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

BRODEUR/FUTURWISE, VINCE PANESKO  
AND WASHINGTON STATE DEPARTMENT OF  
COMMERCE,

Petitioner(s),

v.

BENTON COUNTY,

Respondent,

CITY OF WEST RICHLAND, THE ESTATE OF  
THAYNE WISER, CLAYNE WISER, KURT  
WISER, and TALON WISER,

Intervenor(s).

Case No. 09-1-0010c

**FINAL DECISION AND ORDER**

**[Resolution 09-143: West Richland  
Urban Growth Area]**

**I. SYNOPSIS**

With this Final Decision and Order (FDO), the Board addresses challenges to Benton County's adoption of Resolution 09-143, which expanded the West Richland Urban Growth Area (UGA) by approximately 747 acres of land to accommodate commercial and industrial development and non-residential economic development. Petitioners also challenged Benton County's adoption of Resolution 09-160, which changed the land use designation on rural lands within the Richland-West Richland Rural Planning Area; however, the Board addressed those challenges in a separate FDO issued on November 24, 2009. The Board concludes that Petitioners have carried their burden of proof in demonstrating that Benton County's action in adopting Resolution 09-143 violated RCW 36.70A.110 and RCW 36.70A.115.

1 **II. PROCEDURAL BACKGROUND**

2 Petitions for Review

3 On April 10, 2009, John Brodeur and Futurewise (Brodeur/Futurewise) filed a Petition for  
4 Review (PFR) which was assigned Case No. 09-1-0008. On April 23, 2009, Vince Panesko  
5 (Panesko) filed a PFR which was assigned Case No. 09-1-0009. On May 4, 2009, the State  
6 of Washington Department of Commerce<sup>1</sup> (Commerce) filed a PFR which was assigned  
7 Case No. 09-1-0010. As provided in RCW 36.70A.290(5), the Board consolidated these  
8 three PFRs as Brodeur/Futurewise, et al v. Benton County, EWGMHB Case Number: 09-1-  
9 0010c.

10 Although consolidated, the PFR filed by Commerce did not challenge the adoption of  
11 Resolution 09-143 and, therefore, Commerce provided no argument in relationship to this  
12 aspect of the case. As for the other Petitioners, both Brodeur/Futurewise and Panesko  
13 challenged this Resolution and set forth argument to support the issues presented in their  
14 PFRs.

15 Intervention

16 The City of West Richland (City) sought and was granted intervention on behalf of Benton  
17 County’s adoption of Resolution 09-143, which expanded the unincorporated portion of the  
18 West Richland UGA. As provided in WAC 242-02-270(3)(a), West Richland was limited to  
19 those issues in which it had an interest.<sup>2</sup>

20 Hearing on the Merits

21 The Hearing on the Merits (HOM) was held on November 5, 2009, in Kennewick,  
22 Washington. Board members John Roskelley, Joyce Mulliken, and Ray Paolella, were  
23 present, Board Member Paolella presiding.<sup>3</sup> Petitioners Brodeur/Futurewise were

24 <sup>1</sup> At the time of filing, this was the Washington State Department of Commerce, Trade, and Economic  
25 Development (CTED). However, with the passage of EHB 2242, CTED became Commerce in July 2009.

<sup>2</sup> Prehearing Order, at 10-11. The City of West Richland’s participation was limited to Issues 2 through 6.

<sup>3</sup> Due to a scheduling conflict, Board member Roskelley was only present for the Petitioners’ presentation. An  
26 audio recording of the hearing was made available for Mr. Roskelley.

1 represented by Robert Beattey of Futurewise; Vince Panesko appeared *pro se*. Benton  
2 County was represented by Ryan Brown. Intervenor City of West Richland was  
3 represented by Richard Settle.

### 4 III. PRESUMPTION OF VALIDITY, BURDEN OF PROOF, 5 AND STANDARD OF REVIEW

6 Pursuant to RCW 36.70A.320(1), comprehensive plans and development regulations, and  
7 amendments to them, are presumed valid upon adoption.<sup>4</sup> This presumption creates a  
8 high threshold for challengers as the burden is on the Petitioners to demonstrate that any  
9 action taken by the Benton County is not in compliance with the GMA.<sup>5</sup>

10 The Board is charged with adjudicating GMA compliance and, when necessary, invalidating  
11 noncompliant plans and development regulations.<sup>6</sup> The scope of the Board's review is  
12 limited to determining whether Benton County has achieved compliance with the GMA only  
13 with respect to those issues presented in a timely petition for review.<sup>7</sup> The GMA directs that  
14 the Board, after full consideration of the petition, shall determine whether there is  
15 compliance with the requirements of the GMA.<sup>8</sup> The Board shall find compliance unless it  
16 determines that Benton County's actions are clearly erroneous in view of the entire record  
17 before the Board and in light of the goals and requirements of the GMA.<sup>9</sup> In order to find  
18 Benton County's actions clearly erroneous, the Board must be "left with the firm and definite  
19 conviction that a mistake has been committed."<sup>10</sup>

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20 <sup>4</sup> RCW 36.70A.320(1) provides: [Except for the shoreline element of a comprehensive plan and applicable  
21 development regulations] comprehensive plans and development regulations, and amendments thereto,  
22 adopted under this chapter are presumed valid upon adoption.

23 <sup>5</sup> RCW 36.70A.320(2) provides: [Except when city or county is subject to a Determination of Invalidity] the  
24 burden is on the petitioner to demonstrate that any action taken by a state agency, county, or city under this  
25 chapter is not in compliance with the requirements of this chapter.

26 <sup>6</sup> RCW 36.70A.280, RCW 36.70A.302

<sup>7</sup> RCW 36.70A.290(1)

<sup>8</sup> RCW 36.70A.320(3)

<sup>9</sup> RCW 36.70A.320(3)

<sup>10</sup> *City of Arlington v. CPSGMHB*, 162 Wn.2d 768, 778, 193 P.3d 1077 (2008)(Citing to *Dept. of Ecology v. PUD District No. 1 of Jefferson County*, 121 Wn.2d 179, 201, 849 P.2d 646 1993); See also, *Swinomish Tribe, et al v. WWGMHB*, 161 Wn.2d 415, 423-24, 166 P.3d 1198 (2007); *Lewis County v. WWGMHB*, 157 Wn.2d 488, 497-98, 139 P.3d 1096 (2006).

1 In reviewing the planning decisions of cities and counties, the Board is instructed to  
2 recognize “the broad range of discretion that may be exercised by counties and cities” and  
3 to “grant deference to counties and cities in how they plan for growth.”<sup>11</sup> However, Benton  
4 County’s actions are not boundless; their actions must be consistent with the goals and  
5 requirements of the GMA.<sup>12</sup>

6 Thus, the burden is on Petitioners to overcome the presumption of validity and demonstrate  
7 that the challenged actions taken by Benton County are clearly erroneous in light of the  
8 goals and requirements of the GMA.

