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

WILMA et al.,

Petitioners,

v.

STEVENS COUNTY,

Respondent.

Case No. 06-1-0009c

FINAL DECISION AND ORDER

I. SYNOPSIS

The Petitioners, Sandra Wilma, et al. and Jeanie Wagenman, et al. filed two petitions raising twenty-three issues in regards to the Stevens County's Comprehensive Plan, Resolution #59-2006, adopted by the Stevens County Board of County Commissioners (BOCC). Respondent, Stevens County (County), and amicus parties, Stevens County Public Utility District (PUD) and Washington State Community, Trade and Economic Development (CTED), believe the petitions or, in the case of the amicus parties, portions thereof, are without merit and should be dismissed.

The County adopted the Stevens County Comprehensive Plan (CP) by Resolution #59-2006 on July 13, 2006. Three separate and distinct petitions were filed challenging various portions of the CP. The Eastern Washington Growth Management Hearings Board (Board) consolidated the three petitions into one petition under Case No. 06-1-0009c. At a motion hearing on November 27, 2006, the Board dismissed Mr. James Davies' petition containing three issues, which left nineteen issues. They are summarized in the following paragraph.

1 The Petitioners contend in their arguments that the County failed to follow its own
2 Public Participation Plan (PPP) as required by RCW 36.70A.140 and the County's
3 Countywide Planning Policies (CWPP); failed to comply with RCW 36.70A.110(1) and (3) by
4 adopting unincorporated UGAs; failed to follow RCW 36.70A.210(1) by not following the
5 County's CWPPs; failed to follow RCW 36.70A.110(2) by not establishing open space and
6 greenbelts in the new UGAs; failed to meet the requirements of RCW 36.70A.070(5)(d)(iv)
7 by not establishing properly-sized limited areas of more intense development (LAMIRDs);
8 failed to comply with RCW 36.70A.370(2) by violating private property rights; failed to
9 follow RCW 36.70A.070(2) by not including the housing element mandatory requirements;
10 failed to comply with RCW 36.70A.070A(3) and adopt a compliant capital facilities plan;
11 failed to meet the requirements of RCW 36.70.070(5) and RCW 36.70A.110 to protect the
12 rural character and correctly size the County's new LAMIRDs; failed to comply with RCW
13 36.70A.070(1) by not providing for the protection of quality and quantity of ground water;
14 failed to meet the requirements of RCW 43.21C and adopt a compliant environmental
15 impact statement (EIS); failed to comply with RCW 36.70A.160 to include greenbelts and
16 open space in the new UGAs; failed to comply with RCW 36.70A.110(1) and (2) for not
17 prohibiting growth outside the UGAs; and failed to meet the requirements of RCW
18 36.70A.110(4) for not restricting urban services to urban areas.

17 The Respondent and the two amicus parties argued that the County's CP is a result
18 of many years of hard work and public participation. They claim it's a balanced document
19 that reflects the rural nature of Stevens County, protects the citizen's private property rights
20 and takes into consideration the broad discretion granted to local governments under the
21 GMA. They believe the Petitioners issues are overly broad and have forced the County to
22 produce numerous documents unrelated to the CP. Their arguments of the issues are varied
23 and concise.

24 The Board studied the issues as presented and determined from the parties'
25 arguments, the record, past Hearings Boards' decisions, case law, and the requirements set
26 forth in the Growth Management Act (GMA), whether the County complied with RCW

1 36.70A. Rather than reiterate the Board's analysis for every issue here in the synopsis, only
2 a summary of the conclusions will be given.

3 The Board finds that the Petitioners failed to carry their burden of proof in the
4 following issues: No. 1 (public participation), No. 4 (formation of new UGAs), No. 6 (Loon
5 Lake LAMIRD), No. 7 (private property rights), No. 8 (housing element), No. 10 (public
6 participation), No. 14 (public participation), No. 16 (urban services), and No. 23 (EIS).

7 The Board finds that the Petitioners carried their burden of proof in the following
8 issues: No.2 (urban growth areas); No. 5 (greenbelts and open spaces); No. 9 (capital
9 facilities plan); No. 15 (capital facilities plan); No.17 (concurrency); No. 18 (quantity and
10 quality of groundwater); No. 19 (land quantity analysis); No. 20 (greenbelts and open
11 space); No. 21 (rural character); and No. 22 (urban reserve designation).

12 Issue Nos. 12, 13 and 14 were dismissed by motion and the Board deemed Issue No.
13 3 abandoned.

14 **II. PROCEDURAL HISTORY**

15 On September 8, 2006, SAUNDRA WILMA and ROBERT BERGER, filed a Petition for
16 Review.

17 On September 11, 2006, JAMES DAVIES and LARSON BEACH NEIGHBORS and
18 JEANIE WAGENMAN, filed Petitions for Review.

19 On October 10, 2006, the Board held a telephonic Prehearing conference for Case
20 Nos. 06-1-0007, 06-1-0008, and 06-1-0009 collectively. Present were, John Roskelley,
21 Acting Presiding Officer, Board Members Judy Wall and Dennis Dellwo were unavailable.
22 Present for Petitioners were Sandra Wilma, Robert Berger, James Davies, and Jeanie
23 Wagenman. Present for Respondent was Peter Scott.

24 The Board at the Prehearing conference consolidated Case Nos. 06-1-0007-06-1-
25 0009. The new Case Name and Number is as follows and shall be captioned accordingly:
26 WILMA et al. v. STEVENS COUNTY, 06-1-0009c. The acting Presiding Officer instructed the
Petitioners to consolidate the issues and provide the Board and Respondent with copies of
consolidated issues by October 16, 2006. The Petitioners advised they were unable to meet

1 the October 16, 2006, deadline for submitting the proposed consolidated issues and would
2 provide the Board and Respondent the issues as soon as possible.

3 On October 24, 2006, the Board received the proposed consolidated issues.

4 On October 25, 2006, the Board asked the Respondent to advise the Board if it
5 objected to the rewritten issues. Mr. Scott on October 31, 2006, filed with the Board
6 Respondent's Objection and Motion for Extension.

7 On October 31, 2006, the Board received Petitioners' Motion to Supplement the
8 Record.

9 On November 1, 2006, the Board issued its Prehearing Order.

10 On November 8, the Board received Respondent's Motion to Dismiss Issue Nos. 11,
11 12, and 13, filed by Petitioner James Davies.

12 On November 15, 2006 the Board received from Petitioner James Davies, Response
13 to Motion to Dismiss, Respondent Stevens County's Response to Motion to Supplement the
14 Record, and Request for Extension.

15 On November 20, 2006, the Board received Respondent's Reply in Support of Motion
16 to Dismiss and Response to Petitioners' Request for Extension.

17 On November 27, 2006, the Board received Larson Beach Neighbors & Jeanie
18 Wagenman's Response to Stevens County's Response to Motion to Supplement Record.

19 On November 27, 2006, the Board held the telephonic motion hearing. Present were,
20 John Roskelley, Presiding Officer, and Board Members Dennis Dellwo and Joyce Mulliken.
21 Present for Petitioners were, Sandra Wilma, James Davies, Larson Beach Neighbors, &
22 Jeanie Wagenman. Present for Respondent was Peter Scott, Clay White, and the Stevens
23 County Board of County Commissioners.

24 On December 4, 2006, the Board received from Jeanie Wagenman, a Motion to
25 Intervene.

26 On December 4, 2006, the Board issued its Order on Motions.

1 On December 18, 2006, the Board received from Stevens County's PUD No. 1 a
2 Request for Permission to File a Motion After the Date Set Forth in the Prehearing Order;
3 and Motion to File Amicus Curiae Brief.

4 On December 18, 2006, the Board received from Stevens County Response to
5 Petitioner Wagenman's Motion to Intervene.

6 On December 20, 2006, the Board issued its Order on Motion to File Amicus Brief.

7 On December 29, 2006, the Board received Petitioners' Wilma et al. Response to
8 Stevens County P.U.D. Request to File Late Motion and Response to PUD Motion to File
9 Amicus Curiae Brief.

10 On January 3, 2007, the Board received CTED's Request for Permission to File a
11 Motion After the Date Set Forth in the Prehearing Order and Motion to File Amicus Brief.

12 On January 4, 2007, the Board issued its Order on Stevens County PUD's Motion to
13 File Amicus Curiae Brief.

14 On January 11, 2007, the Board received Petitioners Larson Beach Neighbors and
15 Jeanie Wagenman's letter expressing concern over CTED's involvement in this matter.

16 On January 12, 2007, the Board issued its Order on CTED's Motion to File Amicus
17 Curiae Brief.

18 On January 31, 2007, the Board received Petitioner Larson Beach Neighbors and
19 Jeanie Wagenman's Motion to File a Motion, a Motion to File an Extended Reply Brief, and
20 Motion Requesting the Eastern Washington Growth Management Hearings Board
21 (EWGMHB) ask for a complete CD record.

22 On February 5, 2007, the Board issued its Order on Petitioners' Motion to File a
23 Motion, Motion to File an Extended Reply Brief, and Motion for Complete CD Record.

24 On February 7, 2007, the Board held the hearing on the merits. Present were, John
25 Roskelley, Presiding Officer, and Board Member Dennis Dellwo. Board Member Joyce
26 Mulliken was unavailable. Present for Petitioners were, Sandra Wilma, Robert Berger,
Larson Beach Neighbors, & Jeanie Wagenman. Present for Respondent was Peter Scott.
Present for Stevens County P.U.D., amicus party, was Brian Wurst.

1 On February 12, 2007, the Board received Petitioners Larson Beach Neighbors and
2 Jeanie Wagenman's Re-Submitted Hearing on the Merits Reply Brief.

3 On February 14, 2007, the Board received Respondent's Motion to Reconsider Order
4 and Strike Portions of Petitioners' Reply Brief.

5 On February 15, 2007, the Board issued its Order on Respondent's Motion for
6 Reconsideration.

7 **III. PRESUMPTION OF VALIDITY, BURDEN OF PROOF AND STANDARD OF**
8 **REVIEW**

9 Comprehensive plans and development regulations (and amendments thereto)
10 adopted pursuant to Growth Management Act ("GMA" or "Act") are presumed valid upon
11 adoption by the local government. RCW 36.70A.320. The burden is on the Petitioners to
12 demonstrate that any action taken by the respondent jurisdiction is not in compliance with
13 the Act. The Board ". . . shall find compliance unless it determines that the action by the .
14 . . County. . . is clearly erroneous in view of the entire record before the Board and in light
15 of the goals and requirements of [Growth Management Act]." RCW 36.70A.320. To find an
16 action clearly erroneous, the Board must be ". . . left with the firm and definite conviction
17 that a mistake has been committed." *Department of Ecology v. Central Puget Sound*
18 *Growth Management Hearings Board*, 142 Wn.2d 543, 552, 14 P.3d 133 (2000).

19 The Hearings Board will grant deference to counties and cities in how they plan
20 under Growth Management Act (GMA). RCW 36.70A.3201. But, as the Court has stated,
21 "local discretion is bounded, however, by the goals and requirements of the GMA." *King*
22 *County v. Central Puget Sound Growth Management Hearings Board*, 142 Wn.2d 543, 561,
23 14 P.2d 133 (2000). It has been further recognized that "[c]onsistent with *King County*, and
24 notwithstanding the 'deference' language of RCW 36.70A.3201, the Board acts properly
25 when it foregoes deference to a . . . plan that is not 'consistent with the requirements and
26 goals of the GMA." *Thurston County v. Cooper Point Association*, 108 Wn. App. 429, 444, 31
P.3d 28 (2001).

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

3 **IV. ISSUES AND DISCUSSION**

4 **Issue No. 1:**

5 Legal Issue #1 contains issues relating to Public Participation in passing Resolution
6 59-2006, The Comprehensive Plan (CP). Did one hearing in front of the County
7 Commissioners on the final draft of the CP and one Commissioner hearing in which
8 testimony was limited to changes made to the draft of the Stevens County CP, meet the
9 requirements of RCW 36.70A.140, including but not limited to the following; "early and
10 continuous public participation in the development and amendment of comprehensive
11 plans"; "opportunity for open discussion"; and "public meetings after effective notice".
12 Furthermore, did these two hearings which allowed no open discussion, or public questions
13 and answers from the public to the commissioners, meet the goals and the "spirit of the
14 Act" referred to in RCW 37.70A.020(11) and RCW 36.70A.140, and Countywide Planning
15 Policy #8(I)(D) to wit: "provisions for open discussion"? If these public hearings were not
16 closed on the date they were held, but continued to other dates without the same public
17 notice, would this violate RCW 36.70A.140, "...The procedures shall provide ...public
18 meetings after effective notice.", and Stevens County Public Participation Policy Resolution
19 20-2002 page 13 which relates to "close hearing" as the last step in the hearing, and
20 County-wide Planning Policy #8(I)C. "Public meetings after effective notice?"

15 **The Parties' Position:**

16 **Petitioners:**

17 The Petitioners, Sandra Wilma and Robert Berger, contend that "open discussion",
18 as it relates to public participation, means that citizens will have the opportunity to discuss
19 issues with their elected officials, in this case the Stevens County Commissioners. RCW
20 36.70A.140 requires the public participation policy (PPP) to contain "provision for open
21 discussion." The Stevens County PPP, Resolution 20-2002, provides for open discussion.
22 The Petitioners argue that the Commissioners did not "provide for open discussion" as
23 required by the PPP at either of the two Commissioner hearings and the Commissioners'
24 action does not meet the goals or the spirit of the GMA.

25 The Petitioners contend that the Commissioners did not follow the Stevens County
26 PPP, Resolution 20-2002, as written. For instance, the PPP calls for the hearing body

1 (Commissioners) to deliberate in front of the public after a hearing is closed and afterward
2 make a motion for disposition. A discussion then takes place, followed by a vote. The
3 Petitioners argue that the Commissioners did not re-advertise continued hearings from the
4 March 14, 2006, hearing. The June 12, 2006, hearing was the only advertised date after the
5 March 14, 2006, hearing, even though there were six additional continued hearings after
6 the March 14th hearing and before the June 12th hearing. If the hearings had been
7 adjourned, as required by the GMA, then the Commissioners would have had to re-advertise
8 the above mentioned hearings. The Petitioners contend the County significantly violated the
9 spirit of the Act.

9 **Respondent:**

10 The Respondent contends that the Stevens County PPP has procedures that provide
11 for open discussion and, therefore, complies with RCW 36.70A.140. Open discussions were
12 provided at public meetings and workshops held in May, June, July, August, and September
13 of 2005. Additional hearings were held by the BOCC on September 6 and 7, 2005.

14 According to Petitioner Wilma, open discussion requires immediate response in the
15 form of active dialog. The Respondent argues that this definition is too narrow and creates
16 a system that is unworkable and not required. The Respondent contends that all comments
17 on the Comprehensive Plan were "meticulously responded to". Respondent's Brief at 6.
18 Chapter 8, Section D of the PPP allows time limits and other appropriate constraints for
19 hearings and discretion by the hearing body to orally address comments, which is what the
20 BOCC said they would do.

21 The Respondent also argues that state law allows hearings to be continued or re-
22 continued. The Petitioner's allege that the County violated the PPP because the PPP does
23 not expressly allow for continuances. The Stevens County PPP does not prohibit the County
24 from continuing and re-continuing hearings, so state law controls.

24 **Petitioners HOM Reply:**

25 The Petitioners contend that the CP draft hearings in September 2005, referred to by
26 the Respondent, did not have UGAs or LAMIRDs chosen. The only public hearing on the

1 final draft, which included maps of the UGAs and LAMIRDs, was February 21, 2006. The
2 Petitioners contend there was no provision for open discussion at this hearing as the
3 County's PPP requires. Rather than time limits for open discussion, the Commissioners
4 denied discussion.

5 The Petitioners argue that RCW 42.30.100 does not allow the County to continue or
6 re-continue any hearing without proper notice as provided in RCW 42.30.080. Proper notice
7 for "special meetings" includes a local newspaper of general circulation. RCW 42.30.080.
8 Re-notification would include the same as the original notification. According to the
9 Petitioners, the requirement set forth in the statutes for notification was not done by the
County.

10 **Board Analysis:**

11 RCW 36.70A.140 Comprehensive plans – Ensure public participation, is the heart and
12 soul of the GMA. It requires "[E]ach county and city to establish and broadly disseminate to
13 the public a public participation program providing for early and continuous public
14 participation in the development and amendment of comprehensive land use plans and
15 development regulations implementing such plans." It also requires procedures for an
16 "opportunity for written comments, public meetings after effective notice, provision for open
17 discussion, communication programs, information services, and consideration of and
response to public comments."

18 The Petitioners argue that the County did not follow the requirements of RCW
19 36.70A.140 that requires "open discussion", nor did the County follow its own public
20 participation policy (PPP), Resolution 20-2004, which also encourages and allows for open
21 discussion in workshops, meetings and hearings. The Respondent disagrees and argues that
22 open discussions were provided at public meetings and workshops and, therefore, the
23 County followed its procedures found in the PPP and Countywide Planning Policies.

24 The Board agrees with the Respondent. The County's PPP, under Chapter 6,
25 Provisions For Open Discussion, allows for open discussions between the Stevens County
26 Planning Department, the committee, and the public under A. Workshops, and is

1 encouraged under B. Meetings. Under C. Hearings, where public hearings are conducted by
2 either the Planning Commission or the BOCC, open discussion can be considered optional:

3 Hearings shall include opportunities, as deemed appropriate by the hearing
4 body and as the issue and circumstances allow, for oral public comment and
5 testimony on the proposal being considered. The hearing body shall
6 encourage and solicit public opinions, reactions or suggestions and provide for
7 open discussion.

8 The County's hearing procedures outlined in Chapter 6, D. Conduct Of Workshops,
9 Meetings and Hearings To Provide For Equal Opportunities, does not require an exchange of
10 dialogue between the hearing body and the public, only that testimony is allowed at a
11 certain time in the proceeding. Under the heading, Order for Legislative Hearings, No. 10,
12 Open for Hearing Body Discussion, the hearing body may open the subject for "discussion
13 of finding of fact and conclusions by the Hearing Body members." Stevens County
14 Resolution 20-2004. Nothing is mentioned about an open discussion taking place between
15 the hearing body and the public.

16 The Stevens County Countywide Planning Policies (CWPP), under Policy #8, requires
17 provisions for open discussion in its Citizen Participation Plan, which it has done. Again,
18 nothing in the CWPP requires the hearing body, in this case the BOCC, to respond verbally
19 in open discussion to the public. The option for open discussion is required and this
20 obligation is taken care of in workshops and meetings, or in the alternative, in hearings at
21 the discretion of the hearing body.

22 There are numerous decisions rendered by all the Hearings Boards concerning public
23 participation required by the GMA. This Board, in *City of Ellensburg*, wrote the following:

24 "Substantive compliance with the Act is the Board's first consideration. If it
25 finds substantive compliance with the minimum requirements of the Act, its
26 inquiry ends, except where the public participation process is at issue. If
substantive compliance is arguable, the Board looks to evidence of procedural
compliance. If the record shows valid consideration of the factors necessary
for compliance, weight is given to the decision maker's position." *City of*
Ellensburg, et al. v. Kittitas County, EWGMHB Case No. 95-1-0009, Final
Decision and Order (May 7, 1996).

1
2 The record shows that Stevens County gave sufficient public notice, held numerous
3 public meetings, allowed both verbal and written public comment and, in general, followed
4 its public participation policy adopted by Resolution 20-2004.

5 In *Save Our Butte Save Our Basin Society*, the Board said the elected decision
6 makers must give the public their due consideration for public input:

7 "The elected decision makers need not agree with all that participate or even
8 with the majority of those speaking, as long as they comply with the GMA.
9 They must, however, give the people of the county a chance to express their
10 views on pending county action." *Save Our Butte Save Our Basin Society, et*
11 *al. v. Chelan County*, EWGMHB Case No. 94-1-0015, Order on Compliance and
12 Rescinding Invalidity Concerning Critical Areas (Sep. 2, 1998).

13 Stevens County gave its citizens ample opportunity to express their views on the
14 County's Comprehensive Plan and the workshops, meetings and hearings fulfilled the
15 County's obligation to its citizens:

16 "Citizen or surrounding community disappointment in local government
17 decisions is not a violation of the public participation requirements of the GMA,
18 so long as a reasonable opportunity to comment has been provided." *City of*
19 *Burien, City of Des Moines, City of Normandy Park and City of Tukwila v. City*
20 *of Sea-Tac (Burien)*, CPSGMHB Case No. 98-3-0010, FDO, August 10, 1998.

21 This Board said in *Sandra Wilma, et al.*, that public participation can take many
22 forms, but it has to be adequate:

23 "The GMA does not prescribe how public participation shall occur, it provides
24 only that there be extensive public participation. The process must be
25 examined to determine whether there is adequate public participation. This
26 Board has always held that public participation was the very core of the
Growth Management Act. Without it the legislative body cannot possibly know
what its jurisdiction's needs are." *Sandra Wilma, et al. v. Stevens County*,
EWGMHB Case No. 99-1-0001c, Final Decision and Order, May 21, 1999.

The Central Board defined several terms in their decision in *Twin Falls*:

1 "Take into account public input" means "consider public input." "Consider
2 public input" means "to think seriously about" or "to bear in mind" public
3 input; "consider public input" does not mean "agree with" or "obey" public
4 input. *Twin Falls Inc., Weyerhaeuser Real Estate Co., Snohomish County
Property Rights Alliance and Darrell R. Harting v. Snohomish County (Twin
Falls)*, CPSGPHB Case No. 93-3-0003c, FDO, September 7, 1993.

