

1 BEFORE THE WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

2
3 ABENROTH, et al.,

4 Petitioners,

5
6 v.

7 SKAGIT COUNTY,

8
9 Respondent,

10 SKAGIT COUNTY GROWTHWATCH,
11 CITIZENS TO PROTECT BAY VIEW RIDGE,
12 AND GERALD STEEL,

13 Petitioners,

14 v.

15 SKAGIT COUNTY,

16
17 Respondent,

18 And

19 BOUSLOG INVESTMENTS, L.L.C., JBK
20 INVESTMENTS, L.L.C., and JOHN BOUSLOG,

21
22 Intervenors

Case No. 97-2-0060c

**COMPLIANCE ORDER – BAYVIEW
RIDGE URBAN GROWTH AREA**

CASE NO. 07-2-0002

FINAL DECISION AND ORDER

23
24 **I. SYNOPSIS**

25 There are a number of urban growth areas (UGAs) in Skagit County but only one of them is
26 not centered on a city. The Bayview Ridge UGA was initially established around the
27 Bayview Airport (property owned by the Port of Skagit County). After a 1998 decision by
28 this Board finding various aspects of the new UGA non-compliant, the original UGA was
29 limited to encompass only the airport and airport-related uses.
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1 After further study and public participation, the County decided that it was important to utilize
2 the Bayview Ridge UGA for projected urban residential growth as well as for commercial
3 and industrial uses in addition to those related to the airport. In December 2006, the County
4 Commissioners adopted the Bayview Ridge Subarea Plan (Subarea Plan) and
5 Development Regulations to create a cohesive UGA encompassing an area of 3,633 acres.
6 The purpose of the Subarea Plan and Development Regulations was to achieve compliance
7 as to the Bayview Ridge UGA in the earlier case as well as to address the need to
8 accommodate urban residential and commercial/industrial growth that the County felt could
9 not be accommodated in the municipal UGAs.
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12 Petitioners and Participants in this case have brought a number of challenges to the
13 compliance of the Bayview Ridge UGA with the Growth Management Act (GMA) (Ch.36.70A
14 RCW). In this decision, the Board finds that there are non-compliant portions of the
15 Subarea Plan and that one development regulation in particular is invalid for allowing urban
16 levels of development on holding tanks rather than on public sewer (SCC 14.28.105(13)).
17 As is typical in establishing a UGA apart from an existing city, the provision of urban levels
18 of service concurrent with urban levels of development is the biggest challenge for this
19 UGA. However, the Board also finds that the Subarea Plan addresses many of the
20 residential and commercial/industrial aspects of the Bayview Ridge UGA in a manner that is
21 compliant with the GMA.
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24 Key points in this decision are: the County has not timely updated its comprehensive plan
25 and must therefore use the planning period of 1995-2015 in the Subarea Plan as well. The
26 Subarea Plan, with its accompanying capital facilities plan, must show how the UGA will be
27 provided with urban levels of public services by the year 2015, the planning period currently
28 in effect. There are deficiencies at this time with respect to public sewer, fire and parks. To
29 maintain consistency, the Subarea Plan must also use the population projections that are
30 used in the comprehensive plan and size the Bayview Ridge UGA according to the 2015
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1 population projections and allocations for urban growth in the comprehensive plan. Where
2 the County has used greater numbers for the new UGA, that is non-compliant with RCW
3 36.70A.110. Finally, the County must have development regulations that ensure that
4 growth that occurs in the new non-municipal UGA is urban in nature. At this time, the
5 County lacks such development regulations and that failure, too, fails to comply with RCW
6 36.70A.110.
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8 II. PROCEDURAL BACKGROUND

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10 The issues here come before the Board in two cases: the remaining compliance issues
11 from the 1997 case of *Abenroth et al. v. Skagit County*, WWGMHB Case No. 97-2-0063c
12 relating to the Bayview Ridge UGA; and the issues raised in the 2007 petition for review
13 which challenges Skagit County's adoption of the Bayview Ridge Subarea Plan (Subarea
14 Plan) and Development Regulations by Ordinance 020060007 (*Skagit Growthwatch*).¹
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16 In its January 23, 1998 Final Decision and Order in the 1997 *Abenroth* case, this Board
17 found the designated non-municipal UGA at Bayview Ridge outside the property of the Port
18 of Skagit to be non-compliant with the Growth Management Act (GMA) and imposed
19 invalidity. On June 10, 1998 the Board declined to lift invalidity (Order Re: Bayview Ridge
20 UGA) but later the parties stipulated to a rescission of invalidity. Over the past nine years,
21 the many issues presented in the 1997 *Abenroth* case have been found compliant and
22 closed, with only the compliance of the Bayview Ridge UGA remaining an open compliance
23 topic.
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26 On December 1, 2006, the Board of County Commissioners adopted the Bayview Ridge
27 Subarea Plan (Subarea Plan) through Ordinance 020060007. The initial petition for review
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32 ¹ Petitioners have also challenged the failure of the County to timely update its comprehensive plan and
development regulations as required by RCW 36.70A.130(1),(2) and 4(b). The County admits that it is still
working on its update and the Board entered a decision on motion that the County was not in compliance on
this issue (Issue No.1).

1 in the 2007 case was filed by Petitioners on February 5, 2007 and the Prehearing
2 Conference in *Skagit Growthwatch* was held March 2, 2007. At the Prehearing Conference,
3 Petitioners were represented by Gerald Steel and the County was represented by Deputy
4 Prosecuting Attorney Arne Denney. An amended petition was filed to clarify the issues for
5 review on March 7, 2007. On March 9, 2007, the Board issued its Prehearing Order in the
6 2007 case incorporating the issue statement from the amended petition for review.
7 However, Petitioners were dissatisfied with this Prehearing order and requested a number
8 of corrections.² As a result, the Board issued an Amended Prehearing Order on March 22,
9 2007, which sets out the issues for the 2007 case.
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12 The compliance prehearing conference in the *Abenroth* case was held on February 6, 2007.
13 Deputy Prosecutor Arne Denny and Planning Director Gary Christensen appeared for Skagit
14 County. Ellen Bynum appeared for Friends of Skagit County, attorney John Groen attended
15 for Drainage District 14, and attorney Jonathan Sitkin appeared for Bouslog Investments
16 LLC, JBK Investments LLC, and John Bouslog. The parties agreed to coordinate the
17 hearing on the compliance case (*Abenroth*) with the hearing on the new petition (*Skagit*
18 *Growthwatch*).
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21 In an effort to confine the service obligations to only those past participants interested in the
22 Bayview Ridge UGA portion of the *Abenroth* case, all parties of record in that case were
23 served with notice that they must submit a form indicating their intention to participate in the
24 case to remain as parties. Skagit Growthwatch, Citizens to Protect Bayview Ridge, and
25 Gerald Steel filed a notice of intent to participate on February 28, 2007. Friends of Skagit
26 County (June Kite, representative) filed its notice of intent to participate on March 7, 2007.
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32 ² Petitioners' Corrections to Prehearing Order, March 16, 2007.
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1 Bouslog Investments LLC, JBK Investments LLC, and John Bouslog also filed a notice of
2 intent to participate in the *Abenroth* case.³

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4 The County filed the Index to the County's Record for the adoption of the Bayview Ridge
5 Subarea Plan on March 6, 2007. On March 19, 2007, Petitioners filed their Additions to the
6 Index without objection. On March 23, 2007, Bouslog Investments LLC, JBK Investments
7 LLC and John Bouslog filed their motion for intervention. Intervention was granted by order
8 dated April 3, 2007. On April 3, 2007, Petitioners filed motions on Issue No. 1, to amend the
9 schedule and for shortening time, and for an over-length brief.⁴ The County conceded that it
10 had not completed its update although working diligently on it.⁵ On April 27, 2007, the
11 Board issued its decision on Issue No. 1, finding the County had not complied with RCW
12 36.70A.130 (4) in completing its update of its comprehensive plan policies and development
13 regulations.⁶

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16 After correspondence with the parties, the dates for substantive motions were scheduled,
17 with the opportunity for more time to be requested as needed.⁷ On April 23, the Board
18 issued its Order Clarifying Service Requirements And Denying Motion For Overlength Brief,
19 noting that the Petitioners had not yet attempted to write a brief within page limitations.
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21 On April 12 and April 16, 2007, the County filed motions to supplement the record.⁸ These
22 motions were granted.⁹ On May 22, 2007, Skagit County filed a third motion to supplement
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26 ³ The cities of Concrete and Hamilton also filed notices of intent to participate but did not brief any issues or
appear at the hearing on the merits.

27 ⁴ Motion for Non Compliance on Issue 1; Motion for Amending Schedule and for Shortening Time; Motion for
Overlength Brief and for Clarifying Service on Parties.

28 ⁵ Skagit County's Reply To Dispositive Motion For Finding Of Noncompliance With RCW 36.70A.130(4)(B)
And Motion To Permit A Late Filing, April 17, 2007.

29 ⁶ Order on Issue No. 1- Failure to Timely Adopt Update Required by RCW 36.70A.130(4).

30 ⁷ April 11, 2007 letter to counsel from presiding officer.

31 ⁸ Skagit County's Motion to Supplement the Record; Skagit County's Second Motion to Supplement the
Record.

32 ⁹ Order Granting Skagit County's Motions to Supplement the Record, April 30, 2007.

1 the record together with its responsive brief.¹⁰ Intervenor also filed a motion to supplement
2 the record which was heard at the hearing on the merits.

3
4 The hearing on the merits was held June 6, 2007 at the Fire Station, 1901 North La
5 Venture, Mount Vernon. Deputy Prosecutor Arne Denney and Jeraldine Hulberg appeared
6 for Skagit County. Gerald Steel represented Petitioners in the *Skagit Growthwatch* case.
7 June Kite and Ellen Bynum appeared for Friends of Skagit County. Attorney Jonathan
8 Sitkin represented the Intervenor. All three Board members attended, Margery Hite
9 presiding.

10
11 At the hearing, the Board heard argument concerning the County's third motion to
12 supplement the record. Petitioners opposed the County's motion. The Board denied
13 County's Exhibit 810, the Declaration of Jeraldine Hulberg. Ms Hulberg's declaration was a
14 summary of capital facilities planning that has occurred since the adoption of the Subarea
15 Plan and Development Regulations. The Board deems this not relevant to the County's
16 adoption of the challenged Ordinance since it concerns planning that has occurred since
17 that time. The Board admitted County's Exhibit 811, a map showing the floodplain
18 designated for the Skagit River, subject to Petitioners' ability to correct the map with relevant
19 information from FEMA post-hearing.
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22 Intervenor also filed a motion to supplement the record with proposed Exhibits 800-801
23 and 803-809; and Exhibit 353, the environmental impact statement for the Bayview Ridge
24 Subarea Plan and Development Regulations. Exhibit 353 was admitted with time allowed
25 for Petitioners to make their response to it. Exhibits 800, 801, 807, 808 and 809 are
26 incorporated by reference in the Subarea Plan and/or comprehensive plan and are therefore
27 properly before the Board. The agreements and deeds/easements shown in Exhibits 803,
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32 ¹⁰ Skagit County's Third Motion to Supplement the Record, May 22, 2007.
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1 804, 805 and 806 have not been shown to be necessary or of substantial assistance to the
2 Board and are therefore not admitted.

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4 On June 13, 2007, Intervenors submitted copies of Exhibit 353 to the Board. Petitioners
5 submitted no post-hearing response to any of the exhibits.

7 III. ISSUES PRESENTED

8 Compliance Issues:

9 Does the Bayview Ridge UGA now comply with the GMA requirements with respect
10 to:

- 11 a. Allocation of urban population to the Bayview Ridge urban growth area
- 12 b. Sufficiency of urban services planned for the Bayview Ridge UGA
- 13 c. A record that demonstrates that the requirements for a UGA have been met
14 (“show your work”)

15 Issues from new petition for review:

- 16 1. Whether the County failed to review and update its Comprehensive Plan and the
17 implementing development regulations (not including critical areas regulations)
consistent with RCW 36.70A.130?
- 18 2. Whether the Bayview Ridge Subarea Plan (“Plan”) fails to be internally consistent within
19 itself and with the remainder of the Comprehensive Plan as required by RCW
20 36.70A.130 and -.070(preamble), consistent with the update requirements in RCW
21 36.70A.130 and consistent with the framework of the Countywide Planning Policies
pursuant to RCW 36.70A.130 and -.210?
- 22 3. Whether the Plan fails to comply with RCW 36.70A.020(1),(2),(5) and (12) and -.130, -
23 .110, -.115, and -.210 regarding comprehensive plans, including new subarea plans,
24 providing for urban growth for the succeeding twenty-year period including the ancillary
requirement to “show the work”?
- 25 4. Whether the Plan fails to comply with RCW 36.70A.020(1) ,(2), (5) and (12) and
26 36.70A.070, - .130, -.110, -.115, and -.210, by not providing adequate analysis of
27 locations, capacities, needs, costs, and funding sources to provide urban public facilities
and services?
- 28 5. Whether the Plan fails to comply with RCW 36.70A.020(1) ,(2), and (12) and
29 36.70A.070, - .130, -.110, -.115, and -.210 if, under close scrutiny, the UGA is
30 inappropriate for urban residential growth that can be better accommodated in municipal
31 UGAs?

- 1 6. Whether Ordinance #O20060007 (“Ordinance”) fails to comply with RCW 36.70A.020(1)
- 2 ,(2), (5) and (12) and 36.70A.130, -.110, -.115, and -.210 by not adequately planning for
- 3 7. Whether Ordinance #O20060007 (“Ordinance”) fails to comply with RCW 36.70A.020(1)
- 4 ,(2), (5) and (12) and 36.70A.130, -.110, -.115, and -.210 by not requiring efficient
- 5 phasing of residential and non-residential growth during the twenty-year planning period
- 6 in a UGA?
- 7 8. Whether the Plan fails to comply with RCW 36.70A.130, and -.070(1) by not designating
- 8 the extent of uses and building intensities for the commercial and industrial districts in
- 9 the text of the Plan?
- 10 9. Whether the Plan fails to comply with RCW 36.70A.130, and -.070(1) by not including an
- 11 adequate review of drainage, flooding, and storm water run-off in the area and nearby
- 12 jurisdictions and/or by not providing guidance for corrective actions to mitigate or cleanse
- 13 those discharges that pollute waters of the state, including Puget Sound or waters
- 14 entering Puget Sound?
- 15 10. Whether the Plan fails to comply with RCW 36.70A.020(1), (2), (5) and (12) and
- 16 36.70A.130, -.070, -.110, -.115, and -.210 by not requiring development to be truly
- 17 urban?
- 18 11. Whether the Plan fails to comply with RCW 36.70A.020(1), (2), (5) and (12) and
- 19 36.70A.070, -.130, -.110, -.115 and -.210 by oversizing the UGA and by not reasonably
- 20 accounting for infill development as a component to meet its commercial/industrial
- 21 acreage need and its residential population target?
- 22 12. Whether the Plan fails to comply with RCW 36.70A.020(1) ,(2), and (12) and
- 23 36.70A.070, -.130, -.110, -.115, and -.210 by designating 303 residential developable
- 24 acres in the UGA in the 2006 Plan on Page 2-5 that can accommodate population
- 25 growth of 2,909 people by 2015 when the projected need on Page 7-6 of the Plan is only
- 26 1,182 new people between 2006 and 2015?
- 27 13. Whether the Plan fails to comply with RCW 36.70A.020(1), (2), (5) and (12) and
- 28 36.70A.070, -.130, -.110, -.115, and -.210 by having inadequate, ambiguous, unreliable,
- 29 inconsistent and/or unfunded levels of service for public facilities and services (roads,
- 30 police, sewer, parks, fire, garbage collection, storm sewers, etc.)?
- 31 14. Whether Plan Policy 6A-1.2 fails to comply with RCW 36.70A.020(1), (2), (5) and (12)
- 32 and 36.70A.070, -.130, -.110, -.115, and -.210 by allowing an agreement to be signed to
- avoid concurrency?
15. Whether the Ordinance fails to comply with RCW 36.70A.020(1) ,(2), (5) and (12) and
- 36.70A.070, -.130, -.110, -.115, and -.210 by inadequately implementing CPP 12.9 in the
- Bayview Ridge Subarea?
16. Whether the Ordinance fails to comply with RCW 36.70A.020(1), (2), and (12) and
- 36.70A.070, -.130, -.110, -.115, and -.210 such that designation and allowance of
- residential urban development in the UGA (and related text and figures) should be found
- to not comply with the GMA?

