Respondent states, “The GMA sets forth no minimum densities for resource lands.” Desk book Supp. SU 95-19. They cite several growth board cases to make their point. CPSGMHB refused to establish a bright line for agricultural parcel sizes, or even a range

within which discretion may be exercised. *City of Gig Harbor v. Pierce County* No. 95-3-0016 at 22 (FDO Oct. 31, 1995). They refused to hold that an agricultural designation of one dwelling unit per ten acres necessarily violates the GMA. No. 95-3-0016 at 24 (FDO Oct. 31, 1995). The Petitioners in that case argued agricultural land designations of one dwelling unit per ten acres was “an invitation to chop all agricultural land into little ten-acre pieces,” and the designation would “insidiously eliminate agricultural lands because ten acres is simply not adequate for a viable farm.” The CPSGMHB disagreed with the Petitioners’ argument for such a per se rule.

The Respondent believes lands can be properly designated as agricultural lands (in some cases must be designated as agricultural lands) even if the lands are not, and may not likely be, used for producing agriculture. *City of Redmond v. CPSGMHB*, 136 Wn.2d 38, 53, 959 p.2d 1091 (1998).

The Respondent cites from *Grant County Association of Realtors v. Grant County*, EWGMHB No. 99-1-0018, at 6 (FDO May 23, 2000) in designating agricultural land, no one factor, including current use, is controlling. According to the Court, land is “devoted to’ agricultural use if it is an area where the land is actually used “ or capable of being used” for agricultural production. *Redmond*, 135 Wn. 2d at 53. [N]either current use nor land owner intent of a particular parcel is conclusive” for purposes of classifying agricultural land. *Id.*

The Respondent states if current use were a criterion, comprehensive plans would be mere inventories of current land use, if land owner intent were the controlling factor, local jurisdictions would be powerless to preserve natural resource lands. *Williams and Diefenbach v. Kittitas County*, EWGMHB No. 95-1-0009, at 10.

The Respondent asserts the County’s designations of agricultural lands err on the side of inclusion, including about 4% of land that could reasonably be classified as rural residential land rather than agricultural land and establishing minimum lot sizes in the range of 10-20 acres for such lands. In implementing the OCD guidelines in reference to soil class and quality, the Board “ has approved local classifications of agricultural lands when they err more toward the side of inclusion of lands rather than exclusion.” *Grant County Association of Realtors v. Grant County*, EWGMHB Case No. 99-1-0018 at 7 (FDO May 23, 2000).

**Discussion:**

Petitioners brief and oral arguments center on the confusion over what the County has done to designate Agricultural Lands of Long-term Commercial Significance. The confusion has occurred in some cases by the use of poorly defined terms in the ordinance, and also by misreading what the ordinance contains.

The Board also had concerns regarding the words "future designation" used in the Comprehensive Plan, causing us to wonder if the designation was to occur sometime in the future.

However, the County has provided convincing arguments for the validity of their actions in designation and protecting agricultural lands of long-term significance. The Comprehensive Plan does provide for the designation of approximately 93% of the County's landmass as protected agriculture lands of long-term commercial significance. At the Hearing on the Merits, to a question by the Board, the County Commissioners affirmed that the use of the term "future designation" in this context was basically a scrivener's error and would be changed in any future printings of the Comprehensive Plan. Further, the Board takes official notice of Ordinance 269 and Resolution 02118, which contain the development regulations to implement the Comprehensive Plan. These documents remove any doubt about what Walla Walla County has designated as Agricultural Lands of Long-term Commercial Significance.

The Board is satisfied that sufficient lands have been designated as Agricultural Lands of Long-term Commercial Significance.

The Board agrees with the County's contentions regarding ten and twenty acre lots as part of the protected agricultural lands designation. If small lots were allowed throughout the agricultural zones, clearly, the agricultural lands and industry would not be protected. However, small agricultural lots are of increasing importance in many areas of our State, including Walla Walla County. Agricultural activities found on small lots are definitely becoming more common and have long-term commercial significance and deserve protection. The Board recognizes that not all these parcels will be used for production, but their potential for future production purposes needs to be preserved. The Board complements the County for this foresight.

