

1 BEFORE THE WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

2
3 Friends of Skagit County, June Kite, and
4 Evergreen Islands,

Case No. 07-2-0025c

5
6 Petitioners,

COMPLIANCE ORDER

7 v.

8 Skagit County,

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10 Respondent.

11
12 And

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14 The City of Anacortes,

15
16 Intervenor.

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18 This matter comes before the Board following the submittal of Skagit County's Compliance
19 Report.¹ The Compliance Report describes Skagit County's (County) response to the
20 Board's May 12, 2008 Final Decision and Order (FDO) and subsequent Order on
21 Reconsideration. In that FDO and Order on Reconsideration the Board found that portions
22 of the County's Comprehensive Plan, maps and development regulations adopted under
23 Ordinance No.O20070009 were not compliant with the Growth Management Act (GMA) as
24 set forth in the FDO and as described further below.
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27 **I. SYNOPSIS OF DECISION**

28 The Board finds that the County has cured the areas of non-compliance identified in the
29 FDO. In particular, the Board finds in this order that the County's amendments to SCC
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32 ¹ Compliance Report on Partial Compliance and Requires for Partial Rescission of Invalidity, filed 10/29/08. In addition the County filed a First Progress Report on August 13, 2008 detailing its compliance efforts.

1 14.04.020 for “owner/operator caretaker quarters” as well as amendments to SCC
2 14.16.130(4)(b) further limit the size and scope of employee housing, and to SCC
3 14.16.130(4)(b) ensures that housing allowed by administrative special use shall not be for
4 permanent residential uses. These provisions adequately address the areas of
5 noncompliance identified in the FDO. The Board also concludes that the County’s
6 amendments to Comprehensive Plan Policies 3C-1.4 and 3C-2.1, along with changes to
7 SCC 14.16.300(4), .310(4) and .320(4) have remedied this inconsistency between the
8 comprehensive plan and development regulations and cured that area of noncompliance.
9 The County’s amendments to CP Policy 3C-2.18(b) bring that policy into compliance with
10 the GMA and cause this policy to no longer substantially interfere with the goals of the GMA.
11 Finally, the Board concludes the County’s deletion of CP Policy 3C -6.4, has brought the
12 Plan into compliance with the GMA so that the elimination of this policy removes its
13 substantial interference with the goals of the GMA.
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16 II. PERTINENT PROCEDURAL HISTORY

17 The matter came before the Board at a Hearing on the Merits of the Petitions for Review on
18 March 27, 2008.
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21 On May 12, 2008 this Board issued its FDO and, while finding that the Petitioners had not
22 carried their burden of proof with regard to certain issues, found the County out of
23 compliance with the GMA in several regards, including: 1) SCC 14.16.140(3) allowed new
24 caretaker quarters or owner/operator housing in the Small Scale Recreation and Tourism
25 (SRT) zone in Type II Limited Areas of More Intense Rural Development (LAMIRDs) in
26 conflict with CP Policy 3B-1.6 and in violation of RCW 36.70A.070(5)(d)(ii); 2) CP Policies
27 3C-1.4 and 3C-2.1 which discourage commercial and industrial uses in residential areas
28 were not supported by consistent development regulations as required by RCW
29 36.70A.040; 3) the County deviated from the GMA requirements for LAMIRDs by allowing
30 the addition of new uses or areas that were developed *after* 1990 if they serve the same
31 function as other Rural Centers that were existing as of July 1,1990; 4) Policy 3C -6.4
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1 allowed designation of new LAMIRDS that are contiguous to existing LAMIRDS even though
2 Industrial LAMIRDS need to be isolated as required RCW 36.70A.070(5)(d)(iii); and 5)
3 Policy 3A-2.2 failed to distinguish between rural and resource lands. The Board held that by
4 referring to “rural” rather than to “rural and resource” areas, this plan policy implied that no
5 growth should occur in the resource areas of the County. This resulted in an inconsistency
6 with Skagit Countywide Planning Policy 1.2.
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8 On December 29, 2008, the Board held a telephonic compliance hearing. Petitioners
9 Friends of Skagit County, June Kite, and Evergreen Islands (collectively the “Petitioners”)
10 were represented by Gerald Steel. Ms. Jill Olson represented the County and was
11 accompanied by Carly Raucho, Planner for Skagit County. Board members James
12 McNamara and William Roehl attended. Board member Holly Gadbow did not attend but
13 reviewed the transcript of the hearing.
14