- 1 17. Whether the Ordinance fails to comply with RCW 36.70A.020(1), (2), (5) and (12) and
2 36.70A.070, -.130, -.110, -.115, and -.210 such that designation and allowance of non-
3 accessory commercial urban development in the UGA (and related text and figures)
4 should be found to not comply with the GMA?
- 5 18. Whether the Ordinance fails to comply with RCW 36.70A.020(1), (2), (5) and (12) and
6 36.70A.070, -.130, -.100, -.110, -.115, and -.210 such that designation and allowance of
7 industrial urban development in the UGA (and related text and figures) outside of the
8 Port property should be found to not comply with the GMA?
- 9 19. Whether Plan fails to comply with RCW 36.70A.020(9) and (10) and 36.70A.070, -.110,
10 -.130, and -.210 by failing to designate adequate open space in the UGA including open
11 space buffers over and adjacent to petroleum pipelines?
- 12 20. Whether the Plan fails to comply with RCW 36.70A.020(1), (5) and (12) and 36.70A.070,
13 -.130, -.110, -.115, and -.210 by having the proposed ratio of employees to developable
14 industrial acreage for purposes of transportation and other public facility and service
15 planning much smaller than the existing ratio of employees to fully developed industrial
16 acreage inside the UGA?
- 17 21. Whether the Plan's implementing development regulations fail to comply with RCW
18 36.70A.130 by not fully implementing in a consistent manner the Subarea Plan and
19 Comprehensive Plan inside the UGA, or by implementing plan provisions found not in
20 compliance with the GMA, or by not being timely reviewed and updated?
- 21 22. Whether the Plan and implementing development regulations ensure that the urban
22 facilities and services necessary to support development in the unincorporated UGA will
23 be adequate to serve that development at the established urban levels of service at the
24 time of occupancy consistent with RCW 36.70A.020(12) and 36.70A.070, -.130, -.110, -
25 .115, and -.210?
- 26 23. Whether any portion of the Ordinance found not to comply with the Act in Issues 2 to 22
27 above should also be found invalid under RCW 36.70A.302 for substantial interference
28 with the fulfillment of Goals 1,2,5,6, 9, 10 and/or 12?

29 **IV. BURDEN OF PROOF**

30 For purposes of board review of the comprehensive plans and development regulations
31 adopted by local government, the GMA establishes three major precepts: a presumption of
32 validity; a "clearly erroneous" standard of review; and a requirement of deference to the
33 decisions of local government.

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

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

RCW 36.70A.320(1).

4 This same presumption of validity applies when a local jurisdiction takes legislative action in
5 response to a noncompliance finding; that legislative action is presumed valid. Petitioners
6 argued at the hearing on the merits that the burden is on the County to show that it has
7 achieved compliance as ordered by the Board in the Final Decision and Order. This is not
8 correct. The only time that the burden of proof shifts to the County is when the County is
9 subject to a determination of invalidity.¹¹ In a compliance hearing such as this one, the
10 burden is on the Petitioners to show that the adoption of the Subarea Plan fails to comply
11 with the GMA.

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14 The statute further provides that the standard of review is whether the challenged
15 enactments are clearly erroneous:

16 The board shall find compliance unless it determines that the action by the state
17 agency, county, or city is clearly erroneous in view of the entire record before the
18 board and in light of the goals and requirements of this chapter.

19 RCW 36.70A.320(3)

20 In order to find the County's action clearly erroneous, the Board must be "left with the firm
21 and definite conviction that a mistake has been made." *Department of Ecology v. PUD1*,
22 121 Wn.2d 179, 201, 849 P.2d 646 (1993).

23
24 Within the framework of state goals and requirements, the boards must grant deference to
25 local governments in how they plan for growth:

26
27 In recognition of the broad range of discretion that may be exercised by counties and
28 cities in how they plan for growth, consistent with the requirements and goals of this
29 chapter, the legislature intends for the boards to grant deference to the counties and
30 cities in how they plan for growth, consistent with the requirements and goals of this

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32 ¹¹ RCW 36.70A.320(2) and (4).

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.
RCW 36.70A.3201 (in part).

7 In challenging the sufficiency of compliance efforts as well as in an initial petition for review,
8 the burden is on Petitioners to overcome the presumption of validity and demonstrate that
9 any action taken by the County is clearly erroneous in light of the goals and requirements of
10 Ch. 36.70A RCW (the Growth Management Act). RCW 36.70A.320(2). Where not clearly
11 erroneous, and thus within the framework of state goals and requirements, the planning
12 choices of local government must be granted deference.
13

14 **V. DISCUSSION**

15 While the issue statement includes over 25 issues, the Board considers that many of those
16 issues overlap, and this is confirmed by the briefing of the parties. Therefore, the Board will
17 group the issues by topic and discuss those together.
18
19

20 **A. Update Compliance - Issue No. 1**

21 The Board has ruled on motion that the County has failed to timely complete its update of
22 comprehensive plan policies and development regulations as required by RCW
23 36.70A.130(1)(2) and (4). Order on Issue No. 1 – Failure to Timely Adopt Update Required
24 by RCW 36.70A.130(4), April 27, 2007. That order is incorporated herein by reference and
25 made part of this final decision and order.
26

27 **B. Inconsistency - Issue No. 2**

28 The allegations of inconsistency in Issue No. 2 are addressed in the various subject
29 headings below, as they must be addressed to specific provisions of the Subarea Plan.
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1 **C. Planning Period and Show Your Work - Issues No. 3 and**
2 **Compliance Issue (c)**

3 **Issue 3:** Whether the Plan fails to comply with RCW 36.70A.020(1),(2),(5) and (12) and -
4 .130, -.110, -.115, and -.210 regarding comprehensive plans, including new subarea plans,
5 providing for urban growth for the succeeding twenty-year period including the ancillary
6 requirement to “show the work”?

7 **Compliance Issue (c):** Does the Bayview Ridge UGA now comply with the GMA
8 requirements with respect to:

9 (c) A record that demonstrates that the requirements for a UGA have been met
10 (“show your work”)?

11 **Planning Period** – Petitioners raise an overall challenge to the Subarea Plan by alleging
12 that the Subarea Plan fails to provide for urban growth for the “succeeding twenty-year
13 period”.

14
15 From the outset, then, Petitioners mistake the obligation of the County in adopting its
16 Subarea Plan for Bayview Ridge. It is true, and the Board has already found, that the
17 County has not completed its seven-year update of its comprehensive plan policies and
18 development regulations as required by RCW 36.70A.130 (Issue 1). However, it does not
19 follow that the County may never amend its comprehensive plan in the meantime and if it
20 does, that the amendments must address the subsequent twenty-year period. There is no
21 GMA provision that directly bars amendments to the comprehensive plan until the
22 mandatory update is completed and, in this case, the County adopted its Bayview Ridge
23 Subarea Plan to achieve compliance on a longstanding issue before this Board.

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26 Amendments to the comprehensive plan, such as this Subarea Plan, must conform to the
27 existing comprehensive plan and use the same planning period. If they did not, the
28 planning period in the Subarea Plan would be inconsistent with the comprehensive plan in
29 violation of RCW 36.70A.070 and 36.70A.080(2).
30

1 The twenty-year planning period referenced by Petitioners in Issue 3 is established in the
2 comprehensive plan as a whole and is not altered by the adoption of a subarea plan. The
3 adoption of new population projections is the triggering event for the revision of the planning
4 period in the comprehensive plan, rather than the revision of the planning period being
5 triggered by the adoption of a subarea plan.¹²
6

7 **“Show Your Work”** – Petitioners argue in a general way that the County has not “shown its
8 work” on the Bayview Ridge UGA. Where this is raised in a specific challenge, the Board
9 considers it below. However, it is important to understand that the requirement to “show
10 your work” applies where the GMA expressly requires certain kinds of analysis to have
11 taken place. For instance, RCW 36.70A.110(2) requires the county or city to include “areas
12 and densities sufficient to permit the urban growth that is projected to occur in the county or
13 city for the succeeding twenty-year period”. As part of its analysis, the county or city must
14 “show its work” as it comes to its decisions about where and how to allocate growth.¹³
15 Therefore, the “work” will be in the record of the County’s action and Petitioners may
16 challenge the basis for the County’s decisions by putting relevant portions of the work
17 before the Board.
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20 However, this principle is not the same thing as shifting the burden of proof. It is not “justify
21 your work”. The burden remains on the Petitioner to demonstrate that the County’s analysis
22 is clearly erroneous. Where there is an absence of proof that the County’s legislation fails to
23 comply with a provision of the GMA, then it is the Petitioners who have not met their burden,
24 rather than the County.
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29 _____
30 ¹² RCW 36.70A.130(3)(a) and (b) requires revisions every ten years for UGAs to account for subsequent 20
31 year growth. RCW 36.70A.110(2) requires the OFM population projections to be utilized to provide for areas
32 sufficient land capacity consistent with the twenty-year population forecast.

¹³ *Port Townsend v. Jefferson County*, WWGMHB Case No. 94-2-0006 (Final Decision and Order, August 10,
1994).

1 **Conclusion:** The use of the comprehensive plan planning period (1995-2015) for the
2 Subarea Plan is necessary to maintain consistency between the comprehensive plan and
3 the Subarea Plan as required by RCW 36.70A.070 and 36.70A.080(2).
4

5 **D. Capital facilities and utilities planning – Issues 4, 9 and**
6 **Compliance Issue (b)**

7 **Issue 4.** Whether the Plan fails to comply with RCW 36.70A.020(1), (2), (5), and (12) and
8 RCW 36.70A.070, RCW 36.70A.130, RCW 36.70A.110, RCW 36.70A.115, and RCW
9 36.70A.210 by not providing adequate analysis of locations, capacities, needs, costs and
10 funding sources to provide urban public facilities and services?

11 **Issue 9.** Whether the Plan fails to comply with RCW 36.70A.140 and RCW 36.70A.070(1)
12 by not including adequate review of drainage, flooding and storm water runoff in the area
13 and nearby jurisdictions and/or by not providing guidance for corrective actions to mitigate
14 those discharges that pollute waters of the state, including Puget Sound or waters entering
15 Puget Sound?

16 **Compliance Issue (b):** Does the Bayview Ridge UGA now comply with the GMA
17 requirements with respect to:

18 (b) Sufficiency of urban services planned for the Bayview Ridge UGA?

19 **Positions of the Parties**

20 Petitioners argue that detailed capital facilities planning required by RCW 36.70A.070(3) is
21 nonexistent. Petitioners say that the required missing parts of this capital facilities plan
22 include the failure to list existing facilities, to denote what facilities are actually in place, and
23 that the capital facilities plan should include capital facilities and financing for six years
24 beyond 2006 (the year the plan was adopted). Petitioners contend that the County has not
25 completed the GMA required identification of capital facilities with its necessary pipelines
26 and appurtenances and their costs that need to be identified for the 20-year life of the plan.
27 Petitioners maintain that the County does not have agreements with providers that services
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1 will be provided, and notes particularly that no agreement with the City of Burlington exists
2 to guarantee sewer service.¹⁴

3
4 Skagit County argues that public facilities owned by other public entities do not need
5 reiteration in the County's plan. The County cites the September 9, 1995 Final Decision
6 and Order in *Achen v. Clark County*, WWGMHB Case No. 95-2-67c and several Central
7 Puget Sound Hearings Board cases¹⁵ to support its position.¹⁶ The County says that the
8 plan shows that the City of Burlington will provide sewers, Skagit County Public Utility
9 District (PUD) #1 will provide water, and the Burlington-Edison School District will provide
10 schools.¹⁷ The County admits that not all the elements exist in the various documents on
11 which it relies and that they need to be included in the plan. While this omission may merit
12 a finding of noncompliance, the County maintains that because of its concurrency
13 requirements that did not allow development unless water, sewer, fire and police services
14 are available, it does not merit an invalidity finding. The County declares its storm water
15 plan fulfills the capital facilities requirement.
16
17

18 Intervenor states that the County adopted a capital facilities plan in 2000, and updated it in
19 to 2003 to show needed facilities and funding until 2008. The Intervenor asserts that the
20 needed information for a capital facilities plan are contained in either the County's adopted
21 CIP or the Bayview Ridge CIP. Because different service providers are on different
22 planning schedules than the County, the CIPs of these entities and the County are not
23 totally consistent, Intervenor explains, and concedes that some need updating to show
24 service to the Bayview Ridge UGA during the planning period.¹⁸
25
26
27

28
29 _____
30 ¹⁴ Petitioners' Opening Brief at 24.

31 ¹⁵ *Bremerton v. Kitsap County*, CPSGMHB Case No. 95-3-0009c, CPSGMHB Case No. 95-3-00030c and
32 CPSGMHB Case No. 95-e-0039c

¹⁶ Skagit County's Response at 21.

¹⁷ *Ibid* at 21.

¹⁸ Intervenor's Brief at 11.

1 Friends of Skagit County (FOSC) urged at the hearing on the merits that there are
2 unfinished drainage projects without funding and no agreement about who will provide
3 them. FOSC also noted that the efforts to clean up Puget Sound will like result in new
4 requirements for storm-water management.
5

6 **Board Discussion**

7 As we have decided in Issue 3 above, the planning period for the Subarea Plan must be the
8 same as the planning period in the comprehensive plan to maintain consistency between
9 the Subarea Plan and the comprehensive plan. Therefore, the failure of the County to plan
10 for the next twenty years of capital facilities from the date that the Bayview Ridge UGA was
11 adopted in 2006 is not fatal.
12

13
14 However, there are certain consequences to using an outdated planning period when
15 attempting to establish a residential UGA. One is that since all of the needed capital
16 facilities for the new UGA must be shown to be provided within the planning period, there
17 may be a very short timeframe to accomplish the capital facilities build-out necessary for the
18 new residential UGA. The plan must show how this build-out will be accomplished in the
19 limited time-frame of the remaining planning period. Further, new capital facilities require a
20 funding mechanism for at least six years and this requirement applies regardless of whether
21 the underlying planning period is timely or not ¹⁹.
22

23
24 In addition, we note that the County's choice to adopt the Subarea Plan at this point does
25 not exempt the Subarea Plan from review when the County does conduct its seven-year
26 update. This will be important for internal consistency and to ensure that the Subarea Plan
27 conforms to the overall County strategy for the accommodation of urban growth. RCW
28 36.70A.130(1),(2)(a) and (4)(b). Therefore, a twenty year plan for the capital facilities for the
29 Bayview Ridge UGA will be required with the update.
30

31
32 ¹⁹ RCW 36.70A.070(3)(d)
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1 Nevertheless, the County has chosen to adopt the Subarea Plan under the existing
2 comprehensive plan planning period. We review the capital facilities plan for the Subarea
3 Plan in that light.

4
5 RCW 36.70A.070(3)(b) requires a forecast of the future needs for capital facilities; and (c)
6 requires the proposed locations and capacities of expanded or new capital facilities.

7 RCW 36.70A.110(3) requires (in the pertinent part) that urban growth should be located
8 first in areas already characterized by urban growth that have adequate existing public
9 facility and service capacities to serve such development, second in areas already
10 characterized by urban growth that will be served adequately by a combination of both
11 existing public facilities and services and any additional needed public facilities and services
12 that are provided by either public or private sources, and third in the remaining portions of
13 the urban growth areas. The Board has long held that these two requirements read
14 together obligate counties and cities to include in the comprehensive plan's capital facilities
15 element the proposed locations, capacities, and funding for the twenty-year planning period
16 covered by the comprehensive plan.²⁰

17
18
19 The Bayview Ridge Subarea Plan is a component of the 1998 Skagit County
20 Comprehensive Plan ("comprehensive plan" or "plan") and the capital facilities plan for the
21 Bayview Ridge Subarea needs to be consistent with the capital facilities element contained
22 in Skagit County Comprehensive Plan. This includes the six-year funding plan for capital
23 improvements, often abbreviated "CIP". The County adopted a six-year capital facilities
24 funding plan (CIP) in 1999, and then it was amended in 2003 to cover the years from 2003
25 to 2008. Information in both plans can be used to help meet the capital facilities planning
26
27

28
29
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31
32 ²⁰ See *Cotton v. Jefferson County*, WWGMHB Case No. Case No. 98-2-0017 (Amended Final Decision and Order, April 5, 1999), *Irondale Community Action Neighbors v. Jefferson County*, WWGMHB Case No. 03-2-0010 and WWGMHB Case No. 04-2-0022 (Compliance Order and Final Decision and Order, May 31, 2005) and *Ludwig v. San Juan County*, WWGMHB Case No. 05-2-0019c, Final Decision and Order and Compliance Order (Eastsound UGA), June 20, 2006).

