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

LOON LAKE PROPERTY OWNERS
ASSOCIATION, LOON LAKE DEFENSE
FUND and WILLIAM & JANICE SHAWL,
LARSON BEACH NEIGHBORS and
JEANIE WAGENMAN

Petitioner,

v.

STEVENS COUNTY,

Respondent.

Case No. 01-1-0002c

ORDER ON RESPONDENT'S MOTION
TO RESCIND ORDER ON
INVALIDITY; ORDER ON MOTION
TO FIND COMPLIANCE; ORDER ON
PETITIONER WAGENMAN'S MOTION
TO TAKE OFFICIAL NOTICE –
MATERIAL FACTS; AND ORDER ON
RESPONDENT'S MOTION TO
STRIKE

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I. PROCEDURAL HISTORY

On January 26, 2001, Loon Lake Property Owners Association, Loon Lake Defense Fund and William and Janice Shawl, (LLPOA) filed a Petition for Review and on January 29, 2001 Larson Beach Neighbors and Jeanie Wagenman (Larson Beach) filed a Petition for Review.

On February 28, 2001, Larson Beach filed an Amendment of Petition for Review.

The petitions were subsequently consolidated in the March 13, 2001, Prehearing Order.

In the Amended Final Decision and Order issued October 26, 2001, the Board found Stevens County in non-compliance on the following issues:

1. Stevens County Titles 4 and 5 are out of compliance with the GMA for its failure to prohibit urban growth outside IUGAs and UGAs in rural

1 areas of the County; for encouraging and allowing urban services such
2 as public sewer in rural areas; failure to follow its Public Participation
3 Policies; and failure to follow its Countywide Planning Policy 8.

4 2. Stevens County is out of compliance with the GMA for its failure to
5 adopt a Comprehensive Plan and development regulations as required
6 by law.

7 3. Steven County is out of compliance with the GMA for its failure to
8 designate and conserve Natural Resource Lands as is required by law.

9 On December 13, 2001, the Board issued its Order on Reconsideration, which
10 declared Titles 4 and 5 invalid.

11 The County provided the Board with a schedule for coming into compliance.

12 On October 23, 2002, the Board received a request from attorney Bruce Erickson for
13 a compliance hearing.

14 On November 8, 2002, the Board held a telephonic compliance hearing. Present were
15 D.E. "Skip" Chilberg, Presiding Officer and Board members Judy Wall and Dennis Dellwo.
16 Present for Petitioners were Jeanie Wagenman, Bruce Erickson, William and Janice Shawl.
17 Present for Respondent was Lloyd Nickel, Stevens County Prosecuting Attorney.

18 After reviewing briefs and hearing arguments from the parties, the Board concluded
19 Stevens County remains in non-compliance on the issues found in our Amended Final
20 Decision and Order dated October 26, 2001.

21 February 12, 2003, The Board held a telephonic compliance hearing.

22 Periodic status conferences have been held. The most recent status conference was
23 held on July 18, 2007. Present were John Roskelley, Presiding Officer, and Board Members
24 Dennis Dellwo and Joyce Mulliken. Present for Petitioners were Jim Davies, Jeanie
25 Wagenman, and William and Janice Shawl. Present for Respondent were Peter Scott and
26 Clay White.

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1 On July 27, 2007, the Board received Respondent's Motion to Rescind Order of
2 Invalidity and Motion for Compliance Hearing.

3 On August 2, 2007, the Board issued its Order Setting Compliance Hearing and
4 Briefing Schedule.

5 On August 3, 2007, the Board received Petitioners' letter requesting a final hard copy
6 of the development regulations, Title 3. On August 6, 2007, the Board requested Stevens
7 County provide all parties the documents pertaining to Title 3.

8 On August 14 and 15, 2007, the Board received Petitioners' briefs on Order
9 Rescinding Invalidity.

10 On August 22, 2007, the Board received Petitioner Wagenman's request for a copy of
11 Title 3.

12 On August 23, 2007, Presiding Officer, John Roskelley directed counsel for
13 Respondent, Stevens County to provide all parties a complete copy of Title 3.

14 On September 5, 2007, the Board received County's Response to Petitioners' Briefs
15 RE: Compliance, County's Objection and Motion to Strike, County's Reply to Petitioners'
16 Briefs RE: Invalidity, and County's Objection to Order Regarding Production of Evidence.