#### 9 IV. BOARD JURISDICTION

10 The Board finds that the Petitions for Review were timely filed, pursuant to RCW  
11 36.70A.290(2). The Board finds that Petitioners have standing to appear before the Board,  
12 pursuant to RCW 36.70A.280(2). The Board finds that it has jurisdiction over the subject  
13 matter of the petitions pursuant to RCW 36.70A.280(1).

#### 14 V. PRELIMINARY MATTERS

15 On July 28, 2009, the Board responded to West Richland’s Motion to Supplement the  
16 Record with nine exhibits; denying the supplementation of all exhibits with the exception of  
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19  
20 <sup>11</sup> RCW 36.70A.3201 provides, in relevant part: In recognition of the broad range of discretion that may be  
21 exercised by counties and cities consistent with the requirements of this chapter, the legislature intends for the  
22 boards to grant deference to counties and cities in how they plan for growth, consistent with the requirements  
23 and goals of this chapter. Local comprehensive plans and development regulations require counties and cities  
24 to balance priorities and options for action in full consideration of local circumstances. The legislature finds that  
25 while this chapter requires local planning to take place within a framework of state goals and requirements, the  
26 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.

<sup>12</sup> *King County v. CPSGMHB*, 142 Wn.2d 543, 561, 14 P.2d 133 (2000)(Local discretion is bounded by the  
goals and requirements of the GMA). See also, *Swinomish*, 161 Wn.2d at 423-24. In *Swinomish*, as to the  
degree of deference to be granted under the clearly erroneous standard, the Supreme Court has stated: The  
amount [of deference] is neither unlimited nor does it approximate a rubber stamp. It requires the Board to give  
the [jurisdiction's] actions a “critical review” and is a “more intense standard of review” than the arbitrary and  
capricious standard. *Id.* at 435, Fn.8.

1 Exhibit 1.<sup>13</sup> However, the Board noted as to Exhibit 2 (Red Mountain Conceptual Plan) that  
2 this document might be deemed admissible at the HOM if the City, upon a renewed Motion  
3 to Supplement made prior to the HOM, provided the necessary information.<sup>14</sup>

4 On October 23, 2009, the City filed a Second Motion to Supplement the Record. With this  
5 Motion, the City renewed its request for the admission of Exhibit 2 and asked the Board to  
6 “reconsider its decision as to the other documents, particularly Exhibit 9.”<sup>15</sup> Panesko  
7 objected to this request.<sup>16</sup>

8 A majority of the Board finds that the information requested by the Board in its July 28, 2009  
9 Order was provided by the City and, as such, the City’s Second Motion to Supplement the  
10 Record, as to Exhibit 2, was granted at the HOM. However, as to the remaining exhibits –  
11 Exhibits 3 to 9, the Board reaffirmed its earlier decision to deny supplementation as not of  
12 substantial assistance to the Board because those Exhibits post-dated the County’s  
13 decision, were of questionable reliability, or were otherwise not part of the body of records  
14 made available to the County decision makers at the time of adoption of Resolution 09-143.

## 15 VI. ISSUES AND DISCUSSION

### 16 *The Challenged Action*<sup>17</sup>

#### 17 **Resolution 09-143 – Expansion of the West Richland Urban Growth Area**

18 In November 2007, the City of West Richland filed an application for a Comprehensive  
19 Plan Amendment (CPA 08-02) to the Benton County Comprehensive Plan to allow for the  
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21 <sup>13</sup> July 28, 2009 Order on Motion to Supplement the Record, 3-4. Exhibit 1 were aerial maps showing location  
22 of the UGA expansion and the surrounding area.

23 <sup>14</sup> July 28, 2009 Order on Motion, at 4, Fn. 1. The City needed to provide information demonstrating that the  
24 Conceptual Plan: (1) was adopted prior to Ordinance 09-143, (2) was part of the County’s official planning  
25 records at that time, and (3) was relevant to a specific, identified issue in this case.

26 <sup>15</sup> City’s Second Motion to Supplement, at 4.

<sup>16</sup> Panesko’s Response, filed October 27, 2009. Commerce also filed a response on October 29, 2009, but  
noted that it was not a party to the issues related W. Richland and therefore was not taking a position of the  
City’s Motion.

<sup>17</sup> The description of the challenged action and its background is derived from the briefing and exhibits of all of  
the parties to this matter.

1 expansion of the unincorporated portion of the West Richland Urban Growth Area (UGA).

2 According to CPA 08-02, the reasons for the amendment were to:

- 3 1. Have control of planning and development for an area that will be urban in nature  
4 once the I-82 interchange project is firmed up, enabling the City to do responsible  
5 land planning as annexations proceed;
- 6 2. Establish, at a well-defined City entrance, direct interstate highway connection to the  
7 rest of Benton County and the outside world in general;
- 8 3. Capitalize on development opportunities associated with the Red Mountain AVA  
9 master plan and significant plans being crafted for a “world class” development at the  
10 7,800 acre Lewis and Clark Ranch; and
- 11 4. Provide much needed specialty industrial (primarily wine-related) and specialty  
12 retail/commercial land for near future development;
- 13 5. Establish an area where planned development can take place.

14 This acreage adjoins the City’s municipal boundary via a narrow panhandle of  
15 approximately 92 acres of land owned by the Port of Kennewick and then forms an almost  
16 uniform square as it extends south/southwest into undeveloped land. The area is  
17 bordered on the north by State Highway 224 and on the South by Interstate 82. In  
18 addition, a small portion of the Red Mountain American Viticultural Area (AVA)<sup>18</sup> extends  
19 into the northwestern section of the UGA expansion area.

20 In September 2008, after holding public hearings in July and August, the Benton County  
21 Planning Commission concurred with County Planning Staff and recommended denial of  
22 the amendment based upon the finding that the City already had sufficient land within its  
23 existing UGA. On February 23, 2009, the Benton County Commissioners (BOCC) adopted  
24 Resolution 09-143 which approved CPA 08-02 and expanded the UGA by an additional  
25 747 acres.

26 The following issues, as set forth in the Board’s Prehearing Order, challenge Benton  
County’s adoption of Resolution 09-143:

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<sup>18</sup> The Red Mountain AVA is a 4,400 acre, federally designated grape-growing and wine-producing region located within unincorporated Benton County. A Conceptual Plan has been developed and presents a vision for the future development of the Red Mountain AVA, including a mixture of vineyards, wineries, and visitor facilities. W. Richland Supplement Exhibit 2.

1 Issue 2. By expanding the City of West Richland Urban Growth Area, has  
2 Benton County included more land than necessary to  
3 accommodate twenty years of residential, commercial, and  
4 industrial growth and thus failed to comply with RCW  
36.70A.020(1-2, 5, 8-10, 12), 36.70A.040, 36.70A.070,  
36.70A.110, 36.70A.115, and 36.70A.130?<sup>19</sup>

5 Issue 3. Does Resolution 09-143 fail to comply with RCW 36.70A.110(1)  
6 and (3) because the 747 acres are not already characterized by  
7 urban growth, and are not adjacent to territory already  
characterized by urban growth?

