

1 BEFORE THE WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

2 ADVOCATES FOR RESPONSIBLE
3 DEVELOPMENT, JOHN E. DIEHL,
4 individually and ADVOCATES FOR
5 RESPONSIBLE DEVELOPMENT,
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Case No. 06-2-0005

FINAL DECISION AND ORDER

v.

MASON COUNTY,

Respondent,

And,

BRIAN PETERSEN, JACK NICKLAUS AND
LES KRUEGER,

Intervenors.

I. SYNOPSIS OF DECISION

This case challenges Mason County's 2005 Update of its comprehensive plan and development regulations on a number of grounds. We find that Petitioners have failed to meet their burden of proof with respect to all issues except the provision of urban levels of service within the Belfair and Allyn urban growth areas (UGAs).

Mason County has designated two non-municipal UGAs to accommodate the bulk of its population growth in the next twenty years – Belfair and Allyn. Urban levels of public sewer service have recently been provided in the Allyn UGA. However, sewer service to the Belfair UGA is still in the preliminary planning stages. Although the County has made major strides towards obtaining funding for this important service, it still has not met the requirements of RCW 36.70A.070(3)(d) for a six-year financing plan. While the County is confident of obtaining the necessary funding, its plan for sewer facilities in the Belfair UGA cannot be finalized until funding and extent of service outside the UGA is determined. For those reasons, we find the Belfair Area Sewer Plan not yet compliant with RCW 36.70A.070(3).

1 In addition, the County has placed binding site plan requirements on commercial, industrial
2 and mixed-use development in the Belfair UGA so that they will be required to hook up to
3 public sewer when it becomes available. These are appropriate requirements to ensure that
4 concurrency of urban development with necessary urban services is met. However, these
5 regulations fail to encompass residential development within the Belfair UGA. With over a
6 1,000 gross acres zoned for residential development within the Belfair UGA, RCW
7 36.70A.110(3) requires that the County phase urban levels of residential development to
8 coincide with the availability of urban sewer. Without a requirement that residential
9 development within the UGA connect to sewer when public sewer is available within the
10 UGA, there is no assurance that such urban residential development will ever be connected
11 to public sewer. We find that the County's failure to ensure that public services are
12 available when urban levels of development are allowed in the Belfair UGA violates RCW
13 36.70A.110(3) and the concurrency goal (12) of the GMA.
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17 Storm water management for the Belfair and Allyn UGAs is another area in which the
18 County is making good progress but has not yet achieved compliance with GMA goals and
19 requirements. Urban levels of development such as are planned for the Belfair and Allyn
20 UGAs require storm water management in order to assure proper treatment of run-off from
21 the increased impervious surfaces. The County has no storm water management plan or
22 utility, but relies wholly on on-site management of run-off. In the UGAs, the County must
23 address the area-wide infrastructure needs for storm water management because of the
24 increase in impervious surfaces inherent in a UGA. We note that the County is beginning to
25 study this problem but until the system improvements are planned for the Belfair and Allyn
26 UGAs, the capital facilities element for those UGAs is noncompliant with 36.70A.070(3),
27 RCW 36.70A.110(3), and Goal 12 of the Growth Management Act (GMA), Ch. 36.70A.
28 RCW. We take this opportunity to note with approval the County's use of its planning staff
29 to present the majority of its oral argument in this case. The County's attorney in this case
30 utilized planning staff strategically to make the County's arguments on planning points and
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1 to answer Board questions. County staff deftly avoided the potential pitfalls of this approach
2 by carefully limiting themselves to exhibits already before the Board. The Western Board
3 recognizes that not all of the growth boards will accept this approach but we found this
4 approach very helpful since the planning staff presented arguments and responded to
5 Board questions with respect and professionalism.
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7 8 **II. PROCEDURAL HISTORY**

9 The petition for review in this case was filed on February 13, 2006. Petitioners are
10 Advocates for Responsible Development and John E. Diehl (collectively "ARD"). Petitioners
11 challenge Mason County's update of its comprehensive plan and development regulations,
12 in the adoption of which Petitioners participated orally and in writing. Ordinance 108-05 was
13 adopted on November 29, 2005 and notice of the adoption was published on December 15,
14 2005.
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17 The prehearing conference was held telephonically on March 15, 2006. As a result of the
18 discussions in the prehearing conference, Petitioners were given the opportunity to submit a
19 revised issue statement. Petitioners submitted a revised issue statement¹ and this was
20 incorporated into the Prehearing Order issued March 23, 2006. Subsequently, Mason
21 County objected to the lack of clarity of some of the issues.^{2 3} The Board thereupon issued
22 an order for a more definite statement of Issues 1 and 4.⁴ Petitioners also objected to the
23 issue statement in the Prehearing Order because one of their issues (Issue 6) had not been
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30 ¹ Restatement of Issues and Request for Extension of Time, March 22, 2006.

31 ² Respondent Mason County's Response to Proposed Issues Presented Based on the Prehearing Order,
March 31, 2006.

32 ³ Objection to Index as Submitted; Motion for Additions to the Index; Motion for Restoration of Issue 3.6, March
31, 2006.

⁴ Order on More Definite Statement and Extending the Deadline for Substantive Motions, April 4, 2006.

1 included. The order for a more definite statement was then revised to add Issue 6 to the
2 issue statement.⁵ Petitioners also objected to the order for a more definite statement
3 because they had not received service of the County's objections.⁶ Nonetheless,
4 Petitioners revised their issue statement and this was incorporated into the Amended
5 Prehearing Order, issued April 20, 2006.
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8 On April 10, 2005, Brian Petersen, Jack Nicklaus and Les Krueger filed a motion to
9 intervene in this case.⁷ This motion was granted.⁸

10
11 Petitioners filed a dispositive motion prior to the hearing on the merits seeking an early
12 decision on Issues 1, 2, 4 and 6.⁹ However, they included their dispositive motion in the
13 same pleading in which they filed objections to the order requiring a more definite statement
14 of Issues 1 and 4.¹⁰ The County filed a late response to the dispositive motion, objecting to
15 a decision on the issues without a full record review.¹¹ While Petitioners moved to strike
16 the County's response as untimely,¹² the Board, independently of the County's objection,
17 declined to rule on the raised issues on motion, reserving decision until after the hearing on
18 the merits.¹³
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22 The hearing on the merits was held on July 6, 2006 in Shelton, Washington. John Diehl
23 represented Petitioners. The County was represented by deputy prosecuting attorney T.J.
24 Martin, assisted by Robert Fink, Steve Goins, Barbara Adkins and Allan Borden. The
25 Intervenors were represented by David Mann. All three board members attended.
26

27 ⁵ Corrected Order on More Definite Statement and Extending the Deadline for Substantive Motions, April 7,
28 2006.

29 ⁶ Objection to Order; Revision of Issues; and Dispositive Motion, April 11, 2006.

30 ⁷ Motion to Intervene by Brian Petersen, Jack Nicklaus and Les Krueger, April 10, 2006.

31 ⁸ Order Granting Leave to Intervene to Brian Petersen, Jack Nicklaus and Les Krueger, April 14, 2006.

32 ⁹ *Ibid.*

¹⁰ *Ibid.*

¹¹ Respondent Mason County's Response to Dispositive Motion by Petitioners, May 3, 2006.

¹² Motion to Strike Response; and Reply to Response to Dispositive Motion, May 8, 2006.

¹³ Order on Motion, May 8, 2006.

1 In response to a question from the Board about land use and resource protection, economic
2 growth, current use taxation, public health, and environment policy linkages that might be
3 incorporated somewhere as adopted County policy, the County provided a copy of “over-
4 arching” policies in the comprehensive plan, dealing with rural development and
5 encouragement of urban growth post-hearing.¹⁴ These policies provided are part of the
6 County’s comprehensive plan which is one of the “core documents” in the case.
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9 **III. ISSUES PRESENTED**

- 10 1. Has the County failed to review and, if needed, revise §17.01.060, 17.01.061,
11 17.01.062, 17.01.064 and 17.01.068 of the Resource Ordinance as required
12 by RCW 36.70A.130 to make these development regulations compliant with
13 RCW 36.70A.060 and 36.70A.170.
- 14 2. Has the County failed to meet the goal to retain open space (RCW
15 36.70A.020(9)) and the requirements of RCW 36.70A.040 and 36.70A.160
16 and WAC 365-195-420 by failing to act to reserve open space corridors c
17 connecting urban growth areas and failing to implement the part of its
18 comprehensive plan relating to such corridors.
- 19 3. Has the County failed to meet the goals to reduce inappropriate conversion of
20 undeveloped land into sprawling, low density development (RCW
21 36.70A.020(2)), to conserve productive agricultural and forest lands (RCW
22 36.70A.020(8)), to retain open space and conserve fish and wildlife habitat
23 (36.70A.020(9)), and to protect the environment (36.70A.020(10)) and the
24 requirements of 36.70A.060, 36.70A.070, and 36.70A110 by failing to act to
25 curb continued proliferation, through subdivision, of rural parcels even while it
26 has such a large inventory of vacant rural parcels that the County’s entire
27 projected population growth to the planning horizon might be accommodated
28 in rural areas on existing vacant parcels.
- 29 4. Has the County failed to meet the goals to reduce inappropriate conversion of
30 undeveloped land into sprawling, low density development (RCW
31 36.70A.020(2)), to conserve productive agricultural and forest lands (RCW
32 36.70A.020(8)), to retain open space and conserve fish and wildlife habitat
(36.70A.020(9)), and to protect the environment (36.70A.020(10)) and the

¹⁴ Memorandum of July 11, 2006 from Bob Fink to T.J. Martin.

1 requirements of RCW 36.70A.040, RCW 36.70A.060, and 36.70A.070 by
2 failing to adopt development regulations to implement Policy B-1-a.1, Policy B-
3 1-a.4, Policy -1-a.5, Policy B-1-a.6, Policy B-1-a.7, Policy B-1-a.8 and Policy
4 B-3-c.2 of the Harstine Island Sub-Area Plan as required by RCW 36.70A.040.

