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BEFORE THE WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

Friends of Skagit County, June Kite, and
Evergreen Islands

Petitioners,

v.

Skagit County,

Respondent.

And

The City of Anacortes,

Intervenor.

Case No. 07-2-0025c

ORDER ON MOTIONS FOR RECONSIDERATION

The Board issued its Final Decision and Order (FDO) in the above-captioned matter on May 12, 2008. This matter comes before the Board upon both a Motion for Reconsideration of Skagit County¹ and a Motion for Reconsideration of Petitioners Friends of Skagit County and June Kite (Petitioners).² Petitioners filed opposition to the County's Motion and a related Motion to Strike.³ The County filed a response in regards to Petitioners' Motion.⁴

In its motion, Skagit County contends the Board erred by referencing the Rural Reserve zoning district in Conclusion of Law I. The basis for the County's assertion is that this zoning district was not presented in the Petitioners' list of issues nor has Petitioner

¹ Skagit County Motion for Reconsideration (County Motion), filed May 21, 2008.
² Friends of Skagit County's Motion for Reconsideration and Motion for Board Authorization and Consideration of Petitioners' Post-Hearing Submittals (Petitioners' Motion), filed May 22, 2008.
³ Petitioners Friend of Skagit County, June Kite, and Evergreen Islands' Opposition to Skagit County's Motion for Reconsideration and Petitioners' Motion to Strike (Petitioners' Opposition), filed May 27, 2008.
⁴ Skagit County's Response to Motion for Reconsideration, filed May 30, 2008.

1 Evergreen Islands (EI) established standing to challenge this subject matter.⁵ Petitioners
2 oppose the County's Motion, seeking to strike Page 4 of the Motion and contending the
3 Board's ruling on the Rural Reserve zoning was correct as was its ruling in regard to
4 standing.⁶

5
6 In their motion, the Petitioners request that the Board reconsider its decision denying
7 Petitioners' submittal of post-hearing documents; its finding of compliance in regards to the
8 Long CaRD Ordinance (Issue 8); its conclusion pertaining to standing (Issue 7); and its
9 interpretation in regards to RCW 36.70A.115 (Issue 5). In addition, Petitioners contend the
10 FDO contains typographical errors and seek a modification of the Compliance Schedule to
11 allow for additional time and briefing.⁷

12 13 14 **Motion for Reconsideration**

15 A motion for reconsideration of a final decision of a Board is governed by WAC 242-02-832.
16 It provides that a motion for reconsideration must be based on at least one of the following
17 grounds:
18

- 19 (a) Errors of procedure or misinterpretation of fact or law, material to the party seeking
20 reconsideration;
21 (b) Irregularity in the hearing before the board by which such party was prevented from
22 having a fair hearing; or
23 (c) Clerical mistakes in the final decision and order.

24 WAC 242-02-832(2)

25 26 **Skagit County's Motion for Reconsideration**

27 With its Motion, the County asserts the Board's inclusion of a reference to the Rural
28 Reserve zoning district (RRv), within Conclusion of Law I, was either a clerical error (WAC
29 242-02-832(2)(c)) or a misinterpretation of fact or law (WAC 242-02-832(2)(a)).⁸ Skagit
30

31 _____
32 ⁵ See, County Motion.

⁶ Petitioners' Opposition to County's Motion and Motion to Strike.

⁷ See, Petitioners' Motion.

⁸ County Motion, at 1.

1 County argues that Petitioners did not challenge special uses permitted in non-LAMIRD
2 rural zones, such as the RRv, and therefore, the Board's finding of non-compliance was in
3 error.⁹ In addition, the County contends Petitioner Evergreen Island never offered any
4 evidence to demonstrate that it had standing to raise an issue based on the development
5 regulations applicable to this zoning district.¹⁰
6

7 In response, Petitioners first assert that the Board should strike Page 4 of the County's
8 Motion because it was missing from the copy served upon Petitioners and this failure was
9 prejudicial.¹¹ As to the merits of the County's Motion, Petitioners contend the Board's
10 inclusion of the RRv zoning district was correct because the ruling addressed
11 Comprehensive Plan Policy 3C-2.1's requirement for all new more intensive commercial and
12 industrial uses in the rural areas to be located in designated commercial Limited Areas of
13 More Intense Development (LAMIRDs).¹² In regard to standing, Petitioners point out that
14 the Board found EI had standing to raise the subject matter presented by Issues 1 and 2
15 and with their argument the County is seeking "issue-specific" standing.¹³
16
17

18 **Board Discussion**

19 First, as to Petitioners' Motion to Strike. Petitioners move to strike Page 4 of the County's
20 Motion, arguing that this page was missing from the copy received by the Petitioners. The
21 Board notes that the original copy received at the Board's office contained Page 4 but that
22 additional copies erroneously omitted this page, undoubtedly a clerical error during copying
23 of the Motion.¹⁴ Generally, once notified of such an error a party will correct the error by
24 promptly providing the missing page. This, the County has not done. Although the Board
25 did receive this page with the original filing, a key recipient was the Petitioners so that they
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27

28 ⁹ *Id.* at 1-2.