The Board in the case *Wenatchee Valley Mall Partnership v. Douglas County*,

*EWGMHB 96-1-0009* has recognized clustering as an acceptable technique to preserve large-tract agricultural lands. The objective of preserving agricultural lands of long-term commercial significance does not mean homes cannot be built on these lands, only that the lands remain in parcels sizes, which enable agricultural production. Clustering of homes, along with relatively large lot sizes for the underlying zone, certainly encourages preservation of large tracts for agricultural production.

**Conclusion:**

The Board concludes Walla Walla County has designated and protected Agricultural Lands of Long-term Commercial Significance in compliance with the GMA, consisting of over 700,000 acres, 93% of the County.

**E. FEIS Issues (Ordinance 264)**

**Issue 20:** Do the "Walla Walla County 2021 Comprehensive Plan," the Rural Lands Sub-Element of the "Walla Walla County 2021 Comprehensive Plan," and "rural transition" future land use designation provisions of the "Walla Walla County 2021 Comprehensive Plan" comply with the State Environmental Policy Act, RCW Ch. 43.21C? Case No. 01-1-0015 ¶3.36. (From the Joint Statement of Issues for Case Nos. 01-1-0012, 01-1-0013, 01-1-0014, and 01-1-0015).

**Issue 8:** Do the "Walla Walla County 2021 Comprehensive Plan," the Rural Lands Sub-Element of the "Walla Walla County 2021 Comprehensive Plan," and the "rural floating" future land use designation provisions of the "Walla Walla County 2021 Comprehensive Plan" comply with the State Environmental Policy Act, RCW Ch. 43.21C? Case No. 01-1-0015 ¶3.36. (From the Joint Statement of Issues for Case Nos. 01-1-0012, 01-1-0013, 01-1-0014, and 01-1-0015).

**Petitioner's Position:**

The Petitioner contends they have standing to challenge the EIS because they properly participated by commenting on the integrated comprehensive plan and EIS. Petitioners contend that for such a combined document the public comment period on the formal SEPA document shall be the same as the comment period on the GMA action... WAC 197-11-230(4). Petitioners also contend they repeatedly commented upon the combined document. However, if there was no comment, the Petitioners contend that lack of comment does not bar later challenge to the adequacy of the EIS. WAC 197-11-545(2).

That regulation states only that such lack of comment will be construed as lack of objection. The party is not bared from later challenge.

The Petitioners claim SEPA mandates that within an environmental impact statement, to the fullest extent possible, the environmental effects of the proposal and alternatives are to be sufficiently disclosed, discussed, and substantiated by supportive data and opinion. The Petitioners claim the FEIS plainly fails to consider on and off site alternatives to the proposal and to sufficiently analyze the proposal's impacts to traffic, wetlands, future land use, noise and groundwater.

The Petitioners claim the statute contains both procedural requirements and substantive authority. Procedurally, the statute requires the integrated use of environmental values in the decision making by all state and local agencies. RCW 43.21C.030(2)(a). Substantively, SEPA grants governmental agencies the authority to use the environmental documentation to condition, and even deny, specific projects and other governmental actions based upon environmental impacts. RCW 43.21C.060.

The Petitioners believe the principal vehicle for assuring environmental factors are fully considered in governmental decision-making is the environmental impact statement, which is required to be prepared for all major actions that significantly affect the quality of the environment.

The Petitioners state because complete and accurate information is a prerequisite to sound environmental action, the requirements of SEPA have been construed liberally.

The Petitioners claim SEPA requires the environmental impact statement to be "detailed." The standard for adequacy is whether "the environmental effects of the proposed action and reasonable alternatives are sufficiently disclosed, discussed, and substantiated by supportive opinion and data."

The Petitioners claim the FEIS must stand on its own, and the document's authors cannot rely on subsequent analysis and data in an effort to rehabilitate the FEIS. The Petitioners cite from Roders, Environmental Law at 728 (1977).

### **FEIS Adequacy Presents a Question of Law, Subject to De Novo Review.**

The Petitioners also claim whether an FEIS is adequate, is a question of law, subject to a de novo review. They cite Klickitat County at 632-33, citing *Solid Waste Alternative Proponents v. Okanogan Cy.*, 66 Wn. App. 439, 441, 832 P.2d 503, 120

Wash.2d 1012, 844 P.2d 435 (1992); *Citizens for Clean Air v. Spokane*, 114 Wash.2d 20, 34, 785 P.2d 447 (1990).