17 On September 11, 2007, the Board received Petitioner LBN & Wagenman Motion
18 Requesting Extension for Briefing Reply on Compliance and letter.

19 On September 12, 2007, the Board's Administrative Officer, Angie Andreas, received
20 a telephone call from Mr. Scott, Stevens County's attorney of record, indicating he has a
21 scheduling conflict with the current telephonic compliance schedule.

22 On September 13, 2007, the Board issued its Order Amending Compliance Hearing
23 and Briefing Schedule.

24 On October 15, 2007, the Board held a telephonic compliance hearing. Present were
25 John Roskelley, Presiding Officer, and Board Members Dennis Dellwo and Joyce Mulliken.

1 Present for Petitioners were Jim Davies, Jeanie Wagenman, and William and Janice Shawl.
2 Present for Respondent were Peter Scott and Clay White.

3 II. DISCUSSION

4 The Eastern Washington Growth Management Hearings Board (Board) issued an
5 Amended Final Decision and Order on October 26, 2001, for Case No. 01-1-0002c, finding
6 Stevens County out of compliance on three issues and specific provisions of Titles 4 & 5
7 invalid. The Respondent, Stevens County, contends it has addressed the compliance issues
8 and the findings made in support of invalidity by adopting a Comprehensive Plan
9 (Resolution No. 59-2006) and implementing Development Regulations (Ordinance No. 2007-
01). The Board will address each motion separately.

10 **Motion to Rescind Invalidity:**

11 The Board made four Findings of Fact in support of their determination of invalidity.
12 They are as follows:

- 13 1. One of the key provisions that substantially interfere with the fulfillment
14 of the goals of the GMA is the minimum lot size of 2.5 acres residential
15 lots in the rural areas of the County. This flies in the face of a major
16 goal of the GMA, reduction of sprawl. (RCW 36.70A.020(2)).
- 17 2. The failure of the County to follow its own Public Participation program
18 and applicable statutes in the passage of Titles 4 and 5 is particularly
19 disquieting. RCW 36.70A.020(11), RCW 36.70A.140 and RCW
20 36.70A.035 all require substantial public participation and a program for
21 such participation be developed to insure the adequacy of that
22 participation. The public participation program that was developed by
23 the County was not used although the Titles were considered the
24 "cornerstone" of the comprehensive plan. Also, Number 8 of the
25 Countywide Planning Policies was not followed. These actions of the

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1 County substantially interfere with the fulfillment of Goal 11 of the
2 GMA.

3 3. The County admits that it has not adopted a comprehensive plan,
4 regulations to designate and conserve Natural Resource Lands and that
5 they are not proceeding in the sequence established by the GMA. By
6 adopting Titles 4 and 5 out of sequence, the Comprehensive Plan
7 policies and direction have not been developed. Establishing minimum
8 lot size at a non-rural size can preclude the adoption of policies in
9 conformity with the Goals of the GMA. These actions of the County
substantially interfere with the fulfillment of Goals 8 and 9 of the GMA.

10 4. Portions of Stevens County are developing more rapidly than other
11 parts, particularly in the south around the lakes and near the large
12 metropolitan area of Spokane. To allow the minimum lot sizes
13 contained in Titles 4 and 5 to stand would forever preclude establishing
14 densities in those rural areas sought.

15 Based on the Findings of Fact listed above, the Board invalidated portions of Titles 4
16 and 5. The Respondent argues: 1.) the County repealed Titles 4 and 5 and adopted its
17 Comprehensive Plan and Development Regulations which eliminated the 2.5 acre zoning
18 and provided for a variety of lot sizes in the rural areas with a maximum density of one
19 residential unit per five acres. Accordingly, the County contends, 1.) the key provisions
20 upon which the finding of substantial interference rests has been repealed and replaced
21 with Growth Management Act (GMA) compliant provisions; 2.) the County's Public
22 Participation Program has been found to be GMA compliant and the public participation
23 issues that contributed to the determination of invalidity have been addressed; 3.) the
County has now adopted a map designating resource lands and are shown on the newly

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1 adopted zoning map; and 4.) the County has repealed the provisions that would allow 2.5-
2 acre zoning.