8 Issue 4. Does Resolution 09-143 fail to comply with RCW 36.70A.110(2)  
9 because there is no supporting analysis which shows the  
10 additional 747 acres are needed for the City of West Richland to  
11 achieve urban densities using the office of financial management  
12 projections for the succeeding twenty-year period?

13 Issue 5. Does Resolution 09-143 fail to comply with RCW 36.70A.120  
14 because the Resolution is inconsistent with the Benton County  
15 Comp Plan which requires an urban density of 4 to 6 du/ac?

16 **A. UGA Expansion Purpose and Size (Issues 2 and 4)**

17 Applicable Law

18 The GMA provides that each county shall designate Urban Growth Areas “within which  
19 urban growth shall be encouraged and outside of which growth can occur only if it is not  
20 urban in nature.”<sup>20</sup> Each county shall include designations of Urban Growth Areas in its  
21 comprehensive plan.<sup>21</sup>

22 An important goal of the GMA is to “[r]educe the inappropriate conversion of undeveloped  
23 land into sprawling, low density development.” RCW 36.70A.020(2). Urban Growth Area  
(UGA) boundaries serve to contain “urban growth” within the designated UGA, thereby

24 <sup>19</sup> Within its HOM Brief, Futurewise cites only to RCW 36.70A.110 along with a statement as to the  
25 Resolution’s interference with Goals 2, 8, 9, 10, and 12. Therefore, the Board deems abandoned the  
following RCW provisions, 36.70A.020(5), 36.70A.040, 36.70A.070, and 36.70A.130.

<sup>20</sup> RCW 36.70A.110(1).

<sup>21</sup> RCW 36.70A.110(6).

1 furthering the fundamental GMA policy to discourage sprawl.<sup>22</sup> “Oversized UGAs are  
2 perhaps the most egregious affront to the fundamental GMA policy against urban sprawl,  
3 and it is this policy that the UGA requirements, more than any other substantive GMA  
4 mandate, are intended to further.”<sup>23</sup>

5 The GMA contemplates that cities and counties will work together and shall attempt to reach  
6 agreement on the correct **size** for a UGA.<sup>24</sup> A county’s UGA designation “cannot exceed the  
7 amount of land necessary to accommodate the urban growth projected by OFM, plus a  
8 reasonable land market supply factor.”<sup>25</sup>

9 The GMA prescribes the method for determining the correct size for a UGA. RCW  
10 36.70A.110(2)<sup>26</sup> provides in pertinent part as follows (emphasis added):

11 Based upon the growth management population projection made for the county  
12 by the office of financial management, the county and each city within the  
13 county shall include areas and densities sufficient to permit the **urban growth**  
14 **that is projected to occur** in the county or city **for the succeeding twenty-**  
15 **year period** . . . As part of this planning process, each city within the county  
16 must include areas sufficient to **accommodate the broad range of needs and**  
17 **uses that will accompany the projected urban growth** including, as  
18 appropriate, medical, governmental, institutional, commercial, service, retail,  
19 and other nonresidential uses . . . An urban growth area determination may  
20 include a reasonable **land market supply factor** and shall permit a range of  
21 urban densities and uses. In determining this market factor, cities and counties  
22 may consider local circumstances. Cities and counties have discretion in their  
23 comprehensive plans to make many choices about accommodating  
24 growth . . .

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21 <sup>22</sup> RCW 36.70A.020(2); *Thurston County et al. v. W. Wash. Growth Mgmt. Hearings Bd. et al.*, 164 Wn.2d  
22 329, 351 (2008).

23 <sup>23</sup> Id. at 164 Wn.2d 329, 351 (2008).

24 <sup>24</sup> RCW 36.70A.110(2).

25 <sup>25</sup> *Thurston County et al. v. W. Wash. Growth Mgmt. Hearings Bd. et al.*, 164 Wn.2d 329, 352 (2008).

26 <sup>26</sup> RCW 36.79A.110(2) and RCW 36.70A.115 were amended in 2009 to add language clarifying that during the  
24 UGA planning process, cities and counties must consider the full range of urban uses (e.g. commercial,  
25 industrial, retail, etc.). The parties used the 2009 amended language in their briefing and at oral argument.  
26 The Board notes that the 2009 amendments reiterate previous GMA principles regarding planning for a range  
of urban uses. None of the parties raised any issue as to whether the 2009 amendments operate  
retrospectively.. Accordingly, the Board need not determine that issue.

1 “Urban Growth” refers to growth that makes intensive use of land for the location of  
2 buildings, structures, and impermeable surfaces to such a degree as to be incompatible with  
3 the primary use of land for the production of food, other agricultural products, or fiber, or the  
4 extraction of mineral resources, rural uses, rural development, and natural resource lands.<sup>27</sup>

5 “Land market supply factor” refers to “the estimated percentage of net developable acres  
6 contained within a UGA that, due to idiosyncratic market forces, is likely to remain  
7 undeveloped over the course of the twenty-year planning cycle.”<sup>28</sup>

8 RCW 36.70A.115 provides in pertinent part as follows (emphasis added):

9 Counties and cities . . . shall ensure that, taken collectively, adoption of and  
10 amendments to their comprehensive plans and/or development regulations  
11 provide **sufficient capacity of land suitable for development** within their  
12 jurisdictions to accommodate their **allocated housing and employment**  
13 **growth**, including the accommodation of, as appropriate, the medical,  
14 governmental, educational, institutional, commercial, and industrial facilities  
15 related to such growth, as adopted in the applicable countywide planning  
16 policies and **consistent with the twenty-year population forecast** from the  
17 office of financial management.

18 Another pertinent GMA planning goal is to “[e]ncourage economic development throughout  
19 the state that is consistent with adopted comprehensive plans, promote economic  
20 opportunity for all citizens of this state, especially for unemployed and for disadvantaged  
21 persons, promote the retention and expansion of existing businesses and recruitment of  
22 new businesses, recognize regional differences impacting economic development  
23 opportunities, and encourage growth in areas experiencing insufficient economic growth, all  
24 within the capacities of the state's natural resources, public services, and public facilities.”

25 RCW 36.70A.020(5).

### 26 Positions of the Parties

27 Brodeur/Futurewise contends that the newly expanded West Richland UGA has six times  
28 the area needed to accommodate the City’s 20-year population projection.

29 Brodeur/Futurewise asserts the only purpose for expanding an UGA allowed under the GMA

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<sup>27</sup> RCW 36.70A.030(19).

<sup>28</sup> *Thurston County et al. v. W. Wash. Growth Mgmt. Hearings Bd. et al.*, 164 Wn.2d 329, 352 (2008).

