

1 BEFORE THE WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

2
3 The BUILDING ASSOCIATION OF CLARK COUNTY, the
4 CLARK COUNTY ASSOCIATION OF REALTORS, the
5 RESPONSIBLE GROWTH FORUM, and the GREATER
6 VANCOUVER CHAMBER OF COMMERCE, et al,

7 Petitioners,

8 v.

9 CLARK COUNTY and STATE OF WASHINGTON, OFFICE
10 OF FINANCIAL MANAGEMENT,

11 Respondents,

12 and,

13 GRAMOR OREGON, INC., JOHN SOMARAKIS, ROBERT
14 FRASIER and GARY RADEMACHER, MICHAEL J.
15 DEFREES, WHISPERING PINES LAND INVESTMENT AND
16 DEVELOPMENT COMPANY, JOSEPH and VIRGINIA
17 LEAR, DEBBIE MERA, JOSEPH and VIRGINIA LEAR,
18 PETER J. STONE, DONNA L. STONE, MAKIM
19 ENTERPRISES, JOHN, PAM, AND CHRISTINE
20 PHILBROOK, THE CITY OF BATTLE GROUND, THE
21 ROSEMARY PARKER LIVING TRUST, ROSEMARY
22 PARKER, JAMES PARKER, HOLT HOMES, MICHAEL S.
23 and TERRY K. BOWYER, The BUILDING ASSOCIATION
24 OF CLARK COUNTY, CLARK COUNTY ASSOCIATION OF
25 REALTORS, the RESPONSIBLE GROWTH FORUM, the
26 GREATER VANCOUVER CHAMBER OF COMMERCE,
27 DONALD and NANCY BLAIR, RICHARD and PAMELA
28 MARION, ROGER and BONNIE GREGG, MARK and
29 KATHRYN LEATHERS, RICHARD and BARBARA SALAS,
30 SHARON Y. MILLER, JUDITH and BRUCE WOOD, JERRY
31 MICHELE WINTERS, AND RENAISSANCE HOMES,

32 Intervenors.

Case No. 04-2-0038c

**AMENDED FINAL
DECISION AND ORDER**

33 Upon the Western Washington Growth Management Board's (Board) November 23, 2005,
34 Order Amending Final Decision and Order of August 22, 2005 on Reconsideration, the
35 Board hereby amends the Final Decision and Order (August 22, 2005) and issues this
36 Amended Final Decision and Order.

1 **SYNOPSIS OF DECISION**

2 This case started as a consolidation of 14 petitions for review that challenged the adoption
3 of the Clark County 20 Year Comprehensive Growth Management Plan 2003 – 2023
4 Revised (County’s CP) and raised 43 issues. On September 7, 2004, the County adopted a
5 new comprehensive plan (CP) which, at the same time, completed its update requirements.
6 After an intense series of procedural motions, only two petitioners, the Clark County Natural
7 Resources Council (CCNRC) and Futurewise, remained as petitioners. The number of
8 issues was reduced from 43 to 8 as a consequence.
9

10
11 CCNRC asks the Board to find the County’s CP noncompliant on four major issues: the
12 County’s land capacity analysis and population allocation analysis in establishing its urban
13 growth areas (UGAs); the County’s failure to conduct a concurrency analysis with respect to
14 schools, particularly in the Battle Ground School District; the County’s use of its Urban
15 Holding designation; and failings alleged to be in the County’s transportation element.
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18 As for CCNRC’s arguments on the County’s assumptions and its land capacity analysis, the
19 record shows that the County spent much time and sought advice from a wide-range of
20 individuals and interest groups. The County grounded this advice with analysis from its
21 technical staff and the technical staff of Clark County cities and special districts. A Steering
22 Committee of all three County Commissioners and elected officials from each of Clark
23 County’s cities evaluated these recommendations. The Board finds that, in light of the
24 conflicting data, the thorough analysis and discussion by the staff and elected officials of all
25 Clark County jurisdictions and special districts, and the open public process, the decisions
26 Clark County made in regard to the land capacity assumptions are within the discretion
27 afforded to local elected officials.
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31 In regard to the inconsistencies between the County’s population projections for different
32 elements of Clark County’s comprehensive plan, the Board finds that using a higher

1 population projection to plan for transportation facilities is not inconsistent with the use of a
2 lower population projection for other planning purposes; the use of one does not conflict
3 with the use of the other, since the higher transportation numbers are used as a prudent
4 and more conservative planning approach to transportation issues without impacting the
5 other elements of the CP.
6

7
8 Likewise, we find the difference between the land capacity assumptions of the County and
9 that of the City of Vancouver not clearly erroneous and not unworkable. These jurisdictions'
10 plans differ on the size of the Vancouver UGA and the population assumptions used to size
11 the UGA. RCW 36.70A.110(2) places the ultimate responsibility of sizing the urban growth
12 areas with the County. This includes the assumptions used as the basis for sizing the
13 UGAs. The City believes it can achieve greater densities through redevelopment and infill
14 than the County assumes. Those differences do not create an inconsistency precluding
15 achievement of any other feature of either plan. Furthermore, the County's urban holding
16 designation for part of the Vancouver UGA and its county-wide planning policy instituting
17 plan monitoring mitigate and monitor these differences over the life of the plan.
18

19
20 CCNRC's other challenges criticize the County's capital facilities planning results and the
21 way Clark County applies concurrency. CCNRC asserts that the Growth Management Act
22 (GMA) requires concurrency for school facilities and state transportation facilities. For
23 schools, Petitioner bases this contention on the GMA's Goal 12, RCW 36.70A.070(3) -
24 requirements for a capital facilities plan; the Western Board's Final Decision and Order in
25 *Taxpayers for Responsible Government v. City of Oak Harbor*, WWGMHB Case No. 96-2-
26 0002 (*Taxpayers*); and the fact that Clark County charges impact fees for schools. For state
27 transportation facilities, Petitioner bases its challenge on RCW 36.70A.070(3) and (6) – the
28 requirements for a GMA comprehensive plan's capital facilities and transportation elements.
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1 We find it reasonable for the County to address schools as an “indirect concurrency”
2 service, particularly because of the complex and multi-faceted method that school districts
3 must rely on to fund new school facilities; combining state funding based on need and state
4 priorities, voter supported bond issues, and impact fees. We also find that the land use
5 element and the capital facilities element are not inconsistent because the County’s capital
6 facilities element and the Battle Ground School District’s capital facilities plan adopted by
7 the County declare that school districts will provide a broad range of school facilities. The
8 County’s comprehensive plan also shows how permanent facilities will be funded, and
9 discloses that when funding is not available for permanent facilities, school districts will
10 provide facilities through temporary buildings. This information and disclosure makes the
11 land use element and the capital facilities element consistent and complies with RCW
12 36.70A.070(3) and RCW 36.70A.020(12).
13
14

15
16 For state transportation facilities, CCNRC argues that the CP fails to disclose the level of
17 service (LOS) deficiencies and needs and fails to include a multi-year spending plan for
18 these facilities. As a result, CCNRC argues that Clark County should have reassessed the
19 land use element to make it consistent with achievable LOS standards. CCNRC argues that
20 the County should meet the GMA requirements for state transportation facilities. However,
21 in 1998 the legislature changed the requirements for the information required in local plans
22 for state transportation facilities and relieved local governments from achieving concurrency
23 for these facilities. The County has fulfilled the current GMA requirements by describing the
24 conditions of the state highway system during the next 20 years, the impacts and effects
25 these conditions will cause for the local system, and the local system impacts on state
26 highways.
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29
30 In another issue related to capital facilities and concurrency, CCNRC charges that the
31 County’s use of the urban holding designation is not compliant with the GMA. Urban
32 holding is an overlay designation that the record shows the County believes is key to

1 making its UGAs compliant. We find Clark County's Special Implementation Procedures,
2 thorough and explicit concurrency regulations, and permitting process requirements rebut
3 CCNRC's claims that the Urban Holding overlays violate RCW 36.70A.070(3) and RCW
4 36.70A.020(12).

5
6
7 CCNRC assertions related to concurrency illustrate a common misconception about
8 concurrency; that it guarantees a certain level of service that would raise the level of service
9 and better the quality of life in local communities. However, the Legislature set no minimum
10 or maximum standards for public facilities and services, leaving this to local governments to
11 determine. What the GMA's concurrency principle guarantees is "truth in planning." That is:
12 local governments must disclose the amount and quality of the services they will provide,
13 how and where they will be provided, how much they will cost, and how they will be funded.
14 Here, the County has used the discretion afforded by the GMA to make these choices in
15 compliance with the Act. Clark County's comprehensive plan illustrates the extremely
16 difficult choices cities and counties planning under the GMA must make with dwindling
17 financial resources and increasing growth pressures.

18
19
20 Futurewise challenges the County's Urban Reserve (UR) and Industrial Urban Reserve
21 (IUR) overlay designations on the grounds that these overlay designations fail to conserve
22 agricultural lands and will allow interference with incompatible uses because these overlays
23 earmark agricultural lands for future industrial uses.

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26 The majority of the Board finds the use of the UR or IUR is not clearly erroneous. We agree
27 with the past Clark County decision¹ of this Board that found this concept a compliant
28 innovative technique for planning for future urban growth beyond GMA's mandated planning
29 horizon. These properties given these overlay designations are designated agricultural
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¹ *Achen v. Clark County*, WWGMHB Case No. 95-2-067c (2nd Compliance Order, December 17, 1997)

1 lands of long-term commercial significance. The County has compliant agricultural
2 conservation measures to prevent interference from incompatible uses. Also, we find that
3 Clark County's regulations governing a change in designation, as well as its codified criteria
4 for bringing land into the UGA, conserve these lands within the 20-year mandated planning
5 horizon.
6

7 8 II. PROCEDURAL HISTORY

9 This case that began as a result of 14 challenges to the Clark County 20 Year
10 Comprehensive Growth Management Plan 2003-2023 and 43 issues is a shadow of its
11 original. After a long and tangled Procedural History, two Petitioners, the Clark County
12 Natural Resource Council, Futurewise, and eight issues remain. For a detailed review of
13 this Procedural History, see Appendix A.
14

15 16 III. ISSUES PRESENTED

17 ***Issue No. 6: Did Clark County violate RCW 36.70A.110, which requires a land***
18 ***capacity analysis and population allocation consistent with population allocation and***
19 ***densities; RCW 36.70A.215, which requires periodic monitoring of development***
20 ***assumptions; and RCW 36.70A.070, which requires comprehensive plan elements to***
21 ***be internally consistent, by allocating excess residential growth to, and in the***
22 ***designation of Urban Growth Areas (UGA) for the City of Vancouver, where the***
County's erroneous allocations and designations include, but are not limited to:

- 23 • ***Inconsistencies with Vancouver's land capacity analysis;***
- 24 • ***Analysis based on 8 units per acre versus the more accurate 9.5 units per acre;***
- 25 • ***Analysis based on 5 percent rather than the more accurate 10 percent***
26 ***redevelopment;***
- 27 • ***Internally inconsistent land and capital facility capacities, where road capacity***
28 ***is assumed at 556,000 people, compared to the VBLM assumption of 534,000***
29 ***people.***
- 30 • ***County VBLM overstatement of lands which are not developable, where more***
31 ***than one half of Vancouver's October 2003 site-specific requests concerned***
32

1 land the County considered unbuildable over 20 years. Therefore, the
2 Vancouver UGA can hold considerably more population than the County (and
3 its VBLM) has projected. (Case No. 04-2-0023).

4 **Issue No. 21: Did Clark County violate RCW 36.70A.070(3) and RCW 36.70A.020(12)**
5 **by failing to include at least a six-year financing plan for public school facilities**
6 **within projected funding capacities that clearly identifies sources of public money by**
7 **allocating any residential growth to, and in the designation of Urban Growth Areas for**
8 **the City of Battle Ground, and the portion of Vancouver's Urban Growth Area served**
9 **by the Battle Ground School District, where Clark County's Capital Facilities Plan**
10 **identifies serious inadequacies in school levels of service and identifies no credible**
11 **or probable funding to correct school deficiencies? (Case No. 04-2-0023).**

12 **Issue No. 22: Did Clark County violate RCW 36.70A.020(12)'s goal 12 on public**
13 **facilities and services, RCW 36.70A.070(3)'s provision on Capital Facilities, RCW**
14 **36.70A.070(6)'s provisions on transportation, and RCW 36.70A.070's provision on**
15 **consistency, by adopting Urban Holding designations for Vancouver, Battle Ground,**
16 **Camas, LaCenter, Ridgefield, Washougal, and Woodland that do not require full**
17 **implementation and consistency with all applicable Capital Facilities Plans? (Case**
18 **No. 04-2-0023).**

19 **Issue No. 23: Did Clark County violate RCW 36.70A.070(3), (4) and (6) and RCW**
20 **36.70A.210(1) and (3) by failing to identify state and local transportation system**
21 **needs to meet current and future demands, to include a multi-year financing plan**
22 **based on these needs, and by failing to reassess land use plans if probable funding**
23 **falls short? (Case No. 04-2-0023).**

24 **Issue No. 40: Does adoption of Clark County Ordinance No. 2004-09-02 fail to comply**
25 **with RCW 36.70A.020(1), RCW 36.70A.020(8), RCW 36.70A.040, RCW 36.70A.050, RCW**
26 **36.70A.060 and RCW 36.70A.130 when the application of Urban Reserve and**
27 **Industrial Urban Reserve designations to agricultural resource lands of long term**
28 **commercial significance fails to encourage and conserve agricultural resource lands**
29 **and industry? (Case No. 04-2-0028).**

30 **Issue No. 41: Does adoption of Clark County Ordinance No. 2004-09-02 fail to comply**
31 **with RCW 36.70A.020(1), RCW 36.70A.020(10), RCW 36.70A.040, RCW 36.70A.060,**
32 **RCW 36.70A.110 and RCW 36.70A.130 when the application of Urban Reserve and**
33 **Industrial Urban Reserve designations to critical areas fails to protect the functions**
34 **and values of those areas and encourages future urban growth into areas**
35 **inappropriate to accommodate urban growth? (Case No. 04-2-0028).**

1 ***Issue No. 42: Does adoption of Clark County Ordinance No. 2004-09-02 fail to comply***
2 ***with RCW 36.70A.020(1), RCW 36.70A.020(8), RCW 36.70A.040, RCW 36.70A.050, RCW***
3 ***36.70A.060, RCW 36.70A.110 and RCW 36.70A.110 when the comprehensive plan***
4 ***definition for Urban Reserve regarding application to resource lands fails to***
5 ***incorporate GMA criteria for designation of agricultural resource lands of long term***
6 ***commercial significance? (Case No. 04-2-0028).***

7 ***Issue No. 43: Does the continued validity of the violations of RCW Title 36.70A (The***
8 ***Growth Management Act), described in Issue Nos. 40 and 42 above, substantially***
9 ***interfere with the fulfillment of the goals of the Growth Management Act such that the***
10 ***enactments at issue should be held invalid pursuant to RCW 36.70A.302? (Case No.***
11 ***04-2-0028).***

12 IV. BURDEN OF PROOF

13 For purposes of board review of the comprehensive plans and development regulations
14 adopted by local government, the GMA establishes three major precepts: a presumption of
15 validity; a “clearly erroneous” standard of review; and a requirement of deference to the
16 decisions of local government.