1 requirements of RCW 36.70A.070(3). The Subarea Plan represents that Skagit County has
2 done this to meet the capital facilities planning requirements for the Bayview Ridge UGA.²¹

3
4 Petitioners' claim that the capital facilities planning for Bayview Ridge does not meet RCW
5 36.70A.070(3) (a) – (d). (Issue 4). RCW 36.70A.070(3) requires (in pertinent part):

- 6 (a) An inventory of existing capital facilities owned by public entities, showing the
7 locations and capacities of the capital facilities; (b) a forecast of the future needs for
8 such capital facilities; (c) the proposed locations and capacities of expanded or new
9 capital facilities; (d) at least a six-year plan that will finance such capital facilities
10 within projected funding capacities and clearly identifies sources of public money for
such purposes...

11 RCW 36.70A.070(3).

12
13 The urban services that need to be provided to a UGA are defined as:

14 Urban governmental services" or "urban services" include those public services and
15 public facilities at an intensity historically and typically provided in cities, specifically
16 including storm and sanitary sewer systems, domestic water systems, street cleaning
17 services, fire and police protection services, public transit services, and other public
utilities associated with urban areas and normally not associated with rural areas.

18 RCW 36.70A.020(20)

19 We will address the challenged compliance of the capital facilities element with the
20 requirements of RCW 36.70A.070(3) by subsection, and the utilities element with the
21 requirements of RCW 36.70A.070(4).

- 22
23 1) Inventories with proposed locations and capacities (RCW 36.70A.070(3)(a))

24
25 First, we will discuss Petitioners' claim that the Bayview Ridge Subarea Plan does not have
26 the necessary components to fulfill the requirements of RCW 36.70A.070(3)(a), an inventory
27 of existing public facilities, showing their locations and capacities. The Subarea Plan
28 explains that the County provides sheriff services directly; park facilities in cooperation with
29

30
31 ²¹ Bayview Ridge Subarea Plan at 7-1

1 the Port of Skagit County; and storm drainage facilities with the drainage districts.²² Water
2 is provided by PUD No. 1; sewer by the City of Burlington; and fire protection by several fire
3 districts.²³ The Skagit County 2003-2008 Capital Facilities Plan provides an inventory of
4 the County's existing park and sheriff facilities, including capacities and locations. The
5 Bayview Ridge Sub-Area Plan includes an inventory of existing transportation facilities.²⁴
6 The Bayview Ridge Stormwater Management Plan Phase adopted by Skagit County on
7 April 16, 2007 contains an inventory of existing storm water facilities with locations and
8 capacities.²⁵
9

10
11 While the County contends that it does not need to include non-county owned facilities in its
12 CIP, the Subarea Plan references the plans of other public entities as part of the Subarea
13 Plan's capital facilities element and plan.²⁶ Additionally, the 2003 – 2008 Skagit County
14 CIP includes an inventory of diking and fire district facilities in the subarea.²⁷ The
15 Burlington-Edison School District as well as water system plans serving Skagit County,
16 including PUD. No.1,²⁸ are incorporated and referenced in the 2003-2008 CIP. The CIP
17 also notes where these plans are.²⁹ The Bayview Ridge Watershed Management Plan
18 Phase 1 includes a list of an inventory of existing facilities for the subarea.³⁰
19

20
21 The Water System Plan for Public Utility District No. 1 of Skagit County, Volume 1 contains
22 a description of the existing facilities serving Bayview Ridge in 2001.³¹ The burden of proof
23

24
25 ²² Subarea plan at 7-6 – 7-15.

26 ²³ Exhibit 807 at 3-11, 4-9, 4-12, 4-17.

27 ²⁴ Subarea plan at 6-4 and Figure 9.

28 ²⁵ Exhibit No. 333 at Chapter 4 and Appendix A, Exhibit No. 379.

29 ²⁶ Bayview Ridge Subarea Plan at 7-5.

30 ²⁷ Exhibit 807 at 4-2, 4-6, 4-9 and 4-17 and Appendix D.

31 ²⁸ PUD No.1 plans are included in the Skagit County Coordinated Water System Plan that is adopted as part
32 of the Skagit County Comprehensive Plan. See City of Anacortes v. Skagit County, Case No. 07-2-0002 (Order to Dismiss Petition for Lack of Jurisdiction, July 2, 2007)

²⁹ Ibid at 4-23 and 4-27.

³⁰ Bayview Ridge Watershed Stormwater Management Plan Phase 1 at Chapter 4 and Appendix A.

³¹ The Water System Plan for Public Utility District No. 1 of Skagit County, Volume 1 at 4-17 -4-19.

1 is on the Petitioner to show that this list of facilities serving Bayview Ridge UGA is incorrect
2 which they have failed to do.

3
4 The City of Burlington (Revised) Sanitary Sewer and Comprehensive Western Plan Map
5 shows existing sewer main lines and capacities to serve the Bayview Ridge UGA.³² The
6 City of Burlington 2005 Wastewater Plan states that the Bayview Ridge Urban Growth Area
7 and Sewer Service Area boundaries are adjusted to reflect the final action planned in 2005
8 for the Bayview Ridge Urban Growth Area.³³ However, a discrepancy exists in the City of
9 Burlington's Comprehensive Wastewater Plan that the Skagit County Capital Facilities
10 Element needs to clarify. While the sewer plan's map shows existing and proposed
11 facilities, the text of the plan says the facilities to serve the Bayview Ridge are "basically
12 complete"³⁴ or "started".³⁵ Without this clarifying information, this inventory is not complete
13 and therefore non-compliant with RCW 36.70A.070(3)(a).
14
15

16 Existing facilities with their locations and capacities are included in the Burlington-Edison
17 School District 100's Six-year Capital Facilities Plan adopted in 2006, covering the years
18 2006 -2011.³⁶
19

20 The Board has previously held that the comprehensive plan should either contain the
21 relevant information from non-county owned capital facilities or reference the information
22 clearly so that is accessible to the public.³⁷ This the County has done.
23
24
25
26
27

28 ³² Exhibit 294.

29 ³³ Ibid at 6.

30 ³⁴ Ibid at 6.

31 ³⁵ Ibid at 14.

32 ³⁶ Burlington-Edison School District 100' Six-year Capital Facilities Plan (April 2006) at 4.

³⁷ Stephen f. Ludwig v. San Juan County, WWGMHB Case No. 05-2-0019c (Final Decision and Order,
Compliance Order, April 19, 2006)

1 The County argues that public facilities not owned and operated by the County do not need
2 to be included in the County's capital facilities plan and that *Achen* supports its position.

3 However, the Board finds that *Achen* reaches a different conclusion:

4 The language of that statute involves facilities owned by "public entities" and does
5 not limit capital facilities planning to only those facilities owned by the County. Public
6 facilities that are owned by cities and are covered in a different comprehensive plan
7 do not need reiteration in a County's plan. Other facilities owned by "public entities"
8 do need to be included in order to adequately assess and fulfill the requirements of
RCW 36.70A.070(3)...

9
10 Clark County further argued that if such a requirement existed it would merely
11 incorporate the capital facilities plans of other public entities. This argument misses
12 the point. The overall purpose of the capital facilities element of a comprehensive
13 plan is to see what is available, determine what is going to be needed, figure out
14 what that will cost, and determine how the expense will be paid. A simple
15 incorporation of some other entity's plan without then reviewing the entire program in
a coordinated manner to ensure consistency and achieve the goals and requirements
of the Act would not be in compliance.

16 *Achen v. Clark County*, WWGMHB 95-2-0067, Final Decision and Order (September 20,
17 1995) at 59.

18
19 The Board in *Achen* did not conclude that it was not necessary to include public facilities
20 owned by other entities in the County's comprehensive plan when the County relies upon
21 them to fulfill the requirements of RCW 36.70A.070(3) as the County argues, and we do not
22 reach that conclusion here either. Under RCW 36.70A.070(3)(a), the capital facilities
23 element must show an inventory of the existing capital facilities for Bayview Ridge. Here,
24 the plans of other entities are included and, except for the City of Burlington's sewer plan,
25 Petitioners have not met their burden of proof that they are not sufficient.
26

27
28 **Conclusion:** Except for sewer service, Petitioners have not carried their burden of proof
29 that the County has not complied with the requirements of RCW 36.70A.070(3)(a). In order
30 to comply with RCW 36.70A.070(b) and (c), the Skagit County Capital Facilities Element
31 needs to clarify the City of Burlington sewer facilities that exist to serve the Bayview Ridge
32

1 UGA. The Subarea Plan fails to comply with RCW 36.70A.070(3)(a) as to the inventory of
2 existing sewer capital facilities to serve the subarea.

3
4 2) Forecast of Future Needs and Proposed Locations, Capacities, and Financing
5 of Future Needs for the 20-year planning period (RCW 36.70A.070(3)(b) and (c))

6 Petitioners contend that the County has not identified capital facilities and the necessary
7 pipelines and appurtenances; their capacities and costs for future needs as are necessary
8 to meet these requirements of the GMA. The County argues that this is not required for
9 non-county owned facilities.

10
11 For this issue, the record shows that the analysis of the capital facilities needs over the life
12 of the plan is mixed. The Skagit County Capital Facilities 2003 to 2008 CIP does not
13 contain any analysis of future needs beyond 2008. The Bayview Ridge Subarea Plan does
14 this for some, but not all facilities.

15
16
17 Public Safety. For public safety needs, the County defines its level of service as one
18 commissioned officer per 1000 population or per 100 acres of commercial or industrial
19 property, whichever is higher. The Subarea Plan concludes that no deficiencies exist for the
20 2001 – 2006 period and that the County will need an additional 6.5 officers to maintain the
21 current LOS for the UGA in 2015.³⁸

22
23 Parks. The Subarea Plan discusses the UGA's park land needs to 2015, and the facilities
24 and possible locations of some, but not all the facilities needed to maintain its LOS until
25 2015. Funding sources in the years beyond 2006 are not projected.³⁹

26
27 Water. The Subarea Plan includes an analysis of the quantity of water needed to serve
28 Bayview Ridge to 2015, discusses improvements to storage facilities and concludes that it
29

30
31
32 ³⁸ Bayview Subarea Plan at 7-9

³⁹ Bayview Ridge Subarea Plan at 7-7 to 7-9
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1 has capacity to serve Bayview Ridge until 2015. The Subarea Plan also states that the
2 PUD's plan includes water system improvements to serve the UGA by the year 2020.⁴⁰,
3 and the Water System Plan for Public Utility District No.1 of Skagit County confirms this.⁴¹
4 The PUD plan is incorporated in the 2003-2008 Skagit County CIP by virtue of its being part
5 of the Skagit County Coordinated Water System Plan that has been adopted as part of the
6 County's comprehensive plan.⁴² While no exhibit provided by any party provides specific
7 information on the PUD's proposed improvements with locations, capacities and financing,
8 the Table of Contents to the PUD's plan indicates that proposed improvements and
9 financing are included in the plan.⁴³ Again, it is the Petitioners' burden to provide evidence
10 from the County's adopted plan to show that PUD capital facilities plan is inadequate and
11 incomplete as to planned locations and capacities of water delivery systems to serve the
12 UGA.
13

14
15 Storm water. Skagit completed and adopted an extensive stormwater management plan in
16 April 2007⁴⁴ to manage storm water runoff in the 11,277 acre Bay View Ridge Watershed.
17 The Bayview Ridge UGA comprises 3,663 acres or about 32 per cent of the watershed.⁴⁵
18 Resolution R20070227 that adopted the Bay View Ridge Stormwater Plan: Phase 1 avers
19 that this plan addresses the Bayview Ridge Urban Growth Area and the slightly larger
20 subarea plan boundary. The storm water plan contains a capital facilities plan of proposed
21 projects and their cost estimates for Phase 1. These facilities are scheduled to be
22 completed in 2011.⁴⁶ The stormwater plan indicates that these projects are the ones
23 necessary "to reduce or eliminate existing and /or future flooding conditions within the
24
25

26
27 ⁴⁰ Bayview Ridge Subarea Plan at 7-11.

28 ⁴¹ Water System Plan for Public Utility District No.1 of Skagit County at 1-4.

29 ⁴² Exhibit 807 at 4-23, *City of Anacortes v. Skagit County and the Department of Ecology*, WWGMHB Case
30 No. 07-2-0003 (Order Dismissing Petition for Review for Lack of Subject Matter Jurisdiction , July 2, 2007) at
31 21.

32 ⁴³ Exhibit 155 at i and ii.

⁴⁴ Exhibit 333 and Exhibit 379

⁴⁵ Exhibit 333 at 2.1

⁴⁶ Exhibit 333 at 8.1

1 Bayview Ridge UGA".⁴⁷ The adopting resolution states Skagit County will bear the costs of
2 the improvements and that these will be funded through various legally authorized means,
3 not limited to development contributions and the Skagit County Drainage Utility.⁴⁸ The plan
4 indicates that maintenance of the storm drainage facilities should be the responsibility of the
5 drainage districts and those agreements have yet to be finalized.
6

7 Schools. The Burlington-Edison School District needs are projected until 2015 in the
8 Subarea Plan. The Subarea Plan references the School District's current six-year capital
9 facilities plan.⁴⁹ The Burlington-Edison School District No. 100's Six –Year Capital Facilities
10 Plan covers the years 2006-2011 and discusses future projects with their locations and
11 their capacities, and lists costs and funding sources through 2011.⁵⁰
12

13 Fire Protection. The Subarea Plan includes a discussion of the long-term needs of the Fire
14 Districts serving the UGA, but does not incorporate any facilities or other capital expenses
15 needed to maintain the LOS until 2015. Fire District No. 6, one of the fire districts serving
16 the UGA's whose capital facilities plan is incorporated into the County's 2001-2008 CIP
17 includes improvements needed in the years 2001-2006. Also, the plan discusses that the
18 Fire Districts' negotiations on how to serve the UGA have not been completed.⁵¹
19 Commitments to serve the UGA must be in place to ensure that the UGA's fire service LOS
20 can be maintained over the life of the plan.⁵²
21
22

23 Sewer Service. The Subarea Plan explains that the Bayview Ridge UGA is in the City of
24 Burlington's western service area.⁵³ This is confirmed by the City of Burlington's 2005
25
26
27

28 ⁴⁷ Ibid

29 ⁴⁸ Exhibit 379 at 2

30 ⁴⁹ Subarea Plan at 7-12.

31 ⁵⁰ The Burlington-Edison School District No. 100's Six –Year Capital Facilities Plan at 5-8.

32 ⁵¹ Subarea Plan at 7-10

⁵² Ibid.