1 is to accommodate projected residential growth.<sup>29</sup> Brodeur/Futurewise asserts that the  
2 Buildable Lands Summary prepared by the City demonstrates how the additional acreage is  
3 unnecessary for the residential growth projected by OFM. Rather, the City is seeking to  
4 utilize this land for commercial and industrial uses but, according to Bordeur/Futurewise, the  
5 City's UGA already has a vast amount of land to serve these purposes.<sup>30</sup>

6 Panesko asserts that the West Richland Planning Staff stated the City did not need  
7 additional land to accommodate population growth, with the City actually stated that it had  
8 sufficient land to accommodate 20 years of projected growth "and beyond." Panesko  
9 contends West Richland's application clearly states its intent to develop an interchange  
10 commercial area but fails to provide any analysis demonstrating the need for additional  
11 commercial and industrial lands. Panesko cites to the Benton County Planning  
12 Commission's recommendation which concurred with the County Planning Staff in that the  
13 GMA does not authorize the expansion of an UGA "simply to exert municipal land use  
14 authority over an area that has upon it a local project designation that is contingent upon the  
15 uncertainties of future federal approval and funding."<sup>31</sup> In summary, Panesko cites to  
16 several EWGMHB cases and argues there is nothing in the Record which shows that the  
17 UGA expansion is needed per OFM population projects and the previous West Richland  
18 UGA had adequate room.<sup>32</sup>

19 Benton County did not set forth argument in relationship to these issues. Rather, the  
20 County deferred to the argument of Intervenor West Richland.<sup>33</sup>

21 In response, the City acknowledges its UGA has a surplus of land but that the GMA  
22 mandates deference to local planning decisions, such as this one to promote economic  
23 development. The City states that there is no GMA requirement that a UGA's size be

24 <sup>29</sup> *Brodeur/Futurewise HOM Brief, at 17-19.*

25 <sup>30</sup> *Brodeur/Futurewise HOM Brief, at 17, 18.*

26 <sup>31</sup> *Panesko HOM Brief, at 5-6.*

<sup>32</sup> *Panesko HOM Brief, at 7-8*

<sup>33</sup> *Benton County's HOM Brief, at 7.*

1 based solely on residential development but that jurisdictions are required to accommodate  
2 a wide range of urban uses, including commercial and industrial uses, within the UGA.<sup>34</sup>  
3 West Richland contends the Supreme Court's holding in *Thurston County* pertained to  
4 residential development and, when a UGA expansion is designed to promote economic  
5 development with a restriction for commercial and industrial uses, the size of the UGA is not  
6 limited on the basis of land needed to accommodate population projection. In regards to  
7 this expansion, West Richland notes it is designed to accommodate the unique opportunity  
8 of providing commercial and industrial development to support the wine industry, including  
9 tourism, for the Red Mountain AVA and similarly designated land within its previously  
10 existing UGA was "simply ... in the wrong place to serve the City's economic development  
11 policies."<sup>35</sup>

11 The City asserts this is the very type of "local circumstances" jurisdictions may consider  
12 when making UGA sizing decisions.<sup>36</sup> According to the City, not only is West Richland a  
13 bedroom community but a large portion of its undeveloped land is controlled by two property  
14 owners and the City has no control or ability to predict when, if ever, this acreage will be  
15 developed. West Richland contends the expansion area is uniquely located and is "the only  
16 location where the proposed interchange and AVA can be supported and utilized and major  
17 retail shopping opportunities can be provided."<sup>37</sup> The City further states that there was  
18 "virtually zero" land within the UGA for the City to accomplish its economic development  
19 objectives.<sup>38</sup>

### 19 Board Analysis and Findings

20 On February 23, 2009, the Benton County Board of Commissioners adopted Resolution 09-  
21 143 which amended the Comprehensive Plan Land Use Map to add 747 acres of land to the  
22 \_\_\_\_\_

23 <sup>34</sup> West Richland's HOM Brief, at 8-9. West Richland cites not only to RCW 36.70A.115 (sufficient capacity  
24 for ... commercial and industrial facilities) to the 2009 amendment to RCW 36.70A.110(2) which added  
25 language specific to planning for non-residential needs.

26 <sup>35</sup> West Richland's HOM Brief, at 11-13.

<sup>36</sup> West Richland's HOM Brief, at 13.

<sup>37</sup> West Richland's HOM Brief, at 13-14.

<sup>38</sup> West Richland HOM Brief, at 15-16.

1 City of West Richland’s Urban Growth Area.<sup>39</sup> Resolution 09-143 contains the following  
2 finding:

3 [T]he Board of County Commissioners finds that the application by the City of  
4 West Richland is in compliance with the goals of the Growth Management Act  
5 identified in RCW 36.70A.020 (5) and Benton Countywide Policies (20) that  
6 require that Comprehensive Plans shall jointly and individually support the  
7 county and region’s economic prosperity in order to promote employment and  
8 economic opportunity for all citizens.<sup>40</sup>

9 The City and County are in agreement on this 747 acre UGA expansion to promote  
10 economic development goals for the community. According to the City, this “UGA expansion  
11 was designed to promote the economic development goal and was restricted to location-  
12 dependent commercial and industrial development” in support of the Red Mountain AVA  
13 and associated wine industry.<sup>41</sup> Having the proposed West Richland/I-82 freeway  
14 interchange inside the City’s UGA is a key part of the City’s economic development  
15 strategy.<sup>42</sup>

16 The City acknowledges that it has an abundance of residential growth land<sup>43</sup> but claims to  
17 lack land for this economic development purpose -- without this UGA expansion, “there is  
18 essentially no land within the City that is available to serve the location-dependent economic  
19 development purposes.”<sup>44</sup> In its Buildable Lands Summary, the City stated that its request to  
20 expand the UGA is “not to provide additional residential land, but to facilitate the  
21 establishment of an interchange and commercial area off Interstate 82, and to provide  
22 support services to the Red Mountain AVA.”<sup>45</sup> In its application, the City pledged to restrict  
23 development in the UGA expansion area to non-residential only – “there will be no  
24 residential development potential for the area.”<sup>46</sup>

25 <sup>39</sup> Futurewise Petition for Review (April 10, 2009), Attachment 09-143.

26 <sup>40</sup> Id. Attachment pp. 1-2.

<sup>41</sup> City’s Response Brief, pp. 10-11.

<sup>42</sup> Futurewise HOM Brief, Exhibit 108-2 (City’s application for UGA expansion).

<sup>43</sup> Futurewise HOM Brief, Exhibit 108-2 (City’s application for UGA expansion).

<sup>44</sup> City’s Response Brief, p. 7.

<sup>45</sup> Futurewise HOM Brief, Exhibit 108-1.

<sup>46</sup> Futurewise HOM Brief, Exhibit 108-2 (City’s application for UGA expansion).