17 Pursuant to RCW 36.70A.320(1), comprehensive plans, development regulations and
18 amendments to them are presumed valid upon adoption:

19 Except as provided in subsection (5) of this section, comprehensive plans and
20 development regulations, and amendments thereto, adopted under this chapter are
21 presumed valid upon adoption.
22 RCW 36.70A.320(1).

23 The statute further provides that the standard of review shall be whether the challenged
24 enactments are clearly erroneous:

25 The board shall find compliance unless it determines that the action by the state
26 agency, county, or city is clearly erroneous in view of the entire record before the
27 board and in light of the goals and requirements of this chapter.
28 RCW 36.70A.320(3).

1 In order to find the County's action clearly erroneous, the Board must be "left with the firm
2 and definite conviction that a mistake has been made." *Department of Ecology v. PUD1*,
3 121 Wn.2d 179, 201, 849 P.2d 646 (1993).

4
5 Within the framework of state goals and requirements, the boards must grant deference to
6 local government in how they plan for growth:
7

8 In recognition of the broad range of discretion that may be exercised by counties and
9 cities in how they plan for growth, consistent with the requirements and goals of this
10 chapter, the legislature intends for the boards to grant deference to the counties and
11 cities in how they plan for growth, consistent with the requirements and goals of this
12 chapter. Local comprehensive plans and development regulations require counties
13 and cities to balance priorities and options for action in full consideration of local
14 circumstances. The legislature finds that while this chapter requires local planning to
15 take place within a framework of state goals and requirements, the ultimate burden
16 and responsibility for planning, harmonizing the planning goals of this chapter, and
17 implementing a county's or city's future rests with that community.
18 RCW 36.70A.3201 (in part).

19 In sum, the burden is on the Petitioner to overcome the presumption of validity and
20 demonstrate that any action taken by the County is clearly erroneous in light of the goals
21 and requirements of Ch. 36.70A RCW (the Growth Management Act). RCW 36.70A.320(2).
22 Where not clearly erroneous and thus within the framework of state goals and requirements,
23 the planning choices of local government must be granted deference.

24 V. DISCUSSION

25 ***Issue No. 6: Did Clark County violate RCW 36.70A.110, which requires a land***
26 ***capacity analysis and population allocation consistent with population allocation and***
27 ***densities; RCW 36.70A.215, which requires periodic monitoring of development***
28 ***assumptions; and RCW 36.70A.070, which requires comprehensive plan elements to***
29 ***be internally consistent, by allocating excess residential growth to, and in the***
30 ***designation of Urban Growth Areas (UGA) for the City of Vancouver, where the***
31 ***County's erroneous allocations and designations include, but are not limited to:***

- 32 • ***Inconsistencies with Vancouver's land capacity analysis;***

- 1 • ***Analysis based on 8 units per acre versus the more accurate 9.5 units per acre;***
- 2
- 3 • ***Analysis based on 5 percent rather than the more accurate 10 percent***
- 4 ***redevelopment;***
- 5 • ***Internally inconsistent land and capital facility capacities, where road capacity***
- 6 ***is assumed at 556,000 people, compared to the VBLM² assumption of 534,000***
- 7 ***people.***
- 8 • ***County VBLM overstatement of lands which are not developable, where more***
- 9 ***than one half of Vancouver's October 2003 site-specific requests concerned***
- 10 ***land the County considered unbuildable over 20 years. Therefore, the***
- 11 ***Vancouver UGA can hold considerably more population than the County (and***
- 12 ***its VBLM) has projected. (Case No. 04-2-0023).***

13 A. Land Capacity Analysis

14 Positions of the Parties

15 CCNRC contends that Clark County's use of erroneous and unsupported assumptions
16 caused it to oversize its UGA and violates RCW 36.70A.110. GMA Appeal Brief of CCNRC
17 Issues 21, 23, 6, and 22 (CCNRC's Appeal Brief) at 14. Petitioner asserts that Clark County
18 used a flawed two-step process for completing its land capacity analysis. First, Petitioner
19 claims that the County's available land inventory excluded land that was available for
20 development. Petitioner bases this assertion on a 2003 study done for a Vancouver UGA
21 that showed that property owners had applied for development permits on over half the land
22 that the County had excluded. *Ibid* at 16.
23
24

25
26 Second, Petitioner claims that the County relied on inaccurate growth assumptions. More
27 specifically, Petitioner contends that the County's assumptions for the percentage of land for
28 various categories that can be expected to redevelop is particularly flawed. For land
29 needed to accommodate population growth, Petitioner contends that 10 to 20 percent of
30

31 ² Vacant Buildable Lands Model
32

1 existing residential areas will redevelop while the County assumed 5 percent of residential
2 land would redevelop. For job growth and development, Petitioner states that from 20 to 60
3 percent of lands now used for job growth and development could be expected to redevelop
4 based on the City of Vancouver's public testimony and the County's Focus Public
5 Investment Report, while the County assumes only 5 percent of existing land needed for
6 this use will redevelop. As for land needed for public needs, Petitioner says it is reasonable
7 to expect 10 to 20 percent of this land to redevelop, based on a letter from WESD. Finally,
8 Petitioner asserts that census data and recent technology reports make it reasonable to
9 assume that 5 percent of job growth will occur from home based businesses, while the
10 County assumes no job growth from this type of business. *Ibid* at 17.
11
12

13 Petitioner asserts the comprehensive plan is based on other flawed assumptions.
14 Specifically, Petitioner disagrees with the assumption that commercial land will produce an
15 average of 20 jobs per net acre for commercial and 9 jobs per net acre for industrial land
16 when the County's Buildable Lands Analysis showed actual development at 22 jobs per
17 acre for commercial land and 10 per acre for industrial land. Also, Petitioner asserts that the
18 Buildable Lands Analysis does not consider the existing 20 percent vacancy rate on
19 commercial and industrial lands. *Ibid* at 17.
20
21

22 County's Position

23 Clark County argues that the assumptions on which the County based its land capacity
24 analysis were legitimate choices for the County to make and cites a letter supportive of
25 these choices from the Washington Department of Community, Trade and Economic
26 Development. Clark County Brief at 18. The County states that the choices were
27 recommended by its Plan Monitoring Technical Advisory Committee (PMTAC)³ which
28 reached a consensus recommendation on all the assumptions except for the amount of
29
30

31 _____
32 ³ County's abbreviation for this Committee. County's Appeal Brief at 18.

1 infrastructure that should be deducted from the amount of available land. *Ibid.* Since the
2 committee was unable to reach consensus, the County based its assumption on a staff
3 survey that 27.5 percent of the land would be devoted to infrastructure. *Ibid.* This
4 percentage compares to the figure of 30 percent of the available land devoted to
5 infrastructure that the Responsible Growth Forum assumed, based on a survey of eight
6 subdivisions of their choosing, and the 20 percent of available buildable land devoted to
7 infrastructure figure that “Friends” said occurred in other cities in the Metro area. Clark
8 County Brief at 18.

10
11 The County also offers evidence of the conflicting recommendations on other assumptions
12 that it received for determining land capacity. On the one hand, the City of Vancouver
13 determined that the County’s buildable lands model excluded redevelopable properties. *Ibid*
14 at 19. On the other hand, the Building Association of Southwest Washington argued that
15 the assumption of 70 percent of growth occurring on redevelopable properties was too high
16 based on its available land studies, the 28 percent Metro “refill” rate and comparison with
17 another county’s (Snohomish County) assumption that 40 percent of its land will redevelop.
18 *Ibid.* At argument at the July 1, 2005 hearing the County explained that the County’s record
19 shows that its buildable land model did not consider lands as developable where 50 percent
20 or more of land contained critical areas; these lands may have accounted for some of the
21 lands for which the City of Vancouver received applications for development permits.
22 Exhibit 637.

23
24
25
26 Clark County responds to Petitioner’s argument that nothing in the record supports the
27 assumption that 10 to 20 percent of population growth will occur on redeveloped land by
28 citing to Exhibit 538. This exhibit shows use of 10-25 percent residential redevelopment
29 factors in Gresham, Tigard and unincorporated Washington County, Oregon. *Ibid* at 18 and
30 19.
31
32

1 In response to Petitioner’s argument that employment densities should be higher based on
2 the Buildable Lands Analysis, the County says that the densities cited in the Buildable
3 Lands Plan Monitoring Report (Exhibit 629) were based on 399 permits issued between
4 1995 and June 2000 for which matching employment information could be obtained.
5 Information on existing employment densities was not analyzed. Clark County Brief at 20.
6 Additionally, the County says the purpose of the Buildable Lands Monitoring Report was to
7 monitor how the existing plan performed, not as a directive on assumptions for the plan
8 review process. *Ibid.*

10
11 The County denies the CCNRC claim that it did not use the 25 percent and 50 percent
12 market factor for commercial and industrial lands, respectively, in its capital facilities
13 analysis. *Ibid.* The County refers to the Revenue Prospective (Exhibit 700), which states
14 that “These growth assumptions are also those used for the capital facilities analysis.” *Ibid.*

16
17 Intervenor Building Association of Clark County, et al., reminds the Board that CCNRC has
18 a much higher burden of demonstrating the Clark County’s assumptions and calculations
19 are so erroneous and unreasonable that they constitute abuse of the broad discretion
20 afforded planning jurisdictions by the GMA. Intervenor says that CCNRC implicitly accuses
21 the County of “artificially deflating the number of acres with existing UGA boundaries in
22 order to ‘justify expansive UGAs’.” Intervenor asserts that the issue for the Board is whether
23 the County abused its discretion in making assumptions in the plan. Brief of Intervenor
24 Building Association of Clark County, et al., on Issues 6, 21, 22, and 23 in Response to Brief
25 of CCNRC at 8.

27
28 **Board Analysis**

29 On September 7, 2004, Clark County adopted an updated comprehensive plan. Ordinance
30 No. 2004-09-02. This ordinance did not merely amend and update the existing plan; it
31 adopted a new plan in its entirety:
32

1 The 20-year land use plan is hereby adopted as the GMA Comprehensive Plan for
2 Clark County.
3 Ordinance 2004-09-02, Section 2, at 8.

4
5 Petitioner CCNRC filed its petition for review on November 10, 2004. The petition does not
6 challenge the County's compliance with RCW 36.70A.130, its 7-year update obligation, but
7 challenges the new comprehensive plan for compliance with a variety of other GMA
8 requirements. Thus, while the County did meet its update requirements with its adoption of
9 Ordinance No. 2004-09-02, the CCNRC challenges to that ordinance are not based in RCW
10 36.70A.130.

11
12
13 Issue 6 challenges the County's compliance with RCW 36.70A.110, 36.70A.215 and
14 36.70A.070 in the conduct of the land capacity and population allocation analysis used to
15 establish urban growth boundaries (UGAs). However, CCNRC rests its argument on this
16 issue primarily on its challenges to the land capacity analysis.

17
18 RCW 36.70A.110 requires the County to designate urban growth areas (UGAs) in its
19 comprehensive plan. Each city in the County must be included in a UGA. RCW
20 36.70A.110(1). These UGAs must be sized to accommodate the population within the
21 range of population projections given to the County by the Washington Office of Financial
22 Management. RCW 36.70A.110(2). The requirements for creating and sizing a UGA are
23 set out in RCW 36.70A.110. This section of the statute provides that UGAs must include
24 areas and densities sufficient to accommodate the 20-year population projections by the
25 Office of Financial Management (OFM):
26
27

28 Based upon the growth management population projections made for the county by
29 the office of financial management, the county and each city within the county shall
30 include areas and densities sufficient to permit the urban growth that is projected to
31 occur in the county or city for the succeeding twenty-year period, except for those
32 urban growth areas contained totally within a national historical reserve... An urban
 growth area determination may include a reasonable land market supply factor and
 shall permit a range of urban densities and uses. In determining this market factor,

1 cities and counties may consider local circumstances. Cities and counties have
2 discretion in their comprehensive plans to make many choices about accommodating
3 growth.

4 RCW 36.70A.110(2) (in pertinent part).

5 RCW 36.70A.110(2) provides that county UGAs shall include areas and densities sufficient
6 to permit the urban growth projected for the county by OFM. RCW 36.70A.110(2). This
7 provision has been interpreted to also limit the size of UGAs as well as to ensure that the
8 UGA boundaries are sufficient to accommodate projected growth, in light of the anti-sprawl
9 goal of the GMA. *Diehl v. Mason County*, 94 Wn.App. 645, 982 P.2d 543 (Div. II, 1999).
10 "... [T]he OFM projection places a cap on the amount of land a county may allocate to
11 UGAs." *Ibid* at 654. Thus, RCW 36.70A.110 requires that the UGAs be created to
12 accommodate the OFM population projection for the 20-year planning horizon and also
13 limits the size of UGAs to those lands needed to accommodate the urban population
14 projection utilized by the county.
15
16

17
18 CCNRC first argues that the land capacity analysis is "fundamentally flawed." GMA Appeal
19 Brief of CCNRC Issues 21, 23, 6, and 22 at 18. This, CCNRC claims, is due to inaccurate
20 assumptions and a failure to count potentially developable land. *Ibid* at 15-16. However,
21 the County's record shows that there were conflicting views and conflicting evidence upon
22 which to base the County's determination of available land for development. The County
23 considered a range of possible assumptions in calculating its land capacity and chose to
24 rely upon assumptions for which justification exists in the record. The County's explanations
25 (see County's Position above) provide a reasonable basis for the choices that were
26 ultimately made. CCNRC has not sustained its burden of proof on this point.
27
28

29 Second, CCNRC argues that the County's growth assumptions are unsupported in the
30 record and, in some cases, contradicted by County reports. *Ibid* at 16 -17. The County
31 asserts that its growth assumptions are valid choices made by the County. Clark County
32 Brief at 18.

1 Growth assumptions as a basis for UGA boundaries are addressed in CTED's Procedural
2 Criteria for Adopting Comprehensive Plans and Development Regulations. Ch. 365-195
3 WAC. CTED recommends that the determination of land necessary to accommodate
4 growth include, among other things:

5 A forecast of the likely future growth of employment and population in the community,
6 utilizing the twenty-year population projection for the county in conjunction with data
7 on current community population, recent trends in population, and employment in
8 and near the community and assumptions about the likelihood of continuation of such
9 trends. Where available, regional population and employment forecasts should be
10 used.

11 WAC 365-195-335(3)(d)(i).

12 CCNRC does not argue that the County has failed to consider these factors, only that the
13 County has relied upon the wrong numbers. However, the County has discretion in
14 choosing assumptions based on reasonable criteria.