The Petitioners also claim the scope of review is de novo, as cited in *Leschi Improvement Council v. Washington State Highway Commission*, 84 W.2d 271, 281, 286, 525 P.2d 774 (1974) since no opportunity to contest the adequacy of the FEIS was provided for in the administrative proceedings.

The Petitioners claim non-consulted agencies and members of the public are treated differently than consulted agencies.

WAC 197-11-545 Effect of no comment. (1) Consulted agencies. If a consulted agency does not respond with written comments within the time periods for commenting on environmental documents, the lead agency may assume that the consulted agency has no information relating to the potential impact of the proposal as it relates to the consulted agency's jurisdiction or special expertise. Any consulted agency that fails to submit substantive information to the lead agency in response to a draft EIS is thereafter barred from alleging any defects in the lead agency's compliance with Part Four of these rules [relating to contents of an EIS].

(2) Other agencies and the public. Lack of comment by other agencies or members of the public on environmental documents, within the time periods specified by these rules, shall be construed as lack of objection to the environmental analysis, if the requirements of WAC 197-11-510 are met.

(Emphasis supplied).

The Petitioners claim while the consulted agency is barred from alleging any defects in the lead agency's compliance with Part Four of these rules [relating to contents of an EIS], for other agencies and members of the public at large, absence of comment is only construed to mean lack of objection. Because the rule specifically provides that absence of comment bans later challenge by a consulted agency the absence of such a provision for other agencies and members of the public at large means that absence of comment by those entities does not bar later challenge.

The Petitioners claim as a factual matter, Citizens for Good Governance did participate in commenting by submitting written comments on February 10, 1999 and again on June 26, 2000.

**To Be Legally Adequate a FEIS Must Address a Full Range of Alternatives; Walla Walla County's FIES Fails to do so and is Inadequate**

The Petitioners claim the Final EIS contains three alternatives: Alternative A – The Proposed Plan, Alternative B – No action, and Alternative C – Higher Resource Protections.

The Petitioners claim the County's document fails to fulfill this requirement by failing to contain other alternatives, most notably an alternative that would eliminate the rural comprehensive plan designations that have a minimum lot size of less than five acres. The Petitioners claim such an alternative would have significant benefits: less sprawl, greater protection of the County's key economic sector – agriculture, and lower public service costs.

The Petitioners claim SEPA mandates adequate consideration of a sufficient range of alternatives, including alternative sites and alternatives within the proposed site. The Petitioners further claim an integrated EIS and GMA action is required to contain a comparative evaluation of the alternative courses of action. . . . WAC 197-11-235(6)(a). It fails to consider the alternative of a more uniform application of large lot sizes in agricultural lands and the elimination of sub-five acre lot sizes in the rural residential, floating and transition zones.

**Environmental Effects of the Proposal and Reasonable Alternatives are not Sufficiently Disclosed, Discussed, and Substantiated by Opinion and Data.**

a. Future Land and Shoreline Use

The Petitioners claim Land and Shoreline Use are elements of the environment, the impacts of which must be sufficiently discussed, disclosed, and supported by substantiated opinion and data. WAC 197-11-444(1)(b).

The Petitioners claim the impact analysis on pages 89 through 91 and pages 149 through 151 of the FIES fails to identify any of the adverse impacts of designating 7,343 acres Rural Floating, Rural Residential, and the Rural Transition RAID. These include sprawl, increased development along shorelines, and failure to designate as agricultural land of long-term commercial significance and the failure to zone agricultural the areas in these three designations with good agricultural soils.

The Petitioners also claim the failure to analyze the land use impacts of the rural residential, transition and floating zones on adjacent agricultural lands involves a failure to disclose and analyze the central impacts of these designations, not remote and speculative impacts that are beyond the realm of probability.

b. Groundwater

The Petitioners claim Groundwater movement and the quantity and quality of groundwater are elements of the environment, the impacts of which must be sufficiently discussed, disclosed and supported by substantiated opinion and data. WAC 19711-444 (1)(c)(iv).