- 5 5. Do the development regulations for the Belfair and Allyn urban growth areas,
6 which set boundaries to include land not characterized by urban growth, but
7 which allow urban growth throughout the UGAs without any staging to limit
8 growth initially to areas characterized by urban growth, and which allow urban
9 growth in parts of the UGAs for which there is no provision for concurrent
10 development of sewer and stormwater management facilities, fail to comply
11 with GMA requirements and interfere with GMA goals to reduce inappropriate
12 conversion of undeveloped land into sprawling, low density development
13 (RCW 36.70A.020(2)), to conserve productive agricultural and forest lands
14 (RCW 36.70A.020(8)), to retain open space and conserve fish and wildlife
15 habitat (36.70A.020(9)), and to protect the environment (36.70A.020(10)) and
16 to ensure that public facilities necessary to support development shall be
17 adequate to serve the development when it becomes available for occupancy
18 (RCW 36.70A.020(12)).
- 19 a. By including about 1,000 acres of undeveloped forest land in the Belfair
20 UGA, does the County fail to comply with RCW 36.70A.110(1)'s
21 requirement that territory outside a city or fully contained community
22 and not characterized by urban growth may be included in a UGA only
23 if it is adjacent to territory characterized by urban growth.
- 24 b. By allowing urban growth to occur immediately throughout the Belfair
25 UGA, and by amending its comprehensive plan to state that it is only
26 determining the "feasibility" of providing municipal sewers, does the
27 County fail to comply with RCW 36.70A.110(3)'s requirements relating
28 to the sequencing of urban growth.
- 29 c. By failing to provide for implementation of municipal sewage and
30 stormwater treatment facilities concurrent with urban growth in its
31 designated Belfair and Allyn UGAs, does the County fail to comply with
32 RCW 36.70A.040 and RCW 36.70A.070.
6. Has the County failed to meet the goals to reduce inappropriate conversion of
undeveloped land into sprawling, low density development (RCW
36.70A.020(2)), to conserve productive agricultural and forest lands (RCW
36.70A.020(8)), to retain open space and conserve fish and wildlife habitat
(36.70A.020(9)), and to protect the environment (36.70A.020(10)) and the
requirements of RCW 36.70A.060, 36.70A.070 and RCW 36.70A.110, by
adopting Policy MPD 1.7, which provides for increased density and/or
reduction in dimensional standards within a Master Development Plan when
enhanced on-site amenities are incorporated into the overall development, but

1 where such development at increased densities or reduced standards may be
2 incompatible with these GMA goals and requirements.

3 4 **IV. BURDEN OF PROOF**

5 For purposes of board review of the comprehensive plans and development regulations
6 adopted by local government, the GMA establishes three major precepts: a presumption of
7 validity; a “clearly erroneous” standard of review; and a requirement of deference to the
8 decisions of local government.
9

10 Pursuant to RCW 36.70A.320(1), comprehensive plans, development regulations and
11 amendments to them are presumed valid upon adoption:
12

13 Except as provided in subsection (5) of this section, comprehensive plans and
14 development regulations, and amendments thereto, adopted under this chapter are
15 presumed valid upon adoption.

16 RCW 36.70A.320(1).

17 The statute further provides that the standard of review shall be whether the challenged
18 enactments are clearly erroneous:
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20 The board shall find compliance unless it determines that the action by the state
21 agency, county, or city is clearly erroneous in view of the entire record before the
22 board and in light of the goals and requirements of this chapter.

23 RCW 36.70A.320(3)

24 In order to find the County’s action clearly erroneous, the Board must be “left with the firm
25 and definite conviction that a mistake has been made.” *Department of Ecology v. PUD1*,
26 121 Wn.2d 179, 201, 849 P.2d 646 (1993).

27
28 Within the framework of state goals and requirements, the boards must grant deference to
29 local government in how they plan for growth:
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31 In recognition of the broad range of discretion that may be exercised by counties and
32 cities in how they plan for growth, consistent with the requirements and goals of this
chapter, the legislature intends for the boards to grant deference to the counties and
cities in how they plan for growth, consistent with the requirements and goals of this

1 chapter. Local comprehensive plans and development regulations require counties and
2 cities to balance priorities and options for action in full consideration of local
3 circumstances. The legislature finds that while this chapter requires local planning to
4 take place within a framework of state goals and requirements, the ultimate burden and
5 responsibility for planning, harmonizing the planning goals of this chapter, and
6 implementing a county's or city's future rests with that community.
7 RCW 36.70A.3201 (in part).

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

13 14 V. DISCUSSION

15 ***Issue No. 1: Has the County failed to review and, if needed, revise***
16 ***§17.01.060, 17.01.061, 17.01.062, 17.01.064 and 17.01.068 of the Resource***
17 ***Ordinance as required by RCW 36.70A.130 to make these development***
18 ***regulations compliant with RCW 36.70A.060 and 36.70A.170.***

19 20 **Positions of the Parties**

21 Petitioners allege that the County has failed to review and evaluate its resource lands
22 development regulations in violation of RCW 36.70A.130.¹⁵ They seek an order requiring
23 “reasoned review and evaluation by which the County might show its work in considering
24 what revisions, if any, are needed to its sections in the Resource Ordinance pertaining to
25 resource lands.”¹⁶
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32 ¹⁵ Objection to Order, Revision of Issues and Dispositive Motion at 3.

¹⁶ *Ibid.*

1 The County responds that its Resource Ordinance was determined to be in full compliance
2 with the GMA on June 6, 2003.¹⁷ As a result, the County argues, the only update of the
3 Resource Ordinance that was necessary was to address changes in the GMA. The County
4 argues that it incorporated the 2005 GMA changes which encouraged accessory uses on
5 Agricultural Resource Lands that support and promote agricultural operations as the only
6 necessary update.¹⁸
7

8 9 **Board Analysis**

10 The GMA requires counties planning under the GMA to take legislative action to review, and
11 if needed, revise comprehensive plans and development regulations to ensure that they
12 comply with the requirements of the GMA. RCW 36.70A.130(1). This periodic review
13 requirement is known as the "Update" requirement:
14

15 "Updates" means to review and revise, if needed, according to subsection (1) of this
16 section, and the time periods specified in subsection (4) of this section...
17 RCW 36.70A.130(2)(a)(in part)

18 The date by which Mason County was required to adopt its update was December 1, 2005.
19 RCW 36.70A.130(4)(b). Ordinance No. 108-05 is Mason County's Update ordinance.¹⁹ It
20 was timely adopted on November 29, 2005.
21

22 Ordinance 108-05 is entitled "Amendments to the Mason County Comprehensive Plan,
23 Resource Ordinance, Shoreline Master Program, and Mason County Development
24 Regulations." The Ordinance recites that the County accomplished the compliance review
25 and revision required by RCW 36.70A.130 through a work program and public participation
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31 ¹⁷ Mason County's Response to Petitioners' Brief at 6, citing this Board's decision in *Dawes v. Mason County*,
32 WWGMHB Case No. 95-2-0073.

¹⁸ *Ibid*, citing Ex. 241 and 322.

¹⁹ Ex. 322.

1 plan.²⁰ The findings regarding the review and revisions adopted are set out in Attachment A
2 to Ordinance 108-05²¹.

3
4 Petitioners allege “procedural noncompliance” and rest on that basis alone in making this
5 challenge.²² However, the County did complete its Update. Therefore, Petitioners cannot
6 claim that the County failed to act. Their assertion must be, instead, that the County failed
7 to adopt necessary revisions to the natural resource development regulations (the Resource
8 Ordinance). This is a challenge to the substance and sufficiency of the Update. Petitioners
9 must show how the actions that the County took failed to comply substantively with GMA
10 requirements. Petitioners did not even attempt to make this showing and have therefore
11 failed to sustain their burden of proof.
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15 **Conclusion:** The County timely conducted the Update required by RCW 36.70A.130. The
16 only update of the Resource Ordinance that the County determined was necessary was to
17 incorporate the 2005 GMA changes which encouraged accessory uses on Agricultural
18 Resource Lands. Petitioners have failed to show that revisions of the Resource Ordinance
19 were necessary to make these development regulations compliant with RCW 36.70A.060
20 and 36.70A.170, and that the County failed to make those necessary revisions.
21

22 **Issue No. 2: Has the County failed to meet the goal to retain open space (RCW**
23 **36.70A.020(9)) and the requirements of RCW 36.70A.040 and 36.70A.160 and WAC**
24 **365-195-420 by failing to act to reserve open space corridors connecting urban**
25 **growth areas and failing to implement the part of its comprehensive plan relating**
26 **to such corridors.**

27 **Positions of the Parties**

28 Petitioners argue that it is implicit in the requirements of RCW 36.70A.040 that
29 implementation of the requirement to identify open space corridors, which Petitioners
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32 ²⁰ *Ibid.*; Exhibit 322.

²¹ Attachment A also refers to another ordinance, Ordinance 109-05, which is not challenged here.

²² Objection to Order, Revision of Issues and Dispositive Motion at 3.

1 acknowledge the County has completed, requires more than mere mapping or designating
2 or locating open space corridors. Petitioners assert that the County has no regulations that
3 reserve or preserve these existing corridors or keep them from being fenced. Without such
4 regulations, Petitioners contend these identified corridors will be ineffective for recreation or
5 wildlife use.²³
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8 The County argues that the doctrine of *res judicata* should apply to this issue since
9 Petitioners have raised and lost on this issue in *Overton v. Mason County*, WWGMHB Case
10 No.05-2-0009c, Final Decision and Order (August 25, 2005).²⁴
11

12 Petitioners reply that the doctrine of *res judicata* does not apply to this challenge because it
13 is a challenge to the County's update pursuant to RCW 36.70A.130 that subjects the
14 comprehensive plan and development regulations to "continuing review and evaluation".²⁵
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16
17 In an alternative argument, the County states that it has implemented the requirement to
18 identify open space corridors by adopting policies pertaining to open space corridors, long
19 range trail planning, open space networking, trail development, education and recreation,
20 and parks and trails as they relate to quality of life, public safety and economic
21 development. Finally, the County declares it has development regulations that promote
22 clustering and include incentives for preserving designated open space, and lands abutting
23 open space.²⁶
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26 Also at argument and in Petitioners' Reply Brief, Petitioners stated that while they find
27 Mason County's policies promoting the preservation of open space corridors of questionable
28 value, they do not challenge them, but argue that it is the lack of development regulations to
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32 ²³ Objection to Order, Revision of the Issues, and Dispositive Motion at 4.

²⁴ Mason County's Response to Petitioners' Brief at 11 and 12.

²⁵ Petitioner's Reply Brief at 1.

²⁶ Mason County's Response to Petitioners' Brief at 12.

1 implement open space corridors that make the County's development regulations
2 noncompliant.²⁷

3
4 **Board Analysis**

5 The County argues that the Board decided this issue in *Overton Associates v. Mason*
6 *County*, WWGMHB Case No. 05-2-0009c (Non-Belfair Issues) (*Overton*). However, the
7 decision in the *Overton* case dealt with the timeliness of Petitioners' challenge. In that case,
8 Petitioners had raised their challenge to the County's implementation of the open space
9 corridors as a failure to act challenge, thus arguing that it could be raised at any time.²⁸

10 The Board determined that the County had identified and mapped open space corridors as
11 part of the comprehensive plan amendment in 2003.²⁹ Therefore, the Board found that the
12 time for bringing a challenge to whether the County had development regulations to
13 implement these corridors was when the County adopted its 2003 comprehensive plan
14 amendment .³⁰

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18 Here, however, Petitioners raise their challenge as part of the County's Update requirement.
19 The petition for review in this case appeals the failure of the County to "adequately review
20 and evaluate its comprehensive plan ("CP") and development regulations ("DRs") pursuant
21 to RCW 36.70A.130".³¹ The Update under RCW 36.70A.130 requires the County to
22 review and, if needed, revise its comprehensive plan and development regulations to
23 ensure the plan and regulations comply with this chapter [the GMA] according to the
24 time periods specified in subsection (4) of this section.
25 RCW 36.70A.130(1)(in pertinent part).