29 ¹⁰ County Motion, at 3.

30 ¹¹ Petitioners' Opposition, at 2.

31 ¹² *Id.* at 2-3.

32 ¹³ *Id.* at 3-4.

¹⁴ The Board further notes that Skagit County generally provides an electronic version (e-mail) of its filings to both the Board and the Petitioners. This does not appear to have been done with the filing of this motion. If such an electronic filing had occurred, Petitioners' motion would have been without merit since any alleged prejudice from non-receipt of the printed page would have been cured by its availability in electronic format.

1 could adequately respond to the arguments presented. **Therefore, Petitioners' Motion to**
2 **Strike Page 4 of the County's Motion for Reconsideration is GRANTED.**

3
4 Second, the County's Motion for Reconsideration. With their Motion, the County seeks two
5 things: (1) removal of the reference to the RRv zoning district from Conclusion of Law I and
6 (2) reversal of the Board's determination that EI had standing to raise the issues it
7 presented, specifically as the argument relates to special uses within RRv zone.
8

9 EI's participation in this matter was limited to Legal Issues 1, 2, and 13, with Legal Issues 1
10 and 2 going to the merits of the County's LAMIRD provisions.¹⁵ The Board determined
11 that EI had standing to assert these issues because it had commented on a variety of
12 LAMRID-based issues during the adoption process including the creation of new and/or
13 expanded LAMIRDs, the intensification of density, boundaries, and the expansion of uses.¹⁶
14 The County challenges this determination.
15

16
17 In the briefing for the Hearing on the Merits, the crux of Petitioners' argument was that CP
18 Policy 3C-2.1 required new, more intensive, commercial and industrial rural development to
19 be located in a LAMIRD and, by allowing these types of uses via a special use permit in
20 rural residential zones (SCC 14.16.300(4), Rural Intermediate; .310(4), Rural Village
21 Residential; and .320(4), Rural Reserve), the County acted inconsistently with its own
22 comprehensive plan (CP) policy and with the GMA's requirements for LAMIRDs. Thus, the
23 issue was not based on an assertion that the special uses for the RRv zone were
24 inappropriate; rather the issue alleged that the County's LAMIRD provision were not being
25 appropriately implemented when commercial and/or industrial type uses were potentially
26 being allowed outside of a LAMIRD in residential areas.
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31 ¹⁵ Friends of Guemes Island, Friends of Skagit County, and June Kite joined in on these two issues. In the
32 May 12, 2008 FDO, the Board found that Friends of Guemes Island failed to establish standing but concluded
that Evergreen Islands and Friends of Skagit County did have standing in regards to the subject matter raised
with Legal Issues 1 and 2; Skagit County only challenges the Board's determination as to Evergreen Island.
See, FDO, at 16-21; County's Motion, at 3.

¹⁶ FDO, at 18.

1 **Therefore, the Board finds no error in its conclusion that SCC 14.16.320(4) is**
2 **inconsistent with Policy 3C-2.1 because it allows for commercial or industrial uses to**
3 **be located in rural residential areas.** As noted *supra*, the issue was not whether the uses
4 permitted by the County's development regulations for LAMIRDs were consistent, but
5 whether the County's implementing development regulations, particularly SCC 14.16, were
6 consistent with the County's comprehensive plan. Although the specific issue of special
7 uses was not raised by EI during the comment period, it did provide comments in regards to
8 the subject matter of LAMIRDs, specifically as to areas, uses, densities, intensities, and
9 boundaries and therefore have standing to raise Legal Issue 1.
10

11
12 **Conclusion:** Petitioners' Motion to Strike Page 4 of the County's Motion for
13 Reconsideration is **GRANTED**.

14
15 After considering the arguments raised by Skagit County in its Motion for Reconsideration
16 and the Petitioners' Response to this Motion, the Board finds no error in law or fact with the
17 conclusions set forth in the May 12, 2008 FDO. Skagit County's Motion for Reconsideration
18 is **DENIED**.