5 The Central Board also clarified the weight of written comments and oral comments
6 in public participation:

7 "For purposes of satisfying the requirements of RCW 36.70A.140, written
8 comments carry just as much weight as oral comments." *West Seattle
Defense Fund v. City of Seattle (WSDF I)*, CPSGMHB Case No. 94-3-0016,
9 FDO, April 4, 1995.

10 The case decision that sheds considerable light on this particular issue concerning
11 "open discussion" was written by the Central Board in *Robinson*:

12 In RCW 36.70A.140, the Act envisions a "response" to public comments and
13 "open discussion" to occur within a variety of forums including vision
14 workshops, open houses, focus groups, opinion surveys, charettes, committee
15 meetings and public hearings. It does not entitle citizens to a face-to-face
16 confrontation and verbal exchange with elected officials about the Plan."
Robison, et al., v. City of Bainbridge Island [SBCA and BISS – Intervenors]
(Robison), CPSGMHB Case No. 94-3-0025c, FDO, May 3, 1995.

17 The Petitioners argue that the "public was denied their right to discourse with their
18 elected representatives." Petitioners HOM brief at 8. The Act does not direct elected
19 representatives to respond in one form or another. It is within the elected representative's
20 discretion outlined in the jurisdiction's public participation plan as to the manner in which
21 they will respond. Again, the Central Board considered this question in *Bremerton/Alpine*:

22 "[T]he most appropriate definition of "respond" within the context of RCW
23 36.70A.140 is "to react in response." Applying this definition does not mean
24 that jurisdictions must react in response to all citizens questions or comments;
25 applying this definition means only that citizens comments and questions must
26 be considered and, where appropriate, jurisdictions must take action in
response to those comments and questions." *Bremerton, et al., v. Kitsap
County*, CPSGMHB Case No. 95-3-0039c, FDO, October 6, 1995.

1 As much as the Petitioners would like the BOCC to have an "open discussion" with
2 them concerning their issues, there is no requirement in the GMA for the BOCC to do so.
3 Elected officials are usually not land use experts. To be accurate and informed, they often
4 take the time to consult with their expert staff before responding. Public hearings are to
5 take the public's testimony. An open dialogue between a citizen and an elected official at a
6 public hearing without more specific information on the issue, investigation into the pros
7 and cons, and staff input is rare.

7 **Conclusion:**

8 The Board finds that the Petitioners have not carried their burden of proof in Issue
9 No. 1.

10 **Issues No. 2:**

11 In naming the following unincorporated areas as Urban Growth Areas (UGAs): Addy,
12 Clayton, Valley and Hunters, did Stevens County meet the requirements of RCW
13 36.70A.110(1) including, but not limited to the following "...An urban growth area may
14 include territory that is located outside of a city only if such territory already is characterized
15 by urban growth whether or not the urban growth area includes a city, or is adjacent to
16 territory already characterized by urban growth, or is a designated new fully contained
17 community as defined by RCW 36.70a.350" and would naming these areas as UGAs conflict
18 substantially with RCW 36.70A.110(3) "Urban growth should be located first in areas
19 already characterized by urban growth that have adequate existing public facility and
20 service capacities to serve such development, second in areas already characterized by
21 urban growth that will be served adequately by a combination of both existing public
22 facilities and services and any additional needed public facilities and services that are
23 provided by either public or private sources, and third in the remaining portions of the
24 urban growth areas"?

20 **The Parties' Position:**

21 **Petitioner:**

22 The Petitioners argue that the County's four (of five) designated UGAs, Hunters,
23 Valley, Addy and Clayton, are not urban in nature, but may qualify as LAMIRDs. The
24 Petitioners contend the four UGAs do not fit the criteria in RCW 36.70A.030 "Urban Growth"
25 and these UGAs fit a pattern of more intensive rural development as described by RCW
26

1 36.70A.070(5)(d). The sewers in three of the four towns are limited in capacity; the UGA
2 boundaries of Addy and Valley are larger than the boundaries of the existing service area of
3 the PUD; there are no capital facilities plan or financial plan; and very little urban character.
4 The Petitioners cite several Board cases to emphasize their points. The four urban growth
5 areas are not characterized by urban growth or adjacent to urban growth. The Petitioners
6 contend these UGAs should be LAMIRDS.

6 **Respondent:**

7 The Respondent contends that Stevens County designated UGAs based on local
8 circumstances per RCW 36.70A.3201. The County added strategically located UGAs to
9 manage future growth and services. The Respondent argues that there is no requirement
10 for urban growth areas to be incorporated and that counties are permitted to designate
11 UGAs outside cities in places characterized by urban growth. RCW 36.70A.110(1). Counties
12 may also designate UGAs adjacent to unincorporated territory that is characterized by urban
13 growth. The definition of urban growth states that urban governmental services are
14 typically required only when urban growth is allowed to spread over a wide area.

15 According to the Respondent, the County went through an "extensive analysis" to
16 characterize numerous communities as UGAs. Respondent's Brief at 8. The County used a
17 variety of factors to designate UGAs, such as land use character, water and sewer service,
18 proximity to existing UGAs, economic potential and environmental constraints. Five of the
19 six highest scoring communities were designated as UGAs. The Respondent argues that
20 Clayton was the only designated UGA that was not ranked in the highest category for land
21 use; that three of the four designated UGAs have sewer systems; and that Hunters and
22 Suncrest are remote urban communities in environmentally sensitive areas.

22 The Petitioner agrees that Hunters and Suncrest should become UGAs, but argues
23 that the County already has cities that should develop before more UGAs are declared. The
24 Respondent argues this reasoning is flawed. First, the communities provided favorable
25 responses to the County to become UGAs. Second, the time is now, while the County is
26 adopting its Comprehensive Plan, to designate UGAs because there must be sufficient urban

1 areas to accommodate growth over the next twenty years. The County has decided to
2 manage rural growth, which is more than 50% of the growth projected in Stevens County,
3 by establishing new UGAs in previously approved high-density rural development.

4 The Respondent argues that if the County can only designate UGAs based on the
5 Office of Financial Management's (OFM) projection for urban growth, it would never be able
6 to increase the percentage of growth occurring in urban areas. According to the
7 Respondent, this last statement is "especially true in Stevens County where the built
8 environment includes vested high-density plats and a growth pattern that is remote from its
9 existing UGAs." Respondent's Brief at 12. The newly designated UGAs are defined by
10 existing and platted development, so it makes sense to increase the percentage of growth
11 that is urban by facilitating high-density growth where it is already approved. These
12 unincorporated UGAs are intended to encourage a higher percentage of urban growth in
13 Stevens County in order to minimize the loss of agricultural land and open space to low-
density development.

14 The Respondent contends that designating new UGAs is appropriate to lessen the
15 financial burden on the County. Low density rural development increases the demand for
16 certain services and is more costly to provide.

17 **Amicus Response (PUD No. 1):**

18 Public Utility District No. 1 (PUD) contends that all of the unincorporated areas
19 designated UGAs are "urban" in character in light of the local circumstances of the County.
20 The record reflects population growth in the County will be seven times higher in the
21 unincorporated areas than in incorporated cities and towns. According to the PUD, the GMA
22 specifically allows the designation of UGAs in the unincorporated areas, if such area is
23 characterized by "urban growth," as defined by RCW 36.70A.030(18). The PUD points out
24 that the Petitioner acknowledges that UGAs typically require urban governmental services,
25 as defined in RCW 36.70A.030(20). The County used six factors to evaluate whether areas
26 qualified for UGA designation. These six factors are public water service, public sewer
service, proximity to other UGAs, economic potential, potential for environmental impacts,

1 and land use character. Addy, Clayton, Valley and Hunters all scored the highest under
2 these factors, even though Hunters does not have a sewer system presently.

3 **Amicus Response (CTED)**

4 CTED contends that the GMA allows a UGA to extend beyond municipal boundaries
5 or even to be located where there are no municipal boundaries. A UGA can be where it
6 contains territory that "already is characterized by urban growth," "is adjacent to territory
7 already characterized by urban growth," or "is a designated new fully contained
8 community." RCW 36.70A.110(1). According to the courts, it would be inconsistent with
9 legislative intent to unnecessarily constrain the ability of local jurisdictions to plan and
10 manage for imminent and inevitable growth. *Quadrant Corp v. Growth Mgmt. Hrgs. Bd.*,
11 154 Wn.2d 239, 110 P.3d 1132 (1995). In counties with substantial urban areas or
12 pressure for urban sprawl, urban growth most certainly should be directed to cities and
13 existing UGAs, and UGA expansion and the designation of new UGAs should occur only
14 when existing capacity is reasonably expected to be exhausted within the 20-year planning
15 horizon.

16 According to CTED, Stevens County is in a "different situation." The County has an
17 opportunity to plan for urban development before the press of urban sprawl reduces its
18 planning options. CTED contends that the GMA permits a predominantly rural county to
19 designate a limited number of established communities to receive urban growth – even if
20 those communities are not yet incorporated – as a means of encouraging urban
21 development in UGAs and discouraging urban development in rural areas. The key is
22 whether the County used a deliberative process that is consistent with the goals and
23 requirements of the GMA. Unlike more populous counties in Washington, there are few
24 options for centering new urban development on existing cities. In developing its
25 Comprehensive Plan, the County sought to reduce anticipated pressures for more rural
26 development "by establishing four unincorporated UGAs as a means of channeling future
population growth into urban areas." Amicus brief at 5 (CTED).

1 CTED argues that the central question before the Board is whether the deliberations
2 undertaken by the County reflect a process that is consistent with the goals and
3 requirements of the GMA. CTED suggests the answer is yes, given the local conditions.
4 First, the County adopted the Office of Financial Management's (OFM) intermediate
5 projection. Second, the County proposed Land Use Policy LU-1 to raise the percentage of
6 new growth that occurs in designated urban areas and to reduce sprawling, low-density
7 development in non-urban areas. Third, the County adopted supporting land use policies to
8 ensure that UGAs are appropriately located and sized. Fourth, the County undertook an
9 analysis of nine unincorporated communities, including the four at issue here, to determine
10 whether and how they might be designated to encourage new development and discourage
11 sprawling low-density rural development. The County considered creating UGAs or
12 LAMIRDs and chose UGAs as the best alternative, given the ratings scale it developed from
specific criteria.

13 CTED contends that the County acknowledged that designating new UGAs would not
14 guarantee that new urban development would be attracted to those communities. The
15 County made the "conscious, rational decision that urban development is more likely to be
16 channeled to designated UGAs and away from rural areas, if UGAs are intelligently planned
17 and located where at least some urban-level development and urban services are available
or can be made available." CTED brief at 9.

18 CTED contends that in this situation, the County's decision to designate four
19 unincorporated UGAs was a reasoned decision, consistent with the GMA's goals of
20 channeling urban growth into urban areas and avoiding urban sprawl into rural areas.

21 **Petitioners HOM Reply:**

22 The Petitioners contend that Addy, Clayton and Valley did not have sanitary sewers
23 operated by the PUD prior to 1993 and there are no dates for the creation of these sewers
24 in the record. The Petitioners contend that all three sewers were installed after 1995 and
25 provide PUD Resolutions No. 1-95, 8-97 and 19-99 as proof. They cite RCW 36.70A.110
26 and argue that cities are the units of local government most appropriate to provide urban

1 governmental services except in those limited circumstances shown to be necessary to
2 protect basic public health and safety. The PUD used RCW 36.70A.110(4) to place sanitary
3 sewers in Addy, Clayton and Valley. The Petitioners contend the "PUD simply provided
4 three rural areas with sanitary sewers for the health and welfare of the occupants." There
5 were no urban areas created.

6 According to the Petitioners, the community of Hunters has been unresponsive to
7 the PUD installing sewer and the citizens will have no choice but to accept the County's and
8 PUD's decision to install them.

9 The Petitioners contend that Stevens County is a rural county and will not change its
10 population gain to urban growth areas. By declaring these areas urban, the County
11 removes the rural lifestyle the inhabitants have chosen, and subjects those citizens to
12 future urbanization. The Petitioners also argue that based on the population figures
13 allocated to Stevens County by OFM, there are discrepancies in the County's targets for
14 urban areas at four units per acre. With the inclusion of Suncrest, with an acreage of 4,867,
15 the county could support the entire county population into the city UGAs. Additional UGAs
16 are not warranted.

17 The Petitioners argue that an appropriate land capacity analysis was not done and, if
18 one were to be completed, the figures would not add up to allow UGAs in Clayton, Addy,
19 Valley and Hunters.

20 **Board Analysis:**

21 There are two parts to Issue No. 2. The first part challenges compliance with the
22 UGA location requirements of RCW 36.70A.110(1), and the second part asks if the County,
23 by designating four of the five new UGAs, is in conflict with RCW 36.70A.110(3).

24 The GMA allows the designation of UGAs in unincorporated areas, if such area is
25 characterized by urban growth. Urban growth is defined by RCW 36.70A.030(18):

26 "Urban growth" refers to growth that makes intensive use of land for the
location of buildings, structures, and impermeable surfaces to such a degree
as to be incompatible with the primary use of land for the production of food,
other agricultural products, or fiber, or the extraction of mineral resources,

1 rural uses, rural development, and natural resource lands designated pursuant
2 to RCW 36.70A.170.”

3 RCW 36.70A.110(1) requires counties and cities to designate urban growth areas
4 within which urban growth shall be encouraged and outside of which growth can occur only
5 if it is not urban in nature:

6 “Each city that is located in such a county shall be included within an urban
7 growth area. An urban growth area may include more than a single city. An
8 urban growth area may include territory that is located outside of a city only if
9 such territory already is characterized by urban growth whether or not the
10 urban growth area includes a city, or is adjacent to territory already
11 characterized by urban growth, or is a designated new fully contained
12 community as defined by RCW 36.70A.350.”

13 Stevens County followed a process to determine whether certain areas within the
14 County already characterized by urban-type growth should be designated as either
15 unincorporated UGAs or as LAMIRDs. Taking into account growth projections, the existing
16 built environment and vested plats, as well as economic and environmental issues, the
17 County concluded that “additional strategically located UGAs were needed to manage future
18 growth and services.” Respondent’s brief at 8. The County used six factors to evaluate
19 whether areas qualified for UGA designation. These six factors included public water
20 service, public sewer service, proximity to other UGAs, economic potential, potential for
21 environmental impacts, and land use character. The unincorporated urban-like areas of
22 Addy, Clayton, Valley, Hunters and Suncrest were selected as new UGAs by their ranking
23 based on the six factors. Taking into account the medium population allocation by OFM, the
24 County chose to designate new unincorporated UGAs in areas already characterized by
25 urban growth to accommodate some of the expected growth.

26 This Board recognizes that designating UGAs that are not adjacent to or abutting
incorporated UGAs is unusual, but has been done by counties in other parts of the state.
The Western Board has decided several cases that have to do with newly designated
unincorporated UGAs, which they call non-municipal UGAs. In *Advocates for Responsible*

1 *Development, et al.*, the Western Board clarified the terms "territory" and "adjacent" in the
2 statute:

3 "We agree with the County that parcel-by-parcel contiguity is not what is
4 required by the phrase "adjacent to territory already characterized by urban
5 growth". The GMA uses the term "territory" when referring to lands that may
6 be included in a UGA: ... An urban growth area may include **territory** that is
7 located outside of a city only if such **territory** is already characterized by
8 urban growth whether or not the urban growth area includes a city, or is
9 adjacent to **territory** already characterized by urban growth..." RCW
10 36.70A.110(1)(in part)(emphasis added)

11 "Territory" is not defined in the GMA so we turn to the dictionary to interpret
12 its meaning. ("Unless contrary legislative intent is indicated, words are given
13 their ordinary, dictionary meaning". *City of Bellevue v. Lorang*, 140 Wn.2d 19
14 at 24, 992 P.2d 496, 2000 Wash LEXIS 79 (2000)). The Random House
15 Dictionary defines "territory" as: 1. any tract of land; region or district. 2. the
16 land and waters belonging to or under the jurisdiction of a state, sovereign,
17 etc. 3. any separate tract of land belonging to a state.

18 "Adjacent" is also undefined in the GMA; again, the dictionary definition is
19 instructive: 1. lying near, close, or contiguous; adjoining; neighboring (*a field
20 adjacent to the highway*) 2. just before, after, or facing (*a map on an
21 adjoining page*) "Territory ...adjacent to territory" must therefore mean that
22 the tracts of land are near, close or contiguous. It does not mean that every
23 lot or parcel within the territory included must be contiguous to a lot or parcel
24 already characterized by urban growth. 06-2-0005: *Advocates for Responsible
25 Development, et al v. Mason County and Brian Petersen, et al, Intervenors,
26 WWGMHB Case No. 06-2-0005 FDO, August 14, 2006.*

By statute, the legislature requires the Board "to grant deference to counties and
cities in how they plan for growth, consistent with the requirements and goals of" the GMA.
RCW 36.70A.3201. Accordingly, the Board must defer to the County's planning actions, if
they are consistent with the goals and requirements of the GMA. *Quadrant Corp. v.*
Hearings Board, 154 Wn.2d 224, 238, 110 P.3d 1132 (2005). The Board cannot find error or
violation of RCW 36.70A.110(1) by Stevens County within the context of this issue. Counties

1 are allowed by statute to designate UGAs in territory already characterized by urban
2 growth.

3 In the second part of the issue, the Board is asked to decide if designating Addy,
4 Valley, Hunters and Clayton as UGAs is in conflict with RCW 36.70A.110(3), which states:

5 "Urban growth should be located first in areas already characterized by urban
6 growth that have adequate existing public facility and service capacities to
7 serve such development, second in areas already characterized by urban
8 growth that will be served adequately by a combination of both existing public
9 facilities and services and any additional needed public facilities and services
10 that are provided by either public or private sources, and third in the
11 remaining portions of the urban growth areas. Urban growth may also be
12 located in designated new fully contained communities as defined by RCW
13 36.70A.350."

14 RCW 36.70A.110(3) requires in part that urban growth take place in areas that have
15 existing public facilities and service capacities or in areas that can be served by a
16 combination of both existing public facilities and services and any additional needed public
17 facilities and services that are provided by either public or private sources (Board
18 emphasis). In order to ensure that urban areas have the necessary public facilities and
19 services, counties and cities are required under RCW 36.70A.070 to adopt a comprehensive
20 plan with specific mandatory elements. RCW 36.70A.070(3) requires Stevens County to
21 include a capital facilities plan, which consists of:

22 (a) An inventory of existing capital facilities owned by public entities, showing
23 the locations and capacities of the capital facilities; (b) a forecast of the future
24 needs for such capital facilities; (c) the proposed locations and capacities of
25 expanded or new capital facilities; (d) at least a six-year plan that will finance
26 such capital facilities within projected funding capacities and clearly identifies
sources of public money for such purposes; and (e) a requirement to reassess
the land use element if probable funding falls short of meeting existing needs
and to ensure that the land use element, capital facilities plan element, and
financing plan within the capital facilities plan element are coordinated and
consistent. Park and recreation facilities shall be included in the capital
facilities plan element.

1 While the Stevens County Comprehensive Plan provides some information about
2 capital facilities planning in the new unincorporated UGAs, and additional information about
3 sewer and water is available in the Stevens Public Utility District's (PUD) 2005 Updated
4 Comprehensive Water System Plan (Exh. 536), the County fails its obligation under RCW
5 36.70A.070(3). The County acknowledges its responsibility under this statute in its Capital
6 Facilities Plan Element, yet fails to provide: (1) a complete inventory of existing capital
7 facilities; (2) adopt or incorporate the PUD's and other provider's capital facilities plans; (3)
8 provide a forecast of the future needs for such capital facilities for the new unincorporated
9 UGAs"; (4) include the proposed locations and capacities of expanded or new capital
10 facilities; (5) and include a six-year plan that will finance the public facilities and services in
11 the new UGAs.

12 In fact, under CFP-1, the County's policy is to "[D]evelop and regularly update a six-
13 year financing program for capital facilities that meets the requirements of the GMA,
14 achieves the County's objectives for level of service, and is within the County's financial
15 capabilities to carry out." "Develop" in this context seems to mean "in the future." No
16 detailed capital facilities plan or financial plan to support a capital facilities plan as required
17 by the GMA was written and submitted with the Comprehensive Plan. In addition, the Board
18 can not find levels of service (LOS) for public facilities or services.

19 The parties debated the definition of "public facilities" and "capital facilities". Capital
20 facilities are considered "public facilities" as defined by RCW 36.70A.030(13).

21 For purposes of conducting the inventory required by RCW 36.70A.070(3)(a),
22 "public facilities" as defined at RCW 36.70A.030(13) are synonymous with
23 "capital facilities owned by public entities." *West Seattle Defense Fund v. City
24 of Seattle*, CPSGMHB Case No. 94-3-0016, FDO April 4, 1995.