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²⁷ Ibid at 2.

30 ²⁸ *Overton* at 13. at 14.

31 ²⁹ *Dawes v. Mason County*, WWGMHB Case No. 96-2-0023c (Compliance Order, November 12, 2003)

32 ³⁰ *Overton* at 17.

³¹ Petition for Review, ¶ 2.

1 Open space corridor designation and mapping forms a part of the Mason County
2 comprehensive plan so it is subject to the Update requirement. The *Overton* decision did
3 not decide the merits of Petitioners' claims so the doctrine of *res judicata* does not apply.
4 Therefore, the Board will address Petitioners Issue 2.

5
6
7 RCW 36.70A.160 states in pertinent part, “

8 Each county and city that is required or chooses to prepare a comprehensive land
9 use plan according to RCW 36.70A.040 shall identify open space corridors within and
10 between urban growth areas. They shall include lands useful for recreation, wildlife
11 habitat, trails, and connection of critical areas as defined by RCW 36.70A.030.
12 Identification of a corridor under this section by a county or a city shall not restrict the
13 use or management of these lands within the corridor for agricultural or forest
14 purposes. Restrictions on the use or management of these lands for agricultural or
15 forest purposes imposed after the identification solely to maintain or enhance the
16 value of such lands as a corridor may occur only if the county or city acquires
17 sufficient interest to prevent development of these lands or to control the resource
18 development...Nothing in this section shall be interpreted to alter the authority of the
19 state, or a county or city, to regulate land use activities...

20 RCW 36.70A.160.

21
22 The context of the phrase that a county or city that is “required or chooses to prepare a
23 comprehensive land use plan” shows that the identification of open space corridors is a
24 component of developing a comprehensive plan. The County was found compliant as to
25 this planning requirement in 2003³² and Petitioners do not challenge the open space
26 corridors' identification as part of the Update required pursuant to RCW 36.70A.130. What
27 Petitioners challenge is the County's lack of development regulations to implement these
28 corridors. In this regard, we agree with the Central Puget Sound's evaluation of whether
29 RCW 36.70A.160 requires the County to adopt implementing development regulations to
30 preserve open space corridors:
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³² See *Dawes v. Mason County*, WWGMHB Case No. 96-2-0023c (Compliance Order, November 12, 2006).

1 ...RCW 36.70A.160 encourages the acquisition of identified open space corridors,
2 and addresses procedures for imposing restrictions on agricultural and forest lands
3 and emphasizes that "nothing in this section should be interpreted to alter the
4 authority of a ...city to regulate land use activities". Thus, while .160 requires the
5 identification of open space corridors, it does not require regulations to protect open
6 space corridors, it does not provide that mere identification is protection of an open
7 space corridor, nor does it provide an independent source for regulating land use
8 activities within an open space corridor. Any authorized land use or limitation,
9 restriction or prohibition of land uses Woodway might choose to employ within an
10 identified open space corridor must be grounded in separate legal authority, not RCW
11 36.70A.160.

12 *LMI/Chevron, CPSGMHB 98-3-0012 (Final Decision and Order, January 8, 1999.)*

13 Likewise, Mason County is not required by RCW 36.70A.160 to adopt development
14 regulations to preserve open space corridors. Further, the requirement that comprehensive
15 plan policies be implemented in development regulations in RCW 36.70A.040 does not
16 mean that open space corridors require regulation.

17 When we read Goal 9 of the Growth Management Act together with the requirements of
18 RCW 36.70A.160 we find we also agree with our sister board's interpretation of .160 that for
19 the identification of open space corridors to be an effective planning requirement, the
20 County must go beyond mere mapping. Goal 9 (RCW 36.70A. 020(9)) provides this
21 guidance:
22

23 Retain open space, enhance recreational opportunities, conserve fish and wildlife
24 habitat, increase access to natural resource lands and water, and develop parks and
25 recreation facilities.

26 Here, the County has incorporated Goal 9 in its open space policies. It has adopted
27 planning policies that pertain to open space corridors, long range trail planning, open space
28 networking, trail development, education and recreation, and parks and trails as they relate
29 to quality of life, public safety and economic development.³³ The minutes of Mason County
30
31

32 _____
³³ Ordinance 108-05(Exhibit 22), Chapter III-6 Open Space (Exhibit 255),and Exhibit 379.
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1 Trails Committee show that the County is using its policies to plan for trails.³⁴ Further the
2 County has development regulations to provide opportunities to provide for open space
3 corridors through its clustering ordinance and incentives for acquiring open space abutting
4 identified open space corridors.³⁵

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7 **Conclusion:** Petitioners have not met their burden of proof that the County has failed to
8 comply with RCW 36.70A.160, RCW 36.70A.040, and RCW 36.70A.020(9) by failing to
9 adopt development regulations that require the preservation of open space corridors. We
10 find that the County has complied with both the letter and the spirit of RCW 36.70A.160,
11 .040, and 020 (9).

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14 **Issue No. 3: Has the County failed to meet the goals to reduce**
15 **inappropriate conversion of undeveloped land into sprawling, low density**
16 **development (RCW 36.70A.020(2)), to conserve productive agricultural and**
17 **forest lands (RCW 36.70A.020(8)), to retain open space and conserve fish**
18 **and wildlife habitat (36.70A.020(9)), and to protect the environment**
19 **(36.70A.020(10)) and the requirements of 36.70A.060, 36.70A.070, and**
20 **36.70A110 by failing to act to curb continued proliferation, through**
21 **subdivision, of rural parcels even while it has such a large inventory of**
22 **vacant rural parcels that the County's entire projected population growth to**
23 **the planning horizon might be accommodated in rural areas on existing**
24 **vacant parcels.**

25 **Positions of the Parties**

26 Petitioners claim that the GMA requires rural areas to be primarily used for production of
27 food, other agricultural products, and fiber, or for extraction of mineral resources and similar
28 rural uses.³⁶ They argue that adequate restrictions have not been placed on pre-existing
29 rural lots in Mason County to prevent sprawling low-density residential and commercial

30
31
32 ³⁴ Exhibit 379

³⁵ Mason County Code Chapters 16.22 and 16.23 and definitions section; MCC 1.04-240 and 1.04.230

³⁶ Petitioners' Brief at 2.

1 development from consuming large tracts of productive rural lands.³⁷ Petitioners assert that
2 the “vast inventory” of undeveloped rural lots, if allowed to develop without restriction, will
3 continue to cause most of the County’s projected population increase to occur in rural
4 zones, rather than in urban ones.³⁸ Based on the argument that the County’s
5 comprehensive plan policies and development regulations do not adequately reduce the
6 conversion of undeveloped land into sprawling, low-density development, Petitioners assert
7 that the plans and development regulations are contrary to RCW 36.70A.070(5)(c) and the
8 concurrency goal of RCW 36.70A.020(12).³⁹ Petitioners further argue that the County’s
9 comprehensive plan is internally inconsistent because it assumes a predominant population
10 allocation to urban areas (61.8%) but allows a pattern of population growth located mostly in
11 the rural areas.⁴⁰
12
13

14
15 The County responds that the highest residential density it allows in rural lands is one unit
16 per five acres.⁴¹ The County points to its analysis of the population estimates and
17 allocations within rural and non-rural areas as evidence of the basis for its assessment of
18 population growth in rural and urban areas.⁴² At the hearing on the merits, the County
19 noted that there are major portions of the County’s rural areas in RR-20 (rural residential
20 one unit per twenty acres) and RR-10 (rural residential one unit per ten acres) zones; and
21 that the County’s pattern of rural densities has been found compliant by this Board.
22
23

24 While arguing that the County has appropriate rural zoning, the County also states that it
25 has chosen to encourage urban development by attracting growth to the urban areas rather
26 than restricting development elsewhere. The County maintains that it cannot prohibit lawful
27 rural development in pre-existing rural lots but that its experience shows that growth follows
28

29
30 ³⁷ Ibid.

31 ³⁸ Ibid at 7

32 ³⁹ Ibid at 8.

⁴⁰ Petitioners’ Reply Brief at 4-5.

⁴¹ Mason County’s Response to Petitioners’ Brief at 14.

⁴² Ibid.

1 infrastructure. Therefore, the County is planning for more intense urban development when
2 public sewer becomes available in the Belfair UGA, which, the County believes, would be
3 consistent with the pattern of development in the Allyn UGA when sewer became
4 available.⁴³
5

6 **Board Analysis**

7
8 Petitioners' claims on this issue may be grouped into three general categories: (1) the failure
9 to conserve "productive" rural lands; (2) the failure to restrict subdivision in rural lands to
10 prevent sprawl; and (3) the failure of consistency in the comprehensive plan and
11 development regulations to direct population growth to the urban lands instead of to rural
12 lands.
13

14
15 With respect to "productive" rural lands, Petitioners confuse the requirements for the
16 conservation of natural resource lands with the requirements for rural development. Rural
17 development is defined in the GMA:

18 "Rural development" refers to development outside the urban growth area and
19 outside agricultural, forest, and mineral resource lands designated pursuant to RCW
20 36.70A.170. Rural development can consist of a variety of uses and residential
21 densities, including clustered residential development, at levels that are consistent
22 with the preservation of rural character and the requirements of the rural element.
23 Rural development does not refer to agriculture or forestry activities that maybe
24 conducted in rural areas.

24 RCW 36.70A.030(15).

25 The conservation of productive agricultural, forestry and mineral resource lands occurs,
26 under the GMA, through the natural resource lands designation process (RCW 36.70A.040
27 and 36.70A.170) and through the adoption of development regulations to assure their
28 conservation (RCW 36.70A.060(1)). Agriculture and forestry must be permitted in the rural
29 areas (RCW 36.70A.070(5)(b)), but there is no requirement that rural lands be primarily
30
31
32

⁴³ Argument presented at the Hearing on the Merits.

1 devoted to those uses. Therefore, there is no requirement that the County conserve
2 “productive” rural lands for natural resource industry purposes.
3

4 Petitioners also challenge the failure of the County to curb subdivision of rural lots.
5 However, Petitioners have not challenged the County’s development regulations for
6 “performance subdivisions”⁴⁴ which allow additional density bonuses outside of “working
7 rural areas” or the development regulations allowing clustering within “working rural
8 areas”.⁴⁵ There is no mention of these development regulations in Issue 3 and, despite
9 advisement by the Presiding Officer that it is necessary to specify any challenged
10 development regulations, Petitioners deliberately chose not to challenge any specific
11 development regulations,
12 development regulations:
13

14 Though it might simplify the task for the board if only a few DRs could be the focus of
15 the issue, it may not be possible, given that the complaint is against what may be
16 seen as a sin of omission... Although Issue 3.3 [restated as Issue 3 in the prehearing
17 orders] is not a complaint against any particular provision of DRs that allow
18 conversion of productive agricultural lands and forest lands into low-density rural
19 residential and commercial development, it is a complaint against the DRs as a
20 whole, which might be remedied by either more restrictive provisions relating to
21 further subdivision or substantial incentives for recombination of existing vacant rural
22 parcels or annual quotas of allowable rural development and subdivision or some
23 combination of these.⁴⁶

24 In their briefing, Petitioners claim that invalidity should be imposed as to certain provisions
25 of the Mason County Development Code: §1.03.032 (Development Densities; Dimension
26 Requirements); § 1.04.213A, 1.04.223A and 1.04.233A (setting density and lot size for
27 Rural Residential 2.5, Rural Residential 5, and Rural Residential 10, respectively).⁴⁷
28 However, Petitioners never challenged these provisions as *noncompliant* with any provision
29 of the GMA. Despite Petitioners’ assertion to the contrary in their Reply Brief, Petitioners
30

31 ⁴⁴ Chapter 16.21 of the Mason County Code.