19
20 **Petitioners' Motion for Reconsideration**

21
22 With its Motion, Petitioners seek reconsideration of the Board's decisions in regard to: (1)
23 denial of Post-Hearing Submittals; (2) finding compliance in regard to the Long CaRD
24 Ordinance, Issue 8; (3) denial of standing for FOOSC and June Kite in regard to Natural
25 Resource Lands, Issue 7; and (4) interpretation of RCW 36.70A.115, Issue 5.¹⁷ In addition,
26 Petitioners state that the FDO contains typographical errors and seeks a modification of the
27 Compliance Schedule to allow for additional time for filing of objections and for the ability to
28 file a reply to any response filed by the County in regard to Petitioners' objections.¹⁸
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¹⁷ See, Petitioners' Motion.

¹⁸ *Id.* at 11.

1 In response to Petitioners' Motion, Skagit County asserts that Petitioners fail to substantiate
2 the grounds for any reconsideration of the Board's FDO.¹⁹ The County contends it did not
3 commit to submitting specific documents, most notably documents Petitioners assumed
4 should have been submitted and, Petitioners allege no error of fact or law in regard to the
5 Long CaRD ordinance; are simply re-arguing prior arguments for the rural lands analysis;
6 have not established standing for June Kite in regard to map amendments or LAMIRDs; and
7 fail to identify alleged typographical errors.
8

9
10 **Board Discussion**

11 Petitioners set forth several items for reconsideration; the Board will address each item in
12 turn.

13 • Compliance Schedule

14 In the May 12, 2008 FDO, the Board established November 17, 2008 as the deadline for
15 Skagit County to file its Compliance Report and Index to the Compliance Record. From this
16 date, the Board granted Petitioners a deadline of December 1, 2008 for the filing of any
17 objections which provides for a response period of 14 calendar days. Petitioners now
18 request an additional 14 days, seeking a December 15, 2008 deadline to respond citing the
19 need to secure copies via public disclosure requests and prepare objections.
20

21
22 As these Petitioners and the attorney representing them have been before this Board on
23 several occasions, they should be well aware that it is the general practice of the Board to
24 provide 10-14 calendar days for a party to respond to a Compliance Report.²⁰ With the
25 exception of the Thanksgiving Holiday, which encompasses two days, the Board sees
26 nothing which merits the granting of 14 additional days for the filing of objections.
27

28 **Therefore, the Petitioners' request to modify the Compliance Schedule to allow for**
29 **additional time in regard to the filing of Objections to the County's Compliance**
30

31
32 ¹⁹ Skagit County's Response to Motion for Reconsideration, filed May 30, 2008.

²⁰ This time schedule is in accord with our colleagues at the Central Puget Sound and Eastern Washington
Growth Management Boards, both of which permit 14 days for the filing of objections to a jurisdiction's
Compliance Report.

1 **Report is DENIED except that 2 additional days are granted to account for the**
2 **Thanksgiving holiday and the date for response for objections will be advanced two**
3 **days.**

4
5 Petitioners also request the Board amend the Compliance Schedule to include a provision
6 for the filing of a reply to the County's Response to Petitioners' Objections. Petitioners
7 assert that since it has the burden of proof, it is "not fair" to provide Petitioners with only one
8 opportunity to supply argument.
9

10 As with the schedule for the filing of objections, it is not the practice of this Board to permit a
11 reply brief by a petitioner to a jurisdiction's response to objections during the compliance
12 period of a case.²¹ The Board recognizes that in matters of non-compliance, as opposed to
13 invalidity, the burden remains on a petitioner; however this alone does not merit the
14 suspension of the Board's long-standing practice especially given the opportunity for
15 Petitioners' to voice opposition during the County's adoption process and at the Compliance
16 Hearing itself and to subsequently file a Petition for Review if needed. **Therefore, the**
17 **Petitioners' request to modify the Compliance Schedule to allow for the filing of a**
18 **Reply Brief to any response filed by the County in regards to Petitioners' Objections**
19 **is DENIED.**
20
21

22
23 **Conclusion:** Petitioners' Motion to Modify the Compliance Schedule is **DENIED, except to**
24 **the extent that two additional days are added to the date for filing an objection to**
25 **account for the Thanksgiving holiday. The date for response for objections will be**
26 **advanced two days.**
27

- 28 • Typographical Errors

29 Petitioners contend that the FDO contains typographical errors but, with the exception of
30 reference to the first paragraph of the FDO, fails to provide specific citation to any alleged
31

32

²¹ The Board notes that while our colleagues at the Eastern Washington Board permit the filing of such a reply, our colleagues at the Central Puget Sound Board do not.