25 The Central Board further defined "capital facilities" and what is required to fulfill the
26 GMA obligation:

"The Board holds that a Capital Facilities Element must include all facilities
that meet the definition of public facilities set forth in RCW 36.70A.030(12). All
facilities included in the CFE must have a minimum standard (LOS) clearly

1 labeled as such (i.e., not "guidelines" or "criteria"), must include an inventory
2 and needs assessment and include or reference the location and capacity of
3 needed, expanded or new facilities. (RCW 36.70A.070(3)(a), (b) and (c). In
4 addition, the CFE must explicitly state which of the listed public facilities are
5 determined to be "necessary for development" and each of the facilities so
6 designated must have either a "concurrency mechanism" or an "adequacy
7 mechanism" to trigger appropriate reassessment if service falls below the
8 baseline minimum standard. Transportation facilities are the only facilities
9 required to have a concurrency mechanism, although a local government may
10 choose to adopt a concurrency mechanism for other facilities." *Jody L.*
11 *McVittie v. Snohomish County*, CPSGMHB Case No. 01-3-0002), Final Decision
12 and Order, July 25, 2001.

9 Therefore, as defined by "public facilities", the County is required to have a capital
10 facilities plan and financial plan for "streets, roads, highways, sidewalks, street and road
11 lighting systems, traffic signals, domestic water systems, storm and sanitary sewer systems,
12 parks and recreational facilities, and schools." In addition, the capital facilities plan and
13 financial plan must also include "public services", defined as "fire protection and
14 suppression, law enforcement, public health, education, recreation, environmental
15 protection and other governmental services." WAC 365-195-200(12) and (13).

15 The Board couldn't find in the County's Final CP, Final Draft CP, Appendix A or the
16 FEIS any mention of specific adopted levels of service (LOS) for public facilities and
17 services, a list of public facilities "determined to be necessary for development", or a
18 "concurrency mechanism" or an adequacy mechanism" to trigger appropriate reassessment,
19 if service falls below the baseline minimum standard. *McVittie v. Snohomish County*, FDO.
20 The County can not determine what it will need in the future for public facilities and
21 services without knowing what levels of service it has to meet.

22 The PUD is the main provider of sewer and water services in Stevens County and the
23 incorporated cities. It has documented the present state of its facilities, including the
24 facilities, or lack thereof, located within the five new UGAs. The PUD also has provided a
25 forecast of growth projections and existing service area maps for Addy, Suncrest, Clayton,
26 and Valley. Hunters is not currently served by the PUD and the residents have indicated by

1 not responding to the PUD's offer to provide services that they are not willing to accept the
2 PUD services at this time. Other special districts will provide the new UGAs with education
3 facilities and fire protection. Capital facilities and financing plans adopted by special
4 districts, other jurisdictions, and private providers should be incorporated into the County's
5 CFP and financial plan. Again, as far as the Board can tell, there is no future financial plan
6 to support the new UGAs with sewer and water as they are now currently sized.

7 The Central Board decided in two *Bremerton v. Kitsap County* cases that counties
8 should at least provide some detailed capital facilities and financing information from special
9 purpose districts, other jurisdictions or private interests in its CFP or be cautious in
10 designating new UGAs:

11 "If a county designates a UGA that is to be served by a provider (other than
12 the county), the county should at least cite, reference or otherwise indicate
13 where locational and financing information can be found that supports the
14 UGA designations and GMA duty to ensure that adequate public facilities will
15 be available within the area during the twenty-year planning period."
16 *Bremerton/Port Gamble v. Kitsap County*, CPSGMHB Case No. 5339/7324c,
17 FDO September 8, 1997.

18 "If a county has limited authority to locate and finance needed infrastructure
19 because those aspects of capital facility decision-making rest with special
20 districts, other jurisdictions (city, state or federal governments) or private
21 interests, then a county should be cautious and judicious in designating UGAs
22 until assurances are obtained that ensure public facilities and services will be
23 adequate and available." *Bremerton, et al., v. Kitsap County* CPSGMHB Case
24 No. 95-3-0039c and No. 97-3-0024c, Order at 42, Sept. 8, 1997.

25 The Western Board in *Ludwig, et al., v. San Juan County* agreed with the Central
26 Board in that a county's plan for a UGA must include capital facilities information and
financing for those services:

"An urban growth area may be designated where there is a realistic plan for
the extension of urban levels of service throughout the UGA during the 20-
year planning horizon. Here, the County has chosen to rely upon private
agencies to provide water and sewer services to the Lopez Village UGA.
Private providers may be the source of such public services. See RCW
36.70A.110(3). However, if they are, the County's plan for the UGA must

1 include necessary capital facilities information and financing for those services
2 needed during the planning period. RCW 36.70A.070(3)(a), (c), and (d)."
3 *Stephen F. Ludwig, et al., v. San Juan County*; Case No. 05-2-0019c
4 WWGMHB FDO April 19, 2006.

5 All three Growth Management Hearings Boards have consistently held that counties
6 and cities must include the mandatory elements in their comprehensive plans. A detailed
7 capital facilities plan and a six-year financial plan that will finance such capital facilities is
8 not an option. Generalized statements in the County's Comprehensive Plan (8.0 Capital
9 Facilities Plan Element, and 7.0 Utilities Element, Stevens County Final Draft Comprehensive
10 Plan, Appendix A, A-49 and 50, A-53 through A-56) of what capital facilities the County has
11 presently and may need in the future does not clearly identify what is needed to support
12 the incorporated cities, let alone the new unincorporated UGAs, nor how much these public
13 facilities and services will cost and sources of public money needed for such purposes.

14 The Board acknowledges that the County can designate unincorporated UGAs, but it
15 should be cautious and follow the GMA requirements for designating UGAs. As the Western
16 Board said in *Irondale Community Action Neighbors* in support of designating
17 unincorporated UGAs:

18 "A defined funding mechanism needs to be included in the capital facilities
19 plan before urban development is allowed. Public sanitary sewer service is a
20 key urban governmental service with important public health and
21 environmental consequences, and is essential to providing urban densities. At
22 the same time, we must acknowledge the thorny problem facing the County.
23 The County has reasonably chosen to consider the existing small lots as
24 "urban growth." The choice to create an urban growth area which
25 incorporates existing urban growth is also a responsible one – but it must be
26 accompanied by urban levels of service. Otherwise, new growth will
compound the existing problem. Board emphasis. *Irondale Community Action*
Neighbors v. Jefferson County; WWGMHB Case No. 03-2-0010, FDO, May 31,
2005.

1 **Conclusion:**

2 In the first part of the issue, the Respondent's argument concerning the location of
3 the new unincorporated UGAs is acceptable. In the second part, the Board finds that the
4 Petitioner has carried their burden of proof and that the County's actions are clearly
5 erroneous. The County failed to adopt a capital facilities plan and six-year financial plan as
6 required by RCW 36.70A.110(3) and RCW 36.70A.070(3).

7 **Issue No. 3:**

8 If the population projections used by Stevens County were substantially different
9 from the population projections adopted in the comp plans of Colville, Springdale and
10 Marcus, would these differences substantially interfere with the consistency requirements
11 of RCW 36.70A.100? "The comprehensive plan of each county or city that is adopted
12 pursuant to RCW 36.70A.040 shall be coordinated with, and consistent with the
13 comprehensive plans adopted pursuant to RCW 36.70A.040 of other counties or cities with
14 which the county or city has, in part, common borders or related regional issues." And
15 would this UGA adoption interfere substantially with RCW 36.70A.210(1) "...This framework
16 shall insure that the city or county comprehensive plans are consistent as required by RCW
17 36.70A.100." Do these conflicting population forecasts interfere substantially with
18 Countywide Planning Policies (CPP) #1, "Each jurisdiction shall base their urban capital
19 facilities element (e.g. their urban growth area) on a proportion of the population projection
20 numbers for Stevens County from the Washington State Office of Financial Management.
21 The combined population figures for each municipality and the County must total the State's
22 population forecast for Stevens Count."?

23 **The Parties' Position:**

24 **Petitioners:**

25 The Petitioners failed to brief Issue No. 3.

26 **Respondent:**

The Respondent argues that the Petitioner expressly waived this issue.

Board Analysis:

The Board agrees the Petitioner failed to brief Issue No. 3 and is deemed abandoned.

Conclusion:

The Petitioner failed to brief this issue, therefore it is abandoned.

1 **Issue No. 4:**

2 Transference of governance within UGAs: If the population projections for Addy,
3 Clayton, Hunters and Valley do not reach the threshold to become a municipality by 2010,
4 and these UGAs are not adjacent to any cities to provide services by annexation, do naming
5 these areas as UGAs substantially interfere with the Act including, but not limited to RCW
6 36.70A.210(1)? "The legislature recognizes that counties are regional governments within
7 their boundaries, and cities are primary providers of urban governmental services within
8 urban growth areas." If the CP provides no analysis of infrastructure to support urban
9 densities for these four areas, would this interfere substantially with RCW 36.70A.210(1) id,
10 and Countywide Planning Policy (CPP) #1(III) "Designated urban growth areas should
11 include those portions of our communities already characterized by urban growth that have
12 existing public facilities and service capacities to serve such developments as well as those
13 areas projected to accommodate future growth"? Are these four proposed UGAs non-
14 compliant with CPP #2(I)(C) "The availability of the full range of urban services will be
15 subject to the annexation policy of the adjacent municipality"?

11 **The Parties' Position:**

12 **Petitioners:**

13 The Petitioners argue that Stevens County is out of compliance for not including an
14 incorporation policy within its Comprehensive Plan for isolated UGAs and the communities of
15 Hunters, Clayton, Addy and Valley do not have a forecasted population figure that would
16 allow these areas to incorporate in the State of Washington. Therefore, the burden for
17 responsibility for the governance of these UGAs would be on Stevens County and the
18 taxpayers.

19 **Respondent:**

20 The Respondent argues that none of the new UGAs designated by the County are in
21 close proximity to an existing municipal UGA and, therefore, as cited in the Petitioner's
22 brief, the County is under no obligation to plan for transference of governance as part of its
23 Comprehensive Plan. The Petitioner acknowledges that "the C[W]PP does not expressly
24 prohibit naming UGAs that are not contiguous to a municipality. Wilma Brief at 14."
25 Respondent's Brief at 14.

1 **Amicus Response (PUD No. 1)**

2 The PUD contends that a "UGA specifically allows an area to be designated as a UGA
3 if the 'territory that is located outside of a city only if such territory already is characterized
4 by urban growth,' whether or not the urban growth area includes a city." RCW
5 36.70A.110(1) and Amicus brief at 7. According to the PUD, under the GMA the
6 comprehensive plan need not require annexation or incorporation of UGAs and there is no
7 showing by the Petitioner that these areas are not characterized by urban growth.

8 **Petitioners HOM Reply:**

9 The Petitioners quote a paragraph from *Tacoma v. Pierce County*, CPSGMHB Case
10 No. 94-3-0001 FDO, which in part says that a UGA must have urban governmental services
11 provided primarily by cities.

12 **Board Analysis:**

13 The Board agrees with the Respondent and the PUD. As discussed under Issue No. 2,
14 RCW 36.70A.110(1) specifically allows for an area to be designated as an urban growth
15 area: "territory that is located outside of a city only if such territory already is characterized
16 by urban growth." The five new unincorporated UGAs were determined by the County to be
17 urban in nature after following a process with a ratings scale to determine whether certain
18 communities could be designated UGAs. The areas are "characterized by urban growth,
19 relative to the local circumstances of the County". "Under the GMA, the comprehensive plan
20 need not require annexation or incorporation of UGAs." PUD brief at 7. The Board is not
21 saying it agrees with the population allocation or the density provision found in the CWPP
22 LU-3(D.), only that UGAs can be located as per RCW 36.70A.110(1).

23 The Petitioner acknowledges that "the C[W]PP does not expressly prohibit naming
24 UGAs that are not contiguous to a municipality." Wilma brief at 14.

25 **Conclusion:**

26 The Board finds the Petitioners have failed to carry their burden of proof in Issue No.
4.

1 **Issue No. 5:**

2 The County shows no greenbelts and open spaces on its maps portraying the UGAs
3 of Clayton, Valley, Addy and Hunters. Does this interfere substantially with RCW
4 36.70A.110(2), "...Each urban area shall permit urban densities and shall include greenbelt
and open space areas'?

5 **The Parties' Position:**

6 **Petitioners:**

7 The Petitioners argue there are no greenbelts and open spaces as required by RCW
8 36.70A.070(8) in the plans for the four UGAs and cites *Wilma et al v. Stevens County*,
9 EWGMHB Case No. 99-1-0001c, to show that greenbelts and open spaces are necessary
10 components of a UGA.

11 **Respondent:**

12 The Respondent argues that the County's land use policy for open spaces (LU/OS-1)
13 identifies a variety of uses and designations, such as rural development patterns, wetlands
14 and riparian corridors, as greenbelts and open space. They contend that all of the new
15 UGAs include some rural development patterns, as well as limited critical areas, and
16 mention Suncrest and Clayton as examples. The Respondent also argues that the County's
17 CWPP encourages the designation of open space and recreational opportunities, not
requires such elements.

18 **Petitioners HOM Reply:**

19 The Petitioners again quote *Tacoma v. Pierce County* and argue that there are no
20 designated greenbelts or open spaces as required by the County's own Comprehensive Plan
at Open Space LU/OS-1 and LU/OS-2.

21 **Board Analysis:**

22 The Board agrees with the Petitioners. RCW 36.70A.110(2) requires that "[E]ach
23 urban growth area shall permit urban densities and shall include greenbelt and open space
24 areas." The County has incorporated cities and newly designated unincorporated UGAs. The
25 statute requires that greenbelts and open space be part of the County's planning.

1 The Western Board narrowed the responsibility to counties in *Agriculture for*
2 *Tomorrow*:

3 RCW 36.70A.110(2) applies only to counties; it does not impose that
4 requirement [to *include* greenbelt and open space areas when it designates
5 UGAs] on cities. *Agriculture for Tomorrow v. City of Arlington*, CPSGMHB Case
6 No. 95-3-0056, FDO, Feb. 13, 1996.

6 In *Evergreen v. Skagit County*, the Western Board opined:

7 Counties are required to identify “green belt and open space areas” within
8 UGAs and to “identify open space corridors within and between” UGAs. Official
9 maps, which do not show these areas fail to comply with the GMA. *Evergreen*
10 *v. Skagit County*, WWGMHB Case No. 00-2-0046c, Final Decision and Order,
11 2-6-01.

11 Greenbelts are not mentioned in the County’s CWPP under Open Space planning
12 policies. The County has within its discretion in “their comprehensive plans to make many
13 choices about accommodating growth.” RCW 36.70A.110(2). As such, the County is
14 required to at least analyze the potential for greenbelt and open space within specific UGAs.
15 The County can base its decision on a variety of criteria, including population, size, and
16 need of the individual UGAs, factor that analysis into its planning and show designated
17 greenbelts and open space in the County’s maps. Some UGAs may not need greenbelts or
18 open spaces, some may need both. Regardless, the County must include greenbelt and
19 open space areas or show its work why greenbelts and open spaces are not necessary
20 when it designates UGAs.

20 **Conclusion:**

21 The Board finds that the Petitioners have carried their burden of proof and that the
22 County’s actions are clearly erroneous. The County failed to designate or identify greenbelts
23 and open space or show its work why these elements were not considered within the new
24 unincorporated UGAs.

1 **Issue No. 6:**

2 The County has declared two non contiguous areas of Loon Lake as a Land Area of
3 More Intense Rural Development (LAMIRD) including 74 acres of commercial land and 19
4 acres of residential land, but has excluded a large portion of the built environment
5 residential land near the school, medical clinic and post office. Does this meet the goals of
6 RCW 36.70A.070(5)(d)(iv) "...Lands included in such existing areas or uses shall not extend
7 beyond the logical outer boundary delineated predominately by the built environment, but
8 that may also include undeveloped lands if limited as provided in this section. The county
9 shall establish the logical outer boundary of an area of more intense rural development. In
10 establishing the logical outer boundary the county shall address (A) the need to preserve
11 the character of existing natural neighborhoods and communities, (B) physical boundaries
12 such as bodies of water, streets and highways, and land forms and contours, (C) the
13 prevention of abnormally irregular boundaries, and (D) the ability to provide public facilities
14 and services in a manner that does not permit low density sprawl." Does this exclusion of
15 residential land interfere substantially with the goals of the act including, but not limited to
16 Goal #4 (RCW 36.70A.0202(4) "Housing. Encourage the availability of affordable housing to
17 all economic segments of the population of this state, promote a variety of residential
18 densities and housing types, and encourage preservation of existing housing stock"?

13 **The Parties' Position:**

14 **Petitioners:**

15 The Petitioners argue that the County has made a mistake by creating two LAMIRDs,
16 at Loon Lake, rather than one continuous LAMIRD that would include the developed land
17 between the two. The Petitioners contend the "no-man's land" between the two LAMIRDs
18 has all the urban services and built environment necessary to be included into one large
19 designated LAMIRD and would infill accordingly. Petitioners' brief at 17. The Petitioners cite
20 RCW 36.70A.070(5)(d)(iv) to emphasize their argument and claim that the County's two
21 LAMIRDs substantially interfere with the GMA Goals Nos. 2, 4, and 6.

21 **Respondent:**

22 The Respondent contends that the two LAMIRDs have logical boundaries and
23 conform to the requirement not to extend beyond the predominantly built environment. The
24 area in question, which lies between the two designated LAMIRDs, is currently not
25 developed beyond ordinary rural intensity and was not characterized by urban growth in
26

1 1993. The decision as to whether this area should be included as part of one contiguous
2 LAMIRD was deferred by the County in recognition of the need for additional public input in
3 the upcoming Loon Lake sub-area planning process. According to the Respondent, the
4 existing LAMIRDS accurately reflect the bifurcated nature of the built environment that
5 existed in 1993 and only the sub-area planning process will best determine how best to
6 manage growth in the Loon Lake watershed.

7 **Amicus Response (CTED):**

8 CTED argues that RCW 36.70A.070(5)(d)(iv) does not require that any particular
9 LAMIRD extend all the way to "the logical outer boundary." Accordingly, the alleged
10 exclusion of some area that qualifies for inclusion in a LAMIRD cannot be a violation of that
11 statute. Without non-compliance, there can be no substantial interference with the goals of
12 the GMA. RCW 36.70A.302(1).

13 **Petitioners HOM Reply:**

14 The Petitioners argue that infill has taken place between the two proposed Loon Lake
15 LAMIRDS and that the County's development map is wrong. They also contend that the
16 PUD's 6.2 acre property was put into the LAMIRD, but not the Petitioners developed
17 property.

18 The Petitioners contend that the County chose 452 acres for the LAMIRD at Arden
19 and only 93 acres for Loon Lake. They argue that the County considered Loon Lake an
20 urban area at one point, then a LAMIRD later. LAMIRDS can never be made larger. CTED
21 did not indicate that the Petitioners property did not qualify as built environment for the
22 LAMIRD, just that the boundary need not encompass all the property to the very end. The
23 Petitioners argue that if a LAMIRD can't be expanded or enlarged, why did the County place
24 an urban reserve area in the middle of the two?

25 **Board Analysis:**

26 The County went through a lengthy and arguably detailed process to determine
which areas of urban-like development in the County should be designated unincorporated
UGAs or LAMIRDS. The Loon Lake commercial/residential urban-like area was ranked sixth

1 out of the nine communities eligible for consideration and, after additional analysis by
2 County staff, was designated a LAMIRD with two distinct logical outer boundaries. In this
3 case, the Board believes the County showed its work. The Board's decision for this LAMIRD
4 does not mean we agree or disagree with the designation of Loon Lake as a LAMIRD or the
5 "logical outer boundaries" of the LAMIRD. In fact, there doesn't seem to be a logical
6 explanation for the County to designate 1,713 acres of residential in the West Kettle Falls
7 LAMIRD without any discussion in the FEIS, 238 acres of residential at Arden, and yet
8 choose to exclude six additional acres between the two LAMIRDs at Loon Lake, which would
9 have made one logical LAMIRD.

10 RCW 36.70A.320(3) directs the Boards to apply a more deferential standard of
11 review to actions of counties and cities and allow them to balance priorities and options
12 when developing their comprehensive plan "in full consideration of local circumstances."
13 RCW 36.70A.3201.

14 In amending RCW 36.70A.320(3) by section 20(3), chapter 429, Laws of
15 1997, the legislature intends that the boards apply a more deferential
16 standard of review to actions of counties and cities than the preponderance of
17 the evidence standard provided for under existing law. In recognition of the
18 broad range of discretion that may be exercised by counties and cities
19 consistent with the requirements of this chapter, the legislature intends for the
20 boards to grant deference to counties and cities in how they plan for growth,
21 consistent with the requirements and goals of this chapter. Local
22 comprehensive plans and development regulations require counties and cities
23 to balance priorities and options for action in full consideration of local
24 circumstances. The legislature finds that while this chapter requires local
25 planning to take place within a framework of state goals and requirements,
26 the ultimate burden and responsibility for planning, harmonizing the planning
goals of this chapter, and implementing a county's or city's future rests with
that community.