32 ⁴⁵ Chapter 16.23 of the Mason County Code.

⁴⁶ Restatement of Issues and Request for Extension of Time at 2. March 22, 2006 (in pertinent part).

⁴⁷ Petitioners’ Brief at 16.

1 did not identify noncompliant development regulations in Issue 3.⁴⁸ In their briefing,
2 Petitioners requested an invalidity determination as to those development regulations but
3 nothing in the issue statement in either the petition for review or the prehearing order sets
4 forth a claim that rural lot sizes and densities are alleged to be noncompliant (or, for that
5 matter, invalid). A growth management hearings board may only decide issues “presented
6 to the board in the statement of issues, as modified by any prehearing order”.⁴⁹ Petitioners
7 seem to argue that since invalidity may only be imposed after a finding of noncompliance
8 has been made, a challenge to the compliance of those regulations may be inferred.⁵⁰ They
9 are mistaken. RCW 36.70A.290(1) expressly limits the Board to deciding issues raised in
10 the issue statement incorporated into the prehearing order. Since Petitioners did not allege
11 noncompliance of the specific development regulations establishing rural lot sizes and
12 densities, Petitioners may not backdoor their request for invalidity into a compliance
13 challenge they did not raise.
14
15

16
17 Without challenges to the compliance of those development regulations, Petitioners’
18 argument must be seen to be that allowing rural subdivisions at rural densities with
19 appropriate performance standards still contributes to sprawl in Mason County. However,
20 the GMA does not preclude rural subdivisions. To the contrary, the GMA expressly allows
21 clustering, density transfers, design guidelines, and “other innovative techniques” that
22 accommodate appropriate rural densities and uses, not characterized by urban growth and
23 consistent with rural character. RCW 36.70A.070(5)(b). Mason County has adopted many
24 of these techniques.⁵¹ Since there was no challenge to the compliance of those
25 development regulations, the County’s development regulations for rural subdivisions are
26 deemed compliant with the GMA.⁵²
27
28

29
30 _____
31 ⁴⁸ Petitioners’ Reply Brief at 5.

32 ⁴⁹ RCW 36.70A.290(1)

⁵⁰ RCW 36.70A.302(1)(a).

⁵¹ Title 16 of the Mason County Code.

⁵² RCW 36.70A.320(1)

1 The main thrust of Petitioners arguments in Issue 3 is that there are too many rural lots in
2 Mason County. Petitioners argue that there are approximately 20,000 buildable lots in the
3 rural area and that this number would fully accommodate the projected population growth
4 through 2025.⁵³ Therefore, Petitioners argue that the County must counteract the effect of
5 these pre-existing lots by regulating the number of rural lots that may be developed with
6 development regulations that preclude full development of all of the rural lots.⁵⁴
7

8
9 Petitioners base their claim in part on RCW 36.70A.070(5)(c):

10 The rural element shall include measures that apply to rural development and protect
11 the rural character of the area, as established by the county, by:

- 12 (i) Containing or otherwise controlling rural development;
- 13 (ii) Assuring visual compatibility of rural development with the
14 surrounding rural area;
- 15 (iii) Reducing the inappropriate conversion of undeveloped land
16 into sprawling, low-density development in the rural area;
- 17 (iv) Protecting critical areas, as provided in RCW 36.70A.060,
18 and surface water and ground water resources and
- 19 (v) Protecting against conflicts with the use of agricultural,
20 forest, and mineral resource lands designated under RCW
21 36.70A.170.

22 RCW 36.70A.070(5)(c).

23 This provision of the GMA requires the rural element of the County's comprehensive plan to,
24 among other things, contain rural development and reduce the inappropriate conversion of
25 undeveloped land into low-density sprawl. Petitioners allege that the County has failed to
26 do this because it does not have a development regulation restricting the number of rural
27 parcels that may be developed. The County does have development regulations addressed
28 to nonconforming rural lots, even if they do not restrict development as Petitioners deem
29 necessary.⁵⁵ Further, the "sin of omission" that Petitioners allege is not the noncompliance
30 of any existing development regulations but the absence of a regulation such as Petitioners

31
32 ⁵³ Petitioners' Argument at the Hearing on the Merits.

⁵⁴ Ibid.

⁵⁵ MCC 1.03.032B.5(a) and (b).

1 suggest. However, there is no GMA requirement that the County adopt a specific approach
2 to “containing or otherwise controlling rural development” or to “reducing the inappropriate
3 conversion of undeveloped land into sprawling, low-density development in the rural area”.
4 Indeed, the reverse is the case. That is, the GMA expressly directs the board to “grant
5 deference to counties and cities in how they plan for growth, consistent with the goals and
6 requirements of this chapter”.⁵⁶ To simply allege that there must be a regulation that limits
7 the number of rural lots that are developed fails to recognize the Petitioners’ burden to show
8 why the County’s choices are clearly erroneous.
9

10
11 This is not a case in which the County failed to consider its obligation to contain rural
12 development and to reduce sprawl. The County directly addressed the concern of reducing
13 the percentage of rural development over the 20-year planning period in adopting the
14 population allocations that it did. According to the County’s analysis, existing growth trends
15 would place 80% of future development in the rural areas.⁵⁷ However, the County based its
16 choice to allocate a larger percentage of its future population to urban areas on its
17 experience in the Allyn UGA after sewer was provided. Prior to the advent of sewer, the
18 Allyn UGA accounted for 2-3% of building permits in the County. After sewer was provided,
19 8-9% of the building permits in the County were issued for the Allyn UGA.⁵⁸
20
21

22
23 Based on its experience with the Allyn UGA, the County adopted a plan that anticipates a
24 shift from rural to urban development, beginning in 5 to 10 years.⁵⁹ This shift assumes that
25 sewer will be available in the Belfair UGA in that timeframe. Petitioners have failed to show
26 that this strategy for addressing disproportionate amounts of rural development is clearly
27 erroneous.
28

29
30
31 ⁵⁶ RCW 36.70A.3201 (in part).

32 ⁵⁷ Exhibit 214.

⁵⁸ *Ibid.*

⁵⁹ Exhibit 142

1 Further, the last part of the County's comprehensive plan and development regulations to
2 be revised and found compliant were the parts pertaining to rural development. Compliance
3 on these parts of the County's plan and regulations was found in November 2004. The
4 Update challenged here relies in large part on these policies and regulations. Therefore,
5 the County has not yet had the opportunity to develop much data on whether its strategy for
6 promoting growth in urban areas and restricting growth in rural areas is working. One of the
7 purposes of the Update mandated by RCW 36.70A.130 is to give citizens and local
8 governments an opportunity to assess the success of plans and regulations. The County's
9 next update of its UGAs and development regulations will provide a better picture of the
10 success of the County's strategy and its compliance with the sprawl reduction goal of the
11 GMA.
12
13

14
15 **Conclusion:** Petitioners have failed to show that the County's strategy for the reduction of
16 growth in the rural areas is clearly erroneous. Further, Petitioners failed to challenge the
17 County's development regulations related to subdivisions, lot sizes and rural densities;
18 therefore those regulations are deemed compliant with the GMA.
19

20
21 **Issue No. 4** Has the County failed to meet the goals to reduce inappropriate
22 conversion of undeveloped land into sprawling, low density development
23 (RCW 36.70A.020(2)), to conserve productive agricultural and forest lands
24 (RCW 36.70A.020(8)), to retain open space and conserve fish and wildlife
25 habitat (36.70A.020(9)), and to protect the environment (36.70A.020(10)) and the
26 requirements of RCW 36.70A.040, RCW 36.70A.060, and 36.70A.070 by failing
27 to adopt development regulations to implement Policy B-1-a.1, Policy B-1-a.4,
28 Policy -1-a.5, Policy B-1-a.6, Policy B-1-a.7, Policy B-1-a.8 and Policy B-3-c.2 of
29 the Harstine Island Sub-Area Plan as required by RCW 36.70A.040.

30 **Positions of the Parties**

31 Petitioners argue that the County had adopted no development regulations to implement
32 any of the policies of the Harstine Island Sub-Area Plan as listed in Issue 4.⁶⁰ Petitioners

⁶⁰ Objection to Order; Revision of Issues; and Dispositive Motion at 3.
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1 observe that the County's position is that development regulations apply county-wide and
2 that there do not need to be any special development regulations for Harstine Island.⁶¹

3 Petitioners then assert:

4 So long as there is a Harstine Island Sub-Area Plan that specifies needs and
5 desiderata that apply to the island, but not elsewhere, the County's approach is
6 clearly defective.⁶²

7
8 The County responds first that this issue was decided by the Board in *Overton Associates v.*
9 *Mason County*, WWGMHB Case NO. 05-2-0009c (Final Decision and Order on Non-Belfair
10 Issues, August 25, 2006).⁶³ The County argues that the doctrine of *res judicata* should bar
11 re-litigation of this decided issue.⁶⁴ Further, the County argues that no changes in the GMA
12 were applicable to Harstine Island and therefore no Update revisions were required.⁶⁵

14 **Board Analysis**

15
16 The County argues that the Board decided this issue in *Overton Associates v. Mason*
17 *County*, WWGMHB Case No. 05-2-0009c (Non-Belfair Issues) (*Overton*). However, the
18 decision in the *Overton* case dealt with the timeliness of Petitioners' challenge. In that case,
19 Petitioners had raised their challenge to the County's implementation of the Harstine Island
20 Sub-Area Plan as a failure to act challenge, thus arguing that it could be raised at any
21 time.⁶⁶ The Board determined that the County had adopted the Harstine Island Sub-Area
22 Plan as part of the comprehensive plan in 1996. Therefore, the time for bringing a
23 challenge to development regulations to implement the plan was 1996.⁶⁷

24
25
26
27
28
29 ⁶¹ *Ibid* at 4

30 ⁶² *Ibid.*

31 ⁶³ Mason County's Response to Petitioners' Brief at 18.

32 ⁶⁴ *Ibid.*

⁶⁵ *Ibid.*

⁶⁶ Final Decision and Order at 14.

⁶⁷ *Ibid* at 15.