15 16 **III. PRELIMINARY MATTERS**

17 The May 12, 2008 FDO in this case directed the County to cure the areas of non-
18 compliance by November 12, 2008.² In its Compliance Report the County claimed that the
19 amendments could not be adopted to meet the compliance deadline due to scheduling
20 constraints of the Planning Commission and Board of County Commissioners. Instead, the
21 ordinance adopting the measures intended to bring the County into compliance with the
22 GMA was adopted on December 2, 2008. In response, Petitioners took note of the
23 County’s failure to meet the November 12 deadline, as well as the County’s failure to
24 request an extension of that compliance date. In consequence, they requested that the
25 County should be found in continued non-compliance on all issues, and in continued
26 invalidity regarding CP Policies 3C2-18(b) and 3C-6.4.³ However, at the Compliance
27 Hearing Petitioners withdrew this objection, noting that there would be no benefit in the
28 delay of compliance proceedings under these circumstances.
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32 ² FDO at 57.

³ Petitioners’ Objections at 1.
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1 RCW 36.70A.300(3) requires the Board to set a compliance schedule in the FDO, setting
2 forth a deadline by which the Respondent must achieve GMA compliance. It is expected
3 that the Respondent in all cases before the Board shall comply with that schedule, or seek
4 an extension. It is unfortunate that in this case the County exceeded the time provided by
5 the Board to adopt amendments to achieve GMA compliance. Nevertheless, this does not
6 appear to be a case where the County was attempting to delay or avoid compliance, but
7 rather the failure to achieve compliance was due to difficulty scheduling this matter before
8 the County Planning Commission and Board of County Commissioners. Furthermore, the
9 delay was a matter of some three weeks and the ordinance in question was adopted prior to
10 the date set for the compliance hearing. The Board agrees with the parties that there is no
11 sense in entering a finding of continued non-compliance when we have before us the
12 measures the County has adopted to achieve compliance. To do so would only needlessly
13 delay review of the merits of Ordinance #O20080012. Therefore, while the County is
14 reminded of its obligation to comply with the Board's compliance schedule, we decline to
15 make a finding of continuing non-compliance or continuing invalidity based on a brief delay
16 in the adoption of Ordinance #O20080012.
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19 20 **IV. BURDEN OF PROOF**

21 After a board has entered a finding of non-compliance, the local jurisdiction is given a period
22 of time to adopt a legislative enactment to achieve compliance. RCW 36.70A.300(3)(b).
23 After the period for compliance has expired, the board is required to hold a hearing to
24 determine whether the local jurisdiction has achieved compliance. RCW 36.70A.330(1) and
25 (2). For purposes of board review of the comprehensive plans and development regulations
26 adopted by local governments in response to a non-compliance finding, the presumption of
27 validity applies and the burden is on the challenger to establish that the new adoption is
28 clearly erroneous. RCW 36.70A.320(1),(2) and (3).
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1 If a finding of invalidity has been entered, the burden is on the local jurisdiction to
2 demonstrate that the ordinance or resolution it has enacted in response to the finding of
3 invalidity no longer substantially interferes with the goals of the GMA. RCW 36.70A.320(4).

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5 In order to find the City's action clearly erroneous, the Board must be "left with the firm
6 and definite conviction that a mistake has been made." *Department of Ecology v. PUD1*,
7 121 Wn.2d 179, 201, 849 P.2d 646 (1993). In this case, the Board found that SCC
8 14.16.140(3), and Comprehensive Plan Policies 3C-1.4, 3C-2.1, 3C-2.18(b), 3C-6.4 were
9 not compliant with the GMA, and that there was an inconsistency between Policies 1.2 and
10 3A-2.2. The Board also found that Comprehensive Plan Policies 3C-2.18(b) (Rural Centers)
11 and 3C-6.4 (Rural Marine Industrial) substantially interfered with GMA goals 1 and 2. On
12 remand, the County bears the burden of demonstrating that the provisions of these Policies
13 no longer substantially interfere with these goals.

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16 As to the other areas of non-compliance, the Board did not find that they substantially
17 interfered with the goals of the GMA, and therefore the burden of proving lack of compliance
18 remains with the Petitioner and Intervenors.