1 typographical error. Petitioners note that in the first paragraph of the FDO the Board
2 erroneously referenced Evergreen Islands (EI) when the correct reference should be
3 Friends of Skagit County (FOSC).

4
5 When filing a motion for reconsideration, the burden is on the moving party to articulate not
6 only the reason for its motion but where in the Board's FDO the alleged error(s) had been
7 made. To simply state that there are errors within the FDO is not enough. The Board did
8 review the one specific citation Petitioners did provide, the reference to EI as opposed to
9 FOSC in the first paragraph. The FDO reads:

10
11 In this Order the Board finds that while Petitioner Evergreen Islands (EI) has
12 standing to raise issues regarding LAMIRDs and Petitioner Evergreen Islands
13 has standing to raise issues regarding the County's urban/non-urban growth
14 allocation policy, CP Policies 3A-1.1, 3A-2.2, non-urban growth allocations
15 (Issue 5), the Long CaRD policy in this case, Petitioners lack standing to bring
the remaining issues in this case.²²

16 Petitioners are correct that the Board found Evergreen Islands had standing to raise only
17 the legal issues pertaining to LAMIRDs, Petitioner Friends of Guemes Island failed to
18 demonstrate standing on any issue and was dismissed as a party in this matter, and,
19 therefore, it was Friends of Skagit County and June Kite alleging the balance of the issues.

20 The first sentence of the opening paragraph of the FDO should read:

21
22 In this Order the Board finds that while Petitioner Evergreen Islands (EI) has
23 standing to raise issues regarding LAMIRDs and ***Petitioners Friends of***
24 ***Skagit County and June Kite (collectively, FOSC)*** have standing to raise
25 issues regarding...(corrected language in ***bold italics***)

26 ***Conclusion:*** The Board will note the error specifically cited to by the Petitioners in their
27 Motion but finds there is no need to amend and reissue the May 12, 2008 FDO to reflect this
28 error. Petitioners have failed to provide adequate citation to any other alleged error and the
29 Board will not address such unsupported allegations.

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- Post-Hearing Submittals

²² FDO, at 1.
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1 Petitioners seek the Board's reconsideration of its decision to deny the admission of
2 unauthorized documents submitted subsequent to the Hearing on the Merits (HOM) by
3 Petitioners.²³ Petitioners contend that the Board has the authority to take official notice of
4 these documents and should have used these materials when reviewing the County's
5 provisions for allowed uses and building areas in Type 1 LAMIRDs.²⁴ Petitioners further
6 argue that the preclusion of these documents prevented it from having a fair hearing on
7 these issues and, due to the County's failure to provide the information as requested by the
8 Board, prevented Petitioners from making its own request to provide the information.²⁵
9

10 **Board Discussion**

11 Petitioners misunderstand the Board's holding in regard to these documents. The fact
12 that the Board *may* take official notice of legislative enactments, including related
13 attachments, is not the issue. The issue is the unauthorized submittal of post-hearing
14 documents. In response to a request made at the HOM, the County did submit additional
15 documents and these documents were reviewed and considered by the Board in making its
16 final determination in this matter. In the FDO, the Board concluded that just because
17 Petitioners believed the documents submitted by the County were not sufficient, this belief
18 did not authorize Petitioners to file unsolicited and competing documents after the
19 conclusion of the HOM without prior authorization of the Board as provided in WAC 242-02-
20 810.²⁶ The Board will not allow for the submittal of unauthorized materials.
21
22
23

24 In regard to Petitioners' assertion that the Board's denial prevented it from having a fair
25 hearing on the issues the submittals pertained to, Petitioners are reminded that its case is
26 presented in briefing (opening and reply) and at oral argument, with the evidence supporting
27 such argument to be provided at that time. If the information contained within these
28 documents was so vital to the Petitioners' case, these documents should have been
29
30

31 _____
32 ²³ May 12, 2008 FDO, at 9-10.

²⁴ Petitioners' Motion, at 1-2.

²⁵ *Id.* at 2.

²⁶ FDO, at 9-10.

1 submitted with the briefing or, in the alternative, the Petitioners should have moved for
2 authorization to file additional documents subsequent to the HOM.