1 Here, however, Petitioners raise their challenge as part of the County's Update requirement.
2 The petition for review in this case appeals the failure of the County to "adequately review
3 and evaluate its comprehensive plan ("CP") and development regulations ("DRs") pursuant
4 to RCW 36.70A.130".⁶⁸ The Update under RCW 36.70A.130 requires the County to
5 review and, if needed, revise its comprehensive plan and development regulations to
6 ensure the plan and regulations comply with this chapter [the GMA] according to the
7 time periods specified in subsection (4) of this section.
8 RCW 36.70A.130(1)(in pertinent part).

9
10 The Harstine Island Sub-Area Plan forms a part of the Mason County comprehensive plan
11 so it is subject to the Update requirement. The *Overton* decision did not decide the merits of
12 Petitioners' claims so the doctrines of *res judicata* and collateral estoppel do not apply.
13 Therefore, the Board will address Petitioners Issue 4.

14
15
16 Petitioners argue that there are no development regulations implementing the Harstine
17 Island Sub-Area Plan policies they list. These are Policies B-1-a.1, Policy B-1-a.4, Policy B-
18 1-a.5, Policy B-1-a.6, Policy B-1-a.7, Policy B-1-a.8 and Policy B-3-c.2 of the Harstine Island
19 Sub-Area Plan, found in the Mason County Comprehensive Plan (2005) at III-3.17 – III-3.20.

20
21
22 In response, the County offers Exhibit 241 to show that it did, in fact, review the Harstine
23 Island Sub-Area Plan comprehensive plan policies to assure consistency with development
24 standards applicable on Harstine Island. County staff determined that the innovative
25 provisions and incentives for subdivisions contained in the Mason County Code - Chapter
26 16, Section 16.22, Performance Subdivisions, and the Section 16.23 Cluster Subdivisions -
27 apply on Harstine Island and implement the Policy B-1-a series of the Harstine Island Sub-
28 Area Plan.⁶⁹ These policies, B-1-a-1 through B-1-a-8, fall under the rubric of B-1-a:
29
30
31

32

⁶⁸ Petition for Review, ¶ 2.

⁶⁹ *Ibid*, Attachment 5.

1 Establish subdivision design standards which minimize site disturbance, preserve the
2 natural beauty of the Island, minimize the visual impact of the development, ensure
3 privacy of residents and maintenance of rural character.

4 They also reviewed development regulations implementing the B-3 industrial and
5 commercial land use policies.⁷⁰ Policy B-3-c.2 is the only Harstine Island Sub-Area Plan
6 policy outside of the B-1-a series which has been challenged by Petitioners:
7

8 Commercial development be subject to design review to ensure compatibility with
9 rural character of the Island.

10 Staff review determined that the B-3 policies are implemented by “the whole set of rural
11 lands regulations relevant to those uses”:

12 These include the Rural Commercial, Rural Tourist, Rural Industrial, Rural Natural
13 Resources. There is a whole framework to preserve rural character that was
14 approved by the GMHB that controls this type of development on Harstine Island.
15 The Island is all zoned as various rural areas. Almost all of it is one of the rural
16 residential zones where any industrial or commercial home occupation is closely
17 regulated.⁷¹

18 These are the development regulations on which the County relies for implementing the
19 specified Harstine Island Sub-Area Plan policies. Petitioners appear to concede that the
20 County has development regulations implementing the Harstine Island Sub-Area Plan, “if
21 not robustly”.⁷² However, they insist that since the comprehensive plan states that some
22 policies are intended to apply to Harstine Island only, the County must have development
23 regulations that apply to Harstine Island only. We do not agree that Petitioners may satisfy
24 their burden of proof by simply pointing to a lack of development regulations unique to
25 Harstine Island.
26

27
28 The sentence in the comprehensive plan upon which Petitioners rely states:
29
30

31
32 ⁷⁰ *Ibid.*

⁷¹ *Ibid.*

⁷² Objection to Order; Revision of Issues; and Dispositive Motion at 4.

1 For Harstine Island, this plan has some planning policies intended to apply only to
2 that area.⁷³

3 The plan does not state nor do Petitioners articulate what policies are unique to Harstine
4 Island. Even less do Petitioners show that a particular policy regarding Harstine Island is
5 not implemented through the applicable development regulations. Under these
6 circumstances, Petitioners have not shown that the development regulations applicable to
7 Harstine Island fail to implement the challenged policies of the Harstine Island Sub-Area
8 Plan.
9

10
11 **Conclusion:** Petitioners have failed to show that the County's development regulations
12 implementing Harstine Island Sub-Area Plan policies B-1-a.1, Policy B-1-a.4, Policy B-1-a.5,
13 Policy B-1-a.6, Policy B-1-a.7, Policy B-1-a.8 and Policy B-3-c.2 are clearly erroneous.
14

15
16 **Issue 5: Do the development regulations for the Belfair and Allyn urban growth**
17 **areas, which set boundaries to include land not characterized by urban growth,**
18 **but which allow urban growth throughout the UGAs without any staging to limit**
19 **growth initially to areas characterized by urban growth, and which allow urban**
20 **growth in parts of the UGAs for which there is no provision for concurrent**
21 **development of sewer and stormwater management facilities, fail to comply**
22 **with GMA requirements and interfere with GMA goals to reduce inappropriate**
23 **conversion of undeveloped land into sprawling, low density development**
24 **(RCW 36.70A.020(2)), to conserve productive agricultural and forest lands**
25 **(RCW 36.70A.020(8)), to retain open space and conserve fish and wildlife**
26 **habitat (36.70A.020(9)), and to protect the environment (36.70A.020(10)) and to**
27 **ensure that public facilities necessary to support development shall be**
28 **adequate to serve the development when it becomes available for occupancy**
29 **(RCW 36.70A.020(12)).**

30 a. By including about 1,000 acres of undeveloped forest land in the Belfair
31 UGA, does the County fail to comply with RCW 36.70A.110(1)'s requirement
32 that territory outside a city or fully contained community and not
characterized by urban growth may be included in a UGA only if it is
adjacent to territory characterized by urban growth.

⁷³ Mason County Comprehensive Plan at III-1.
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1 available at the time development is available for occupancy and use.⁸⁰ Petitioners assert
2 that the County's development regulations allow urban densities of development throughout
3 the Belfair UGA without any staging or limitation except that a developed parcel must be
4 large enough to support a septic system and the developers of such property must agree
5 not to contest a sewer assessment if one is ever imposed.⁸¹ This, they argue, violates RCW
6 36.70A.110(3) and Goal 12, RCW 36.70A.020(12).⁸²
7

8
9 Third, Petitioners argue that the Belfair and Allyn urban growth areas (UGAs) have been
10 created without a plan for the provision of urban services throughout the UGAs.⁸³ The
11 capital facilities element of the County's comprehensive plan, Petitioners assert, has failed
12 to identify projected funding capacities or sources of public money for sewers in the Belfair
13 UGA or stormwater management facilities in Belfair and Allyn.⁸⁴ This, Petitioners allege,
14 violates RCW 36.70A.070(3)'s requirement for the clear identification of sources of public
15 money and a six-year plan for firm funding for such services.⁸⁵ Further, Petitioners argue
16 that development regulations that implement a non-compliant capital facilities plan do not
17 themselves comply with RCW 36.70A.040, RCW 36.70A.110(3), RCW 36.70A.020(1), (2)
18 and (12).⁸⁶
19
20
21

22 The County responds first that the determination of which lands should be included in the
23 UGAs was made through an extensive public participation process.⁸⁷ As to Petitioners'
24 argument that the Belfair UGA includes lands that are not adjacent to lands already
25 characterized by urban growth, the County asserts that the lands which surround the Belfair
26
27

28 ⁸⁰ *Ibid* at 12.

29 ⁸¹ *Ibid*.

30 ⁸² *Ibid*.

31 ⁸³ Petitioners' Brief at 10

32 ⁸⁴ *Ibid* at 13.

⁸⁵ *Ibid* at 14.

⁸⁶ *Ibid* at 15.

⁸⁷ Mason County's Response to Petitioners' Brief at 18.

1 Commercial District meet the statutory requirement.⁸⁸ Further, the County asserts that the
2 UGAs were sized appropriately to accommodate the population allocation and growth
3 projections established in the comprehensive plan.⁸⁹
4

5
6 In response to Petitioners' argument that there is no staging of growth established in the
7 Belfair UGA, the County asserts that it is in the process of studying the feasibility of
8 extending public sewer to include the North Shore Hood Canal area as part of the Belfair
9 UGA wastewater system.⁹⁰ Public water is provided in the Belfair UGA. The County urges
10 that its efforts to address the contamination issues affecting Hood Canal comply with the
11 concurrency requirements of RCW 36.70A.110(3) and the concurrency goal of the GMA,
12 RCW 36.70A.020(12).⁹¹
13

14
15 In answer to the Petitioners' challenge to the plan for urban services within the Belfair UGA,
16 the County argues that it has plan provisions for the implementation of sewer services in the
17 Belfair UGA, a six-year financing plan for capital facilities in both UGAs, and provisions for
18 the implementation of stormwater management in the Allyn and Belfair UGAs.⁹² The County
19 asserts that these planning documents comply with RCW 36.70A.040 and 36.70A.070 and
20 ensure that wastewater and stormwater facilities will be provided concurrently with projected
21 growth for those areas.⁹³
22

23 24 **Board Analysis**

25 We will address the first sub-part to Issue 5 first and then the second two sub-parts
26 together.
27

28
29
30 ⁸⁸ *Ibid.*

31 ⁸⁹ *Ibid.*

32 ⁹⁰ *Ibid* at 19; Argument at the Hearing on the Merits

⁹¹ *Ibid.*

⁹² Mason County's Response to Petitioners' Brief at 20

⁹³ *Ibid* at 21.

1 a. By including about 1,000 acres of undeveloped forest land in the Belfair
2 UGA, does the County fail to comply with RCW 36.70A.110(1)'s requirement
3 that territory outside a city or fully contained community and not
4 characterized by urban growth may be included in a UGA only if it is
5 adjacent to territory characterized by urban growth.

6 The first sub-part (a) of Issue 5 challenges compliance with the UGA location requirements
7 of RCW 36.70A.110(1). The GMA provides:

8 Each county that is required or chooses to plan under RCW 36.70A.040 shall
9 designate an urban growth area or areas within which urban growth shall be
10 encouraged and outside of which growth can occur only if it is not urban in nature.
11 Each city that is located in such a county shall be included within an urban growth
12 area. An urban growth area may include more than a single city. An urban growth
13 area may include territory that is located outside of a city only if such territory is
14 already characterized by urban growth whether or not the urban growth area includes
15 a city, or is adjacent to territory already characterized by urban growth, or is a
16 designated new fully contained community as defined by RCW 36.70A.350.

17 RCW 36.70A.110(1).

18 Petitioners allege that the Belfair UGA does not meet this requirement because it includes
19 territory that is neither characterized by urban growth nor adjacent to territory characterized
20 by urban growth.⁹⁴ However, Petitioners have not challenged the size of the Belfair UGA on
21 grounds that it is disproportionate to the population allocated to it.⁹⁵ We therefore accept
22 the County's assertion that the Belfair UGA is sized appropriately to accommodate the
23 population allocation and growth projections established in the comprehensive plan.⁹⁶
24
25
26
27

28 ⁹⁴ Petitioners' Brief at 10-11.