⁵³ Subarea Plan at 7-13

1 Comprehensive Wastewater Management Plan⁵⁴ The City of Burlington (Revised) 2005
2 Sanitary Sewer and Comprehensive Plan Wastewater Plan Map shows locations and
3 proposed capacities of main sewer lines to serve the UGA.⁵⁵ This plan also says that the
4 construction projects to serve the Bayview Ridge UGA are “basically complete”.⁵⁶
5 Appendix E to City of Burlington 2005 Comprehensive Wastewater Plan also states that a
6 project has been started to replace a pump station and construct a new 24 inch force main
7 and that the completion of these projects will allow the City to serve the anticipated needs of
8 the “western service area”.⁵⁷ The Subarea Plan does summarize the City’s improvements to
9 its treatment plant that provides treatment capacity to serve the entire UGA.⁵⁸ From the
10 information provided on the sewer map, in the plan’s introduction and summary, and
11 Appendix E, it is difficult to determine what projects that serve the UGA are actually
12 completed. If the projects are completed, particularly the pump station and force main
13 needed to serve the Bayview Ridge UGA, no financing information is needed. However, if
14 they are not, projected costs and funding information is needed in the plan. No information
15 in the record shows any costs or funding or is there any indication where the reader can find
16 this information. To comply with RCW 36.70A.070(3)(b) and (c), this information needs to
17 readily accessible and understandable to public.
18
19
20

21 **Conclusion:** The CIPs in the comprehensive plan overall and in the Subarea Plan supply
22 some, but not all, of the requirements to comply with RCW 36.70A.070(3)(b) and (c).

- 23 • Police - Information provided on capital facilities for public safety services complies
24 with RCW 36.70A.070(3)(b) and (c).
- 25 • Water - Petitioners have not carried their burden of proof that the water service to be
26 delivered by the PUD No.1 does not meet this requirement.
27

28
29
30 ⁵⁴ City of Burlington’s 2005 Comprehensive Wastewater Management Plan, Exhibit 800, at 6 and 15

⁵⁵ Exhibit 800

⁵⁶ Ibid at 6 and 15.

⁵⁷ Exhibit 800 at Appendix E.

⁵⁸ Ibid at 7-13

- 1 • Parks and Fire - Neither the Bayview Ridge Subarea Plan nor the Skagit County
2 CIP 2003-2008 project all of the costs, and financing needed to ensure that the LOS
3 for parks or fire services will be maintained over the 1995-2015 planning period nor
4 do these plans comply with RCW 36.70A.070(3)(b) and (c) for parks or fire
5 protection. This fails to comply with RCW 36.70A.070(3)(b) and (c).
6
- 7 • Schools - The Bayview Ridge Subarea Plan does not contain the necessary
8 requirements to comply with RCW 36.70A.070(3)(b) and (c). The Burlington-Edison
9 School District CIP covers the six-year period from 2006 to 2011. From the
10 information provided in both the Subarea Plan and the Burlington-Edison School
11 District CIP, adopted in 2006, proposed facilities and funding methods are not
12 analyzed for the 20-year planning period. For School Facilities, the Subarea Plan
13 and the Burlington Edison CIP does not contain the necessary information to comply
14 with RCW 36.70A.070(3)(b) and (c).
15
- 16 • Sewer - The Skagit County's Capital Facilities Element does not clarify which
17 facilities listed as proposed or incomplete in other parts the City of Burlington's
18 Comprehensive Wastewater Plan have been completed as the introduction to the
19 plan suggests, are incomplete as Appendix E states, or are proposed as the City's
20 sewer service map indicates. Skagit County's Capital Facilities Element needs to
21 provide costs and funding information for any proposed or incomplete sewer
22 projects. Without this clarification and/or cost and funding information about
23 proposed or existing projects, the information about sewer service for the Bayview
24 Ridge UGA does not comply with RCW 36.70A.070(3)(b) and (c).
25
- 26 • Stormwater – The Bay View Ridge Stormwater Plan: Phase 1 and Resolution that
27 adopted the plan fulfill the requirements of RCW 36.70A.070(3)(b) and (c) for storm
28 drainage facilities for the Bayview Ridge UGA.
29

30 3) Six-Year Capital Facilities Plan – RCW 36.70A.070(3)(d)

1 The Bayview Ridge Capital Facility Plan contains a six-year capital facilities plan that
2 summarizes projects from 2001-2006 to support the UGA's growth. The County's most
3 recent CIP does not satisfy the requirement for "a six-year plan that will finance such capital
4 facilities" as required by RCW 36.70A.070(3)(d) because "such facilities" as are added
5 through the Bayview Ridge Capital Facilities Plan were not the subject of the County's
6 2001-2006 CIP. There is no six-year plan for financing capital facilities needed to support
7 the Bayview Ridge UGA, beginning with its adoption in December 2006. Further, RCW
8 36.70A.070 requires that the plan be an internally consistent document. In addition, the
9 Plan relies upon outdated information for fire and parks facilities and therefore is not
10 consistent with the requirements of RCW 36.70A.070 (3)(d) which requires at least a six-
11 year plan that will fund such capital facilities within projected funding capacities and clearly
12 identifies sources of public money for such purposes.
13
14

15
16 Therefore, there must be a capital facilities funding plan for both Bayview Ridge and the
17 County as a whole to cover the six-year period from the date of the establishment of the
18 Bayview Ridge UGA so that both plans are consistent. The absence of such a CIP fails to
19 comply with RCW 36.70A.070(3)(d).
20

21 **Conclusion:** The Bayview Ridge Capital Facilities Plan does not summarize projects and
22 funding for the six-year period following the establishment of the Bayview Ridge UGA as
23 required by RCW 36.70A.070(3)(d). Furthermore, it is not consistent with the most recent
24 Skagit County CIP, which should also cover the same period, so it does not comply with
25 RCW 36.70A.070.
26
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32

1 4) Utilities Element – RCW 36.70A.070(4)

2
3 **Position of the Parties**

4 Petitioners allege that the utility analysis in Chapter 8 of the Subarea Plan does not provide
5 the general locations, proposed locations and capacities of all utilities as required by RCW
6 36.70A.070(4).⁵⁹

7
8 **Board Discussion**

9 RCW 36.70.070 (4) requires :

10 A utilities element consisting of the general location, proposed location, and capacity
11 of all existing and proposed utilities, including, but not limited to, electrical lines,
12 telecommunication lines, and natural gas lines.

13 RCW 36.70A.070(4).

14 The Bayview Ridge Subarea Plan discusses the utility providers for the Bayview Ridge
15 UGA: Puget Sound Energy (electricity), Cascade Natural Gas, Verizon (telephone), cellular
16 telephone service, internet providers, and cable television. The Subarea Plan states that no
17 capacity problems exist for electricity or natural gas, two utilities required to be included in a
18 Utilities Element. The Subarea Plan explains that RCW 80.36.090 requires
19 telecommunication services to be provided on demand; therefore, telephone service
20 providers will provide facilities to accommodate whatever growth patterns occur.⁶⁰

21
22
23 The Skagit County Comprehensive Plan's Utility Element says maps showing the major
24 locations of the electricity and natural gas facilities serving Skagit County are included in the
25 Skagit County supplemental map portfolio. The Utility Chapter also states that information
26 relating to Utility Element requirements is contained in the plans of the utility providers.⁶¹

27 The burden is on Petitioners to show that this map portfolio and the utility providers' plans
28
29

30
31 ⁵⁹ Petitioners' Opening Brief at 16.

⁶⁰ Bayview Ridge Subarea Plan at 8-1

32 ⁶¹ Skagit County Comprehensive Plan at 10-1
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1 are inadequate to meet the requirements for RCW 36.70A.070(4) regarding the Bayview
2 Ridge UGA.

3
4 **Conclusion:** Petitioners have not carried their burden of proof that Skagit County has not
5 complied with RCW 36.70A.070 (4) in regard to the Bayview Ridge UGA.

6
7 **E. UGA residential allocation and sizing – Issues 5, 11, 12, 16 and**
8 **Compliance Issue (a).**

9 **Compliance Issue (a):** Does the Bayview Ridge UGA now comply with the GMA
10 requirements with respect to:

11 (a) Allocation of urban population to the Bayview Ridge urban growth area?

12
13 **Issue 5:** Whether the Plan fails to comply with RCW 36.70A.020(1) ,(2), and (12) and
14 36.70A.070, -.130, -.110, -.115, and -.210 if, under close scrutiny, the UGA is inappropriate
15 for urban residential growth that can be better accommodated in municipal UGAs?

16 **Issue 11:** Whether the Plan fails to comply with RCW 36.70A.020(1), (2), (5) and (12) and
17 36.70A.070, -.130, -.110, -.115 and -.210 by oversizing the UGA and by not reasonably
18 accounting for infill development as a component to meet its commercial/industrial acreage
19 need and its residential population target?

20 **Issue 12:** Whether the Plan fails to comply with RCW 36.70A.020(1) ,(2), and (12) and
21 36.70A.070, -.130, -.110, -.115, and -.210 by designating 303 residential developable acres
22 in the UGA in the 2006 Plan on Page 2-5 that can accommodate population growth of 2,909
23 people by 2015 when the projected need on Page 7-6 of the Plan is only 1,182 new people
between 2006 and 2015?

24 **Issue 16:** Whether the Ordinance fails to comply with RCW 36.70A.020(1), (2), and (12)
25 and 36.70A.070, -.130, -.110, -.115, and -.210 such that designation and allowance of
26 residential urban development in the UGA (and related text and figures) should be found to
27 not comply with the GMA?

28
29 **Positions of the Parties**

30 Petitioners argue that all of the urban residential growth proposed during the life of the 2000
31 Comprehensive Plan (1995-2015) can easily be accommodated in the already-large
32

1 municipal urban growth areas (UGAs) in Skagit County.⁶² Petitioners cite to the 2003 Skagit
2 County Growth Management Population Allocation Technical Committee Recommendations
3 which find an estimated residential land capacity for municipal UGAs to be 43,974 people.⁶³
4 With a total urban growth of 18,588 between 2005 and 2015 assumed in the existing
5 comprehensive plan, Petitioners argue that the existing municipal UGAs have the capacity
6 to accommodate that growth.⁶⁴
7

8 Petitioners also argue that even assuming there is a need for additional residential urban
9 lands outside the municipal UGAs the Bayview Ridge UGA is oversized.⁶⁵ Petitioners base
10 this assertion on the comprehensive plan identification of growth in the Bayview Ridge UGA
11 from 2,710 in 2005 to 3,420 in 2015. This additional demand, Petitioners argue, is for
12 accommodating 710 people. Using a 25% market factor and an assumption of 4 units per
13 acre and 2.4 persons per unit, Petitioners' assert that the demand is for 74 acres.⁶⁶ For that
14 reason, Petitioner asserts, the proposed 307 acres of residential land in the Bayview Ridge
15 UGA is excessive "and should lead to sprawling leapfrog development in violation of GMA
16 goals 1 and 2."⁶⁷
17
18

19 The County responds that Countywide Planning Policy (CPP) 1.1 assigns 3,420 residents to
20 Bayview Ridge.⁶⁸ Because of geographical factors, the County states, none of the existing
21 municipal UGAs except Mount Vernon are able to expand.⁶⁹ The County also argues that
22 the OFM population projections through 2025 for Skagit County project additional growth of
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27 ⁶² Opening Brief of Skagit County Growthwatch, Citizens to Protect Bay View Ridge, and Gerald Steel at 16.

28 ⁶³ Ex. I-400

29 ⁶⁴ *Ibid.*

30 ⁶⁵ Opening Brief of Skagit County Growthwatch, Citizens to Protect Bay View Ridge, and Gerald Steel
(Petitioners' Opening Brief) at 17.

31 ⁶⁶ *Ibid.*

32 ⁶⁷ *Ibid.*

⁶⁸ Skagit County's Response at 5.

⁶⁹ *Ibid* at 5-6.

1 about 30,000 people.⁷⁰ To preserve productive farmland from conversion to residential use,
2 the County urges, it is appropriate to channel growth to the Bayview Ridge, which is neither
3 in the flood plain nor prime farmland.⁷¹

4
5 While the County admits that it has not completed its update, it states that the 2015 OFM
6 population projections for Skagit County were the basis for the CPP 1.1 allocation of 3,420
7 residents to the Bayview BR-R zone of the UGA.⁷² The County argues that it has not
8 adopted the population allocations of CPP 1.1 in the Subarea Plan but simply based the
9 size of the UGA on the allocated population.⁷³ Therefore, the County argues that the
10 population allocations of CPP 1.1 are not subject to challenge.⁷⁴

11
12
13 Intervenor's are owners of a majority of the residentially-zoned lands in the Bayview Ridge
14 UGA. They argue that the residential population allocation to the Bayview Ridge UGA is
15 proper for the same reasons urged by the County.⁷⁵ Intervenor's point out that the Bayview
16 Ridge UGA is adjacent to the approved portion of the UGA that contains the Port of Skagit
17 County property and therefore meets the requirements of RCW 36.70A110(1).⁷⁶ Further,
18 they assert that Petitioner's are attempting a collateral attack on the infill analysis in the
19 comprehensive plan and the countywide planning policies (CPPs), which is already
20 settled.⁷⁷

21 22 **Board Discussion**

23
24 Although there was some confusion on this score at the hearing, there do not appear to
25 have been any changes to the comprehensive plan population allocation figures since 2000,
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28 ⁷⁰ *Ibid* at 6.

⁷¹ *Ibid* at 6-7.

29 ⁷² *Ibid* at 8.

⁷³ *Ibid* at 9.

30 ⁷⁴ *Ibid* at 8.

31 ⁷⁵ Intervenor's' Response Brief at 20.

⁷⁶ *Ibid* at 21.

32 ⁷⁷ *Ibid*.

1 the date of the current comprehensive plan.⁷⁸ The population allocation figures for
2 residential lands in the urban growth areas in the County were adopted in the County's
3 comprehensive plan and are found at Table 3-4 of the Comprehensive Plan for the planning
4 period 1995-2015. That plan has not been timely updated (Issue #1) nor has it been
5 amended to utilize new figures.
6

7 The GMA requires the comprehensive plan to be "an internally consistent document and all
8 elements shall be consistent with the future land use map."⁷⁹ Since the Bayview Ridge
9 Subarea Plan is part of the County's comprehensive plan, it must use the same population
10 figures as those found in the comprehensive plan.⁸⁰ As a result, the Board agrees with the
11 County that the urban residential population allocations in the Subarea Plan should be the
12 same as shown in the comprehensive plan.
13

14
15 In challenging the size of the Bayview Ridge UGA, Petitioners argue first that the boards
16 apply a high level of scrutiny to UGAs that are both outside city limits and seek to include
17 land in the UGA that does not have urban development.⁸¹ However, the burden of proof is
18 not changed by virtue of the fact that the County has adopted a non-municipal UGA.⁸²
19 Because non-municipal UGAs may extend urban growth to areas that do not already have a
20 governmental structure for the provision of urban levels of service, the boards must review
21 them to ensure that they are planned to provide urban levels of service to populations and
22 uses at urban densities.⁸³ As this Board stated in its Final Decision and Order in this case,
23 there must be measures in place to "ensure development is truly urban in nature and
24 efficiently phased." However, this does not mean that non-municipal UGAs are suspect;
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28 ⁷⁸ Skagit County Comprehensive Plan on-line at skagitcounty.net.

29 ⁷⁹ RCW 36.70A.070 (preamble)

30 ⁸⁰ RCW 36.70A.080(2)

31 ⁸¹ Petitioners' Opening Brief at 10.

32 ⁸² Boards do not have authority to change the burden of proof.

⁸³ See, e.g., *Irondale, et al. v. Jefferson County*, WWGMHB Case No. 04-2-0022, Final Decision and Order at 15-16, May 31, 2005.

1 legislative enactments adopting them are entitled to the same presumption of validity as are
2 all others.⁸⁴ This is true whether the enactments were adopted to achieve compliance on
3 remand or whether they were adopted without an order of noncompliance.⁸⁵
4

5 In the Final Decision and Order issued in this case, the Board found that the County had
6 delineated several over-sized UGAs and that the municipal UGAs (as opposed to the non-
7 municipal UGAs of Bayview Ridge and Big Lake) were large enough to accommodate
8 virtually all of the urban residential needs for twenty years.⁸⁶ This finding is based in RCW
9 36.70A.110, which requires that UGAs be sized to accommodate the projected growth that
10 is allocated to them:
11

12 Based upon the growth management population projection made for the county by
13 the office of financial management, the county and each city within the county shall
14 include areas and densities sufficient to permit the urban growth that is projected to
15 occur in the county or city for the succeeding twenty-year period, except for those
16 urban growth areas contained totally within a national historical reserve.