RCW 36.70A.070(5)(d)(iv) states:

(iv) A county shall adopt measures to minimize and contain the existing areas
or uses of more intensive rural development, as appropriate, authorized under
this subsection. Lands included in such existing areas or uses shall not extend
beyond the logical outer boundary of the existing area or use, thereby

1 allowing a new pattern of low-density sprawl. Existing areas are those that are
2 clearly identifiable and contained and where there is a logical boundary
3 delineated predominately by the built environment, but that may also include
4 undeveloped lands if limited as provided in this subsection. The county shall
5 establish the logical outer boundary of an area of more intensive rural
6 development. In establishing the logical outer boundary the county shall
7 address (A) the need to preserve the character of existing natural
8 neighborhoods and communities, (B) physical boundaries such as bodies of
9 water, streets and highways, and land forms and contours, (C) the prevention
10 of abnormally irregular boundaries, and (D) the ability to provide public
11 facilities and public services in a manner that does not permit low-density
12 sprawl;

13 The Board may not agree with the County on designating two LAMIRDs at Loon Lake
14 and its analysis when compared to the West Kettle Falls LAMIRD designation and the
15 statute's wording, "...but that may also include undeveloped lands if limited as provided in
16 this subsection", but after review of the County's work and analysis, and in light of the
17 requirements of RCW 36.70A.070(5)(d)(iv), the Board agrees that the Loon Lake LAMIRD,
18 as proposed, follows the mandate of the GMA to designate limited areas of more intense
19 development as LAMIRDs.

20 **Conclusion:**

21 The Board finds the Petitioners have failed to carry their burden of proof in Issue No.
22 6.

23 **Issue No. 7:**

24 In LU-7 (B) and (C) the County has established an "urban" reserve classification and
25 designated this classification to the proximate to a UGA to keep minimum lot size at 10
26 acres for possible inclusion in a UGA at a later date. Does this interfere substantially with
private property rights RCW 36.70A.370(2) "Local governments that are required or choose
to plan under RCW 36.70A.040 and state agencies shall utilize the process established by
subsection (1) of this section to assure that proposed regulatory or administrative actions
do not result in an unconstitutional taking of private property."? Does this "saving" or
"holding" pattern interfere with CPP Preamble #6 "Property rights. Private property shall not
be taken for public use without just compensation having been made. The property rights
of landowners shall be protected from arbitrary and discriminatory actions"?

1 **The Parties' Position:**

2 **Petitioners:**

3 The Petitioners contend the County has violated the landowner's legal rights by an
4 arbitrary and capricious action in designating a large portion of the Loon Lake area as Urban
5 Reserve. A sub-area plan for the Loon Lake area was developed by the County and citizens,
6 yet not adopted during the Comprehensive Plan process. The Petitioners argue that by
7 designating ten acre minimum lots in the Loon Lake watershed for Urban Reserve until a
8 plan is in place violates their rights.

8 **Respondent:**

9 The Respondent contends that counties have the right to plan for future urban
10 development where it makes sense to do so. Stevens County has designated two Urban
11 Reserve areas, one at Loon Lake and the other at Hunters, which may be appropriate for
12 inclusion within a UGA at a later date. The Respondent argues that the community
13 committed to the sub-area planning process and, in recognition of the substantial
14 disagreement within the Loon Lake community over growth management, the County has
15 elected to defer a determination of a UGA in this area until that process is completed. They
16 also argue that the Urban Reserve designation is a place holder to preserve the status quo
17 until the sub-area plan is adopted. The Respondent contends that Ms. Wilma's challenge to
18 her constitutional property rights is premature and she needs to challenge the zoning after
19 the designation is completed. The Respondent also contends that the Hunters UGA is
20 heavily platted and, therefore, a logical choice for future urban growth.

20 **Petitioners HOM Reply:**

21 See Petitioners answer to Issue No. 6.

22 **Board Analysis:**

23 The Petitioner asks the Board to determine if the Urban Reserve classification with a
24 ten acre minimum lot size violates RCW 36.70A.370(2). As framed, this is a private property
25 rights issue and not whether the Urban Reserve areas designated by the County are
26 appropriate.

1 The Board agrees with the Respondent concerning Issue No. 7. Counties and cities
2 who are required or choose to plan under RCW 36.70A.040 are authorized by RCW 36.70A
3 to designate land use. If these actions are done in an "orderly, consistent process", the
4 county or city does not violate the statute in question. RCW 36.70A.370(1).

5 The County followed the proper process authorized by RCW 36.70A to determine
6 land use designation throughout the County. After following a process, the County adopted
7 its Comprehensive Plan as authorized by RCW 36.70A.

8 The Central Board in *Shulman v. City of Bellevue* clarified the role of the Hearings
9 Boards:

10 "A private party is not granted the right to seek judicial relief for alleged
11 noncompliance with RCW 36.70A.370 (Protection of private property). The
12 Board does not have jurisdiction to determine whether there has been a
13 violation of RCW 36.70A.370." *Shulman v. City of Bellevue*, CPSGMHB Case
14 No. 95-3-0076, FDO, May 13, 1996.

15 In the same case, the Central Board also explained what the petitioners must do to
16 prevail:

17 "In order for petitioners to prevail in this type of challenge, they must prove
18 that the action taken by a city or county is both arbitrary and discriminatory.
19 Showing either an arbitrary or discriminatory action is insufficient to overcome
20 the presumption of validity that actions of cities and counties are granted by
21 the Act." *Shulman v. City of Bellevue*, CPSGMHB Case No. 95-3-0076, FDO,
22 May 13, 1996.

23 As stated, Issue No. 7 concerns RCW 36.70A.370(2). The Board has no jurisdiction
24 over this issue.

25 **Conclusion:**

26 The Board finds the Petitioners have failed to carry their burden of proof in Issue No.
7.

Issue No. 8:

Mandatory to the Comprehensive Plan are the following: RCW 36.70A.070(2) "A
housing element ensuring the vitality and character of established residential neighborhoods

1 that: (a) Includes an inventory and analysis of existing and projected housing needs” and
2 (c) “identifies sufficient land for housing, including, but not limited to, government assisted
3 housing, housing for low-income families, manufactured housing, multifamily housing, and
4 group homes and foster care facilities; and (d makes adequate provision for existing and
5 projected needs of all economic segments of the community.” Does it interfere substantially
6 with the Act that Stevens County has none of these things in its CP?

5 **The Parties’ Position:**

6 **Petitioners:**

7 The Petitioners contend the County has failed to adequately address housing issues
8 in its Comprehensive Plan as mandated in RCW 36.70A.070(2). The Comprehensive Plan
9 does not say how the County will promote affordable housing in UGAs, and allow
10 manufactured housing. The Petitioners contend that the CP Appendix includes an inventory
11 of residential structures, but no projected needs analysis, such as housing for low income,
12 government assisted housing, multifamily housing, group homes and foster care facilities.
13 The County’s CWPP #5 contain the elements required for the housing section of the CP, but
14 does not contain sufficient information.

15 **Respondent:**

16 The Respondent contends that the County addresses each of the four parts to the
17 GMA Housing element. First, the County provided an inventory and analysis of existing and
18 projected housing needs and identified the need for 5,200 additional homes. The second
19 part requires the County to provide a statement of goals, policies, objectives and mandatory
20 provisions for the preservation, improvement and development of housing, which the
21 Respondent argues the County did with mandatory elements in its plan. The third part of
22 the GMA housing element requires counties to identify sufficient land for all types of
23 housing. The Respondent contends that the County established UGAs and LAMIRDs as part
24 of its plan to fulfill this element and shift low-density rural growth into areas where the built
25 environment will support greater density. In addition, Appendix A provides for a variety of
26 alternative housing in the County. In the fourth part, the Respondent argues that the

1 County developed a clear understanding of the economic range within the County and its
2 policies and goals reflect its commitment to serving all segments of the community.

3 **Petitioners HOM Reply:**

4 Petitioners reiterate previous arguments, but agree with the Respondent that the
5 County did include an estimate of 5,200 houses would be needed.

6 **Board Analysis:**

7 A housing element is one of the mandatory elements that must be included in a
8 county's or a city's comprehensive plan. The Respondent contends that the County
9 addressed each of the four parts. First, counties are required to provide an inventory and
10 analysis of existing and projected housing needs that identifies the number of housing units
11 necessary to manage growth. RCW 36.70A.070(2)(a). In the County's CP, Appendix A, the
12 County provided an inventory of housing units and concluded that 5,200 homes will be
13 needed for permanent full-time residents. The County fulfilled their obligation under (2)(a).

14 Second, the housing element requires counties and cities to include a statement of
15 goals, policies, objectives, and mandatory provisions for the preservation, improvement,
16 and development of housing, including single-family residences. RCW 36.70A.070(2)(b).
17 The County established its goal for housing in its Comprehensive Plan under sec. 6.1 and its
18 policies for housing under sec. 6.2. Four policies were written, HO-1 through HO-4, that
19 provide for sufficient land, infrastructure and densities to meet the County's housing
20 demands; address affordable housing needs; allows housing for the special needs
21 population; and encourage innovative regulatory strategies. The County fulfilled its
22 obligation under (2)(b).

23 A third part of the GMA housing element requires the County to identify sufficient
24 land for all types of housing and housing needs. The County established new
25 unincorporated UGAs and LAMIRDS to ensure there is adequate land available for housing
26 needed to support growth. The section under Appendix A: Affordable Housing; A Range of
Housing Types, makes clear that housing alternatives are available. The County fulfilled its
obligation under (2)(c).

1 The fourth and final requirement of the housing element is to make adequate
2 provisions for existing and projected needs of all economic segments of the community. The
3 County analyzed census data for each subdivision in the County, which developed a clear
4 understanding of the economic range within the County. This is reflected in the goals and
5 policies in the housing element. The County has fulfilled its obligation under (2)(d).

6 **Conclusion:**

7 The Board finds that the Petitioners have failed to carry their burden of proof in
8 Issue No. 8.

9 **Issue No. 9:**

10 Is Stevens County's CP out of compliance for not containing "A capital facilities plan
11 element consisting of: (a) An inventory of existing capital facilities owned by public entities,
12 showing the location and capacities of expanded or new capital facilities; (b) a forecast of
13 the future needs for such capital facilities; (c) the proposed locations and capacities of
14 expanded or new capital facilities; (d) at least a six-year plan that will finance such capital
15 facilities within projected funding capacities and clearly identifies sources of public money
16 for such purposes: and (e) a requirement to reassess the land use element if probable
17 funding falls short of meeting existing needs and to ensure that the lands use element,
18 capital facilities plan element, and financing plan within the capital facilities plan element
19 are coordinated consistent," RCW 36.70A.070(3)?

20 **The Parties' Position:**

21 **Petitioners:**

22 The Petitioners argue that the County has failed to provide planning, including
23 existing inventories, projected needs analysis and funding sources, for capital facility utility
24 elements as required by the GMA under Goal 12, Public facilities and services.

25 **Respondent:**

26 The Respondent contends that the capital facilities plan elements (CFP), such as
sewer and water, are defined as public facilities. RCW 36.70A.030(12). The Petitioner
acknowledges that the public facilities district (PUD) has primary responsibility for financing
the construction of such utilities. Thus, the County is not in a position of having to address
financing such projects.

1 **Amicus Response (PUD No. 1):**

2 The PUD contends that nowhere does RCW 36.70A.070(3) address domestic water
3 systems or sanitary sewer systems, rather domestic water and sanitary sewer systems, as
4 provided by the PUD, are defined as "public facilities." RCW 36.70A.030(12). Accordingly,
5 there is no need for the capital facilities plan in the County's Comprehensive Plan (CP) to
6 adopt or even address the PUD's plan regarding "public facilities" such as domestic water
7 systems and sanitary sewer systems. The PUD argues that the Utility Element in the
8 County's CP "clearly and satisfactorily addresses these elements, including timing of utility
9 extensions into UGAs, citing of public facilities, and forecasted future need for public
10 facilities services." Amicus brief at 8.

11 The PUD argues that the County did evaluate and rely upon the PUD's
12 Comprehensive Water System Plan and Satellite Management Agency Plan in its CP. The
13 Petitioners' own admissions concerning the PUD's role overcome their own contentions.

14 **Petitioners HOM Reply:**

15 The Petitioners cite the Eastern Board's case, *Moitke v. Spokane County*, EWGMHB
16 Case No. 05-1-0007 FDO, February 14, 2006, and *Roberts v. Benton County*, EWGMHB, 05-
17 1-0003 FDO, October 19, 2005, as examples where the Board held that an amendment of a
18 comprehensive plan to expand the UGA requires a new review of a capital facilities plan to
19 determine if services will be available and how they would be paid for. According to the
20 Petitioners, all the GMA cases referenced above reveal utilities are capital facilities. The
21 County does not plan for how these services are to be financed. Levels of service are not
22 even adopted.

23 **Board Analysis:**

24 This issue was covered extensively under Board Analysis of Issue No. 2.

25 **Conclusion:**

26 The Board finds that the Petitioners have carried their burden of proof and that the
County's actions are clearly erroneous. The County failed to adopt a capital facilities plan
and financial plan as required by RCW 36.70A.070(3).

1 **Issue No. 10:**

2 The county commissioners stated that all land owners who wanted their land
3 reclassified, should ask for that reclassification in their comment. The commissioners
4 guaranteed they would answer those requests in written form during the commissioner
5 deliberations. If all requests were answered except the Petitioner's request, would that be a
6 violation of RCW 36.70A.140 "...consideration of and response to public comments"; and a
7 violation of Stevens County Public Participation Policy #8 paragraph 4; "The hearing body is
8 encouraged to orally address public comments in public hearings and make oral findings of
9 facts to support decisions"? And would this failure to answer also conflict substantially with
10 the Goals of the Act RCW 36.70A.020(11) Citizen participation and coordination?

8 **The Parties' Position:**

9 **Petitioners:**

10 The Petitioners contend the County failed to properly, accurately and adequately
11 respond to certain documents submitted by the Petitioners. The Petitioners argue that
12 based on the documents prepared by Mr. Clay White, Stevens County Planning Department,
13 a mistake has been made, which interferes significantly with the GMA Goal No. 11 Citizen
14 participation.

15 **Respondent:**

16 The Respondent contends that the County staff did not falsify public documents and
17 that the planning director, Mr. White, did not lie about past correspondence or current
18 development on Ms. Wilma's property. According to the Respondent, the County answered
19 public comments appropriately.

19 **Petitioners HOM Reply:**

20 The Petitioners argue that their letter (Exh. 840) requests the area containing the six
21 acres of their property be added to the LAMIRD and they also requested this orally at the
22 February 21, 2006, hearing. In addition, the Petitioners argue that the County put excessive
23 acreage into other LAMIRDs, including the Arden and West Kettle (Falls) LAMIRDs, and
24 describe the services available to these LAMIRDs compared to those at Loon Lake, which
25 they contend are minimal.

1 **Board Analysis:**

2 RCW 36.70A.140 requires counties to have a public participation plan that is broadly
3 disseminated to the public. Included in this plan are procedures providing for "early and
4 continuous public participation in the development and amendment of comprehensive land
5 use plans and development regulations implementing such plans." It also requires
6 "...consideration of and response to public comments." The County has an adopted public
7 participation plan. After full review of the record, this Board believes the County fulfilled its
8 obligation to follow its plan and the method of response, while not what the Petitioner's
9 would have liked, was legal and appropriate.

10 Having determined that the County followed its adopted public participation plan, the
11 Board can not find the County out of compliance with RCW 36.70A.020(11). In addition, the
12 Board incorporates their conclusion from Issue No. 1.

12 **Conclusion:**

13 The Board finds that the Petitioners have failed to carry their burden of proof in
14 Issue No. 10.

15 **Issue Nos. 11, 12, & 13:**

16 The Petitioner, Mr. James Davies, failed to carry his burden of proof on Issues Nos.
17 11, 12, and 13. The Board, after hearing all arguments at the motions hearing on November
18 27, 2006, dismissed all three Issues by its Order on Motions issued December 4, 2006.

18 **Issue No. 14:**

19 Has Stevens County failed to follow their own Public Participation Policy,
20 County Wide Planning Policy, as well as the requirements for Public Participation set
21 forth in the Growth Management Act in RCW 36.70A .020 (11), RCW 36.70A.035 and
22 RCW 36.70A.140, when it adopted Stevens County's Comprehensive Plan?

22 **The Parties' Position:**

23 **Petitioners:**

24 The Petitioner argues that despite numerous letters, comments and submission of a
25 sub-area plan to the BOCC by the Loon Lake Watershed Citizens Advisory Committee
26

1 (LLWCAC), the Loon Lake Property Owners Association (LLPOA) and the Petitioners, the
2 BOCC failed to follow the County's PPP in providing open discussion, dialogue and feedback
3 to the citizens. The Petitioner contends that public participation is not optional by the
4 County. The BOCC has a duty and legal requirement to respond to submissions by the
5 public.

6 **Respondent:**

7 The Respondent argues that sub-area planning issues, in particular the sub-area
8 plan for Loon Lake, which was dismissed by the Board, and documents supplemented into
9 the record (over the County's continuing objection) could not be used to support an
10 argument related to sub-area planning. As argued before, the County deferred sub-area
11 planning and was upheld by the Board, so it does not have to engage in public participation
12 for a process that has been properly deferred.

13 **Petitioners HOM Reply (Wagenman, et al):**

14 The Petitioners contend that the County, in an effort to disqualify environmental
15 comments received by Petitioners and by the Loon Lake community, defer and deny any
16 responsibility in addressing these factors by stating these issues are for sub-area planning
17 at a later date. The County has written a document that has no goals and policies that
18 would support the future sub-area plans. The Petitioners argue that they followed the
19 communications by the County to participate and produce a growth management sub-area
20 plan to have it incorporated into the first Comprehensive Plan. The County created the
21 LLWCAC by Resolution #61-2002, which has not been replaced or repealed, and it cannot
22 later opt not to accept the committee's work. The Petitioners argue that the County
23 repealed the old zoning map and sub-area plan and adopted in their place a CP that ignores
24 the environmental concerns, such as water quality, wetlands and rural character, that the
25 LLWCAC recommended being protected.

26 The Petitioner contends that many of their concerns about the rural character of
Loon Lake and environmental concerns are not addressed and, according to the Petitioners,
nothing in the CP or the background for this CP addresses the watershed/rural character

1 issues either. They argue that at some point in the hearing process there should be
2 "conversation or dialogue, not monologue with the Hearing Body." HOM Reply brief at 7.

3 **Board Analysis:**

4 This issue was covered and decided under Board Analysis of Issues No. 1 and 10.

5 **Conclusion:**

6 The Board finds the Petitioners have failed to carry their burden of proof in Issue No.
7 14.

8 **Issue No. 15:**

9 Has Stevens County failed to comply with the Growth Management Act and
10 RCW 36.70A.070 (3) ensuring that Capital Facilities and Services exist, (finance plan) are
11 adequate and available at the time the development is available ("when impacts of
12 development occur") for occupancy and uses without decreasing minimum standards as per
13 .070 (3), RCW 36.70A.110 (3) RCW 36.70A.020 (12) and WAC 365-195-070 (3) Has the
14 County failed to provide a forecast of future needs for such capital facilities? Has the County
15 failed to complete the necessary joint planning among local and other counties jurisdictions
16 (consistency)? Has the County failed to adequately show their work? Does this substantially
17 interfere with the Goals of the Act? (#1, #12)

18 **The Parties' Position:**

19 **Petitioners:**

20 The Petitioners argue that the County has not adequately planned for capital facilities
21 and public facilities and services to comply with the GMA. In addition, the Petitioners
22 contend that the County has failed to follow CTED's recommendation that a plan for public
23 facilities must be based on quantifiable, objective measures of capacity; that concurrency is
24 required for transportation facilities; and that the County has not followed its own
25 Countywide Planning Polices #2 and #3. The Petitioners also contend the County has failed
26 to plan for the future needs of the five new UGAs; that the data is insufficient to support
the County's claim that its facilities, except for jails, are adequate; that there is a financial
plan to support projected facilities in the new UGAs; and that the County engaged in joint
planning with other jurisdictions. The Petitioners argue the County has expanded the five
new UGAs without taking into consideration the impact of the new growth, the necessary

1 capital facilities and how to pay for these facilities, and details these problems for each
2 UGA. Citing several EWGMHB cases, the Petitioners contend that RCW 36.70A.020(12)
3 requires that public facilities and services be available to serve development as the
4 development occurs or within a reasonable time. According to the Petitioners, the County
5 has not established the capability of providing these services as development occurs or
6 within a reasonable time and that there is little or no planning for these new UGAs.

7 **Respondent:**

8 The Respondent contends the County's CP includes a forecast for capital facilities. As
9 for public facilities, these are discussed in the Plan's utility element. Growth for the new
10 UGAs is forecast in its plan and policies are in place to require coordinated planning with
11 utility providers at the project level in the long term. According to the Respondent, the
12 County engaged in joint planning with other local jurisdictions, as documented in many of
13 the exhibits, and received comments from both CTED and WSDOT. The Petitioners question
14 the County's ability to provide services as required by the GMA. The Respondent counters
15 by reiterating the requirements set forth by the GMA, which is the adoption of policies to
16 govern growth when it occurs and that applicants for building permits must demonstrate
17 that services are available.

18 **Amicus Response (PUD No. 1):**

19 The PUD contends that Petitioner Wagenman "clearly ignores the burden of proof
20 that falls on the Petitioners, who must demonstrate clear error and that the CP does not
21 comply with the GMA, thereby overcoming the presumed validity of the CP." Amicus brief at
22 8. The PUD also contends that the Petitioner is mistaken in that the County did engage in
23 significant joint planning with local jurisdictions, special interests, citizen groups and the
24 citizenry. One special purpose district states that it was not contacted, but that does not
25 mean there was no local jurisdiction coordination.