The Petitioners claim Walla Walla County's FEIS does not evaluate the groundwater impacts of the alternatives on the rural area. The Petitioners cite as an example, the Rural Floating designations, the two to three acre minimum lot size rural land use designations in the Comprehensive Plan where it provides that:

Lands designated as Rural Floating area characterized by unique topographically constraints. These lands fall within corridors defined by steep slopes. Creeks and streams are present and the flood plain and soil types affect available buildable area. Existing lot sizes are generally 1-10 acres in size, although larger parcels in agricultural use are not uncommon.

The Petitioners also cite a letter from the City of Walla Walla which stated increased residential development along Mill Creek, the area to which this designation is applied, will reduce water in the creek due to the construction of exempt wells, reducing the in-stream flows needed to fish survival and requiring the City to increase the amount of water it allows to flow in the creek, thus reducing its supply of water.

**Respondent's position:**

The Respondent states as a matter of law, Citizens and 1000 Friends are precluded from challenging the Final EIS. The Respondent states for the Petitioners to have standing to challenge the EIS, they must have commented on the Draft when provided with the opportunity. The Respondent states SEPA is unequivocal in this regard, ... Lack of Comment by other agencies or members of the public on environmental documents, within the time periods specified by these rules, shall be construed as lack of objection to the environmental analysis, if the requirements of WAC 197-11-510 are met.

The Respondent contends that, consistent with SEPA and the GMA, the County prepared a combined Draft Environmental Impact Statement and Draft Comprehensive Plan. The County gave notice of the availability of the Draft to Department of Ecology; each federal agency with jurisdiction over the proposal; each agency with jurisdiction

over or environmental expertise on the proposal; each City/County in which adverse environmental impacts identified in the Draft could occur if the proposal were implemented; all persons requesting a copy of the Draft; and any affected tribes. Comments were to be submitted by the close of business on July 2, 2000.

The Respondent states Walla Walla County did not receive any written comments from Citizens for Good Governance or 1000 Friends on or before July 2, 2000. The Respondent states under the SEPA guidelines, any party that fails to comment on the environmental documents during the established time period is prohibited from alleging on appeal any defect in the environmental documents. WAC 197-11-545(2); Walla Wall County 18.04.150.

**The County provides the following argument should the Board find the Petitioners have standing**

**1. They prepared an Adequate Environmental Impact Statement**

The Respondents state the question of the adequacy of the EIS is one of law; but the decision of the agency is to be accorded substantial weight. RCW 43.21C.030(2) (c), RCW 43.21C.090. The Respondent contends this Board's review of the EIS consists of a determination of whether the environmental impacts of the Comprehensive Plan are "reasonably disclosed, discussed, and substantiated." (Cites omitted).

**2. The County Considered Reasonable Alternatives.**

The Respondent states the Petitioners alleged the County failed to consider sufficient alternatives to the Plan designations, specifically, alternatives that would have eliminated the rural designation for lots with less than 5 acres. The County contends that this assertion is based on a false assumption that "the Rural Residential designation has a minimum lot size of two to five acres." The Respondent also states consequently, their ensuing analysis as to Walla Walla County's alleged violation of SEPA alternative analysis by failing to consider alternatives that would eliminate designations of less than 5 DU/acre is misplaced. See decision, *supra*, Part B.

The Respondent also states the EIS is not to be a compendium of every conceivable effect or alternative, but rather an aid to the decision-making process.

The Respondent states for non-project actions, such as comprehensive plans, alternatives may be limited to those "formally proposed" or "reasonably related" to the proposed action. The County is not required to examine all conceivable policies,

designations, or implementation measures. WAC 197-11-442

The Respondent states the EIS included a general discussion of the impacts of alternative proposals that would achieve the policies set forth in the Comprehensive Plan; SEPA does not require the County to consider alternative policies, just alternative ways of achieving the policies with less environmental impact. WAC 197-11-442(4)

### **3. The EIS Adequately Evaluated Probable Significant Impacts.**

The Respondent states neither the courts nor administrative rule makers have construed the statutory mandate for a "detailed statement" on the environmental impact of the proposed action" to mean that the EIS must include every possible impact; only "probable," "significant," impacts must be considered, and then, only reasonable consideration of such impacts is required.