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

17 The comprehensive plan allocates residential growth to “Burlington/County” in the amount of
18 3,420 (see Table 3-4) to the year 2015. This allocation was intended for the Bayview Ridge
19 UGA.⁸⁷ The Board found this allocation of residential urban growth noncompliant in 1998.⁸⁸
20 The County has returned to the Board with a Subarea Plan that again allocates this
21 residential urban growth to Bayview Ridge; this time, the Subarea Plan discusses the need
22 for this allocation by reviewing the capacity of five major municipal UGAs to accommodate
23 this projected growth⁸⁹. After concluding, in consultation with those cities, that most of them
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28 ⁸⁴ RCW 36.70A.320

29 ⁸⁵ The burden only shifts to the County if there is an outstanding determination of invalidity. RCW
30 36.70A.320(2).

31 ⁸⁶ Final Decision and Order, January 23, 1998.

32 ⁸⁷ Subarea Plan at 6-7.

⁸⁸ Final Decision and Order, January 23, 1998.

⁸⁹ Subarea Plan at 6.

1 could not accommodate extra growth due to environmental and infrastructure limitations, the
2 County turned to Bayview Ridge.⁹⁰

3
4 The question for the Board is not whether urban residential growth can be “better
5 accommodated” in the County’s municipal UGAs (Issue No. 5) or whether the County has
6 shown that infill opportunities are not available (Issue 11). Rather, the question is whether
7 the allocation of urban residential population to the Bayview Ridge UGA complies with the
8 requirements of RCW 36.70A.110 for proper allocation of urban growth at urban densities
9 with necessary urban levels of service.⁹¹ It is true that urban growth must be assessed on a
10 countywide basis, rather than on a UGA by UGA basis since urban growth is allocated for
11 the county as a whole. However, the County did not revise its allocations to the municipal
12 UGAs when it adopted the Subarea Plan; rather it reviewed the capacity of those UGAs to
13 absorb the urban growth originally allocated to the Bayview Ridge and Big Lake UGAs and
14 determined that they could accommodate only half of the allocation originally intended for
15 the Big Lake UGA.⁹² The County therefore allocated all of the original Bayview Ridge UGA
16 population to the Bayview Ridge UGA, and hopes to be able to also accommodate the
17 remaining allocation originally intended for the Big Lake UGA in the new non-municipal
18 UGA.⁹³ This was important, the Subarea Plan concludes, to avoid shifting too much of the
19 population growth to the rural areas: “As Skagit County residents value its agricultural
20 history and seeks[sic] to protect agricultural lands, the County seeks to identify lands
21 outside current municipal UGAs that are suitable for urban residential development.”⁹⁴

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Petitioners appear to claim that the County must prove that this choice is compliant because
the Board found that the record lacked justification for the residential portion of the Bayview

⁹⁰ *Ibid* at 6-7.

⁹¹ Intervenor responded to the claim that the residential area was not adjacent to a UGA by pointing out that the residential area was adjacent to the approved UGA for the Port of Skagit property. Petitioners essentially abandoned their claim by failing to reply to that argument.

⁹² Subarea Plan at 7.

⁹³ *Ibid*.

⁹⁴ *Ibid*.

1 Ridge UGA in the original Final Decision and Order in this case. As we said earlier, this is
2 an erroneous view of the burden of proof in a compliance case. The County has presented
3 a record here for its choice to allocate residential growth to the Bayview Ridge UGA and has
4 therefore “shown its work”. The Petitioners must show that the analysis for that choice is
5 clearly erroneous.
6

7 Petitioners rest their claim that the residential portion of the Bayview Ridge UGA is over-
8 sized on the fact that the projected population growth in the comprehensive plan for the
9 Bayview Ridge UGA was 2,710 for 2005 and 3,420 for 2015.⁹⁵ However, this ignores the
10 analysis of existing residential development in the Subarea Plan. That analysis concludes
11 that there are 681 homes and a population of 1,634 people currently in the Bayview Ridge
12 UGA.⁹⁶ This, the County notes, is a result of down-zoning the area to rural development
13 standards in response to the Board’s earlier ruling in 1998.⁹⁷ Since urban levels of growth
14 were not allowed after 1998, the projections for how that would occur over time embodied in
15 the comprehensive plan are not applicable. For that reason, the County analyzed existing
16 residential development. Utilizing the projected residential population of 3,420 for 2015 in
17 the comprehensive plan, the County subtracted 1,634 as the existing residential population
18 and concluded that the Bayview Ridge UGA should house 1,786 new residents by 2015.⁹⁸
19 This, as computed in the Subarea Plan, is assumed to be at densities of four dwelling units
20 per acre and an average of 2.4 persons per household for approximately 186 acres of
21 land.⁹⁹ Adding approximately 46 acres due to a 25% market factor yields a need for 233
22 acres of residential land.¹⁰⁰
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28 ⁹⁵ Petitioners’ Opening Brief at 17.

29 ⁹⁶ Subarea Plan at 5-1.

30 ⁹⁷ *Ibid* at 5-2.

31 ⁹⁸ Subarea Plan at 5-3.

32 ⁹⁹ *Ibid*.

¹⁰⁰ *Ibid*.

1 We find that Petitioners have not shown that this computation is clearly erroneous and so
2 we find that the allocation of 1,786 new residents to the Bayview Ridge UGA to 2015 in
3 conformity with the population allocations shown in the comprehensive plan complies with
4 the GMA. We also find that the inclusion of 233 acres of land for new residential
5 development complies with the requirements of RCW 36.70A.110 to size a UGA in
6 accordance with its population allocation.
7

8 However, for some unexplained reason, the County went on to add an additional 211
9 residents, apparently by working backwards from an area of 705 acres to reach the
10 population figure that would justify the entire acreage.¹⁰¹ The County's analysis gives no
11 other reason for adding this population nor does it show how this total population of 3,631
12 squares with the allocation in the comprehensive plan of 3,420. Issue 12 takes issue with
13 the use of 307 acres of developable land for residential purposes found in Table 1A of the
14 Subarea Plan. As shown on page 5-3 of the Subarea Plan, the County's analysis shows a
15 need for 233 acres of developable residential land. However, to the extent that the Subarea
16 Plan allocates an additional 211 residents (a total population of 3,631) to the Bayview Ridge
17 UGA to 2015 and an additional 45 acres (or 74 additional developable acres on page 2-5
18 and Appendix A) the Subarea Plan fails to comply with the requirements of RCW
19 36.70A.110 for urban growth areas to be sized according to their population allocation. It
20 further violates the requirements of RCW 36.70A.070 for an internally consistent
21 comprehensive plan because the population allocation to the Bayview Ridge UGA in the
22 comprehensive plan differs from the population allocation for the same non-municipal UGA
23 in the Subarea Plan.
24
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28 **Conclusion:** The allocation of 1,786 new residents to the Bayview Ridge UGA to 2015 and
29 the inclusion of 233 acres of land for new residential development comply with the
30

31 ¹⁰¹ *Ibid.* While the Subarea Plan at 5-3 includes 23 acres for the community center, the County notes in its brief
32 that actually the property zoned for a community center is zoned BR-CC and is within the industrial zone. See
Skagit County's Response at 16.

1 requirements of RCW 36.70A.110 to size a UGA in accordance with its population
2 allocation. However, to the extent that the Subarea Plan allocates an additional 211
3 residents to 2015 (a total population of 3,631) to the Bayview Ridge UGA and an additional
4 45-74 acres (depending upon which figures are used in the Subarea Plan), the Subarea
5 Plan fails to comply with the requirements of RCW 36.70A.110 for urban growth areas to be
6 sized according to their population allocation. The addition of population in the Subarea
7 Plan beyond that in the comprehensive plan further violates the requirements of RCW
8 36.70A.070 for an internally consistent comprehensive plan; as does the inconsistent use of
9 population and residential land figures in the Subarea Plan itself.
10

11
12 **F. Transformance of Governance – Issue 6**

13 **Issue 6.** Whether Ordinance #020060007 (Ordinance) fails to comply with RCW
14 36.70A.020(1), (2), (5), and (12) by not adequately planning for the transformance of
15 governance?

16 **Positions of the Parties**

17 Petitioners point out that the Bayview Ridge UGA is three quarters of a mile from the City of
18 Burlington and that the City is providing sewer and some fire service. Because
19 36.70A.110(4) requires that cities should be the primary providers of urban services, the
20 County has not provided the necessary plan for the transformance of governance,
21 Petitioners contend.¹⁰²
22

23
24 The County says that Petitioners allege a nonspecific problem of transformance of
25 governance and do not mention annexation, which the County says bears mentioning.¹⁰³

26 The County declares that annexation to the City of Burlington is not possible because the
27 three quarters of a mile separating the Bayview Ridge UGA and the City consists of
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32 ¹⁰² Opening Brief of Skagit County Growthwatch Citizens to Protect Bayview Ridge, and Gerald Steel at 24.

¹⁰³ Skagit County's Response at 15
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1 designated agricultural lands and floodplain. The County maintains that the GMA requires
2 phasing and capital facilities planning, not transformance of governance.¹⁰⁴

3
4 Intervenor asserts that neither annexation nor incorporation is required to achieve the
5 transformance of governance. Intervenor agrees with the County that efficient timing of
6 infrastructure must occur and argues that the County's concurrency regulations provide for
7 this.¹⁰⁵

8
9 **Board Discussion**

10 While other concerns about the City of Burlington capability or commitment to provide sewer
11 service to the Bayview Ridge UGA are addressed in other parts of this order, this section
12 deals with the issue of whether planning for transformance of governance to the City of
13 Burlington is required by RCW 36.70A.110.

14
15 RCW 36.70A.110(3) requires (in pertinent part) that urban growth should be located first in
16 areas already characterized by urban growth that have adequate existing public facility and
17 service capacities to serve such development, second in areas already characterized by
18 urban growth areas...

19
20
21 RCW 36.70A.110(4) requires that in general, cities are the units of local government most
22 appropriate to provide urban governmental services. In general, it is not appropriate that
23 urban governmental services be extended to or expanded in rural areas except in those
24 limited circumstances shown to be necessary to protect basic public health and safety and
25 the environment and when such services are financially supportable at rural densities and
26 do not permit urban development.

27
28
29
30
31 _____
32 ¹⁰⁴ *Ibid.*

¹⁰⁵ Intervenor's Response Brief at 16 and 17.
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1 The great majority of unincorporated urban growth areas are adjacent to cities and are
2 expected to eventually become part of cities. The Growth Boards have long recognized that
3 cities, when they are able, should be the providers of urban services and that annexation is
4 a key part of providing for orderly growth in UGAs.¹⁰⁶ Nevertheless, this Board has also
5 has found that RCW 36.70A.110 (3) allows counties to designate non-municipal UGAs that
6 are not contiguous to cities as long as urban services can be provided to these UGAs in an
7 efficient and timely manner and urban densities can be achieved.¹⁰⁷
8

9
10 Where there is no adjacency between an urban growth area and a municipality, there is no
11 reason to provide for transformance of governance for that UGA from the County to a
12 municipality.

13
14 **Conclusion:** The City and the Bayview Ridge UGA are noncontiguous. Intervening
15 agricultural land and flood plain make intervening land unsuitable for urban growth. In these
16 circumstances RCW 36.70A.110(3) and (4) do not require the City and County to plan for
17 the transformance of governance.
18

19 **G. Assuring Urban Levels of Development - Issues 7, 8, and 10**
20

21 **Issue 7:** Whether Ordinance #O20060007 (“Ordinance”) fails to comply with RCW
22 36.70A.020(1) ,(2), (5) and (12) and 36.70A.130, -.110, -.115, and -.210 by not requiring
23 efficient phasing of residential and non-residential growth during the twenty-year planning
24 period in a UGA?

25 **Issue 10:** Whether the Plan fails to comply with RCW 36.70A.020(1), (2), (5) and (12) and
26 36.70A.130, -.070, -.110, -.115, and -.210 by not requiring development to be truly urban?
27

28 ¹⁰⁶ See *City of Sedro Wooley v. Skagit County*, WWGMHB Case No. 03-2-0013c (Compliance Order, June
29 18,2004) and *City of Tacoma v. Pierce County*, CPSGMHG Case No. 94-2-0001 (Final Decision and Order,
30 July 5, 994)

31 ¹⁰⁷ *Michael Durland v. San Juan County*, WWGMHB Case No. 00-2-0062c (Final Decision and Order, May 7,
32 2001) and *Town of Friday Harbor v. San Juan County*, WWGMHB Case No. 99-2-10c (Compliance Order,
May 7, 2001 and October 15, 2002) at 5 and 12 respectively, *Fred Klein v. San Juan County*, WWGMHB
Case No. 02-2-0008 (Final Decision and Order, October 15, 2002), and *Irondale Community Action Neighbors
v. Jefferson County*, WWGMHB Case No 03-2-0010c (Final Decision and Order, August 22, 2003) at 1.

1 **Positions of the Parties:**

2 Petitioners claim that the Bayview Ridge UGA does not have measures in place to ensure
3 development is truly urban and efficiently phased.¹⁰⁸ In particular, Petitioners argue that
4 there are no minimum densities for residential development in either the Subarea Plan or
5 the development regulations which will allow low-density suburban residential
6 development.¹⁰⁹ Petitioners also argue that RCW 36.70A.070(1) requires the County to
7 designate the extent of uses and building intensities.
8

9
10 The County responds that a policy that imposes a minimum density for residential areas is
11 not needed.¹¹⁰ Because almost all of the land in the BR-R zone is within Airport Safety
12 Zone 6, the County urges that the maximum residential density is 5.19 dwelling units per
13 acre.¹¹¹ Further, the County argues that the interplay between market factors, minimum
14 sizes, and the requirement of an average density of four dwelling units per acre establishes
15 a reasonable cap on “urban sprawl”.¹¹²
16

17 Intervenor's emphasize that no “long subdivisions” are allowed until the PRD ordinance is
18 adopted.¹¹³ The clear goal, Intervenor's argue, is “to have a minimum of 4 units per acre
19 density averaged over a whole area with a variety of housing stocks as allowed by plan and
20 development regulations, consistent with the Airport Land Use Compatibility Study.”¹¹⁴
21

22
23 **Board Discussion**

24 The essential nature of an urban growth area is that it contains growth that is urban in
25 nature.¹¹⁵ The County does not dispute this but asserts that it is not necessary to have
26

27 ¹⁰⁸ Petitioners' Opening Brief at 19.

28 ¹⁰⁹ *Ibid* at 20.

29 ¹¹⁰ Skagit County's Response at 12.

30 ¹¹¹ *Ibid*.

31 ¹¹² *Ibid*.

32 ¹¹³ Intervenor's Response Brief at 24.

¹¹⁴ *Ibid*.

¹¹⁵ RCW 36.70A.110

1 minimum densities in this new UGA to achieve urban growth. At argument, both the County
2 and the Intervenors emphasized the importance of the PRD ordinance (still in drafting
3 stages) in assuring urban densities in the Bayview Ridge UGA. Intervenors also point out
4 that the residential lands that have been designated for future residential development in the
5 UGA are primarily in the ownership of Intervenors who have every intention of developing in
6 accordance with the PRD ordinance.
7

8 However, what is before the Board at present is a UGA which had no residential component
9 prior to this time and which is centered, not on an existing city, but on an airport. Urban
10 levels of service have largely been planned for the area but the only disincentives to
11 residential development at less than urban densities are hypothetical market forces.
12 Although the plan calls for a minimum of four dwelling units per acre, there are no adopted
13 regulations to ensure that. There is no regulation to preclude the development of suburban
14 housing at the kind of densities – 1 dwelling unit per half acre or even less intense
15 development – which characterize “sprawl”. It takes only a common familiarity with the
16 housing market to question the assumption that luxury houses on large lots with urban
17 services cannot command a sufficient price to make their construction worth the effort.
18
19

20 Providing urban levels of service to non-urban development encourages rather than
21 discourages such suburban sprawl. Designating an area a UGA but allowing non-urban
22 densities of residential development fails to meet the urban density requirements for UGAs.
23 Without some mechanism to assure minimum urban densities, the new residential portions
24 of the UGA are all too likely to become suburban sprawl. Although the County aspires to
25 have urban densities in the Bayview Ridge Subarea Plan, it has no ability to foreclose
26 development within the new UGA at less than urban densities. It may be that the new PRD
27 ordinance for the Subarea will address this concern, but at this point, there is no regulation
28 to meet it. This fails to comply with RCW 36.70A.110.
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1 In Issue 7, Petitioners allege that phasing of development so that it can only occur when
2 urban services are available is missing here.¹¹⁶ However, Petitioners failed to respond to
3 the County's arguments on this point and do not, therefore, meet their burden of proof.¹¹⁷
4 As the County and Intervenors point out, phasing is one mechanism for achieving urban
5 densities concurrent with needed urban levels of service but phasing itself is not a GMA
6 requirement.
7

8 **Conclusion:** The failure to ensure that new residential development within the new UGA
9 will occur at urban densities fails to comply with RCW 36.70A.110 and Goals 1 and 2 of the
10 GMA (36.70A.020(1) and (2)) to encourage urban growth and reduce sprawl. (Issue 10)
11 However, the Petitioners have failed to meet their burden of proof that phasing, other than
12 as discussed in the concurrency discussion below, has not been provided.(Issue 7)
13
14

15 **H. Commercial and Industrial Lands – Issues 8, 11, and 18.**

16 **Issue 8:** Whether the Plan fails to comply with RCW 36.70A.130 and -.070(1) by not
17 designating the extent of uses and building intensities for the commercial and industrial
18 districts in the text of the Plan?
19

20 **Issue 11:** Whether the Plan fails to comply with RCW 36.70A.020(1), (2), (5) and (12) and
21 36.70A.070, -.130, -.110, -.115 and -.210 by oversizing the UGA and by not reasonably
22 accounting for infill development as a component to meet its commercial/industrial acreage
23 need and its residential population target?