1 Petitioner Futurewise indicates that it has no disagreement with these propositions: the  
2 GMA encourages economic development, local jurisdictions have broad discretion to make  
3 economic development policy choices, the GMA authorizes expansion of a UGA to  
4 accommodate economic, commercial, and industrial growth, and the City believes the  
5 expansion in question will further the City's economic growth objectives.<sup>47</sup> Nevertheless,  
6 Petitioners Futurewise and Panesko both assert that this 747 acre UGA expansion is not  
7 needed. Futurewise argues that the existing UGA currently has six times the area needed to  
8 accommodate the City's 20 year population projection.<sup>48</sup>

9 However, the Board notes that this reference to "six times the area needed" is derived from  
10 the City's Buildable Lands Summary and was a calculation of area needed for additional  
11 housing units -- **residential** uses only -- not a calculation for commercial, industrial, or  
12 **economic development** needs. Clearly, there is no justification to expand the UGA for  
13 residential uses. The record demonstrates, and the City acknowledges, that the City has  
14 much more residential land than it will need to accommodate projected urban growth for the  
15 next 20 years.<sup>49</sup>

16 But UGA expansion to accommodate projected urban growth for exclusively non-residential  
17 **economic development** purposes is different from UGA expansion to accommodate  
18 projected urban growth for the full range of urban purposes. The City argues that a major  
19 portion of the current City inventory of undeveloped land is in a restricted oligopolistic  
20 ownership and is not available or appropriate for this type of economic development.<sup>50</sup>  
21 Petitioners argue that UGA expansion is impermissible and development can occur within  
22 the pre-existing UGA boundaries; however, petitioners do not directly address the issue of  
23 accommodating this type of non-residential growth.<sup>51</sup>

24 <sup>47</sup> Futurewise Reply Brief, p. 3.

25 <sup>48</sup> Futurewise HOM Brief, p. 18.

26 <sup>49</sup> Futurewise HOM Brief, Exhibit 108-2 (City's application for UGA expansion).

<sup>50</sup> City Response Brief, pp. 2, 13.

<sup>51</sup> Futurewise Reply Brief, p. 5.

1 The City determined that there was insufficient land within the pre-existing UGA to  
2 accommodate the anticipated non-residential growth.<sup>52</sup> The County agrees with the City on  
3 UGA expansion to accommodate projected urban growth for non-residential purposes. The  
4 GMA provides that Cities and Counties have discretion in their comprehensive plans to  
5 make many choices about accommodating growth.<sup>53</sup>

6 There is substantial evidence in the record to support the County's determination that some  
7 revision to the pre-existing UGA boundaries is needed to accommodate projected urban  
8 growth for the AVA-related economic development purposes, in furtherance of the economic  
9 development goal in RCW 36.70A.020(5) -- including evidence that (1) urban growth will  
10 occur around the proposed I-82 interchange and the nearby Red Mountain AVA, and (2) this  
11 growth is dependent on freeway access which is not available within the pre-existing UGA  
12 boundaries.<sup>54</sup>

13 But a key question remains unanswered in the record: what is the appropriate size  
14 (acreage) for this UGA expansion? The record does not support 747 acres as the calculated  
15 size for the expansion area – there is no substantial evidence supporting this specific  
16 amount of acreage.

17 Under RCW 36.70A.110(2), when the City and County disagree on the UGA, the County  
18 must justify in writing why it so sized the UGA. If the City and County agree on the UGA, the  
19 Supreme Court states: “[o]nce a petitioner challenges the size of a county’s UGA, the  
20 county may explain whether the difference between the supply and demand is due to a land  
21

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22 <sup>52</sup> Id. p. 7.

23 <sup>53</sup> RCW 36.70A.110(2).

24 <sup>54</sup> See City’s Supplemental Exhibit 2 (Red Mountain Conceptual Plan and Red Mountain AVA Draft Master  
25 Site Plan); Futurewise HOM Brief, Exhibit 108-1 (Buildable Lands Summary); Id., Exhibit 108-2 (City of West  
26 Richland Application for Comprehensive Plan Amendment). For example, the Benton Rural Electric  
Association submitted correspondence stating: “The proposed ‘Red Mountain Interchange’ along Interstate-82,  
which has wide support throughout Benton County and the region, will undoubtedly spur considerable  
commercial and industrial growth” and “West Richland needs to expand the UGA towards the proposed I-82  
Interchange to capture the commercial and industrial growth.” City Response Brief, Exhibit 70.

1 market supply factor or other circumstances.”<sup>55</sup> In this case, Resolution 09-143 is presumed  
2 valid, petitioners have the burden to prove non-compliance with GMA, and the Board cannot  
3 find noncompliance unless the County’s action is shown to be clearly erroneous in light of  
4 the entire record.

5 The UGA sizing standard requires the County to designate no more than the amount of land  
6 necessary to accommodate the 20-year urban growth projection, plus a reasonable land  
7 market supply factor.<sup>56</sup> Once a petitioner challenges a county’s UGA designation, the county  
8 must “show its work” to analyze and compute the appropriate amount of UGA acreage.  
9 Consistent with the OFM 20-year population forecast, the “projected urban growth” must  
10 include residential uses together with a broad range of non-residential needs and uses (e.g.  
11 commercial, industrial, service, and retail).

12 Typically, the appropriate size of a UGA is determined by preparing a “land capacity  
13 analysis” or a “land quantity analysis.”<sup>57</sup> That analysis determines how much land should be  
14 included within a UGA to accommodate expected urban development, based on the OFM  
15 population projections. Thus, the land capacity analysis seeks to balance the supply of  
16 developable land with the demand for such land over the 20-year planning horizon.

17 The City’s Buildable Lands Summary contains a land capacity analysis with acreage  
18 calculations for 20 years of residential growth needs but does not contain a complete  
19 analysis for commercial and industrial growth needs. In fact the commercial and industrial  
20 sections of the report contain only question marks where acreage numbers would typically  
21 be presented, i.e., the amount of Commercial and Industrial “acreage needed by 2027” is  
22  
23

24 <sup>55</sup> *Thurston County et al. v. W. Wash. Growth Mgmt. Hearings Bd. et al.*, 164 Wn.2d 329, 353 (2008).  
25 Counties have great discretion in making choices about accommodating growth and the land market supply  
26 factor may be based on local circumstances. Id.

<sup>56</sup> *Thurston County et al. v. W. Wash. Growth Mgmt. Hearings Bd. et al.*, 164 Wn.2d 329, 352 (2008).

<sup>57</sup> *Kittitas Co. Conservation et al. v. Kittitas Co.*, EWGMHB Case No. 07-1-0004c, FDO p. 65 (Aug. 20, 2007).

1 shown not as a number but as a “?”. This appears to be an uncompleted analysis, which is  
2 required to be complete under Countywide Planning Policy # 4.<sup>58</sup>

3  
4 To enable this AVA-related economic development, the City and County agreed to a 747  
5 acre UGA expansion. But there is no evidence in the record showing how the City and  
6 County determined that 747 acres was the needed amount of land for this UGA expansion.  
7 There are no findings by the County Commissioners, no analyses, and no computations for  
8 the **size** of the UGA expansion.<sup>59</sup> The Board cannot determine from the record whether the  
9 County’s designation of 747 acres exceeds the amount of land necessary to accommodate  
10 the projected urban growth. It is unclear whether 747 acres is too much land, too little land,  
11 or just the right amount of land to match the OFM 20-year urban growth projection.  
12 Moreover, the Board cannot determine whether a land market supply factor was used.

