

1 The Respondent, Benton County, Intervenor, Nor Am Development, LLC and
2 Intervenor, City of Richland, contend Benton County followed all the requirements and
3 statutes of the GMA, including those the Petitioners have cited, in the adoption of
4 Resolution 05-057. They argue their public participation and notification procedures were
5 more than adequate; that the land included in the Resolution is not Agricultural Land of
6 Long-Term Commercial Significance; that planning for capital facilities, utilities and
7 transportation in the proposed UGA expansion is best done after the land is in the UGA;
8 that the expanded UGA area is not considered rural when there is a vested development in
9 place; and that adoption of 56% more land than is necessary, according to OFM projections
10 and their own CWPP#4, is appropriate given the special circumstances of the City of
11 Richland.

12 The Board finds the Petitioners have carried their burden of proof in Legal Issues #3
13 and #5 and have shown the action taken by the County in adopting Resolution 05-057 is
14 clearly erroneous. Benton County failed to adequately plan for capital facilities, utilities and
15 transportation facilities for the UGA expansion and, in addition, failed to follow the OFM
16 population allocation guidelines and their own County-wide Planning Policy (CWPP) #4
17 when determining the final size of the UGA expansion.

18 **II. PROCEDURAL HISTORY**

19 On April 1, 2005, BRUCE ROBERTS and MARILYN TAYLOR, by and through their
20 representative, Bruce Roberts, filed a Petition for Review.

21 On April 8, 2005, the Board received Motion of Nor Am Development, LLC,
22 Requesting Intervenor Status on the Side of Respondents, Declaration of Loren D. Combs in
23 Support of, and Memorandum of Nor Am Development, LLC, in Support of Motion to
24 Intervene.

25 On April 26, 2005, the Board received Motion of City of Richland Requesting
26 Intervenor Status on Side of Respondents.

On April 26, 2005, the Board heard the Motions to Intervene filed by Nor Am
Development, LLC, and the City of Richland before the Prehearing conference. The Board

1 grants Intervenor status to Nor Am Development, LLC, and the City of Richland. The parties
2 are intervening on behalf of the Respondent.

3 On April 26, 2005, the Board held the Prehearing conference. Present were, John
4 Roskelley, Presiding Officer, and Board Members Dennis Dellwo and Judy Wall. Present for
5 Petitioners were Bruce Roberts and Marilyn Taylor. Present for Respondent was Ryan
6 Brown. Present for Intervenors Nor Am was Loren Combs. Present for Intervenors City of
7 Richland was George Fearing.

8 On May 3, 2005, the Board issued its Prehearing Order.

9 On May 4, 2005, the Board received Respondent's Supplemental Index.

10 On May 18, 2005, the Board received Petitioners' Motion to Admit Documents. The
11 Board allowed the admittance of the documents after receiving no objections from the
12 parties.

13 On July 7, 2005, Petitioners filed a Motion to Amend Statement of Legal Issues. By
14 letter dated July 11, 2005, the Board instructed the parties to file their objections with the
15 Board no later than July 12, 2005.

16 On July 12, 2005, the Board received Objection of Nor Am Development, LLC, to
17 Petitioners' Motion to Amend Statement of Legal Issues.

18 On July 18, 2005, the Board issued its Order on Motion to Amend Statement of Legal
19 Issues.

20 On August 16, 2005, the Board held the Hearing on the Merits. Present were John
21 Roskelley, Presiding Officer, and Board members Judy Wall and Dennis Dellwo. Present for
22 Petitioners were Bruce Roberts and Marilyn Taylor. Present for Respondent was Ryan
23 Brown. Present for Intervenors Nor Am was Loren Combs. Present for Intervenors City of
24 Richland was George Fearing.

25 **III. PRESUMPTION OF VALIDITY, BURDEN OF PROOF AND STANDARD OF** 26 **REVIEW**

Comprehensive plans and development regulations (and amendments thereto)
adopted pursuant to Growth Management Act ("GMA" or "Act") are presumed valid upon

1 adoption by the local government. RCW 36.70A.320. The burden is on the Petitioners to
2 demonstrate that any action taken by the respondent jurisdiction is not in compliance with
3 the Act.

4 The Hearings Board will grant deference to counties and cities in how they plan
5 under Growth Management Act (GMA). RCW 36.70A.3201. But, as the Court has stated,
6 "local discretion is bounded, however, by the goals and requirements of the GMA." *King*
7 *County v. Central Puget Sound Growth Management Hearings Board*, 142 Wn.2d 543, 561,
8 14 P.2d 133 (2000). It has been further recognized that "[c]onsistent with *King County*, and
9 notwithstanding the 'deference' language of RCW 36.70A.3201, the Board acts properly
10 when it foregoes deference to a . . . plan that is not 'consistent with the requirements and
11 goals of the GMA." *Thurston County v. Cooper Point Association*, 108 Wn. App. 429, 444, 31
12 P.3d 28 (2001).

13 Pursuant to RCW 36.70A.320(3) we "shall find compliance unless [we] determine
14 that the action by [Jefferson County] is clearly erroneous in view of the entire record before
15 the Board and in light of the goals and requirements of [the GMA]." In order to find the
16 County's action clearly erroneous, we must be "left with the firm and definite conviction that
17 a mistake has been made." *Department of Ecology v. Public Utility Dist. 1*, 121 Wn.2d 179,
18 201, 849 P.2d 646 (1993).

19 The Hearings Board has jurisdiction over the subject matter of the Petition for
20 Review. RCW 36.70A.280(1)(a).

21 **IV. ISSUES AND DISCUSSION**

22 **Issue No. 1:**

23 Does adoption of Resolution No. 05-057, redesignating approximately 3000 acres of
24 land from Agriculture Commercial to City of Richland UGA fail to comply with RCW's
25 36.70A.020(2), 36.70A.020(8) (planning goals to reduce sprawl and conserve natural
26 resource lands), 36.70A.040 (local governments must adopt development regulations that
preserve agricultural lands) 36.70A.050 (classification of agricultural lands) 36.70A.060
(conservation of agricultural lands) and 36.70A.170 (designation of agricultural lands) when
the land at issue contains prime and unique soils and continues to meet all criteria under
the Growth Management Act for Agricultural Lands of Long-Term Commercial Significance?

1 **The Parties' Position:**

2 **Petitioners: Bruce Roberts and Marilyn Taylor**

3 In Legal Issue #1, the Petitioners contend the adoption of Benton County Resolution
4 05-057 fails to comply with a variety of key agricultural and natural resource sections of the
5 Growth Management Act (GMA). They believe the Urban Growth Area (UGA) expansion set
6 forth in Benton County Resolution No. 05-057 contains "Agricultural Lands of Long-Term
7 Commercial Significance", specifically the 746-acre orchard that was included in the revised
8 recommendation by Benton County staff. Petitioners reference *C.U.S.T.E.R v. Whatcom*
9 *County*, WWGMHB, 96-2-0008 (FDO), as an example that "the GMA does not allow
10 designation of areas for urban growth where no such urban growth is expected within the
11 planning period."