15
16 To evaluate the assumptions that Clark County would use to size its UGAs, the County
17 appointed a steering committee of elected officials from all Clark County cities and a
18 technical advisory committee that included these jurisdictions' planning staff and staff from
19 special districts. Exhibits 1-35. These committees met regularly from 2000-2004 to
20 examine data and make recommendations to the County Commissioners on various
21 aspects of the comprehensive plan including assumptions on which to base the size of the
22 urban growth areas (UGAs). Exhibits 1-35. The minutes of the Steering Committee show
23 that the Steering Committee gathered and analyzed a wide range of opinion and analysis
24 based on studies done by diverse groups and the Plan Monitoring Technical Committee's
25 (PMTAC) land supply assumptions for sizing the UGA. Exhibits 1 – 35. In 2000, early in
26 the process, the PMTAC, composed of various technical staff, reached a consensus
27 recommendation on all the land supply assumptions for sizing the UGAs except one, the
28 assumption about the amount of land assumed to be devoted to infrastructure. For the
29 PMTAC, one remaining item of dispute, the PMTAC relied on its study of 50 subdivisions to
30
31
32

1 use 27.5 percent for infrastructure. Exhibit 637. The City of Vancouver's objections and
2 reasons for these objections to the population assumptions were considered by the Steering
3 Committee. The Steering Committee did not reach an agreement on the population
4 assumptions, and the County Commissioners made the decision on the population
5 assumptions for sizing UGAs.
6

7
8 CCNRC essentially argues that the County should have weighed the evidence differently in
9 choosing between proposals. GMA Appeal Brief of CCNRC Issues 21, 23, 6, and 22 at
10 17-18. This is not sufficient to show that the County was clearly erroneous.
11

12 **Conclusion:** In light of the conflicting data, the thorough analysis and discussion by the
13 staff and elected officials of all Clark County jurisdictions and special districts, an open
14 public process that involved a diversity of opinion, and the decisions Clark County made in
15 regard to the land capacity assumptions are within the discretion afforded to local elected
16 officials and are not clearly erroneous according to RCW 36.70A.320.
17

18 19 **B. Consistency Challenges**

20 Positions of the Parties

21 CCNRC claims that the Clark County Plan is internally inconsistent and violates the
22 requirement in RCW 36.70A.070 that all comprehensive plan elements must be internally
23 consistent by using a different figure for projected future population in its land capacity
24 analysis than it uses in its capital facilities element. CCNRC Appeal Brief Issues at 18.
25

26
27 CCNRC also asserts that the County's plan fails to comply with RCW 36.70A.215 because it
28 is not consistent with the plan of the City of Vancouver. CCNRC Appeal Brief at 19. The
29 City of Vancouver's land capacity analysis shows room for 95,000 new people and 59,000
30 new jobs while the County's analysis shows room for only 79,000 new people and 39,000
31 new jobs.
32

1 CCNRC says that the land capacity analysis, by failing to include all the developable land
2 and using inaccurate growth assumptions, violates 36.70A.100 and 110. The alleged
3 inconsistency is in violation of 36.70A.215. Because the County did not correct this
4 inconsistency, Petitioner contends this violates RCW 36.70A.215.
5

6
7 The County cites the Compliance Order - Transportation (November 16, 2000) in *Achen v.*
8 *Clark County*, WWGMHB Case No. 95-2-0067 to argue that there is no absolute
9 requirement that the population projections used in a comprehensive plan be the same in
10 every part of the plan. In *Achen*, the Board found compliant a planning horizon for
11 transportation planning that was different from that used in the land use element. The
12 County says, the transportation projections used here are higher than the population
13 projections due to the added capacity provided for by the market factor. Clark County Brief
14 at 21.
15

16
17 The County argues that the discrepancy between Vancouver's land capacity assumptions
18 and the County's may result from the fact that Vancouver has more capacity to invest in
19 infrastructure improvements within the City, particularly in the downtown, than do the County
20 and the other cities in Clark County.
21

22 **Board Analysis**

23 Inconsistency among the elements of Clark County's Plan

24 The internal consistency requirement for comprehensive plans arises from RCW
25 36.70A.070 which provides, in pertinent part:
26

27 The plan shall be an internally consistent document and all elements shall be
28 consistent with the future land use map.
29

30 The County acknowledges that the population forecast used for the basis of the County
31 CP's land use element is different from the population used for transportation forecasting.
32

1 The County says that this is due to the use of a market factor for commercial and industrial
2 lands.

3
4 We agree with the County's statement that using a higher population for transportation
5 planning is a conservative and prudent approach to planning for future transportation
6 improvements that works to fiscally constrain Clark County's transportation plan.

7
8 Internal consistency among the parts of a comprehensive plan is defined in the Procedural
9 Criteria (WAC 365-195-500):

10 This means that each part of the plan should be integrated with all other parts and
11 that all should be capable of implementation together. Internal consistency involves
12 at least two aspects:

- 13 1. Ability of physical aspects of the plan to coexist on available land.
- 14 2. Ability of the plan to provide that adequate public facilities are available when
15 the impacts of development occur (concurrency).

16 In this case the larger numbers utilized for transportation planning do not interfere with the
17 ability of the physical aspects of the plan to coexist on available land; they simply provide a
18 greater cushion for adequate transportation planning to support development. Second, the
19 larger population projections for transportation planning purposes actually could further the
20 plan's ability to provide for adequate public facilities, cause more phasing, and bring
21 possible levels of service deficiencies into sharper focus during the County's annual review
22 of its annual transportation plan update.

23
24
25 The inconsistency challenge as to the differences between the City of Vancouver's plan and
26 the County's plan is based on RCW 36.70A.215(4):

27 If the evaluation required by subsection (3) of this section demonstrates an
28 inconsistency between what has occurred since the adoption of the county-wide
29 planning policies and the county and city comprehensive plans and development
30 regulations and what was envisioned in those policies and plans and the planning
31 goals and the requirements of this chapter, as the inconsistency relates to the
32 evaluation factors specified in subsection (3) of this section, the county and its cities
shall adopt and implement measures that are reasonably likely to increase
consistency during the subsequent five-year period. If necessary, a county, in

1 consultation with its cities as required by RW 36.70A.210, shall adopt amendments to
2 county-wide planning policies to increase consistency. The county and its cities shall
3 annually monitor the measures adopted under this subsection to determine their
4 effect and may revise or rescind them as appropriate.

5 This provision of the GMA does not require consistency between the city and county
6 comprehensive plans. To bring a colorable claim for violation of this provision, a petitioner
7 would have to base the challenge in the evaluation component of RCW 36.70A.215(3). This
8 CCNRC has failed to do.

9
10
11 CCNRC also alleges a failure to comply with RCW 36.70A.110:

12 The comprehensive plan of each county or city that is adopted pursuant to RCW
13 36.70A.040 shall be coordinated with, and consistent with, the comprehensive plans
14 adopted pursuant to RCW 36.70A.040 of other counties or cities with which the
15 county or city has, in part, common borders or related regional issues.
16 RCW 36.70A.110.

17 The City of Vancouver adopted its comprehensive plan before Clark County, which included
18 different land capacity assumptions and UGA boundary. Exhibit 775 at 82, 84. The
19 difference in their assumptions is how long each jurisdiction believes that the UGA will
20 endure. The City expects to be able to redevelop and infill areas within the City's UGA at a
21 rate that exceeds the County's assumptions. Exhibit 130 at 59. The County recognizes that
22 the City has adopted this strategy but does not adopt it for the county as a whole. The
23 County attributes the differences to the limitations of its vacant buildable lands modeling and
24 the differences in the capacity of the county and the city for using discretionary funds to
25 promote infilling in the manner Vancouver has.
26
27

28
29 Consistency, we have held, means that no feature of the plan or regulation is incompatible
30 with any other feature of the plan or regulation. *CMV v. Mount Vernon*, WWGMHB 98-2-
31 0006 (July 23, 1998, Final Decision and Order). Said another way, no feature of one plan
32 may preclude achievement of any other feature of that plan or any other plan. *Carlson v.*

1 *San Juan County, WWGMHB 00-2-0016 (September 15, 2000, Final Decision and Order).*
2 Here the urban growth area boundary and land capacity assumptions of the City and the
3 County differ but do not affect the achievement of any feature of either plan. RCW
4 36.70A.110(2) places the ultimate responsibility of sizing the urban growth areas with the
5 County. This includes the designation of the urban growth boundary and assumptions used
6 to base the UGA's size.
7

8
9 Further, the County was not unsympathetic to Vancouver's desire for infilling, downtown
10 redevelopment, and willingness to invest in infilling incentives. The County included
11 mechanisms in its plan to mitigate and monitor for these differences in the vacant land
12 capacity analysis and infill rate. These measures are:

13 (1) urban holding overlays in the Vancouver UGA that will phase development and
14 allow Vancouver to concentrate its development in its urban core and near already
15 available infrastructure – a laudable goal, and

16 (2) the implementation of County-wide Planning Policy 1.1.17 that requires each
17 municipality within Clark County to annually provide parcel specific information on
18 land developed or permitted in residential, commercial, and industrial designations for
19 the purpose of monitoring and analyzing potential development and employment
20 capacity that will help both jurisdictions adjust assumptions based on actual data.

21
22 **Conclusion:** We find that the use of greater population projection figures for transportation
23 planning purposes than used in the land use element does not create an internal
24 inconsistency in the plan since the use of such larger figures actually promotes prudent
25 transportation planning and does not interfere with any other planning purposes.
26 Therefore, the Board does not find this difference in population forecasts is clearly
27 erroneous. RCW 36.70A.320(2).
28

29
30 Further, the Board finds the County has not violated RCW 36.70A.100 or RCW 36.70A.215
31 with regard to the differences in the City of Vancouver and Clark County's land capacity
32

1 assumptions; those differences do not create an inconsistency precluding achievement of
2 any other feature of either plan.

3
4 ***Issue No. 21: Did Clark County violate RCW 36.70A.070(3) and RCW 36.70A.020(12)***
5 ***by failing to include at least a six-year financing plan for public school facilities***
6 ***within projected funding capacities that clearly identifies sources of public money by***
7 ***allocating any residential growth to, and in the designation of Urban Growth Areas for***
8 ***the City of Battle Ground, and the portion of Vancouver’s Urban Growth Area served***
9 ***by the Battle Ground School District, where Clark County’s Capital Facilities Plan***
10 ***identifies serious inadequacies in school levels of service and identifies no credible***
11 ***or probable funding to correct school deficiencies? (Case No. 04-2-0023).***

12 **Positions of the Parties**

13 Petitioner’s Position

14 Petitioner CCNRC argues that Clark County has allocated new growth to urban growth
15 areas without regard to existing deficiencies in school facilities and lack of funding to correct
16 these deficiencies. Petitioner contends that this creates a significant concurrency problem
17 and that concurrency for these facilities is a requirement, not just a goal and cites the
18 July 16, 1996, Final Decision and Order in *Taxpayers v. the City of Oak Harbor*, WWGMHB
19 Case No. 96-2-0002 (*Taxpayers*) support this contention. CCNRC Appeal Brief at 5 and 6.
20 Petitioner alleges the County finds that schools are “necessary to support development” and
21 therefore, according to *Taxpayers*, these facilities must comply with RCW 36.70A.020(12)
22 and direct concurrency requirements. Furthermore, Petitioner argues that it is inconsistent
23 for the County to impose impact fees for schools as a facility needed to support new growth,
24 and then argue that schools are not a necessary facility. CCNRC Reply Brief (May 24,
25 2005) at 6 and 7.
26
27

28
29 CCNRC argues that the County has allocated most of its current urban growth to the
30 Vancouver and Battle Ground urban growth areas (UGAs) and made UGA expansions in
31 these UGAs. These are locations that the Battle Ground School District serves. Petitioner
32 states that the County’s own analysis shows the Battle Ground School District is currently

1 over capacity in 14 of its 16 schools, would need 10 to 12 new schools to serve the
2 additional population in the expanded UGAs, as well as 3 schools to cure existing
3 deficiencies, and has a 90 million dollar deficit for meeting current needs. Petitioner argues
4 that voter approved bonds needed to finance these new school facilities will fail to
5 materialize based on the past failure of Battle Ground School District school bond
6 proposals. CCNRC Appeal Brief at 6 and 7.
7

8
9 CCNRC also claims that the Clark County comprehensive plan and supporting documents
10 contain no specific Level of Service (LOS) reduction other than a vague reference to future
11 use of portable classrooms. Petitioner contends that the County's plan doesn't, but should
12 include information on the cost, funding options, expansion plans, and locations for the use
13 of portables. Petitioner concludes that this failure to describe a reduction in the LOS or
14 reassess the land use element in light of capital facilities deficit for schools described above
15 violate RCW 36.70A.070(3) and RCW 36.70A.020(12). *Ibid* at 7 and 8.
16
17

18 County and Intervenor's Response

19 Clark County and Gramor Oregon, Inc., John Somarakis, Robert Frasier, and Gary
20 Rademacher, Intervenor, maintain that the County can distinguish between facilities for
21 which it can require direct concurrency and those for which it finds "indirect concurrency."
22 Both the County and the Intervenor argue that this is consistent with this Board's holding in
23 *Taxpayers for Responsible Government v. City of Oak Harbor*, WWGMHB Case No. 96-2-
24 0002 (Final Decision and Order, July 16, 1996). County's Appeal Brief at 14 and 15. The
25 County contends that the Battle Ground School District did not request that direct
26 concurrency be required for its school facilities. County's Appeal Brief at 14.
27
28

29
30 Clark County states the Battle Ground School District uses portables to address growth
31 impacts and voter approved bonds and state funds to finance permanent school facilities.
32

1 The County points out the nature of school facility funding is that it depends on the
2 precariousness of voter approved bond issues and the showing of need by school districts
3 to qualify for state funding. The County argues that this funding reality makes it impossible
4 to insist that no growth be allocated to areas where deficiencies exist in permanent school
5 facilities. Intervenors point out that Battle Ground School District voters approved a bond
6 issue this spring, after the County's comprehensive plan adoption that fully funded these
7 school district's planned permanent facilities for the next six years. *Ibid* at 12 and 13.
8

9
10 Petitioner replies that the bond issue will not fully fund these facilities and that even though
11 the school bond issue passed, the County based its capital facilities plan on the assumption
12 that the bond issue's passage was unlikely. CCNRC Reply at 8.
13

14 **Board Analysis**

15
16 Petitioner argues that the County's decision not to require permanent school facilities for the
17 Battle Ground School District at the time of development and to require only what the
18 County calls "indirect concurrency" for schools violates RCW 36.70A.070(12) and RCW
19 36.70A.070A(3) due to the fact that the County imposes impact fees for schools. Through
20 this decision, CCNRC argues the County has decided that permanent school facilities "are
21 necessary to serve new growth and development,"⁴ and should have required what the
22 County calls "direct concurrency" by which the County requires facilities to support growth to
23 be in place at the time of occupancy. Petitioner also cites the County's assumption that
24 permanent facilities will be provided by successful Battle Ground School District bond
25 issues, which have had a history of failure. This unsupported assumption, Petitioner
26 argues, causes the County's comprehensive plan not to comply with RCW 36.70A.070(3)(e)
27 and RCW 36.70A.020(12). The County, on the other hand, maintains that it has more
28
29
30

31 _____
32 ⁴ RCW 82.02.050 (1)(b).