3
4 **Conclusion:** Petitioners had the chance to make its case or request an opportunity to
5 respond to the County’s submission, and the preclusion of the documents offered as
6 supplemental evidence did not create such an irregularity as to prevent Petitioners’ from
7 being afforded a fair and impartial hearing. **Therefore, the Petitioners’ request for the**
8 **Board to take official notice of Petitioners’ Post-Hearing Submittals and,**
9 **subsequently, reconsider its ruling in regard to allowed uses and building areas in**
10 **Type 1 LAMIRDS is DENIED.**

- 11 • Issue 8 – Long CaRD Ordinance

12
13 With its Motion, Petitioners contend the Board erred when it found that the County, in
14 maintaining the underlying residential zoning density and providing for protections such as
15 setbacks and screening, adequately protected the rural character with the Long CaRD
16 Ordinance, SCC 14.18.330. Petitioners specifically question whether the Long CaRD
17 includes sufficient protections to preserve rural character as the Board concluded in the
18 FDO.²⁷

19
20
21 **Board Discussion**

22 Petitioners are incorrect in asserting that a “14-acre parcel” would get 14 homes on one-
23 acre lots within the Rural Reserve zone. According to the County’s code for this zoning
24 district, a minimum parcel size of 10 acres is required for a Long CaRD with an underlying
25 density of 2 du/10 acres or 1 du/5 acres – a rural, not urban density, which is consistent with
26 preserving the rural character. Therefore, a 14-acre parcel would need to maintain that
27 underlying gross density and could provide for only 2 residences on one-acre parcels with
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²⁷ Petitioners’ Motion, at 4 (citing to FDO, at 48).
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1 the balance of the site – 12 acres – retained as open space.²⁸ Likewise, Petitioners’
2 assertion of “100 houses on 100 acres” fails for the same reasons. For 100 homes to be
3 built on 100 acres, an originating parcel of 500 acres would be required within the Rural
4 Reserve zone and 400 acres would be maintained as open space. In addition, no more
5 than 14 homes are permitted in a cluster; therefore, the 100 homes would be distributed
6 amongst eight clusters with a *minimum* separation of 25 feet. If those same 100 homes
7 were built on 5,000 square foot lots,²⁹ this would leave some 488 acres in open space.
8

9
10 Given that RCW 36.70A.070(5)(b) provides "*counties may provide for clustering, density*
11 *transfer, design guidelines, conservation easements, and other innovative techniques that*
12 *will accommodate appropriate rural densities and uses that are not characterized by urban*
13 *growth and are consistent with rural character*" there is no inherent error in the County's
14 clustering program provided for in the Long CaRD. (emphasis added) The Board
15 acknowledges that the clustered design of the development appears denser when viewed in
16 isolation, but because it is required to maintain the underlying density it is nonetheless a
17 rural density when viewed in the context of the entire parcel; therefore, preserving rural
18 character.
19

20
21 Any Long CaRD development would also be required to satisfy various requirements which
22 include sizing requirements for water and on-site sewage systems; avoidance of critical
23 areas and buffers; minimization of impacts to NRL operations; setbacks of a minimum of 25
24 feet from a public roadway for cluster pods, a minimum 200 foot setback from adjacent
25 Natural Resource Land designated parcels; and screening via existing topography or
26 vegetation or an approved Landscaping Plan.³⁰ Petitioners allege that these requirements
27 are not sufficient, pointing specifically to the requirement for screening via existing
28 vegetation or an approved landscape plan. Petitioners assert existing grasses could
29

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32 ²⁸ Under the Long CaRD provisions, in order to have 14 homes on 14 acres the development proposal would need to start with a 60-acre parcel. Maintaining the underlying gross density of 1 du/5 acres would result in 14 acres of residential lots and 46 acres of open space.

²⁹ SCC 14.18.310(7)(a): 5000 square feet is minimum lot size for detached residences.

³⁰ See SCC 14.18.310 (General Approval Provisions) and 14.18.330 (Long CaRD provisions).

1 qualify as existing vegetation; the provisions of SCC 14.16.830 [Landscape Requirements]
2 are not applicable to the typical Long CaRD in a Rural Reserve zone; and screening is not
3 required between clusters.³¹ The Board disagrees.