12 Petitioners, referencing *Citizens for Good Governance, 1000 Friends of Washington*
13 *and City of Walla Walla v. Walla Walla County*, EWGMHB 01-1-0015c & 01-1-0014cz (FDO),
14 believe previous rulings from the EWGMHB have "declared substantive Countywide Planning
15 Policies binding on the County. They cite Benton County CWPP #9 as an example where
16 Resolution 05-057 is contrary to the Planning Policy.

17 According to the Petitioners, Benton County Planning staff realized that the 746-acre
18 orchard was agricultural, but labeled it Urban Reserve to avoid a "TDR" (transfer of
19 development rights). They believe the Interlocal Agreement between the County and the
20 City of Richland is proof the jurisdictions acknowledge the importance of preserving the
21 agricultural activity of the orchard.

22 **Respondent: Benton County**

23 The Respondent argues that Benton County in 1995 did not include the 746 acre
24 area as worthy for protection as "agricultural land". The County designated over half of
25 Benton County as agricultural land, but not the 746 acres currently in orchard. As the
26 County points out, even the Petitioners acknowledge that none of the lands added by

1 Resolution 05-057 is designated "agricultural land" and their complaint should have been
2 "years ago", not now.

3 Consequently, the Respondent argues that the orchard is not "agricultural land" as
4 defined by the GMA. They also reference the County's CWPP #8, which allows the County
5 to include such areas in their proposed Urban Growth Area (UGA). The Respondent cites
6 *Benton County Fire Protection District No. 1 v. Benton County*, EWGMHB Case No. 94-1-
7 0023 (FDO), to show the Board has upheld similar decisions by the County.

8 The Respondent also argues that the County's inclusion of the orchard does not
9 violate CWPP #9. They contend CWPP #9 "merely provides guidance". Second, the
10 Petitioners allege only one factor in CWPP #9 compromises the adoption of the orchard
11 area, where there are six factors to consider. The Respondent contends inconsistency does
12 not preclude expansion or prohibit inclusion of a piece of property. They argue the
13 Washington Supreme Court decision, *Quadrant*, 154 Wn.2d at 239-40, allows counties to
14 look to the "built" environment, such as Badger Mountain Planned Development, to include
15 in their UGA's.

Intervenor: Nor Am Development, LLC

16 The Intervenor, Nor Am Development, LLC, argues that the 746-acre orchard is not
17 designated "agricultural land" or natural resource lands under RCW 36.70A.170(1), even
18 though it's currently in productive agricultural use. They argue that the County has
19 complied with RCW's 36.70A.040, 36.70A.050, 36.70A.060 and 36.70A.170(1) by adopting
20 zoning regulations that protect Agricultural Lands of Long-Term Commercial Significance
21 and determining these lands that are appropriate. The Intervenor argues the Petitioners
22 have not carried their burden of proof, including support in the record for their assertion
23 that the land contains "prime and unique soils and conditions."

24 The Intervenor concludes by reiterating the Respondent's argument concerning the
25 EWGMHB case No. 94-1-0023 and quote a portion of the decision to back their argument.

Intervenor: City of Richland

26 The City of Richland did not brief this issue.

1
2 **Board Analysis:**

3 The Board looks to the GMA, Benton County County-wide Planning Policies, Benton
4 County Development Regulations, zoning maps, and case law to determine if the Petitioners
5 have carried their burden of proof for Legal Issue No. 1.

6 Preserving agricultural lands is of primary importance to the State of Washington and
7 its citizens. In *Richard L. Grubb v. City of Redmond*, CPSGMHB 00-3-0004 (FDO at 8,
8 August, 2000), The Central Board emphasized the importance of agricultural lands,

9 "The GMA's provisions for the conservation of natural resource lands, including
10 agricultural lands, constitutes one of the Act's most important and directive
11 mandates."

12 The Petitioners argue that Resolution No. 05-057 fails to comply with six
13 GMA statutory provisions because the land at issue contains "prime and unique"
14 soils and meets all the criteria under the GMA for "Agricultural Lands of Long-
15 Term Commercial Significance." These two arguments may be correct in theory,
16 but the Petitioners failed to show how these statutes have been violated by the
17 exclusion of the 756 acres from the natural resource lands designation. In
18 addition, they have not provided any studies, tests or proof in the record from
19 reliable sources, such as the Soil Conservations Service, to prove the agricultural
20 lands in question contain "prime and unique soils."

21 In addition, the Petitioners argue the County realized that the 746 acre orchard was
22 agricultural, but labeled it Urban Reserve "to avoid a TDR". Again, this may be the case, but
23 as reflected by a Western Board's decision, an owner's current use and/or intent for future
24 use is not a conclusive determination of whether land qualifies for agricultural resource land
25 designation. *ICCGMC v. Island County*, WWGMHB 98-2-0023 (FDO, June, 2, 1999).

26 The Respondent, Benton County, designated the majority of the County in 1995, as
"GMA Agriculture" pursuant to RCW 36.70A.030 and 36.70A.170. It did not include the land
now in question, including the 746 acre orchard. There were no appeals to the County's

1 decision as to what land met the GMA definition of "agricultural lands". It cannot be argued
2 at this time. There was discussion by the parties as to whether the County violated its own
3 County-wide Planning Policy #9. The Petitioners allege at least several of the five factors in
4 the policy were violated and argue that the Washington State Supreme Court has ruled that
5 County-wide planning policies are mandatory. *King v. CPSGMHB*, 138 Wn.2d, 161, 175
6 (1999). They also cite *Citizens for Good Governance, 1000 Friends of Washington and City*
7 *of Walla Walla v. Walla Walla County*, EWGMBH 01-1-0015c & 01-1-0014cz, (FDO's, May 1,
8 2002), to show previous rulings from this Board have declared substantive County-wide
9 Planning Policies (CWPP) binding on the County.

10 Both the Respondent and Intervenor disagreed. County-wide Planning Policies for
11 Benton County, according to their preamble to the chapter, are written policy statements
12 used "solely for establishing a county-wide framework from which county and city
13 Comprehensive Plans are developed and adopted."

14 Regardless of how the County words its preamble, in *C.U.S.T.E.R.*, the Western
15 Board found "cities and counties are both required to adhere to the county-wide planning
16 policies." *C.U.S.T.E.R. v. Whatcom County*, 96-2-0008 (FDO, 9-12-96). The Eastern Board,
17 in *James A. Whitaker v. Grant County*, Order on Respondent's Motion for Reconsideration.
18 (Aug. 7, 2000), agreed that, "Only those county-wide planning policies that are directive are
19 mandatory."

20 Policy #9 is not directive, but suggestive (and a possible flaw in the County's
21 planning policies). The policy deals with the "appropriate direction" (CWPP #9) and sets
22 forth the five factors to be considered in determining the direction for expansion.

23 **Conclusion:**

24 The Board finds that the Petitioners have failed to carry their burden of proof on
25 Legal Issue #1 based on their failure to establish the land at issue in Resolution 05-057
26 contains "prime and unique soils" and is presently designated "Agricultural Lands of Long-
Term Commercial Significance" by the County. It is also too late to challenge the County's
designation of Agricultural Resource lands.