3 The Petitioners, Bill and Janice Shawl, contend the Board in 2001, looked at the
4 cumulative impact of the County's non-complying actions in deciding to issue its Order of
5 Invalidity. They argue that many public meetings attended by many people, and reams of
6 reports, letters, drafts and input does not mean differences were resolved. Petitioner's Bill
7 and Janice Shawl contend rezoning the Loon Lake watershed and allowing five-acre
8 minimum parcels does not protect the watershed and rural areas, especially the two largest
9 remaining wetlands on Loon Lake. They also argue the sub-area plan for Loon Lake needs
10 to be in place prior to the rezoning of the area to protect the rural lands and watershed.
11 They request the Order of Invalidity remain in effect until the Loon Lake sub-area plan is
formally adopted.

12 Petitioner Jim Davies, representing the Loon Lake Property Owners Association and
13 Loon Lake Defense Fund, argues the new zoning still does not protect the Loon Lake
14 watershed from contaminates and degradation and does not meet the goals of the GMA.
15 Mr. Davies contends five-acre development will not protect the lake or the groundwater
16 recharge areas. His brief details the science his group has provided in support of larger
17 parcels in the Loon Lake watershed.

18 Petitioner Jeanie Wagenman, representing herself and Larson Beach Neighbors,
19 argues if portions of the County's Comprehensive Plan were found out of compliance, as
20 was decided in Case No. 06-1-0009c, and failed to protect rural character, critical areas,
21 water quality and water quantity, then Title 3, the County's development regulations, would
22 fail also. Petitioner, Wagenman contends the County has "dragged their feet" in complying
23 with the Board's Order and still allows urban growth in the rural areas. Response to
24 Respondent's Motion to Rescind Order of Invalidity at 14. Petitioner, Wagenman provides
four examples of increased density on lots in the rural area around Loon Lake where the

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1 applicants were given administrative approvals for reduced buffer widths or an increase in
2 density. In addition, Petitioner, Wagenman argues the County's Title 3 allows accessory
3 dwelling units for each parcel, has bonus clusters, temporary dwelling uses, which all lead
4 to urban-type uses in Rural Lands and Natural Resource Lands. The County also fails to stop
5 extension of sewer systems into the Rural and Natural Resource Lands. These uses are
6 claimed to substantially interfere with the Goals of the Act.

7 The Respondent, in response to the Petitioners arguments, contends review of a
8 determination of invalidity is not an opportunity to consider Title 3 in its entirety. The GMA
9 provides a separate statutory process for petitioners to seek review of Title 3. The
10 Respondent addresses each Petitioner's argument and concludes that many of their
11 arguments are not before this Board or are unsupported by the record. The Respondent
12 contends Ms. Wagenman wants the Board to review Title 3 without filing a petition for
13 review. Many of her issues are not before this Board as it determines whether or not to
14 rescind invalidity.

15 The Respondent, Stevens County, by motion, has asked to Board to rescind the
16 Board's determination of invalidity. Under RCW 36.70A.302(6), the Board "shall
17 expeditiously schedule a hearing on the motion", which was done on October 15, 2007. The
18 Parties involved either presented information to the Board in support of rescinding the
19 determination of invalidity or in support of maintaining the determination. Under RCW
20 36.70A.302(7)(a), the Board shall modify, or rescind the determination of invalidity if it
21 determines under the standard in subsection (1) of this section that the plan or regulation,
22 as amended or, in this case, where regulations are repealed and a new plan and
23 implementing development regulations are adopted, will no longer substantially interfere
24 with the fulfillment of the goals of this chapter. Board's emphasis. The County bears the
25 burden of "demonstrating that the legislation it has enacted in response to the

1 determination of invalidity will no longer substantially interfere with the fulfillment of the
2 goals of the act". WAC-242-02-632(2).

3 The Board finds the Respondent, Stevens County, has carried its burden of proof and
4 removed the basis for invalidity so that it no longer "substantially interferes with the goals
5 of the act" by repealing Titles 4 and 5 and adopting its Comprehensive Plan (Resolution No.
6 59-2006) and Title 3, Development Regulations (Ordinance No. 2007-01). WAC 242-02-894.
7 In doing so, the County repealed the 2.5-acre zoning; complied with the public participation
8 process; designated and mapped Natural Resource Lands, and adopted a comprehensive
9 plan and development regulations, which were the basis of the Board's Findings of Fact.
10 This finding by the Board is not to say it agrees or disagrees with the substance or adopted
11 regulations of the County's Comprehensive Plan and/or Title 3, Development Regulations,
12 only that the County has fulfilled its obligation under WAC 242-02-894.