26 **Petitioners HOM Reply (Wagenman, et al):**

The Petitioners contend that to grant deference to counties where they ignore the
basic building blocks and mandates of the GMA simply defeats the purpose of the Act and

1 cite *King County v. CPSGMHB*, 142 Wn.2d 543, 561 14P.2d 133 (2000); *City of Spokane v.*
2 *Spokane County and City of Airway Heights*, EWGMHB Case No. 02-1-0001 FDO, July 3,
3 2002; and *Roberts, et al v. Benton County*, EWGMHB Case No. 05-1-0003 FDO, September
4 20, 2005. RCW 36.70A.030(12) is the definition for public facilities, yet the County has not
5 adopted the PUD's comprehensive plan. And, according to the Petitioners, there is no
6 statement of concurrency by the County in its CP to provide public facilities. If water and
7 sewer are not included in the capital facilities plan by the County, why is it mentioned in the
8 publication by CTED? The County has no mechanism to comply with the GMA's requirement
9 for public facilities in its Comprehensive Plan. The County also has no capital facilities plan
10 for the new UGAs, or the funding for these plans. The Petitioners contend that the PUD has
11 not provided enough information to determine whether or not there are sufficient capital
12 facilities or money to fund the additional expected population gain in the new UGAs. The
13 County did not inventory capital facilities in Addy, Clayton, Valley, Hunters or Suncrest. The
14 Petitioners contend the County is obligated to come up with a plan for the non-municipal
UGAs, including a six-year capital facilities plan.

15 **Board Analysis:**

The issue was addressed and answered under Board Analysis in Issues No. 2 and 9.

16 **Conclusion:**

17 The Board finds the Petitioners have carried their burden of proof and that the
18 County's actions are clearly erroneous. The County failed to adopt an adequate capital
19 facilities plan and six-year financial plan as required by RCW 36.70A.070(3), failed to ensure
20 adequate existing public facilities and service capacities as required by RCW 36.70A.110(3),
21 and failed to follow goals RCW 36.70A.020(1), (2), and (12) as required by the GMA.

22 **Issue No. 16:**

23 Has Stevens County failed to comply with the Growth Management Act by
24 allowing and failing to restrict urban services such as, but not limited to, public sanitary
25 sewer services in the Rural areas. Does this substantially interfere with the Goals of the Act
(#1, #2, #12) and fail to comply with RCW 36.70A. 110. (4) RCW 36.70A.030

1 **The Parties' Position:**

2 **Petitioners:**

3 The Petitioners contend the County's Comprehensive Plan fails to comply with the
4 GMA in that it doesn't give direction and definition of sewer services in the rural areas, or
5 prohibit the extension of sewer services into rural areas, which would encourage urban-like
6 growth in these areas. The County's action substantially interferes with RCW 36.70A.020,
7 Goals 1, 2, and 12.

7 **Respondent:**

8 The Respondent argues that the County's Plan does not permit the expansion of
9 urban services into rural areas unless there is a threat to health and safety.

10 **Amicus Response (PUD No. 1):**

11 The PUD argues that consistent with RCW 36.70A.110(4), "urban governmental
12 services", such as sewer and water, are appropriate only "in those limited circumstances
13 shown to be necessary to protect basic public health and safety and the environment and
14 when such services are financially supportable at rural densities and do not permit urban
15 development."

16 **Petitioners HOM Reply (Wagenman, et al):**

17 The Petitioners object only to sewer as being clearly not rural as stated in the
18 definition found in RCW 36.70A.030(16), and the Respondent and amicus arguments did
19 not include water service. The Petitioners contend the County's CP does not have a guiding
20 policy that would prohibit the extension of sewer into the rural areas. The Petitioners
21 contend that sewers should not be available for permitting new development, only to
22 protect the development that is in an urban-like area now. The Petitioners also argue the
23 County did not work with the Loon Lake Sewer District as directed by its own plan at UT-4.
24 The Petitioners contend the County's CP permits and does not prohibit extension of sewer
25 services into the rural areas. The Washington Supreme Court affirmed the Court of Appeals
26 in *Cooper Point Association v. Thurston County* 148 Wn. 2d1, 57 P.3d 1156 (2002), that
RCW 36.70A.110(4) does not allow a county to extend ... a sewer line when the county has

1 not shown that the extension is necessary to protect public health and safety and the
2 environment.

3 **Board Analysis:**

4 One of the mandatory elements of a jurisdiction's comprehensive plan is a rural
5 element. Stevens County adopted this requirement under CWPP 5.0 Rural Element, which
6 contains many, if not all the provisions, found in RCW 36.70A.070(5). There is no
7 requirement in this statute for a county or city to specifically state in its comprehensive plan
8 that sanitary sewers are prohibited in the rural area. It is certainly clear in RCW
9 36.70A.070(5)(b) Rural development, which states in part, "The rural element shall provide
10 for a variety of rural densities, uses, essential public facilities, and rural governmental
11 services needed to serve the permitted densities and uses." Public facilities, such as sewer,
12 are not mentioned and, therefore, are not to be provided.

13 The County chose to be more general in its statements concerning its rural element
14 goal and policies and not specifically define, direct or prohibit the extension of urban
15 development such as sanitary sewer services. The Petitioners concede the CP states that
16 "land use activities and development intensities" are encouraged that "do not require or
17 lead to extension of urban services or facilities except as may be permitted by the
18 Comprehensive Plan." The Petitioners also acknowledge the County will work with "utility
19 providers to support public sewer and water services" that "will not result in new urban
20 development that is not permitted by the Comprehensive Plan." The PUD argues that RCW
21 36.70A.110(4) controls, which states that, "In general, it is not appropriate that urban
22 governmental services be extended to or expanded in rural areas except in those limited
23 circumstances shown to be necessary to protect basic public health and safety and the
24 environment and when such services are financially supportable at rural densities and do
25 not permit urban development."

26 **Conclusion:**

The Board finds the Petitioners have failed to carry their burden of proof in Issue No.
16.

1 **Issue No. 17:**

2 Has Stevens County failed to comply with the Growth Management Act by
3 failing to meet the goals of concurrency? Does this substantially interfere with the
4 Goals of the Act RCW 36.70A.020 (12)& comply with RCW 36.70A 070? Has the County
5 failed to show their work?

5 **The Parties' Position:**

6 **Petitioners:**

7 The Petitioners argue that along with a capital facilities element there needs to be
8 adequate provision for concurrency. Counties and cities planning under the GMA must
9 ensure at the time of new development public facilities and service are either in place or are
10 adequately planned. According to the Petitioners, this imposes a requirement upon the
11 government to state what it plans to do and how that is going to be accomplished in order
12 to achieve concurrency. In addition to the transportation concurrency requirement, the
13 EWGMHB has RCW 36.70A.020(12) to require that public facilities and services must be
14 available to serve the development... as that development occurs or within a reasonable
15 time.

15 The Petitioners contend the County has not even established a baseline to determine
16 the minimum level of services for public facilities and services in the new UGAs. What is
17 needed to serve the projected population in these new areas, either at the time of
18 occupancy and use or within an appropriately timed phasing of growth, must be connected
19 to a clear and specific funding strategy.

20 **Respondent:**

21 The Respondent contends this issue was not briefed and should be waived.

22 **Petitioners HOM Reply (Wagenman):**

23 The Petitioners point to the County's statement that "[T]he principle that public
24 facilities and services needed to support development should be provided concurrently with
25 the related development is a keystone of the GMA." The Petitioners argue there should be a
26 written policy in the CP that reflects the above statement of concurrency. However, there

1 isn't one. The Petitioners paraphrase this Board's FDO in *Cascade Columbia Alliance v.*
2 *Kittitas Co.*, EWGMHB Case No. 98-1-0004, FDO, Dec. 21, 1998, which states in part that
3 the GMA requires water and sewer and other services to be in place when development
4 occurs and that cities are required to provide these facilities and services at least
5 concurrently with the projected growth. According to the Petitioner, the County does not
6 have a policy that speaks to the goal of concurrency.

7 **Board Analysis:**

8 RCW 36.70A.020(12) in the GMA guides local governments to "ensure that those
9 public facilities and services necessary to support development shall be adequate to serve
10 the development at the time the development is available for occupancy and use without
11 decreasing current service levels below locally established minimum standards."

12 In *McVittie et al., v. Snohomish County*, the Central Board interpreted Goal 12 to
13 mean:

14 "Unlike the transportation element, the capital facilities element does not use
15 the phrase "concurrent with development" and does not specify an
16 enforcement procedure. [However, read in light of Goal 12] a local
17 government is obligated to take steps to ensure that those facilities and
18 services it has identified as being necessary to support development are
19 adequate and available to serve development. *Jody McVittie, et al., v.*
20 *Snohomish County [Snohomish County-Camano Association of Realtors –*
21 *Intervenor]*, CPSGMHB Case No. 99-3-0016c FDO, Feb. 9, 2000.

22 The Central Board also determined in *McVittie* that Goal 12 does not require a
23 development-prohibiting concurrency ordinance for public facilities and services, other than
24 transportation:

25 "The answer to question 4 – Does Goal 12 require "concurrency" for all public
26 facilities and services, beyond the explicit concurrency requirement of RCW
36.70A.070(6)(b) for transportation" is no. Goal 12 does not require a
development-prohibiting concurrency ordinance for non-transportation
facilities and services. Goal 12 allows local governments to determine what
facilities and services are necessary to support development and develop an
enforcement mechanism for ensuring that identified necessary facilities and
services for development are adequate and available. Board emphasis. *Jody*

1 *McVittie, et al., v. Snohomish County*, CPSGMHB Case No. 99-3-0016c, FDO
2 Feb. 9, 2000.

3 The Eastern Board in *Miotke v. Spokane County* determined concurrency means that
4 not only are there facilities with the capacity to serve development, but also these facilities
5 and services are in place or that a financial commitment is in place to ensure these facilities
6 and services can be provided in a timely manner. This takes a detailed capital facilities plan
7 backed by a six-year financial plan that identifies sources of public money for such
8 purposes:

9 "Concurrency" is defined by WAC 365-195-210 and means "adequate public
10 facilities are available when the impacts of development occur." This definition
11 includes two additional concepts: "adequate public facilities and "available
12 public facilities". "Adequate public facilities" means facilities, which have the
13 capacity to serve development without decreasing levels of service below
14 locally established minimums. "Available public facilities" means that facilities
15 or services are in place or that a financial commitment is in place to provide
16 the facilities or services within a specified time. In the case of transportation,
17 the specified time is six years from the time of development. *Kathy Miotke and
18 Neighborhood Alliance of Spokane v. Spokane County, Respondent, and
19 Ridgecrest Developments, L.L.C., et al*, EWGMHB Case No. 05-1-0007, FDO,
20 (February 14, 2006).

21 Key to the Petitioners argument is whether the County needs a policy in its CP to
22 provide for concurrency and, again, *McVittie* gives us some direction:

23 "For capital facilities, adoption of a concurrency ordinance is not required, but
24 it is not prohibited; such action is within local discretion. In any case, an
25 enforcement mechanism is required."

26 The County's CP has what may be described as a concurrency policy for
transportation under 8.0 Transportation Element at TR-5, which states, "Provide for
concurrent financing and development of needed transportation facilities consistent with the
Land Use Element of this Plan." The County did not adopt either policies or regulations that
provide reasonable assurances that the locally defined public facilities and services will be
available at the time of development or shortly thereafter.

1 This Board found Stevens County lacking in support of RCW 36.70A.020(12) in *Loon*
2 *Lake Property Owners Association*:

3 RCW 36.70A.020(12) requires local governments to adopt either policies or
4 regulations or a combination thereof that provide reasonable assurances, but
5 not absolute guarantees, that the locally defined public facilities and services
6 necessary for future growth are adequate to serve that new growth, either at
7 the time of occupancy and use or within an appropriately timed phasing of
8 growth, connected to a clear and specific funding strategy. 01-1-0002c:
9 *Loon Lake Property Owners Association, et al v. Stevens County*, Amended
10 Final Decision and Order (October 26, 2001).

11 The Board has already found the County out of compliance in Issue No. 2 for not
12 having an adequate capital facilities plan for all public facilities and services with a financing
13 plan to support it. Now we find that the County in its CP has not adequately provided for
14 locally defined public facilities and services through policies or regulations or a combination
15 thereof that provide reasonable assurances that new growth will be served as required by
16 RCW 36.70A.020(12). Without designated level of services for public facilities and services,
17 the County can't even determine what is necessary to ensure adequate public facilities and
18 services, let alone ensure they will be available for new growth.

19 **Conclusion:**

20 The Board finds the Petitioners have carried their burden of proof and that the
21 County's actions are clearly erroneous. The County failed to adopt policies or regulations in
22 its CP to "ensure" public facilities and services are available when impacts of development
23 occur or within a reasonable time afterwards.

24 **Issue No. 18:**

25 Has Stevens County failed to comply with the Growth Management Act,
26 RCW 36.70A.070 (1), Land Use Element by providing for protection of quality and
quantity of ground water with review of drainage, flooding and storm water run-off.? Did
the County fail to provide guidance for corrective actions to mitigate or cleanse those
discharges that pollute the waters of the state? Does this substantially interfere with the
Goals of the Act? #10 #9

1 **The Parties' Position:**

2 **Petitioners:**

3 The Petitioners contend the County failed to protect the quality and quantity of
4 ground water with a policy or policies that address drainage, flooding, and stormwater
5 runoff and failed to provide guidance for corrective actions to mitigate or cleanse those
6 discharges that pollute the waters of the state. They also contend that the County's CAO
7 and Shoreline Master Program (SMP) do not address the intensity of uses or densities of
8 development, ground water, surface discharge and recharge, stormwater pollution, septic
9 tanks and uses compatible with fish and wildlife. The Petitioners argue that the CAO
10 addresses critical areas and the SMP addresses shorelines, but the rural character is not
11 protected by the County's Rural Element or Land Use Element.

12 The Petitioners contend that the GMA in RCW 36.70A.070(5)(c) requires a Rural
13 Element in the County's CP that protects the rural character, including surface water and
14 ground water resources. WAC 365-195-330 Rural Element Requirements, states that "[T]he
15 Rural Element shall permit land uses that are compatible with the rural character of such
16 lands and provide for a variety of densities." Further in the statute, under (d)(i) and (v),
17 counties are required to preserve critical areas and establish criteria for environmental
18 protection, including programs to control non-point sources of water pollution and to
19 enhance habitat for fish and wildlife."

20 The Petitioners argue the County issued a FEIS as required by RCW 43.21C, but did
21 not address several important environmental impacts, such as impervious surfaces created
22 by a LAMIRD or Urban Reserve designation, allowance for five and ten acre parcels,
23 increased development by the five-acre density, or potential for storm water pollution. In
24 addition, the Petitioners contend Mr. St. Goddard's report did not address the five acre
25 parcels and failed to address water quality. The Petitioners contend the FEIS did not
26 address the impact of five acre densities in areas like Loon Lake for water quality,
impervious surfaces, pollution from runoff, and storm water.

1 The Petitioners acknowledge the County's Rural Element in RU-11 mentions
2 "geographical, topographical, hydrological, transportation and other ... development
3 factors", but fail to define just what these criteria mean.

4 Addressing the Land Use Element, the Petitioners argue that there is nothing in this
5 section that refers to rural areas, nor is there any direction or policies for the LAMIRDs. In
6 addition, there are no protections for sensitive shorelines outside the jurisdiction of 200 feet
7 from the ordinary high water mark because there are no sensitive shorelines designated by
8 the County.

9 The Petitioners argue the County has no designated variety of rural densities as it did
10 before the new CP was adopted. Consequently, septic systems will have an adverse impact
11 on water quality and ground water. They also contend that the County designated Granite
12 Point as a Type II LAMIRD and allowed the development to grow while still using a septic
13 system. The County also allowed four other Type II LAMIRDs around other lakes as well
14 and failed to address in its FEIS the impact of additional growth in these LAMIRDs next to
15 critical areas. The Petitioners provided seventeen comments from various governmental,
16 scientific and public submissions to the record in support of their argument that water
17 quality is in jeopardy in the region's lakes and critical areas.

18 In conclusion, the Petitioners contend the County failed to write goals and policies
19 that protect the rural character's environmental concerns as required by the GMA.

20 **Respondent:**

21 The Respondent argues that this issue challenges the County's shoreline master
22 program and critical areas ordinance and those are not before the Board and should not be
23 considered. The water quality issue is addressed in Issue No. 21.

24 **Amicus Response (PUD No. 1):**

25 The PUD contends the Petitioners' argument concerns the Critical Areas Ordinance
26 and Shoreline Master Program, neither of which is before the Board. Therefore, this issue
should not be considered. The PUD also contends that the County was not required to
address in detail the environmental impacts, such as watershed recharge, impervious

1 surfaces, pollution runoff, storm water, groundwater, water quality and impacts on
2 wetlands, objected to by the Petitioner in the non-project Environmental Impact Statement
3 and cites WAC 197-11-442 (non-project actions), WAC 365-195-610 (SEPA), WAC 365-195-
4 760 (integration of SEPA), and an Eastern Board case, *Citizens for Good Governance, et al.*
5 *v. Walla Walla County*, EWGMHB Case No. 01-1-0015c and 01-1-0014cz, FDO May 1, 2002.

6 **Petitioners HOM Reply (Wagenman):**

7 The Petitioners contend that a variety of rural densities should reflect, in part, critical
8 areas, watersheds, surface water and ground water resources, water recharge and
9 discharge areas, flooding and storm water runoff, wildlife, water quality and quantity. They
10 argue that there are no goals or policies in the Land Use Element that address land uses
11 and intensities regarding the aforementioned environmental problems. The Petitioners
12 contend that the rural character exists outside of shorelines and critical areas and these
13 factors are not taken into consideration in other rural areas. In addition, the issues of land
14 use combined with intensity of development, is not addressed in a CAO or Shoreline Master
15 Program. As previously briefed, the Petitioners argue that the County is relying on its CAO
16 and SMP to protect water, but these ordinances do not address issues of impervious
17 surfaces, stormwater, and water quality and quantity. The Respondent refers to the General
18 Planning Goal of GP-13, but this does not require protections the County should place in its
19 goals and policies and language that would reflect the requirements in the GMA. The
20 Petitioners argue that LU-4 and LU/SMP 3, 4 and 8 fulfill other obligations to the GMA, such
21 as to shorelines and critical areas, not watersheds and rural character.

22 The Petitioners contend the County only looked at one watershed, the Sheep Creek
23 watershed, when considering CARAs and general watershed protection. They also argue
24 that none of the County's statements concerning CARAs are supported by scientific data.
25 There is no conclusion about five and ten acre densities in the Sheep Creek CARA as being
26 insignificant to the watershed. This is the County's interpretation of the St. Goddard report.
The conclusions drawn by the County for the Sheep Creek CARA are then applied to the
entire Colville River Basin.

1 The Petitioners argue that it's general knowledge that the Colville River is having
2 problems in terms of water quality. The County has failed to address this problem and there
3 are no policies in the plan that would do so. The County is choosing to ignore issues related
4 to ground water, water quantity and quality, stormwater, impervious surfaces by not
5 addressing them in the CP. The Petitioners contend that the County has no rural policies or
6 land use policies that will guide these kinds of rural constraints for comprehensive planning
7 purposes. The Petitioners contend the County removed the protections for Loon Lake by
8 repealing the Loon Lake sub-area plan, but replaced it with the CP, which doesn't protect
the environment or address the capacity of land, air and water.

9 **Board Analysis:**

10 The Board looks at whether Stevens County fulfilled its obligation under RCW
11 36.70A.070(1) when it adopted its CP. The Petitioners contend the County's Land Use
12 Element does not contain a goal or policies that protect rural character, water quality and
13 quantity, provide stormwater protections or address environmental issues related to a
14 density of one unit per five acres in the rural areas. The Respondent argues the County's CP
15 has goals and policies that address these issues, specifically LU-4, LU/SMP 3, 4 and 8, GP-
16 13, NR/CA-1, 2 and 3, the County's CAO and the SMP, while the Intervenor argues that the
17 CP is a general plan and detailed environmental impacts were not required in a non-project
EIS that supports the CP.

18 RCW 36.70A.070(1) is the land use element required by the GMA. The land use
19 element designates the proposed general distribution and general location and extent of the
20 uses of land, as well as includes population densities, building intensities and estimates of
21 future population growth. It specifically states, "The land use element shall provide for
22 protection of the quality and quantity of ground water used for public water supplies.
23 Where applicable, the land use element shall review drainage, flooding, and storm water
24 run-off in the area and nearby jurisdictions and provide guidance for corrective actions to
25 mitigate or cleanse those discharges that pollute waters of the state..." The question is did
26 Stevens County comply with the statute?

1 The County's CP under 3.0 Land Use Element mentions many of the RCW
2 36.70A.070(1) requirements, such as "protection of the quality and quantity of ground
3 water used for public water supplies, review of drainage, flooding and stormwater runoff",
4 but refer these issues to the Natural Resources Element without setting any policies in this
5 section to address them. The County, under Land Use Goal 1, mentions, in part, "Increase
6 the percentage of new growth that occurs at higher densities in designated urban areas,
7 and reduce sprawl and maintain the character of rural areas." This seems to be a step
8 toward maintaining Stevens County's rural character. It isn't until 3.2 Land Use Policies,
9 under Shorelines, the Board sees a reference to stormwater runoff or water quality, and this
10 is addressed under LU/SMP-5 Parking. Under LU/SMP-8 Water Quality, the County
11 addresses this issue for shorelines, but not for the rural areas as a whole.