1 **Issue No. 2:**

2 Does the adoption of Resolution No. 05-057, designating approximately 3000 acres
3 to City of Richland UGA fail to comply with RCW's 36.70A.020(1) (planning goal to
4 encourage development in urban areas where adequate facilities and services exist),
5 36.70A.020(2) 36.70A.020(8) (planning goals to reduce sprawl and conserve natural
6 resource lands), 36.70A.070(5) (rural element requires policies and regulations that protect
7 and conserve rural character and prevent abnormally irregular boundaries), and
8 36.70A.110(3) (locate Urban Growth Areas in areas characterized by urban growth and
9 development) when the land at issue is located within and adjacent to rural areas and
10 continues to meet all criteria under the Growth Management Act for preserving rural lands?

11 **The Parties' Position:**

12 **Petitioner: Bruce Roberts and Marilyn Taylor**

13 The Petitioners believe approximately 700 acres included within the designated UGA
14 by Benton County are rural as presented in the Facts Section in the Revised Staff Report.
15 They also contend that the adopted UGA is in violation of two RCW's because the new UGA
16 is placed adjacent to the rural community of El Rancho Reata. The Petitioners also argue
17 that the UGA expansion creates an irregular boundary, which surrounds El Rancho Reata, a
18 rural area.

19 **Respondent: Benton County**

20 The Respondent argues the Petitioner is in error by citing *C.U.S.T.E.R v. Whatcom*
21 *Co.*, WWGMBH, 96-2-0008 (FDO, 9-12-96) and gives their interpretation of the decision.
22 The Respondent goes on to argue that the Petitioner knows Badger Mountain has in large
23 part been publicly acquired for open space and the fact that it is not available for urban
24 development does not require it to be excluded from a UGA.

25 Concerning the issue that UGA's cannot be adjacent to Rural Areas, the Respondent
26 argues the Petitioners "erroneously" cite RCW 36.70A.050(3) and RCW 36.70A.110(3) as
prohibiting rural areas in or adjacent to UGA's. The Respondent then explained their
reasons. Under the scenarios provided by the Respondent, rural lands will and must be
adjacent to UGA's.

1 **Intervenor: Nor Am Development. LLC**

2 The Intervenor, Nor Am Development, has similar arguments to that of Benton
3 County. They contend the County must consider vested development rights in determining
4 whether a territory is characterized by urban growth. The vacant and agricultural lands in
5 question included in the UGA are adjacent to the vested Badger Mountain Planned
6 Development. The Intervenor also argues that "exclusion of any of the areas requested by
7 Petitioners would result in a UGA boundary significantly more severe and irregular."

8 **Intervenor: City of Richland**

9 The City of Richland did not brief this issue.

10 **Board Analysis:**

11 The Petitioners again cite five statutory provisions from the GMA to prove the
12 adoption of Resolution 05-057 fails to comply when the land at issue is located within and
13 adjacent to rural areas and continues to meet all criteria under the GMA for preserving rural
14 lands. Petitioners argue that Resolution 05-057 adds 700 acres of geologically hazardous
15 land that can't be developed or can only be developed at rural densities. They clarify their
16 issue in their Hearing On The Merits Reply Brief by referencing RCW 36.70A.110(3) arguing
17 that this statute was violated by the fact the additional lands are located in an area not
18 characterized by urban growth and development.

19 The Intervenor, Nor Am Development, addressed this issue appropriately. The GMA
20 does not require land to be urban in character in order to be included in a UGA. Only that it
21 be "adjacent to territory already characterized by urban growth." RCW 36.70A.110(1).
22 Badger Mountain PUD is a vested urban development right and, according to RCW
23 36.70A.110(3), "Urban growth may also be located in designated new fully contained
communities as defined by RCW 36.70A.350." The Intervenor also cites *Quadrant
Corporation v. GMHB*, 154 Wn.2d 224, 241 (2005), to support their position.

24 In addition, the Petitioners argue that the amendment creates an "abnormally
25 irregular boundary", a "peninsula" surrounding El Rancho Reata, a self-contained rural
26

1 community, and fails to protect the rural character of the area. RCW
2 36.70A.070(5)(c)(ii)(iii)(iv).

3 The Petitioners can't have it both ways. They argue 700 acres on Badger Mountain is
4 rural and will never be developed, yet cite statutes that accuse the County of not assuring
5 visual compatibility. They argue El Rancho Reata, with its one to two acre lots, is rural, but
6 Badger Mountain PUD at .5 DU's/acre is creating sprawling, low-density development. They
7 also argue the County is not protecting critical areas, surface water and ground water,
8 although El Rancho Reata is on septic and Badger Mountain PUD may be required to be
sewered.

9 The only reference in the GMA to "abnormally irregular boundaries" is in RCW
10 36.70A.070(5)(d)(iv)(C), which is the section concerning Limited Areas of More Intensive
11 Rural Development (LAMIRDS). RCW 36.70A.110 Comprehensive Plans – Urban growth
12 areas, does not contain any reference to irregular boundaries, thus the issue is considered
13 moot.

14 **Conclusion:**

15 The Board finds that the Petitioners have not carried their burden of proof
16 concerning Legal Issue #2 based on their failure to prove Resolution 05-057 fails to comply
17 with the referenced statutes when the land at issue is located within and adjacent to rural
18 areas and continues to meet the criteria under the GMA for preserving rural areas.

19 **Issue No. 3:**

20 Does the adoption of Resolution No. 05-057, designating approximately 3000 acres
21 to City of Richland UGA fail to comply with RCW's 36.70A.070(3) (capital facilities
22 assessment and plan), 36.70A.070(4) (utilities element to determine whether utilities exist
23 and can handle anticipated growth), 36.70A.070(6) (transportation element to determine
24 traffic capacity and growth) when the land at issue is located in a rural area with limited
25 utilities, transportation, and access?
26

1 **The Parties' Position:**

2 **Petitioners: Bruce Roberts and Marilyn Taylor**

3 The Petitioners argue that Benton County acknowledges non-compliance with
4 County-wide Planning Policies regarding utilities, transportation and access, referencing the
5 Facts Section and Table 3 on page 9 of the Revised Staff Report. They believe the
6 Washington State Supreme Court has ruled that CWPP's are mandatory [King v. CPSGMHB,
7 138 Wn.2d, 161, 175 (1999)]. The staff report, specifically Table 3, references five of the
8 six conditions in CWPP #9 are inconsistent.

9 The Petitioners also contend that in Table 3, page 9, Benton County acknowledges
10 inconsistency with the GMA. In addition, they argue the Capital Facilities Studies and Plans
11 are lacking or incomplete.

12 **Respondent: Benton County**

13 The Respondent, Benton County, argues the Petitioners failed to present any
14 argument as to how the statutory provisions cited have been violated, so the issue should
15 be abandoned. They contend the County has adopted a land use plan that has capital
16 facilities, utilities and transportation elements. The Respondent argues RCW 36.70A.070
17 does not require revisions to these elements simply because additional areas are designated
18 within a city's UGA.