1 discretion on how to provide for these facilities. All parties argue that their positions are
2 consistent with this Board's Final Decision and Order in *Taxpayers*.

3
4 For schools, as well as other county-owned facilities and facilities owned by other entities,
5 the County chose to use what it calls "indirect concurrency." Clark County defines indirect
6 concurrency as follows:
7

8 Indirect concurrency include storm drainage, public schools, parks, fire
9 Protection, law enforcement, solid waste disposal, county buildings, electricity,
10 natural gas, and telecommunications. These services are necessary to support
11 growth in varying degrees, but have not been identified by the GMA as critical
12 facilities to be applied using direct concurrency standards as in the case of roads,
13 sewers, and water facilities.

14 Clark County 20 Year Growth Management Plan 2003 – 2023 (County CP) at 6-10.

15 To determine whether this concept is consistent with the GMA, we will examine the statutes
16 that apply, pertinent provisions of WAC 365-195⁵, and past Board decisions.

17
18 WAC 365-195-210 says "concurrency" means adequate public facilities are available when
19 the impacts of development occur, and that this definition includes "adequate public
20 facilities" and "available public facilities." The same guideline defines "adequate public
21 facilities as facilities which have the capacity to serve development with decreasing levels of
22 service below locally established minimums. WAC 365-195-210 also describes available
23 public facilities that are in place to provide facilities or services within a specified period of
24 time.
25

26
27 Concurrency is incorporated in the GMA in several ways. The first place is Goal 12 of the
28 Act which states:
29

30
31
32 ⁵ Guidance provided by the Washington Department of Community, Trade and Economic Development for
implementing the requirements of the GMA.

1 Ensure that those public facilities and services necessary to support development
2 shall be adequate to serve the development at the time the development is available
3 for occupancy and use without decreasing current service levels below locally
4 established minimum standards.

5 RCW 36.70A.020(12).

6 The requirements for the capital facilities elements also incorporate elements of
7 concurrency:

8 A capital facilities element consisting of: ...e) a requirement to reassess the land use
9 element if probable funding falls short of meeting existing needs and to ensure that
10 the land use element, capital facilities plan element, and financing plan within the
11 capital facilities plan element are coordinated and consistent.

12 RCW 36.70A.070 (3)(e).

13 Also, the requirements for a comprehensive plan's transportation element requirement
14 requires concurrency for local transportation facilities:

15 A transportation element that implements, and is consistent with, the land use
16 element: (a) The transportation element shall include the following subelements: ...
17 (D) Specific actions and requirements for bringing into compliance locally owned
18 transportation facilities or services that are below an established level of service
19 standard.... (b) After adoption of the comprehensive plan by jurisdictions required to
20 plan or who choose to plan under RCW [36.70A.040](#), local jurisdictions must adopt
21 and enforce ordinances which prohibit development approval if the development
22 causes the level of service on a locally owned transportation facility to decline below
23 the standards adopted in the transportation element of the comprehensive plan,
24 unless transportation improvements or strategies to accommodate the impacts of
25 development are made concurrent with the development..."concurrent with the
26 development" shall mean that improvements or strategies are in place at the time of
27 development, or that a financial commitment is in place to complete the
28 improvements or strategies within six years.

29 RCW 36.70A.070(6)(a) and (b).

30 The Board's decision in *Taxpayers* also discusses the role of concurrency for various capital
31 facilities. In that decision, the Board said:

32 The general scheme of the GMA is that within the parameters of the goals and
requirements of the Act, local governments have a wide variety of discretion to make
localized decisions. *Clark County*... In determining what public facilities and services
are "necessary to support development" a local government must consider all
aspects of public facilities and public services and make a reasoned decision as to

1 what facilities and services are necessary and how to subject those facilities and
2 services to concurrency requirements. The resulting decision must be within the
3 bounds of discretion afforded to local governments by the Act. *Clark County 1.*
4 *Taxpayers for Responsible Government v. City of Oak Harbor*, WWGMHB 96-2-0002 (Final
5 Decision and Order).

6 In making this decision the Board looked to WAC 365-195-070(3) for guidance. That
7 guidance says:

8 The achievement of concurrency should be sought with respect to public facilities in
9 addition to transportation facilities. The list of such facilities should be locally defined.
10 The department recommends that at least domestic water systems and sanitary
11 sewer systems be added within urban growth areas, and domestic water systems
12 outside of UGAs....With respect to facilities other than transportation and domestic
13 water systems local jurisdictions can fashion their own regulatory responses...
14 WAC 365-195-070(3).

15 The County has followed the advice provided in WAC 365-195-070(3), the same advice the
16 Board looked to in *Taxpayers*. The County requires concurrency for transportation, water,
17 and sanitary sewer systems. For schools, as well as other county-owned facilities and
18 facilities owned by other entities, the County chose "indirect concurrency."

19
20 We do not agree with the Petitioner that because the County has agreed to impose impact
21 fees developed by the school district that the County has decided *de facto* to provide direct
22 concurrency. For cities and counties planning according RCW 36.70A.040, impact fees are
23 authorized by the Legislature as a source for some, but not all of the funding for certain
24 capital facilities delineated in counties and cities' capital facilities plan. RCW 82.02.060.
25 Imposition of impact fees is a decision to employ a certain authorized funding source, not a
26 decision to impose concurrency. Also, the County has not decided that schools are not
27 necessary to support growth, but that permanent facilities will not necessarily be in place at
28 the time of development.
29
30
31
32

1 Clark County demonstrates the reasonableness of choosing indirect concurrency as a way
2 of providing for public schools by describing the State of Washington school funding
3 regulations:

4 State funding regulations result in new facilities usually being constructed after the
5 growth has occurred and need can be demonstrated. School districts are also
6 cautious not to overbuild permanent buildings since the average lifespan of a school
7 is fifty years and growth may significantly increase and declined during that time. For
8 these reasons, "portable" and "temporary" classrooms are common in fast growing
9 school districts. Clark County CP at 6-12.

10 The Board finds the County's decision to use indirect concurrency as a way for schools to
11 provide for facilities to support development is reasonable due the complex and multi-
12 faceted method that school districts in general, and the Battle Ground School District, in
13 particular, must rely on to fund new school facilities, by combining state funding based on
14 need and state priorities, voter supported bond issues, and impact fees. This complicated
15 and often controversial funding strategy makes the County's choice of subjecting schools to
16 "indirect concurrency" reasonable and consistent with the local discretion included in the
17 advice given by WAC 365-195-070(3). WAC 365-195-070(3) provides guidance on how to
18 provide for public facilities, such as schools, as required by RCW 36.70A.070(3) and for
19 direction for fulfilling Goal 12, the public facilities and services goal of the GMA.
20
21

22 Just as cities and counties have discretion to determine for which facilities they will mandate
23 concurrency, they also have discretion as to the level of service new development will be
24 required to meet. The Legislature set no minimum or maximum standards for public
25 facilities and services and left this to local governments to determine. If the local
26 government determines through the development process that the locally set level of service
27 can't be met, it has several options. Local governments can adjust their capital facilities
28 plan to add more money, they can lower the level of service, or they can reassess the land
29 use element to allow less development or phase development. In this case, Petitioner
30 implies that the level of service for schools that the District set and the level of service the
31
32

1 County adopted is permanent school facilities at the time of development. However, the
2 record shows that this is not the case. The level of service that the County and the District
3 set is permanent facilities over the life of the plan with temporary portable facilities to fill the
4 needs when other sources of funds are delayed. While a higher level of service might be
5 desirable, it is within the County's discretion to set a lower one, without violating RCW
6 36.70A.070(3).
7

8
9 The County's capital facilities plan describes the level of service for school facilities in the
10 urban area as "full range of school facilities." County's CP at 6 – 34. The Battle Ground
11 School District capital facilities plan (CIP) for 2003 - 2009, adopted by reference as part of
12 the County's comprehensive plan, sets a level of service based on standards set by the
13 State Board of Education and Washington Superintendent of Public Instruction. This CIP
14 portrays how the District plans to fund permanent facilities through the combination of funds
15 described above and discloses that it will use impact fees to serve short-term and
16 immediate needs. Exhibit 325 at 4.
17

18
19 Furthermore, Clark County capital facilities planning goals and policies commit to working
20 cooperatively with schools to ensure these facilities meet RCW 58.17.110's requirement that
21 adequate school facilities will be provided before subdivision approval. Schools Goal and
22 Policy 6.9.1, County CP at 6-31. The County's capital facilities plan generally explains the
23 new facilities that the Battle Ground School District plans to build and how the District plans
24 to finance these facilities. A footnote discloses that 4.8 million dollars collected from impact
25 fees is for portables. County CP at 6 – 14. Capital facilities policy 6.5.7 also responsibly
26 commits the County to provide impact fees as a funding source for schools. County CP
27 at 6 – 14.
28
29

30
31 While the record indicates that the County Commissioners were clearly concerned about the
32 past failure of the District's school levies, the record shows that the Commissioners and

1 School District determined that urban holding zones could mitigate the pressure on
2 permanent facilities. Also, after the County's CP adoption, the voters in the School District
3 passed a bond issue that secured funding for permanent facilities for the next six years. We
4 also find that RCW 36.70A.070(3)(c) does not demand that the costs and locations of
5 portables be included in the CIP due to their temporary nature. Also, the successful bond
6 levy, although passed after the adoption of the comprehensive plan, makes permanent
7 financially feasible during the first six years of the plan.
8

9
10 **Conclusion:** Based on the information included in the County's capital facilities element,
11 the District's capital facilities element adopted by the County as part of its plan, and the
12 capital facilities goals and policies provide disclosure to the citizens of Clark County on what
13 level of service and type of facilities that can be expected for schools in the Battle Ground
14 School District within the UGAs served by the district. This information makes the capital
15 facilities plan and the land use element coordinated and consistent and compliant with RCW
16 36.70A.070(3) and the direction given by RCW 36.70A.020(12). Petitioner has not met its
17 burden of proof that the County's decision to subject school facilities to "indirect
18 concurrency" is clearly erroneous according to RCW 36.70A.320(2).
19
20

21 ***Issue No. 22: Did Clark County violate RCW 36.70A.020(12)'s goal 12 on public***
22 ***facilities and services, RCW 36.70A.070(3)'s provision on Capital Facilities, RCW***
23 ***36.70A.070(6)'s provisions on transportation, and RCW 36.70A.070's provision on***
24 ***consistency, by adopting Urban Holding designations for Vancouver, Battle Ground,***
25 ***Camas, LaCenter, Ridgefield, Washougal, and Woodland that do not require full***
26 ***implementation and consistency with all applicable Capital Facilities Plans? (Case***
27 ***No. 04-2-0023).***

28 Petitioner's Position

29 Petitioner CCNRC describes the County's comprehensive plan's Urban Holding designation
30 as a development phasing mechanism, where properties given this designation must meet
31 certain criteria before development at urban standards is allowed. While CCNRC
32

1 acknowledges that this specific phasing requirement is not required by the GMA, CCNRC
2 argues that when the County adopts this mechanism, then the mechanism must comply with
3 the GMA. CCNRC's Appeal Brief at 20 and 21. CCNRC contends the Urban Holding
4 designation does not comply because to have the Urban Holding designation lifted,
5 properties must only demonstrate that urban services are available rather than meeting the
6 capital facilities plan's LOS. Petitioner asserts lack of this requirement makes the Urban
7 Holding designation inconsistent with Goal 12 of the GMA that requires public facilities and
8 services to support development, and GMA capital facilities planning, transportation
9 concurrency, and consistency requirements. CCNRC's Appeal Brief at 20 and 21.
10 CCNRC says that this designation results in project-by-project planning without capital
11 facilities standards. Petitioner argues that the Board has said that failure to set an LOS is
12 failure to engage in appropriate capital facilities planning and cites the October 15, 2002,
13 compliance order Case No. 02-2-0008, *Klein v. San Juan County*. *Ibid* at 21.
14
15

16
17 CCNRC points to various places in the record where Clark County suggested that the Urban
18 Holding designations would ensure that capital facilities would be provided to serve urban
19 growth expansions. However, CCNRC argues that property owners only have to show that
20 full urban services are available and can connect to these services without having the
21 County address subarea or system-wide needs, LOS issues, feasible funding, or other
22 capital facilities planning issues required by the GMA. *Ibid* at 24.
23

24 25 County's Position

26 Clark County maintains that the Urban Holding technique is an innovative technique, not
27 required by the GMA; therefore, the technique is not subject to GMA requirements. The
28 County asserts that the GMA does not require the impossible; full implementation of the
29 capital facilities plan before a property can be included in the urban growth area. Finally,
30 the County states concurrency goals and requirements prevent premature development of
31 the UGA without urban services. Clark County Brief at 22.
32

1 **Board Analysis**

2 RCW 36.70A.110(3) sets out the requirements for locating urban growth areas. It provides:

3 Urban growth should be located first in areas already characterized by urban growth
4 that have adequate existing public facilities and services, second in areas
5 characterized by urban growth that will be adequately served by a combination of

6 both existing and public facilities and services that are provided by either public or
7 private resources, and third, in remaining portions of the UGA.

8 RCW 36.70A.110(3).

9

10 This requirement clearly suggests that phasing of growth was envisioned in the GMA to
11 prevent low density development within the UGA before urban services are available.

12

13

14 Clark County's urban holding designation is an overlay designation within the County's
15 urban growth areas (UGAs) that establishes maximum residential densities of one unit per
16 10 acres, one unit to 20 acres, and one unit to 40 acres until urban services are available.

17 When services are available, the area can develop to its ultimate urban density. County CP
18 at 1-16. Both CCNRC and the County agree that the Urban Holding designation is an

19

20 innovative technique used to accomplish phasing within the urban growth areas (UGAs), but
21 disagree on whether these areas are, or even need to be compliant with the GMA. The

22

23 Board agrees with CCNRC on this threshold issue. While there are other techniques that
24 the County could use to phase growth, the County chose the Urban Holding overlay as its

25

26 phasing method; therefore it must comply with the GMA. RCW 36.70A.040. Further, this
27 Board has held that the GMA obligates the County to develop policies "to ensure that

28

29 development [in the UGAs] is truly urban and efficiently phased," particularly if the County
30 adopts a large UGA. *Abenroth v. Skagit County*, WWGMHB Case No. 04-2-0060c (Final

31

32 Decision and Order, January 23, 1997). While we agree with the County that according to
RCW 36.70A.110(3), all capital facilities planning for UGAs need not be complete upon

33

comprehensive plan's adoption, the Board has held in several decisions that if the capital
facilities cannot be provided at the time of the plan adoption, a compliant phasing plan is

1 essential to prevent sprawl and comply with RCW 36.70A.110(3) and RCW 36.70A.020(2).
2 See *Evergreen Islands v. Skagit County*, WWGMHB Case No. 00-2-0046c (Final Decision
3 and Order, February 6, 2001), *Custer v. Whatcom County*, WWGMHB Case No. 96-2-0008
4 (Final Decision and Order, September 12, 1998), and *TRC v. Oak Harbor*, WWGMHB Case
5 No. 96-2-0002 (Final Decision and Order, July 16, 1996).
6

7
8 In fact, Clark County used urban holding zones in its first GMA comprehensive plan adopted
9 in 1995 to phase growth. In this Board's September 20, 1995, Final Decision and Order in
10 *Achen v. Clark County*, WWGMHB Case No. 95-2-0067c, the Board found urban holding
11 areas a compliant phasing method for phasing growth:

12 The concept of the urban holding area within an urban growth area furthers the
13 concurrency goals and requirements of the Act. The use of such a concept is in the
14 discretion afforded to local decision makers.

