State of Washington
GROWTH MANAGEMENT HEARINGS BOARD
FOR EASTERN WASHINGTON

CITY OF ZILLAH, Petitioners, v. YAKIMA COUNTY, Respondent.	Case No. 08-1-0001 FINAL DECISION and ORDER

I. SYNOPSIS

With this matter, the City of Zillah challenges Yakima County's adoption of Ordinance 15-2007 which, among other things, amended the Urban Growth Area (UGA) boundary for the Zillah UGA. Although the County amended the boundary, it did not amend it in the manner proposed by Zillah and thus the reason for this case.

The Board recognizes public participation is the heart and soul of the Growth Management Act (GMA), with several provisions mandating that jurisdictions must engage the public during the GMA planning process. However, the Board *concludes* the GMA, with RCW 36.70A.035, does not require Yakima County to provide specific, individualized notice to property owners within a proposed UGA expansion area.

The Board applauds Zillah's forward-thinking planning efforts in regards to capital facilities for its community, but RCW 36.70A.110 is explicit – population projections, adequate land to meet these projections, and a reasonable market factor – establish UGA

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boundaries not the provision of public services. The Board does not discount the importance of capital facilities planning to a UGA and acknowledges the provisions of such services do come into play when evaluating planning decisions under the GMA. However, although population growth and capital facilities planning are intrinsically linked, it is the population which drives the primary decision as to UGA sizing. Once the land base of the UGA has been established, then a jurisdiction's work as to providing the necessary public facilities and services to the UGA begins.

Therefore, with this Final Decision and Order (FDO), the Board *concludes* Yakima County's methodology for sizing of the Zillah UGA was properly based on the Office of Financial Management's (OFM) 10-year population forecast, as required by RCW 36.70A.110 and 36.70A.130, and allocation of that population by the County-Wide Planning Policy Committee, along with growth rate assumptions, is supported by historic trends and statistical data.

The Board also *concludes* various planning assumptions Yakima County utilized when preparing its Land Capacity Analysis (LCA) were reasonable in light of the GMA's requirements for urban growth, statistical trends, and the economic environment.

However, the Board *concludes* it is unclear from the Record whether Yakima County, when preparing its LCA, adequately reflected the developable status of vacant lands within the existing Zillah UGA based on constraints which would impact the ability to build on the properties.

Thus, Ordinance 15-2007, in regards to the LCA for vacant lands and the Zillah UGA, is remanded to Yakima County in order for it to take legislative action consistent with this FDO.

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II. PROCEDURAL HISTORY

On February 8, 2008, the City of Zillah filed a Petition for Review. A telephonic Prehearing conference for this matter was held on March 10, 2008.[1]

Between March 2008 and February 2009, the Board received four Joint Motions for Extension of Case Schedule signed by the parties with each requesting a ninety (90) day extension in order to pursue settlement negotiations.[2] The Board granted each of these requests by issuing an Order Granting Joint Motion for Extension of Case Schedule.[3]

On July 7, 2009, the Board held the Hearing on the Merits. Present were, Joyce Mulliken, Presiding Officer,[4] and Board Member John Roskelley. The City of Zillah was represented by James Carmody.[5] Yakima County was represented by Terry Austin.[6]

III. PRESUMPTION OF VALIDITY, BURDEN OF PROOF AND STANDARD OF REVIEW

Comprehensive plans and development regulations, and amendments thereto, adopted pursuant to the Growth Management Act (GMA) are presumed valid upon adoption by the local government.[7] The burden is on the City of Zillah to demonstrate that any action taken by Yakima County is not in compliance with the GMA.[8] The Board ". . . shall find compliance unless it determines that the action by the [the County] is clearly erroneous in

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[1] Present were Dennis Dellwo, Presiding Officer (Mr. Dellwo's term with the Eastern Board expired on June 30, 2008; Ray Paolella assumed the role of Presiding Officer in this matter at that time) and Board Members, John Roskelley and Joyce Mulliken. Petitioner's attorney James Carmody was unable to connect to the telephonic conference due to technical difficulties and was subsequently advised of the details of the conference. Present for the Respondent was Terry Austin.

[2] March 28, 2008 Joint Motion for Extension of Case Schedule; September 5, 2008 2nd Joint Motion; December 4, 2008 3rd Joint Motion; February 12, 2009 4th Joint Motion.

[3] April 2, 2008 Order Granting Joint Motion; September 11, 2008 Order Granting 2nd Joint Motion; December 5, 2008 Order Granting 3rd Joint Motion; February 13, 2009 Order Granting 4th Joint Motion.

[4] Board member Ray Paolella recused himself for this matter. The parties were notified of this on June 23, 2009 and Joyce Mulliken assumed the role of Presiding Officer.

[5] Also present at the hearing in a supporting capacity for the City of Zillah were Ardele Steele, Associate Planner and Sharon Bounds, City Clerk.

[6] Also present at the hearing in a supporting capacity for Yakima County were Steve Erickson, Director of Planning and Paul McIlrath, Deputy Prosecuting Attorney.

[7] RCW 36.70A.320.

[8] RCW 36.70A.320(2)

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view of the entire record before the Board and in light of the goals and requirements of the [Growth Management Act]."[9] To find an action clearly erroneous, the Board must be ". . . left with the firm and definite conviction that a mistake has been committed."[10]

The Board will grant deference to counties and cities in how they plan under the GMA.[11] But, as the Court has stated, "local discretion is bounded, however, by the goals and requirements of the GMA."[12] It has been further recognized that "… notwithstanding the 'deference' language of RCW 36.70A.3201, the Board acts properly when it foregoes deference to a . . . plan that is not 'consistent with the requirements and goals of the GMA."[13]

The Board finds that the Petition for Review was timely filed;[14] Petitioners have standing to appear before the Board;[15] and the Board has jurisdiction over the subject matter of the Petition for Review.[16]

IV. PRELIMINARY MATTERS

Before addressing the merits of this case, there are several preliminary matters needing to be addressed by the Board - namely the Record and Exhibits. Both the City and the County are reminded that the Board's review is limited to "the record developed by [the County] and supplemented with additional evidence if the board determines such additional evidence would be necessary or of substantial assistance to the board in reaching its decision."[17] **Thus, the evidence and/or exhibits from which a party may rely are**

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[9] RCW 36.70A.320(3)
[10] *Department of Ecology v. Central Puget Sound Growth Management Hearings Board,* 142 Wn.2d 543, 552, 14 P.3d 133 (2000).
[11] RCW 36.70A.3201
[12] *King County v. Central Puget Sound Growth Management Hearings Board,* 142 Wn.2d 543, 561, 14 P.2d 133 (2000).
[13] *Thurston County v. Cooper Point Association,* 108 Wn. App. 429, 444, 31 P.3d 28 (2001).
[14] RCW 36.70A.290(2)
[15] RCW 36.70A.280(2)
[16] RCW 36.70A.280(1)(a).

[17] RCW 36.70A.290(4)

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limited to those documents contained in the Record or as supplemented to the Record by an order of the Board.

The County filed its Index to the Record on March 3, 2008. The Board takes this Index as a good faith listing of all documents considered by the County during the adoption process. The City of Zillah has the responsibility of reviewing the Index to determine if documents have been erroneously omitted. If documents were omitted, the City should first request the County to amend the Index so as to include these documents or, if needed, file a Motion to Supplement the Record with the Board.[18] No amended Index was filed nor has the Board received from any party a Motion to Supplement the Record.

In the harshest of results, the Board would simply strike any exhibit which is not listed within the County's Index of the Record or for which a Motion for Supplement was granted, leaving any arguments and/or assertions relying on one of these exhibits simply unsupported. In reading both the City's and the County's briefing, the Board finds numerous references to exhibits which were not contained in the County's Index. For example, the City of Zillah Exhibits 3, 7, 8, and 9 and numerous portions of Yakima County's Exhibit D all fail to appear in the County's Index of the Record.[19] However, in reviewing these exhibits, the Board finds that Zillah Exhibits 7, 8, and 9 and the portions of Yakima Exhibit D clearly should have been part of the County's Index of the Record because all relate to the underlying matter – the UGA Update for Yakima County. Therefore, these items will be included within the Record for these proceedings.

In regards to Exhibit 3, although this letter pertains to the Zillah UGA update, it was generated by the City of Zillah for distribution to property owners within the potential expansions areas. Nothing in the City's briefing denotes that a copy of this letter was ever sent to Yakima County. However, this exhibit specifically relates to the City's claims as to

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[18] WAC 242-02-540.