19 The Respondent argues expansion to the southwest is consistent with CWPP #9 and
20 all factors listed in that policy do not have to be in place.

21 The Respondent also argues that urban services will be available to accommodate
22 the projected growth. According to the Respondents, the Petitioners do not cite any legal
23 authority or facts that services cannot be provided.

24 **Intervenor: Nor Am Development, LLC**

25 The Intervenor also argues the Petitioners failed to address the issue and failure to
26 brief an issue constitutes abandonment. They also contend the Petitioners bring up issues
that were not included in the Amended Statement of Issues or Order on Motion to Amend
Statement of Issues and are precluded from raising these issues now. The Intervenor

1 admits the City of Richland will have to update its Comprehensive Plan to include the new
2 UGA area and to plan for future land uses and capital facilities, utilities and transportation to
3 serve the area, however, such planning is not required prior to the area's inclusion in the
4 City's UGA.

5 **Intervenor: City of Richland**

6 The City of Richland did not brief this issue.

7 **Board Analysis:**

8 The Board looks to RCW 36.70A.020(12) Planning Goals, RCW 36.70A.215 and RCW
9 36.70A.070(3), (4), & (6), the CWPP's and case law to determine whether the Petitioners
10 have proven Resolution 05-057 fails to comply with the GMA when the land at issue is
11 located in a rural area with limited utilities, transportation, and access.

12 The Board made a determination under Board Analysis in Legal Issue #1 that Policy
13 #9 is not directive, but suggestive. It was adopted with this language and not appealed.
14 The policy deals with the "appropriate direction" (CWPP #9) and sets forth five factors to be
15 considered in determining the direction for expansion. It does not mandate that one or
16 more of the suggested factors be present to enlarge the UGA.

17 The Petitioners' argument concerning the lack of an updated or complete capital
18 facilities plan element has merit. One of the primary tenants in the GMA is RCW36.70A.020
19 Planning Goals. Under that statute, subsection (12) Public facilities and services, provides,

20 "Ensure that those public facilities and services necessary to support
21 development shall be adequate to serve the development at the time the
22 development is available for occupancy and use without decreasing current
23 service levels below locally established minimum standards."

24 A county or city can't fulfill the requirements of Planning Goal #12 without a
25 futuristic look at their community using a detailed capital facilities plan element, among
26 other elements of their comprehensive plan.

The GMA, under RCW 36.70A.070(3), requires a capital facilities plan element in the
City or County's Comprehensive Plan. The Legislature recognized that planning is forward

1 looking, so mandated at a minimum a six-year Capital Facilities Element (CFE), to ensure
2 financing of projected capital facilities and sources of public money were clearly identified.
3 They also required a forecast of future needs for such capital facilities.

4 The GMA is planning for the future. Benton County and the City of Richland may
5 have Capital Facilities Elements in their Comprehensive Plans, but, according to the written
6 record and testimony by all the Parties at the Hearing on the Merits, not one that takes into
7 consideration the additional sewer capacity, transportation facilities and other elements
8 needed for the Badger Mountain PUD and additional UGA lands adopted in Resolution 05-
9 057. In fact, in Table 3, "Consistency of the City of Richland Proposed UGA Expansion with
10 the adopted CWPP, Relevant Provisions of the Benton County Comprehensive Plan Policies,
11 and GMA RCW's", p. 11, the County staff in their comment section concerning RCW
12 36.70A.020(1) admit,

13 "it is not known whether or not public services can be provided efficiently, it is
14 not known what the measure of efficiency is in this instance."

15 Special service districts arguing over who is going to serve the area is not the same
16 as developing a CFE that determines how much the infrastructure is going to cost and a
17 financial mechanism to fund it. For the County or City of Richland to know if they can
18 provide services at the time of development, they need to plan ahead and this has not been
19 done for this expansion of the UGA.

20 The Respondent and Intervenor seem to believe that planning is retroactive
21 (Respondent Hearing on the Merits brief, p.17 and Intervenor's Hearing on the Merits brief,
22 p. 8). Consequently, the County contends its present CFE is current, even though it's been
23 in place for seven years without an update for this area.

24 There is a world of difference between increasing a UGA a few parcels or a few
25 hundred acres compared to the current proposal of 3,322 acres, which includes a vested
26 PUD with over 800 homes and businesses. Perhaps the County's current six-year plan is
usable for a small inclusion of land, but not for a major amendment, such as proposed here.

1 The Badger Mountain PUD should have triggered a County and City of Richland update of
2 their six-year plans immediately upon the application for the amendment to change the
3 UGA, if not when the PUD was vested.

4 In *Bremerton, et al., v. Kitsap County*, CPSGMHB 95-3-0039c (FDO, Oct. 6, 1995),
5 the Central Board determined that,

6 “[Although] the GMA does not designate a specific six-year period for Capital
7 Facilities Element planning, it is illogical, and contrary to one of the bedrock
8 purposes of the GMA – planning to manage future growth – to suggest that
9 the Capital Facilities Element’s six-year financing plan can be, in whole or in
10 part, an historical report of capital facility financing for prior years.”

11 Under RCW 36.70A.215 Review and evaluation, the GMA is requiring some counties
12 [see RCW 36.70A.215(7)] to adopt County-wide Planning Policies to establish a review and
13 evaluation program. In (2)(a), the GMA asks those counties to:

14 “encompass land uses and activities both within and outside of urban growth
15 areas and provide for annual collection of data on urban and rural land uses,
16 development, critical areas, and capital facilities to the extent necessary to
17 determine the quantity and type of land suitable for development...”.

18 The GMA here is requiring an annual update of information to ensure a county or city
19 has the information they need to make informed decisions on growth. It can be simple or
20 detailed, depending on the changes within the jurisdiction. While it does not apply in
21 Benton County, this statute shows the Legislature sees this as a need in the future and
22 expects counties and cities to be as up-to-date as possible, so their comprehensive plan
23 reflects current conditions and agrees with their 20-year plan and six-year CFE.

24 The minimum six-year CFE is a living document. It is supposed to help cities and
25 counties understand their current and future financial capabilities as they grow, how to pay
26 for that growth and, in some respects, how to grow. They may find it is more cost-effective
to increase density within their present UGA to absorb their population allocation, rather
than run expensive utilities into expanding territory. An up-to-date CFE is a tool that can do
this.

1 Once an area is brought into an existing UGA, it will need infrastructure. The GMA
2 requires a "forecast of the future needs" in the six-year plan. Neither Benton County nor the
3 City of Richland updated their plans in anticipation of adopting Resolution 05-057. According
4 to the Intervenor, "The GMA requires only that the County determine that urban services
5 can be provided at the time of development. RCW 36.70A.110(3)."

6 That's certainly when they can be provided, but planning for those services has to
7 take place much earlier. RCW 36.70A.070(3)(b).

8 "The purpose of the capital facilities element of a comprehensive plan is to see
9 what is available, determine what is going to be needed, figure out what that
10 will cost, and determine how the expense will be paid. *Achen v. Clark County*
11 95-1-0067 (FDO, Sept. 20, 1995).