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20 Within the framework of state goals and requirements, the boards must grant deference to
21 local governments in how they plan for growth:

22
23 In recognition of the broad range of discretion that may be exercised by counties and
24 cities in how they plan for growth, consistent with the requirements and goals of this
25 chapter, the legislature intends for the boards to grant deference to the counties and
26 cities in how they plan for growth, consistent with the requirements and goals of this
27 chapter. Local comprehensive plans and development regulations require counties
28 and cities to balance priorities and options for action in full consideration of local
29 circumstances. The legislature finds that while this chapter requires local planning to
30 take place within a framework of state goals and requirements, the ultimate burden
31 and responsibility for planning, harmonizing the planning goals of this chapter, and
32 implementing a county's or city's future rests with that community.
RCW 36.70A.3201 (in part).

In sum, the burden is on the Petitioner to overcome the presumption of validity and

1 demonstrate that any action taken by the County is clearly erroneous in light of the goals
2 and requirements of Ch. 36.70A RCW (the Growth Management Act). RCW 36.70A.320(2).
3 Where not clearly erroneous and thus within the framework of state goals and requirements,
4 the planning choices of the local government must be granted deference.
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6 **V. ISSUES TO BE DISCUSSED**

7 Whether the County has achieved compliance with the GMA with regard to those areas
8 found to be non-compliant in the Board's May 12, 2008 FDO?
9

10 Has the County removed the risk of substantial interference with the goals of the GMA such
11 that the Board's earlier finding of invalidity regarding Comprehensive Plan Policies 3C-
12 2.18(b) (Rural Centers) and 3C-6.4 (Rural Marine Industrial) should be rescinded?
13

14 **VI. DISCUSSION**

15 The Board's May 12, 2008 FDO remanded portions of the County's Comprehensive Plan
16 and development regulations to the County for compliance with the GMA.
17

18 On remand, the County took a number of steps to achieve compliance by adopting
19 Ordinance No. O20070009, adopting amendments to the Skagit County Comprehensive
20 Plan and Skagit County Code on December 2, 2008.
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22 **A. Caretaker Quarters in the Small Scale Recreation and Tourism District**

23 In the May 12, 2008 FDO the Board found that "SCC 14.16.140(3) allows new caretaker
24 quarters or owner/operator housing in the Small Scale Recreation and Tourism (SRT) zone
25 in Type II LAMIRDs in conflict with CP Policy 3B-1.6 and in violation of RCW
26 36.70A.070(5)(d)(ii)."⁴ In response, the County added a new general definition in SCC
27 14.04.020 for "owner/operator caretaker quarters" as well as amendments to SCC
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32 ⁴ FDO at 30. The Board recognizes that it cited SCC 14.16.140 in error. The correct citation should have been to SCC 14.16.130.

1 14.16.130(4)(b) to further limit the size and scope of employee housing. Under the new
2 definition, "owner operator/employee housing" provides:

3
4 One dwelling unit, accessory to a primary use, for persons who live on premises
5 for the purposes of managing, operating, maintaining, or guarding a primary non-
6 residential use. Quarters may be occupied by either the owner of the principle use
7 and his/her immediate family, or employees of the owner as well as their immediate
8 family members.

9 In addition, SCC 14.16.130(4)(b) has been amended to ensure that housing shall not be for
10 permanent residential uses by making the following changes:

11 In remote areas only, such as east of Concrete and on saltwater islands without ferry
12 service, employee housing sufficient to operate the SRT operation, provided that
13 such housing shall not be for permanent residential use and is limited in size and
14 quantity to only that necessary to house active, existing employees. Any employee
15 housing shall be incidental in scale to the primary SRT use.

16 Petitioners object to the County's efforts to reach compliance in this regard. They allege
17 that the County has merely changed the name of the allowed new residential development
18 from "owner operator dwelling unit" to "owner operator caretaker quarters". Petitioners
19 assert that RCW 36.70A.070(5)(d)(ii) does not permit new residential development,
20 including "owner operator/caretaker quarters".⁵

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23 In response, the County argues that the GMA's prohibition on residential development in
24 Type II LAMIRDs is intended to prevent the exploitation of a permitted use, such as a cabin,
25 to achieve a type and density of residential development that is inconsistent with the GMA.⁶

26 The County suggests that an interpretation of the GMA that would preclude any new
27 residential use in the SRT zoning designation, specifically a single accessory dwelling unit
28 for caretaker or owner, would be a draconian interpretation of the law that defies common
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32 ⁵ Petitioners' Objections at 2.

⁶ Counties response to objections at 4.