12 Under 4.0 Natural Resources Element, which the Land Use Element referenced above
13 referred the environmental issues to, the County places some of the Petitioners' issues in
14 Goal 4.1, "It is the Natural Resources (NR) goal of Stevens County to: Maintain and
15 enhance natural resource-based industries in the County; protect critical areas, including
16 surface and ground water resources, and provide for the stewardship and productive use of
17 forest, mineral and agricultural lands." The County's policy, under 4.2 Natural Resource
18 Policies, is a directive concerning critical areas only and requires appropriate protections for
19 critical areas and review of new development applications to ensure that reasonable
20 provisions for drainage and stormwater management. Unfortunately, under Policy NR/CA-3,
21 the County only considers using the Department of Ecology's Stormwater Manual for
22 Eastern Washington as guidance for planning and for implementing stormwater best
23 management practices. Board emphasis.

24 The Board looked at 5.0 Rural Element, as well, to determine if the County had
25 placed a goal or policies in that section that would fulfill the obligations required by RCW
26 36.70A.070(1). The County paraphrases the necessary wording from the GMA in the Rural
Element introduction, but falls short of putting the necessary protections in place in 5.1
Rural Goal and in 5.2 Rural Policies. For instance, in the overall statement under Rural

1 Element, the County mentions, "Fundamental to the goals of the rural element is providing
2 guidance that...protects critical areas and surface and ground water resources...", yet the
3 County fails to implement this with a policy specific to all rural areas of the County, not just
4 critical areas.

5 The Board finds that the goals and policies of the County's CP do not protect the
6 quality and quantity of ground water used for public water supplies, or review drainage,
7 flooding, and storm water run-off in the rural areas and nearby jurisdictions. The County
8 has designated new UGAs, LAMIRDs, Urban Reserve areas, and a single density of a
9 minimum of one unit per five acres. The Land Use Element requires the County to plan for
10 the impacts of these land uses in its goals and policies. The Land Use Element is specific in
11 its direction and the County's goals and policies do not fulfill the obligation set forth in RCW
12 36.70A.070(1).

12 **Conclusion:**

13 The Board finds the Petitioners have carried their burden of proof and that the
14 County's actions are clearly erroneous. The County failed to adopt policies in the Land Use
15 Element of the CP to protect quality and quantity of groundwater used for public water
16 supplies or review drainage, flooding or stormwater in the rural area and nearby
17 jurisdictions as required by RCW 36.70A.070(1).

17 **Issue No. 19:**

18 Has Stevens County failed to plan under RCW 36.70A.040 and RCW 36.70A.110
19 to include areas and densities sufficient to permit the urban growth that is projected
20 based upon the population projection (OFM & vision of urban development) without
21 exceeding the size or cap on the land that a county may allocate to handle the 20 year
22 population projection? Has the County failed to properly perform a complete land quantity
23 analysis showing its work? RCW 36.70A.110 (1) (2) Has the County failed to encourage
24 then development where adequate services and facilities exist (prohibit urban growth
25 outside of UGAs) or can be provided prohibiting sprawl? Does this substantially interfere
26 with the goals of the Act?

1 **The Parties' Position:**

2 **Petitioners:**

3 The Petitioners argue the County failed to use the Office of Financial Management
4 (OFM) population projections and/or a land quantity analysis when designating urban
5 growth areas. According to the Petitioners, the County's OFM population projection for
6 twenty years is expected to be 18,118. Yet, the Petitioners calculate that the new
7 unincorporated areas will receive 4,276 people. The Petitioner calculates that with an
8 acreage of 6,120 acres, three-quarters of which could be residential, multiplied by four
9 dwelling units per acre, the number of units would be 18,360 residential units. Multiply this
10 number by 2.75 persons per unit and conceivably 50,490 people could live in the five new
11 UGAs. The Petitioners contend this is excessive for the OFM projection. The Petitioners also
12 contend that the sizes of the new unincorporated UGAs are much too large for the
13 anticipated population. In addition, the five new urban growth areas are more rural in
14 nature than urban. The County's actions substantially interfere with RCW 36.70A.020, Goals
1, 2, 4, and 12.

15 **Respondent:**

16 The Respondent refers this Issue to their argument for Legal Issue No. 2.
17 Specifically in Legal Issue No. 2, the Respondent contends counties are not required to use
18 OFM data when planning for growth in the unincorporated part of the county. They cite
19 *Clark County Citizens v. Resources Coun.*, 94 Wn.App. 670, 674, 972 P. 2d 941, (1999).
20 "Thus, in designating new UGAs as part of its plan to manage growth in the unincorporated
21 part of the county, OFM data does not control but may be used. Stevens County has
22 decided to manage rural growth by establishing new UGAs and the limit of those boundaries
23 is not dictated by OFM projections, which do not consider previously approved high-density
rural development." (Respondent's Brief page 11.)

24 **Petitioners HOM Reply (Wagenman, et al):**

25 The Petitioners contend the County has not met the specific requirements for sizing a
26 UGA, in particular a new or adjusted land quantity analysis. The Petitioners question the

1 Respondent's figures and conclusions when new UGAs are not simply "unincorporated"
2 areas as portrayed by the County, so OFM data is not required, but designated new urban
3 growth areas. The new UGAs have 6,120 acres with a population increase of 4,276 and a
4 previous population of 4,236, totaling 8,512. Accordingly then, the County does not need
5 the 6,120 acres. This number of acres far exceeds what is necessary for the twenty-year
6 projection. The County's own CWPP directs that these new UGAs be designated, sized and
7 based upon the projected population, which states the "combined population figures for
8 each municipality and the County must total the State's population forecast for Stevens
County." According to the Petitioners, the County has failed to do this.

9 The Petitioners also contend that the characteristics of the new UGAs do not meet
10 the definition of urban found in the GMA. The County has failed to justify the urban growth
11 acreage and has failed to do a land quantity analysis to determine the size of the urban
12 areas based on anticipated population growth. The Petitioners question whether the County
13 has adequate existing and planned infrastructure as stated by CTED's brief. The Petitioners
14 also point out that there is nothing in the record to show that the County adopted
15 supporting land use policies to ensure that UGAs are appropriately located and sized to the
16 projected population. The Petitioners cite *Diehl v. Mason County* as an argument that the
17 Growth Boards and the Appellate Courts have held that urban growth areas are limited by
18 the OFM population projection adopted by a county. The Petitioners argue that the new
UGAs do not fit the definition of urban, nor do they fit the OFM projections for the County.

19 **Board Analysis:**

20 Issue No. 19 questions whether the County appropriately added new unincorporated
21 UGAs based on OFM projections and a land quantity analysis. The Petitioners argue the
22 County failed to complete a land quantity analysis that justifies the acreage assigned to
23 each of the five new UGAs. The County argues that adding new UGAs is part of its
24 management of rural growth and the limit of those boundaries is not dictated by OFM
25 projections, which do not consider previously approved high-density rural development. In

1 essence, the County contends that OFM projections do not account for urban growth in
2 unincorporated parts of the County.

3 The County's contention that OFM projections are not required to be used in the
4 unincorporated part of the County is based upon an improper reading of *Clark County*
5 *Citizens v. Resources Coun., supra*. In that case the Court held that: "[M]ore particularly,
6 nothing in the GMA provides that a county must use OFM's population projections as a cap
7 when planning for non-urban growth." (Page 943). In the footnote cited by the County, to
8 the previous quote, the Court actually said "Without so holding, we assume that the GMA
9 permits a county to use OFM's population projections when planning for lands outside its
10 urban growth areas. That question is not presented by this appeal." (footnote n.23). "The
11 GMA required a county to consider OFM population projections when sizing urban growth
12 areas." (*Clark County Citizens, supra*). (See also WAC 365-195-335(1)(d)).

13 RCW 36.70A.110(1) describes where urban growth areas can be located or
14 designated. The County's new unincorporated UGAs are covered under this section and
15 Section 3. Section (2) says that counties and cities shall include areas and densities
16 sufficient to permit the urban growth that is projected to occur in the county or city for the
17 succeeding twenty-year period. It also says, "[C]ities and counties have discretion in their
18 comprehensive plans to make many choices about accommodating growth." Discretion, of
19 course, is bounded by the requirements of the GMA. Section (3) requires counties and cities
20 to locate urban growth "first in areas already characterized by urban growth that have
21 adequate existing public facility and service capacities to serve such development, second in
22 areas already characterized by urban growth that will be served adequately by a
23 combination of both existing public facilities and services and any additional needed public
24 facilities and services that are provided by either public or private sources, and third in the
25 remaining portions of urban growth areas. Section (4) says that, in general, cities are the
26 units of local government most appropriate to provide urban governmental services. Section
(5) requires counties and cities to adopt development regulations designating interim urban
growth areas and final UGAs shall be adopted at the time of comprehensive plan adoption.

1 The Central Board in *Strahm v. City of Everett* addressed the process to arrive at
2 reasonable and defensible UGAs:

3 "RCW 36.70A.110(2) and .130(3) contain two compatible and major
4 directives. The first is that the State Office of Financial Management (OFM)
5 must project population ranges for each GMA county. These are the
6 *population drivers*, the urban growth, which the county, in conjunction with its
7 cities must accommodate. Second, this section of the Act directs the county
8 and its cities to include areas and densities *sufficient to permit the urban*
9 *growth* that is projected to occur. In order to comply with these directives,
10 jurisdictions must undertake some form of land capacity analysis to determine
11 whether their *areas and permitted densities* for the lands within their
12 jurisdiction can accommodate the projected and allocated growth. Both of
13 these GMA requirements speak in terms of providing *densities* to
14 accommodate growth – compact urban development." *F. Robert Strahm v.*
15 *City of Everett*, CPSGMHB Case No. 05-3-0042, FDO, Sep. 15, 2006.

16 To determine what the County did to follow the requirements of the GMA, specifically
17 how it distributed its population allocation, the Board looked at the numbers and
18 conclusions. Some of the numbers in the Respondent's brief are misleading, but by careful
19 analysis of the CP, the Board was able to decipher and understand what the figures
20 represent and how they were calculated. This is important. Without a careful analysis of the
21 OFM twenty-year population allocation in relation to land quantity, type of land designation,
22 density, public services and public facilities, growth patterns and other factors by the
23 County, its Comprehensive Plan would be inaccurate and not a true planning document as
24 required by the GMA.

25 According to their brief, "In 2000, the office of financial management (OFM)
26 predicted that over the succeeding twenty years, the population of Stevens County would
increase by 18,118 or 45% overall." Respondent's brief at 11. This population is the
increase over the twenty-year period from years 2000 to 2020 and calculated from Table 2
in the Final CP (Appendix A, A-15). The Respondent then contends that, "The share of
growth allocated by the OFM to existing urban growth areas is 8,799 (8,740 is a misprint)."
Respondent's brief at 11. The population figure of 8,799 allocated to the incorporated UGAs

1 is approximately 38% of the population projection from years 2005 to 2025, which is
2 23,000 people (Appendix A, 2.1.1.1, Final Draft CP), and the 8,740 number is actually the
3 true number of 38% of 23,000.

4 It's difficult, if not impossible, to determine what figures the County is working with
5 throughout the CP document or FEIS and just how staff arrived at the number and size of
6 the new UGAs. Each of the five new UGAs exceeds the area presently served by public
7 facilities and services, some by a considerable margin. This is acceptable only if the County
8 can justify the need for additional urban growth areas. Although considerable detail was
9 included in the FEIS on why the UGAs were selected, how the County determined the UGA
boundaries and sizing (acreage) remains a mystery.

10 CTED argues the County's deliberations reflect a process that is consistent with the
11 goals and requirements of the GMA because in adopting its CP the County adopted policies
12 and "otherwise acted to encourage urban development in designated urban growth areas
13 and to discourage urban sprawl into designated rural areas." CTED brief at 5. CTED then
14 summarizes the County's procedures for adopting the OFM population allocation and
15 distribution, referenced the adopted land use policies that support the County's actions, and
16 examined the County's analysis of the UGA/LAMIRD debate. In its conclusion, even though
17 CTED endorsed the County's decision to designate "four" (sic) unincorporated UGAs, CTED
18 refuses to address whether the boundaries of the new UGAs were correctly drawn, whether
19 the existing densities are sufficiently urban, or whether the projected urban development
20 will occur. These last three questions are the basis for Issue No. 19 and whether a land
quantity analysis was used.

21 The new UGAs are not the only land designations that will allow for urban
22 development and infill. While there is no documentation as to how the County determined
23 the size of the new UGAs, the County's new LAMIRDs, on the other hand, are supposedly
24 sized according to RCW 36.70A.070(5)(d), including the "logical outer boundary", and are
25 included in the population allocation for the rural areas. A population target was not
26 specifically assigned to each LAMIRD, even though 1,970 acres of residential is designated

1 for the three Type I LAMIRDs. Both the Arden and Loon Lake LAMIRDs seem to be in
2 compliance with RCW 36.70A.070(5)(d) as far as the built and platted environment, but the
3 West Kettle Falls LAMIRD is an anomaly.

4 The West Kettle Falls LAMIRD, consisting of 1,906 acres, 1,713 of which has been
5 assigned residential, does not fit the true definition of a LAMIRD as a "limited area of more
6 intensive rural development, including necessary public facilities and public services to serve
7 the limited area..." A large portion of the West Kettle Falls LAMIRD has one acre platted lots
8 and access to public water. Public sewer is not presently in place and there are no plans to
9 provide this public facility at this time, either by the PUD or the County. This designated
10 area is adjacent to and above the Columbia River. With over 1,500 potential residential
11 units on one acre lots, numerous commercial businesses, and several large industries, it is
12 essential that a sewer system be put in place in the West Kettle Falls LAMIRD to prevent
13 potential environmental damage to the river. Yet, there is not a plan or proposal to sewer
14 this future urban-like community. A plat map was not provided in the record.

15 Unlike the other two designated LAMIRDs, Arden and Loon Lake, West Kettle Falls
16 was mentioned only by name in the Final Draft Comprehensive Plan (III-18, III-39), but
17 was never analyzed in the FEIS (Appendix A at A-65). There was only one comment letter
18 in the record that requested this area be designated as a LAMIRD (exhibit 596). The Board
19 mentions this LAMIRD specifically because, with its density and size, it has the potential to
20 impact the County's population by over 3,000 people over the next twenty years, three-
21 quarters of what was allocated to the new UGAs. A failure to analyze the West Kettle Falls
22 area thoroughly and appropriately, like the other urban-like communities, is a major flaw in
23 the County's FEIS and CP, given the potential impact of this urban-like area.

24 Rather than increase the size of the current incorporated UGAs to distribute
25 additional population in the future, the County chose to make only "minor changes to these
26 IUGAs" and to "reconcile urban growth boundaries with existing city limits and existing
parcel lines." Final Draft CP at A-65. The County accommodated two-thirds of its projected
urban population growth (8,799 people) in the five existing UGAs. The County then chose to

1 create new unincorporated UGAs to focus some of the OFM population allocation into
2 communities already urban-like in nature and have public facilities or the potential for public
3 facilities and services in the future. The County assigned one-third (4,278 people) of its
4 projected urban population growth to the new unincorporated UGAs. This is encouraged
5 and, indeed, CTED submitted an amicus brief in support of these new UGAs.

6 In lieu of performing a land quantity analysis, though, the County based its decision
7 to designate five new UGAs on six criteria it developed, believing that "OFM projections do
8 not account for urban growth in unincorporated parts of the County." Respondent's brief at
9 12. In the Final Draft Comprehensive Plan, the County used the population figure of 23,000
10 for the years 2005 through 2025 and calculated that approximately 14,300 people would
11 move into the unincorporated areas of the County, which includes the new UGAs, a master
12 planned resort, and rural areas. Again, nothing is said about the growth in the LAMIRDs,
13 where in Appendix A in the Final Draft CP at A-68, under 11.2 LAMIRDs: Criteria and
14 Considerations, the County acknowledges that "UGAs are not the only option for directing
15 growth into areas well suited for development."

16 Without a land quantity analysis, there is no way to determine whether the new
17 UGAs are sized appropriately or to examine the impact of LAMIRDs, the master planned
18 resort or crossroads areas on the overall OFM population allocation. In *Port Townsend v.*
19 *Jefferson County*, the Western Board wrote:

20 "A land capacity analysis, an analysis of existing and future capital facilities
21 and services, and fiscal impacts must be completed before an IUGA outside
22 municipal boundaries may be established. The IUGA must be consistent with
23 the goals and requirements of the GMA and the CPPs. Guidance as to the
24 information required for such an analysis is found in WAC 365-195-335(3)."
25 *Port Townsend v. Jefferson County* 94-2-0006 (Final Decision and Order, 8-
26 10-94)

27 The Central Board determined in *Tacoma, et al., v. Pierce County* that a County must
28 show its work when designating UGAs:

1 "A county must base its UGAs on OFM's twenty-year population projection,
2 collect data and conduct analysis of that data to include sufficient areas and
3 densities for that twenty-year period (including deductions for applicable lands
4 designated as critical areas or natural resource lands, and open spaces and
5 greenbelts), define urban and rural uses and development intensity in clear
6 and unambiguous numeric terms, and specify the methods and assumptions
7 used to support the IUGA designation. In essence, a county must "show its
8 work" so that anyone reviewing a UGAs ordinance, can ascertain precisely
9 how the county developed the regulations it adopted." *City of Tacoma, City of
10 Milton, City of Puyallup and City of Sumner v. Pierce County*, CPSGMHB Case
11 No. 94-3-0001, FDO July 5, 1994.

12 This is not to say the County can't allocate growth to rural areas. The Central Board
13 addressed this question in *Vashon-Maury et al. v. King County*.

14 "Allocating growth to rural areas is not, on its face, a violation of the GMA.
15 Growth may be allocated to rural areas, provided that it does not constitute
16 urban growth. How rural growth is manifested on the ground is a separate
17 matter." *Vashon-Maury, et al., v. King County*, CPSGMHB Case No. 95-3-
18 0008c, Final Decision and Order, (Oct. 23, 1995),

19 Key to the discussion of sizing the UGAs is the density set by the County. Under 3.2
20 Land Use Policies, LU-3, the County's policy reflects the importance of designating UGAs "of
21 adequate size and appropriate permissible densities to accommodate the urban growth that
22 is projected by the State Office of Financial Management for the coming 20-year planning
23 period." Under Policy LU-3(C.), the County even establishes a "target average density of 4
24 dwelling units per acre for new development" and encourages infill or redevelopment at
25 higher densities. But under Policy LU-3(D.), the County allows on an interim basis, "until
26 sewer service can be provided to identified Urban Growth Areas", a minimum density of 1
dwelling unit per acre, explaining that, "[1] acre reflects the density commonly found in
built-up, urbanized areas of Stevens County today, and is recognized as constituting urban
growth." Public sanitary sewer is not even available in the incorporated city of Northport, let
alone in Hunters. By adopting Policy LU-3(D), the County is eliminating urban growth

1 densities in several UGAs for the foreseeable future, thus condemning these communities to
2 low-density sprawl.

3 This does not reflect RCW 36.70A.020 Planning goals (1) and (2). The Central Board
4 wrote:

5 "For sizing UGAs, the density assumption used cannot be based upon historic
6 patterns that perpetuated low density sprawl, and must reflect the planned for
7 urban densities." *Bremerton/Port Gamble v. Kitsap County*, CPSGMHB Case
8 No. 95-3-0039c/97-3-24c, Finding of Noncompliance and Determination of
9 Invalidity in *Bremerton* and Order Dismissing *Port Gamble*, (Sep. 8, 1997).

10 In *Bremerton/Alpine v. Kitsap County*, the Central Board also found that despite the
11 imperfection of long-range population projections, counties need to specifically show how
12 they arrived at the size of a UGA:

13 "The sizing of the UGA must be supported by analytical rigor and an explicit
14 accounting, yet [the sizing of UGAs] is an inexact science. The specificity and
15 precision important to the accounting are tempered by the imprecise nature of
16 long-range population projections, and indeed comprehensive planning itself."
17 *Bremerton, et al., v. Kitsap County/Alpine Evergreen, et al., v. Kitsap County*,
18 CPSGMHB Case No. 95-3-0039c Coordinated with Case No. 98-3-0024 FDO.

19 The Central Board in *Kitsap Citizens, et al. v. Kitsap County* emphasized again that
20 counties must show their work:

21 "Actions of local governments are presumed valid; however, when [UGA
22 designations or expansions are] challenged the record must provide support
23 for the actions the jurisdiction has taken; otherwise the action may be
24 determined to have been taken in error – clearly erroneous. The Board will
25 continue to adhere to the requirement that counties must "show their work"
26 when designating UGAs and affirms its prior decisions on this question." *Kitsap
Citizens for Rural Preservation and Suquamish Tribe v. Kitsap County [Port
Blakely Tree Farms L.P.- Intervenor]*, CPSGMHB Case No. 00-3-0018, FDO
May 29, 2001.

The County designated the communities of Addy, Clayton, Hunters, Lake Spokane
and Valley, totaling 6,120 acres, as new unincorporated UGAs. It also designated the
communities of Arden, Loon Lake and West Kettle Falls as Type I LAMIRDs, with an

1 additional urban area of 2,451 acres, of which 1,970 are residential. The County also
2 designated twelve communities, totaling 184 acres, as Type II LAMIRDs, and twelve more
3 communities, totaling 351 acres, as Crossroads Areas. While the County used its own
4 process and criteria to determine these designations, it did not do a land quantity analysis
5 to determine how much urban growth area would accommodate the OFM population
6 allocation or to determine the proper sizing for the five new designated UGAs.