[19] Zillah Exhibit 3 – 10/24/07 Letter from Zillah to Interested Parties; Zillah Exhibit 7 – 7/7/06 Yakima County Staff Report; Zillah Exhibit 8 – 7/31/06 Letter from Zillah to Yakima County; Zillah Exhibit 9 – 11/8/06 letter from Zillah to Yakima County; Yakima Exhibit D – 9/5/07 – 9/11/07 Email Chain Steele to Hoge; Yakima Exhibit D – 9/14/07 Email Hoge to Steele.

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notice and the County did not dispute its submittal. Therefore, despite the fact Zillah failed to file a motion to supplement the Record, the Board finds that Exhibit 3 would be necessary or of substantial assistance to the Board in reaching its decision and includes it within the Record.

In addition, the Board further reminds the parties that all exhibits, whether they are listed in the County's Index of the Record or not, must be attached to a party's brief in order to be considered by the Board.[20] For example, the Board notes the City, via Page 1, Footnote 1, and Page 7, Footnote 6, cites to letters from the City to the County in regards to Zillah's planning efforts and the Zillah UGA.[21] However, not only were these letters not included within the Index of the Record, they were not attached to the City's brief.[22] Similarly, Zillah makes numerous excerpted citations from a 2000 Law Review Article, *Accommodating Growth or Enabling Sprawl*, but fails to attach a copy to its brief.[23] As noted *supra,* pursuant to WAC 242-02-52001, all evidence and/or exhibits must be attached to a party's brief in order to be considered by the Board. The noted documents – July 2006 Letter, November 2006 Letter, and 2000 Law Review Article - were not attached to the City's brief and not included within the Record for these proceedings. Therefore, these exhibits are stricken and assertions based on these documents are left unsupported and will be disregarded by the Board.

Also, the City of Zillah provides various indented quotations throughout its briefing without correlating citations. For example, on Pages 2, 5, and 6, there are quotations without any reference to where in the Record the Board can locate the source document for

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[20] WAC 242-02-52001.

[21] Footnote 1 references at July 31, 2006 letter. Footnote 6 references a November 8, 2006 letter which contained the City's UGA proposal.

[22] Also in Footnote 6, the City states that the letter "will be submitted as a part of the record" but the Board finds no Motion to Supplement the Record nor was the County's Record amended to include this document.

[23] Although the Board does not generally require copies of prior Board decisions, court case, RCW provisions, or WAC provisions to be attached to a party's brief, documents such as law review articles do not fall into this same category. The Board acknowledges this same law review article was referenced by the County at Page 19, Footnote 2 of its HOM Brief. However, the County's inclusion was merely as a correlating citation from the Supreme Court's holding in *Thurston County v. WWGMHB,* 164 Wn.2d 329 (2008) and did not include actual excerpts of the article as the City did.

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the quotation. In addition, both the City and the County cite to a plethora of statistics without a supporting citation. It is not the Board's role to delve through the authorized evidence to ascertain where a quote or a statistic came from; this is for the party seeking to support an argument with this information. If, during the review of this matter, the Board can not easily discern the source of any quotation or statistic, the assertion or argument based on this information will be disregarded.

Lastly, at the Hearing on the Merits, the City of Zillah provided two maps for the Board. The first map was an enlarged version of Zillah Exhibit 2, with shading provided to denote the Western UGA and the Eastern UGA expansion areas. The County did not object to the use of this map. The Board shall admit this map – Zillah Exhibit 2 - to the Record for illustrative purposes. The second map was an enlarged version of Zillah Exhibit B; the County objected to the use of this map asserting the issue of critical areas was never raised before the BOCC and the map was not presented to the BOCC. Zillah conceded this map was not before the BOCC, but the issues of whether the County gave consideration to critical areas and other development constraints was before them. The Board notes, although this map is fundamentally the same as Zillah Exhibit 2, the City has augmented the map with notations as to the developable status of various parcels within the existing UGA. Therefore, the use of this map – Zillah Exhibit B – is not permitted and all arguments and/or assertions based on this exhibit shall be disregarded.

In conclusion, the Board reminds the parties of the parameters established by the GMA and the Board's Rules of Practice and Procedures as to the Record and the Exhibits. In subsequent matters before the Board, the parties are well advised to adhere to these requirements in the future. As noted *supra,* the Board permits the following exhibits:

Zillah Exhibit 7 – HOM Exhibit 1
Zillah Exhibit 8 – HOM Exhibit 2
Zillah Exhibit 9 – HOM Exhibit 3
County Exhibit D – HOM Exhibit 4
Zillah Exhibit 3 – HOM Exhibit 5
Zillah Exhibit 2 – HOM Exhibit 6 (Illustrative)

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Also as noted *supra,* the Board denies Zillah Exhibit B and strikes all references to any document not attached to the briefing, with the exception of those types of documents noted by the Board in Footnote 23. In addition, all unsupported quotations or statistics will be disregarded by the Board.

V. LEGAL ISSUES AND DISCUSSION

Challenged Action

With its Petition for Review, the City of Zillah challenges Yakima County's adoption of Ordinance 15-2007 which enacted various amendments to the County's Comprehensive Plan (CP) and Development Regulations (DR). Specific to this matter, the County amended the Zillah Urban Growth Area (UGA),[24] expanding the UGA to include land within an area generally identified in planning documents as the "Western UGA." However, in doing so the County determined not to include land within an area generally identified as the "Eastern UGA," finding the addition of lands within both the Western UGA and Eastern UGA areas would result in more land than what was needed to accommodate Zillah's future growth projections.

As noted in Zillah's and Yakima County's briefs, the County's review of its UGAs begin in 2005 with letters being sent to the mayors of the 14 cities in Yakima County advising them of the 2025 OFM Population Forecasts and providing guidelines for analysis of their respective UGAs.[25] This correspondence articulated the County's desire to include the cities in this process.[26] Between 2005 and 2006, proposed UGAs were developed.[27]

In July 2006,[28] the Planning Department for Yakima County issued a Staff Report which concluded:[29]

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[24] The Zillah UGA is comprised of land located within the municipal boundaries of the City as well as within the unincorporated portions of the County.
[25] Zillah Exhibit 5; Zillah Exhibit 6; County Exhibit B.
[26] Zillah Exhibit 6
[27] Zillah HOM Brief, at 5-7; County HOM Brief, at 4-5
[28] From the Record, the Board notes the Planning Department held various Open Houses on the UGA Update. For example, Open Houses were held on November 8, 2006, and November 29, 2006. County Exhibit D.
[29] Zillah Exhibit 7 – HOM Exhibit 1, at 4

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> [The UGA Analysis for Zillah projected] … a surplus of 317 vacant acres within the city and its current UGA … Therefore, expansion of the UGA is not recommended as none is needed to accommodate the projected increase in population through 2025.

Subsequent to this determination, discussions occurred between the City and the County which resulted in a different methodology being used for Zillah than for other cities within the County in order to account for a larger growth rate and the master planned community of Zillah Lakes.[30] From this modified analysis, with a Staff Report issued in March 2007, County Planning Staff determined: [31]

> [The UGA Analysis for Zillah] … projects a deficit of 24 acres of vacant residentially-zoned land outside of Zillah Lakes and a surplus of 10 acres of vacant commercially-zone land within the city and its current UGA.

Therefore, the Planning Staff recommended inclusion of the Eastern UGA and a portion of the Western UGA to serve these needs.[32]

After conducting two open record public hearings,[33] the Yakima County Planning Commission issued its Findings and Recommendations.[34] The Planning Commission noted that the City's proposal sought to add the Eastern UGA for residential uses and the Western UGA for commercial and residential uses. After reviewing Planning Staff's recommendation and hearing public testimony, the Planning Commission determined: [35]

> [T]the western area is more a vector area of growth than the eastern area. Therefore, it is preferable to add the entire western area and none of the eastern area.

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[30] Zillah Exhibit 10, at 2. *See also,* Ordinance No. 15-2007 "Whereas" section for Urban Growth Areas.
[31] Zillah Exhibit 10, at 7-8.
[32] Zillah HOM Brief, at 8; Zillah Exhibit 10 – Attachment 5.
[33] Public hearings were held on September 24, 2007, and September 26, 2007. Zillah Exhibit 11; County Exhibit D.
[34] Zillah Exhibit 11, at 9 (specific to Zillah UGA).
[35] Zillah Exhibit 11, at 9.