15 *Achen v. Clark County*, WWGMHB Case No. 95-2-0067c (Final Decision and Order,
16 September 20, 1995).

17
18 The record is replete with evidence that shows that the County, in fact, believes it needs the
19 Urban Holding overlay to make its plan compliant. The Final Environmental Impact
20 Statement (FEIS), the County's Capital Facilities Summary Report, and advice from the
21 County's legal counsel show that the County had information that the urban holding zone
22 was essential to making the plan's preferred alternative compliant due to the lack of
23 completion of a full range of capital facilities planning for the UGAs. Exhibit 65 (FEIS) at 62,
24 Clark County Capital Facilities Plan Summary Report at 27 and 75, and Exhibit 58 at 13.
25

26
27 Therefore, the Board will examine the County's use of the Urban Holding overlay as an
28 effective and compliant tool for phasing urban growth within its UGA. The County's CP
29 contains similar criteria for removing the Urban Holding designations in all of the County's
30 municipal UGAs. These criteria include the following provision for removal of an urban
31 holding overlay designation: "removal of urban holding shall be by subarea appropriate for
32

1 consideration for appropriate capital facilities, and not by individual site specific
2 properties...” County CP at 12-5 - 12-19. Removal of the urban holding zone also requires
3 a decision of the County Commissioners. County CP at 12-5 to 12-9. Certain properties
4 require a master plan. County’s CP at 12-6 to 12-9.
5

6
7 The County maintains that its concurrency ordinance will ensure that urban services will be
8 available to serve the development when urban levels of development are allowed. In
9 response to Board questions, the County provided copies of its concurrency regulations.
10 These regulations are detailed and explicit. Clark County Code 40.350.020.
11 Applicants for development permits in UGAs also must have a review by sewer and water
12 providers and connection to the public sewer and water are required, with a few limited
13 exceptions. Clark County Code Sections 40.370.10, 40.370.20, and 40.510.050.
14

15
16 **Conclusion:** We find that the County’s Special Implementation Procedures, its thorough
17 and explicit concurrency regulations, and its permitting process requirements rebut
18 CCNRC’s claims that the Urban Holding overlays violate RCW 36.70A.070(3) and RCW
19 36.70A.020(12). In fact, we observe that the Urban Holding designations here work to
20 phase development by keeping land from developing at sprawl-like densities before
21 necessary urban services are available. This will make it possible to achieve higher urban
22 densities eventually. Petitioner has not met its burden of proof that the Urban Holding
23 designations do not comply with the RCW 36.70A.070(3) and RCW 36.70A.020(12)
24 pursuant to RCW 36.70A.320(2).
25

26
27 ***Issue No. 23: Did Clark County violate RCW 36.70A.070(3), (4) and (6) and RCW***
28 ***36.70A.210(1) and (3) by failing to identify state and local transportation system***
29 ***needs to meet current and future demands, and to include a multi-year financing plan***
30 ***based on these needs, and failing to reassess land use plans if probable funding falls***
31 ***short? (Case No. 04-2-0023).***
32

1 **Positions of the Parties**

2 Petitioner's Position

3 Petitioner CCNRC argues that by not responding to the funding and level of service (LOS)
4 deficiencies, Clark County's comprehensive plan fails to implement the concurrency
5 requirement of the GMA. CCNRC maintains that adequate transportation facilities
6 constitute the most significant facility needs in both the size and the cost of the concurrency
7 problem. GMA Appeal Brief of CCNRC Issues 21, 23, 6, and 22 at 9.
8

9
10 CCNRC notes that the Draft Environmental Impact Statement (DEIS) and the Final
11 Environmental Impact Statement (FEIS) depict the deficiencies of Washington State
12 Highway System in Clark County but that the County "responded by simply removing the
13 State's funding deficiencies from the FEIS and the Capital Facilities Plan analysis." GMA
14 Appeal Brief of CCNRC Issues 21, 23, 6, and 22 at 10. The DEIS estimates the cost of
15 improvements to the state and local transportation system ranging from \$1.8 to \$2.4 billion,
16 and the FEIS estimates the state system cost for the preferred alternative is \$1.3 billion.
17
18 *Ibid* at 9.

19
20 CCNRC asserts that the Washington State Department of Transportation has severe
21 funding problems and plans to fund only four state system improvements in Clark County
22 during the comprehensive plan's 20-year planning period; this is only half of what historically
23 been spent on the state system in Clark County. *Ibid* at 9-10. Petitioner contends that the
24 County's comprehensive plan will dramatically increase the use of the state system. *Ibid*
25 at 11. Petitioner states that the County's final adopted County CP shows that it would
26 cause 18 links in the state system to fail, but contends that the failures will be worse than
27 this, due to the plan's speculative assumption that reasonably funded projects will be built.
28
29 *Ibid* at 11. CCNRC observes that even those projects are unlikely to be built due to the
30 state's severe funding problems. *Ibid* at 12.
31
32

1 CCNRC contends that the GMA requires analysis of funding capability in order to assess
2 public facility needs against public resources. CCNRC argues that the plan's lack of needs,
3 costs, and funding capability analysis violates RCW 36.70A.070(6), and the plan's failure to
4 reassess the land use element in light of these deficiencies violates RCW 36.70A.070(3)(e).
5 CCNRC also argues that the County had to lower its adopted level of service standards;
6 raise the needed funding; or reassess its land use plan. *Ibid* at 13. The failure to do any of
7 these, CCNRC argues, is reversible error. *Ibid*.
8

9
10 County and Intervenor's Position

11 The County contends the fundamental flaw in CCNRC's argument is that the law upon
12 which CCNRC relies has been amended. Clark County Brief at 16. The Final Decision and
13 Order in *Achen v. Clark County*, WWGMHB Case No. 95-2-0067c was issued in 1995.
14 RCW 36.70A.070(6) was amended in 1998 to eliminate any "consistency" requirement with
15 state transportation facilities. *Ibid*. RCW 36.70A.070(6)(iii)(C) now provides that the county
16 plan must reflect the level of service standards for state highways but only for the purposes
17 of monitoring performance of the system, evaluating improvement strategies, and
18 coordinating the county's road program with the state department of transportation's six-
19 year program. *Ibid*.
20
21

22 The County and Intervenor assert that the GMA requires only the following: identification of
23 impacts of local land use assumptions on state highway LOS standards and projected
24 needs. The purpose for identifying these in the plan is to assure monitoring, coordination,
25 and planning between the local and state systems. Clark County Brief at 16.
26
27

28 The County acknowledges that under the current state funding scenario the state highway
29 system in Clark County will not maintain the established LOS over the 20-year planning
30 period. However, the County argues, the Board is no longer a forum in which deficiencies of
31 the state transportation system are addressed. *Ibid*.
32

1 Intervenor notes that RCW 47.05.030 requires the State Transportation Commission to
2 adopt a six-year program to address the needs on state facilities and maintains that it is not
3 the County's obligation to fund state facilities. Intervenor's Brief at 13 and 14.
4

5 **Board Analysis**
6

7 The Legislature amended RCW 36.70A.070(6) in 1998 (after the *Achen* decision) to clarify
8 the planning obligations of cities and counties for state transportation facilities. The
9 statutory amendment eliminated the concurrency requirement in local plans for state
10 highways and facilities of statewide significance.⁶ RCW 36.70A.070(6)(a)(ii), RCW
11 36.70A.070(6)(iii)(C)(F), and RCW 36.70A.070(a)(iv)(B) describe the planning obligations
12 for cities and counties planning according to RCW 36.70A.040 for state transportation
13 facilities:
14

15 (6) A transportation element that implements, and is consistent with, the land use
16 element.

17 (a) The transportation element shall include the following subelements;

18 ...

19 (ii) Estimated traffic impacts to state-owned transportation facilities resulting
20 from land use assumptions to assist the department of transportation in
21 monitoring the performance of state facilities, to plan improvements for the
22 facilities, and to assess the impact of land-use decisions on state-owned
23 transportation facilities;.

24 (iii) Facilities and services needs, including:

25 : ...

26 (C) For state-owned transportation facilities, level of service standards
27 for highways, as prescribed in chapters [47.06](#) and [47.80](#) RCW, to
28 gauge the performance of the system. The purposes of reflecting level
29 of service standards for state highways in the local comprehensive plan
30 are to monitor the performance of the system, to evaluate improvement
31 strategies, and to facilitate coordination between the county's or city's
32 six-year street, road, or transit program and the department of
transportation's six-year investment program. ...

⁶ Legislative History listed at the end of RCW 36.70A.070(6).

1 (F) Identification of state and local system needs to meet current and
2 future demands. Identified needs on state-owned transportation
3 facilities must be consistent with the statewide multimodal
4 transportation plan required under chapter [47.06](#) RCW...
5 RCW 36.70A.070(6)(a)(ii), (6)(a)(iii)(C) and (F).

6 Therefore, the County's obligations relative to state highways in its plan is to estimate traffic
7 impacts to state-owned transportation facilities, to include state-adopted levels of service
8 standards for the purpose of monitoring the system's performance, evaluating improvement
9 strategies, and to identify the needs of state-owned transportation facilities consistent with
10 the state's multi-modal plan.
11

12
13 The Board concludes that the 1998 amendments to the GMA relieve the County from the
14 other requirements that CCNRC contends are the County's responsibility. In the past the
15 Board has concluded that the Legislature did not impose on counties and cities
16 requirements that are impossible to meet. See *Taxpayers for Responsible Government v.*
17 *City of Oak Harbor*, WWGMHB 96-2-0002 (July 16, 1996). The County has no authority to
18 alter levels of service standards for state transportation facilities. That authority rests with
19 the Washington State Transportation Commission. Nor does the County have responsibility
20 to make ultimate decisions concerning improvements to the state highway system, or to
21 raise needed funding. WSDOT has the responsibility for planning these facilities, while the
22 Legislature has the ultimate responsibility of deciding what facilities will be built and how
23 they will be funded. Without these assigned responsibilities or capabilities it is not possible
24 for the County to comply with RCW 36.70A.070(3) for state transportation facilities.
25 Therefore, CCNRC has not met its burden of proof that the county plan does not comply
26 with RCW 36.70A.070(3).
27
28
29

30 The County's CP includes the information required by RCW 36.70A.070(6)(a)(ii) and (iii)(C)
31 for state transportation facilities as follows: estimates of traffic volumes on state facilities at
32

1 CP 5-5(RCW 36.70A.070(6)(a)(ii)), existing deficiencies cause by traffic estimates at CP 5-6
2 (RCW 36.70A.070(6)(a)(ii)), future deficiencies at CP 5-7 (RCW 36.70A.070(6)(a)(iii)(F)),
3 and level of service standards for highways of state-wide and regional significance at CP 5-
4 8 (RCW 36.70A.070(a)(iii)(B)). The County used a traffic model based on proposed land
5 use patterns to project future traffic volumes, and worked with cities and counties, the
6 regional transportation council and the Washington State Department of Transportation to
7 identify future deficiencies. County CP at 5.
8

9
10 CCNRC ably describes the grim future for state transportation facilities in Clark County. The
11 County does not dispute this depiction and the County's transportation element reflects it.
12

13
14 In its Petition for Review, CCNRC alleges that the County CP violates 36.70A.070(4) and
15 36.70A.210 but in its brief does not argue how the CP violates these statutes. Therefore,
16 the Board will not address violations of those statutes.
17

18 **Conclusion:** The County CP's Transportation Element shows the County has completed
19 the requirements needed to be included in the plan in regard to state transportation
20 facilities. The County's CP complies with RCW 36.70A.070(3)(4)(6) and 36.70A.210(1)
21 and (3).
22

23
24 As for the other alleged violations of RCW 36.70A.070(6) and RCW 36.70A.070(3) for the
25 reasons cited above, we find that CCRNC has not carried its burden of proof that the County
26 erred in fulfilling the requirements of RCW 36.70A.070(6). For state highways of statewide
27 or regional significance, RCW 36.70A.070(3) does not apply.
28

29
30 ***Issue No. 40: Does adoption of Clark County Ordinance No. 2004-09-02 fail to comply***
31 ***with RCW 36.70A.020(1), RCW 36.70A.020(8), RCW 36.70A.040, RCW 36.70A.050, RCW***
32 ***36.70A.060 and RCW 36.70A.130 when the application of Urban Reserve and***
Industrial Urban Reserve designations to agricultural resource lands of long term

1 **commercial significance fails to encourage and conserve agricultural resource lands**
2 **and industry? (Case No. 04-2-0028).**

3
4 **Issue No. 41: Does adoption of Clark County Ordinance No. 2004-09-02 fail to comply**
5 **with RCW 36.70A.020(1), RCW 36.70A.020(10), RCW 36.70A.040, RCW 36.70A.060,**
6 **RCW 36.70A.110 and RCW 36.70A.130 when the application of Urban Reserve and**
7 **Industrial Urban Reserve designations to critical areas fails to protect the functions**
8 **and values of those areas and encourages future urban growth into areas**
9 **inappropriate to accommodate urban growth? (Case No. 04-2-0028).**

10 **Issue No. 42: Does adoption of Clark County Ordinance No. 2004-09-02 fail to comply**
11 **with RCW 36.70A.020(1), RCW 36.70A.020(8), RCW 36.70A.040, RCW 36.70A.050, RCW**
12 **36.70A.060, RCW 36.70A.110 and RCW 36.70A.110 when the comprehensive plan**
13 **definition for Urban Reserve regarding application to resource lands fails to**
14 **incorporate GMA criteria for designation of agricultural resource lands of long term**
15 **commercial significance? (Case No. 04-2-0028).**

16 **Issue No. 43: Does the continued validity of the violations of RCW Title 36.70A (The**
17 **Growth Management Act), described in Issue Nos. 40 and 42 above, substantially**
18 **interfere with the fulfillment of the goals of the Growth Management Act such that the**
19 **enactments at issue should be held invalid pursuant to RCW 36.70A.302? (Case No.**
20 **04-2-0028).**

21 At argument, Futurewise declared that it was abandoning Issue 41. We will discuss related
22 issues 40, 42, and 43 together.

23 Petitioner's Position

24 Petitioner Futurewise challenges both the Urban Reserve (UR) and the Industrial Urban
25 Reserve (IUR), which are overlay designations for the following four areas: Vancouver 179th
26 Street, Vancouver 162nd Street, City of Washougal, and City of Ridgefield. Futurewise cites
27 a Supreme Court Case⁷ that determined that RCW 36.70A.020(8), .060(1), and .170 when
28 read together created evidence of a legislative mandate to conserve agricultural land.
29 Futurewise's Prehearing Brief at 6. Futurewise maintains therefore Clark County has the
30

31
32 ⁷ *King County v. Central Puget Sound Hearings Board*, 142 Wn.2d 543 (2000).