Motion Seeking Compliance:

13 The Board found Stevens County in non-compliance on three issues. They are as
14 follows:

- 15 1. Stevens County Titles 4 and 5 are out of compliance with the GMA for
16 its failure to prohibit urban growth outside IUGAs and UGAs in rural
17 areas of the County; for encouraging and allowing urban services such
18 as public sewer in rural areas; failure to follow its Public Participation
19 Policies; and failure to follow its Countywide Planning Policy 8.
- 20 2. Stevens County is out of compliance with the GMA for its failure to
21 adopt a Comprehensive Plan and development regulations as required
22 by law.
- 23 3. Steven County is out of compliance with the GMA for its failure to
24 designate and conserve Natural Resource Lands as is required by law.

25 The Petitioners, Shaws and Davies, did not specifically address the non-compliance
26 issues, but their arguments concerning invalidity do carry over and address portions of

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1 these issues. Ms. Wagenman, on the other hand, specifically requests the Board to accept
2 her previous brief of August 15, 2007, and her September 25, 2007, brief as arguments
3 pertaining to compliance and invalidity. The Board does so. Ms. Wagenman's briefs are
4 outlined in the invalidity section above and include discussions on development of non-rural
5 densities in Title 3 by allowing accessory dwelling units, temporary housing units, clustering
6 development and bonus densities, and allowing urban services, such as public sewer, all
7 without specific criteria to control increased density. The Petitioner also contends the
8 County fails to control urban uses in the rural areas, and densities in LAMIRDs and Natural
9 Resource Lands.

10 The Respondent argues the County has taken the following actions to come into
11 compliance: 1.) repealed Titles 4 and 5; 2.) adopted a Comprehensive Plan and
12 implementing development regulations (Title 3); 3.) rigorously followed its public
13 participation policy and exceeded the requirements of the GMA to ensure proper notice and
14 participation; 4.) designated resource lands in the Comprehensive Plan; 5.) included
15 measures to conserve resource lands that were adopted as part of Title 3; and 6.) claim
16 under Title 3 and the Comprehensive Plan that urban services are not permitted in
17 designated rural areas.

18 The Petitioners bear the burden of proof of showing continuing non-compliance.
19 WAC 242-02-632(1) states that "[E]xcept as provided in subsection (2) of this section, the
20 burden of proof shall be on the petitioner to show that respondent's action or failure to act
21 is not in compliance with the requirements of the act".

22 The Board will address each compliance issue separately.

23 **Issue No. 1:**

24 Under Issue No. 1, the Board found the County in non-compliance for failing to
25 prohibit urban growth outside its IUGAs and UGAs and in the rural areas when it adopted
26 Titles 4 and 5; for encouraging and allowing urban services such as public sewer in rural

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1 areas; for failure to follow its Public Participation Policies; and for failure to follow its
2 Countywide Planning Policy 8.

3 The Petitioners agree the County has repealed Titles 4 and 5 and eliminated the 2.5-
4 acre zoning, but argue Title 3 allows accessory dwelling units, cluster development,
5 temporary housing and bonus densities that increase or even double the density in the
6 overlying five, ten and twenty-acre zones and the County's criteria for them are not
7 sufficient enough to prevent urban-like growth.

8 As per WAC 242-02-893(2), "[T]he evidence in a compliance hearing shall consist of
9 the exhibits cited in the briefs..." Submitted to the Board as evidence in this case were
10 Stevens County's recently adopted Title 3, implementing development regulations, and
11 Ordinance No. 2007-01 repealing Titles 4 and 5. The question for the Board is did the
12 County's action prohibit urban growth outside IUGAs and UGAs, and in the rural areas?

12 **Accessory Dwelling Units:**

13 All three Hearings Boards have discouraged detached accessory dwelling unit
14 provisions without specific criteria to curtail indiscriminate increased density. The Central
15 Board opined in *Friends of San Juans, et al. v. San Juan County*, that detached accessory
16 dwelling units are separate dwelling units, then determined detached units fail to prevent
17 urban sprawl:

18 A freestanding ADU is a separate dwelling unit and has all the structural
19 characteristics of a dwelling unit, whether it is owned by the owner of a
20 principal residence or not. *Friends of the San Juans, Lynn Bahrych, and Joe
Symons v. San Juan County*, Case No. 03-3-0003 Corrected Final Decision and
Order, April 17, 2003.