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Thus, the Planning Commission recommended adding the entire Western UGA, as requested by Zillah in its November 8, 2006, letter, but denying addition of the Eastern UGA.[36]

The Yakima County Board of County Commissioners (BOCC) held a public hearing on November 6, 2007 in order to take public testimony on the proposed UGA changes outlined by the Planning Commission's recommendations.[37] Another public hearing was held by the BOCC on December 13, 2007, to allow for public testimony on the BOCC's proposed modifications and changes to the Planning Commission's recommendations.[38] After conducting these hearings, the BOCC agreed with the Planning Commission's recommendations and added only the Western UGA to the Zillah UGA, rezoning the expansion area's westerly potion to R-1 and the easterly portion to Commercial.[39]

Based on these actions, the City of Zillah alleges Yakima County failed to comply with the GMA by (1) violating the GMA's public participation requirements by failing to provide individual notification to property owners and (2) failing to include land sufficient to permit projected urban growth for the succeeding 20-year planning period. In relationship to the sufficiency of land question, the City asserts the County's Land Capacity Analysis (LCA) is erroneous.

Since public participation is a keystone to GMA planning, the Board will first address the City's assertion that the County violated the GMA's public participation requirements. Then, the Board will address the City of Zillah's claims related to the sizing of the Zillah UGA and the related LCA.

Public Participation

Issue 1: Did Yakima County violate public participation requirements of RCW 36.70A.035 in failing to provide notification to property owners within areas proposed for UGA expansions for the City of Zillah?

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[36] Zillah Exhibit 11, at 9. In addition, the Planning Commission noted the Western UGA should be rezoned to R-1 and Commercial and the addition of the Western UGA was "subject to the city adopting adequate plans for capital facilities, utilities, and transportation to serve the enlarged UGA."
[37] Ordinance 15-2007, at 4. *See also,* County Exhibit D.
[38] Ordinance 15-2007, at 4. *See also,* County Exhibit D.
[39] Ordinance 15-2007, at 8 and Exhibit C.

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Positions of the Parties

The City of Zillah contends Yakima County failed to provide appropriate and adequate notice to property owners.[40] The City grounds this contention on a requirement for the County to provide "specific notice of public hearings" to property owners within the Eastern UGA, especially after the Planning Commission's modification to the Planning Department's recommendation.[41] According to the City, this notice deficiency impaired the public participation process by failing to allow full community participation.[42]

In response, Yakima County states it provided notice to all property owners for all areas being recommended for addition to the UGA.[43] The County states these notices included information for the Planning Commission hearings as well as maps showing proposed areas.[44] In addition, the County points out individualized notices as to subsequent BOCC hearings were sent to people who requested to be added to the County's mailing list, those who attended hearings, and those who submitted written comments.[45]

Discussion and Analysis

This Board has previously held public participation is the "heart and soul" of the GMA.[46] The GMA contains several provisions addressing citizen involvement in comprehensive land use planning, including RCW 36.70A.020(11), .035, and .140, all of which combine to create a strong foundation for public participation which cannot be compromised. With Issue 1, the City of Zillah asserts Yakima County violated a single

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[40] Zillah HOM Brief, at 23.
[41] Zillah HOM Brief, at 23; Zillah Reply Brief, at 17.
[42] Zillah Reply Brief, at 17.
[43] County Response Brief, at 21.
[44] County Response Brief, at 22.
[45] County Response Brief, at 22.
[46] *Citizens for Good Governance v. Walla Walla County,* Case No. 05-1-0013, FDO at 9 (June 15, 2006)(Board considers public participation as the heart and soul of the GMA); *Roberts/Taylor v. Benton County,* Case No. 05-1-0003, FDO, at 18 (Sept. 20, 2005)(Public Participation is at the very heart of the GMA); *LBN/Wagenman v. Stevens County,* Case No. 04-1-0010, FDO at 7 (Feb. 2, 2005)(Public participation was the very core of the GMA). See also, *1000 Friends of Washington v. McFarland,* 159 Wn.2d 165 (2006)(Supreme Court holding that the GMA extensive public input for the development of the regulations and the comprehensive plans and therefore the use of referenda to repeal such an enactment is not permitted).

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provision of the GMA's public participation requirements - RCW 36.70A.035 Public Participation – Notice Provisions.

Zillah contends the County's procedures "provided for limited notice of proposed UGA expansions to affected property owners."[47] Zillah does not allege the County failed to provide general public notice of hearings on the UGA expansions or that the content of those notices was insufficient. Rather, Zillah argues solely what was missing from the County's notice process in this matter was specific, individualized notice to property owners within the Eastern UGA after the Planning Commission rejected the Planning Department's recommendation advising them these lands were no longer being recommended for inclusion within the Zillah UGA.[48]

Thus, the issue, as presented by Zillah, is whether the GMA requires property owners to receive individual notice. There is no doubt in the Board's mind in order to ensure public participation sufficient notice is required but, as noted *supra,* Zillah does not challenge the content of the notices provided by the County only its delivery. RCW 36.70A.035 provides, in relevant part, emphasis added:

> (1) The public participation requirements of this chapter shall include *notice procedures that are reasonably calculated to provide notice to property owners and other affect and interested individuals* … of proposed amendments to comprehensive plans and development regulations. *Examples of reasonable notice provisions include*:
>
> > (a) Posting the property for site-specific proposals;
> > (b) Publishing notice in a newspaper of general circulation in the county, city, or general area where the proposal is located or that will be affected by the proposal;
> > (c) Notifying public or private groups with known interest in a certain proposal or in the type of proposal being considered;

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[47] Zillah does not specifically allege the County failed to comply with its own public participation procedures nor does Zillah contend those procedures do not comply with the GMA. The Board notes although the City could have challenged the County for compliance with its own public participation procedures, something it did not do, a challenge to the validity of the County's Public Participation Procedures would be untimely as it was adopted long ago. (See YCC 16B.010.070, last amended Ord. 4-2000 §1 (2000).

[48] Zillah HOM Brief, at 23; Zillah Reply Brief, at 17. The Board notes Zillah makes this assertion without citing to a GMA provision or supporting case law.

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> (d) Placing notices in appropriate regional, neighborhood, ethnic, or trade journals; and
> (e) Publishing notice in agency newsletters or sending notice to agency mailing lists, including general lists or lists for specific proposals or subject areas.

Noticeably absent from the GMA's listing of examples is a requirement to give individualized notice to a property owner, the very thing Zillah is contending the County failed to do. The question of whether the GMA requires individualized notice was addressed by the Supreme Court in *Chevron USA, Inc. v. CPSGMHB, et al.*[49] In *Chevron,* property owned by Chevron was designated as a Potential Annexation Area (PAA) by both the City of Shoreline and then the Town of Woodway. A case was filed with the Central Puget Sound Growth Management Hearings Board (CPSGMHB) and Chevron intervened in the matter, contending Woodway failed to provide sufficient notice of the PAA amendment.[50] Chevron's claim, based on both a GMA violation as well as a due process claim, was first addressed by the Court of Appeals; with the court finding individualized notice was not required.[51] Chevron appealed to the Supreme Court which looked at two provisions of the GMA, RCW 36.70A.035(1) and RCW 36.70A.140, and concluded "neither of these statutes specifically required individualized notice."[52,53]

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[49] 156 Wn.2d 131 (2005)
[50] *Shoreline v. Woodway,* CSPGMHB Case NO. 01-3-0013, Final Decision and Order (Nov. 28, 2001)
[51] *Chevron USA, Inc. v. CPSGMHB,* 123 Wn.App. 161, 169 (2004).
[52] 156 Wn.2d at 137. RCW 36.70A.140 is the GMA's requirement to ensure early and continuous public participation. The City of Zillah has not asserted a violation of RCW 36.70A.140.
[53] In addition, the Court then went on to analyze the due process claim, finding Chevron was unable to show how its property rights were actually affected and, without an actual effect on its property rights, Chevron was unable to show substantial prejudice. The Court stated:

> While these cases [*Harris v. County of Riverside,* 904 F.2d 497 (9th Cir., 1990) and *Holbrook Inc. v. Clark County,* 112 Wn.App. 354 (200)] stand for the proposition that due process rights, including the right to individual notice, may be implicated when a property owner's land is uniquely targeted by the government and, as a result, the landowner's property rights are actually and significantly affected, they do not support Chevron's argument here. Although Chevron argues that its property was targeted by Woodway in the 2001 plan amendments, Chevron is unable to show how its property rights were actually affected. Chevron continues to use its land in the manner it did prior to the 2001 plan amendments. As

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Therefore, based on the explicit notice provision of the GMA as set forth in RCW 36.70A.035(1), in association with the courts interpretation of this provision, the Board *concludes* the GMA does not require individualized notice.[54] Yakima County did not violate RCW 36.70A.035 when it failed to provide such notice.[55]

In addition, the Board cannot help but note the City of Zillah appears to have provided the very notice it contends the County failed to do. With an October 24, 2007, notice from the City to "Residents within City of Zillah's proposed Urban Growth Areas," the City advises residents of the upcoming BOCC hearing and the Planning Commission's modifications which would exclude certain property that had been recommended for inclusion within the Zillah UGA.[56] This letter specifically states:[57]

> This notification is in reference to the Urban Growth Area and the status of your property … The city has received Yakima County's recommendations,

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> the Court of Appeals notice, Point wells cannot be annexed without Chevron's consent. Chevron, therefore, can defeat any attempt by Woodway to annex the property. Chevron's property rights have not been affected. Without an actual affect on its property rights, Chevron is unable to show substantial prejudice. 156 Wn.2d at 138-139.