1 responsibility to conserve lands that continue to meet the GMA's criteria for agricultural
2 lands of long-term commercial significance. Petitioner then shows how the lands that have
3 been included in the urban reserve overlay or industrial reserve overlay continue to meet
4 the GMA criteria for agricultural lands of long-term commercial significance. Futurewise's
5 Prehearing Brief (April 26, 2005) at 7 through 14.
6

7
8 Futurewise argues that the County should have applied GMA criteria for the designation of
9 agricultural lands of long-term commercial significance before it applied the UR or IUR
10 overlay to designated agricultural lands and should not have applied these overlay
11 designations since these lands still met the criteria for designation as agricultural lands.
12 Petitioner also asserts that once agricultural lands are designated, the County must adopt
13 regulations that assure these lands will be conserved and that the use of adjacent lands
14 does not interfere with the conservation of designated agricultural lands. Futurewise
15 contends that the UR and IUR overlays do not conserve designated lands or protect them
16 from interference from incompatible uses. Futurewise's Prehearing Brief at 13 and 14.
17

18
19 Therefore, Futurewise contends that these overlay designations violate the GMA's
20 conservation imperative in the following ways:
21

- 22 • Imposing urban overlays violates RCW 36.70A.060(1) because declaring these lands
23 are specifically targeted for urban designation discourages farmers from investing in
24 agriculture. Instead these overlays encourage farmers to begin planning for the day
25 the land will be no longer designated or zoned for agricultural land.
- 26 • These overlays by definition lead to de-designation of agricultural land and the loss of
27 farmlands affected by the overlays and therefore fails to conserve farmlands.
- 28 • By imposing these overlays to agricultural land, the County fails to protect the
29 adjacent farmland from incompatible development, creates a justification for
30 conversion of adjacent lands to urban development, and begins a perpetuating cycle
31 of conversion. Futurewise's Prehearing Brief at 2 and 3.
32

1 County's Position

2 Clark County says that this Board in its September 17, 1995, Final Decision and Order in
3 *Achen v. Clark County*, WWGMHB Case No. 95-2-0067c found the concepts of Urban
4 Reserve and Industrial Urban Reserve overlay designations acceptable if these lands that
5 met the County's agricultural designation criteria were not exclusively designated with
6 overlay, but were also designated as agricultural lands. The County cites this 1995 Final
7 Decision and Order and the December 17, 1997, Compliance Order in *Achen*. The County
8 notes that these designations were either contained in the 1994 County comprehensive plan
9 or were designated as a result of the remand work required by the *Achen*. The County
10 contends that the present challenges are foreclosed by the Board's 2nd Compliance Order
11 (December 17, 1997) in *Achen*. County's Appeal Brief at 3, 4, and 8.
12
13

14 The County maintains that it has adopted regulations to conserve designated agricultural
15 land and ensure that adjacent uses do not interfere with their conservation. These
16 regulations are compliant and have not been challenged. The County asserts that
17 challenged UR and IUR designations are truly conserved designated agricultural lands. *Ibid*
18 at 9.
19
20

21 The County argues that these lands have not been de-designated, are not part of a UGA,
22 and must go through a comprehensive amendment process to be de-designated. At the
23 time the designation of the lands change, then a challenge to the change would be
24 appropriate, but is not appropriate at this time, because the actual designation of the lands
25 where the overlay has been applied has not changed. *Ibid* at 11 and 12.
26
27

28 Intervenor's Position

29 Intervenor Renaissance Homes cites a letter submitted to the County as part of its update
30 process that argues that Intervenor's property (the 179th Street area) should not be
31 designated agricultural lands and should be part of the Vancouver UGA. In this letter,
32

1 Intervenor contends the property no longer meets the GMA criteria for agricultural land
2 designation. The reasons Intervenor uses to support his argument that its property should
3 be de-designated include the property's proximity to the I-5 and the Washington State
4 University –Vancouver Campus, some of the EIS's alternatives included the property in the
5 Vancouver UGA, utilities and services can be extended to the site easily, proximity to the
6 urban area, and that much of the property lacks prime soils. Exhibit "A" at 2 through 8.
7 Despite these reasons that Intervenor used to justify de-designation its property as
8 agricultural lands and for inclusion in the UGA, Intervenor notes that this property has been
9 designated agricultural land for 11 years. The County declined to de-designate the property
10 and include it in the Vancouver UGA during the adoption of the 2004 County CP adoption
11 process. Intervenor Renaissance Homes Response to Petitioner Futurewise Prehearing
12 Brief (May 17, 2005) at 2.
13
14

15 16 **Board's Analysis**

17 In its 1995 Final Decision and Order in *Achen v. Clark County*, WWGMHB Case No. 95-2-
18 0067c, the Board held that the UR and the IUR did not violate the GMA and commended it
19 as an "innovative technique":

20 Long range planning for a time-frame in excess of 20 years does not violate the GMA
21 and is a laudable planning achievement. We take official notice that other states with
22 longer histories of GMA planning than we, are experiencing problems with the
23 proliferation of 5 acre or less lots adjacent to urban growth boundaries when the time
24 for expansion of the UGA arrives. Contrary to some petitioners' assertions, GMA
25 does not require all planning to stop at the end of the 20 year period.

26 *Achen v. Clark County*, WWGMHB Case No. 97-2-0067c (Final Decision and Order,
27 September 20, 1995) at 33.

28 Nevertheless, the Board had concerns about the concept's execution. For Urban Reserve
29 and Industrial Urban Reserve Overlays to be compliant, the Board held that they could not
30 be designated as an overlay exclusively, that lands which had been given this overlay
31 designation which met the criteria for agricultural lands of long-term commercial significance
32

1 also needed to be designated as agricultural lands. Further, the Board stated prime
2 industrial lands in the UGAs needed to be protected in order not to cause premature
3 conversion of UR and IURs, and strict criteria for bringing land into the UGA was needed.
4

5 After the County addressed the Board's noncompliance issues, the Board found these
6 designations in compliance:
7

8 The County also placed an URA overlay over the RL designations. ...The areas in
9 dispute are now properly designated as resource lands and the overlay for post 20-
10 year planning purposes does not violate the GMA. Clark County is in compliance on
11 this issue.

12 *Achen v. Clark County*, WWGMHB Case No. 95-2-0067c (2nd Compliance Order,
13 December 17, 1997).

14 Three challenged overlay designations, Vancouver 179th Street, Washougal, and Ridgefield
15 Areas, have had these designations since the 1997 remand, and were found compliant at
16 that time. In the 2004 County CP, the County gave the Vancouver 117th Street and
17 Vancouver 162nd areas similar overlay designations as one method of implementing the
18 County CP's major themes to increase the jobs to population ratios by preserving large
19 parcels at key locations for future industrial sites.
20

21 The County has not changed the manner or the conditions in the way it applied UR or IUR
22 designations to agricultural lands in the 2004 County CP, nor have the GMA requirements
23 for designating or conserving agricultural land changed since the Board's 1997 decision that
24 found these overlay designations compliant. Futurewise cites the 2000 *Soccer Fields* case
25 holding that that the goals and requirements of the Act mandate that counties must assure
26 the conservation of designated agricultural land as a change in circumstances that the
27 Board should reconsider its previous decision regarding these designations and find these
28 overlay designations noncompliant and invalid.
29
30
31
32

1 The County does not disagree with Futurewise that these lands that have a UR or IUR
2 designation still meet the County's criteria for designated agricultural land and should be
3 designated agricultural lands. In fact, the lands with these overlays are designated
4 agricultural lands as this Board ruled in *Achen* that they must.

6
7 The County conserves these lands through development regulations that have not been
8 challenged. If a property owner wants to change the designation of commercially significant
9 agricultural land that also has a UR or IUR overlay, that applicant would still have to meet
10 the criteria for map changes outlined in CCC 40.50.010 G, as would any other owner of
11 commercially significant agricultural land. Appendix A attached Clark County's
12 Supplemental Submission (July 21, 2005). To bring this land into a UGA, a map change
13 must be made through a legislative decision based on established need using specific
14 criteria. CCC 40.560.010 D, G, and I.

16
17 Furthermore, three areas have had these overlay designations since 1997. The County
18 planned for the next 20 years in its current CP and considered, but did not add three of
19 these sites to its UGAs. This demonstrates that these overlays are being used for planning
20 beyond the 20-year horizon. This shows that the County's regulations for map changes and
21 adding land to the UGA are keeping these designations beyond the GMA's mandated 20-
22 year planning horizon.

24
25 The process and the conditions that the County has imposed on changing the designation
26 or adding land to the UGA work to keep these lands designated as agricultural lands during
27 the County's GMA's mandated planning horizon. Also, Futurewise offers no evidence to
28 support its contention that landowners will not invest in agriculture because of these
29 designations, when it may take decades given the conditions the County imposes for map
30 changes and additions to the UGAs, the size of the County's UGAs, land devoted to urban
31 holding zones, market factors for industrial and commercial land, and capital facility
32

1 limitations. The limitations in CCC 40.50.010 G and I deters the conversion of adjacent
2 lands within the current 20-year planning horizon. The IUR and UR designations may act as
3 an incentive to keep these lands designated as agricultural lands for as long as possible, to
4 prevent their conversion to rural development, and to conserve less vulnerable agricultural
5 lands. With its limited application and specific conditions governing the change to the
6 overlay designation, the IUR and UR overlays have potential to assist in conserving
7 agricultural lands during this mandated planning period and for providing for more efficient
8 extension of urban services, higher urban densities, and industrial developments that use
9 land more effectively in the next planning period.
10

11
12 **Conclusion:** For the reasons outlined above, we find that the County's use of UR and IUR
13 overlays are not clearly erroneous according to RCW 36.70A.320 and Petitioner has not
14 sustained its burden of proof that the UR and IUR designations fail to comply with RCW
15 36.70A.020(1), RCW 36.70A.020(8), RCW 36.70A.040, RCW 36.70A.050, RCW
16 36.70A.060, and RCW 36.70A.130 and fails to encourage and conserve designated
17 commercial significant agricultural resource lands.
18
19
20
21

22 VI. FINDINGS OF FACT

- 23 1. Clark County is located west of the crest of the Cascade Mountains and is required to
24 plan pursuant to RCW 36.70A.040.
- 25 2. Petitioners Clark County Natural Resources Council (CCNRC) and Futurewise are
26 nonprofit organizations that participated in the adoption of Ordinance No. 2004-09-02
27 and Ordinance No. 2004-09-02A in writing and orally. These Petitioners addressed the
28 issues raised in their Petitions for Review in its participation below.
- 29 3. Intervenors have an interest in the decision in this case and have been granted
30 Intervenor status by the Board.
- 31 4. Clark County adopted Ordinance No. 2004-09-02 and Ordinance No. 2004-09-02A,
32 adopting a new Clark County's comprehensive plan, zoning ordinance, and zoning
maps, on September 20, 2004.
5. Clark County published notice of the adoption of Ordinance No. 2004-09-02 and
Ordinance No. 2004-09-02A on September 24, 2004.

- 1 6. Petitioner CCNRC filed its Petition for Review on November 19, 2004 and Petitioner
2 Futurewise filed its Petition for Review on November 22, 2004.
- 3 7. To develop the assumptions that Clark County would use to size its UGAs, the County
4 appointed a steering committee of elected officials from all Clark County cities and a
5 technical advisory committee that included the planning staff of the local jurisdictions
6 and the staff from special districts. These committees met regularly from 2000-2004 to
7 examine data and make recommendations to the County Commissioners on various
8 aspects of the comprehensive plan including assumptions on which to base the size of
9 the urban growth areas (UGAs). Exhibits 1 – 35.
- 10 8. The minutes of the Steering Committee show that a wide range of opinion and analysis
11 based on studies done by diverse groups was gathered and evaluated. Exhibits 1 – 35.
- 12 9. In 2000, early in the process, the PMTAC reached a consensus recommendation on the
13 land supply assumptions for sizing the UGAs except one, the amount of land assumed
14 to be devoted to infrastructure. Exhibit 637.
- 15 10. The Clark County plan does not use a market factor for residential land, but does use a
16 25 percent market factor for commercial, and 50 percent for industrial land.
- 17 11. The County uses a projected future population of 556,000 for purposes of transportation
18 planning and a projected future population of 534,000 for all other parts of its
19 comprehensive plan. Exhibit 700 at 45.
- 20 12. The larger numbers utilized for transportation planning do not interfere with the ability of
21 the physical aspects of the plan to coexist on available land; they simply provide a
22 greater cushion for adequate transportation planning to support development. The
23 larger population projections for transportation planning purposes actually further the
24 plan's ability to provide for adequate public facilities, cause more phasing, and bring
25 possible levels of service deficiencies into sharper focus during the County's annual
26 review of its annual transportation plan update.
- 27 13. RCW 36.70A.110(2) places the ultimate responsibility of sizing the urban growth areas
28 with the County. This includes adopting the UGA boundary and assumptions on which
29 to determine the size of the UGA.
- 30 15. For public schools, the County chose to use what it calls "indirect concurrency" for
31 schools. These services are those deemed necessary to support growth in varying
32 degrees, but have not been identified by the GMA as critical facilities to be applied using
direct concurrency standards as in the case of roads, sewers, and water facilities.
16. The Battle Ground School District uses a complex and multi-faceted method, to fund
new school facilities, by combining state funding given to school districts based on local
need, voter supported bond issues, and impact fees.
17. The Battle Ground School District capital facilities plan (CFP) for 2003 - 2009, is
adopted by reference as part of the County's comprehensive plan. This CFP portrays
how the District plans to fund permanent facilities through the combination of funds
described above and discloses that the District will use impact fees to serve short-term
and immediate needs. It details the cost of permanent facilities to serve growth and
shows that \$4.8 million will be spent on portable buildings.