The Respondent states mere assertion of theories or possibilities does not show the County erred in not including a more detailed discussion of sprawl, and impacts on shorelines and ground.

The Respondent contends the buildable lands study, as supported by the record, indicates that, based upon site development constraints, including critical areas and stream protections, very few lots could actually be built out for residential use in the Blalock area and the Rural Remote floating zone.

The Respondent states with respect to the Rural Transition zones Policy RL-31: "The creation of new lots should be prohibited unless they will be connected to a public water system." The Respondent contends rural development in the zones at issue is speculative and uncertain and therefore the County acted reasonably in limiting discussion on ground and surface water impacts in the EIS.

The Respondent also contends before buildings or improvements can be constructed in the zones of concern, landowners will need to acquire regulatory approvals, which will necessitate consideration of the impacts of the proposed development on the environment. As an example, Rural floating zone, an individualized showing, which ensures adequate protections to critical area flood plains, and ground and surface water is required before a two to three-acre minimum density will be permitted.

### **Discussion:**

The Washington State Legislature granted the Growth Management Hearings Boards

jurisdiction to hear matters relating to RCW 43.21 (SEPA) as it relates to plans, development regulations or amendments adopted under the GMA. The Board recognizes that the Petitioners actively participated in the joint hearing process where the EIS and the Comprehensive Plan was discussed. This together with the careful reading of WAC 197-11-545(2) in full and our liberal examination of standing, we find that the Petitioners have standing to challenge the adequacy of the EIS herein.

The Petitioner still has the heavy burden of showing the actions of the County are clearly erroneous. That burden and the presumption of validity statutorily given to the actions of the County, compels us to find the Petitioners have not carried their burden. The Issues concerning lots smaller than 5-acres has been resolved in previous issues herein. The County continues to claim there are no designations of less than 5 DU/acre within the rural areas and this Board has held herein that where the authority for such density exists in the rural areas, it is out of compliance.

The other decisions herein require the County to take further action regarding Rural Floating zone, Rural Residential zone and Rural Transitional. Many of the issues raised challenging the adequacy of the EIS will need to be reexamined throughout the process as the County brings itself into compliance with the GMA.

The EIS performed was adequate for a non-project EIS. The Board finds the law does not require the examination of each and every potential option. The contents of the EIS on non-project proposals are described in WAC 197-11-442. That code provision declares that the County "shall have more flexibility in preparing EISs on non-project proposals, because there is normally less detailed information available on their environmental impacts and on any subsequent project proposals. The EIS may be combined with other planning documents . . . ." WAC 197-11-442(1).

The County has flexibility in preparing the non-project EIS for the Comprehensive Plan. WAC 197-11-443(2) provides that a "non-project proposal may be approved based on an EIS assessing its broad impacts. When a project is then proposed consistent with the approved non-project action, the EIS on such a project shall focus on the impacts and alternatives including mitigation measures specific to the subsequent project and not analyzed in the non-project EIS. The scope shall be limited accordingly . . . ."

**Conclusion:**

It is clear from the above and from the examination of the record that the County has

adequately performed the FEIS for the non-project actions of the County. This is especially true due to the fact that the County has been found out of compliance where it has allowed the designation of less than 5-acre lots in rural areas.

## **F. MISCELLANEOUS ISSUES RAISED BUT NOT COVERED PREVIOUSLY**

### **I. VIOLATION OF COUNTYWIDE PLANNING POLICIES 3.2 AND 10.1**

The City of Walla Walla contends the County has violated the Countywide Planning Policies (CPP) 3.2 and 10.1 when the County designated the RAIDs.

**CPP 3.2:** 10 and 20 year Office of Financial Management (OFM) population forecasts, as adjusted by the local jurisdiction, should be accommodated in UGAs... It is recognized that a portion of the growth will occur outside of UGAs at rural densities.

**CPP 10.1:** Rural lands are distinguished from Urban Growth Areas and from agricultural, forestry and mineral lands and shall have an appropriate level of services established.

Substantive CPPs are binding on the county if they are directive also meet the following three criteria: 1. A policy must meet a legitimate regional objective, 2. It may not usurp a city's land use powers, and 3. It must be consistent with other relevant provisions in the GMA.