7 **Conclusion:**

8 The Board finds that the Petitioners have carried their burden of proof and that the
9 County's actions are clearly erroneous. The County failed to complete a land quantity
10 analysis to justify the designation of the five new UGAs and their sizing as required by RCW
11 36.70A.020(2).

12 **Issue No. 20:**

13 Has Stevens County failed as per RCW 36.70A.110 to include greenbelt and open
14 spaces, and failed under RCW 36.70A.160 to identify open space corridors within and
15 between urban growth areas. Does this substantially interfere with the goals of the Act?

16 **The Parties' Position:**

17 **Petitioners:**

18 The Petitioners argue the County has failed to designate and encourage the retention
19 of greenbelts, open space, and recreational areas. In addition, the County has failed to
20 identify locations in the county where such areas can be found now or in the future as
21 development takes place in the Urban Reserve and urban areas.

22 **Respondent:**

23 The Respondent argues the GMA requires counties that adopt comprehensive plans
24 to identify open space and greenbelts, designating a proposed general distribution. RCW
25 36.70A.110(1). The policies adopted in the Comprehensive Plan adequately identify open
26 space and greenbelts both in and between UGAs.

1 **Petitioners HOM Reply (Wagenman, et al):**

2 The Petitioners contend the County has not complied with the GMA and identified
3 open space and greenbelts in the new UGAs. The County's policy, LU/OS-1, does not
4 identify any open space or greenbelts. The language of the GMA states that greenbelts and
5 open space shall be identified in urban areas. Policy does not identify. The Petitioners also
6 contend that open space corridors are also not identified.

7 **Board Analysis:**

8 This is the same issue as Issue No. 5 and the arguments are related.

9 **Conclusion:**

10 The Board finds the Petitioners have carried their burden of proof and that the
11 County's actions are clearly erroneous. The County failed to designate or even identify
12 greenbelts and open space within the new unincorporated UGAs.

13 **Issue No. 21:**

14 Has Stevens County failed under RCW 36.70A.070(5) and RCW 36.70A.110 to
15 provide and protect the Rural character, requiring a variety of rural densities, limiting
16 development at levels that are consistent with the rural character, protect critical areas,
17 surface water and ground water resources, and discharge areas, requiring land use –
18 developments that are compatible with wildlife fish and wildlife habitat(.030) and restrict
19 the extension of urban services and prohibit or discourage urban growth in rural areas. Has
20 the County also failed in designating Limited Areas of More Intense Development to comply
21 with RCW36.70A.070 (5). Has Stevens County failed to develop a written record explaining
22 how the rural element harmonizes the planning goals in RCW 36.70A and meets the
23 requirements of the chapter as required by RCW 36.70A.070(5)? Does this substantially
24 interfere with the Goals of the Act?

25 **The Parties' Position:**

26 **Petitioners:**

The Petitioners contend the County failed to provide for a variety of rural densities
and requires only that rural densities shall not be greater than one dwelling unit per five
acres. The Petitioners argue that what the County has written in its Comprehensive Plan,
RU-11, is simply not enough and substantially interferes with Goals Nos. 1, 2, 8, and 10 of

1 the Act. The Land Use Element, RCW 36.70A.070(1) mandates densities,...and the Rural
2 element to establish patterns, as well as a variety of rural densities. The Petitioners also
3 contend that five acre parcels along the urban growth boundary make the extension of
4 public facilities, annexation and future re-subdivision at urban densities difficult, hindering
5 the logical expansion of urban growth areas.

6 The Petitioners argue the County has policies for shorelines and critical areas, but
7 nothing in place to protect the "rural character" of the county as mandated by RCW
8 36.70A.070(5)(c)(iv). In addition, the County failed to address several important
9 environmental impacts which would affect the rural character and surrounding critical areas.
10 For instance, the record does not show where the Department of Ecology (DOE) was
11 consulted or even commented on the FEIS or Comprehensive Plan. Also, there wasn't any
12 analysis of the increased development in the LAMIRD areas and the effect this impact will
13 have on the recharge of the watershed. Nothing in the record shows that the County took
14 into consideration Mr. Davies' or the Petitioner's concerns mentioned in their letters.

Respondent:

15 The Respondent argues that the County's rural policy specifically requires the
16 establishment of development regulations that provide for a variety of lot sizes based on
17 many listed factors. The Respondent contends that it is the Petitioners responsibility to
18 show that the County committed clear error in the method they used to establish LAMIRDs.
19 The Respondent also contends that the County has a critical areas ordinance in the Land
20 Use element of its CP to protect critical areas and water quality, which includes GP-13,
21 requiring new development to mitigate all significant environmental impacts; LU-4, requiring
22 consideration of environmental constraints when designating UGAs; and LU/SMP-3, 4 and 8,
23 requiring protection of environmentally sensitive, wetlands and water quality. In addition,
24 Appendix B of the resolution to adopt the Comprehensive Plan is the CARA designation for
25 the Loon Lake and Deer Lake water sheds.
26

1 **Amicus Response (PUD No. 1):**

2 The PUD agrees with the Petitioners that the CP Rural Policy directs the County to
3 establish development regulations within designated rural lands with densities not greater
4 than one dwelling unit per five acres. But the CP Rural Policy also directs that such
5 regulations must provide for densities based on geographical, topographical, hydrological,
6 transportation and other development-related factors. No error is identified by the
7 Petitioners on the part of the County.

8 The PUD also argues that the Petitioners failed to carry their burden of proof
9 concerning the logical outer boundaries of the LAMIRDs, as they existed when the County
10 opted into Growth Management. The Petitioners ask questions, but do not point to any
11 error by the County.

12 Furthermore, the PUD contends that the Petitioners failed to carry their burden of
13 proof concerning the County's management of environmental concerns through its Rural
14 Element and Land Use Element in the CP. The PUD argues that the Rural Element clearly
15 addresses the protection of critical areas, as required by RCW 36.70A.170.

16 **Amicus Response (CTED):**

17 RCW 36.70A.070(5)(b) requires the rural element of a comprehensive plan to
18 "provide for a variety of rural densities, uses, essential public facilities, and rural
19 governmental services needed to serve the permitted densities and uses." With that statute
20 in mind, CTED contends that the County's Rural Policy RU-11 establishes a policy under
21 which development regulations may not provide for rural densities greater than 1 dwelling
22 unit per five acres. RU-11 also provides development factors are to be used to provide for a
23 variety of lot sizes. Since the minimum lot size is 5 acres, RU-11 necessarily must refer to a
24 variety of lot sizes that are larger than 5 acres, consistent with rural character as defined in
25 the GMA. CTED argues that the policies and narrative in the County's CP comply on their
26 face with RCW 36.70A(5)(b). The rural density provisions in the County's CP do not provide
for uniform five-acre lots throughout the rural area, and they are therefore distinguishable
from the provisions found non-compliant in Western Board decisions.

1 According to CTED, the adoption of development regulations that implement a
2 variety of rural densities, and that the County will allow rezones to impermissible densities,
3 is not relevant to the Board's decision regarding the issue that is raised in this petition:
4 whether the Rural Element of Stevens County's CP complies with RCW 36.70A.070(5)(b).

5 **Petitioners HOM Reply (Wagenman, et al):**

6 The Petitioners contend the County must show its work in determining the logical
7 outer boundaries for the fifteen designated LAMIRDs. The Petitioners cannot find any maps
8 or documents that detail how the logical outer boundaries for the LAMIRDs were
9 determined and designated as per the build environment from 1993. The Petitioners
10 question the County's work to show the built environment of the Loon Lake LAMIRD. The
11 Respondent argued that the Wilma property is not "currently developed beyond ordinary
12 rural intensity", but offers no explanation as to what defines this rural intensity and whether
13 the County used the same criteria for the other LAMIRDs. Respondent HOM brief. The
14 Petitioner argues that the County did not use any criteria for establishing the LAMIRD
15 boundaries and thus promotes sprawl. The Petitioners contend the GMA is very specific in
16 that a "...written record shall explain how the rural element harmonizes with the planning
17 goals and meets the requirement of the chapter as required." RCW 36.70A.070(5)(a).

18 The Petitioners contend the County's CP does not contain specifics for protecting the
19 rural character, but only refers to the development regulations yet to be adopted. The
20 County relies on its Critical Areas Ordinance (CAO) to provide planning or direction for
21 developments within critical areas. But, the Petitioners argue, the CAO and the Shorelines
22 Management Plan (SMP) do not address water quantity and quality, stormwater run-off,
23 impervious surfaces and watershed recharge. The County has no variety of rural densities
24 and thus is deficient in the GMA. The Petitioners argue that development regulations can be
25 and will be amended and changed and rezones are not subject to necessary guidance from
26 the CP. The Petitioners further argue that five-acre minimums do not protect the
environmental concerns in the Loon Lake watershed.

1 The Petitioners address Issues Nos. 18 and 23 under this Issue at this point in their
2 Reply Brief. The Petitioners argue the County's CP has no Land Use Goals or Land Use
3 Policies in place to protect the rural character. They contend the rural character exists
4 outside of the County's critical areas and shorelines, which the County says it has policies
5 for protection. The Petitioners also contend that the Natural Resource Element does not
6 have policies that identify issues as land use issues for protection of quality and quantity of
7 ground water, drainage and flooding, as suggested by the statement in the Land Use
8 Element, II-6. The Petitioners also contend that the County's General Planning Goal, GP-13,
9 does not protect the environment from new development because there is no Rural Element
10 or Land Use Element that would address the issues of protecting the rural character, such
11 as water issues. The Petitioners argue that there are other sub-areas and sub-watersheds
12 outside of the Sheep Creek CARA that need protection as well and that none of the County's
13 statements about Mr. St. Goddard's report are supported by scientific data. There is also
14 nothing in the CP that protects the Colville River, which is in poor condition, according to
15 the Petitioners. Also, the Sheep Creek watershed and the Loon Lake watershed are distinct
16 and different and the County should not compare the two in terms of the effect of five-acre
17 densities.

18 The Petitioners contend that the County repealed the original sub-area plan and put
19 in place its CP, which does not address the capacity of land, air and water. With the
20 adoption of the CP by the BOCC, everything the (Loon Lake) community has worked to
21 protect in the Loon Lake watershed is in jeopardy.

Board Analysis:

22 RCW 36.70A.070(5) Rural element, is a mandatory element of the GMA. The statute
23 requires, in part, that counties develop a written record explaining how the rural element
24 harmonizes the planning goals [(5)(a)]; it requires that the county provide a variety of rural
25 densities [(5)(b)]; it requires measures that reduce the inappropriate conversion of
26 undeveloped land into sprawling, low-density development [(5)(c)(iii)]; it requires measures
to protect critical areas and surface water and ground water resources [(5)(c)(iv)]; it

1 requires measures that protect against conflicts with the use of agriculture, forest and
2 mineral resource lands [(5)(c)(v); and it also provides for LAMIRD designation [(5)(d)].

3 The Petitioners contend that the County's Comprehensive Plan Rural policy, RU-11,
4 which establishes a minimum density of one unit per five acres, fails to protect the County's
5 rural character by not providing a "variety of rural densities", limiting development at levels
6 consistent with the rural character, protecting critical areas, and other requirements found
7 in RCW 36.70A.070(5).

8 The Board agrees with the Petitioners. There is an obvious disconnect between the
9 proposed variety of densities in the County's Final Draft Comprehensive Plan (December,
10 2005), for which the Final Environmental Impact Statement was written, and Policy RU-11
11 in the County's Final Comprehensive Plan (July, 2006). After careful examination of the
12 record, the Board finds that the County failed to show its work from its original proposal of
13 five, ten and twenty acre designations for rural and resource lands to its final designation of
14 "densities not greater than 1 dwelling unit per 5 acres" for all rural lands. The FEIS, which is
15 the document that examines the County's potential alternatives, including "no action", did
16 not examine the five-acre minimum decision and its effect on the environment. In fact, it
17 was never mentioned. RU-11, as written in the Final CP, did not see the light of day until
18 the final hearings. RU-11 was not mentioned as a possibility in the FEIS; in Appendix A of
19 the Final Draft CP; or in the Introduction portion of the Final CP under 3.0 Major Changes in
20 the Comprehensive Plan. A change in the CP of this magnitude and with such a potential
21 impact on land use throughout Stevens County should have had its own alternative study in
22 the FEIS.

23 The County's Final Draft Comprehensive Plan, Appendix A, under 4.2.2 Rural
24 Development Generally, and specifically 4.2.2.1, 5-, 10- and 20-acre Zoning, makes the
25 assumption that the County would adopt under Policies RU-8 through RU-11, "the
26 establishment of five, ten or twenty acre densities" based on an assessment of several
factors, such as topography, access to existing County roads, areas with known water
limitations, areas of higher density rural zoning; and areas characterized by higher intensity

1 development. In the accompanying land maps, the Draft Comprehensive Plan Rural Zoning
2 and Resource Lands map (A-12, page 86) has a legend with five, ten and twenty acre
3 zoning. The map shows proposed areas of Stevens County zoned five, ten and twenty acre
4 areas.

5 In the Final EIS, under 4.0 Draft Plan/EIS Comments & Responses, Issue 4: Density
6 limits for various zones, page III-34, the County's response to citizen's questions related to
7 density for various zones included:

8 "The County elected to adopt a 20-acre density limit for resource lands,
9 consistent with the approach used by several other eastern Washington
10 counties with similar development characteristics. The Final Plan proposes
11 density limits varying from 5 to 20 acres for both rural and resource lands,
12 depending on location-specific characteristics relative to the applicable
13 criteria."

14 The Board could not find in the record where the County considered the impact of its
15 final decision to remove ten and twenty acre zoning and blanket the County with "densities
16 not greater than 1 unit per five acres." But, from the time the FEIS and Draft
17 Comprehensive Plan was completed and the Final Comprehensive Plan was adopted, all of
18 the information relating to five, ten and twenty acre zoning was eliminated in the text and
19 from the final land use maps. Without the County designating larger densities in agricultural,
20 forest and environmentally sensitive areas, large areas of rural and resource lands will be
21 parceled into five-acre lots.

22 The County's Final CP Rural Element states that "...the rural element must provide
23 direction and support for measures applying to rural development that will protect the rural
24 character of the area. Rural character is defined based on the local circumstances of each
25 county." Under 5.1 Rural Goal, the County states that "It is the rural goal of Stevens County
26 to protect and enhance the character and quality of rural areas in ways that promote
traditional rural lifestyles and industries, including timber, agriculture and mining, while also
allowing for a diversity of uses, densities, and innovative development." Policy RU-1 is
written to "reduce the inappropriate conversion of undeveloped land into sprawling, low-

1 density development and reduce the proportion of County-wide growth occurring in the
2 rural area." Policies RU-2 A., B. and C. encourage rural land use activities and development
3 intensities that: A. are consistent with and build upon the existing character of the rural
4 areas; B. avoid interference with resource land uses; and C. provide appropriate protections
5 for critical areas as required by RCW 36.70A.170.

6 As written in its Comprehensive Plan under the Rural Element, the County is very
7 protective of rural areas. But Policy RU-11 fails to provide the protections contemplated by
8 the goals and policies in the County's Rural Element. The GMA requires a "variety of
9 densities" to protect the rural lands and resource lands as described in the GMA and the
10 County's goal and policies. The County has an obligation to its citizens to not just print the
11 words in its Comprehensive Plan, but to also follow-through with protections for these
12 lands. Allowing five-acre parcels throughout the rural lands and resource lands is allowing
13 low-density sprawl to take place in agricultural, forest and rural areas. There was no written
14 record submitted showing how this change from a variety of densities to the present RU-11
15 "harmonizes the planning goals."

16 The Western Board addressed this issue in *Achen v. Clark County*:

17 Where the record demonstrated that a greater variety of rural densities, a
18 decrease in urban and rural sprawl and an increase in RL conservation would
19 be achieved by a greater than 5-acre minimum lot size, maintaining a
20 minimum 5-acre lot size throughout the county did not comply with the GMA
21 and substantially interfered with the goals of the GMA. *Achen v. Clark County*,
22 WWGMHB Case No. 95-2-0067, Compliance Order, Feb. 5, 1998.

23 As a self-defined "rural county", Stevens County has an obligation to its citizens to
24 protect the rural nature and the resource lands so important to its economy. The County, in
25 Chapter 1, Stevens County Context & Approach to the Comprehensive Plan, acknowledges
26 that its Plan "...presents a unique opportunity to provide for ample conditions to foster
stewardship of abundant natural resources, promote agricultural activities and encourage
well-planned development throughout a wide variety of environments located throughout
the County." Maintaining a rural lands policy, such as RU-11, will not achieve these goals.

1 The Petitioners also contend that the County failed to comply with RCW
2 36.70A.070(5) when it designated the three LAMIRDs, Arden, Loon Lake and West Kettle
3 Falls.

4 The Board partially addressed the County's three LAMIRDs in Issue Nos. 6 and 19. In
5 Issue No. 6, the Board was asked whether the Loon Lake LAMIRD was in compliance with
6 RCW 36.70A.070(5)(d)(iv). To reiterate, "In this case, the Board believes the County
7 showed its work. The Board's decision for this LAMIRD does not mean we agree or disagree
8 with the designation of Loon Lake as a LAMIRD or the "logical outer boundaries" of the
9 LAMIRD." In other words, the Board agrees with the Respondent that the Loon Lake
LAMIRD is in compliance.

10 The Arden LAMIRD was not addressed in Issue No. 6, but given the same process
11 the County followed in the FEIS and Final Draft Comprehensive Plan as it did with Loon
12 Lake, the Board believes that the County is also in compliance with the Arden LAMIRD,
13 although the public facilities and services may not be available as needed when Arden
14 finally grows in population.

15 The West Kettle Falls LAMIRD was discussed in Issue No. 19. In this case, as
16 outlined in the discussion there, the Board finds that the County failed to show its work to
17 designate 1,917 acres as a LAMIRD. The area may very well be platted, but there was no
18 discussion or study in the FEIS or a land use map that clearly showed where the built
19 environment, including legal plats, was located. Essentially, this LAMIRD was added late to
20 the process without the required environmental review to determine its impact. RCW
21 36.70A.070(5)(d)(iv) is implicit that LAMIRDs "shall not extend beyond the logical outer
22 boundary of the existing area or use, which are those areas clearly identifiable and
23 contained and where there is a logical boundary delineated predominately by the built
24 environment, but that may also include undeveloped lands if limited as provided in this
25 subsection." The West Kettle Falls LAMIRD designation is clearly erroneous in light of the
26 entire record.

1 **Conclusion:**

2 The Petitioners have carried their burden of proof in Issue No. 21 and the Board
3 finds the County clearly erroneous. The County failed to protect the Rural Character as
4 required by RCW 36.70A.070(5) when designating the West Kettle Falls LAMIRD and by
5 establishing Rural densities not greater than 1 unit per five acres. These actions
6 substantially interfere with Goals Nos. 1, 2, 8, and 10 of the Act.

7 **Issue No. 22:**

8 Has Stevens County failed to comply with their County Wide Planning Policies
9 in the following manners, but not limited to these areas: In creating Urban Reserve Areas,
10 new Urban Growth Areas, and failing to address open space, conservation of fish and
11 wildlife habitat while protecting and enhancing the county's quality of life including water
12 quality and quantity.

13 **The Parties' Position:**

14 **Petitioners:**

15 The Petitioners contend the two areas designated Urban Reserve by the County,
16 Loon Lake and Hunters, do not comply with the County's Countywide Planning Policies, or
17 the County's Land Use Policies. According to the Petitioner, Loon Lake and Hunters are not
18 designated UGAs, not incorporated, or even qualify for incorporation. In addition, neither of
19 these rural towns have urban development or urban facilities or services. The County has
20 inappropriately designated approximately 640 acres as Urban Reserve, yet does not know
21 the future capacity of the sewer district to serve the area.

22 The Petitioners also argue that the County's designated Urban Reserve area sits on
23 top of a critical aquifer recharge area (CARA), which has environmental constraints. There
24 are no uses prohibited by the County in the area of a CARA. The Petitioners contend that
25 the County has made an error in designating Hunters and Loon Lake as areas of Urban
26 Reserve. The County has not met its own criteria under its CWPP, specifically items III. and
VI. on page 6, and in its Comprehensive Plan, specifically LU-4 and LU-7-C, to use this

1 designation at Loon Lake and Hunters. This action substantially interferes with RCW
2 36.70A.020, Goals 1, 2, 9, and 10.

3 **Respondent:**

4 The Respondent incorporates Legal Issue No. 7, 2, 15 and 23 in the County's
5 response to the Petitioner's assertions. The Respondent contends that the Petitioners'
6 arguments cite no authority to support any assertions that the County may not plan for
7 future urban growth in the manner it has chosen to do so.

8 **Petitioners HOM Reply (Wagenman, et al):**

9 The Petitioners contend the Urban Reserve area designated by the County doesn't
10 make sense because of the number of public comments opposed to this designation and
11 this designation would mark the Loon Lake area for consideration as urban, not rural. The
12 Petitioners also argue that the Land Use Policies found in the CP are not supportive of this
13 designation, including the fact that no uses are prohibited in CARA's and other uses have
14 waived hydrology reports. The County designated this Urban Reserve area over a CARA
15 despite its own land use policy (LU-7).