- 1 18. After the County CP adoption, the voters in the Battle Ground School District approved
2 a bond issue that secured funding for permanent facilities for the next six years.
- 3 19. Clark County's CP contains specific criteria that must be met before removing the
4 Urban Holding designations in each of the County's municipal UGAs. These plan
5 criteria include the provision that removal must be by area of urban holding overlays,
6 not by individual site-specific properties. Certain properties require a master plan.
7 Clark County's CP at 12-6 to 12-9.
- 8 20. Clark County Code 40.350.020 contains explicit concurrency standards.
- 9 21. Clark County Code Sections 40.370.10, 40.370.20, and 40.510.050 detail the
10 requirements for connecting to sanitary sewer systems and domestic water supplies
11 and also detail permitting requirements for urban services in urban growth areas.
12 These requirements apply to keep urban holding areas at rural development densities
13 until urban levels of services are provided.
- 14 22. The Legislature amended the GMA in 1998 to clarify cities' and counties' planning
15 obligations for state transportation facilities, effectively eliminating the concurrency
16 requirement for state highways and facilities of statewide significance.
- 17 23. The County has included the information required by RCW 36.70A.070(6)(a)(ii) and
18 (iii)(C) in the County's CP as follows: estimates of traffic volumes on state facilities at 5-
19 5, existing deficiencies cause by traffic estimates at 5-6, future deficiencies at 5-7 and
20 level of service standards at 5-8.
- 21 24. The County CP discloses how the lack of concurrency for state highways will impact
22 Clark County by describing: a) what the conditions of the state highway system will be
23 during the next 20 years, b) the probable impacts on the local system by state
24 transportation facilities, and (c) likely local system impacts on state highways.
- 25 25. In its 1995 Final Decision and Order in *Achen v. Clark County*, WWGMHB Case No. 95-
26 2-0067c, the WWGMHB held that the Urban Reserve concept did not violate the GMA
27 and, in fact, commended it as an "innovative technique."
- 28 26. In *Achen v. Clark County*, WWGMHB Case No. 95-2-0067c (2nd Compliance Order,
29 December 17, 1997) the Board found the Urban Reserve Area concept compliant when
30 the County designated areas that had been designated Urban Reserve also as
31 commercially significant agricultural lands.
- 32 27. Areas adjacent to Vancouver's 179th Street, Vancouver's 162nd Street, the City of
Washougal's UGA, and the City of Ridgefield's UGA have been designated agricultural
lands of long-term significance in Clark County's 2004 Plan. All but the area adjacent to
the City of Washougal have also been given an Urban Industrial Reserve Area
designation. The area adjacent to the City of Washougal has been given an Urban
Reserve Designation.
28. The County has not changed the manner or the conditions for how it applies Urban
Reserve or Industrial Urban Reserve designations to commercially significant
agricultural lands in the County CP since these designations were found compliant by
this Board. Nor have the Growth Management Act requirements changed since this
concept was found compliant in 1997.

- 1 29. The County's development regulations to conserve agricultural lands and prevent
2 interference from incompatible uses are unchallenged and therefore deemed compliant.
3 30. A property owner who wishes to change the designation of commercially significant
4 agricultural land that also has an Urban Reserve or Industrial Urban Reserve overlay,
5 must still meet the criteria for designation and zoning map changes outlined in CCC
6 40.50.010 G. Any owner of commercially significant agricultural land would be obliged
7 to do the same.
8 31. The limitations in county code at CCC. 40.50.010 G and I deter the conversion of
9 adjacent lands designated agricultural lands within the current twenty-year planning
10 horizon.

11 VI. CONCLUSIONS OF LAW

- 12 A. The Board has jurisdiction over the parties and subject matter of this consolidated
13 petition.
14 B. The petitions were timely brought and the petitioners have standing to raise the issues in
15 their petitions for review (now consolidated).
16 C. The petitions challenge the County's adoption of the Clark County 2004 Comprehensive
17 Plan in Ordinance No. 2004-09-02 and Ordinance No. 2004-09-02A.
18 D. The land capacity analysis and population forecast analysis in the Clark County 2004
19 Comprehensive Plan comply with RCW 36.70A.020, 36.70A.070, 36.70A.110(2) and
20 36.70A.115.
21 E. The capital facilities plan for schools in the Clark County 2004 Comprehensive Plan
22 complies with RCW 36.70A.070(3) and 36.70A.020(12).
23 F. The transportation element of the Clark County 2004 Comprehensive Plan
24 complies with RCW 36.70A.070(3), (4), and (6), and 36.70A.210(1) and (3).
25 G. The Urban Holding designations in the Clark County 2004 Comprehensive Plan comply
26 with RCW 36.70A.020(12), 36.70A.070(3), 36.70A.070(6) and 36.70A.070.
27 H. The application of the Urban Reserve and Industrial Urban Reserve Designations in the
28 Clark County 2004 Comprehensive Plan complies with RCW 36.70A.020(1),
29 36.70A.020(8), 36.70A.040, 36.70A.050, 36.70A.060 and 36.70A.130.

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1 **VII. ORDER**

2 THIS Board having determined that the Clark County Comprehensive Plan 2004 is in
3 compliance with the Growth Management Act (Ch. 36.70A. RCW) as to all the challenges
4 raised in the consolidated petitions herein, this case is hereby DISMISSED.
5

6 Entered this 23rd day of November 2005.
7

8
9
10 _____
11 Holly Gadbow, Board Member
12

13 _____
14 Gayle Rothrock, Board Member
15

16 Hite, concurring in part and dissenting in part:
17

18 I join in the Board's decision on Issues 6, 22, and 23.
19

20 As to Issue 21, concurrency and public schools, I concur with the Board's finding that the
21 County's capital facilities plan element as to schools meets the requirements of RCW
22 36.70A.070(3). I differ in how I view the applicability of Goal 12, RCW 36.70A.020(12).
23 The County has adopted a measure it calls "indirect concurrency" for evaluating the facilities
24 needs and probable funding for schools. CP 6-10. Indirect concurrency in the County's
25 plan contrasts with "direct concurrency" or GMA concurrency, which requires that needed
26 public facilities "be in place or officially planned and scheduled to be put in place, concurrent
27 with new development." CP 6-1. Indirect concurrency applies to "services necessary to
28 support additional growth to varying degrees, but they have not been identified by the GMA
29 as critical facilities to be applied using direct concurrency standards as is the case with
30 roads, sewer and water facilities." CP 6-10. In the County's capital facilities element, the
31
32

1 County has incorporated the plans of the Clark County School Districts in which each
2 district's schools are inventoried, a forecast of future needs is conducted, the proposed
3 locations and capacities for new or expanded facilities are described, and the financing plan
4 is set out. Clark County Comprehensive CFP Review, 2004. Exhibit 791.
5

6
7 CCNRC focuses on the Battle Ground School District because, CCNRC alleges, the school
8 district is over-capacity in 16 schools and has a current \$90 million deficit for current needs.
9 GMA Appeal Brief of CCNRC Issues 21, 23, 6, and 22 at 6. CCNRC argues that the capital
10 facilities plan provisions regarding schools in the Battle Ground School District are
11 inconsistent with the growth allowed under the land use plan and should have prompted the
12 County to reassess the land use element. *Ibid* at 8.
13

14 The Consortium of Clark County School Districts addresses the Battle Ground funding
15 problems as follows:
16

17 If growth occurs as anticipated, the District may seek an additional bond in the
18 coming years to serve these new students. Should a bond fail, and should student
19 generation occur as predicted, the District may consider adding portables and/or
20 changing service standards.

20 Ex. 274.

21 As recommended in the Procedural Criteria (WAC 242-02-315(2)(b)), the County has
22 selected planning assumptions for schools against which the adequacy of funding may be
23 tested. These are set by the school districts, based on federal and state requirements for
24 school facilities, in light of projected demand. CP 6-12. These planning assumptions may
25 be used to determine if funding is available as needed for residential development. The
26 Battle Ground School District provides that if growth occurs as anticipated, the options are
27 additional bond measures, portable classrooms or changing service standards. Ex. 274.
28 Taken together, these satisfy the requirements for ensuring that the capital facilities plan
29 element, the land use element, and the financing plan are coordinated and consistent.
30

31 RCW 36.70A.070(3)(e).
32

1 However, I would not hold that Goal 12 of the GMA (RCW 36.70A.020(12)) requires that the
2 County establish “concurrency” between school financing and projected development, if the
3 County determines that schools are necessary to support development. I believe that
4 CCNRC has amply proven that the County has determined that schools are “necessary to
5 support development.” However, CCNRC then relies upon this reading of Goal 12 to argue
6 that the only remedy for a shortfall in school funding in Battle Ground is to reallocate
7 development to other parts of the county. GMA Appeal Brief of CCNRC Issues 21, 23, 6,
8 and 22 at 8.
9

10
11 Goal 12 has been labeled the concurrency goal:

12 Public facilities and services. Ensure that those public facilities and services
13 necessary to support development shall be adequate to serve the development at the
14 time the development is available for occupancy and use without decreasing current
15 service levels below locally established minimum standards.

16 RCW 36.70A.020(12).

17 It is important to remember, however, that the goals of the GMA are to be used “exclusively
18 for the purpose of guiding the development of comprehensive plans and development
19 regulations.” RCW 36.70A.020 (introduction). Guidance is not the same thing as
20 mandating particular actions. Reading into Goal 12 a requirement to halt development until
21 public services “necessary to support development” can be provided at current service
22 levels strains the plain language of RCW 36.70A.020.
23

24
25 RCW 36.70A.070(3) establishes requirements for capital facilities planning, including “a
26 requirement to reassess the land use element if probable funding falls short of meeting
27 existing needs and to ensure that the land use element, capital facilities plan element, and
28 financing plan within the capital facilities plan element are coordinated and consistent.”

29
30 Instead of finding a direct concurrency requirement in Goal 12, I would hold that compliance
31 with RCW 36.70A.070(3) is a major step towards achieving Goal 12 and that Goal 12
32 informs the reading of RCW 36.70A.070(3).

1
2 This is not to say that Goal 12 has no substantive import; I would find that Goal 12 has
3 substantive import in that plans and development regulations may not be inconsistent with
4 achieving the goal of adequate public facilities and services to support development when
5 needed. The Eastern Board has held that substantive consideration of the goals of the
6 GMA “remains whether the county’s actions were substantively guided by the goals –
7 whether their actions are consistent with the planning goals.” *Save Our Butte Save Our*
8 *Basin Society v. Chelan County*, EWGMHB Case No. 94-1-0001 (Final Decision and Order,
9 July 1, 1994). Similarly, the Central Board has held that the substantive effect of the goals
10 comes in consistency of local government actions with the goals. The Central Board has
11 said that “to show substantive non compliance with a planning goal, a petitioner must
12 identify that portion of the challenged enactment that is not consistent with, or thwarts, the
13 planning goal, and explain why the identified portion does not comply with that goal.”
14 *McVittie v. Snohomish County*, CPSGMHB Case No. 99-3-0016c (Final Decision and Order,
15 February 9, 2000). Although the Central Board did find Goal 12 requires the establishment
16 of minimum standards as a baseline to assess need, it did so in the context of the Capital
17 Facilities Plan requirements of RCW 36.70A.070(3). I believe that the requirement that local
18 government actions be consistent with Goal 12, particularly in the context of the
19 requirements for capital facilities plans, squares with the language of the GMA that goals
20 are to be used “exclusively for the purpose of guiding the development of comprehensive
21 plans and development regulations.” On the other hand, reading Goal 12 to require specific
22 actions to achieve concurrency for all public services needed to support development, I
23 believe, exceeds the statutory limitation on the use of the goals.
24
25
26
27

28 As to Issue 40,⁸ I respectfully dissent from the majority decision. The County has applied
29 urban “reserve” designations to lands now designated as agricultural lands of long-term
30

31 _____
32 ⁸ Futurewise abandoned Issue 41 after briefing and abandoned Issue 42 before briefing.

1 commercial significance. In applying the urban reserve designations, the County has not
2 made a determination that these lands no longer qualify as agricultural resource lands.
3 Instead, the County has determined that if there is a need for additional industrial land, then
4 the agricultural lands will be available for that use.
5

6
7 Futurewise argues that the lands that have been subjected to the urban reserve overlay still
8 meet the criteria for agricultural lands of long-term commercial significance. Futurewise's
9 Prehearing Brief at 9. The County, Futurewise argues, designated the lands as agricultural
10 resource lands and has not made a determination that this designation is no longer
11 appropriate. *Ibid.*
12

13
14 The County first responds that Futurewise's challenge is foreclosed by the Board's prior
15 decision in *Achen v. Clark County*, WWGMHB Case No. 95-2-0067 (Second Compliance
16 Order, December 17, 1997). Clark County Brief at 8. If the Board determines to reach the
17 merits, the County argues that "unless and until a reserve area is brought into a UGA or
18 designated a non-UGA major industrial development site under RCW 36.70A.365 or .367, it
19 remains fully protected as agricultural land." *Ibid* at 9. Therefore, there is no violation of the
20 GMA requirements to conserve and protect resource lands.
21

22
23 As to the County's first point, I would not find that the Board's decision in *Achen* is binding in
24 this case because the Board has never heard Futurewise's challenge to the urban reserve
25 designation. When the County adopted its new comprehensive plan, the plan was open for
26 challenge for failure to comply with the requirements of the GMA. Although Futurewise did
27 not bring its challenge the first time the County adopted its industrial reserve designations,
28 this does not mean it is forever foreclosed from its day in court. As a result of the update
29 requirements of RCW 36.70A.130, a new plan has been adopted and its provisions must
30 meet the goals and requirements of the GMA. The petition filing requirements of the Act are
31 triggered by the adoption and publication of a legislative enactment. RCW 36.70A.280(2).
32

1 Futurewise properly participated in the adoption of the County's comprehensive plan in
2 2004 and now has standing to bring its challenge. RCW 36.70A.290(2).

3
4 Secondly, I would not find, as the County argues, that the urban reserve overlay designation
5 does not change the conservation of agricultural lands provided by the underlying
6 agricultural designation. The County's goal in the industrial reserve overlay is to prevent
7 premature land parcelization and development of uses that are potentially incompatible with
8 or preclude later industrial development. Clark County's Supplemental Submission at 7; CP
9 at 1-27. The theme of the 2004 CP update process was to increase over time the jobs to
10 population within the county and preserve potential industrial lands not generally found in
11 rural-zoned areas adjacent to UGAs. Clark County Brief at 6. These are reasonable
12 planning objectives but they do not reach the issue of converting specific agricultural
13 resource lands to industrial uses within a UGA.
14
15

16
17 The state Supreme Court has found that the GMA provisions requiring designation,
18 conservation and preservation of resource lands create a mandate to conserve agricultural
19 lands:

20 When read together, RCW 36.70A.020(8), .060(1), and .170 evidence a legislative
21 mandate for the conservation of agricultural land.
22 *King County v. CPSGMHB*, 142 Wn.2d 543, 14 P.3d 133, 2000 Wash. LEXIS 834 (2000) at
23 562.

24
25 The "conservation mandate" does not mean that the designation of agricultural lands may
26 not be changed. However, if a change in designation is to take place, it must be based
27 upon the criteria for agricultural designation. Under the GMA definitions of agricultural
28 lands, there are criteria other than the presence of prime soils which are properly part of the
29 designation decision:

30 "Agricultural land" means land primarily devoted to the commercial production of
31 horticultural, viticultural, floricultural, dairy, apiary, vegetable or animal products or of
32 berries, grain, hay straw, turf, seed, Christmas trees not subject to the excise tax

1 imposed by RCW 84.33.100 through 84.33.140, finfish in upland hatcheries, or
2 livestock, and that has long-term commercial significance for agricultural production.
3 RCW 36.70A.030(2).

4 “Long-term commercial significance” includes the growing capacity, productivity, and
5 soil composition of the land for long-term commercial production, in consideration
6 with the land’s proximity to population areas, and the possibility of more intense uses
7 of the land.
8 RCW 36.70A.030(10).