24 **Issue 18:** Whether the Ordinance fails to comply with RCW 36.70A.020(1), (2), (5) and (12)
25 and 36.70A.070, -.130, -.100, -.110, -.115, and -.210 such that designation and allowance of
26 industrial urban development in the UGA (and related text and figures) outside of the Port
27 property should be found to not comply with the GMA?
28
29
30

31 ¹¹⁶ Petitioners' Opening Brief at 20.

32 ¹¹⁷ Skagit County's Response at 13-14
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1 **Positions of the Parties**

2 Petitioners assert that there is no valid analysis to justify the commercial and industrial
3 acreage allocated to the Bayview Ridge UGA.¹¹⁸ Petitioners argue that the calculation of
4 commercial/industrial acreage is based on a projected increase in workers in the UGA from
5 1,456 in 1998 to 3,301 in 2015.¹¹⁹ Petitioners dispute the need for 777 acres of developable
6 commercial/industrial lands.¹²⁰
7

8 Petitioners also argue that the lack of minimum intensities for commercial and industrial
9 development will cause sprawling low density development to occur.¹²¹ Further, Petitioners
10 assert that there is no policy preventing or discouraging conversion of industrial land or
11 allowing non-industrial uses on industrial lands.¹²² They point to Policies 3A-1.5, 3A-1.9,
12 and 4A-2.6 of the Subarea Plan.¹²³ Petitioners urge that RCW 36.70A.070(1) requires the
13 land use element to designate uses for commerce and industry, and to include building
14 intensities, which is not accomplished in the Subarea Plan.¹²⁴
15
16

17 The County responds that the area in the pre-existing industrial and aviation zones is not
18 open to challenge.¹²⁵ The property in the pre-existing industrial zone, the County argues,
19 was subject to a prior settlement agreement and Stipulation and Order.¹²⁶ Since the County
20 has fully complied with the terms of both, the County urges, it is not subject to review.¹²⁷
21 The Stipulation and Order, the County maintains, allowed the county to permit industrial and
22 other uses throughout Bayview’s industrial zone. “The county’s ordinances thus permitted
23 agriculture, offices, accessory retail sales, manufacturing, warehousing, repair and storage
24
25

26 ¹¹⁸ Petitioners’ Opening Brief at 18.
27 ¹¹⁹ *Ibid*, citing to Subarea Plan at 8-2.
28 ¹²⁰ Petitioners’ Opening Brief at 19.
29 ¹²¹ *Ibid* at 20.
30 ¹²² *Ibid* at 21.
31 ¹²³ *Ibid*.
32 ¹²⁴ *Ibid* at 25.
¹²⁵ Skagit County’s Response at 16.
¹²⁶ *Ibid*.
¹²⁷ *Ibid*.

1 facilities, research and development facilities, wireless services, and “other light industrial
2 uses.”¹²⁸

3
4 As for the allocation of new commercial/industrial lands, the County notes that CPP 1.1 was
5 amended in 2000 to allocate 750 acres of needed acres of commercial/industrial lands to
6 Bayview Ridge.¹²⁹ The ordinance challenged here only adds a net change of 73 acres
7 (because approximately 34 acres were deleted from the northeast corner of the light
8 industrial zone when it was re-zoned to urban reserve), the County claims.¹³⁰

9
10 Moreover, the County asserts that Petitioners’ attacks on the size of the industrial area are
11 based on faulty calculations. The County states it has relied on data provided by E.D.
12 Hovee and Company as the basis for the county’s overall need for commercial and
13 industrial lands.¹³¹

14
15
16 **Board Discussion**

17 Petitioners’ challenge to the amount of commercial and industrial lands allotted to the
18 Bayview Ridge UGA is based in RCW 36.70A.110 – the requirements for proper sizing of
19 UGAs for urban uses and densities. However, the first issue with the allocation of new
20 commercial/industrial lands to the Bayview Ridge UGA in the Subarea Plan is consistency
21 with the comprehensive plan. The Subarea Plan is part of the comprehensive plan and
22 must be consistent with the determinations already made there.¹³²

23
24 In 2000, the County revised its allocations of commercial and industrial lands in the
25 comprehensive plan. The comprehensive plan provides that a total of 3,330 acres of new
26
27

28
29
30 ¹²⁸ *Ibid.*

¹²⁹ *Ibid* at 17.

¹³⁰ *Ibid.*

¹³¹ *Ibid* at 19.

¹³² RCW 36.70A.080(2)

1 commercial and industrial lands would be required in the urban areas through 2015.¹³³
2 However, only 2,926 acres of new commercial/industrial lands are allocated in Table 3-5
3 because 410 acres allocated to Bayview Ridge were found out of compliance by this
4 Board.¹³⁴ Table 3-5 of the comprehensive plan shows a total of 750 acres of new
5 commercial/industrial land allocated to Bayview Ridge.¹³⁵
6

7 According to the Subarea Plan, 750 acres of new commercial/industrial lands are added to
8 the existing land use in the Bayview Ridge UGA (as of 2001).¹³⁶
9

10 To the extent that the Petitioners are challenging the allocation of a total of 750 acres of
11 new commercial/industrial acres to the Bayview Ridge UGA, that challenge is not timely.
12 The comprehensive plan adopted that allocation in 2000. The County maintains that the
13 analysis upon which that allocation was based was the Hovee Report on countywide needs
14 for commercial/industrial lands through 2015. For the Petitioners to challenge the basis for
15 that analysis now would be to re-open a comprehensive plan amendment that was adopted
16 many years ago. Therefore, this challenge to the allocation of 750 acres of new
17 commercial/industrial lands to the Bayview Ridge UGA is not timely.
18
19

20 Petitioners' claim that industrial lands may be converted to non-industrial uses relies upon
21 Subarea Plan Policies 3A-1.5, 3A-1.9 and 4A-2.6. These policies encourage mixed use
22 development, especially the mix of commercial and light industrial uses with residential units
23 in a PRD. While it is important to preserve the industrial lands needed for the future,
24 Petitioners have failed to show how a mix of uses, especially in a PRD, would contravene
25 any goal or requirement of the GMA. As the County points out, the development regulations
26
27
28
29

30 ¹³³ *Ibid* at 3-9.

31 ¹³⁴ *Ibid*.

32 ¹³⁵ Skagit County Comprehensive Plan at 3-11.

¹³⁶ Subarea Plan, Table 2-1 and Table 5-1..

1 limit the uses in the industrial zones to industrial and related uses. SCC 14.16.180 and
2 14.16.190.

3
4 **Conclusion:** The sizing of the Bayview Ridge UGA to include 750 acres of new
5 commercial/industrial land is consistent with the allocation for that purpose adopted in the
6 comprehensive plan in 2000. The challenge to that allocation is not timely. It therefore
7 complies with RCW 36.70A.070 and 36.70A.080(2). The Petitioners have failed to sustain
8 their burden of proof in showing that the County's policies encouraging mixed use
9 development violate the GMA.
10

11
12 **I. LOS standards for roads, fire, law enforcement, sewer, and**
13 **parks are inadequate – Issue 13**

14 **Issue 13:** Whether the Plan fails to comply with RCW 36.70A.020(1), (2), (5) and (12)
15 and 36.70A.070, -.130, -.110, -.115, and -.210 by having inadequate, ambiguous,
16 unreliable, inconsistent and/or unfunded levels of service for public facilities and services
17 (roads, police, sewer, parks, fire, garbage collection, storm sewers, etc.)?

18 In Section D, we discussed whether the information in the Bayview Ridge Subarea Plan,
19 Skagit County's 2003-2008 CIP, or the plans of various non-county service providers that
20 are needed to support development in the UGA and that are incorporated or referenced in
21 the 2003-2008 CIP showed that services could be provided and funded over the 20-year
22 planning period. We found that some, but not all plans were adequate or reliable in that
23 regard. Here we will discuss Petitioners' claim that the level of service standards set for
24 services that the County says it will provide in its county-wide planning policies are
25 ambiguous, inadequate to serve urban development or inconsistent and violate RCW
26 36.70A.070 .
27

28
29 **Positions of the Parties**

30 **Roads**
31
32

1 Petitioners point out that while the Subarea Plan refers to an LOS standard for County
2 Roads and Intersections of Levels D and E respectively, the Comprehensive Plan adopts an
3 LOS of C for Roads and D for intersections, an apparent inconsistency.¹³⁷
4

5 The County responds that, while the Subarea Plan notes that “Based on the Highway
6 Capacity Manual method, the proposed LOS for Skagit County Roads and Intersections is
7 Levels D and E, respectively”,¹³⁸ the LOS actually adopted is that set out in the
8 Comprehensive Plan, i.e LOS C for streets and LOS D for intersections.
9

10 Petitioners assert that LOS standards for fire, law enforcement, sewer, and parks are
11 inadequate and do not ensure that urban facilities and services will be available at time of
12 occupancy.¹³⁹
13

14 **Fire**

15 With regard to fire services, Petitioners assert that the County cannot meet the urban fire
16 LOS standard in the Bayview Ridge UGA as set out in Table 7-1.
17

18 In response, the County merely offers that “Should the information in the capital facilities
19 plan be insufficient, this can be addressed on remand.”¹⁴⁰
20

21 Intervenors provide more a detailed response and note that Skagit County Fire Protection
22 District #6’s 2001 Capital Facilities Plan was incorporated into the Bayview Ridge UGA
23 Subarea Plan. Petitioners argue that these studies show that with the projects shown on
24 Table 7-7 planned to be completed by 2006, necessary facilities are in place to provide
25 urban levels of fire protection services.
26
27
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29

30 ¹³⁷ Petitioners’ Opening Brief at 27.

31 ¹³⁸ Bayview Ridge Subarea Plan at 6-8.

32 ¹³⁹ Petitioners’ Opening Brief at 21 et seq.

¹⁴⁰ Skagit County’s Response at 27.

1 **Police**

2 Petitioners argue that the analysis of needed sheriff officers is inconsistent with the acreage
3 calculations in the Subarea Plan, noting that the 13.4 officers needed in 2015 is incorrectly
4 based on 1,327 acres of commercial/industrial development, instead of 2,064 developed
5 acres shown in Table 1-A in Appendix A.
6

7 Next, while acknowledging that the County has a surplus of commissioned deputies to meet
8 the law enforcement LOS standard for the Bayview Ridge UGA, Petitioners argue that there
9 is no stated agreement between the Sheriff and the County that the officers needed will be
10 assigned to the UGA.
11

12 As noted above, as with regard to fire protection services, the County's response to police
13 services is that "Should the information in the capital facilities plan be insufficient, this can
14 be addressed on remand."¹⁴¹
15

16
17 Intervenors suggest that funding for police is assured since a no-protest agreement for the
18 funding of necessary facilities is required as a condition of development.¹⁴²

19 **Sewer**

20 Petitioners maintain that the County has not adopted sewer level of service standards and
21 that the standards adopted by its sewer service provider, the City of Burlington, are
22 inadequate to serve urban industrial development.¹⁴³
23

24 In response, Intervenors argue that the capital facilities projects identified by the City of
25 Burlington, the provider of sewer services in this case, were complete or nearly complete in
26 2005¹⁴⁴ and that under the County development regulations, no urban development can be
27 approved without public sewer services being available.
28

29 _____
30 ¹⁴¹ Skagit County's Response at 27.

31 ¹⁴² Intervenors' Response Brief at 15.

32 ¹⁴³ Petitioners' Opening Brief at 23.

¹⁴⁴ Intervenors' Response Brief at 11.

1 **Parks**

2 Petitioners assert the County's failure to meet the LOS for park (either the 14.5 acre/1,000
3 standard of the County Capital Facilities Plan, or the 17.3 acre/1,000 standard of the 1998
4 Comprehensive Park and Recreation Plan) is in violation of RCW 36.70A.070(3)'s
5 requirement to address parks in the capital facilities plan. Petitioner claims the County is not
6 meeting and will not meet these standards.
7

8 In response, the County argues that the Subarea Plan complies with 36.70A.070(3) by
9 providing an inventory of existing capital facilities at 7-6 and 7-7, with the remainder of the
10 .070(3) requirements met elsewhere in the Subarea Plan, identifying needed parks, costs
11 and financing.
12

13
14 **Board Discussion**

15 WAC 365-195-510 (2) advises that each comprehensive plan should designate those public
16 facilities in addition to transportation facilities for which concurrency is required. WAC 365-
17 195-510 (3) says that the concept of concurrency is based on the maintenance of levels of
18 service with respect to each of the public facilities to which concurrency applies. The
19 Bayview Ridge Subarea Plan sets the LOS for water, sewer, police, stormwater, fire, and
20 parks.¹⁴⁵ We find that these LOS standards are specific.
21

22 **Roads**

23 The reference to the Highway Capacity Manual standard in the Subarea Plan does not
24 create an inconsistency. That reference was apparently included to note what the LOS
25 would be using the methodology contained in that reference work.
26

27 It is clear from the plain language of Subarea Plan that that there is no inconsistency
28 between the LOS standard for streets and intersections as set out in the Subarea Plan and
29
30

31
32 ¹⁴⁵ Bayview Ridge Subarea Plan at 7-5 and 7-6.

1 the Comprehensive Plan. In both cases, the County has adopted a LOS standard of C for
2 streets and D for intersections. As noted in the Subarea Plan:

3 “The Bayview Ridge Subarea Plan adopts the LOS standards for streets and
4 intersections *as adopted in the Skagit County Comprehensive Plan*. These
5 standards currently are LOS C for streets and LOS D for intersections.”¹⁴⁶
6 (emphasis added)

7 **Fire**

8 In reviewing the portions of the capital facilities elements of the Subarea Plan relevant to fire
9 protection, it is apparent that more work remains to be done. The subarea plan notes that
10 “Negotiations are *on-going* and annexations have been initiated to ensure a coordinated
11 approach to delivery of fire protection services”¹⁴⁷, “the optimum configuration of district
12 boundaries to protect final build-out of the Bayview Ridge UGA is *under discussion*”¹⁴⁸,
13 “Negotiations ensuring a coordinated approach to delivery of fire protection serves are *in*
14 *process*”¹⁴⁹.

15
16
17 While some of the information relied upon in the plan is out of date¹⁵⁰ this may not
18 necessarily be a problem. Intervenors argue, and it has not been disputed, that the capital
19 projects identified by the Fire District and the County to serve at urban levels in the Bayview
20 Ridge UGA have been completed.¹⁵¹ If so, and we have no reason to doubt the assertion,
21 the subarea plan should reflect this condition, and not rely on outdated information. For
22 example, the subarea plan notes that “The district is planning to replace an aid unit in the
23 year 2001.”¹⁵² Certainly by now the County knows whether this is an accurate assumption.
24
25

26
27
28 ¹⁴⁶ Ibid. at 6-9.