The CPPs listed by the City are not substantively directive. If the City wished them to be binding, a more specific statement would have been needed.

#### **Conclusion:**

The CPPs claimed by the City to have been violated by the County are not directive and the City has not carried its burden of proof.

### **II. FAILURE TO COOPERATE - CPP 12.1**

The City contends the County violated CPP 12.1, which requires that new land use designations be "cooperatively determined". Again, as referred to above, directive CPPs can be binding. Here, the County and City are directed to cooperate in the creation of new land use designations. Cooperation, while commendable, does not require mutual agreement on each issue. Here, where the County must make the final decisions, cooperation can mean discussion and disagreement and the County proceeding as they deem appropriate. If the CPPs were drafted to require agreement of both parties prior to the adoption of a new land use designation, they could be directive and possibly

binding. Here the County is not out of compliance.

**Conclusion:**

The County did not violate CPP 12.1 and the County is not out of compliance on this issue.

**III. HAS THE COUNTY FAILED TO REVIEW ITS CRITICAL AREA DESIGNATIONS AND DEVELOPMENT REGULATIONS AS REQUIRED BY RCW 36.70A.060(3)?**

The City contends that the County failed to comply with RCW 36.70A.060(3), which requires that counties and cities “review” their critical area designations and development regulations when adopting their comprehensive plans and implementing development regulations. They contend there is no proof in the record that the county reviewed these items as required.

The County contends that they are not required to document its process of consideration in the record. The County states they have reviewed the critical area designations and development regulations and the record reflects that review.

**Discussion:**

There is no statutory requirement for a written statement to be prepared saying how the County reviewed the critical areas and development regulations. RCW 36.70A.060(3) requires the review but does not require a specific method or manner for the review. The County is presumed to have complied with the GMA and the record reflects their claim to that effect. (See County’s Response Brief to City, p. 17).

**Conclusion:**

The Board finds the Petitioners have not carried their burden of proof. The County is not found out of compliance on this issue.

**G. INVALIDITY**

**Issue 17:** Does the Rural Lands Sub-Element of the “Walla Walla County 2021 Comprehensive Plan,” as it relates to lands designated “rural residential,” substantially interfere with the fulfillment of the goals of RCW Ch. 36.70A so that a determination of invalidity should issue? Case No. 01-1-0015 ¶3.37. (From the Joint Statement of Issues for Case Nos. 01-1-0012, 01-1-0013, 01-1-0014, and 01-1-0015).

**Issue 21:** Does the Rural Lands Sub-Element of the “Walla Walla County 2021 Comprehensive Plan” substantially interfere with the fulfillment of the goals of RCW Ch.

36.70A, as it relates to lands designated "rural transition," so that a termination of invalidity should issue? Case No. 01-1-0015 ¶3.37. (From the Joint Statement of Issues for Case Nos. 01-1-0012, 01-1-0013, 01-1-0014, and 01-1-0015).

**Issue 22 (01-1-0014cz):** Does the "rural transition" classification created by Walla Wall County Amended Ordinance 259 substantially interfere with the fulfillment of the goals of RCW Ch. 36.70A so that a determination of invalidity should issue? Case No. 01-1-0014 ¶3.20. (From the Joint Statement of Issues for Case Nos. 01-1-0012, 01-1-0013, 01-1-0014 and 01-1-0015).

**Issue 5 (01-1-0014cz):** Do the densities allowed under Amended Ordinance 259 and Ordinance 266 and the designations of agricultural and rural lands substantially interfere with the fulfillment of the goals of the Act so that an order of invalidity should be issued? (From the Amended Prehearing Order for Case No. 01-1-0014cz).

**Petitioner's position:**

The Petitioners contend Amended Ordinances 259 and 266's Rural Residential and Rural Transitional zones should be invalidated.

The Petitioners claim Amended Ordinance 259 sets 20-acre minimum lot sizes in the Primary Agriculture zone and General Agriculture zone. It also sets ten-acre minimum lot sizes in the Agriculture Residential zone and the Rural Agriculture zone. Amended Ordinance 259, Section 2 (May 7, 2001). Ordinance 266 sets a twenty-acre minimum lot size and density in the General Agriculture zone and a ten-acre minimum lot size and density in the Agriculture Residential zone. Ordinance 266, Section 2 (October 1, 2001). The Petitioners believe these minimum acreage requirements are inadequate to protect and conserve agricultural lands in the County and thus fail to comply with the GMA. The Petitioners claim the County again ignored the findings of the Resource Lands Technical Advisory Committee when setting these minimum lot sizes.