21 To allow a freestanding accessory dwelling unit on every single-family lot
22 without regard to the underlying density in rural residential districts, including
23 shoreline rural residential districts, fails to prevent urban sprawl, contain rural
24 development, and, instead, allows growth which is urban in nature outside of
an urban growth area. These sections do not comply with RCW 36.70A.020(2)
and RCW 36.70A.110(1) and are clearly erroneous. *Friends of the San Juans*,

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1 *Lynn Bahrych, and Joe Symons v. San Juan County*, 03-3-0003 Corrected Final
2 Decision and Order, April 17, 2003.

3 The Respondent contends Petitioner Wagenman argued only against detached
4 accessory dwelling units and the subsequent density increase, but not attached dwelling
5 units. Respondent's Reply Compliance brief at 3. The Western Board determined that
6 attached accessory dwelling units do not increase density of structures, so need not be
7 counted as separate dwelling units, which would increase population density. In *Yanisch v.*
8 *Lewis County* they opined:

9 Attached or internal accessory dwelling units do not increase the density of
10 structures on a parcel of property and therefore need not be counted as
11 separate dwelling units in determining residential dwelling densities in rural
12 zones. *Yanisch v. Lewis County*, Case No. 02-2-0007c Order on Compliance
13 Hearing, March 12, 2004.

14 Under Stevens County's Title 3, 3.06.010 Accessory Dwelling Units, detached
15 accessory dwelling units are "...permitted in the Residential, Rural Area, Rural Agriculture,
16 Urban Reserve, Agriculture, Forest, and MPR zoning classifications subject to the criteria in
17 this section." The criteria under Section B. are as follows:

18 B. Criteria:

- 19 1. Only one accessory dwelling unit, attached or detached, shall be
20 allowed per parcel. Provided that a detached unit shall not be permitted
21 within the R, CR, and RC zoning classification;
- 22 2. The owner of the property shall reside in the primary residence or the
23 accessory dwelling unit;
- 24 3. The accessory dwelling unit shall not exceed 1000 square feet;
- 25 4. If detached, the accessory unit shall be located within 200 feet of the
26 primary residence or shall be the permitted conversion of an existing
detached structure;

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- 5. Setback requirements for the applicable zoning classification shall apply;
- 6. The accessory dwelling unit shall meet all applicable standards for water and sewage disposal;
- 7. Accessory units shall use the same vehicle access as the primary residence;
- 8. Recreational vehicles shall not be used as accessory dwelling units;
- 9. An Accessory dwelling unit shall not be allowed on parcels under one acre in size.

As per the criteria above, Stevens County allows one detached accessory dwelling unit in the Rural Area, Rural Agriculture, Urban Reserve, Agriculture, Forest and MPR zones on a per parcel basis. One of the Rural Area zones is RA-5, the five-acre designated zone. Contrary to the Respondent’s position in their brief and testimony at the hearing, there is no criterion that limits the number of housing units to the underlying zoning. Accessory dwelling units, as defined by Title 3, can essentially double the density in the rural areas, increasing number of wells and septic systems, which urbanizes the rural area.

Furthermore, the criterion listed above allows one accessory dwelling unit per parcel, not per five-acre lot. Underlined words are Board emphasis. There can be a number of parcels in a lot, which has the potential to increase the density in the underlying zone considerably.

The Western Board in *Friday Harbor v. San Juan County* considered the impact of a “guesthouse” or accessory dwelling unit allowed in designated rural lands without any analysis:

Allowance of a second “guesthouse” as an ADU on every SFR lot in designated rural lands and/or RLs without any analysis of the density impact substantially

1 interferes with the goals of the Act and is determined to be invalid. *Friday*
2 *Harbor v. San Juan County*, Case No. 99-2-0010c, MO (Nov. 30, 2000).

3 The Respondent argues Ms. Wagenman "has failed to show the County committed
4 clear error by allowing ADU's, subject to applicable density requirements." The Board
5 disagrees. Clearly, 3.06.010 allows increased density, thus urban-like growth within the
6 rural areas.