29 ⁹⁵ At the hearing on the merits, Petitioners argued that the Belfair UGA was "over-sized" but that issue is not
30 raised in Issue 5 and cannot be added in the course of argument. As Petitioners state in their brief, the issue
31 of compliance with RCW 36.70A.110(1) is whether "the notion of territory **adjacent** to territory characterized by
32 urban growth can be stretched to include land as much as a mile away from the commercial and residential
development strung along the highway". Petitioners' Brief at 11. A challenge to the appropriate size of a UGA
would be grounded in RCW 36.70A.110(2).

⁹⁶ *Ibid.*

1 The question, then, is whether the territory included in the Belfair UGA, if not characterized
2 by urban growth, is adjacent to territory that is characterized by urban growth. Petitioners
3 argue that since the Belfair UGA extends as much as a mile from the commercial and
4 residential development along SR 3, it fails the adjacency requirement of RCW
5 36.70A.110(1).⁹⁷ Petitioners argued at the hearing on the merits that adjacency requires
6 parcel-by-parcel adjacency, such that the next vacant lot to a developed lot would be the
7 adjacent territory that could be included in a UGA.
8

9
10 In contrast, the County argued at the hearing on the merits that “adjacency” means that the
11 area added to the UGA should be next to an area characterized by urban growth, and that
12 parcel-by-parcel or lot-by-lot contiguity is not required. Since all of the lands in the Belfair
13 UGA are adjacent to other lands in the UGA, the County argues that the adjacency
14 requirements of RCW 36.70A.110(1) are met.
15

16
17 We agree with the County that parcel-by-parcel contiguity is not what is required by the
18 phrase “adjacent to territory already characterized by urban growth”. The GMA uses the
19 term “territory” when referring to lands that may be included in a UGA:
20

21 ... An urban growth area may include **territory** that is located outside of a city only if
22 such **territory** is already characterized by urban growth whether or not the urban
23 growth area includes a city, or is adjacent to **territory** already characterized by urban
24 growth...

25 RCW 36.70A.110(1)(in part)(emphasis added)
26

27 In another section of the GMA, the provisions related to establishing limited areas of more
28 intensive rural development (LAMIRDs), the GMA refers to the creation of some of such
29 LAMIRDs by “lots” (RCW 36.70A.070(5)(d)(ii) and (iii)) while others are created by “areas”.
30 RCW 36.70A.070(5)(d)(i). Clearly, had the drafters intended to limit UGAs to lots adjacent
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⁹⁷ *Ibid.*

1 to areas characterized by urban growth, they would have used the word “lot” instead of
2 “territory”.

3
4 “Territory” is not defined in the GMA so we turn to the dictionary to interpret its meaning.
5 (“Unless contrary legislative intent is indicated, words are given their ordinary, dictionary
6 meaning”. *City of Bellevue v. Lorang*, 140 Wn.2d 19 at 24, 992 P.2d 496, 2000 Wash
7 LEXIS 79 (2000)). The Random House Dictionary defines “territory” as:

- 9 1. any tract of land; region or district.
10 2. the land and waters belonging to or under the jurisdiction of a state, sovereign,
11 etc.
12 3. any separate tract of land belonging to a state.⁹⁸

13 “Adjacent” is also undefined in the GMA; again, the dictionary definition is instructive:

- 14 1. lying near, close, or contiguous; adjoining; neighboring (*a field adjacent to the*
15 *highway*)
16 2. just before, after, or facing (*a map on an adjoining page*)⁹⁹

17 “Territory ...adjacent to territory” must therefore mean that the tracts of land are near, close
18 or contiguous. It does not mean that every lot or parcel within the territory included must be
19 contiguous to a lot or parcel already characterized by urban growth.

20
21 Here, Petitioners rely upon the fact that forested and vacant lands are included in the Belfair
22 UGA to prove that the territory included is not adjacent to territory characterized by urban
23 growth. Petitioners do not argue that the County has created an island of land,
24 unconnected to other portions of the Belfair UGA. Instead, they object to the inclusion of
25 lands (forested, vacant and otherwise) because they stretch up to a mile from the urbanized
26 areas along SR 3. Petitioners call including these lands “gerrymandering”.¹⁰⁰
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32 ⁹⁸ The Random House Dictionary of the English Language, unabridged edition (1967) (first three entries)

⁹⁹ *Ibid.*

¹⁰⁰ Argument at the hearing on the merits.

1 The fact that certain lands are vacant or used for forestry likely means that they are not
2 already characterized by urban growth but it does not, *per se*, demonstrate that those lands
3 could not be part of territory adjacent to urban lands.
4

5 The Petitioners have not claimed that these lands are not appropriate for accommodating
6 urban growth. This challenge does not raise the question of whether “forestry” lands are or
7 should be designated as natural resource lands. The specific challenge raised in Issue 5(a)
8 is whether the inclusion of forestry lands in the Belfair UGA violates the adjacency
9 requirements of RCW 36.70A.110(1). On this record, we do not find that it does.
10 Therefore, we find that the Belfair UGA boundaries are compliant with the location
11 requirements of RCW 36.70A.110(1). To make it plain for future reference, however, the
12 Board is not finding that the size of the Belfair UGA is commensurate with a projected need
13 for urban lands nor are we finding that the densities established within the Belfair UGA are
14 urban densities. We find only that no challenge was raised to those aspects of the Belfair
15 UGA and therefore they are deemed compliant.
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19 **b. By allowing urban growth to occur immediately throughout the Belfair**
20 **UGA, and by amending its comprehensive plan to state that it is only**
21 **determining the “feasibility” of providing municipal sewers, does the**
22 **County fail to comply with RCW 36.70A.110(3)’s requirements relating to the**
23 **sequencing of urban growth.**

24 Issue 5(b) addresses the Belfair UGA and the requirement for sequencing of growth in RCW
25 36.70A.110(3):

26 Urban growth should be located first in areas already characterized by urban growth
27 that have adequate existing public facility and service capacities to serve such
28 development, second in areas already characterized by urban growth that will be
29 served adequately by a combination of both existing public facilities and services and
30 any additional needed public facilities and services that are provided by either public
31 or private sources, and third in the remaining portions of the urban growth areas.
32 Urban growth may also be located in designated new fully contained communities as
defined by RCW 36.70A.350.

1 The County refers us to Section 1.03.031 of the Mason County Development Code for the
2 County's requirements for a binding site plan "prior to the provision of public sewer or public
3 water to a site" in the Belfair and Allyn UGAs:

4 In the Belfair and Allyn urban growth areas and prior to the provision of public sewer
5 or public water to a site, any approval for a commercial, industrial and mixed use
6 development is required to include a binding site plan which:

- 7 1. complies with the applicable health regulations and other Mason County
8 building regulations, e.g. critical areas, storm water management, etc.
- 9 2. provides for the septic needs of the current proposal and shows how the
10 remainder of the site will accommodate and not preclude urban services and
11 densities, and
- 12 3. provides for future sewer pipelines and other utilities.¹⁰¹

13 The County also references Section 1.03.030 of the Development Code, providing for
14 "decommissioning" of septic systems once public sewer is available:

15 If a septic system is proposed for placement in an area identified for sewer line
16 extension in the County's Capital Facilities Plan, for new development other than
17 single family residential construction, the County shall issue any approval for the
18 septic system with a condition that it be decommissioned and the property connected
19 to the sewer system within one year of sewer extension. Within this paragraph, "new
20 development" means any development which requires wastewater/sanitary sewer
21 provisions which can not be met with an existing system.¹⁰²

22 We find that these two development regulations impose appropriate restrictions on
23 commercial/industrial/mixed use growth until public sewer is available in the Belfair UGA.
24 However, Section 1.03.030 exempts single family residential development from the septic
25 system decommissioning requirement and Section 1.03.031 exempts all residential
26 development from the requirement for a binding site plan. Thus, residential development at
27 urban levels is not tied to the availability of urban levels of service. Nor is there any
28 requirement that new residential development commit to connect to sewer when it becomes
29 available.

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32 ¹⁰¹ §1.03.031.A, Mason County Development Code

¹⁰² §1.03.030.C, Mason County Development Code

1 According to Table IV 3-4A (Land Supply Summary), over a thousand gross acres within the
2 Belfair UGA are zoned for residential use at densities of between three dwelling units per
3 acre and 10 dwelling units per acre. Without a requirement that residential development
4 within the UGA connect to sewer when public sewer is available within the UGA, there is no
5 assurance that such urban residential development will ever be connected to public sewer.
6 Further, urban levels of residential development are allowed within the Belfair UGA before
7 urban sewer service can be connected. This violates RCW 36.70A.110(3) and the
8 concurrency goal (12) of the GMA:
9

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

14 RCW 36.70A.020(12)

15 Lack of urban services may also mean that urban densities cannot be achieved in the
16 Belfair UGA. This will defeat the purpose of the UGA and cause development at less than
17 urban but more than rural densities in violation of the anti-sprawl goal of the GMA. RCW
18 36.70A.020(2).
19

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21 **c. By failing to provide for implementation of municipal sewage and**
22 **stormwater treatment facilities concurrent with urban growth in its**
23 **designated Belfair and Allyn UGAs, does the County fail to comply with**
24 **RCW 36.70A.040 and RCW 36.70A.070.**

25 Issue 5(c) challenges the failure of the plan to provide for municipal sewer in the Belfair
26 UGA and stormwater facilities concurrent with permitted urban growth in both the Allyn and
27 Belfair UGAs. Petitioners challenge the compliance of the capital facilities element of the
28 County's comprehensive plan.¹⁰³ The GMA requires the comprehensive plan to include a
29 capital facilities element:
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¹⁰³ Petitioners' Brief at 13.
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1 A capital facilities plan element consisting of: (a) An inventory of existing capital
2 facilities owned by public entities, showing the locations and capacities of the capital
3 facilities (b) a forecast of the future needs for such capital facilities; (c) the proposed
4 locations and capacities of expanded or new capital facilities; (d) at least a six-year
5 plan that will finance such capital facilities within projected funding capacities and
6 clearly identifies sources of public money for such purposes; and (e) a requirement to
7 reassess the land use element if probable funding falls short of meeting existing
8 needs and to ensure that the land use element, capital facilities plan element, and
9 financing plan within the capital facilities plan element are coordinated and
10 consistent. Park and recreation facilities shall be included in the capital facilities plan
11 element.