12 Under *Bremerton/Port Gamble v. Kitsap County*, CPSGMHB Case No. 95-3-0039c,
13 Order Dismissing Port Gamble at p. 41 (Sept. 8, 1997), the Central Board determined,

14 "If a county designates a UGA that is to be served by a provider (other than
15 the county), the county should at least cite, reference or otherwise indicate
16 where locational and financing information can be found that supports the
17 UGA designations and GMA duty to ensure that adequate public facilities will
18 be available within the area during the twenty-year planning period."

19 Benton County, in CWPP #21, acknowledges the importance of the timely matter of
20 the fiscal impact of development.

21 "Where Capital Improvement Plans and Land Use Plans involve land areas
22 within, or tributary to land within the urban growth areas, the County and
23 Cities, individually and jointly, shall routinely conduct fiscal analyses which
24 identify and refine the most cost effective provision of regional and local public
25 services and infrastructure over the long term."

26 "Routinely" is defined in Webster's as "a regular course of procedure" or "of a
commonplace or repetitious character." The County certainly didn't follow CWPP #21 when
confronted with the Badger Mountain PUD in 2000, or when adding 3,322 acres of land to
the UGA in 2005.

1 The County and the City of Richland did not update their CFE (RCW 36.70A.070(3),
2 their utilities element (RCW 36.70A.070(4), or their transportation element (36.70A.070(6)
3 prior to adopting Resolution 05-057. Considering the impacts this amendment will have to
4 the citizens of Benton County and the City of Richland, an update of these comprehensive
5 plan elements were essential to good planning required by the GMA.

6 **Conclusions:**

7 The Board finds the Petitioners have carried their burden of proof and that the
8 County's actions are clearly erroneous. The County failed to adequately plan for capital
9 facilities, utilities and transportation within the land adopted by Resolution 05-057 and thus
10 did not comply with RCW 36.70A.070(3), (4) & (6).

11 **Issue No. 4:**

12 Did the adoption of Resolution No. 05-057, designating approximately 3000 acres to
13 City of Richland UGA fail to comply with RCW's 36.70A.035(1) (reasonable notice
14 provisions) and 36.70A.140 (ensure early and continuous public participation), and
15 36.70A.040(11) (citizen participation and coordination) when changes to the land at issue
16 affected rural property owners and residents located adjacent to the land at issue?

17 **The Parties' Position:**

18 **Petitioner: Bruce Roberts and Marilyn Taylor**

19 The Petitioners allege the County's public notices were deficient. They detail the
20 notices mailed to the local newspaper and those mailed to citizens, developers and others.
21 The Petitioners argue property owners, those who have property abutting the new UGA
22 addition, were not notified. In addition, they allege the record does not reflect private
23 correspondence between Mr. Loren Combs and Benton County Planning staff, who they say
24 "essentially granted a commitment for the UGA." The Petitioners argue that the general
25 public was not allowed similar access to the process.

26 **Respondent: Benton County**

The Respondent disagrees and contends their Public Participation process was
"impeccable." They argue that the requirements of RCW 36.70A.140 and 36.70A.035 were

1 fulfilled by the County and individual notice, as argued by the Petitioners, is not required.
2 *Holbrook, Inc. v. Clark Co.*, 112 Wn.App 354 (2002).

3 The Respondent also argues that WAC 365-195-600, which the Petitioners reference
4 in support of their argument, recommends possible notice procedures, not requires. They
5 contend the County followed the guidelines and suggestions of the legislature and
6 administrative rule and provided "ample notice of the amendment process and the
7 numerous hearings on this issue." They detail the publication notices in their brief and
8 mention the "over 1,300 notices of the public hearings held by the Planning Commission
9 and Board of County Commissioners were mailed directly to the persons that had expressed
an interest in this matter to the County."

10 **Intervenor: Nor Am Development, LLC**

11 The Intervenor, Nor Am Development, detailed the dates of the public hearings and
12 notices in their brief and also argued individual notice to affected property owners is not
13 required. They also contend that errors in exact compliance with the established program
14 and procedures shall not render the comprehensive land use plan or development
15 regulations invalid, if the spirit of the program and procedures are observed. RCW
16 36.70A.140.

17 The Intervenor points out that the Petitioners themselves participated in the process
18 from the beginning. In addition, they point out the County is not required to agree with or
19 act upon the desires expressed by the public. *City of Burien v. Central Puget Sound Growth
Management Hearings Board*, 113 Wn.App. 375, 388 (2002).

20 **Intervenor: City of Richland**

21 The City of Richland did not brief this issue.

22 **Board Analysis:**

23 Public Participation is at the very heart of the GMA. The Board believes counties and
24 cities should have a solid Public Participation Plan (PPP) based in part on the statutes and
25 follow it. This will ensure broad dissemination of the jurisdictions intent and those who want
26 to participate in the GMA process can do so.

1 The record, in this case, did not include a copy of the PPP for Benton County. In the
2 Benton County County-wide Planning Policies, Policy #1(9), the County did mention citizen
3 participation and coordination, but not how the County was going to engage the public.

4 Nevertheless, the Board believes the County fulfilled its public participation process
5 required under the GMA. The County held five public hearings and published notices in the
6 local contracted newspaper, as well as others in the County (Respondent's Hearing on the
7 Merits brief; Exhs. 121, 124, 127, 128). There were also other means of notice used to
8 inform the public, including Planning Commission and County Commissioner agendas, the
9 County website and over 1,300 notices sent to persons that had expressed an interest in
the amendment.

10 The Board disagrees with the Petitioners argument that the County violated the Open
11 Meetings Act by allowing both County and the City of Richland staff to meet with Mr.
12 Combs. The Washington State Open Meetings Act requires that all meetings of municipal
13 governing bodies be open and accessible to the public. A meeting generally includes any
14 situation in which a majority of the council or other governing body (including certain kinds
15 of committees) meets and discusses the business of that body. In order to be valid,
16 ordinances, resolutions, rules, regulations, orders, and directives must be adopted at public
17 meetings. The Act contains specific provisions regarding: regular and special meetings,
18 executive sessions, types of notice which must be given, where meetings may be held,
conduct of meetings, minutes, and penalties and remedies for violation of the statutes.

19 The Open Meetings Act is specific to a majority of a governing body, usually elected
20 officials or appointed board members, not staff. There was no obvious violation of the Open
21 Meetings Act. The Petitioners conceivably could have requested a meeting or meetings with
22 staff at any time through the process to gather information or discuss the amendment.

23 A non GMA action ILA (Interlocal Agreement) between the City of Richland and the
24 County is not subject to the public process. In *City of Burien, City of Des Moines, City of*
25 *Normandy Park and City of Tukwila v. City of Sea Tac, CPSGMHB, Case #98-3-0010 (FDO,*
26 *Aug. 10, 1998, the Central Board found, "The negotiation and execution of an Interlocal*

1 Agreement, that is a non-GMA action, is not subject to the public participation requirements
2 of the GMA over which the Board has jurisdiction.”