7 **Clustering and Bonus Density:**

8 Clustering provisions and bonus densities are permitted by the GMA, but under
9 established criteria that prevents urban-like development in the rural and agricultural areas.
10 Stevens County's Title 3, Section 3.06.040, Cluster Development, gives the criteria for
11 allowing clustering and bonus density. Clustering is allowed in Rural-5, Rural-10 and Rural-
12 20, Rural Agriculture-10 and 20, Agriculture, and Forest zones. Bonus density is available in
13 the Rural-10, Rural-20, Rural Agriculture-20, Urban Reserve and Agriculture. There are no
14 limitations on the number of clustered lots per site or the number of clusters in a given
15 area. Conceivably, by using clustering and bonus density to develop a large tract of rural
land, a small city needing urban services could be created.

16 The Hearings Boards acknowledge that clustering is an allowed innovative zoning
17 technique. (RCW 36.70A.090 and 177). If limited in scope, clustering and bonus density
18 provisions are methods to retain open space and rural nature. If not limited, urban-like
19 development can occur in the rural areas.

20 It is clear that density bonuses and cluster development [in the rural area] are
21 permitted under the Act, but they are limited to the extent they "will
22 accommodate *appropriate rural densities* and uses that are *not characterized*
23 *by urban growth* and that are *consistent with rural character*." RCW
24 36.70A.070(5)(b). [The Board found that the lack of environmental review and
development regulations as well as the ambiguity in the policies themselves
25 did not address whether the rural character would be preserved and urban
26 growth prevented in the rural area.] *City of Bremerton et al., v. Kitsap County,*
et al. Case No. 04-3-009c, Final Decision and Order (Aug. 9, 2004).

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2 The Eastern Board found that clustering is not appropriate in certain zones without
3 specific provisions to protect the rural and agriculture zoning and to prevent urban-like
4 development. Stevens County allows clustering in the agriculture and forest zones.

5 Clustering is only appropriate for lands not designated for agriculture, forest,
6 or mineral resources. *Wenatchee Valley Mall Partnership, et al. v. Douglas*
County, EWGMHB 96-1-0009, Final Decision and Order (Dec. 10, 1996).

7 The Western Board addressed allowing unlimited clustering in *Butler v.*
8 *Lewis County* and bonus density in *Dawes v. Mason County*.

9
10 The allowance of unlimited clustering does not comply with the Act when its
11 purpose is to assure greater densities in rural and resource areas and not to
12 conserve RLs and open space. When allowable clustering results in urban, and
13 not rural, growth it substantially interferes with the goals of the Act. *Butler v.*
Lewis County, WWGMHB 99-2-0027c (Final Decision and Order, 6-30-00)

14 The use of bonus densities along with a failure to limit the number of
15 clustering lots allows non-rural densities in rural areas at a magnitude that
16 demands urban services. *Dawes v. Mason County*, WWGMHB 96-2-0023,
Compliance Order (Jan. 14, 1999).

17 The Western Board also found fault with clustering in the agriculture zone, if certain
18 provisions are not put in place by the county:

19 An agricultural cluster provision which permits urban growth in designated RL
20 areas, does not severely limit the total number of dwelling units and densities
21 and allows a significant percentage of the agricultural land to be converted
22 into residential use did not comply with the GMA. *Hudson v. Clallam County*,
23 WWGMHB 96-2-0031, Final Decision and Order, (April 15, 1997).

1 The Board agrees with Petitioner Wagenman. Additional provisions or criteria must
2 be put in place to prevent urban growth in the rural and agricultural areas through
3 clustering and bonus density.

4 **Temporary Use Structures:**

5 Title 3 at 3.06.070 Temporary Uses, allows temporary use structures in all zones.
6 This is a common practice for all jurisdictions. The Petitioner is concerned the structures will
7 become permanent. According to the 3.06.070, this is not allowed. The Board finds this
8 section in compliance.

9 **Density on Lots Larger Than 20 Acres:**

10 This part of the issue was abandoned by the Petitioner Wagenman.

11 **Urban Services in the Rural Areas:**

12 A sewer system is an urban governmental service by definition and is not to be
13 "...extended to or expanded in rural areas except in those limited circumstances shown to
14 be necessary to protect basic health and safety and the environment and when such
15 services are financially supportable at rural densities and do not permit urban
16 development." RCW 36.70A.110(4). Again, by definition, "[R]ural services do not include
17 storm or sanitary sewers, except as otherwise authorized by RCW 36.70A.110(4)." RCW
18 36.70A.030(17).