[54] Zillah did not raise a due process claim before the Board and, even if it did, the parties should be well aware the Board has no jurisdiction over constitutional issues and could not rule on such an issue. *Dudek/Baguley v. Douglas County,* EWGMHB Case No. 07-1-0009, Order on Motions, at 12 (Sept. 26, 2007) (Reaffirming the Board does not have jurisdiction to hear constitutional issues, such as takings, substantive due process, and due process prohibitions).

[55] It is also clear from the Record Yakima County did provide notice of the Planning Commission and BOCC hearings on the UGA review process; satisfying RCW 36.70A.035's requirements by publishing notice in a newspaper of general circulation - the *Yakima Herald-Republic*. The Board notes three such notices:

- A notice published on September 13, 2007, notifying the public that the Planning Commission would be holding a public hearing "for the purpose of taking public testimony concerning proposed expansions and reductions of the County's [UGAs]" and provided a means to obtain information of the proposed changes, including maps. Yakima County Exhibit D: Index of Record (Main List) No. 19.
- A notice published on October 25, 2007, notifying the public that the Board of County Commissioners would be conducting a public hearing on the County's 10-Year Review of the UGAs. Yakima County Exhibit D: Index of the Record (Main List) No. 23.
- A notice published on December 1, 2007, notifying the public that the Board of County Commissioners would be conducting a public hearing on Amendments to the County's Comprehensive Plan and Zoning Ordinance, which included amendments to the Land Use Element. Yakima County Exhibit D: Index of the Record (Main List) No. 30.

[56] Zillah Exhibit 3 (HOM Exhibit 5).

[57] Zillah Exhibit 3 (HOM Exhibit 5)

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> which excludes certain property that the city originally proposed … Your property or properties has been excluded at this time … We would encourage your participation and support in the upcoming public hearing held by Yakima County Commissioners … This is you last chance to voice opposition or support to the recommendation.

Thus, the specific, individualized notice of the County's action, although not required by the GMA, was actually sent to property owners by the City itself.

CONCLUSION

The City of Zillah has failed to carry its burden of proof in demonstrating that Yakima County violated RCW 36.70A.035 by not providing specific, individualized notification to property owners within areas proposed for UGA expansion. RCW 36.70A.035 does not require specific, individualized notice of a legislative action related to GMA planning; although such individualized notice may, in certain situations, be practical. The County, pursuant to RCW 36.70A.035(1)(b), provided adequate and sufficient notice of hearings before both the Planning Commission and Board of County Commissioners.

Sizing of Urban Growth Areas

The issues related to the sizing of the Zillah UGA are set forth in three of the City's issue statements:

> **Issue 2**: Did Yakima County Ordinance No. 15-2007 fail "…to include areas and densities sufficient to permit urban growth that is projected to occur" in the City of Zillah for the succeeding 20 year period?
>
> **Issue 3**: Did Yakima County erroneously calculate land capacity for the City of Zillah?
>
> **Issue 4**: Does Ordinance No. 15-2007 fail to provide a sufficient area in density to accommodate the urban growth projected for City of Zillah for the succeeding 20-year period as required by RCW 36.70A.110(2)?

Position of the Parties

Zillah argues that by denying a portion of a requested UGA extension, Yakima County based growth projections on outdated information and has placed the City in a difficult

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planning situation by leaving Zillah with a disjointed and irregular growth boundary, failing to provide sufficient land for planning over a 20-year growth horizon, and complicating and compromising capital facility planning.[58] According to Zillah, the County's actions violate the GMA for three primary reasons: (1) incorrect and inaccurate growth assumptions; (2) growth projections were inaccurate; and (3) land capacity analysis was flawed.[59]

In response, Yakima County states it based its UGA sizing decision for all of its 14 cities upon "objective criteria, including land capacity studies, market supply factor analysis, and based on the figures produced by OFM"[60] and the LCA fully justifies the UGA as sized by the County. The County contends it looked at growth patterns unique to a community, existing infrastructure, transportation, and physical constraints when determining UGA sizing.[61] Yakima County asserts it has based its population projections on OFM's 2005-2025 calculations, which was the latest data available.[62] In addition, the County contends it properly calculated vacant and developable lands within the existing UGA and Zillah's assertion the LCA failed to consider critical areas and unbuildable properties is unsupported.[63]

Discussion and Analysis

Generally, the denial of a proposed amendment to a CP does not amount to an action for which the Board has jurisdiction *unless* the amendment is premised on a mandate articulated by the GMA.[64] Here, RCW 36.70A.110(2) mandates jurisdictions to provide a

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[58] Zillah HOM Brief, at 1-3.

[59] Zillah HOM Brief, at 10-11, 18-23; Zillah Reply Brief, at 8, 11-12.. Some of these errors were based on claims of outdated data, failing to recognize changes that had occurred in the city during the update process, permanent residents versus second home residents, commercial development, written justification, and vacant lands inventory.

[60] County Response Brief, at 17.

[61] County Response Brief, at 17. Yakima County points out that growth related to Zillah Lakes and other development has already been quantified and taken into account by the LCA, something which is demonstrated by the modification in the methodology applicable to Zillah. See County Response Brief, at 20, 25.

[62] County Response Brief, at 24-25.

[63] County Response Brief, at 27-28.

[64] RCW 36.70A.280 grants the Board jurisdiction over the adoption of, or amendment to, Comprehensive Plans and Development Regulations. The denial of an application is not an adoption of or amendment to a jurisdiction's GMA planning documents. However, the critical question is not whether the local jurisdiction denied a request for a CP amendment but whether the denial violated a requirement imposed under the GMA.

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UGA which is sufficient in size to accommodate urban growth expected to occur for the succeeding 20-year period. Thus, the Board has jurisdiction to review Yakima County's denial of Zillah's proposed UGA expansion areas to determine if this mandate has been violated.

As Yakima County noted in its response brief, Issue 2 and Issue 4 essentially state the same thing. In fact, the quote referenced by the City in Issue 2 stems from RCW 36.70A.110(2), the GMA provision alleged to be violated in Issue 4. The Board sees these two issues as one and the same,[65] with Zillah contending the County's adoption of Ordinance No. 15-2007 does not comply with RCW 36.70A.110(2). Similarly, the need to conduct a Land Capacity Analysis (LCA) is based on RCW 36.70A.110's requirement that urban growth should be directed to appropriately-sized and delineated UGAs.[66] Thus, the Board sees these three issues all allege a violation of RCW 36.70A.110 which provides: (In Relevant Part, Emphasis added)

> **(1) Each county** that is required or chooses to plan under RCW 36.70A.040 **shall designate an urban growth area** or areas within which urban growth shall be encouraged and outside of which growth can occur only if it is not urban in nature … **An urban growth area may include territory that is located outside of a city only if such territory already is characterized by urban growth** whether or not the urban growth area includes a city, or is adjacent to territory already characterized by urban growth …
>
> **(2) Based upon the growth management population projection made for the county by the office of financial management**, the county and each city within the county **shall include areas and densities sufficient to permit the urban growth that is projected to occur in the county or city for the succeeding twenty-year period** …
>
> **An urban growth area determination may include a reasonable land market supply factor** and shall permit a range of urban densities and uses.

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[65] Yakima County viewed these issues in the same manner, combining argument for Issue 2 and Issue 4. County Response, at 21, Fn. 3.

[66] *Kittitas County Conservation v. Kittitas County,* Case No. 07-1-0004c, FDO, at 65-66 (Aug. 20, 2007)

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> **In determining this market factor, cities and counties may consider local circumstances**. Cities and counties have discretion in their comprehensive plans to make many choices about accommodating growth.
> …
> **The county shall attempt to reach agreement with each city on the location of an urban growth area within which the city is located. If such an agreement is not reached with each city located within the urban growth area, the county shall justify in writing why it so designated the area an urban growth area.** A city may object formally with the department over the designation of the urban growth area within which it is located. Where appropriate, the department shall attempt to resolve the conflicts, including the use of mediation services.