29 ¹⁴⁷ Bayview Ridge Subarea Plan at 7-10.

30 ¹⁴⁸ Ibid.

31 ¹⁴⁹ Ibid.

32 ¹⁵⁰ For example, Table 7-7 “Planned Fire Protection Projects” relies upon estimated costs in 1997 and 1999 dollars.

¹⁵¹ Intervenors’ Response Brief at 13.

¹⁵² Bayview Ridge Subarea Plan at 7-10.

1 Thus, while we do not find noncompliance in this area, we suggest that the Subarea Plan be
2 updated with more current information.

3
4 **Police**

5 With regard to the alleged discrepancy in the analysis of sheriff officers needed in the
6 Subarea, we agree that the County's methodology for calculating future industrial and
7 commercial acreages (upon which the police services LOS is based) is less than obvious,
8 the discrepancies are slight and non-material. While Table 7-5 indicates that developed
9 commercial and industrial property is planned to increase from 601 acres in 2001 to 1,327
10 acres in 2015 (and increase of 726 acres), other sections of the plan support an allocation
11 of 750 additional acres to commercial industrial uses.¹⁵³ Petitioners err by including the 754
12 acres of airport zoned property within the calculation of industrial/commercial acreage for
13 purposes of calculating LOS, despite the fact that Table 7-1 provides that LOS is based on
14 population or commercial/industrial property. Intuitively, as well, it is apparent that acres of
15 runway and surrounding open areas do not place a high demand on police services.
16 Finally, the Subarea Plan reflects that there is currently a surplus of commissioned deputies
17 available in the Sheriff's Office available to serve the Bayview Ridge Subarea.¹⁵⁴

18
19
20 The County and Intervenors' assertion that concurrency for police services will be met by
21 compliance with SCC 14.28.040(2)(g) is difficult to understand. LOS for police services is
22 expressed as the number of officers needed per 1,000 residents or per thousand acres of
23 developed commercial or industrial property.¹⁵⁵ Yet, SCC 14.28.040(2)(g), with its
24 requirement for participation in "future LID or other pro rata sharing of costs to upgrade or
25 install additional urban standard public facilities and services", is more suited for funding
26 physical improvements than the funding of police services. Police services are not
27 dependant merely on facilities but on adequate funding for personnel and operations.
28
29

30
31 ¹⁵³ See, for example, Tables 2-2 and 3-2.

¹⁵⁴ Ibid. at 7-9

¹⁵⁵ Bay7view Ridge Subarea Plan at 7-5.

1 However, Intervenor are correct that SCC 14.28.040(2)(6) (when read in conjunction with
2 SCC 14.28.030 (3)) provides for the denial of project permit approval where police services
3 cannot meet the established LOS standard. This, therefore, does comply with RCW
4 36.70A.070.

5
6 As noted above, Petitioners argue that there is no stated agreement between the Sheriff
7 and the County that the officers needed will be assigned to the UGA. This is not a
8 reasonable objection. Unlike UGAs that must depend on other units of government as
9 service providers, here the County will be utilizing another County department to provide
10 services. We must assume that all units of County government will make available
11 resources available to provide the LOS that the County has legislatively established.
12

13 **Sewer**

14 Petitioners are incorrect in asserting that sewer level of service standards have not been
15 established. The Bayview Ridge Subarea Plan provides that LOS standards for sewer will
16 be provided by each sewer provider.¹⁵⁶ In this case the provider is the City of Burlington.¹⁵⁷
17 While Petitioners take exception to the use of a 500 gallons per acre per day LOS standard,
18 they have not carried their burden of proof to establish that it is inadequate. Local
19 jurisdictions are required to establish an objective baseline to determine minimum LOS
20 standards for public facilities and services.¹⁵⁸ However, in establishing LOS standards, local
21 government is invested with wide discretion as to the proper level¹⁵⁹. Here, the Bayview
22 Ridge Subarea Plan indicates that Phase II of the City of Burlington waste-water treatment
23 plan expansion project will provide sufficient capacity to treat sufficient flows through 2015.
24 Petitioners have failed to demonstrate that this LOS is so ambiguous as to totally avoid
25 concurrency requirements.¹⁶⁰
26
27

28
29
30 ¹⁵⁶ Ibid. at 7-5, Table 7-1.

¹⁵⁷ Ibid. at 7-12.

¹⁵⁸ RCW 37.70A.020(12).

¹⁵⁹ Achen v. Clark County, 95-2-0067 (FDO, 9-20-95).

¹⁶⁰ See *Butler v. Lewis County*, WWGMHB Case No. 99-2-0027c(Final Decision and Order, 6-30-00).

1 **Parks**

2 The Subarea Plan acknowledges that the Parks LOS is not currently being met, as there are
3 no parks in the Subarea¹⁶¹. The Subarea Plan identifies needed parks, costs and
4 financing. It notes a current unmet need for 15.8 acres of parks and year 2015 need for
5 approximately 65 acres of parks/recreation and open space lands. To this extent, it
6 complies with RCW 36.70A.070(3)'s requirement to provide an inventory of existing capital
7 facilities and a forecast of future needs., However, as noted above, it does not contain the
8 proposed locations and capacities of all the facilities needed to maintain its LOS until 2015.
9 Table 7-4 "Planned Park Projects 2001-2006" is already out of date in 2007 and relies on
10 1998 cost data for proposed parks projects. Reliance upon such outdated information is not
11 consistent with the requirements of RCW 36.70A.070(3) for capital facilities which requires
12 at least a six-year plan that will fund such capital facilities within projected funding capacities
13 and clearly identifies sources of public money for such purposes.
14
15

16 Our review of the Bayview Ridge Capital Facilities Chapter and the 2003-2008 Skagit
17 County CIP show that the County has set a LOS of 17.3 acres per 1000 population as the
18 LOS for park land for the Subarea¹⁶² and a LOS of 13.2 acres per 1000 in the 2003-2008
19 CIP.¹⁶³ While there is nothing in the GMA that forbids the County from setting different
20 level of service standards for different areas of the County, the County's CIP should explain
21 this and it does not. This inconsistency, without an explanation, does not comply with RCW
22 36.70A.070.
23
24

25 **Conclusion:**

- 26
- 27 • **Roads** - There is no inconsistency between the LOS standard for streets and
28 intersections as set out in the Subarea Plan and the Comprehensive Plan. In both
29

30 ¹⁶¹ Bayview Ridge Subarea Plan at 7-6 – 7-7.

31 ¹⁶² Bayview Ridge Subarea Plan at 7-6

32 ¹⁶³ Capital Facilities Plan 2003-2008 at 3-9, Exhibit 807.

1 cases, the County has adopted a LOS standard of C for streets and D for
2 intersections

- 3 • **Fire** - Some of the information relied upon in the plan is out of date. Although this
4 does not rise to the level of noncompliance in this area, the Subarea Plan should be
5 updated with more current information to reflect the capital projects that have been
6 completed.
- 7
8 • **Police** - The discrepancies in the County's methodology for calculating future
9 industrial and commercial acreages (upon which the police services LOS is based)
10 are slight and non-material. SCC 14.28.040(2)(6) and SCC 14.28.030 (3) provide
11 for the denial of project permit approval where police services cannot meet the
12 established LOS standard, thereby complying with the challenged sections of the
13 GMA.
- 14
15 • **Sewer** - The Bayview Ridge Subarea Plan indicates that Phase II of the City of
16 Burlington waste-water treatment plan expansion project will provide sufficient
17 capacity to treat sufficient flows through 2015. Petitioners have failed to demonstrate
18 that the adopted sewer LOS is not an adequate standard for industrial urban
19 development.
- 20
21 • **Parks** - The Bayview Ridge Subarea Plan and the 2003- 2008 Skagit County CIP
22 contain different levels of service for park land. Neither the subarea plan nor the CIP
23 explain this inconsistency. Without this explanation, the Bayview Ridge Subarea
24 Plan is inconsistent with the County CIP and does not comply with RCW 36.70A.070.
25 We have found earlier in this order that the Bayview Ridge Subarea Plan fails to
26 contain the proposed locations of park facilities needed to maintain the Parks LOS
27 until 2015. While providing an inventory of existing facilities and a forecast of future
28 needs, the Bayview Ridge Subarea Plan fails to contain the possible locations of park
29 facilities needed to maintain the Parks LOS until 2015.
30
31
32

1 Petitioners have not sustained their burden of proof that the Subarea Plan LOS standards or
2 RCW 36.70A.020 (1) and (2) are inadequate or ambiguous so that they do not support
3 urban growth or reduce sprawl. We find that the Bayview Ridge LOS for Roads is
4 consistent with those set in Skagit County's comprehensive plan. However, the Board finds
5 that the County's 2003-2008 CIP and the Bayview Ridge UGA parks LOS are inconsistent
6 and do not comply with RCW 36.70A.070.
7

8
9 **J. Subarea Plan Policy 6A-1.2 exceptions (a), (b) and (c) do not**
10 **comply with the GMA – Issue 14**

11 Issue 14: Whether Plan Policy 6A-1.2 fails to comply with RCW 36.70A.020(1), (2),
12 (5) and (12) and 36.70A.070, -.130, -.110, -.115, and -.210 by allowing an agreement
13 to be signed to avoid concurrency?

14 **Position of the Parties**

15 Petitioners argue that the exceptions to the transportation concurrency requirements
16 created by Subarea Plan Policy 6A-1.2 exceptions (a), (b) and (c) conflict with the intent of
17 transportation concurrency and violate GMA goal 12.
18

19 Intervenor's counter that the Subarea Plan and development regulations (SCC 14.28 et
20 seq.) comply with the GMA as they provide that a development may be allowed if
21 transportation improvements or strategies to accommodate the impacts are in place at the
22 time of development, or if a financial commitment is in place to complete the improvements.
23
24

25 **Board Discussion**

26 Goal 12 of the GMA requires local governments to ensure that public facilities and services
27 be adequate to serve the development at the time that it is available for occupancy and use
28 without decreasing current service levels below locally established minimum standards.¹⁶⁴
29
30
31

32 ¹⁶⁴ RCW 36.70A.020(12). See also, WAC 365-195-210.
COMPLIANCE ORDER/FINAL DECISION AND ORDER
Cases No. 97-2-0060c and 07-2-0002
August 2, 2007.
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1 Once a local government adopts concurrency policies, implementing development
2 regulations must be adopted that prohibit new development from causing previously
3 established LOS standards to be violated.¹⁶⁵ An exception exists if transportation
4 improvements or strategies to accommodate the impacts of development are made
5 concurrent with development. “Concurrent with development” means that improvement or
6 strategies are in place at the time of development or that a financial commitment is in place
7 to complete the improvements or strategies within six years.¹⁶⁶
8

9
10 Petitioners argue, and we concur, that the exceptions to a decrease in the level of service
11 allowed by Policy 6A-1.2 violate GMA. Policy 6A-1.2(a) creates an exception to
12 transportation LOS standards if the proponents make a fair share contribution to a regional
13 improvement in the case of sites located where regional improvements are the only means
14 to improve or maintain the level of service existing prior to the development. The exception
15 contains the further limitation that the improvement must be planned for construction within
16 five years.
17

18 The difficulty with this exception is that it allows a reduction below the adopted LOS where
19 there is no reasonable assurance the regional improvement will be constructed. While the
20 exception provides that regional improvements must be planned for construction within five
21 years, there is no requirement to show how these improvements will be funded. A strategy
22 must be in place to show how these planned improvements for maintaining the LOS will be
23 funded and constructed within six years before such an exception is permissible. An
24 exception to the lowering of LOS standards where the proponent “sign[s] an agreement to
25 perform at a future date” is also non-compliant as it allows the LOS to be lowered
26 indefinitely with no assurance of when the needed improvement will be constructed and the
27 adopted LOS restored.
28
29

30
31 _____
32 ¹⁶⁵ RCW 37.70A.070(6). See also, *Achen v. Clark County*, 95-2-0067, FDO ,(9-20-95).

¹⁶⁶ RCW 36.70.070 (6)(b).

1 It is noteworthy that, among the strategies noted at WAC 365-195-835 to address
2 insufficient capacity to accommodate development, the following is provided for
3 transportation deficiencies:

4
5 (i) In the case of transportation, an ordinance must prohibit development approval if the
6 development causes the level of service of a transportation facility to decline below the
7 standards adopted in the transportation element of the comprehensive plan unless
8 improvements or strategies to accommodate the impacts of development are made
concurrent with development.

9 Policy 6A-1.2(a) allows the LOS to be degraded indefinitely and is therefore not compliant
10 with RCW 30.70A.070's mandate to prohibit development if the development causes the
11 level of service to decline below adopted LOS standards, unless improvements or strategies
12 are made "concurrent with development." While SCC 14.28 does prohibit development for
13 which there is no concurrency, that prohibition is undercut by the exceptions created by
14 Policy 6A-1.2(a).

15
16
17 We also find Policy 6A-1.2(c) noncompliant. This exception from the concurrency
18 requirement for "Other exceptions . . . if consistent with the policy intent" is unduly broad
19 and could lend itself to an abuse of administrative discretion.

20
21 **Conclusion:** The exceptions to LOS standards created by Policy 6A-1.2(a) allow a LOS to
22 be degraded indefinitely and are therefore not compliant with RCW 30.70A.070(6)'s
23 mandate to prohibit development if the development causes the level of service to decline
24 below adopted LOS standards unless improvements or strategies are made "concurrent
25 with development." The broad grant of administrative discretion to vary from the
26 established LOS created by Policy 6A-1.2(c) also is noncompliant with RCW 36.70A.070(6)
27 since it does not contain sufficient direction to assure that the exceptions still meet the
28 requirements for transportation concurrency.
29
30
31
32

1 **K. Issue: Implementation of CPP 12.9 in the Subarea Plan – Issue**
2 **15**

3
4 Issue 15: Whether the Ordinance fails to comply with RCW 36.70A.020(1) ,(2), (5) and
5 (12) and 36.70A.070, -.130, -.110, -.115, and -.210 by inadequately implementing CPP
6 12.9 in the Bayview Ridge Subarea?

7 **Positions of the Parties**

8 Petitioners argue that CPP 12.9, requiring new development to pay its share of new
9 infrastructure through impact fees, or as a condition of development through the
10 environmental review process, is not implemented in the Subarea Plan. Petitioners assert
11 that although this issue is addressed in Subarea Plan Policies 7A-1.2 (infrastructure), 7A-
12 3.1 (impact fees) and referenced on page 7-18, the Subarea Plan makes payment of a
13 developer’s share of infrastructure or impact fees *optional*. Petitioners argue that, since not
14 every new development goes through the environmental review process, an impact fee
15 ordinance is required.¹⁶⁷

16
17
18 The County responds by pointing out its authority to impose impact fees under Chapter
19 14.30 SCC and SEPA mitigation under RCW 43.21C.060.¹⁶⁸ It further notes that, while CPP
20 12.9 does not specifically mention the use of voluntary agreements for the payment of
21 impact fees, “CPP 12.9 must allow them” as they are allowed by statute and do not conflict
22 with the intent of CPP 12.9.¹⁶⁹ The County also notes that it employs “facility concurrency
23 fees” which “are impact fees under another name”.¹⁷⁰ Finally, the County notes its use of
24 agreements by which a developer agrees “not to protest a future LID or other pro rata
25 sharing of costs to upgrade or install additional urban public facilities and services identified
26 in the Subarea Plan process for the Bayview Ridge UGA within 20 years, including but not
27
28

29
30 _____
31 ¹⁶⁷ Petitioners’ Opening Brief at 25-26.

32 ¹⁶⁸ Skagit County’s Response, at 28.

¹⁶⁹ Ibid.

¹⁷⁰ Ibid.

1 limited to fire/emergency and police/sheriff services and facilities.” SCC 14.28.105(5). The
2 County also notes a similar requirement for streets, water service, storm drainage and
3 sanitary sewer at SCC 14.28.105(1)-(4). Intervenors point to similar provisions.¹⁷¹
4

5 **Board Discussion**

6 CPP 12.9 provides:
7

8 New development shall pay for or provide for its share of new infrastructure
9 through impact fees or as a condition of development through the
10 environmental review process.