The Committee's conclusion, stated in the General Finding #10 of the Final Report states:

The intent of the lot sizes required in the Agricultural Open Space, and the Agricultural General Zoning districts (20 and 10 acres respectively), which was to preserve agricultural lands, is no longer effective due to changing economics and conditions. It is no longer uncommon for a ten-acre tract to be purchased as a primary residence, with no intent to farm the property.

The Petitioners contend Walla Walla County's Rural Residential designation covers 4,665 acres of the rural area. The Petitioners contend the Comprehensive Plan allows minimum lot sizes as small as two acres. The Comprehensive Plan applies this designation to farms and floodplains similar to Stevens County where this Board invalidated 2.5-acre minimum lot size in resource lands and critical areas. (*Loon Lake Property Owners et al. v. Stevens County*, 01-1-0002c).

The Petitioners contend the first lines of the Rural Residential designation read in full: "Rural Residential: 2-5 acre minimum lot size." The Comprehensive Plan further provides that "[t]he area south of the Cities of Walla Walla and College Place which was formally designated in the draft version of this plan at "Rural Residential 2-5' will be held at the upper end of this range at 5 acres."

The Petitioners further state the new zoning regulations provide for a Rural Residential zone with a two-acre minimum lot size. Section 17.18.20, Table of Density and Dimensional Requirements, p. 67.

The Petitioners believe the urban sprawl in the rural area allowed by the Rural Residential designation warrants invalidation.

The Petitioners claim Walla Walla County's Rural Transition RAIDs minimum lot size substantially interferes with the fulfillment of the goals of the GMA.

### **Decision:**

The Petitioners have a heavy burden when seeking invalidity of all or part of the comprehensive plan or development regulations. The Board must first find the County out of compliance and then find those noncompliant actions to substantially interfere with the goals of the GMA. This is not something the Board does lightly.

While the Board finds the County out of compliance in some areas, the Board does not find that the actions of the County substantially interfere with the fulfillment of the goals of RCW 36.70A.

### **Conclusion:**

The Board does not find the actions of the County substantially interfere with the goals of the GMA and does not invalidate portions of the County's Comprehensive Plan or the Development Regulations associated therewith.

## **ORDER**

1. The County is out of compliance for failure to develop a written record explaining

how the rural element harmonizes the planning goals in RCW 36.70A.020 and meets the requirements of the GMA.

2. The County is out of compliance for the failure to maintain the rural character of the Rural Residential area due to the authority to develop lots at a density of less than du/5-acres.
3. The County's Rural Transition zone of Blalock Orchards, as presently configured, is out of compliance.
4. The County's Rural Floating zone is out of compliance as it is presently established and fails to maintain the rural character of the area.
5. The Agricultural lands designations are not out of compliance. The Petitioners have failed to carry their burden of proof.
6. The County is not out of compliance on the FEIS issues. The Petitioners have failed to carry their burden of proof.
7. The County has not violated Countywide Planning Policies 3.2, 10.1 or 12.1 and is not out of compliance on those issues. The Petitioners have failed to carry their burden of proof.
8. The County is not out of compliance for the failure to review its critical area designations as required by RCW 36.70A.060(3). The Petitioners have failed to carry their burden of proof.
9. The Petitioners have failed to carry their burden of proof when seeking a finding of invalidity for various actions of the County. There will be no finding of invalidity.

**The County shall, within 30 days, provide the Board with a schedule to come into compliance.**

**Pursuant to RCW 36.70A.300(5), this is a Final Order for purposes of appeal. Pursuant to WAC 242-02-832, a motion for reconsideration may be filed within ten days of service of this Final Decision and Order.**

**SO ORDERED** this 1<sup>st</sup> day of May 2002.

EASTERN WASHINGTON GROWTH MANAGEMENT  
HEARINGS BOARD

---

Judy Wall, Board Member

---

Dennis Dellwo, Board Member

---

D. E. "Skip" Chilberg, Board Member