Zillah's issues raise a question based on a key structural component of the GMA – the requirements for the sizing of a UGA.[67] At the heart of these requirements are growth projections and the correlating LCA, a critical assessment in which a determination is made as to whether a UGA has sufficient land capacity to absorb the growth projected to occur in the succeeding 20 years.

1. OFM Population Projections

Underlying the sizing of a UGA are population projections. As noted above, RCW 36.70A.110(2) explicitly provides that UGAs are to be based upon population projections made for the county by the OFM. [68] In *Thurston County v. WWGMHB,* the Supreme Court clarified this requirement:[69] (Emphasis added)

> The **size of a UGA must be "[b]ased upon" an OFM projection** and a county must include "areas and densities sufficient to permit the urban growth" projected to occur over the next 20 years. RCW 36.70A.110(2) … Thus, although the GMA does not explicitly limit the size of a UGA, to give meaning to the market supply factor provision and in light of the GMA goal of reducing sprawl, we hold **a county's UGA designation cannot exceed the amount of land necessary to accommodate the urban growth**

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[67] *Id.* (Stating a UGA is one of the main organizing principles of the GMA's approach to planning for growth).
[68] Pursuant to RCW 43.62.035, the State of Washington Office of Financial Management (OFM) is tasked with preparing a reasonable range of possible population growth for Washington counties participating in GMA. These population projections go out 20 years and are used in growth management planning.
[69] *Thurston County v. WWGMHB,* 164 Wn.2d 329, 351-352 (2008).

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projected by OFM, plus a reasonable land market supply factor.

The GMA makes it explicitly clear - the starting point for the sizing of a UGA is OFM's population projections.[70]

Yakima County started its UGA review process in 2002, utilizing OFM population forecasts provided to it for the 20-year planning period of 2005–2025.[71, 72] It was determined by the County-Wide Planning Policy Committee (CWPPC), working in cooperation with the cities, that the forecast of population allocation would be based on each city's current share of the census figures[73] and OFM's medium or high population estimates could be used.[74] Yakima County decided to utilize OFM's "High" estimate for 2025 which results in a total countywide population of 326,254 persons or a growth of 88,843 additional persons over the 20-year planning period for the County.[75] Zillah, whose 2000 Census population represented one percent of Yakima County's total population, was allocated one percent of this total growth figure.[76]

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[70] In conjunction with the exhibits submitted by the parties, pursuant to WAC 242-02-670, the Board takes official notice of various population projection documents produced by OFM. These documents include: *Projections of the Total Resident Population for the GMA – High: 2000 to 2025 by Single Year after 2010 (Released January 2002); April 1 (2009) Population of Cities, Towns, and Counties Used for Allocation of State Revenues; Rank of Cities and Towns by Percent Population Change April 2, 2000 to April 1, 2009; Rank of Cities and Towns by April 1, 2009 Population Size; OFM April 1 Population Determinations Official Change (for Counties) from April 1, 1999 to April 1, 2009.* These documents will be referred to as HOM Exhibit 6.

[71] Zillah Exhibit 5; County Exhibit A, at 2 (noting that OFM has provided their forecast for 2025 population); County Exhibit B (Informing Yakima County's cities that the CWPPC has approved OFM's 2025 population forecast for the County has a whole)

[72] RCW 36.70A.280(b) permits the filing of a Petition for Review which challenges OFM's 20-year planning projections. Neither Yakima County nor the City of Zillah filed such a petition.

[73] County Exhibit A, at 4.

[74] County Exhibit B.

[75] County Exhibit B. It should be noted OFM prepares low, medium, and high population projections for counties as a whole. The allocation of population to individual areas is left to the counties, in consultation with their cities.

[76] County Exhibit A; County Exhibit B. In addition, Zillah presents nothing to the Board denoting it disagreed with or challenged the CWPPC's decisions as to OFM population numbers and allocation at the time these policy decisions were made. RCW 36.70A.280(1)(b) permits an appeal of the OFM population projections and RCW 36.70A.210(6) permits cities to appeal a county-wide planning policy. Without such a challenge, the Board must presume Yakima County and its cities were in agreement on these basic allocations and the UGA update for the County proceeded on this basis. To permit Zillah to challenge these decisions now is simply untimely.

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Zillah asserts error in two regards. First, Yakima County's use of OFM's 2002 population projections resulted in a UGA based on outdate data.[77] RCW 36.70A.130(1)(c) requires jurisdictions to use the "most recent ten-year population forecast" by OFM. At the time of this update, the January 2002 OFM population estimates was the most recent forecast[78] and, therefore, the County's actions were not clearly erroneous in this regard. The Board acknowledges OFM released new projections in November 2007, a month before the County adopted the challenged Ordinance. However, these new projections for Yakima County are not widely divergent from the prior projections. In the 2002 projections, OFM forecasted a 2025 population of 326,254 and, with the 2007 projections, the forecast for 2025 was adjusted to 330,373; a difference of 4,119 county-wide. However, if Zillah's one percent allocation truly reflected OFM's 2007 forecast, the 2025 population would be 3,304 persons. This is far less than the population based on OFM's 2002 projections for the County, which was modified to 4,019.

Second, specific to the county-wide allocation of population, Zillah contends its one percent allocation was not based on actual growth analysis or empirical data and resulted in an erroneous assumption that growth would simply follow historic patterns.[79] However, Zillah provides the Board with nothing to demonstrate its growth will not follow historic patterns. In 1990, Zillah's population represented one percent of Yakima County's total population and this trend continued into 2000.[80] Thus, both the 1990 and 2000 census, along with the 2001 Special Census, reflected the fact that Zillah represents one percent of Yakima County's total population. It was not clearly erroneous for the County to assume this trend would continue.

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[77] Zillah HOM Brief, at 17.
[78] OFM did not produce a new population forecast until November 2007. The challenged Ordinance was adopted in December 2008.
[79] Zillah HOM Brief, at 17.
[80] Zillah Exhibit 5, 1980-2000 City Population Chart; Zillah Exhibit 7, Population Data for UGA Analysis; County Exhibit C

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As discussed *infra,* the 2005-2025 OFM Projections and the US Census figures provided the base for Yakima County's population projections in regards to Zillah. These figures were later modified to take into account Zillah's specific situation with Yakima County increasing the amount of population allocated to Zillah by 797 persons, or 25 percent more than the original allocation represented.[81]

In contrast, Zillah presents numbers derived from planning it conducted in relationship to its water service area (Water Plan), asserting the 2025 population for Zillah should be 5,932.[82] In the Water Plan, a base 2005 population of 2,724 was utilized to project Zillah's future water service population, a figure derived from the water system service population at that time.[83] However, as noted *supra,* the GMA requires UGAs to be sized based on OFM population projections, not on projections from any other source.

CONCLUSION

RCW 36.70A.110 requires a UGA's size must be based on OFM's population projections and RCW 36.70A.130(3)(c) directs Yakima County to use OFM's most recent 10-year forecasts. Therefore, the Board *concludes* Yakima County's action, in basing population on OFM projections, was not clearly erroneous and does not amount to a violation of RCW 36.70A.110. In addition, it was not clearly erroneous for Yakima County to allocate the county-wide population based on the City's share of the census population, as this assumption is supported by historic trends.

2. Population Growth Rate

For Zillah, whose 2000 Census population was 2,198 persons or approximately one percent of the total county population, Yakima County utilized the 2005-2025 OFM 20-year "High" population allocation,[84] resulting in an addition of 627 persons to the city; for a total

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[81] County Exhibit C, at 1
[82] Zillah Exhibit 12, Chapter 2 Water Plan.
[83] Zillah Exhibit 12, Chapter 2 Water Plan, at 2-4. The Board notes the Water Plan accounts for 129 more people in 2005 than OFM's population estimates.
[84] OFM prepares population range projections based on low, medium, and high growth scenarios.