3 **Conclusion:**

4 The Board finds that the Petitioners have failed to carry their burden of proof
5 concerning Legal Issue #4 based on the failure of the Petitioners to prove the Respondent,
6 Benton County, failed to comply with the listed statutes concerning public participation and
7 notice.

8 **Issue No. 5:**

9 Does the adoption of Benton County Resolution No. 05-057, updating and revising
10 the Benton County Comprehensive Plan to designate approximately 3000 acres of land to
11 City of Richland UGA, fail to comply with RCW 36.70A.020(1), RCW 36.70A.020(2), RCW
12 36.70A.110, and RCW 36.70A.130 when the record shows that UGA for the City of Richland
13 established by Benton County is substantially larger than necessary to accommodate the
14 adopted OFM forecast?

15 **The Parties' Position:**

16 **Petitioner: Bruce Roberts and Marilyn Taylor**

17 The Petitioners argue three points in Issue No. 5:

- 18 A. The addition to Richland's UGA is 35% larger than the total number of
19 acres needed.
- 20 B. The City of Richland excluded the option to increase density when
21 calculating need.
- 22 C. Amendment CPA 03-2 to the Comprehensive Plan allows expansion of
23 the urban growth areas based on criteria that violate the GMA.

24 In point A., the Petitioners argue the GMA has three requirements for sizing the
25 UGA's: 1.) the size shall be based on the OFM (Office of Financial Management) 20-year
26 growth projections; 2.) a reasonable market supply factor and 3.) the county must show its
work.

1 The Petitioners contend that Nos. 1 and 2 do not meet the acceptable standards.
2 According to the Facts Section and Table 1 of the Revised Staff Report, in the year 2025,
3 the residential land demand for the Richland UGA is 1,754 acres. With a 25% market supply
4 factor included, the residential demand rises to 2,116. The amendment calls for 3,322 acres
5 and is, according to the Petitioners, in excess of 89% of demand.

6 In point B., the Petitioners argue that the City of Richland failed to reduce sprawl by
7 increasing density within the present UGA. Again, the Facts Section and Table 1 of the
8 Revised Staff Report is used to document the lower densities within the UGA over the 20-
9 year projection. The Petitioners did their own calculations of future density by using the
10 acreage provided with the addition and came up with 0.71 DU's/acre, which they termed
11 "urban sprawl density." They set forth the eight problems associated with sprawl according
12 to the CPSGMHB in the Bremerton case.

13 In point C., the Petitioners reference the Facts Section and Revised Staff Report
14 again, pointing out that the UGA addition includes two large areas the County admits are
15 unavailable or unsuitable for development; the 700-acre area that can no longer be
16 developed and the 746-acre orchard that supposedly will be in production for at least a
17 decade. They paraphrase the staff report, which says, "...the county admits that if it weren't
18 for the Badger Mountain PUD, Richland wouldn't need the UGA." The Petitioners then quote
19 Mr. Darin Arrasmith, Richland City Planning Manager, to emphasize this point. They also use
20 *Diehl v. Manson County*, 94 Wn.App. 645, 972 P.2d 543, 547 (1999) to argue that "the OFM
21 projection places a cap on the amount of land a county may allocate to UGA's."

22 **Respondent: Benton County**

23 The Respondent, Benton County, argues the following concerning the three points
24 presented by the Petitioners, but do so under five numbered sub-headings:

25 In Respondent's No. 1, the Respondent argues the Petitioners do not dispute that an
26 expansion of Richland's UGA is warranted under CWPP #4. Even the Petitioners agree 2,116
developable acres is justified by the formula. The County argues that the additional acreage

1 is needed to accommodate growth projected to the year 2025. The County also argues that
2 the density issue of 2.81 DU's/acre is within Richland's discretion.

3 In No. 2, the Respondent argues that the southwest is the only direction Richland
4 can expand, so County staff and the County Commissioners added 454 acres contiguous to
5 the City's prior UGA on two sides and north of El Rancho Reata.

6 In Respondent's No. 3, they explain the addition of Badger Mountain PUD as being
7 vested prior to the County adopting a final UGA. Using *Quadrant*, 154 Wn.2d at 239-40, the
8 Respondent argues that it is appropriate for a county to consider vested development rights
9 when determining whether an area is "characterized by urban growth" and is properly
10 within a UGA.

11 Under No. 4, the Respondent argues that it would be irrational to exclude the 700
12 acre Badger Mountain property and the 746 acre orchard because that would create an
13 "irregular boundary". They argue the 700 acres is now protected and will remain
14 recreational open space, required by the GMA, and the orchard, if left out of the UGA,
15 would also create an irregular boundary for the UGA. Although staff originally recommended
16 the orchard area be left out, they reconsidered and added acreage in the later
17 recommendations.

18 In Respondent's No. 5 (Petitioners Point C), they argue the Petitioners have
19 miscalculated how much Richland's UGA exceeds the land needed. The accurate calculation,
20 according to the Respondent, is 56% inflated above the County's formula. The County
21 acknowledges the adopted UGA exceeds the acreage needed beyond the 25% market
22 factor by 56%, but contends Richland's circumstances and the formula reflected in CWPP
23 #4 justify the amount. In addition, they contend the orchard was just planted and therefore
24 unavailable for urban development.

25 **Intervenor: Nor Am Development, LLC**

26 The Intervenor, Nor Am Development, argues that the GMA gives counties and cities
"broad discretion in making a number of policy choices and sizing their UGA to
accommodate the projected growth is one such policy choice. *Bremerton v. Kitsap County*,

1 CPSGMHB No. 95-3-0039 (FDO at 39). In addition to simple mathematical analysis, the
2 jurisdictions may also appropriately consider many subjective factors as well, including local
3 circumstances, traditions and identity.

4 The Intervenor contends that the EWGMHB held that local circumstances and a
5 jurisdiction's "community vision," among other things, are appropriate factors that may
6 justify increasing the UGA beyond OFM forecasts. *Benton County Fire Protection District v.*
7 *Benton County*, EWGMHB No. 94-1-0023 (FDO, 1995).

8 They also argue that based on the County's OFM projection the City of Richland
9 needed 2,112 additional acres to accommodate projected growth to the year 2025. Several
10 unique local circumstances justified acreage beyond the OFM projection, including this area
11 being the only area Richland could expand and the vested application of Badger Mountain
12 PUD, which needs a sewer service provider, such as the City of Richland. The Intervenor
13 concludes the UGA boundary is a balance of many concerns, reflects Richland's agricultural
14 roots, follows the natural I-82 boundary, and "looks appropriate on the map." See *Benton*
15 *County* (FDO at 9).

16 **Intervenor: The City of Richland**

The City of Richland did not brief this issue.

17 **Board Analysis:**

18 The Petitioners ask the question whether or not Benton County Resolution 05-057,
19 allows a substantially larger expansion for the UGA than allowed under GMA. For the
20 answer, the Board must look to RCW's 36.70A.020(1), 36.70A.020(2), 36.70A.040,
21 36.70A.110, 36.70A.130, Benton County Planning Policies and the record.