13 Therefore, the Board concludes that the county’s **sizing** of this UGA expansion in  
14 Resolution 09-143 is not supported by substantial evidence in the record. On remand, the  
15 City and County should address the following three issues pertaining to the UGA expansion  
16 for non-residential, economic development purposes:

- 17 1. Develop the analysis showing the needed size (acreage) for this UGA  
18 expansion based upon projected 20-year urban growth (consistent with OFM  
19 population forecast), so as to satisfy the UGA sizing requirements in RCW  
20 36.70A.110(2) and RCW 36.70A.115, plus any offsetting UGA contractions in other  
21 areas;
- 22 2. Identify the land market supply factor, if any, used to calculate total acreage  
23 needed; and
- 24 3. Indicate the land use controls used to restrict residential uses within the UGA  
25 expansion area and also within the rural areas near the proposed freeway  
26 interchange to prevent induced urban growth once the freeway interchange is  
opened.

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27 <sup>58</sup> Benton Countywide Planning Policy #4 states that the “Urban Growth Areas of each City shall be based  
28 upon official and accepted population projections for minimum 20 year periods.” A uniform formula is  
29 prescribed for calculating acreage/per capita values to determine the appropriate UGA size. Benton County  
30 Comprehensive Land Use Plan (officially noticed per WAC 242-02-660(4)).

31 <sup>59</sup> Both the County Planning Department and the Planning Commission stated that the City’s UGA expansion  
32 application lacked an “acres/per capita analysis of the existing land use condition and of future use needs  
33 upon which to base and support an enlarged UGA.” Futurewise HOM brief, Exhibits 108 and 110. This type of  
34 analysis is required by Benton Countywide Planning Policy # 4.

1 **Conclusion**

2 There is substantial evidence in the record to support the County's determination that some  
3 revision to the pre-existing UGA boundaries is needed to accommodate projected urban  
4 growth, in furtherance of the economic development goal in RCW 36.70A.020(5). But there  
5 is no substantial evidence in the record to support the 747-acre **size** of the UGA expansion  
6 area. The Board concludes that Petitioners have carried their burden of proof in  
7 demonstrating that Benton County's action in adopting Resolution 09-143 violated RCW  
8 36.70A.110 and RCW 36.70A.115.

9 **B. UGA Locational Criteria (Issue 3)**

10 **Applicable Law**

11 RCW 36.70A.110(1) provides in pertinent part as follows (emphasis added):

12 An urban growth area may include territory that is located outside of a city only  
13 if such territory already is **characterized by urban growth** whether or not the  
14 urban growth area includes a city, or is **adjacent to territory already**  
15 **characterized by urban growth** . . .

16 RCW 36.70A.110(3) provides in pertinent part as follows (emphasis added):

17 Urban growth should be located first in areas already characterized by urban  
18 growth that have adequate existing public facility and service capacities to  
19 serve such development, second in areas already characterized by urban  
20 growth that will be served adequately by a combination of both existing public  
21 facilities and services and any additional needed public facilities and services  
22 that are provided by either public or private sources, and third in the remaining  
23 portions of the urban growth areas. . . .

24 **Positions of the Parties**

25 Panesko argues that the GMA establishes parameters as to what types of land an UGA may  
26 be expanded into. According to Panesko, an UGA may be located outside a city only if the  
land is already characterized by urban growth or is adjacent to an area characterized by  
urban growth and that growth should be located in areas which are served, or can be

1 served, by adequate public facilities and services.<sup>60</sup> Panesko cites to the Record to  
2 demonstrate these characteristics are not satisfied, including specific statements from the  
3 County Planning Staff and County Planning Commission, and development potential cannot  
4 be used to satisfy this requirement.<sup>61</sup>

5 Although Brodeur/Futurewise did not brief specifically as to this issue, they assert the  
6 configuration of the expansion area represents a classic “step out” or “leap frog”  
7 development given the thin attachment in the northeast corner.<sup>62</sup>

8 Benton County did not set forth argument in relationship to these issues. Rather, the  
9 County deferred to the argument of Intervenor West Richland.<sup>63</sup>

10 West Richland points out that the expansion area is adjacent to its existing UGA and the  
11 GMA contains no requirement that the entire expansion area border an UGA. In addition,  
12 West Richland contends the language of RCW 36.70A.110(3) is inapplicable because that  
13 provisions relates to the sequence of development within UGAs rather than the criteria for  
14 expanding UGAs.<sup>64</sup>

15 Board Findings and Analysis

16 As for RCW 36.70A.110(3), the City is correct. The language of this provision addresses  
17 how cities and counties are to locate urban growth within the boundaries of an UGA – it is a  
18 phasing or sequencing requirement, not a sizing requirement.<sup>65</sup> However, the language of  
19 RCW 36.70A.110(1) is directly applicable to this issue as it states an UGA may contain land  
20 outside of the municipal boundaries of a city, as is the case here, but “only if” the land is (1)  
21 “already characterized by urban growth” or (2) “adjacent to land already character by urban  
22 growth.”

23 <sup>60</sup> Panesko HOM Brief, at 2-3.

24 <sup>61</sup> Panesko HOM Brief, at 3-4.

25 <sup>62</sup> Brodeur/Futurewise HOM Brief, at 20.

26 <sup>63</sup> Benton County’s HOM Brief, at 7.

<sup>64</sup> West Richland HOM Brief, at 15

<sup>65</sup> This is supported by the last phrase in the first sentence of 36.70A.110(3) which states: “and third *in the remaining portions of the urban growth areas.*”

1 The City concedes, and the Record appears to support, that the expansion acreage is not  
2 “characterized by urban growth.” But the City states that it is adjacent to, by means of a  
3 small piece, the boundary of the City’s UGA and therefore satisfies .110(1)’s criteria.<sup>66</sup>  
4

5 The Supreme Court has held that the term “growth” does not simply refer to the “built  
6 environment” – “an area could still be *presently* characterized by growth regardless of  
7 whether that ‘growth’ presently consists only of vested development rights, partially  
8 completed subdivisions, or completed urban neighborhoods.”<sup>67</sup> The Supreme Court has  
9 also held in a case involving a UGA expansion that “[b]ecause the land in question touches  
10 the Arlington UGA, it is adjacent to territory already characterized by urban growth for the  
11 purposes of *RCW 36.70A.110(1)*.”<sup>68</sup>

12 Accordingly, since the acreage in question here touches the existing City of Richland  
13 corporate boundary, it is adjacent to territory already characterized by urban growth for the  
14 purposes of *RCW 36.70A.110(1)*.