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2025 population of 3,222 persons or a per annum growth rate of 1.2 percent.[85] From this population growth projection, Yakima County performed a "7-Step UGA Analysis" to calculate the appropriate sizing of a UGA.[86]

After this initial calculation was presented, further discussion ensued between the County and Zillah based on the City's contention these calculations did not adequately reflect Zillah's growth rate. The resulting discussions recognized Zillah, based on OFM population estimates for 2000 to 2006, was growing faster than OFM originally predicted. In order to reflect this fact, the County adjusted the population for Zillah by using a straight-line extrapolation of the 2000-2006 growth to result in a 2025 population projection of 4,019 persons, for an additional 1,424 more persons during the 20-year planning period or a growth rate of 2.7 percent.[87]

Zillah's growth rate is a key dispute in this case. The City, without providing the Board citation to a source document, contends it has experienced explosive growth between 2000 and 2006, with 2005 being a time when migration "accelerated,"[88] which resulted in a 3.4 percent growth rate per annum"[89] or a total growth within this time period of 23.7%."[90] Zillah's claims a 3.4% yearly growth rate appears to be based on the 2000-2006 time period and are supported by OFM's numbers. However, the Board notes based on OFM's *April 1 (2009) Population of Cities, Towns, and Counties Report*, the City's population during this time, by year, was as follows:

Year	Population (Estimate)
2000	2,198
2001	2,472

[85] County Exhibit B, Yakima County Population Spreadsheet.
[86] Zillah Exhibit 7; HOM Exhibit 1, Staff Report and Attachment 1. This same analysis is set forth in the Land Use Element of the County's Comprehensive Plan – *Plan 2015.*
[87] County Exhibit C, March 2007 Staff Report. The equation is: 4,019 persons – 2,595 persons = 1,424 persons (20 year growth)
[88] Zillah Reply Brief, at 9.
[89] Zillah HOM Brief, at 5.
[90] Zillah HOM Brief, at 17.

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2002	2,450
2003	2,495
2004	2,525
2005	2,595
2006	2,635

The Board further notes that in 2001 a State Certified Special Census was conducted. The 2001 Special Census figure should be the more accurate in comparison to the year 2000 since it was specifically commissioned to address potential errors in Zillah's population figure derived from the 2000 US Census.[91] Thus, if 2000 is removed, the 2001 to 2006 period demonstrates that Zillah has grown by 163 persons, a 6.5 percent total growth rate for five years or 1.3 percent per annum. This historic trend is demonstrated by a review of each year as follows:[92]

Years	**Population in Year No. 1**	**Population in Year No. 2**	**Population Increase/Loss**	**Growth Rate**
2001 – 2002	2,472	2,450	<22>	<0.9% >
2002 – 2003	2,450	2,495	45	1.8%
2003 – 2004	2,495	2525	30	1.2%
2004 – 2005	2,525	2,595	70	2.8%
2005 – 2006	2,595	2,635	40	1.5%

Looking beyond these numbers to the growth experienced between 2006 and 2008, the Board finds the following trend:[93]

Years	**Population in Year No. 1**	**Population in Year No. 2**	**Population Increase**	**Growth Rate**
2006 – 2007	2,635	2,660	25	0.9%
2007 – 2008	2,660	2,720	60	2.3%

Therefore, even when looking at growth trends from 2001 to 2008, the City of Zillah historically has demonstrated an average per annum growth rate of 1.4 percent.[94] Yakima

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[91] The Special Census was presumably done to correct erroneous statistics from the 2000 Census.
[92] Figures derived from OFM's April 1 2009 Population Forecasts.
[93] *Id.*

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County had originally assumed an annual growth rate for Zillah at approximately 1.2 percent and then later revised that number to approximately 2.7 percent in order to better reflect anticipated growth and the Zillah Lakes development. Zillah asserts, at the minimum, a 3.4 percent growth rate should have been used, but once the presumably erroneous 2000 US Census figure is removed, this rate is not supported and, in fact, since 1999, Zillah's growth has generally been under 2 percent and has never had an average growth rate exceeding 3 percent except for one period of time.[95]

The Board is well aware of the Zillah Lakes development, but does not believe this development, especially given the economic condition of the real estate market, will create the exaggerated rates of growth the City of Zillah is promoting, leaving a greater percentage of these residential units to serve forecasted growth. If the Board were to accept the City's growth figures set forth in its Water Plan, growth for the next seven years would be three to six times the historic per annum rate for the City before leveling off to a more historic rate of two percent.

CONCLUSION

Yakima County, in selecting a growth rate which is more than a full percentage point greater than the historic trend, has utilized a reasonable growth rate based on Zillah's potential growth pattern and consideration to the influence of the Zillah Lakes development. Zillah has not carried its burden of proof in demonstrating the County's selected growth rate was clearly erroneous based on the Record presented to the Board and that rate violates RCW 36.70A.110.

3. <u>Land Capacity Analysis – Planning Assumptions</u>

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[94] Going even farther back in time, Zillah's growth rate for the period 1990 – 2000 was approximately 1.4 percent per year. Zillah Exhibit 12, Water Plan, at 2-4.

[95] Zillah Exhibit 12, Water Plan, at Table 2-3. With the exception of growth experienced between 1970-1980, no other 10-year time period has exceeded an average 2 percent per annum growth. The Board also notes that although the Zillah Water Plan does substantially adjust the growth rate until 2015 to reflect the build-out of Zillah Lakes, with the growth rate ranging from a low of 4 percent to a high of 13 percent between 2006 and 2014, the Water Plan utilizes a two percent growth rate during the years of 2015-2027.

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A LCA is key to determining if an existing UGA has sufficient land to accommodate projected growth and, fundamental to this analysis, is a review of whether there is land available for development. When determining available land, review is not merely of vacant land, but also of land that is underutilized or partially used.[96] This land base is then further reduced to reflect public needs and development limitations which make that land not suitable for development, such as the presence of critical areas which would prohibit any type of development. The GMA's permitted market factor supplements this analysis by recognizing that some of this land will not be made available for development within the 20 year planning period due to fluctuating market forces.

Using an average household size of 2.78 persons,[97] Yakima County determined a total of 512 additional residential units would be needed to serve the anticipated 1,424 persons expected to be in Zillah by 2025. Based on an average lot size of 8,500 square feet, or a density of about five units per acre, a total of 100 acres is needed to provide for these new units. The County recognized that, although the planned community of Zillah Lakes will provide for 654 units, only 50 percent of the expected growth is anticipated to locate within Zillah Lakes. Thus, the following equation was used to determine residential land need:[98]

Outside of Zillah Lakes: (8,500 sq foot lot x 512 units) x 50 %	= 50 acres
Inside Zillah Lakes: (5,028 sq foot lot x 512 units) x 50 %	= 30 acres
	80 acres

Other land needs, such as commercial, retail, and community facilities were determined by multiplying the projected population increase of 1,424 persons by the existing per capita acreage of developed land zoned for a particular use. The need for such land is as follows:[99]

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[96] Vacant land is generally defined as land which has no structure or an improvement of nominal value (i.e. a storage shed). Under-utilized land is land zoned for a more intensive use than that which currently occupies the property. Partially used land is seen as occupied by a use which is consistent with current zoning but contains enough land to be further subdivided without the need to rezone.
[97] Average household size of 2.78 was based on US Census numbers. Yakima County Exhibit C, Attachment 1.
[98] Yakima County Exhibit C, at 2-3. Lot size of Zillah Lakes is based on developer's own plans.
[99] Yakima County Exhibit C, at 3.

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Use	Per Capita Acreage	Acres needed
Commercial/Retail	0.0227	32
Community Facilities	0.08	114

From the total acreage needed for all uses – residential, commercial/retail, and community facilities, Yakima County recognized that 15 percent, or 29 acres, was needed to reflect the amount of land for future roadways.[100] Therefore, based on these calculations Yakima County concluded Zillah's UGA would need 225 acres of vacant land to fulfill its 20 year growth expectation needs. By recognizing a 25 percent market factor, an additional 56 acres, for a total of 281 acres of land, was determined to be needed.

Of course, just because the County's calculation resulted in a need for additional land does not warrant the expansion of the Zillah UGA by the same acreage. The GMA focuses growth first within the UGA boundaries, encouraging greater utilization of this area before turning the focus towards expansion. The County is to first look within the boundaries of the UGA to determine if sufficient vacant land, including partially-developed and under-utilized land, can accommodate projected growth. Based on information gained through Yakima County's Department of Geographic Information Services (GIS) to analyze and quantify land within the existing UGA, the County concluded approximately 148 acres of vacant residentially-zoned land is located outside of Zillah Lakes, but within the existing UGA, and 120 acres of vacant commercially-zoned land remained within the UGA. Reducing this acreage by the amount needed for residential and commercial growth and necessary infrastructure (community facilities and roads) and, as allowed by RCW 36.70A.110(2), adjusting this acreage by a 25 percent market factor, the end result was that the Zillah UGA needed to be expanded as follows:[101]

Residential Land (outside Zillah Lakes): (24 acres)

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[100] Yakima County Exhibit C, at 3.

[101] The LCA also states there are 102 vacant acres of industrially-zoned land within the UGA and Zillah has not asserted additional industrial lands are needed. Zillah did request the addition of the Borton property, which is industrially-zoned. This property was included within Ordinance No. 15-2007's authorization for expansion of the UGA.