1 sense.⁷ Further, the County argues that this interpretation would be inconsistent with the
2 business model of the small rural resort or recreation area where owners and operators
3 need to be able to meet guests and customers' normal and emergency needs and/or
4 provide security on a 24-hour basis.

5
6 The Board notes that RCW 36.70A.070(5)(d)(ii) is primarily concerned with allowing small-
7 scale recreational or tourist uses within LAMIRDs. While this section contains a prohibition
8 on new residential development, this appears to be designed to ensure that the jurisdiction
9 does not permit low-density sprawl. Providing limited allowances for caretaker residences
10 does not undermine that intent. In the FDO, the Board expressed the concern that the
11 County had no limitation on the size or scope of "caretaker quarters". The County has
12 addressed that concern by providing that such housing is limited in size and quantity to only
13 that necessary to house active existing employees. While Petitioners insist that even a
14 single new caretaker's residence would violate RCW 36.70A.070(5)(d)(ii), the Board
15 concludes that a more reasonable interpretation of that statute would allow an accessory
16 dwelling unit for the security and operation of small scale recreational or tourist uses allowed
17 in Type II LAMIRDs.
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21 **Conclusion:** The County's amendments to SCC 14.04.020 for "owner/operator caretaker
22 quarters" as well as amendments to SCC 14.16.130(4)(b) further limit the size and scope of
23 employee housing, and to SCC 14.16.130(4)(b) ensures that housing allowed by
24 administrative special use shall not be for permanent residential uses. The provisions
25 adequately address the area of noncompliance identified in Conclusion of Law G, in the
26 FDO.
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28
29 **B. Comprehensive Plan Polices 3C-1.4 and 3C-2.1 in Conflict with Special Uses**
30 **Allowed in Rural Areas in SCC 14.16.300(4), 14.16.310(4) and 14.16.320(4).**
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32 ⁷ Id.

1 In the FDO, the Board noted that the purpose of the Rural Intermediate (RI) designation, as
2 stated in CP Policy 3C-1.4 and SCC 14.16.330 is similar: “The purpose of the Rural
3 Intermediate district is to provide and protect land for residential living in a rural atmosphere,
4 taking priority over resource land uses.” The Board also noted, CP Policy 3C-1.4 provides “
5 . . . taking priority over resource land uses *and commercially oriented special uses*”
6 (emphasis added).⁸ The Board found this policy conflicts with the provisions in SCC
7 14.16.300(4) that allow numerous commercial uses in the RI zone as a special use.
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10 Therefore, the Board found that CP Policies 3C-1.4 and 3C-2.1 which discourage
11 commercial and industrial uses in residential areas were not supported by consistent
12 development regulations as required by RCW 36.70A.040. The Board also found that
13 Policy 3C-2.1 regarding uses in rural commercial and industrial designations was in conflict
14 with SCC 14.16.300(4), 14.16.310(4) and 14.16.320(4) which allowed new more intensive
15 commercial and industrial uses in the Rural Intermediate, Rural Village Residential, and
16 Rural Reserve by special use permit. We found that many of the uses allowed in this
17 manner directly conflicted with the stated purpose of such areas, and thus created a conflict
18 between the Comprehensive Plan’s policies and the related development regulations.
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21 In response, the County revised Comprehensive Plan Polices 3C-1.4 and 3C-2.1

22 Policy 3C-1.4 was revised to read:

23
24 The purpose of the Rural Intermediate designation is provide and protect land for
25 residential living in a remote atmosphere, taking priority over, but not precluding, limited
26 nonresidential uses appropriate to the density and character of this designation,
27 ~~resource land uses and commercially oriented special uses.~~ Long term open space
retention and critical area protection are encouraged.

28 Policy 3C-2.1 now reads:
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32 ⁸ FDO at 30.

1 ~~New rural commercial and industrial uses will be located~~ should be located principally
2 ~~within designated commercial areas to avoid the proliferation of commercial businesses~~
3 ~~throughout the rural area. However, certain limited commercial uses, resource-related~~
4 ~~uses, home based businesses and other non-residential uses may be permitted if~~
5 ~~carefully reviewed, conditioned and found to be compatible with rural areas. To~~
6 ~~encourage efficient use of land, the broadest range of commercial and industrial uses~~
7 ~~should be allowed in areas already accommodating such use and development, with~~
8 ~~greater limitations placed upon such uses within areas devoted predominantly to~~
9 ~~residential use (i.e. Rural Intermediate, Rural Village Residential and Rural Reserve~~
10 ~~areas). To encourage efficient use of land, priority consideration will be given to the~~
11 ~~siting of new rural commercial and industrial uses in areas of existing development. In~~
12 ~~order of priority, these are Rural Village and existing Rural Centers, followed by already~~
13 ~~developed sites in the rural area, and only lastly by wholly undeveloped sites in the rural~~
14 ~~area. Comprehensive Plan and Zoning designations permitting devoted principally to~~
15 ~~commercial and industrial uses in the unincorporated portions of the county are:~~