12 RCW 36.70A.070(3)

13 Petitioners maintain that the capital facilities element in the County's plan does not identify
14 projected funding capacities and source of public money for sewers in the Belfair UGA or for
15 storm water management in the Belfair or Allyn UGAs.¹⁰⁴ Petitioners claims that the
16 comprehensive plan lacks firm funding for sewer construction in Belfair, and points to plan
17 language suggesting that there is no firm commitment to construct sewer: "If the decision is
18 made to proceed with the development of this system..."¹⁰⁵

19 The County argues that the cited language is only expressing uncertainty as to the size of
20 the sewer service area; there is no uncertainty whether the sewer project will extend
21 throughout the Belfair UGA.¹⁰⁶ The County points to the six-year funding plan for the Belfair
22 Area Sewer Improvements (CP VI.3-13), and argues that it shows that sewer will be
23 constructed in Belfair by 2009.¹⁰⁷ The County also points out that a county-operated
24 wastewater system already exists in the Allyn UGA.¹⁰⁸

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¹⁰⁴ *Ibid.*

¹⁰⁵ CP VI.3-2

¹⁰⁶ Argument at Hearing on the Merits.

¹⁰⁷ 2006-2011 Capital Facilities Plan Worksheet, Parks, Utilities & Waste Management

¹⁰⁸ Mason County's Response to Petitioners' Brief at 20.

1 The County clearly understands the need for public sewer to serve the Belfair UGA. The
2 cost estimates for the Belfair Area Sewer Improvements Project are in the planning stage.
3 This means they are based on a project concept and some assessment of relative scale.¹⁰⁹
4 At oral argument, County staff estimated that the County will be able to choose an
5 alternative and start construction within 12 months.
6

7
8 We do not doubt that the County has been working with diligence to plan and finance a
9 public sewer system in the Belfair UGA. However, the County's work is not yet done. The
10 capital facilities financing plan does not yet show how the County "will finance such capital
11 facilities within projected funding capacities and clearly identifies sources of public money
12 for such purposes". RCW 36.70A.070(3)(d). The County's planning estimate is a good start
13 but does not yet fulfill the requirement for a six-year financing plan.
14

15
16 As to storm water management in Belfair and Allyn, the County had adopted the most
17 recent edition of the Washington State Department of Ecology's Stormwater Management
18 Manual, with the exception of the Minimum Requirements chapter.¹¹⁰ However, the County
19 does not have a stormwater plan or utility.¹¹¹ The comprehensive plan indicates that
20 stormwater management facilities may be needed for the designated UGAs:
21

22 The designated urban areas, in particular, need further study to assess if a
23 stormwater utility and facilities are needed for future development. Such facilities
24 have not been determined to be necessary within the six-year financial planning
25 horizon. A comprehensive stormwater plan for county roadways is already
26 scheduled for development as is reflected in the six-year financial plan.¹¹²

27 Stormwater management for the Belfair and Allyn UGAs is another area in which the County
28 is making good progress but has not yet achieved compliance with GMA goals and
29 requirements. Urban levels of development such as are planned for the Belfair and Allyn
30

31 ¹⁰⁹ CP VI.3-1

32 ¹¹⁰ CP VI.8-1

¹¹¹ *Ibid.*

¹¹² CP VI.8-1

1 UGAs require stormwater management in order to assure proper treatment of run-off from
2 the increased impervious surfaces. To accommodate the projected urban population
3 allocation for those UGAs, the County's capital facilities element must contain a forecast of
4 the future needs for stormwater management facilities; the proposed locations and
5 capacities of expanded or new capital facilities; and at least a six-year plan that will finance
6 such capital facilities within projected funding capacities and clearly identifies sources of
7 public money for such purposes. RCW 36.70A.070(3)(b)(c) and (d). Until that has been
8 included in the capital facilities element for the Belfair and Allyn UGAs, the capital facilities
9 element of the comprehensive plan is noncompliant with RCW 36.70A.070.
10
11

12 **Conclusion:** To summarize our conclusions with respect to Issue 5, Petitioners have failed
13 to carry their burden to show that the inclusion of forestry lands in the Belfair UGA is clearly
14 erroneous and violates the adjacency requirements of RCW 36.70A.110(1). (Issue 5(a)).
15 However, Petitioners have carried their burden to show that the County's failure to ensure
16 that public services are available when urban levels of development are allowed in the
17 Belfair UGA is clearly erroneous and violates RCW 36.70A.110(3) and the concurrency goal
18 (12) of the GMA. (Issue 5(b)) The capital facilities financing plan for the Belfair UGA does
19 not yet show how the County will finance public sewer capital facilities within projected
20 funding capacities, nor does it clearly identify sources of public money for the Belfair Area
21 Sewer Improvement Project. For that reason, the capital facilities element for the Belfair
22 UGA is clearly erroneous and fails to comply with RCW 36.70A.070(3)(d). (Issue 5(c)). The
23 capital facilities element and funding plan for storm water management in the Belfair and
24 Allyn UGAs also fails to comply with RCW 36.70A.070(3) because it does not contain a
25 forecast of the future needs for stormwater management facilities; the proposed locations
26 and capacities of expanded or new capital facilities; and at least a six-year plan that will
27 finance such capital facilities within projected funding capacities and clearly identifies
28 sources of public money for such purposes. These deficiencies are clearly erroneous.
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32 **Issue 6:** Has the County failed to meet the goals to reduce inappropriate conversion
of undeveloped land into sprawling, low density development (RCW 36.70A.020(2)),

1 to conserve productive agricultural and forest lands (RCW 36.70A.020(8)), to retain
2 open space and conserve fish and wildlife habitat (36.70A.020(9)), and to protect the
3 environment (36.70A.020(10)) and the requirements of RCW 36.70A.060,
4 36.70A.070 and RCW 36.70A.110, by adopting Policy MPD 1.7, which provides for
5 increased density and/or reduction in dimensional standards within a Master
6 Development Plan when enhanced on-site amenities are incorporated into the overall
7 development, but where such development at increased densities or reduced
8 standards may be incompatible with these GMA goals and requirements.

8 **Positions of the Parties**

9 Petitioners argue that Master Development Plan (MDP) Policy 1.7 is too vague and vests
10 too much discretion in administrative officers.¹¹³ MDP Policy 1.7, Petitioners allege, allows
11 increased density and/or reduction in dimensional standards when “enhanced on-site
12 amenities” are incorporated into the overall development.¹¹⁴ Without assurance that only
13 tradeoffs consistent with the GMA will be allowed, Petitioners urge, this policy could allow
14 deviations from other protections for critical areas or could allow urban growth in rural
15 areas.¹¹⁵

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18 The County responds that the Petitioners have misquoted MDP Policy 1.7.¹¹⁶ The full
19 policy, the County points out, is as follows:

20
21 MDP 1. Adopt regulations to guide the location and citing [sic] of Master
22 Development Plans within rural and urban areas, consistent with policy direction
23 contained throughout the Comprehensive Plan. These regulations shall:
24 MDP 1.7: Allow for increased density and/or a reduction in dimensional
25 standards within the Master Development Plan when enhanced on-site
26 amenities are incorporated into the overall development, such as open
27 spaces, community facilities, landscaping and buffers, recreational
28 opportunities, and other similar amenities that benefit the community and the
29 environment and exceed the existing minimum requirements.¹¹⁷

30
31 ¹¹³ Objection to Order; Revision of Issues; and Dispositive Motion at 4-5.

¹¹⁴ *Ibid.*

¹¹⁵ *Ibid* at 5.

¹¹⁶ Mason County’s Response to Petitioners’ Brief at 21.

¹¹⁷ *Ibid* at 21-22.

1 This policy, the County maintains, requires consistency with policy direction contained in the
2 comprehensive plan and does not contravene any GMA requirements.¹¹⁸
3

4 **Board Analysis**

5 At the hearing on the merits, the County pointed out that the cases relied upon by
6 Petitioners dealt with vagueness in development regulations, not in comprehensive plan
7 policies. We agree that this distinction is important here. A comprehensive plan policy
8 provides general guidance on County policy. Here, MDP Policy 1.7 provides guidance in
9 the future creation of development regulations to implement it. By including the direction
10 that the development regulations be “consistent with policy direction contained throughout
11 the Comprehensive Plan”, MDP Policy 1.7 provides that the development regulations to
12 implement it will also be consistent with existing policies on critical areas and urban growth
13 outside of UGAs.
14
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16
17 **Conclusion:** MDP Policy 1.7 does not conflict with RCW 36.70A.060, 36.70A.070 and
18 RCW 36.70A.110 or Goals 2, 8 and 9 of the GMA. RCW 36.70A.020(2),(8) and (9). It
19 provides sufficient guidance for establishment of development regulations to implement it.
20

21 **Invalidity Issue**

22 In the Petitioners’ briefs, they request a determination of invalidity as to certain rural
23 development regulations and as to adoptions related to the Belfair UGA: the Belfair UGA
24 development area map; and the Belfair UGA development regulations allowing urban
25 densities in areas not served by sewer and/or the development regulation allowing urban
26 residential development based on septic systems without an agreement to move to public
27 sewers when those become available.¹¹⁹ However, this request for an invalidity
28 determination was not made in the petition for review or in the revised issue statement.
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32 ¹¹⁸ *Ibid* at 22.

¹¹⁹ Petitioners’ Brief at 15-17; Petitioners’ Reply Brief at 12.

1 Ordinarily, a request for a determination of invalidity should be raised in the issue statement.
2 That allows the Board to consider the merits of the invalidity request directly as an issue in
3 the case. RCW 36.70A.290(1). Because an invalidity determination must be supported by
4 findings of fact and conclusions of law, the petition for review should set out the basis for the
5 invalidity request. RCW 36.70A.302(1)(b). However, since invalidity is only imposed after a
6 finding of non-compliance is entered, the request for an invalidity determination may also be
7 seen as a request for a specific form of relief. RCW 36.70A.302(1)(a). For that reason, the
8 Board has been willing to consider an invalidity request if it was raised in the portion of the
9 petition for review that requests relief.
10

11
12 However, in this case, invalidity was not raised in the petition for review either as an issue in
13 the case or as a form of relief requested. We will not consider a request for invalidity that
14 was not raised until the briefing. *See also CMV v. Mount Vernon*, WWGMHB Case No. 98-
15 2-0006 (Final Decision and Order, July 23, 1998). Because we have found non-compliance
16 on portions of Issue 5, Petitioners will have the opportunity to petition the Board for a
17 determination of invalidity as to those at the compliance hearing after remand if further
18 noncompliance is found:
19

20 In a compliance hearing upon petition of a party, the board shall also reconsider its final
21 order and decide, if no determination of invalidity has been made, whether one now
22 should be made under RCW 36.70A.302.