4
5 SCC 14.18.300(3) requires cluster pods to be screened from “public roads *and* from other
6 clusters pods.” If existing vegetation is used, the purpose is to *screen* the development.
7 Therefore, existing grasses would not be adequate to accomplish this expressed purpose.
8 In addition, SCC 14.16.830 sets forth Skagit County’s requirements for landscaping which
9 apply to all subdivisions.³² SCC 14.16.830 specifically provides that Type I, Type II, and
10 Type III landscaping may be applied as a condition for a discretionary land use application
11 which a Long CaRD is.³³ Therefore, during the review process the proposed Long CaRD
12 will be reviewed for conformity to the County’s development regulations including SCC
13 14.18.300(1)(c) which notes that one of the purposes of the CaRD provisions is to “retain
14 the rural landscape, character, and lifestyle.”
15
16

17 **Conclusion:** After considering the arguments raised by Petitioners in its Motion for
18 Reconsideration and the County’s Response to this Motion, the Board finds no error in law
19 or fact with the conclusions set forth in the May 12, 2008 FDO. **Therefore, Petitioners’**
20 **Motion for Reconsideration in regard to the Board’s holding that the County’s Long**
21 **CaRD provisions, SCC 14.18.330, complies with the GMA is DENIED.**
22
23

- 24 • Issue 7 – Natural Resource Lands (Standing)

25 Petitioners contend the Board erred when it determined Petitioners did not have standing to
26 raise this issue because the Board failed to consider the individual standing of June Kite,
27 looking only at Friends of Skagit County’s standing.³⁴
28
29
30

31 _____
31 ³¹ Petitioners’ Motion, at 5-6.

32 ³² SCC 14.16.830(2); SCC 14.18.000(4).

33 ³³ SCC 14.16.830(4)(a)(ii)(B) – Type I; SCC 14.16.830(4)(b)(ii)(b) – Type II; SCC 14.16.830(4)(c)(ii)(B) – Type
III.

34 ³⁴ Petitioners’ Motion, at 7.

1 In its original briefing in regards to standing on this issue, Petitioners point to Exhibits
2 218/41, 218/45, 460/94, 460/220, 460/259, and 460/260. With its Motion for
3 Reconsideration, Petitioners point only to Exhibit 218/41 to support the standing,
4 individually, of June Kite. As the Board found in the May 12, 2008 FDO, the GMA does not
5 require issue-specific standing rather standing relates to the subject matter of concern. But,
6 the Board does require that a petitioner's participation be reasonably related to the issue
7 presented to the Board in the Petition for Review, as modified by the Pre-Hearing Order.
8

9
10 Legal Issue 7 questions "Whether the designations and zones where the County has failed
11 to designate and zone natural resource lands that meet natural resource land designation
12 criteria" violated the GMA. No specific designations or zones are noted in the issue
13 statement itself but three sections of land are – Sections 28, 29, and 33 in T33N R4E W.M.
14 In their HOM opening brief, Petitioners reference one land use designation (Rural
15 Resource), one zoning district (Rural Reserve), five tax parcels, and specifically stated:
16

17 *When the County designated its [NRL] in 1996 it considered vested*
18 *subdivision permits as a reason to not consider a property for [designation].*
19 *[With the 2007 CP] the County did not again review the lands it had previously*
20 *excluded because of vested permits. The County should be directed to review*
21 *all of the potential natural resource lands that it previously excluded because*
22 *of vested permits to determine if these properties are now appropriate for*
23 *resource land designations because the properties were not developed ... the*
County simply failed to review for resource land qualification those parcels that
*had previously been excluded because of vested subdivision permits.*³⁵

24
25 In their Reply brief, Petitioners stated:

26 *...the County failed to reapply its [NRL] designation policies to those lands that*
27 *were previously excluded from [NRL] designation because of vested permits*
*for those cases where the property was not ultimately developed.*³⁶

28
29 Although Petitioners point to several parcels of land and assert that these parcels satisfy
30 the County's criteria for designation set forth in CP Policy 4C-1.1, the impetus for this appeal
31

32

³⁵ FOSC HOM Brief, at 20-21.

³⁶ FOSC Reply Brief, at 13.