16 **Board Analysis:**

17 The Respondent argues that the Urban Reserve designation at Loon Lake is
18 "essentially a place holder, intended to preserve the status quo..." Respondent brief at 19.
19 This argument does not justify the Urban Reserve designation.

20 An Urban Reserve area, in general terms, is a "place holder" as described by the
21 Respondent. The Urban Reserve designation is a tool that allows counties to plan ahead to
22 accommodate future expansions of a UGA. An Urban Reserve area can be described as land
23 outside of an urban growth area having the potential for inclusion within a UGA as
24 expansion of a UGA is deemed necessary to meet land availability requirements of future
25 OFM population projections. Urban Reserve areas are selected based on the criteria for
26 UGAs.

27 An Urban Reserve designation allows cities to expand into Urban Reserve areas
28 adjacent to urban growth areas as allowed by RCW 36.70A.110(1) or expand into these

1 areas if they fit one of the six exemptions allowed by the GMA. The Central Board listed
2 those exemptions in *Association of Rural Residents v. Kitsap County*:

3 "The Act does provide six exceptions to the general rule governing locations
4 where UGAs can be extended beyond existing city limits. 1. UGAs can be
5 located outside existing city limits if the detailed requirements for a new fully
6 contained community are met. RCW 36.70A.350. 2. UGAs can be located
7 outside existing city limits if the detailed requirements for master planned
8 resorts are met. RCW 36.70A.360. 3. UGAs may include territory outside
9 existing city limits only if that additional territory is already "land having urban
10 growth located on it." RCW 36.70A.110(1); or 4. UGAs may include territory
11 outside existing city limits only if that additional territory is already "land
12 located in relationship to an area with urban growth on it as to be appropriate
13 for urban growth." RCW 36.70A.110(1); or 5. UGAs may include territory
14 outside existing city limits only if that additional territory is adjacent to
15 territory already "... having urban growth located on it." RCW 36.70A.110(1);
16 or 6. UGAs may include territory outside existing city limits only if that
17 additional territory is adjacent to territory already "... located in relationship to
18 an area with urban growth on it as to be appropriate for urban growth." RCW
19 36.70A.110(1). [*Rural Residents, 3310, FDO, at 48.*]

20 There is no authorization in the GMA to designate an Urban Reserve area adjacent to
21 a LAMIRD, either in RCW 36.70A.110 or in the six exemptions listed above. Furthermore,
22 this designation by the County is illogical given the definition of a LAMIRD. Urban Reserve
23 areas are designated transitional areas, where an existing urban growth area can expand in
24 the future. LAMIRDs have logical outer boundaries predominantly set by the built
25 environment in existence as defined in RCW 36.70A.070(5)(d)(v). This designation
26 eliminates expansion outside the designated outer boundaries:

Lands included in such existing areas or uses shall not extend beyond the
logical outer boundary of the existing area or use, thereby allowing a new
pattern of low-density sprawl. RCW 36.70A.070(5)(d)(iv).

Designating an Urban Reserve area at Loon Lake is also contrary to the County's own
Countywide Planning Policies and Land Use Element in the Comprehensive Plan. CWPP III
states:

1 "Designated urban growth areas should include those portions of our
2 communities already characterized by urban growth that have existing public
3 facilities and service capacities to serve such development as well as those
4 areas projected to accommodate future growth."

5 The Loon Lake LAMIRD is not an option for designating future urban growth. By
6 definition, a LAMIRD can not accommodate future growth outside of its logical outer
7 boundary. It is constrained by the built environment in place when the County opted into
8 the GMA.

9 CWPP VI clearly contemplates that future urban areas, such as Urban Reserve areas,
10 should be designated near or adjacent to cities.

11 Community comprehensive plans should contain annexation and/or
12 incorporation elements. Areas for potential annexation or potential
13 incorporation should be designated in portions of urban growth areas outside
14 of cities.

15 In the County's Land Use Policies, under LU-7.C, the County again anticipates that an
16 Urban Reserve area will be "proximate to a designated urban growth area, which are
17 potentially suitable for inclusion in an urban growth area, based on the criteria established
18 in LU-4. Such areas should not be extensively constrained by critical areas." The Loon Lake
19 LAMIRD is not an urban growth area, there are extensive critical areas around the lake, and
20 the designated Urban Reserve area sits above the Loon Lake CARA area.

21 Hunters, on the other hand, is one of the newly designated unincorporated UGAs. It
22 is not served by the PUD with public water or sanitary sewer, according to the PUD's 2005
23 Updated Comprehensive Water System Plan. Exhibit #165 seems to indicate a private
24 contractor is providing potable water, but the exhibit does not indicate whether the
25 contractor is presently providing water to the built environment or is planning to do so in
26 the future. This exhibit may simply be a photo of Hunters with a hand-written plan that
27 indicates where the water pipes may be in the future. In the end, the Respondent's
28 exhibits, #126 and #165, were inconclusive as to the availability of public water. Public

1 sanitary sewer is presently not provided and, according to the PUD, is not planned. The
2 area around Hunters may have a built environment, but it does not have the public services
3 and facilities necessary to be an urban growth area at this time or have Urban Reserve
4 designated around it.

5 The County has designated an oversized Urban Reserve area outside the built
6 environment of Hunters to absorb urban-like population. Contrary to a LAMIRD, the GMA
7 gives counties authorization in RCW 36.70A.110(1) to designate an urban reserve area
8 outside a UGA. But to do so, the County has to include in its capital facilities a forecast of
9 the future needs for this area and the proposed locations and capacities of expanded or
10 new capital facilities per RCW 36.70A.070(3)(b), and (c).

11 The Board agrees with the Petitioners that the County has not designated Urban
12 Reserve areas according to its CWPPs, its Land Use Element policy, LU-7, or as authorized
13 by the GMA. Open space and quantity and quality of ground water were addressed under
14 Issues Nos. 5 and 18. That portion of the issue concerning "conservation of fish and wildlife
15 habitat" was not argued in the Petitioners' briefs and is therefore deemed abandoned.

16 **Conclusion:**

17 The Petitioners have carried their burden of proof in Issue No. 22 and the Board
18 finds the County's actions clearly erroneous. The County failed to comply with RCW
19 36.70A.070(5)(d) when establishing an Urban Reserve area at Loon Lake and failed to show
20 its work in support of the establishment of an urban reserve designation adjacent to the
21 Hunter's UGA.

22 **Issue No. 23:**

23 Has Stevens County failed to comply with the requirements of RCW 43.21C
24 in adopting the comprehensive plan?
25
26

1 **The Parties' Position:**

2 **Petitioners:**

3 RCW 43.21C.030 and .031 require that the responsible official provide a detailed
4 statement on the environmental impacts of the action, any adverse environmental effects
5 which cannot be avoided, the relationship between short term uses and the maintenance
6 and enhancement of long term productivity, and any irreversible, irretrievable commitments
7 of resources. In addition, The Petitioners contend that the County should have addressed
8 the significant impacts by having the responsible official consult agencies and the public to
9 identify such impacts and limit the scope of the EIS.

10 The Petitioners contend that the County issued an FEIS, but missed addressing the
11 environmental impacts in several important areas. They claim that the record does not
12 show that the DOE was consulted or that the DOE even commented on the EIS or CP. In
13 addition, there was no mention of impervious surface impact or the impact of the five and
14 ten acre parcel designation around Loon Lake.

14 **Respondent:**

15 The Respondent argues that this Legal Issue should be dismissed because SEPA
16 expressly requires aggrieved parties to use available administrative appeal procedures
17 before seeking further review. RCW 43.21C.075(4). The Petitioner did not appeal the FEIS
18 as required by Ordinance 02-1991, Section 3.7.1.C and the Respondent cites *CLEAN v. City*
19 *of Spokane*, 133 Wash.2d 455, 947 P.2d 1169 (1997). The Respondent contends that the
20 County's Comprehensive Plan is supported by a non-project FEIS, so by WAC 197-11-
21 442(4), the County is not required to analyze the kinds of project specific impacts listed in
22 the Petitioner's brief.

22 **Petitioners HOM Reply (Wagenman, et al):**

23 Petitioners argue that the County failed to provide and publish a Notice of the Final
24 Action with dates of any appeal period concerning the FEIS. In addition, the Petitioners
25 contend the publication of the adoption of the Comprehensive Plan also gave no indication
26 that an appeal of the FEIS would be separate.

1 **Board Analysis:**

2 The Stevens County Final Draft Comprehensive Plan and Final Environmental Impact
3 Statement were released by Stevens County on December 23, 2005. As an introduction,
4 Clay White, Planning Director for Stevens County, wrote, "To All Interested Parties/Required
5 Agencies: All comments received are responded to within the Final Environmental Impact
6 Statement." As a general statement and for the most part, the FEIS is a fairly complete
7 document, which tends to follow the requirements of SEPA.

8 The Respondent cites RCW 43.21C.075(4), which requires an aggrieved party to use
9 available administrative appeal procedures before seeking further review:

10 (4) If a person aggrieved by an agency action has the right to judicial appeal
11 and if an agency has an administrative appeal procedure, such person shall,
12 prior to seeking any judicial review, use such agency procedure if any such
13 procedure is available, unless expressly provided otherwise by state statute.

14 The County's SEPA ordinance requires this review before the Board of County
15 Commissioners within ten days of an FEIS being issued (SC Ordinance 02-1991, Section
16 3..7.1.C). The time for the Petitioners to appeal the FEIS to the BOCC is long since past and
17 they are thus barred from advancing this legal issue.

18 In addition, WAC 197-11-442(4), which addresses SEPA, is clear that the EIS is a
19 document which discusses the general impacts of alternate policy proposals, not specific
20 concerns:

21 (4) The EIS's discussion of alternatives for a comprehensive plan, community
22 plan, or other areawide zoning or for shoreline or land use plans shall be
23 limited to a general discussion of the impacts of alternate proposals for
24 policies contained in such plans, for land use or shoreline designations, and
25 for implementation measures. The lead agency is not required under SEPA to
26 examine all conceivable policies, designations, or implementation measures
but should cover a range of such topics. The EIS content may be limited to a
discussion of alternatives which have been formally proposed or which are,
while not formally proposed, reasonably related to the proposed action.

1 The Petitioners contend that the FEIS did not sufficiently cover environmental
2 concerns, such as rural character, impervious surface impacts and the impacts associated
3 with five and ten acre zoning. The Board agrees that the FEIS did not fully cover the
4 alternatives (i.e. the impact of RU-11, Final CP), but the Petitioners are barred from
5 advancing this issue now.

6 The Petitioners also argue that the DOE was not consulted, nor did they comment.
7 According to the County's CP and FEIS introductory letter, the documents were sent to all
8 interested parties and required agencies. Evidently, the DOE chose not to comment on the
9 FEIS, although they did comment on December 15, 2004, (exhibit 1115A). Other agencies
10 did comment on the FEIS. For instance, CTED commented numerous times (exhibits 634,
11 646, 813, 1012, 1073, 1091); Washington State Department of Fish and Wildlife
12 commented several times (exhibits 728, 811); and the Washington State Department of
Transportation also commented (exhibit 798, 1013).

13 **Conclusion:**

14 The Board finds the Petitioners have failed to carry their burden of proof concerning
15 Issue No. 23.

16 **V. FINDINGS OF FACT**

- 17 1. Stevens County is a county located east of the crest of the Cascade
18 Mountains and has chosen to plan under Chapter 36.70A.
- 19 2. Petitioners are citizens of Stevens County and participated in the
20 adoption of the Stevens County Comprehensive Plan, Resolution #59-
21 2006.
- 22 3. Petitioners raised twenty-three legal issues addressed in three original
23 petitions.
- 24 4. The Board consolidated Case Nos. 06-1-007, 06-1-0008 and 06-1-0009
25 into consolidated Case No. 06-1-0009c.

- 1 5. Stevens County completed a Final Draft Comprehensive Plan and a
- 2 Final Environmental Impact Statement on December 23, 2005.
- 3 6. Stevens County enacted Resolution #59-2006 and adopted the Stevens
- 4 County Comprehensive Plan on July 13, 2006.
- 5 7. Petitioners filed timely petitions on September 8, and September 11,
- 6 2006.
- 7 8. Stevens County held numerous public workshops, hearings and allowed
- 8 opportunities for written comment.
- 9 9. The Stevens County CP has designated five incorporated urban growth
- 10 areas, five new unincorporated urban growth areas, three Type III
- 11 LAMIRDs, twelve Type II LAMIRDs, and twelve Crossroads areas.
- 12 10. Stevens County failed to adopt a capital facilities plan and financial plan
- 13 for the new UGAs as required by RCW 36.70A.110(3) and RCW
- 14 36.70A.070(3).
- 15 11. Stevens County failed to designate or identify greenbelts and open space or
- 16 show its work why these elements were not considered within the new
- 17 unincorporated UGAs are required by RCW 36.70A.110(2).
- 18 12. Stevens County failed to adopt a compliant capital facilities plan and six-year
- 19 financial plan as required by RCW 36.70A.070(3); failed to ensure adequate
- 20 existing public facilities and service capacities as required by RCW
- 21 36.70A.110(3), and failure to follow goals RCW 36.70A.020(1), (2), and (12)
- 22 as required by the GMA.
- 23 13. Stevens County failed to adopt policies or regulations in its CP to "ensure"
- 24 public facilities and services are available when impacts of development occur
- 25 or within a reasonable time afterwards as required by RCW 36.70A.020(12).
- 26 14. Stevens County failed to adopt policies or regulations in the Land Use Element
- of the CP to protect quality and quantity of groundwater used for public water

1 supplies or review drainage, flooding or storm water in the area and nearby
2 jurisdictions as required by RCW 36.70A.070(1).

3 15. Stevens County failed to complete a land quantity analysis to justify the
4 designation of the five new UGAs and the acreage assigned to each as
5 required by RCW 36.70A.020(2).

6 16. Stevens County failed to protect the Rural Character as required by RCW
7 36.70A.070(5) for designating the West Kettle Falls area as a LAMIRD.

8 17. Stevens County failed to comply with RCW 36.70A.070(5)(d) when it
9 established an urban reserve area at Loon Lake and failed to show its
10 work in support of the establishment of an urban reserve designation
11 adjacent to the Hunter's UGA.

12 VI. CONCLUSIONS OF LAW

13 1. This Board has jurisdiction over the parties to this action.

14 2. This Board has jurisdiction over the subject matter of this action.

15 3. The Petitioners have standing to raise the issues listed in the
16 Prehearing Order.

17 4. The Petition for Review in this case was timely filed.

18 5. Stevens County is found out of compliance for its failure to adopt a capital
19 facilities plan and financial plan as required by RCW 36.70A.110(3) and RCW
20 36.70A.070(3).

21 6. Stevens County is found out of compliance for its failure to designate or
22 identify greenbelts and open space or show its work why these elements were
23 not considered within the new unincorporated UGAs are required by RCW
24 36.70A.110(2).

25 7. Stevens County is found out of compliance for failure to adopt a compliant
26 capital facilities plan and six-year financial plan as required by RCW
36.70A.070(3); failure to ensure adequate existing public facilities and service

1 capacities as required by RCW 36.70A.110(3), and failure to follow goals RCW
2 36.70A.020(1), (2), and (12) as required by the GMA.

- 3 8. Stevens County is found out of compliance for failure to adopt policies or
4 regulations in its CP to "ensure" public facilities and services are available
5 when impacts of development occur or within a reasonable time afterwards as
6 required by RCW 36.70A.020(12).
- 7 9. Stevens County is found out of compliance for failure to adopt policies or
8 regulations in the Land Use Element of the CP to protect quality and quantity
9 of groundwater used for public water supplies or review drainage, flooding or
10 stormwater in the area and nearby jurisdictions as required by RCW
11 36.70A.070(1).
- 12 10. Stevens County is found out of compliance for failure to complete a lands
13 quantity analysis to justify the designation of the five new UGAs and the
14 acreage assigned to each as required by RCW 36.70A.020(2).
- 15 11. Stevens County is found out of compliance for failure to protect the Rural
16 Character as required by RCW 36.70A.070(5) for designating the West
17 Kettle Falls area as a LAMIRD.
- 18 12. Stevens County failed to comply with RCW 36.70A.070(5)(d) when
19 it established an urban reserve area at Loon Lake and failed to show its work
20 in support of the establishment of an urban reserve designation adjacent to
21 the Hunter's UGA.

22 **VII. INVALIDITY FINDINGS OF FACT**

23 Stevens County has been found out of compliance on a number of serious issues. It
24 is now time for the Board to consider if the remedy of a finding of Invalidity should be
25 made. The Board has reviewed the Record and briefing in detail and we believe that the
26 following is an accurate statement:

1 There exist development regulations which speak of densities for Rural and
2 Resource lands. These are in the process of amendment at this time. (Stevens
3 County 3.01) However the "Future Land Use Map" attached as part of the
4 adopted Comprehensive Plan, did not show the various zoning designations of
5 the Rural lands or Resource lands. Because of this, it appears that the only
6 reference in the Comprehensive Plan or maps limiting the densities of lots
7 within the County is the provision limiting Rural lands to a density of no
8 greater than one dwelling unit per five acres.

9 If this is a correct reading of the Record, the Board will feel compelled to issue a
10 finding of Invalidity, thus finding invalid that portion of the Comprehensive Plan which
11 would allow such a maximum lot density. **The Board will make a determination on the
12 issue of a finding of Invalidity within 14-days of the date of this Order. The
13 Board requests Stevens County to provide clarification as to where in the
14 submitted record or arguments, the final comprehensive plan contains other
15 land use designations other than "a density of no greater than 1 d/u per 5 acres"
16 within 10 days of the date of this Order.**

17 VII. ORDER

- 18 1. The Board finds that the Petitioners have carried their burden of proof and
19 that the County's actions are clearly erroneous. The County is found out of
20 compliance in the following issues: No.2 (urban growth areas); No. 5
21 (greenbelts and open spaces); No. 9 (capital facilities plan); No. 15 (capital
22 facilities plan); No.17 (concurrency); No. 18 (quantity and quality of
23 groundwater); No. 19 (lands quantity analysis); No. 20 (greenbelts and
24 open space); No. 21 (rural character); and No. 22 (urban reserve
25 designation).
- 26 2. The Board has reviewed the Record and briefing and finds the County
apparently has not designated a variety of densities in the Rural and
Resource lands areas and on the Land Use Map. A designated density
of "no greater than 1 d/u per five acres" does not fulfill the County's

1 obligation under GMA. If this proves to be the case, the Board will feel
2 compelled to issue a finding of Invalidity. Stevens County is requested
3 to provide the Board with portions of the record or argument which
4 might affect our decision by **March 22, 2007**.

5 3. Stevens County must take the appropriate legislative action to bring
6 itself into compliance with this Order by **September 10, 2007, 180**
7 **days** from the date issued. The following schedule for compliance,
8 briefing and hearing shall apply:

- 9 • The County shall file with the Board by **September 17, 2007, an**
10 **original and four copies** of a Statement of Actions Taken to Comply
11 (SATC) with the GMA, as interpreted and set forth in this Order. The
12 SATC shall attach copies of legislation enacted in order to comply. The
13 County shall simultaneously serve a copy of the SATC, with
14 attachments, on the parties. **By this same date, the County shall**
15 **file a "Remanded Index," listing the procedures and materials**
16 **considered in taking the remand action.**
- 17 • By no later than **October 1, 2007**, Petitioners shall file with the Board
18 an **original and four copies** of Comments and legal arguments on
19 the County's SATC. Petitioners shall simultaneously serve a copy of
20 their Comments and legal arguments on the parties.
- 21 • By no later than **October 15, 2007**, the County shall file with the
22 Board an **original and four copies** of the County's Response to
23 Comments and legal arguments. The County shall simultaneously serve
24 a copy of such on the parties.
- 25 • By no later than **October 22, 2007**, Petitioners shall file with the
26 Board an **original and four copies** of their Reply to Comments and
legal arguments. Petitioners shall serve a copy of their brief on the
parties.
- Pursuant to RCW 36.70A.330(1) the Board hereby schedules a
telephonic Compliance Hearing for **October 29, 2007, at 10:00 a.m.**
The parties will call **360-357-2903 followed by 18074 and the #**
sign. Ports are reserved for Ms. Wilma, Mr. Berger, Ms. Wagenman,

1 Mr. Scott, Mr. Werst, and Mr. Copsey. If additional ports are needed
2 please contact the Board to make arrangements.

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

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

7 **Reconsideration:**

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

16 **Judicial Review:**

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

22 **Enforcement:**

23 The petition for judicial review of this Order shall be filed with the
24 appropriate court and served on the Board, the Office of the Attorney General,
25 and all parties within thirty days after service of the final order, as provided in
26 RCW 34.05.542. Service on the Board may be accomplished in person or by mail.

1 Service on the Board means actual receipt of the document at the Board office
2 within thirty days after service of the final order.

3 Service:

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

6 SO ORDERED this 12th day of March 2007.

7 EASTERN WASHINGTON GROWTH MANAGEMENT
8 HEARINGS BOARD

9 _____
10 John Roskelley, Board Member

11 _____
12 Dennis Dellwo, Board Member

13 _____
14 Joyce Mulliken, Board Member

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