23 RCW 36.70A.330(4)

24 Such a request for a determination of invalidity must be properly supported with facts and
25 legal authority.
26

27 **Conclusion:** At this time, however, no timely request for a determination of invalidity is
28 before the Board. Therefore, Petitioners' request in their briefing will not be granted.
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VI. FINDINGS OF FACT

1. Mason County is located west of the crest of the Cascade mountains and is required to plan pursuant to RCW 36.70A.040.
2. Ordinance 108-05 is Mason County's Update ordinance, adopted to fulfill the requirements of RCW 36.70A.130(1), (2) and (4).
3. Ordinance 108-05 was adopted on November 29, 2005 and notice of the adoption was published on December 15, 2005.
4. Petitioners participated orally and in writing in the adoption of Ordinance 108-05.
5. Mason County accomplished the compliance review and revision required by RCW 36.70A.130 through a work program and public participation plan and Ordinance 108-05 sets out findings regarding the review and revisions found necessary.
6. Mason County determined that it was not necessary to revise its comprehensive plan provisions and development regulations regarding resource lands, except to incorporate the 2005 GMA changes which encouraged accessory uses on Agricultural Resource Lands.
7. The County identified open space corridors as a component of its comprehensive plan and was found compliant as to this planning requirement in 2003. Petitioners do not challenge the open space corridors' identification as part of the Update.
8. The County has adopted planning policies that pertain to open space corridors, long range trail planning, open space networking, trail development, education and recreation, and parks and trails as they relate to quality of life, public safety and economic development.
9. The County is using its policies to plan for trails. Further the County has development regulations to provide opportunities to provide for open space

- 1 corridors through its clustering ordinance and incentives for acquiring open
2 space abutting identified open space corridors
- 3 10. Petitioners did not challenge the County's development regulations for
4 "performance subdivisions" which allow additional density bonuses outside of
5 "working rural areas" or the development regulations allowing clustering within
6 "working rural areas" in their petition for review or revised issue statement.
- 7
8 11. Neither the petition for review nor any prehearing order sets forth a claim that
9 rural lot sizes and densities are alleged to be noncompliant with the GMA.
- 10 12. MCC 1.03.032B.5(a) and (b) are County development regulations addressed
11 to nonconforming rural lots.
- 12 13. According to the County's analysis, existing growth trends would place 80% of
13 future development in the rural areas.
- 14 14. Prior to the advent of sewer, the Allyn UGA accounted for 2-3% of building
15 permits in the County. After sewer was provided, 8-9% of the building permits
16 in the County were issued for the Allyn UGA.
- 17
18 15. Based on its experience with the Allyn UGA, the County adopted a plan that
19 anticipates a shift from rural to urban development, beginning in 5 to 10 years.
20 This shift assumes that sewer will be available in the Belfair UGA in that
21 timeframe.
- 22
23 16. The County's strategy for addressing disproportionate amounts of rural
24 development is to encourage growth in the designated UGAs.
- 25 17. The petition for review in this case appeals the failure of the County to
26 "adequately review and evaluate its comprehensive plan ("CP") and
27 development regulations ("DRs") pursuant to RCW 36.70A.130".
- 28
29 18. The Harstine Island Sub-Area Plan forms a part of the Mason County
30 comprehensive plan.
- 31 19. As part of the County's Update work plan, County staff determined that the
32 innovative provisions and incentives for subdivisions contained in the Mason

1 County Code - Chapter 16, Section 16.22, Performance Subdivisions, and the
2 Section 16.23 Cluster Subdivisions - apply on Harstine Island and implement
3 the Policy B-1-a series of the Harstine Island Sub-Area Plan.

4 20. Comprehensive plan policies, B-1-a-1 through B-1-a-8, fall under Policy B-1-a:

5 Establish subdivision design standards which minimize site
6 disturbance, preserve the natural beauty of the Island,
7 minimize the visual impact of the development, ensure
8 privacy of residents and maintenance of rural character.

9 Policy B-3-c.2 is the only Harstine Island Sub-Area Plan policy outside of the
10 B-1-a series which is challenged by Petitioners:

11 Commercial development be subject to design review to ensure
12 compatibility with rural character of the Island.

13
14 21. The County development regulations applicable to the Rural Commercial,
15 Rural Tourist, Rural Industrial, Rural Natural Resources zones apply to
16 Harstine Island. They govern commercial development in Harstine Island.

17 22. The comprehensive plan does not state nor do Petitioners articulate what
18 policies are unique to Harstine Island. Petitioners have not shown that a
19 particular policy regarding Harstine Island is not implemented through the
20 applicable development regulations.

21
22 23. Petitioners did not raise a challenge to the size of the Belfair UGA on grounds
23 that it is disproportionate to the population allocated to it. We therefore accept
24 the County's assertion that the Belfair UGA is sized appropriately to
25 accommodate the population allocation and growth projections established in
26 the comprehensive plan.

27 24. The Belfair UGA includes forested and vacant lands.

28 25. The lands in the Belfair UGA are either territory characterized by urban
29 growth or territory adjacent to territory that is already characterized by urban
30 growth.
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26. There are no islands of land in the Belfair UGA that are not directly adjacent to other lands in the UGA.

27. Section 1.03.031 of the Mason County Development Code contains the County's requirements for a binding site plan for commercial, industrial or mixed-use development "prior to the provision of public sewer or public water to a site" in the Belfair and Allyn UGAs.

28. Section 1.03.030 of the Development Code, provides for "decommissioning" of septic systems once public sewer is available.

29. Section 1.03.030 of the Development Code exempts single family residential development from the septic system decommissioning requirement.

30. Section 1.03.031 of the Development Code exempts all residential development from the requirement for a binding site plan.

31. Residential development at urban levels within the Belfair UGA is not tied to the availability of urban levels of service.

32. Urban levels of residential development are allowed within the Belfair UGA before urban sewer service can be connected.

33. Over a thousand gross acres within the Belfair UGA are zoned for residential use at densities of between three dwelling units per acre and 10 dwelling units per acre. Without a requirement that residential development within the UGA connect to sewer when public sewer is available within the UGA, there is no assurance that such urban residential development will ever be connected to public sewer or will ever develop to urban densities.

34. The cost estimates for the Belfair Area Sewer Improvements Project are in the planning stage. This means they are based on a project concept and some assessment of relative scale.

35. The capital facilities financing plan does not yet show how the County "will finance such capital facilities within projected funding capacities and clearly identifies sources of public money for such purposes".

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- 36. The County had adopted the most recent edition of the Washington State Department of Ecology’s Stormwater Management Manual, with the exception of the Minimum Requirements chapter.
- 37. The County does not have a stormwater plan or utility.
- 38. Urban levels of development such as are planned for the Belfair and Allyn UGAs require stormwater management in order to assure proper treatment of run-off from the increased impervious surfaces.
- 39. To accommodate the projected urban population allocation for the Belfair and Allyn UGAs, the County’s capital facilities element must contain a forecast of the future needs for stormwater management facilities; the proposed locations and capacities of expanded or new capital facilities; and at least a six-year plan that will finance such capital facilities within projected funding capacities and clearly identifies sources of public money for such purposes.
- 40. Comprehensive plan policy MDP 1.7 falls under MCP 1 and includes the introductory language of MDP 1:
 - Adopt regulations to guide the location and citing [sic] of Master Development Plans within rural and urban areas, consistent with policy direction contained throughout the Comprehensive Plan. These regulations shall:
 - MDP 1.7: Allow for increased density and/or a reduction in dimensional standards within the Master Development Plan when enhanced on-site amenities are incorporated into the overall development, such as open spaces, community facilities, landscaping and buffers, recreational opportunities, and other similar amenities that benefit the community and the environment and exceed the existing minimum requirements.
- 41. The request for a determination of validity was not raised in the petition for review either as an issue in the case or as a form of relief requested. There was also no issue raised of an invalidity request in any prehearing order.
- 42. Any Finding of Fact hereafter determined to be a Conclusion of Law is hereby adopted as such.

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VII. CONCLUSIONS OF LAW

- A. This Board has jurisdiction over the parties to this action.
- B. This Board has jurisdiction over the subject-matter of this action.
- C. Petitioner has standing to raise the issues in its Petition for Review.
- D. The petition for review in this case was timely filed.
- E. Mason County did not fail to act to Update its Resource Ordinance in violation of RCW 36.70A.130. (Issue 1).
- F. Mason County's development regulations do not fail to comply with RCW 36.70A.160, RCW 36.70A.040, and RCW 36.70A. 020(9) with respect to open space corridors.. (Issue 2).
- G. Mason County's development regulations relative to creation of rural parcels through subdivision do not violate RCW 36.70A.060, 36.70A.070, and 36.70A110 and Goals 2, 8, 9 and 10 of the GMA. (Issue 3)
- H. Mason County has adopted development regulations implementing Harstine Island Sub-Area Plan policies B-1-a.1, Policy B-1-a.4, Policy B-1-a.5, Policy B-1-a.6, Policy B-1-a.7, Policy B-1-a.8 and Policy B-3-c.2. (Issue 4)
- I. The inclusion of forestry lands in the Belfair UGA does not violate the adjacency requirements of RCW 36.70A.110(1). (Issue 5(a)).
- J. The failure of Mason County's comprehensive plan and development regulations to ensure that public services will be available when urban levels of development are allowed in the Belfair UGA is clearly erroneous and violates RCW 36.70A.110(3), the concurrency goal (12) of the GMA (RCW 36.70A.020(12)), and the anti-sprawl goal (2) of the GMA. RCW 36.70A.020(2)(Issue 5(b))
- K. The portion of the capital facilities element that describes the Belfair Area Sewer Improvement Project does not yet show how the County will finance public sewer capital facilities in the Belfair UGA within projected funding capacities, nor does it clearly identify sources of public money. It therefore fails to comply with RCW 36.70A.070(3)(d), and is clearly erroneous. (Issue 5(c)).

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- L. The capital facilities element and funding plan for storm water management in the Belfair and Allyn UGAs fails to comply with RCW 36.70A.070(3) because it does not contain a forecast of the future needs for stormwater management facilities; the proposed locations and capacities of expanded or new capital facilities; and at least a six-year plan that will finance such capital facilities within projected funding capacities and clearly identifies sources of public money for such purposes. These deficiencies are clearly erroneous and also fail to meet Goal 12 of the GMA. (Issue 5(c)).
- M. Any Conclusion of Law hereafter determined to be a Finding of Fact is hereby adopted as such.

VIII. ORDER

The County is ordered to achieve compliance with the Growth Management Act pursuant to this decision no later than February 6, 2007. The following schedule for compliance, briefing and hearing shall apply:

Compliance Due	February 6, 2007.
Compliance Report and Index to the Record (County to file and serve on all parties)	February 13, 2007
Any Objections to a Finding of Compliance and Motions to Supplement Due	March 9, 2007
County's Response Due	March 30, 2007
Compliance Hearing (location to be determined)	April 10, 2007.

Entered this 14th day of August 2006.

Margery Hite, Board Member

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Holly Gadbow, Board Member

Gayle Rothrock, Board Member

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

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

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

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

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

Hite, Concurring:

I concur in the majority opinion. I write only to note the very difficult position in which Petitioners place the Board by simply asserting that the plan or development regulations as a whole fail to comply with some provisions of the GMA. As part of Petitioners burden of proof, Petitioners must point to the specific provisions that are alleged to be flawed.

1 Here, the County did not object to the Petitioners' failure to provide specific references and
2 so the Board has reviewed the development regulations and plan as a whole to determine if
3 Petitioners' somewhat bald assertions are correct. On another occasion, Petitioners should
4 not assume that the Board will take up that task or that the County will elect not to object.
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