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Commercial Land: 10 acres

Therefore, the County's LCA demonstrated a need to expand the UGA by only 24 acres of residentially zoned land, finding sufficient land for all other uses. By adding the entire Western UGA, an area of approximately 120 acres with 25 vacant acres available for residential development, the BOCC satisfied this anticipated need.

Zillah contends the County did not properly prepare its LCA and there is still a deficit of both residential and commercial land within the existing UGA. In review of Zillah's calculations, the Board notes the City contends there is a 149 acre deficit for residential land and a 71 acre deficit for commercial land, after adjusting needed acreage by a 25 percent market factor. However, the basis for these deficits is the City's own population and growth rate projections, not the OFM projections and historic growth rates utilized by the County. Since the Board has previously concluded Yakima County did not err when developing its population allocation and a growth rate, the Board cannot now find a LCA based on the County's own calculations clearly erroneous.

In addition, like with the growth rate, Zillah challenges the County's various land use assumptions asserting the ones utilized by the City are more viable than those utilized by the County. The Board recognizes planning assumptions amount to "educated guesses" without absolute precision and the lack of precision permeates the entire process because the assumptions are largely quantitative, reaching 20 years into the future in an educated attempt to predict future development activity. However, the Board reiterates its role is not to determine whether one assumption is better than another assumption or to substitute its judgment for that of the County. Rather, its role is to ensure the County's actions comply with the goals and requirements of the GMA, in this case – that the Zillah UGA is sized to accommodate its allocated growth.

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Some of the assumptions challenged by Zillah include the following: persons per household, average lot size, permanent resident status.[102] For example, Zillah contends Yakima County made the "unsubstantiated assumption" that 50 percent of growth would be absorbed by Zillah Lakes and then states the "uncontroverted record establishes that 60% of the residences included with [Zillah Lakes] will be second (i.e. not permanent) homes" without providing a supporting citation to where this assumption is derived or how it is substantiated.[103] Presumably the 60 percent figure stems from the developer of Zillah Lakes, who believes the development's homeownership will occur at this level. Nothing in the Record presented to the Board supports this fact. Like any assumption, this too is an assumption based on speculation.

Likewise, Zillah's argument weighs heavily on the Zillah Lakes development in regard to average household size, contending households in Zillah Lake would average 2.5 persons, a determination made in the Water Plan, as opposed to the 2.78 average denoted in the 2000 US Census. Yakima County used a flat rate of 2.78 persons to calculate the total residential units needed to accommodate the 20 year population projection, resulting in 512 residential units. Zillah contends, without supporting analysis, the growth directed to Zillah Lakes should have utilized a 2.5 person rate. As noted above, Yakima County is planning for an additional 1,424 persons within the Zillah UGA over the next 20 years. If that population is distributed at a 50-50 ratio, than 712 persons will locate within Zillah Lakes and 712 will locate outside of Zillah Lakes. Transforming this to residential units at the numbers proposed by Zillah would result in 285 units within Zillah Lakes and 256 units outside of Zillah Lakes, for a total of 541 units, as compared to the County's 512 units or 6 percent more units.

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[102] See, e.g. Zillah HOM Brief, at 18-20 (permanent residents); Zillah Reply Brief, at 11 (permanent residents); at 12 (household size). This is not an exhaustive listing but examples of some of the assumptions Zillah provides argument on.
[103] Zillah Reply Brief, at 11.

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Zillah contends the 8,500 square foot average lot size does not respect the local zoning which would probably establish a one dwelling unit per acre lot size.[104] Zillah must remember that the proposed expansion areas, although part of the Zillah UGA, are not part of the City of Zillah and, therefore, the City's zoning ordinances do not apply. For the Western UGA, Yakima County rezoned the land to R-1 zoning which, pursuant to Yakima County Code (YCC) 15.03.030, provides for a moderate residential density of up to seven dwelling units per acre or approximately 6,200 square foot lots.[105]

In regards to general infill development within the UGA, the Board notes the existing UGA's demographic is currently 79.6 percent single-family residences and 20.4 percent multi-family residences.[106] If this demographic continues, than approximately 100 of the 512 needed residential units would be multi-family, with the YCC establishing two zoning districts for such uses – the Two-Family Residential (density of up to 12 du/acre) and the Multi-Family Residential (density of greater than 12 du/acre) – with an average lot size of less than 5,000 square feet.[107] Growth within the UGA is to be at urban densities and the County's selection of an 8,500 square foot lot (representing an average density of 5 du/acre) reasonably reflects existing demographics as well as the GMA's goals and requirements for urban growth.

CONCLUSION

RCW 36.70A.3201 requires the Board grant deference to Yakima County's planning decisions so long as these decisions fall within the bounds of the GMA. Planning is a science based on trends and assumptions drawn from those trends. In reviewing the briefing and the exhibits presented by Zillah, the City provides no evidence why the County's assumptions are clearly erroneous and result in an inadequately sized UGA for the population allocated in violation of RCW 36.70A.110. The County's assumptions are

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[104] Zillah HOM Brief, Exhibit 12, at 2
[105] The Board takes official notice of YCC 15.03, the County's Zoning Code.
[106] Zillah Exhibit 12, Water Plan, at 2-6.
[107] YCC 15.03.030.

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reasonable given today's economic environment and the GMA's mandate to encourage urban levels of growth within the UGA.

4. Land Capacity Analysis – Vacant Lands

Zillah states not only did the County fail to update the vacant land analysis to reflect recent development activity and market choices, as well as failing to consider wetlands, critical areas, and other development constraints which would make properties unbuildable, but Zillah fails to provide documented support from the Record for these assertions, leaving the Board to question where the City obtained its calculations. The Board notes the County's 7-step UGA Analysis requires an assessment of currently available undeveloped acreage, which requires adjustment based on, among other things, critical areas. The Board finds the LCA clearly reduces the inventory by acreage needed to accommodate future right-of-ways and community facilities and adjusts these amounts by a market factor to reflect the fact certain land, even though vacant, will not be made available for development, but fails to denote any adjustment for unbuildable land based on physical constraints.

Yakima County contends Zillah did not raise this question before the County during the UGA update process and, therefore, is barred from bringing it now. Although the Board agrees a party would not have standing to raise issues to the Board if the subject matter was not raised before the County, not only is the Record clear that Zillah opposed the UGA's sizing, but the City has provided *prima facie* evidence in its challenge to the County's sizing of the Zillah UGA. The County must demonstrate the Zillah UGA fulfills the GMA's requirement for UGAs – land sufficient to accommodate the 20 year growth.

The Board notes Yakima County's 7-Step UGA Analysis requires it to "Determine the *net amount* of total additional acreage required" and the buildable nature of land is a component of that determination. It is not partially developed on under-developed land the Board is concerned with; it is land which may not be developed due to physical or legal constraints. This land must be subtracted from the available vacant land acreage in order to adequately reflect the amount of land which is truly buildable. The County's LCA, in regards

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to the Zillah UGA, is unclear as to whether the County took such things into account when it conducted its GIS analysis of vacant land.

CONCLUSION

Although the Board finds no fault in the County's planning assumptions, it is unclear from the Record presented to the Board whether the County properly adjusted its vacant land inventory to reflect the true buildable nature of this land. Without this information, it is questionable whether the Zillah UGA is, as required by RCW 36.70A.110, sufficiently sized to accommodate projected growth.

5. Other Assertions by the City of Zillah

Written Record

Zillah asserts the County has failed to provide a written justification for the Zillah UGA, a requirement which is triggered when a city and a county cannot agree on the UGA's boundary.[108] RCW 36.70A.110(2), as noted *supra,* requires written justification if agreement cannot be met. Although this provision is in relationship to the initial designation of UGAs, the Board believes its requirements are still invoked during amendments to any previously established UGAs.

However, the County, within its March 2007 Staff Report,[109] clearly denoted the differences between itself and the City of Zillah, including population projections, growth rates, Zillah Lake build-out assumptions, and market factors. This is the written justification required by RCW 36.70A.110(2).

Logical Outer Boundary and Characterized by Urban Growth

Zillah argues its proposed UGA, which draws a boundary along the Yakima Valley Highway, would provide for a logical outer boundary (LOB) of the Zillah UGA, a boundary linked to the City's desire to provide public services. This terminology is derived not from the GMA's UGA provisions but from its Limited Areas of More Intensive Rural Development

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[108] Zillah HOM Brief, at 13; Zillah Reply Brief, at 5.
[109] County Exhibit C

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(LAMIRDs) provisions set forth in RCW 36.70A.070(5)(d). Nothing in RCW 36.70A.110 requires the same for a UGA.