#### 15 Conclusion

16 The Board concludes that Panesko has failed to carry his burden of proof in demonstrating  
17 that adoption of Resolution 09-143 violated of *RCW 36.70A.110(1)* and *RCW*  
18 *36.70A.110(3)*.

#### 19 **C. Internal Inconsistency (Issue 5)**

##### 20 Applicable Law

21 *RCW 36.70A.120* provides:

22 Each county and city that is required or chooses to plan under *RCW*  
23

24 \_\_\_\_\_  
25 <sup>66</sup> West Richland relies on the Supreme Court’s holding in *Arlington v. CPSGMHB*, 164 Wn.2d 768 (2008) to  
support this conclusion.

26 <sup>67</sup> *Quadrant Corp. v. CPSGMHB*, 154 Wn.2d 224, 239 (2005).

<sup>68</sup> *City of Arlington v. CPSGMHB*, 164 Wn.2d 768, 791 (2008).

1 36.70A.040 shall perform its activities and make capital budget decisions in  
2 conformity with its comprehensive plan.

3 Positions of the Parties

4 Panesko asserts that the Benton County Comprehensive Plan advocates for a minimum  
5 average residential density of six units per acre for urban growth. Panesko contends that  
6 prior to the UGA expansion, the City's average density of 0.5 dus/acre and when the  
7 expansion area is added, the density number goes lower. In addition, Panesko points to  
8 County-Wide Planning Policies (CWPPs) and asserts the expansion area does not meet the  
9 criteria for inclusion within an UGA.<sup>69</sup>

10 Benton County did not set forth argument in relationship to these issues. Rather, the  
11 County deferred to the argument of the City.<sup>70</sup>

12 In response, the City reiterates that the UGA expansion was for commercial and industrial  
13 uses, not residential, so Panesko's arguments as to residential densities are irrelevant. As  
14 for the CWPPs, the City argues this is a new issue which was not raised in the PFR and,  
15 therefore, Panesko is barred from asserting these arguments.<sup>71</sup>

16 Board Findings and Analysis

17 As discussed above, the record indicates that Resolution 09-143 was adopted to expand  
18 the UGA to accommodate commercial and industrial growth for non-residential economic  
19 development. The City pledged to restrict development in the UGA expansion area to non-  
20 residential uses only. Therefore, Petitioner's arguments relating to residential densities have  
21 no relevance to this non-residential UGA expansion. In addition, the arguments relating to  
22 Countywide Planning Policies were not presented to the Board in the Statement of Issues,  
23 and as such, cannot be considered by the Board under RCW 36.70A.290(1).

24 \_\_\_\_\_  
25 <sup>69</sup> Panesko HOM Brief, at 9-10.

26 <sup>70</sup> Benton County's HOM Brief, at 7.

<sup>71</sup> West Richland HOM Brief, at 16.

1 **Conclusion**

2  
3 The Board concludes that Panesko has failed to carry their burden of proof in demonstrating  
4 Benton County's action in adoption Resolution 09-143 violated RCW 36.70A.120.

5 **D. Invalidity**

6 Issue 6. Does development of the 747 acres during remand of Resolution  
7 09-143 constitute a substantial interference with RCW  
8 36.70A.020(1) and (2) for failing to encourage urban growth and  
for failing to reduce sprawl?

9 For Brodeur/Futurewise, see Section IV Relief Sought of PFR.

10  
11 **Applicable Law**

12 RCW 36.70A.302, in relevant part, provides:

13 (1) A board may determine that part or all of a comprehensive plan or  
14 development regulations are invalid if the board:

15 (a) Makes a finding of noncompliance and issues an order of remand under  
16 RCW 36.70A.300;

17 (b) Includes in the final order a determination, supported by findings of fact  
18 and conclusions of law, that the continued validity of part or parts of the  
plan or regulation would substantially interfere with the fulfillment of the  
goals of this chapter; and

19 (c) Specifies in the final order the particular part or parts of the plan or  
20 regulation that are determined to be invalid, and the reasons for their  
21 invalidity.

22 **Positions of the Parties**

23 Except to state in a conclusory manner that the West Richland UGA expansion substantially  
24 interferes with the GMA's goals as to reducing sprawl, preserving open space, encouraging  
25 natural resource industries, protecting the environment, and maintaining existing levels of  
26

1 public services, Brodeur/Futurewise does not provide specific argument as to substantial  
2 interference.<sup>72</sup>

3 Panesko argues the addition of the 747 acres “continues a tradition of fostering sprawl” in  
4 substantial interference with Goals 1 and 2. Panesko further contends West Richland has  
5 indicated that it will annex the property during compliance and vest development.<sup>73</sup>

6 Benton County did not set forth argument in relationship to these issues. Rather, the  
7 County deferred to the argument of Intervenor West Richland.<sup>74</sup>

8 West Richland asserts neither Brodeur/Futurewise nor Panesko has identified an issue of  
9 non-compliance upon which invalidity could be based. In addition, West Richland states  
10 that prior to the vesting of development it would need to adopt zoning which authorizes  
11 development and since this has not occurred, invalidity should not be granted.<sup>75</sup>

12 Board Analysis and Findings

13 A determination of Invalidity may be entered when a Board makes a finding of  
14 noncompliance and includes a determination, supported by findings of fact and conclusions  
15 of law that the continued validity of part or parts of the plan or regulation would substantially  
16 interfere with the fulfillment of the goals of this chapter.<sup>76</sup> Under the facts of this case, there  
17 does not appear to be a risk of vesting during the remand period. The Board cannot  
18 conclude that the continued validity of Comprehensive Plan Amendments approved by  
19 Resolution 09-143 would substantially interfere with the fulfillment of the goals of this  
20 chapter.

21 Conclusion

22 The Board does not make a determination of invalidity.

23 \_\_\_\_\_  
24 <sup>72</sup>Brodeur/Futurewise HOM Brief, at 20

25 <sup>73</sup> Panesko HOM Brief, at 11

26 <sup>74</sup> Benton County’s HOM Brief, at 7.

<sup>75</sup> West Richland’s HOM Brief, at 17.

<sup>76</sup> RCW 36.70A.302(1)

1 **VII. ORDER**

2 Based on the foregoing, the Board concludes that Benton County’s adoption of Resolution  
3 09-143 fails to comply with the Growth Management Act and was clearly erroneous in view  
4 of the entire record before the Board and in light of the goals and requirements of the GMA.  
5 This case is remanded to Benton County, and the County is ordered to bring its  
6 Comprehensive Plan into compliance with the Growth Management Act pursuant to this  
7 decision within **120 days**.

8 The following schedule for compliance, briefing and hearing shall apply:

Item	Date Due
Compliance Due on identified areas of noncompliance	April 1, 2010
Compliance Report/Statement of Actions Taken to Comply and Index to Compliance Record	April 22, 2010
Objections to a Finding of Compliance	May 13, 2010
Response to Objections	May 20, 2010
Compliance Hearing – Telephonic <b>Call 360 407-3780 415928#</b>	June 1, 2010

9  
10  
11  
12  
13  
14 If Benton County takes the required legislative action prior to the deadline set forth in this  
15 Order, Benton County may file a motion with the Board requesting an adjustment to this  
16 compliance schedule.