22 Benton County is required to plan under RCW 36.70.040. As such, the County must
23 designate an Urban Growth Area or areas according to RCW 36.70A.110. Under RCW
24 36.70A.110(2), the County must "include areas and densities sufficient to permit the urban
25 growth that is projected to occur in the county or city for the succeeding twenty-year
26 period." The projected growth is "based upon the growth management population
projection made for the county by the Office of Financial Management" (OFM). "The Office

1 of Financial Management projection places a cap on the amount of land a county may
2 allocate to UGA's" [*Diehl v. Mason County*, 94 Wn.App. 645, 654, 972 P.2d 543 (1999)].

3 In 2002, the Office of Financial Management gave the County a low, intermediate
4 and high population projection for the twenty-year period. The County adopted the high
5 population allocation. The County then allocated approximately 28% of their high OFM
6 projection to the City of Richland (Respondent's Ex. 126).

7 The City of Richland used the population allocation given to them by the County to
8 complete an Urban Growth Area Data sheet. That data was used to complete the uniform
9 formula "for identifying the land area necessary per capita for each community" (Benton
10 County CWPP #4), which gave the City of Richland the number of additional acres needed
11 over the next twenty years to meet the City's growth projection. That number, according to
12 the City of Richland staff, was officially 2,116 acres, of which 1,574 was for residential
13 development. This recommendation was "based upon the information provided by the City,
14 County staff analyses of that information, and the application of the methodology in CWPP
15 #4" (Petitioners Exhibit D-1, Nov. 2, 2004 Revised Staff Report).

16 But the original figure of 2,116 acres, based on the high population allocation from
17 OFM and a 25% market factor, was not what was recommended in the "Revised Staff
18 Report" to the Board of County Commissioners. The new number was 3,322 acres, 56%
19 higher than calculated by the CWPP #4 adopted County-wide formula agreed to by all
20 jurisdictions.

21 The City of Richland staff provided three reasons for the change in their
22 recommendation:

- 23 1. Approximately 700 acres is of moderate to steep slopes and would
24 allow only very low densities (1 DU/10-20 acres).
- 25 2. 570 acres of this 700 acres is currently under option for purchase as
26 open space (Note: It has since been purchased for open space).
3. An additional 746 acres are in recently planted orchard that is likely to
be in production over the next decade at least.

1 The staff then suggests, "In fact, the long term and near term development
2 constraints on these approximately 1,446 acres are such that the acres would best be left
3 outside of the UGA, if doing so would not result in a severely gerrymandered county/city
4 boundary..." (Revised Staff Report, p. 5).

5 Petitioners do not dispute that an expansion of Richland's UGA is justified under
6 CWPP #4. They agree with the original number of 2,116 acres recommended by County
7 staff (Petitioners' Brief, p. 30; also Ex. 37, p. 8). But they do dispute the 56% increase
8 above and beyond the OFM projection because the City chose one path, the annexation of
9 land, to accommodate their population allocation. This path reduced the overall density per
10 acre and increased the square footage per person overall (Petitioners' Brief; p. 31)
11 According to Table 1, Status of Vacant Land Supply within the City of Richland, in 1993, the
12 overall density was 4.26 DU's/acre. In 2002, that number fell to 3.26 DU's/acre. With the
13 addition of the new land expansion of 3,322 acres, the density will fall further to 2.81
14 DU's/acre in 2025, less than half of the 4 to 6 DU's/acre recommended by the County
15 (Petitioners' Brief Ex. 255, e-mail from Phil Mees, 9/4/03). This trend is completely
16 backward to that promoted by the GMA, which is to increase densities in urban growth
17 areas.

18 The Board agrees with the Respondent concerning the Washington State Supreme
19 Court's decision, *Quadrant*, 154 Wn.2d at 239-40. It is appropriate for a county to consider
20 vested development rights when determining whether an area is "characterized by urban
21 growth" and is properly within a UGA. Thus, the Badger Mountain PUD can be considered
22 for annexation within the Benton County UGA, even though there was "gerrymandering" as
23 suggested by staff (Respondent's Exhibit list; Ex. 37, p. 5). The expansion of the UGA by
24 the City of Richland, with its addition of 454 acres to connect it to the present UGA and the
25 political decision not to include El Rancho Reata (Petitioners' Ex. F-1, p. 8), creates a truly
26 irregular boundary.

The Intervenor, Nor Am Development, argues that *Bremerton v. Kitsap County*,
CPSGMHB No. 95-3-0039, p. 39 (FDO, 1995), allows local elected officials broad discretion

1 in making a number of policy choices. Market supply increases over 25% may be valid if
2 they are reasonable under the circumstances and the County "shows its work." They argue
3 sizing a UGA involves more than simple mathematical analysis. There are "subjective"
4 factors as well, including local circumstances, traditions and identity (Intervenor's Brief p.
5 11).

6 The Board agrees with this statement to a limited extent. Subjective factors may be
7 considered. But a 56% increase above and beyond the figure calculated by the formula,
8 which already includes a 25% market supply factor and is based on the high OFM
9 projection, is contrary to the principals of the GMA and far in excess of any reasonable
10 subjective factors. The Eastern Board didn't contemplate authorizing sprawl when they held
11 that local circumstances and a jurisdiction's "community vision" among other things, are
12 appropriate factors that may justify increasing the UGA beyond the OFM forecasts (*Benton*
County, at p. 8 -9).

13 The Board takes note of the comments by the City of Richland's planner, Darin
14 Arrasmith in his e-mail to Phil Mees, County Planning on January 7, 2005:

15 "If it weren't for the Badger Mountain Golf Course PUD, it would be my
16 humble opinion that Richland does not need to expand its UGA."

17 The Board also notes the comment by the City of Richland staff in its Revised Staff
18 Report dated September 10, 2003, Issue #3, which is in reference to 700 acres of land that
19 exceeds the area necessary to accommodate the City's officially projected growth demands
20 for residential lands and other parcels:

21 "The inclusion of lands into a UGA that are in excess of the amount needed
22 for projected growth is inconsistent with CWPP#4 as well as goals and
23 provisions of the Growth Management Act relating to sprawl."

24 The County and City of Richland did show their work in regards to the formula in
25 CWPP #4. Their calculations, without increasing density, using the high OFM population
26 allocation and a substantial market factor of 25%, came out to 2,116 acres. The County did

1 not show its work concerning capital facilities, utilities and transportation plans, which is a
2 major step in planning for an expanded UGA. In *Diehl v. Mason County*, 95 Wn.App. 645,
3 654, a market factor is consistent with a jurisdiction's determination of their land supply,
4 but they must demonstrate the reasons for the market factor. "Although a county may
5 enlarge a UGA to account for a 'reasonable land market supply factor,' it must also explain
6 why this market factor is required and how it was reached."

7 Their subjective reasons and "unique local circumstances" (Intervenors' Brief, p. 12),
8 such as creating an irregular boundary, adding 746 acres in recently planted orchard, and
9 dealing with an already vested planned unit development, don't legally justify the
10 exceptional increase in acreage.