- 16 a. Rural Village Commercial
- 17 b. Rural Center
- 18 c. Rural Freeway Service
- 19 d. Small-Scale Recreation and Tourism
- 20 e. Natural Resource Industrial
- 21 f. Rural Marine Industrial
- 22 g. Major Industrial Developments
- 23 h. Master Planned Resorts
- 24 i. Small-Scale Business
- 25 j. Rural Business

26 ~~The Home Based Business special use also permits certain rural commercial activities.~~

27 In response, Petitioners argue that the County's policy changes are not sufficiently clear to
28 ensure that more intensive non-residential uses are not permitted by special use permit in
29 the Rural Intermediate, Rural Village Residential, and Rural Reserve zones.⁹ They argue
30 that many of the non-residential special uses permitted by the County in SCC 14.16.300(4),
31 14.16.310(4), and 14.16.320(4) are inherently more intensive uses that should only be
32 allowed by LAMIRD designation.¹⁰

⁹ Petitioners' Objections at 6.

¹⁰ Id.
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1 The County, in reply, argues that the FDO identified an inconsistency between the County's
2 Comprehensive Plan policies and development regulations, and the Petitioners have not
3 argued that any inconsistency remains. With regard to Petitioners' arguments that the new
4 policy is not sufficiently clear, the County argues that policy language that requires that new
5 commercial uses must be "appropriate to the density and character of the designation" and
6 "conditioned and found to be compatible with rural areas" is sufficiently clear to limit non-
7 residential uses to those consistent with rural areas and character.¹¹
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9
10 The County points out that, although Petitioners argue that "more intensive uses" must be
11 located in LAMIRDs, the Rural Intermediate (RI) and Rural Village Residential (RVR) zones
12 are in fact identified in the County Comprehensive Plan as LAMIRDs.¹² As to the Rural
13 Reserve (RRv) zone which is not a LAMIRD, the County argues that Petitioners have failed
14 to establish that uses allowed in this zone are inconsistent with the uses that were in
15 existence in 1990. The County argues that the commercial uses allowed in this zone are
16 not inherently more intensive uses, and include uses such as kennels, outdoor outfitters,
17 stables and riding clubs. See, eg. SCC 14.16.320.
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20 The Board concurs with the County that "There is not, however, a blanket prohibition within
21 the GMA on non-residential uses that are *less* intensive and consistent with rural character
22 outside of LAMIRDs." The rural areas of counties, outside of LAMIRDs, are not reserved for
23 purely residential uses. Instead, rural development can consist of "a variety of uses and
24 residential densities".¹³ It is only "more intensive rural development" that the GMA requires
25 to be contained in specially designated LAMIRDs. Petitioners' argument at the compliance
26 hearing that even uses such as grange halls¹⁴ or cemeteries, both allowed in the County's
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29 ¹¹ County's Response to Objections at 6.

30 ¹² Id. at 6; citing to CP Rural Element, Policies 3B-1.2 and 3B-1.5.

31 ¹³ RCW 36.70A.030(16).

32 ¹⁴ The National Grange of the Order of Patrons of Husbandry, also simply styled the Grange, is a fraternal organization for American farmers that encourages farm families to band together for their common economic and political good. A more appropriate rural use than one that fosters farming does not readily come to mind.