17 So ORDERED this 2<sup>nd</sup> day of December 2009.

18  
19 \_\_\_\_\_  
Raymond L. Paolella, Board Member

20  
21 \_\_\_\_\_  
Joyce Mulliken, Board Member

22  
23 **Concurring Statement:**

24 I concur with my colleagues on the Board that Petitioners have carried their burden of proof  
25 in demonstrating that Benton County’s action in adopting Resolution 09-143 violated RCW  
26

1 36.70A.110 and RCW 36.70A.115. I do have concerns, though, about this case, specifically  
2 as set forth below and will dissent on the majority's conclusion for Issue No. 6, Invalidity.

3 The County's Resolution No. 09-143 violates a variety of requirements of the GMA. In  
4 particular, the resolution enlarged West Richland's UGA without a proper land quantity  
5 analysis and has been found in non-compliance; the resolution failed to set forth findings as  
6 to how the expansion meets any of the GMA requirements; the resolution ignored the  
7 County's CWPP No. 4; the resolution failed to balance the goals of the GMA, relying solely  
8 on the economic development goal, RCW 36.70A.020(5), to create an enlarged, sprawling  
9 UGA. In addition, no updated capital facilities plan was completed by the City to determine  
10 if this area can be serviced appropriately.

11 The Benton County Board of County Commissioners, in ignoring their planning staff and the  
12 Planning Commission, both of which recommended denial of this expansion,<sup>77</sup> pressed  
13 forward with this classic leap-frog development, a sprawling 747-acre expansion justified  
14 solely on the perception of future interchange-dependent economic development. This  
15 without Findings other than RCW 36.70A.020(5) and CWPP #20, which pertain to economic  
16 development, as if this was their only concern.

17 Case in point: the planning staff found the following partial list of issues: (1) the City of West  
18 Richland had an excess of 8,000 acres of vacant and developable land and could not  
19 demonstrate a need for additional lands to accommodate projected growth; (2) the City did  
20 not provide an analysis of land use needs as required by CWPP No. 4, specifically no  
21 demonstrated need for additional commercial/industrial land; (3) the City's existing  
22 residential densities are not sufficiently high to reduce sprawl; (4) the City is grossly  
23 oversized for its future population growth projections; (5) the land proposed for inclusion  
24 does not have characteristics required by GMA and CWPP No. 9; (6) the City is creating  
25 leap-frog development solely to include potential I-82 interchange; (7) the UGA expansion is

26 <sup>77</sup> Planning staff recommended denial on July 7, 2008; the Planning Commission recommended denial on  
Sept. 15, 2008.

1 premature and based upon conjecture; (8) the UGA expansion is not essential to the  
2 success of the Red Mountain AVA; (9) and the proposal is not consistent with all but  
3 potentially two of the CWPP, CP, and GMA requirements.

4 The Planning Commission had similar concerns and findings.

5  
6 The City of West Richland, using the “deference” argument, seems to believe this trumps  
7 the GMA’s requirements. The Courts have repeatedly said that deference to county and city  
8 decisions extend only as far as such decisions comply with the GMA goals and  
9 requirements.<sup>78</sup> The Boards, “in recognition of the broad range of discretion that may be  
10 exercised by counties and cities consistent with the requirements of this chapter” must grant  
11 deference to counties and cities in how they plan for growth, consistent with the  
12 requirements and goals of this chapter.<sup>79</sup> “Deference” and “range of discretion”<sup>80</sup> are not a  
13 blank check to run amuck and ignore the OFM population allocation and a reasonable  
14 market factor to designate appropriately sized UGA’s. These terms should be used by  
15 decision makers with discretion and within the boundaries of the GMA.

16  
17 Despite Futurewise’s assertion that urban growth is only residential, the GMA’s urban area  
18 is comprised of residential, commercial, industrial, public facilities, and open and recreation  
19 space, and, as such, is sized to accommodate more than just residential. As an example,  
20 Benton County’s Comprehensive Plan, Land Use Element, states that the size of a UGA is  
21 not determined solely by projected rates of population growth, but that other considerations,  
22 such as a city’s need for commercial and industrial zoned lands to meet the economic goals  
23 and objectives may also be factors in the placement of land within UGAs.<sup>81</sup> CWPP No. 4,  
24 which includes non-residential land needs when sizing UGAs, also reflects this standard  
25 methodology.

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26 <sup>78</sup> RCW 36.70A.3201.

<sup>79</sup> Id.

<sup>80</sup> Id.

<sup>81</sup> Benton County Comprehensive Plan, Land Use Element, pp. 4-16.

1 The City of West Richland set forth arguments using the new language in RCW  
2 36.70A.110(2), which became effective July 26, 2009. Futurewise also used the new  
3 language in their brief. I disagree with using the new legislative language retrospectively.  
4 Resolution No. 09-143, which expanded the UGA, was adopted on February 23, 2009.  
5 Thus, the County's action and subsequent filing of the petitions took place prior to when the  
6 legislature passed SHB 1825, which adopted changes to RCW 36.70A.110(2), .210, and  
7 .115. The Courts have held that "a statute will operate only *in futuro* unless the legislature  
8 has plainly declared its intention that it shall operate retrospectively."<sup>82</sup>

9 As for SEPA, the size and scope of this amendment to the City of West Richland UGA and  
10 the changes this land use implies demands for the SEPA to be taken into account.

11 Furthermore, I disagree with my fellow Board members as to their conclusion for Issue No. 6  
12 and dissent on this issue. I believe there is a threat during remand of Resolution No. 09-143  
13 for vesting of development permits and would constitute a substantial interference with  
14 RCW 36.70A.020(1) and (2). Therefore, I would make a determination of invalidity.

15  
16 \_\_\_\_\_  
John Roskelley, Board Member

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

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

82 Hammack v. Monroe, 54 Wn.2d 224 (1959). Also Anderson v. Seattle (1970); Johnson v. BMC (1975); and Howeill v. Spokane Inland (1990).

1 **Judicial Review.** Any party aggrieved by a final decision of the Board may appeal the  
2 decision to superior court as provided by RCW 36.70A.300(5). Proceedings for  
3 judicial review may be instituted by filing a petition in superior court according to the  
4 procedures specified in chapter 34.05 RCW, Part V, Judicial Review and Civil  
5 Enforcement. The petition for judicial review of this Order shall be filed with the  
6 appropriate court and served on the Board, the Office of the Attorney General, and all  
7 parties within thirty days after service of the final order, as provided in RCW  
8 34.05.542. Service on the Board may be accomplished in person, by fax or by mail,  
9 but service on the Board means actual receipt of the document at the Board office  
10 within thirty days after service of the final order.

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