Zillah contends the area it proposed for expansion in the Eastern UGA is characterized by urban growth and, therefore, the GMA requires such lands to be within the UGA.[110] Although the GMA directs counties to establish UGAs in areas which are characterized by urban growth and can have public services provided, it does not mandate the expansion of a UGA boundary solely to encompass these lands.

The GMA requires the boundary of a UGA to be defined based on population projections with land sufficient for growth. If land was added to a UGA simply to create a LOB or because they may be urban in character, without any correlation to population or sufficiency, then these GMA requirements would become meaningless.

VI. FINDINGS of FACT

1. The City of Zillah filed a PFR on February 8, 2008, challenging Yakima County's adoption of Ordinance 15-2007.
2. The Board held a Hearing on the Merits in regards to this PFR on July 7, 2009.
3. The Zillah UGA is comprised of both incorporated and unincorporated lands.
4. Yakima County began its process to update its UGAs in 2005.
5. Yakima County utilized OFM's 2002 Population Projections for the 2005-2025 Planning Period.
6. The YCPPC selected OFM's High Population for the County and allocated population to its cities based on the 2000 US Census.
7. Zillah did not file a challenge to the YCPPC's allocation.

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[110] Zillah HOM Brief, at 21. Zillah contends lands in the Eastern UGA are urban, defining this term to be a density of less than 1 du/5 acre. Although the Board has abandoned any bright line definition for urban versus rural density, the historic definition of urban never amounted to any density of less than 1 du/5 acre but was premised on a 4 du/1 acre density.

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8. The City of Zillah proposed expansion of the Zillah UGA by adding lands within two areas – the Western UGA and the Eastern UGA.
9. In July 2006, Yakima County determined the Zillah UGA was sufficiently sized to accommodate projected growth and did not need to be expanded.
10. Yakima County and the City of Zillah consulted and projections were adjusted to account for Zillah's larger growth rate and the master planned community of Zillah Lakes.
11. Various public meetings and hearings were held by the Planning Department, Planning Commission, and Board of County Commissioners.
12. In December 2007, the BOCC adopted Ordinance 15-2007 which amended the Zillah UGA to include the land encompassed within the Western UGA.
13. As provided in RCW 36.70A.035, Yakima County provided notice to all property owners for areas being recommended for addition to UGAs.
14. As provided in RCW 36.70A.035, Yakima County published general notices in the *Yakima-Herald Republic* of public hearings before the Planning Commission and BOCC.
15. Zillah itself provided specific, individualized notice to property owners within the Eastern UGA area prior to the BOCC's final hearing.
16. RCW 36.70A.130(1)(c) requires Yakima County to use OFM's most recent 10-year population forecast. At the time the County started the UGA update, the most recent forecast available from OFM was the 2002 forecast.
17. In November 2007, just one month prior to the County's adoption of Ordinance 15-2007, OFM released a new population forecast. This forecast modifies the 2025 population for Yakima County by increasing

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it by approximately 4,100 persons. For Zillah, at one percent of total county population, this would result in an additional 41 persons.

18. Yakima County's one percent allocation of population to Zillah conforms to the 2002 US Census and historic statistical data.

19. Yakima County's growth rate for Zillah was adjusted to reflect Zillah's unique circumstances, resulting in a growth rate of 2.7 percent. This growth rate is one percent higher than historic rates.

20. Yakima County prepared a Land Capacity Analysis (LCA) in order to determine, as required by RCW 36.70A.110, whether sufficient land was available in the Zillah UGA to accommodate projected growth.

21. Yakima County utilized various planning assumptions for the LCA including, but not limited to: 2.78 average household size; 8,500 square foot average lot; 25 percent market factor; 50 percent growth to Zillah Lakes; per capital acreage reserves for commercial, retail, and community facilities; and 15 percent for roadways.

22. The current demographic for the Zillah UGA is 80 percent single-family residences and 20 percent multi-family residences.

23. With Ordinance 15-2007, the County has zoned the Western UGA expansion area to permit urban densities.

24. Yakima County utilized GIS to determine vacant lands within the Zillah UGA.

25. It is unclear from the Record whether Yakima County's analysis of vacant land encompasses vacant land, partially developed land, and underutilized land and reflects physical and/or legal constraints which limit the ability of such lands to be developed.

26. Yakima County's Staff Report(s) represent the written record for its determination as to the justification for the Zillah UGA.

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VII. CONCLUSIONS OF LAW

A. The City of Zillah timely filed its Petition for Review, pursuant to RCW 36.70A.290(2).

B. The City of Zillah has standing to appear before the Board, pursuant to RCW 36.70.280(2).

C. The Board has jurisdiction over the parties, pursuant to RCW 36.70A.250(1)(a).

D. The Board has jurisdiction over the subject matter of the Petition for Review, pursuant to RCW 36.70A.280(1)(a).

E. Petitioners failed to demonstrate Yakima County violated RCW 36.70A.035 when it did not provide specific, individualized notice to property owners with the proposed Eastern UGA.

F. Petitioners failed to demonstrate Yakima County violated RCW 36.70A.110 when it used OFM's 2002 Population Projections and based population allocation and growth rates on historic statistical trends.

G. Petitioners failed to demonstrate Yakima County's planning assumptions resulted in an improperly delineated UGA which is insufficient to accommodate the 20-year population growth.

H. Yakima County adequately provided written justification for the Zillah UGA (in comparison to the City's proposal) as required by RCW 36.70A.110(2).

I. The City of Zillah did carry its burden of proof in demonstrating the Land Capacity Analysis fails to clearly articulate how Yakima County calculated its vacant land, specifically in relationship to the developable capacity for this land as indicated by physical or other types of constraints. The availability of land for development within the existing UGA is vital to ensuring sufficient land is available to accommodate

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projected growth, the County's actions fail to comply with the GMA, RCW 36.70A.110.

VIII. ORDER

Based upon review of the Petition for Review, the briefs and exhibits submitted by the parties, the GMA, prior Growth Board's Orders and case law, having considered the arguments of the parties, and having deliberated on the matter the Board ORDERS:

1. Yakima County violated RCW 36.70A.110 by failing to ensure the Zillah UGA was sized to accommodate 20-year growth based on the vacant lands inventory. It is unclear from the County's Land Capacity Analysis whether the County, by failing to reduce vacant land (including partially developed and under-utilized lands) by physical or legal constraints which would prohibit development of those lands.
2. The Board remands Ordinance No. 15-2007, as it pertains to the Zillah UGA, and orders Yakima County to take legislative action to bring itself in compliance with the GMA consistent with this FDO.
3. The Board sets the following compliance schedule:
   - The County shall file with the Board by **October 9, 2009, an original and four copies** of a **Statement of Actions Taken to Comply** (SATC) with the GMA, as interpreted and set forth in this Order. The SATC shall attach copies of legislation enacted in order to comply. The County shall simultaneously serve a copy of the SATC, with attachments, on the parties. **By this same date, the County shall file a "Remanded Index," listing the procedures and materials considered in taking the remand action.**
   - By no later than **October 23, 2009[111],** Petitioners shall file with the Board an **original and four copies** of their Comments and legal arguments (Petitioners' Compliance Brief) on the County's SATC. Petitioners shall simultaneously serve a copy of their Comments and legal arguments on the parties.

[111] October 23, 2009, is also the deadline for a person to file a request to participate as a "participant" in the compliance proceeding. *See* RCW 36.70A.330(2).

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- By no later than **November 6, 2009,** the County and Intervenors shall file with the Board an **original and four copies** of their Response to Comments and legal arguments (Respondent's and Intervenor's Compliance Brief.) The County and Intervenors shall simultaneously serve a copy of such on the parties.

- Pursuant to RCW 36.70A.330(1) and WAC 242-02-891[112] the Board hereby schedules a **telephonic Compliance Hearing for November 16, 2009, from 10:00 a.m. The compliance hearing shall be limited to consideration of the Legal Issues found noncompliant and remanded in this FDO**. The parties will call **360-407-3780 followed by 113234 and the # sign.** Ports are reserved for: **Mr. Carmody and Mr. Austin.** If additional ports are needed please contact the Board to make arrangements.

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

SO ORDERED this 10th day of August, 2009.

EASTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

_____
Joyce Mulliken, Board Member

_____
John Roskelley, Board Member

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

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[112] The Presiding Officer may issue an additional notice after receipt of the SATC to set the format and additional procedures for the compliance hearing.

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Reconsideration:

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

Judicial Review:

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

Enforcement:

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

Service:

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

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