1 RRv zone, would be inappropriate in a rural area is unpersuasive. Further, Petitioner's
2 characterization of these as inconsistent with rural zones based on their commercial nature
3 misinterprets the original basis for the finding of noncompliance contained in the FDO. At
4 oral argument Petitioners relied upon the statement in the FDO where the Board stated:

5 With regard to EI's allegation that requirements for commercial and industrial
6 LAMIRDs are not met because the County allows commercial and industrial
7 uses by special use permit in rural residential zones the Board agrees that
8 Policy 3C-2.1 on rural commercial and industrial designations is in conflict
9 with SCC 14.16.300(4), 14.16.310(4) and 14.16.320(4) which allow new more
10 intensive commercial and industrial uses in the Rural Intermediate, Rural
11 Village Residential, and Rural Reserve by special use permit.¹⁵

12 From this, Petitioners concluded that the Board found noncompliance based on the
13 allowance of commercial and industrial uses in the RI, RVR, RRv zones. In fact, it was not
14 that the County allowed commercial and industrial land uses in those zones that the Board
15 found noncompliant with the GMA, but that doing so was inconsistent with County Plan
16 Policies that discouraged such uses in these zones. Further, some of the commercial and
17 industrial uses were of the intensity that should be confined to LAMIRDs As the Board
18 noted:

19 Many of the uses allowed in this manner directly conflict with the stated
20 purpose of such areas, and thus create a conflict between the comprehensive
21 plans policies and the related development regulations.¹⁶

22 As a consequence, the Board found that the CP policies 3C-1.4 and 3C-2.1 were
23 inconsistent with the County's development regulations. The County has now amended
24 those policies to provide that non-residential uses are not precluded in the RI zone. The
25 County also reviewed the uses that were allowed in these residential zones, eliminated the
26 more intensive uses and subjected the limited commercial uses that are allowed in the RI,
27 RVR and RRv zones to Hearing Examiner review and conditions to ensure compatibility with
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31 _____
32 ¹⁵ FDO at 31.

¹⁶ Id.

1 these zones. These amendments have addressed the inconsistencies the Board found
2 noncompliant with the GMA.

3
4 **Conclusion:** The County's amendments to Comprehensive Plan Policies 3C-1.4 and 3C-
5 2.1, SCC14.16.300, SCC14.16.310, and SCC14.16.320 have remedied the inconsistency
6 between the Comprehensive Plan and development regulations and cured the area of
7 noncompliance identified in Conclusions of Law H and I, in the FDO.

8
9 **C. Establishment of New Rural Centers in Areas Developed After July 1, 1990**
10 **Under Comprehensive Plan Policy 3C2-18(b)**

11 In the May 12, 2008 FDO the Board found that:

12 Policy 3C-2.18(b) clarifies that any new Rural Centers must in a commercial area that
13 is predominated by the built environment that existed on July 1, 1990. This would be
14 compliant if it stopped there. However, the County deviates from the GMA
15 requirements for LAMIRDs by allowing the addition of new uses or areas that were
16 developed *after* 1990 if it serves the same function as other Rural Centers that were
17 existing as of July 1, 1990. That is not consistent RCW 36.70A.070(5)(d)(v) and the
18 GMA makes no provision for adding new areas to a LAMIRD on the basis that they
19 "serve substantially the same function" as the County provides here.¹⁷

20 The Board also held that this policy was invalid because it substantially interfered with goals
21 1 and 2 of the GMA.¹⁸

22 In response, the County has amended Policy 3C-2.18(b) to eliminate the potential to expand
23 LAMIRDs to include areas developed after July 1, 1990. As revised, the policy reads:

24 Any new Rural Center designations shall meet the following criteria:

- 25 a. No change.
26 b. The commercial area existed predominantly as an area or use of more
27 intensive commercial development on July 1, 1990. ~~Limited exceptions may be~~
28 ~~provided, where uses were areas that developed after July 1, 1990 circumstantially~~
29 ~~the same function as other rural centers that were existing commercial areas. As of~~
30 ~~July 1, 1990.~~

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32 ¹⁷ FDO at 38.

¹⁸ FDO at 50.
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1 c. – h. No change.
2 Petitioners have not objected to this amendment as a means of curing non-compliance and
3 invalidity.