1 was the County's update of its Comprehensive Plan and development regulations as
2 required by RCW 36.70A.130 and, from the briefing presented to the Board, the crux of
3 Petitioners argument as it pertained to natural resource lands was the County's failure to re-
4 evaluate lands that had previously been excluded based on vested rights during this review.
5 This is how the Board understood this issue and, based on the County's response, is how
6 the County understood the issue as well. Thus, in regard to standing, the question before
7 the Board is whether or not the petitioners, either FOSC or June Kite, raised the need for
8 the County to re-evaluate those lands that had been previously excluded due to vested
9 permits for potential NRL designation during the update process.
10

11
12 As for FOSC's standing, as was noted in the May 12, 2008 FDO, the Board reviewed the
13 presented exhibits for reference to a re-evaluation as to NRL designation for lands
14 previously excluded based on vested permits and found no reference. As for June Kite's
15 standing, Exhibits 460/94 and 460/220 both are authored by Ms. Kite as a member of FOSC
16 but, as noted above, make no reference to the issue presented to the Board for resolution.³⁷
17 The only comment submitted by June Kite as an individual was Exhibit 218/41 and, like the
18 other exhibits, makes no reference to a re-evaluation of the NRL designation based on
19 vested rights but more specifically addresses the 80/20 urban-rural split and the ability of the
20 County to meet this allocation.
21

22
23 **Conclusion:** After considering the arguments raised by Petitioners in its Motion for
24 Reconsideration and the County's Response to this Motion, the Board finds and concludes
25 that FOSC and June Kite failed to adequately demonstrate participation standing in regards
26 to the issue presented by the Petitioners' briefing for Legal Issue 7. Therefore, the Board
27 finds no error in its May 12, 2008 FDO determination to dismiss Legal Issue 7. **Petitioners'**
28 **request for the Board to reverse its ruling on standing on Legal Issue 7 is DENIED.**
29

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31
32 ³⁷ All other comments submitted by Ms. Kite are as a member of FOSC and, just as an organization may not
rely on the comments of an individual member acting on their own behalf to establish standing, neither may a
member rely on comments he or she submitted on behalf of an organization to demonstrate standing.

- 1
- 2 • Issue 5 – Interpretation of RCW 36.70A.115

3 Petitioners reiterate that RCW 36.70A.115 requires a Needs and Capacity Analysis for rural
4 lands (Rural Analysis) similar to the Needs and Capacity Analysis required for UGAs by
5 RCW 36.70A.110. Petitioners point out that, given prior Growth Board cases, the use of
6 the word “sufficient” in this provision of the GMA requires such an analysis to ensure that
7 the County has the capacity to accommodate the 20 percent growth it has allocated to rural
8 areas.
9

10 **Board Discussion**

11 Petitioners allege that the Board erroneously interpreted RCW 36.70A.115 when it found
12 that this section of the GMA did not require a Needs and Capacity Analysis for Rural Lands
13 similar to the one required by RCW 36.70A.110 for UGAs.³⁸ Because of some confusion
14 arising from terminology utilized in the parties’ original briefing and subsequent motions, the
15 Board first needs to clarify the distinction between a Land Capacity Analysis and a Buildable
16 Lands Report.
17

18
19 A *Land Capacity Analysis* (LCA) is a requirement arising from RCW 36.70A.110 for all
20 counties planning under the GMA. This section of the GMA relates to the designation of
21 UGAs and the requirement that each UGA shall include areas and densities sufficient to
22 permit the urban growth that is projected to occur in the county or city for the succeeding 20-
23 year period. The LCA is a critical mechanism for the sizing of a UGA because it is utilized
24 to determine how much urban land is needed. Therefore, in contrast to the Buildable
25 Lands Report, the LCA is prospective – looking forward over the coming 20 years to see if
26 there is enough land within the UGA to accommodate the growth that has been allocated to
27 the area. In certain counties, the LCA is now underscored by the Buildable Lands Report
28 required by RCW 36.70A.215.
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³⁸ Petitioners’ Motion, at 10.
ORDER ON MOTION FOR RECONSIDERATION
Case Nos. 07-2-0025c
June 18, 2008
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1 A *Buildable Lands Report* (BLR) is a requirement arising from RCW 36.70A.215 for six
2 counties and their cities – Clark, King, Kitsap, Pierce, Snohomish, and Thurston. Any other
3 county may prepare a BLR, but it is not required. The primary purpose of the BLR is to
4 review whether a county and its cities are achieving urban densities within the UGAs by
5 comparing growth and development assumptions, targets, and objectives set forth in the
6 countywide planning policies and comprehensive plans with actual growth and development
7 that has occurred over the past five years in the county and its cities. The BLR is
8 retrospective – looking back over the past five years of development to see how well the
9 county and its cities have performed. The information developed through the BLR provides
10 important information for updating and, perhaps, revising a County’s Land Capacity
11 Analysis. RCW 36.70A.215 does not apply to Skagit County nor, has the County chosen to
12 adhere to the procedures set forth in the section of the GMA.
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15 The Board concludes that a LCA and a BLR are vital tools to be utilized by a county and its
16 cities when managing growth within the community. Both of these documents serve to
17 provide crucial information so as to ensure a UGA is properly sized to accommodate the
18 growth that the GMA mandates that a jurisdiction must provide for. The Board disagrees
19 that the word “sufficient” in RCW 36.70A.115 should be found to mean “not too much and
20 not too little” as previous Board cases have found in relationship to RCW 36.70A.110. This
21 is primarily because RCW 36.70A.110 goes to the establishment of an urban growth
22 boundary and the ability of the area within the boundary to accommodate the allocated
23 growth and to provide for urban facilities and services. The Board does not find that RCW
24 36.70A.115 mandates the same type of analysis for rural areas. To conclude RCW
25 36.70A.115 requires a LCA like Petitioners assert, is essentially finding the GMA requires a
26 county to size *both* its UGA and its rural areas which would be contrary to various provisions
27 of the UGA which require that development be encouraged in urban areas and that
28 sprawling, low-density development be reduced. In other words, the emphasis and focus
29 as to capacity applies to the urban growth areas.
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1 The Board reads RCW 36.70A.115 as requiring a coordinated effort between a county and
2 its cities to ensure that the adoption of subsequent amendments to comprehensive plans
3 and development regulations, when taken collectively, will not adversely impact the supply
4 of land needed to address allocated housing and employment growth for which the County
5 and cities have planned.
6