19 Stevens County authorizes the extension of sewer and water facilities through a
20 conditional use permit in all zones. A conditional use is permitted only after "public" review,
21 and to which "special" conditions may be attached, but the Board could find no mention of
22 RCW 36.70A.110(4), which would restrict the authorization of these permits to the GMA
23 requirements. In other words, the extension of sewer facilities could be granted in any zone
24 by the Director or Hearings Examiner through conditional use without the prerequisite and
25 requirement to protect basic health and safety and the environment.

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1 The Board finds the County out of compliance in this regard. The County's
2 regulations as written fall short of preventing the extension of an urban service, sewer
3 facilities, into the rural and agriculture areas.

4 **Urban Uses and Densities in LAMIRDs and Natural Resource Lands:**

5 Multi-family, mobile home parks and multiple-unit condominiums are urban-like
6 development and should have urban governmental services. The County, under Title 3,
7 authorizes these units and parks subject to density limits within the underlying zone.
8 Without further briefing, the Board cannot determine if these uses are appropriate in the
9 rural zones. This issue is being challenged in EWGMHB Case No. 07-1-0013 and the Board
10 will determine the appropriateness of these uses there.

11 Essential public facilities, such as correctional facilities, landfills, colleges, stadiums
12 and other facilities are difficult for jurisdictions to site and are specifically authorized under
13 RCW 36.70A.200. Most, if not all, of the essential public facilities mentioned in Title 3 under
14 3.03.080 are authorized by conditional use only and are allowed to be placed in the rural
15 and agriculture zones if necessary. Critical areas, natural resource lands and water
16 resources are protected by Stevens County Title 13 and the County should follow
17 Countywide Policy #3 when siting essential public facilities.

18 The Respondent, Stevens County, is in the process of amending its LAMIRD
19 designations to comply with the Board's decision in Case No. 06-1-0009c and no further
20 action on this issue will be taken at this time.

21 The Board finds Stevens County's Public Participation program in compliance with the
22 GMA and Countywide Policy #8, Policies Relating to Public Education and Citizen
23 Participation.
24
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1 **Issue No. 2:**

2 Stevens County has adopted its Comprehensive Plan and implementing Development
3 Regulations as requested by the Board under Issue No. 2. The County is no longer out of
4 compliance on this issue.

5 **Issue No. 3:**

6 Under Issue No. 3, Stevens County was found out of compliance for failure to
7 designate and conserve Natural Resource Lands as required by law. Petitioner, Wagenman
8 argues that accessory dwelling units, clustering and allowing bonus density do not conserve
9 natural resource lands. These arguments were responded to under Issue No. 1.

10 The Board finds the County has designated natural resource lands, but as explained
11 under Issue No. 1, the Board has determined the County fails to protect the rural areas and
12 natural resource areas under sections 3.06.010, 3.06.040 and for not restricting urban
13 services to urban areas. The County is no longer out of compliance on the designation of
14 natural resource lands, but is still found out of compliance for failing to protect the rural
15 areas and natural resource areas and for not restricting urban services to urban areas.

16 **PETITIONER WAGENMAN’S MOTION TO TAKE OFFICIAL NOTICE – MATERIAL
17 FACTS; RESPONDENT’S MOTION TO STRIKE:**

18 The Petitioner, Jeanie Wagenman, filed a Motion to Take Official Notice, and
19 submitted additional information to the Board. The Respondent, Stevens County, filed an
20 objection and a Motion to Strike.

21 Under WAC 242-02-670(4), a board or presiding officer, upon request made before
22 or during a hearing, may officially notice material fact and may take official notice of a
23 material fact on its own initiative. The Board takes official notice of Ms. Wagenman's
24 material as per WAC 242-02-670(4) and denies the Respondent's Motion to Strike.