4
5 Having removed the language which the Board had found non-compliant, we conclude that
6 Policy 3C-2.18(b) is now compliant with the GMA. Furthermore, because the County has
7 removed this language, it has met its burden of showing that this Comprehensive Plan
8 provision no longer substantially interferes with the goals of the GMA.
9

10 **Conclusion:** The County's amendments to CP Policy 3C-2.18(b), previously held to be
11 non-compliant by Conclusion of Law O of the FDO, have brought the Plan into compliance
12 with the GMA and this policy no longer substantially interferes with the goals of the GMA.
13

14 **D. Establishment of New Rural Marine Industrial (RMI) Designations on Lands**
15 **Contiguous to Existing Areas of RMI Zoning Under Comprehensive Plan Policy**
16 **3C-6.4**

17
18 In the May 12, 2008 FDO the Board found that:

19 In addition, we find noncompliant policy 3C -6.4. This policy allows designation of
20 new LAMIRDs that are contiguous to existing LAMIRDs Industrial LAMIRDS need to
21 be isolated as required RCW 36.70A.070(5)(d)(iii).¹⁹

22
23 In response, the County has deleted this language from its Comprehensive Plan.²⁰

24 Petitioners have not objected to this amendment as a means of curing non-compliance and
25 invalidity.

26
27 Because the County has removed policy 3C -6.4 from its Comprehensive Plan it has cured
28 this area of non-compliance. In addition, it has met its burden of showing that this
29 Comprehensive Plan provision no longer substantially interferes with the goals of the GMA.
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32 ¹⁹ FDO at 38.

²⁰ See Ex. 802 to County Compliance Report.
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1 **Conclusion:** The County's deletion of CP Policy 3C -6.4, previously held to be non-
2 compliant by Conclusion of Law P of the FDO, has brought the Plan into compliance with
3 the GMA and this policy no longer substantially interferes with the goals of the GMA.
4

5 **E. Inconsistencies Between Countywide Planning Policy 1.2 and Comprehensive**
6 **Plan Policy 3A-2.2**

7 In the May 12, 2008 FDO the Board held that RCW 36.70A.030(16) draws a clear distinction
8 between urban, rural and resource lands and that Comprehensive Plan Policy 3A-2.2 fails to
9 distinguish between rural and resource lands. The Board held that by referring to "rural"
10 rather than to "rural and resource" areas, the plan policy implied that no growth should occur
11 in the resource areas of the County. This resulted in an inconsistency with Skagit
12 Countywide Planning Policy 1.2.²¹
13

14
15 In response, the County has amended CP Policy 3A-2.2 to indicate that resource areas are
16 part of the non-urban area. The policy now reads:

17 The rate of development in rural and resource areas should be in
18 accordance with adopted Countywide Planning Policies stating that
19 urban areas should accommodate 80 percent of new population growth,
20 with the remaining 20 percent locating in ~~the rural area~~ non-urban areas.
21 Monitor the pace of development in conjunction with the maintenance of data
22 describing the inventory of available buildable land.

23 Petitioners have not objected to this amendment as a means of curing non-compliance and
24 the Board concurs with the County that this addresses the area of non-compliance
25 identified in the FDO.
26

27 **Conclusion:** The County's amendments to CP Policy 3A-2.2 previously held to be non-
28 compliant by Conclusion of Law Q of the FDO, have brought the Plan into compliance with
29 the GMA and this policy no longer substantially interferes with the goals of the GMA.
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²¹ FDO at 40.
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VII. FINDINGS OF FACT

1. Skagit County is a county located west of the crest of the Cascade Mountains that is required to plan pursuant to RCW 36.76A.040.
2. On September 10, 2007 the County adopted Ordinance O20070009, adopting Skagit County's seven year update of its Comprehensive Plan and development regulations.
3. On November 13, 2007, the board received two PFRs. The first PFR was filed by Friends of Skagit County and June Kite and was assigned Case No. 07-2-0024. The second PFR was filed by Evergreen Islands and was assigned Case No. 07-2-0025. These were consolidated as Case No. 07-2-0025c.
4. In the Board's May 12, 2008 Final Decision and Order (FDO) and subsequent Order on Reconsideration the Board found several areas of noncompliance and invalidity, as detailed in Procedural History section of this order, and incorporated by reference into these findings of fact.
5. On December 2, 2008 the Skagit County Board of County Commissioners signed Ordinance #O20080012, adopting amendments to the Skagit County Comprehensive Plan and Skagit County Code in response to the findings of noncompliance.
6. The County added a new general definition to SCC 14.04.020 for "owner/operator caretaker quarters" as well as amendments to SCC 14.16.130(4)(b) to further limit the size and scope of employee housing.
7. SCC 14.16.130(4)(b) has been amended to ensure that housing shall not be for permanent residential uses.
8. The County revised Comprehensive Plan Policy 3C-1.4 to provide that the purpose of the Rural Intermediate designation is to provide and protect land for residential living in a remote atmosphere, taking priority over, but not precluding, limited nonresidential uses appropriate to the density character of this designation.
9. Policy 3C-2.1 was revised to place limitations on commercial uses in rural areas.
10. The County reviewed the uses that were allowed in the RI, RVR, and RRv residential zones, eliminated the more intensive commercial uses and subjected the commercial

1 uses that are allowed in these zones to Hearing Examiner review and conditions to
2 ensure compatibility with these zones.