7 **Conclusion:** The Board finds no error in its May 12, 2008 FDO determination in regards to
8 Legal Issue 5. After considering the arguments raised by Petitioners in its Motion for
9 Reconsideration and the County's Response to this Motion, the Board concludes that RCW
10 36.70A.115 does not require a Rural Lands Capacity Analysis as asserted by the
11 Petitioners. Petitioners Motion for Reconsideration as to Legal Issue 5 is **DENIED**.
12

13 **ORDER**

- 14 1. Skagit County's Motion for Reconsideration in regard to the Board's reference to the
15 Rural Reserve zoning district in Conclusion of Law I is DENIED.
- 16 2. Skagit County's Motion for Reconsideration in regard to the Board's determination
17 that Petitioner Evergreen Islands had standing to challenge the uses permitted within
18 the Rural Reserve zoning district is DENIED.
- 19 3. Petitioners' Motion to Strike Page 4 of the County's Motion for Reconsideration is
20 GRANTED.
- 21 4. Petitioners' Motion for Reconsideration of the Board's denial of its Motion for
22 Submittal of Post-Hearing Materials is DENIED.
- 23 5. Petitioners' Motion for Reconsideration of the Board's conclusion that Skagit County's
24 Long CaRD provisions, SCC 14.18.330 [Legal Issue 8], complied with the GMA is
25 DENIED.
- 26 6. Petitioners' Motion for Reconsideration of the Board's conclusion that Petitioners,
27 Friends of Skagit County and/or June Kite, failed to adequately demonstrate standing
28 on Legal Issue 7 is DENIED.
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- 7. Petitioners' request for the Board to analyze whether the County appropriately designated natural resource lands [Legal Issue 7], is DENIED because Petitioners failed to establish standing on this issue.
- 8. Petitioners' Motion for Reconsideration of the Board's conclusion that RCW 36.70A.115 does not require a Rural Lands Needs and Capacity Analysis [Legal Issue 5] is DENIED
- 9. Petitioners' Motion for Reconsideration based on typographical errors is noted. With this Order, the Board recognizes the error contained within the first sentence of the first paragraph of the May 12, 2008 FDO and modifies it accordingly. However, Petitioners failed to adequately cite to any additional errors and therefore no further corrections will be made.
- 10. Petitioners' Motion for Reconsideration of the Compliance Schedule to allow for additional response time and briefing is DENIED except that two additional days are allowed to account for the Thanksgiving holiday. The date for response for objections will be advanced two days, and the revised compliance schedule shall apply:

Item	Date Due
Compliance Due	November 12, 2008
Compliance Report and Index to Compliance Record	November 17, 2008
Objections to a Finding of Compliance	December 3, 2008
Response to Objections	December 17, 2008
Compliance Hearing	December 29, 2008

ENTERED this 18th day of June, 2008.

James McNamara, Board Member

Holly Gadbow, Board Member

(Board Member William Roehl was not a member of the Board at the time of the issuance of the May 12, 2008 Final Decision and Order and therefore did not take part in this Order on Motion for Reconsideration)

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

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)

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