11 The Intervenors contend, "the City has planned for a variety of residential densities
12 and has the ability to control sprawl through zoning and control of water." (Intervenors'
13 Brief, p. 15). Allowing a .5 DU/acre in the new PUD, a 5 DU's/acre overall in the expanded
14 UGA and a historical decrease in the City's overall UGA density, which is predicted to be at
15 2.81 DU's/acre in 2025, is not following the mandate of the GMA by controlling sprawl. The
16 City of Richland has not shown that ability.

17 **Conclusions:**

18 The Board finds that the Petitioners have carried their burden of proof and that the
19 County's action by adopting Resolution 05-057 is clearly erroneous and fails to comply with
20 RCW 36.70A.020(1), RCW 36.70A.020(2) and RCW 36.70A.110.

21 **Issue No. 6:**

22 Does the continued validity of the violations of RCW Title 36.70A (The Growth
23 Management Act), described in numbers 1, 2, 3, and 4, and 5 above, substantially interfere
24 with the fulfillment of the goals of the Growth Management Act such that the enactments
25 should be held invalid pursuant to RCW 36.70A.302?
26

1 **The Parties' Position:**

2 **Petitioner: Bruce Roberts and Marilyn Taylor**

3 The Petitioners have asked the Board to invoke invalidity for Issues No. 1 through 5
4 on the grounds the amendment, Resolution No. 05-057, substantially interferes with the
5 fulfillment of specifically mentioned goals of the Growth Management Act.

6 **Respondent: Benton County**

7 The Respondent, Benton County, contends that Resolution 05-057 is in full
8 compliance with the GMA and the petition should be dismissed. In addition, if the Board
9 finds Resolution 05-057 out of compliance, the Respondent argues there are two remedies
10 to choose from, invalidity and non-compliance. A finding of non-compliance is the
11 presumptive remedy.

12 **Intervenor: Nor Am Development, LLC**

13 The Intervenors contend there is no basis for a finding of non-compliance and the
14 Petitioners have failed to meet their burden of proving the County's actions in approving the
15 UGA were clearly erroneous, thus there is no basis for making a determination of invalidity.

16 **Intervenor: The City of Richland**

17 The City of Richland did not brief this issue.

18 **Board Analysis:**

19 A finding of invalidity may be entered only when a board makes a finding of
20 noncompliance and further includes a "determination, supported by findings of fact and
21 conclusions of law that the continued validity of part or parts of the plan or regulation
22 would substantially interfere with the fulfillment of the goals of this chapter." RCW
23 36.70A.302(1).

24 The Board has held that invalidity should be imposed if continued validity of the non-
25 compliant Comprehensive Plan provisions or development regulations would substantially
26 interfere with the local jurisdiction's ability to engage in GMA-compliant planning.

On the record before us, we find that the continued validity of the violations of RCW
statutes described in the non-compliant Legal Issues #3 and #5 does not substantially

1 interfere with the fulfillment of the goals of the Growth Management Act such that the
2 enactments at issue should be held invalid pursuant to RCW 36.70A.302.

3 **Conclusion:**

4 The Board finds that the Petitioners have not carried their burden of proof that non-
5 compliance with Legal Issues #3 and #5 substantially interfere with the GMA. Their request
6 for Invalidity is therefore denied.

7 **V. FINDINGS OF FACT**

- 8 1. Benton County is a county located East of the crest of the Cascade
9 Mountains and opted to plan under the GMA and is therefore required
10 to plan pursuant to RCW 36.70A.040.
- 11 2. Petitioners are citizens of Benton County that participated in the
12 adoption of Resolution 05-057 in writing and through testimony.
13 Petitioners raised the six legal issues addressed in its Petition for
14 Review to the County in its participation below.
- 15 3. The County adopted Resolution 05-057 on January 31, 2005.
- 16 4. Petitioners filed their petition of Resolution 05-057 on April 1, 2005.
17 Resolution 05-057 amends the Benton County Comprehensive Plan and
18 County Zoning Map to increase the UGA for the City of Richland by
19 3322 acres of land.
- 20 5. According to the OFM high projection and the City of Richland's
21 calculations from the formula in CWPP #4, the City's projected needs in
22 acreage up to 2025 is 2116 acres.
- 23 6. Resolution 05-057 amended the Benton County Comprehensive Plan to
24 include 1206 acres more than necessary to accommodate the OFM
25 projection, a 56% increase above the calculated figure.

26 **VI. CONCLUSIONS OF LAW**

1. This Board has jurisdiction over the parties to this action.
2. This Board has jurisdiction over the subject matter of this action.

3. Petitioners have standing to raise the issues in their Petition for Review.
4. The Petition for Review in this case was timely filed.
5. Resolution 05-057 fails to comply with RCW 36.70A.070(3), RCW 36.70A.070(4), and RCW 36.70A.070(6) in that the resolution fails to use an updated Capital Facilities Element and plan for utilities and transportation facilities in the expanded UGA area.
6. Resolution 05-057 fails to comply with RCW 36.70A.020(1), RCW 36.70A.020(2), RCW 36.70A.110(2) and (3) in that Benton County failed to encourage development in urban areas where adequate public facilities and services exist or can be provided in an efficient manner; failed to reduce sprawl; and failed to adopt a reasonable amended UGA and encourage growth in existing urban areas.

VII. ORDER

1. The Board finds that the Petitioners have carried their burden of proof on Legal Issues #3 and that the County's actions are clearly erroneous and out of compliance in their failure to adequately plan for capital facilities, utilities and transportation in the expanded UGA area.
2. The Board finds that the Petitioners have carried their burden of proof on Legal Issue #5 and that the County's actions are clearly erroneous and out of compliance in their failure to adopt an expanded UGA that is sized appropriately according to OFM population projections and CWPP #4.
3. Benton County must take the appropriate legislative action to bring themselves into compliance with this Order by **January 18, 2006**, **120** days from the date issued. The following schedule for compliance, briefing and hearing shall apply:

Compliance Due	January 18, 2006
Statement of Action Taken to Comply (County to file and serve on all parties)	February 1, 2006
Petitioners' Objections to a Finding of Compliance Due	February 15, 2006

1	County's Response Due	March 1, 2006
2	Petitioners' Optional Reply Brief Due	March 8, 2006
3	Telephonic Compliance Hearing. Parties will call: 360-709-4803 followed by 523195 and the # sign. Ports are reserved for Mr. Roberts, Ms. Taylor, Mr. Brown, Mr. Combs, and Mr. Fearing	March 15, 2006, 10 a.m.

7 If the County takes legislative compliance actions prior to the date set forth in this
8 Order, it may file a motion with the Board requesting an adjustment to this compliance
9 schedule.

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

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

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

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

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

3 **SO ORDERED** this 20th day of September 2005.
4

5 EASTERN WASHINGTON GROWTH MANAGEMENT
6 HEARINGS BOARD

7 _____
8 John Roskelley, Board Member

9 _____
10 Dennis Dellwo, Board Member

11 _____
12 Judy Wall, Board Member
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