3 11. The County has amended Policy 3C-2.18(b) to eliminate the potential to expand
4 LAMIRDs to include areas developed after July 1, 1990.

5 12. The County has deleted Policy 3C-6.4 from its Comprehensive Plan.

6 13. The County has amended CP Policy 3A-2.2 to indicate that resource areas are part of
7 the non-urban area.

8 14. Any Finding of Fact later determined to be a Conclusion of Law is adopted as such.
9

10 **VIII. CONCLUSIONS OF LAW**

11 A. The Board has jurisdiction over the parties and subject matter of this petition for
12 review.

13 B. Petitioners have standing to participate in this compliance proceeding.

14 C. The County's amendments to SCC 14.04.020 for "owner/operator caretaker quarters"
15 as well as amendments to SCC 14.16.130(4)(b) to further limit the size and scope of
16 employee housing, and to SCC 14.16.130(4)(b) to ensure that housing allowed by
17 administrative special use shall not be for permanent residential uses has adequately
18 addressed the area of noncompliance identified in Conclusion of Law G, in the FDO.
19

20 D. The County's amendments to Comprehensive Plan Policies 3C-1.4 and 3C-2.1,
21 along with changes to SCC 14.16.300(4), .310(4) and .320(4) have remedied the
22 inconsistency between the comprehensive plan and development regulations and
23 cured the area of noncompliance identified in Conclusions of Law H and I, in the
24 FDO.
25

26 E. The County's amendments to CP Policy 3C-2.18(b), previously held to be non-
27 compliant by Conclusion of Law O of the FDO, have brought the Plan into
28 compliance with the GMA and this policy no longer substantially interferes with the
29 goals of the GMA.
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- 1 F. The County's deletion of CP Policy 3C -6.4, previously held to be non-compliant by
2 Conclusion of Law P of the FDO, has brought the Plan into compliance with the
3 GMA and this policy no longer substantially interferes with the goals of the GMA.
4 G. The County's amendments to CP Policy 3A-2.2 previously held to be non-compliant
5 by Conclusion of Law Q of the FDO, have brought the Plan into compliance with the
6 GMA and this policy no longer substantially interferes with the goals of the GMA.
7 H. Any Conclusion of Law later determined to be a Finding of Fact is adopted as such.
8

9
10 **IX. ORDER**

11 The Board having found the County's Comprehensive Plan and development regulations to
12 be in compliance with the requirements of the GMA, this case is CLOSED.

13
14 Entered this 21st day of January 2009.

15
16 _____
17 James McNamara, Board Member

18
19 _____
20 Holly Gadbow, Board Member

21
22 _____
23 William Roehl, Board Member

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

25 **Reconsideration.** Pursuant to WAC 242-02-832, you have ten (10) days from the date
26 of mailing of this Order to file a petition for reconsideration. The original and three
27 copies of a motion for reconsideration, together with any argument in support
28 thereof, should be filed with the Board by mailing, faxing, or otherwise delivering the
29 original and three copies of the motion for reconsideration directly to the Board, with
30 a copy to all other parties of record. **Filing means actual receipt of the document at**
31 **the Board office.** RCW 34.05.010(6), WAC 242-02-240, and WAC 242-02-330. The filing
32 of a motion for reconsideration is not a prerequisite for filing a petition for judicial
review.

1 **Judicial Review.** Any party aggrieved by a final decision of the Board may appeal the
2 decision to superior court as provided by RCW 36.70A.300(5). Proceedings for
3 judicial review may be instituted by filing a petition in superior court according to the
4 procedures specified in chapter 34.05 RCW, Part V, Judicial Review and Civil
5 Enforcement. The petition for judicial review of this Order shall be filed with the
6 appropriate court and served on the Board, the Office of the Attorney General, and all
7 parties within thirty days after service of the final order, as provided in RCW
8 34.05.542. Service on the Board may be accomplished in person or by mail, but
9 service on the Board means actual receipt of the document at the Board office within
thirty days after service of the final order. A petition for judicial review may not be
served on the Board by fax or by electronic mail.

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