9 The Department of Community Trade and Economic Development (CTED) has adopted
10 minimum guidelines for the designation of agricultural lands that further guide the
11 designation process. WAC 365-190-050. The County’s plan indicates that its designation
12 of agricultural lands utilized CTED’s “ten indicators.” CP 3-7. These are the “combined
13 effects of proximity to population areas and the possibility of more intense uses of the land
14 as indicated by:

- 15 (a) The availability of public facilities;
- 16 (b) Tax status;
- 17 (c) The availability of public services;
- 18 (d) Relationship or proximity to urban growth areas;
- 19 (e) Predominant parcel size;
- 20 (f) Land use settlement patterns and their compatibility with agricultural practices;
- 21 (g) Intensity of nearby land uses;
- 22 (h) History of land development permits issued nearby;
- 23 (i) Land values under alternative uses, and;
- 24 (j) Proximity of markets.

25 WAC 365-190-050 (in pertinent part).

26 Consideration of these factors in making an agricultural designation gives a local jurisdiction
27 flexibility in weighing reasons for applying or not applying the designation. In this case, the
28 County did not review these factors and determine that the agricultural lands do not have, or
29 will not have, long-term commercial significance. Instead, the County states that placing the
30 urban reserve designation on agricultural lands is not a decision to change the agricultural
31 designation.
32

1 The County is correct that the urban reserve overlay is not a decision to change the
2 agricultural designation now but it is a decision to change the agricultural designation when
3 certain conditions have been met. The County may bring the lands into a UGA as additional
4 industrial lands "if 50 percent or more of the vacant buildable prime industrial land has been
5 consumed." CCC 40.560.010.K. Comprehensive plan map changes require that a
6 proposed amendment be consistent with the GMA and County planning adoptions, but there
7 is no requirement that a change from resource land designation to industrial lands requires
8 consideration of the applicability of the existing resource designation. CCC 40.560.010.G.

10
11 In contrast to a designation of a major industrial development pursuant to RCW 36.70A.365
12 and an industrial land bank pursuant to RCW 36.70A.367, all that is really required under
13 the County's plan for a change of designation from industrial reserve to UGA industrial land
14 is a determination that over half of the designated industrial lands in a UGA have been
15 consumed. CCC 40.560.010.K. Where both the GMA and the County CP apply rigorous
16 requirements to the determination to convert lands outside of a UGA to industrial use, the
17 County's conversion of designated agricultural resource lands outside a UGA to industrial
18 use within a UGA is triggered only by a generalized "need" for such lands. See CCC
19 40.560.010.F.5 and 40.560.010.I for the County requirements for establishing a major
20 industrial development or a major industrial land bank, including a required concomitant
21 rezone application from the affected property owners.
22
23

24
25 Under the County's criteria for a UGA expansion, the fact of the industrial reserve overlay
26 allows lands designated as resource lands to be added to a UGA, even though resource
27 lands without that designation may not be so added:

28 The amendment does not include lands that are designated as natural resource
29 (agricultural, forest, mineral resource) unless such lands are also designated with an
30 urban reserve or industrial urban reserve overlay.

31 CCC 40.560.010.L.9.
32

1 I would hold that these criteria change the designation of agricultural resource lands upon a
2 County determination that it “needs” them for industrial purposes. Because the industrial
3 reserve overlay has the effect of removing the protections from conversion otherwise
4 provided to County resource lands, I would hold that the industrial reserve overlay violates
5 RCW 36.70A.060 and 36.70A.170, together with the definitions of agricultural lands of long-
6 term commercial significance. RCW 36.70A.030(2) and (10). I would also find that the
7 legislature adopted RCW 36.70A.365 and 36.70A.367 as the means by which counties may
8 convert resource and rural lands to industrial uses and that conformance with those
9 provisions is a necessary part of the conversion of resource lands to industrial uses.
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15 Margery Hite
16 Board Member
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**Appendix A
Procedural History**

On November 19, 2004, the Board received petitions for review from the following parties challenging Ordinance No. 2004-09-02 and Ordinance No. 2004-09-02A that adopted the update of Clark County's comprehensive plan, zoning ordinance, and zoning maps as required by RCW 36.70A.130 and assigned the following case numbers to these petitions:

- Clark County Natural Resources Council (CCNRC) – Case No. 04-2-0023.
- Building Association of Clark County, Clark County Association of Realtors, the Responsible Growth Coalition, and the Greater Vancouver Chamber of Commerce – Case Number 04-2-0024.⁹
- Michael DeFrees – Case No. 04-2-0025.

On November 22, 2004, the Board received petitions for review from the following parties challenging Clark County Ordinance No. 2004-09-02 listed above and assigned the following case numbers to these petitions:

- 1000 Friends of Washington¹⁰ - Case No. 04-2-0028
- Walker Farms, Lori and Jim Walker, and David Callaham – Case No. 04-2-0029
- Whispering Pines Investment and Development Company and Joseph and Virginia Lear - Case No. 04-2-0030
- Debbie Mera, Joseph and Virginia Lear, and Whispering Pines Land and Development Company – Case No. 04-2-0031
- Peter J. and Donna Stone and Makim Enterprises – Case No. 04-2-0032
- John, Pam, and Christine Philbrook – Case No. 04-2-0033
- City of Battle Ground – Case No. 04-2-0034
- Rosemary Parker Living Trust – 04-2-0035

⁹ These Petitioners also challenged the Clark County population forecasts made by the Washington Office of Financial Management (OFM) and named OFM as a Respondent.

¹⁰ 1000 Friends of Washington later changed their name to Futurewise.

- 1 • James Parker – Case No. 04-2-0036
- 2 • Holt Homes, Inc.- Case No. 04-2-0037
- 3 • Michael S. and Terry Bowyer – Case No. 04-2-0038

4 Petitioners in Case Numbers 04-2-0029, 04-2-0030, 04-2-0031, 04-2-0034, 04-2-0036, 04-
5 2-0037, and 04-2-0038 also challenged Ordinance No. 2004-09-02A.

6
7
8 Prehearing Conferences were held on December 13, 14, and 20, 2004.

9
10 Because all of the petitions challenged the Ordinance No. 2004-09-02, the presiding officer
11 consolidated these cases on December 16, 2004. This case became Case No. 04-2-0038c
12 and was entitled the Building Association of Clark County, the Clark County Association of
13 Realtors, the Responsible Growth Forum, and the Greater Vancouver Chamber of
14 Commerce, et al., v. Clark County and the State of Washington, Office of Financial
15 Management.

16
17
18 On January 5, 2005, the Board received a Motion to Intervene for Gramor, Oregon, Inc.,
19 John Somarakis, Robert Frasier, and Gary Rademacher to intervene in the consolidated
20 case. On January 21, 2005, the Board issued an order allowing these parties to intervene.

21
22 On January 12, 2005, the Board received a Motion for an Extension of Time from Clark
23 County. Having received signatures on the Motion for an Extension of Time from all the
24 parties in this consolidated case, the Board issued Order Granting an Extension of the
25 Deadline for Decision for Settlement Purposes on January 18, 2005. The new deadline for
26 issuing the Final Decision and Order became August 22, 2005.

27
28
29 The Board received a motion to supplement the record from Holt Homes, Inc., Rosemary
30 Parker Living Trust, Michael and Terry Bowyer, and Jim Parker on January 24, 2005.

31 Receiving no objections from any party, the Board allowed the parties to supplement the
32 record with eleven items on February 11, 2005.

1 On January 28, 2005, the Board issued a prehearing order. This order allowed the addition
2 of the following petitioners, as no party objected to adding them: Donald Blair, Richard and
3 Pamela Marini, Roger and Bonnie Gregg, Mark and Kathy Leathers, Richard and Barbara
4 Salas, Sharon Y. Miller, Judith and Bruce Wood, and Jerry and Michele Winters.

5
6
7 On February 2, 2005, the Board received a motion from CCNRC for Clarification or to
8 Intervene. Michael DeFrees and Intervenors opposed this motion. On February 28, 2005
9 the Board granted intervention to CCNRC on the issues in the consolidated order that
10 CCNRC had not raised. The Board said:

11 Because consolidation does not confer party status on a party as to petitions other
12 than those filed by that party, CCNRC may not brief issues unless it is either a
13 party or an intervenor in the petition for review in which the respective issues are
14 raised. In considering whether CCNRC may brief issues raised in petitions for
15 review it did not file, the Board will treat the CCNRC motion as a motion to
16 intervene.

17 On February 4, 2005, the Board received a stipulated agreement and motion to dismiss the
18 case, eventually signed by all parties to the consolidated case, except for CCNRC. On
19 February 14, 2005, the Board received opposition from CCNRC to the stipulated motion to
20 dismiss. On February 15, 2005, the Board issued Order Denying Motion to Dismiss. The
21 Board said:

22 The motion asks the Board to issue an order that is not within its authority. The
23 Board does not have the authority to dismiss a petition for review, without a
24 determination on the merits, if all the parties to the action have not stipulated to
25 dismissal. The Board also lacks authority to remand a case to achieve compliance
26 with the Growth Management Act (Ch. 36.70A RCW) unless the Board has made a
27 finding of noncompliance pursuant to RCW 36.70A.302. In this case, the situation is
28 muddled to some extent because a number of petitions have been consolidated into
29 one case. However, the consolidation of the petitions for review did not alter the
30 requirements with respect to each petition that was consolidated. Those
31 requirements go to both the burden on the petitioners to meet their burden of proving
32 noncompliance and to the right of a petitioner to pursue its case.

1 On February 22, 2005, the Board issued an Order to Show Cause Re: Dismissal of Issue 15
2 (related to OFM) after Petitioner's Brief on the issue was not received by the deadline. On
3 February 23, 2005, the Board received a Stipulation and Motion to Dismiss OFM. On
4 March 2, 2005, the Board issued an Order Dismissing Issue 15 and OFM as a party.
5

6
7 Also, on February 22, 2005, the Board issued an Amended Prehearing Order.
8

9 On March 3, 2005, the Board received The Building Industry Association of Clark County, et
10 al.'s Motion to Intervene on Issues 6, 21, 22, 23. On March 15, 2003 the Board granted
11 these parties' motion to intervene.
12

13 From March 7, 2005, through March 15, 2005, the Board received several motions from
14 various parties to intervene on Issues 6, 21, 22, and 23. On March 15, 2005, the Board
15 issued an order allowing Holt Homes, Michael and Terry Bowyer, Rosemary Parker Living
16 Trust, James Parker, and the City of Battle Ground to intervene on Issues 6, 21, 22, and 23.
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19 On March 25, 2005, the Board received a motion from the County for an extension of time.
20 An amended motion was filed on April 6, 2005. CCNRC submitted their opposition to an
21 extension of time on April 14, 2005. On April 19, 2005, the Board issued an order denying
22 the extension of time because all parties to the consolidated order did not support it.
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25 On March 28, 2005, the Board received an opening brief from Petitioner Walker Farms.
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27 On April 15, 2005, the Board received motions withdrawing petitions from Petitioners in
28 Case Numbers 04-2-0024, 04-2-0025, 04-2-0030, 04-2-0031, 04-2-0033, 04-2-0034,
29 04-2-0035, 04-2-0036, 04-2-0037, 04-2-0038. On April 26, 2005, the Board issued an order
30 dismissing the petitions in the cases listed above.
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1 On April 26, 2005, the Futurewise and CCNRC submitted prehearing briefs.

2
3 On April 27, 2005, CCNRC submitted a motion to supplement the record. On May 2, 2005,
4 the Board received a letter from the County confirming that all the items in CCNRC's motion
5 to supplement the record were already contained in the record, except for a newspaper
6 article.
7

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9 On May 5, 2005, the Board received a motion from Walker Farms, Petitioner in original
10 Case No. 04-2-0029 to withdraw its petition from this consolidated case and issued an order
11 dismissing Walker Farms from the case on May 16, 2005.
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14 On May 17, 2005, the Board received a Motion from Renaissance Homes and Brief in
15 Response to Futurewise's prehearing brief. Receiving no objection to Renaissance Homes'
16 Intervention and because Renaissance Homes had submitted its brief in a timely way, the
17 Board allowed Renaissance Homes to intervene on May 31, 2005.
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19 Also, May 17, 2005, the Board received a motion from Intervenors to take official notice of
20 the results of a recent successful Battle Ground School District school bond issue.
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23 On May 27, 2005 CCNRC filed a response opposing taking official notice of this election.
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25 Clark County, Intervenor Building Association of Washington, and Intervenor Gramor,
26 Oregon, Inc., John Somarakis, Robert Frasier, and Gary Rademacher also filed their
27 response briefs on May 17, 2005.
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30 On May 24, 2005, CCRNC filed its Reply Brief.
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1 On June 1, 2005, the Board received an e-mail request that the hearing on the merits in
2 these cases be rescheduled due to a medical emergency of the County's representative.
3 Following this the County filed a motion and a draft stipulated amended motion for an
4 extension of the Final Decision and Order for an extension of time. Based on e-mail
5 assurances from all the parties remaining in the case that they agreed to an extension, the
6 Board rescheduled the hearings for July 1, 2005 for the issues raised by CCNRC and for
7 July 11, 2005 for issues raised by Futurewise. After receiving signatures of all the
8 remaining parties, on June 17, 2005, the Board issued order extending the Final Decision
9 and Order deadline for 30 days to August 22, 2005 and rescheduling the hearings.
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12 On June 1, 2005, the Board held a Hearing on the Merits in Vancouver, Washington on
13 Issues 6, 21, 22, and 23, issues raised by CCNRC. Mr. John Karpinski represented
14 CCNRC. Mr. Christopher Horne represented Clark County. Mr. David Ward represented
15 Intervenor Gramor, Oregon, Inc., John Somarakis, Robert Frasier, and Gary Rademacher.
16 Mr. Glen Amster represented the Building Association of Clark County, et al. All three
17 Board members attended. At the Hearing on the Merits the Presiding Officer made the
18 following rulings:
19

- 20 • The Board took official notice of the recent Battle Ground School Bond Election.
- 21 • The Motion to Strike portions of CCNRC's Reply Brief was denied, but Intervenor
22 Gramor, Oregon, Inc., John Somarakis, Robert Frasier, and Gary Rademacher were
23 allowed to submit a response to CCNRC's Reply Brief.
- 24 • CCNRC was allowed to supplement the record with a newspaper article from *The*
25 *Columbian*, dated July 8, 2004, and was given Exhibit Number 801.
- 26 • The Board allowed the County to submit supplemental information in response to
27 Board questions.
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31 On July 11, 2005, the County submitted supplemental information.
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1 On July 11, 2005 the Board held a Hearing on the Merits on Issues 40, 41, 42, and 43,
2 issues raised by Futurewise. Mr. John Zilavy represented Futurewise. Mr. Bronson Potter
3 represented the County. Mr. James Howsley represented Renaissance Homes. All three
4 Board members attended. At the hearing, the Board allowed both parties to submit
5 argument and information in response to Board questions.
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8 On July 11, 2005, Intervenor submitted Intervenors' Reply to CCNRC's Response to Motion
9 to Strike Portions of CCNRC's Reply Brief.

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11 On July 21, 2005, the County submitted a response.
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