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1 **II. FINDINGS OF FACT**

- 2 1. Stevens County is a county located east of the crest of the Cascade
3 Mountains and is required to plan pursuant to RCW 36.70A.040.
- 4 2. The Petitioners are citizens of Stevens County and participated in the
5 adoption of Stevens County's Title 4 and 5, the County's
6 Comprehensive Plan (Resolution No. 59-2006), and implementing
7 Development Regulations (Ordinance No. 2007-01).
- 8 3. Stevens County adopted Ordinance No. 2007-01, Title 3, on July 2,
9 2007.
- 10 4. The Petitioners filed their petitions on January 26, 2001, and January
11 29, 2001.
- 12 5. The Board finds the Respondent, Stevens County, has carried its
13 burden of proof and removed the basis for invalidity. The County no
14 longer "substantially interferes with the goals of the act" because it
15 repealed Titles 4 and 5 and adopted its Comprehensive Plan
16 (Resolution No. 59-2006) and Title 3, Development Regulations
17 (Ordinance No. 2007-01). WAC 242-02-894.
- 18 6. The Board finds Stevens County under Issue No. 1 failed to prohibit
19 urban growth outside UGAs by allowing accessory dwelling units,
20 clustering and bonus density in rural and agricultural zones without
21 provisions or criteria to prevent urban densities; and failed to prohibit
22 urban services, specifically sewage services, in the rural areas. Stevens
23 County is in compliance with its Public Participation Plan and
24 Countywide Planning Policy #8.
- 25 7. The Board finds Stevens County in compliance on Issue No. 2.

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1 8. The Board finds Stevens County is in compliance in part, with the GMA
2 by designating natural resource lands, but finds the County out of
3 compliance for failing to conserve Natural Resource Lands as is
4 required by law due to Finding of Fact #6.

5 9. The Board takes official notice of Petitioner Wagenman's supplemental
6 material and denies the Respondent's Motion to Strike.

7 **III. CONCLUSIONS OF LAW**

- 8 1. The Board has jurisdiction over the parties to the motion.
9 2. This Board has jurisdiction over the subject matter of this action.
10 3. Stevens County is required to come into compliance with the Board's
11 Final Decision and Order.
12 4. Stevens County addressed the four Invalidity Findings of Fact by
13 adopting its Comprehensive Plan and implementing Development
14 Regulations (Title 3), and repealing Titles 4 and 5.
15 5. Stevens County is in compliance with Issue No. 2 by following its Public
16 Participation Plan and Countywide Planning Policy #8.
17 6. Stevens County is found in non-compliance with portions of Issue Nos.
18 1 and 3 for failure to adopt provisions or criteria that protect the rural
19 and agriculture zones from urban-like development, and for failure to
20 protect natural resource lands from urban-like development.

21 **IV. ORDER**

- 22 1. The Board removes their finding of invalidity.
23 2. Under Issue No. 1, the Petitioners have carried their burden of proof
24 and have shown the actions of the County are clearly erroneous in its
25 failure to protect the rural and agriculture zones from urban-like
26 development, specifically the sections in Title 3 pertaining to accessory

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1 dwelling units, clustering provisions and bonus density, and
2 authorization of urban services, such as sewer, by conditional permit
3 into the rural and agriculture zones.

- 4 3. The Board does not find the County out of compliance on Issue No. 2.
- 5 4. Under Issue No. 3, the Board finds the County in compliance for
6 designating natural resource lands, but finds the Petitioners have
7 carried their burden of proof and have shown the actions of the County
8 are clearly erroneous in its failure to conserve natural resource lands as
9 argued under Issue No. 1.
- 10 5. Stevens County must take the appropriate legislative action to bring
11 itself into compliance with this Order by **April 21, 2008, 180 days**
12 from the date issued. The following schedule for compliance, briefing
13 and hearing shall apply:

- 14 • The County shall file with the Board by **April 28, 2008, an original
15 and four copies** of a Statement of Actions Taken to Comply (SATC)
16 with the GMA, as interpreted and set forth in this Order. The SATC shall
17 attach copies of legislation enacted in order to comply. The County
18 shall simultaneously serve a copy of the SATC, with attachments, on
19 the parties. **By this same date, the County shall file a
20 "Remanded Index," listing the procedures and materials
21 considered in taking the remand action.**
- 22 • By no later than **May 12, 2008**, Petitioners shall file with the Board an
23 **original and four copies** of Comments and legal arguments on the
24 County's SATC. Petitioners shall simultaneously serve a copy of their
25 Comments and legal arguments on the parties.
- 26 • By no later than **May 26, 2008**, the County shall file with the Board an
original and four copies of their Response to Comments and legal
arguments. The County shall simultaneously serve a copy of such on
the parties.

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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 25th day of October 2007.

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HEARINGS BOARD

John Roskelley, Board Member

Dennis Dellwo, Board Member

Joyce Mulliken, Board Member