11 CPP 12.9 provides alternative means by which new development can be made to shoulder
12 its share of the cost of new infrastructure: impact fees or SEPA mitigation. Adoption of an
13 impact fee ordinance is not mandatory under state law, but is optional.¹⁷² A local jurisdiction
14 is not required to have in place authority to impose mitigation measures under both an
15 impact fee ordinance and SEPA. Even were both in place, it would still be required to elect
16 which of the two sources of authority to apply in a particular instance since it could not
17 impose mitigation for system improvements under both and impact fee ordinance and
18 SEPA. In fact, any sort of this overlap is prohibited by law. RCW 82.02.100 provides that a
19 person required to pay SEPA impact fees for system improvements shall not be required to
20 pay an impact fee under RCW 82.02.050 through 82.02.090.
21
22

23 While, in fact, the County has authorized the collection of impact fees at SCC 14.30, it is
24 free to mitigate impacts to infrastructure under SEPA instead. Although Petitioners claim
25 that some development might avoid the type of environmental review that would subject it to
26 the payment of SEPA mitigation, it has not presented any evidence regarding the nature
27 and extent of SEPA exemptions allowed by the county. Nor do Petitioners offer evidence to
28
29
30

31 ¹⁷¹ Intervenors’ Response Brief, at 26.

32 ¹⁷² See, RCW 82.02.050
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1 demonstrate how a project that is SEPA exempt would have an impact on the local
2 infrastructure that would not be addressed by the County's existing mitigation measures.

3
4 **Conclusion:** Therefore, we find that the Petitioner has not carried its burden to demonstrate
5 that the County does not have adequate means in place to implement CPP 12.9.

6
7 **L. Abandoned Issues – Issues 17 and 19.**

8 Petitioners failed to brief or argue Issue 17: Whether the Ordinance fails to comply with
9 RCW 36.70A.020(1), (2), (5) and (12) and 36.70A.070, -.130, -.110, -.115, and -.210 such
10 that designation and allowance of non-accessory commercial urban development in the
11 UGA (and related text and figures) should be found to not comply with the GMA?
12

13 Petitioners also failed to brief or argue Issue 19: Whether Plan fails to comply with RCW
14 36.70A.020(9) and (10) and 36.70A.070, -.110, -.130, and -.210 by failing to designate
15 adequate open space in the UGA including open space buffers over and adjacent to
16 petroleum pipelines?
17

18 Petitioners are deemed to have abandoned both issues. *OEC v. Jefferson County*,
19 WWGMHB Case No. 94-2-0017 (Final Decision and Order, February 16, 1995).
20

21 **M. Development regulations – Issue 21 and 22**

22 Issue 21: Whether the Plan's implementing development regulations fail to comply with
23 RCW 36.70A.130 by not fully implementing in a consistent manner the Subarea Plan and
24 Comprehensive Plan inside the UGA, or by implementing plan provisions found not in
25 compliance with the GMA, or by not being timely reviewed and updated?

26 Issue 22: Whether the Plan and implementing development regulations ensure that the
27 urban facilities and services necessary to support development in the unincorporated UGA
28 will be adequate to serve that development at the established urban levels of service at the
29 time of occupancy consistent with RCW 36.70A.020(12) and 36.70A.070, -.130, -.110, -
30 .115, and -.210?
31
32

1 **Positions of the Parties**

2 Petitioners argue that the failure of the County to do a compliant capital facilities plan should
3 make the Subarea Plan Development Regulations invalid.¹⁷³ Bayview DR (development
4 regulation) 14.28.105(13) “allows urban development regulations to be implemented with
5 wastewater placed in holding tanks”, Petitioners allege.¹⁷⁴ Further, Petitioners claim that the
6 Table of Land Use Districts in DR 14.16.030 fails to clearly prescribe maximum and
7 minimum densities for residential development.¹⁷⁵ Petitioners also fault the non-industrial
8 uses such as offices allowed in the light industrial zone (DR 14.16.180); and the absence of
9 standards for assessing sound impacts on residents.¹⁷⁶ Petitioners also list other
10 development regulations they assert are inconsistent with requirements for capital facilities
11 elements.¹⁷⁷

12
13
14 The County responds that Petitioners point out a number of minor errors that can easily be
15 addressed.¹⁷⁸ However, the County urges that including restaurants and taverns as
16 permissible uses in industrial zones is not clearly erroneous.¹⁷⁹ There is no evidence, or
17 even a good argument, the County asserts, that allowing restaurants in the commercial
18 zones will lead to a wholesale conversion of industrial lands.¹⁸⁰ The County also notes that
19 it has an adequate noise ordinance (SCC 14.16.840(5)).
20
21

22 **Board Discussion**

23 Petitioners’ shotgun approach to issues relating to development regulations makes it difficult
24 for the Board to follow their objections; further, it is unclear why the objections to certain
25 development regulations, e.g. allowing holding tanks for wastewater in the new UGA, were
26

27
28 ¹⁷³ Petitioners’ Opening Brief at 28.

29 ¹⁷⁴ *Ibid.*

30 ¹⁷⁵ *Ibid.*

31 ¹⁷⁶ *Ibid.*

32 ¹⁷⁷ *Ibid* at 29.

¹⁷⁸ Skagit County’s Response at 24

¹⁷⁹ Skagit County’s Response at 20.

¹⁸⁰ *Ibid.*

1 not raised in conjunction with the arguments on Subarea Plan policies on the same
2 subjects.

3
4 Petitioners appear to request that the Board impose invalidity on all the development
5 regulations for the Subarea Plan because there is not a compliant capital facilities plan. The
6 Board declines to accept a universal principle that a non-compliant capital facilities plan
7 necessitates invalidating all development regulations. Petitioners must specify the
8 development regulations that are alleged to be non-compliant and invalid and show how
9 each fails to comply with the requirements and goals of the GMA.
10

11 In one respect, Petitioners identify a development regulation that is inconsistent with needed
12 capital facilities for the new UGA. Petitioners point to SCC 14.28.105(13) regarding public
13 sewer. They argue that it allows an urban use to be constructed in the Bayview Ridge UGA
14 if no sewer is available. The Board finds this development regulation is inconsistent with the
15 claim that urban services are available now. SCC 14.28.105(13) allows urban levels of
16 development without concurrent urban levels of public sewer service. This fails to comply
17 with RCW 36.70A.110 and Goal 12 of the GMA, the concurrency goal.
18

19
20 Moreover, connection to public sewer is expressly envisioned to take as long as twenty
21 years:

22
23 As a condition of any development approval, and for all property owned by the same
24 owner in the UGA, the property owner agrees for all property owned in said UGA not
25 to protest an LID or other pro-rata sharing in any costs to upgrade and extend public
26 sewer to the property within 20 years. Credit for prior contributions and
27 improvements that are included in the Subarea facilities plan shall be provided as set
28 forth in subsection (6) below.

29 SCC 14.28.105(13)(e).

30 There must be urban levels of sanitary sewer provided to the entire UGA by 2015 (the end
31 of the planning period), not within twenty years of the date of subsequent approval of
32 development on holding tanks. This is because the designation of areas for urban growth

1 must ensure that urban services are available when the urban growth occurs. The UGA
2 boundaries may only extend as far as urban levels of service are ensured for the planning
3 period. If urban services cannot be provided in the planning period, then the areas which
4 cannot be served should not be designated for urban growth, i.e. included in the UGA.¹⁸¹
5

6 Moreover, if urban levels of service will not be provided at the time of development,
7 development must be phased so that there are not urban levels of development until urban
8 services are provided. In the meantime, the development that does occur within the UGA
9 must allow for eventual urban densities, typically by platting and locating initial growth so
10 that higher densities will be available as urban services are available.
11

12 SCC 14.28.105(13) clearly allows urban development without ensuring that public sewer will
13 be available in the planning period, and allows for development that could preclude the
14 urban development for which the UGA is designated. SCC 14.28.105(13), therefore, fails to
15 comply with RCW 36.70A.110, requiring urban levels of service for urban development, and
16 Goal 12, the concurrency goal.
17

18
19 **Conclusion:** Petitioners' claim that all development regulations applicable to the Bayview
20 Ridge UGA are non-compliant is not sustained. However, SCC 14.28.105(13) allows urban
21 levels of development without concurrent urban levels of public sewer service. This
22 provision fails to comply with RCW 36.70A.110, requiring urban levels of service for urban
23 development, and the concurrency goal (Goal 12) RCW 36.70A. 020.
24

25 26 **N. Invalidity – Issue 23**

27 Issue 23: Whether any portion of the Ordinance found not to comply with the Act in Issues
28 2 to 22 above should also be found invalid under RCW 36.70A.302 for substantial
29 interference with the fulfillment of Goals 1,2,5,6, 9, 10 and/or 12?
30

31
32

¹⁸¹ *Irondale Community Action Neighbors v. Jefferson County*, WWGMHB Case No. 04-2-0022 (Final Decision
and Order, May 31, 2005.

1 **Positions of the Parties**

2 Petitioners allege that the noncompliant provisions of the Subarea Plan and development
3 regulations substantially interfere with the fulfillment of Goals 1, 2, 5 and 12.¹⁸² The County
4 and Intervenors argued at the hearing on the merits that any non-compliant matters could
5 be resolved without the necessity for an invalidity determination.
6

7 **Board Discussion**

8 A finding of invalidity may be entered when a board makes a finding of noncompliance and
9 further includes a “determination, supported by findings of fact and conclusions of law that
10 the continued validity of part or parts of the plan or regulation would substantially interfere
11 with the fulfillment of the goals of this chapter.” RCW 36.70A.302(1) (in pertinent part).
12

13 We have held that invalidity should be imposed if continued validity of the noncompliant
14 comprehensive plan provisions or development regulations would substantially interfere with
15 the local jurisdiction’s ability to engage in GMA-compliant planning. See *Butler v. Lewis*
16 *County*, WWGMHB Case No. 99-2-0027c (Order Finding Noncompliance and Imposing
17 Invalidity, February 13, 2004).
18

19
20 In this case, there are two areas in which the potential for vesting of applications for
21 development in the Bayview Ridge UGA before compliance is achieved is of concern to the
22 Board. The first of these is with respect to urban development without public sewer. SCC
23 14.28.105(13) allows urban levels of development, both residential and industrial, on
24 holding tanks. Not only does this development regulation fail to comply with RCW
25 36.70A.110, as we have found, but it also substantially interferes with the fulfillment of Goal
26 12, in that it does not ensure that public facilities and services necessary to support
27 development will be adequate to serve the development at the time the development is
28 available for occupancy. Urban levels of development require urban levels of service and
29
30

31 _____
32 ¹⁸² Petitioners’ Opening Brief at 30.

1 key among urban services is public sewer. The exemption to the general requirement for
2 hook-up to public sewer as a condition of approval found in SCC 14.28.105(13) is therefore
3 invalid.

4
5 The second area of concern is the absence of development regulations to ensure minimum
6 densities for residential development in the new UGA. To the extent that residential
7 development applications may vest during the compliance period granted in this order, the
8 Board is concerned about less-than-urban levels of development. The County states that its
9 goal is at least 4 dwelling units per acre in the Bayview Ridge UGA and that development
10 regulations to ensure minimum densities are not required because of this goal. While we
11 have found that the failure to ensure urban residential densities fails to comply with RCW
12 36.70A.110, the Board will not impose invalidity at this time because of the County's goal of
13 urban residential densities and the Intervenor's assertion that the residential development
14 on their property will be pursuant to the new planned residential development (PRD)
15 ordinance. On the record before us, we do not find that a remand with an order to achieve
16 compliance is insufficient to enable the County to pursue proper planning under the Act.
17
18

19 However, if circumstances change such that development applications during the pendency
20 of the County's compliance efforts are likely to vest in ways that will substantially interfere
21 with the achievement of the goals and requirements of the GMA, we will entertain a motion
22 to impose invalidity on provisions of Ordinance 020060007, the Bayview Ridge Subarea
23 Plan and/or the development regulations that we have found noncompliant in this final
24 decision and order. RCW 36.70A.330(4). Such a motion may be brought at any time until
25 compliance has been found but must be accompanied by documents indicating the
26 conditions justifying a finding of invalidity.
27
28

29 **VI. FINDINGS OF FACT**

- 30
31 1. Skagit County is located west of the crest of the Cascade mountains and is required
32 to plan pursuant to RCW 36.70A.040.

- 1 2. On December 1, 2006, the Board of County Commissioners adopted the Bayview
2 Ridge Subarea Plan (Subarea Plan) and Development Regulations through
3 Ordinance 020060007.
- 4 3. The initial petition for review of Ordinance 020060007 was filed by Petitioners Skagit
5 County Growthwatch, Citizens to Protect Bayview Ridge, and Gerald Steel on
6 February 5, 2007
- 7 4. Petitioners Skagit County Growthwatch, Citizens to Protect Bayview Ridge, and
8 Gerald Steel participated in the adoption of Skagit County Ordinance 020060007
9 through written comments.
- 10 5. Ordinance 020060007 was adopted to achieve compliance on the Bayview Ridge
11 UGA issues remaining in *Abenroth et al. v. Skagit County, et al.*, WWGMHB Case
12 No. 97-2-0060c.
- 13 6. Friends of Skagit County participated as Petitioners in *Abenroth et al. v. Skagit*
14 *County, et al.*, WWGMHB Case No. 97-2-0060c and filed a notice of intent to
15 participate in the compliance issues related to the Bayview Ridge UGA.
- 16 7. Intervenor Bouslog Investments LLC, JBK Investments LLC, and John Bouslog
17 participated in the adoption of Ordinance 020060007 and are owners of property
18 included in the Bayview Ridge UGA.
- 19 8. The Board has ruled on motion that the County has failed to timely complete its
20 update of comprehensive plan policies and development regulations as required by
21 RCW 36.70A.130(1)(2) and (4). Order on Issue No. 1 – Failure to Timely Adopt
22 Update Required by RCW 36.70A.130(4), April 27, 2007. That order is incorporated
23 herein by reference and made part of this final decision and order.
- 24 9. The Bayview Ridge Subarea Plan is a component of the 1998 Skagit County
25 Comprehensive Plan (“comprehensive plan” or “plan”).
- 26 10. The County adopted a six-year capital facilities funding plan (CIP) in 1999. The most
27 recent amendment of the CIP was adopted in 2003 to cover the years from 2003 to
28 2008.
- 29
- 30
- 31
- 32

- 1 11. The Subarea Plan explains that the County provides sheriff services directly; park
2 facilities in cooperation with the Port of Skagit County; and storm drainage facilities
3 with the drainage districts. Water is provided by PUD No. 1; sewer by the City of
4 Burlington; and fire protection by several fire districts.
5
6 12. The Skagit County 2003-2008 Capital Facilities Plan(CIP) provides an inventory of
7 the County's existing park and sheriff facilities, including capacities and locations.
8 The Sub Area Plan contains the transportation facilities inventory.
9
10 13. The 2003 – 2008 Skagit County CIP includes an inventory of diking and fire district
11 facilities in the subarea.
12
13 14. The plan for the Burlington-Edison School District as well as water system plans
14 serving Skagit County, including PUD. No.1,¹⁸³ are incorporated and referenced in
15 the 2003-2008 CIP.
16
17 15. The Water System Plan for Public Utility District No. 1 of Skagit County, Volume 1
18 contains a description of the existing facilities serving Bayview Ridge in 2001.
19
20 16. The City of Burlington 2005 Wastewater Plan states that the Bayview Ridge Urban
21 Growth Area and Sewer Service Area boundaries are adjusted to reflect the final
22 action planned in 2005 for the Bayview Ridge Urban Growth Area.
23
24 17. A discrepancy exists in the City of Burlington's Comprehensive Wastewater Plan.
25 While the sewer plan's map shows existing and proposed facilities, the text of the
26 plan says the facilities to serve the Bayview Ridge UGA are "basically complete"¹⁸⁴
27 or "started".
28

29
30 ¹⁸³ PUD No.1 plans are included in the Skagit County Coordinated Water System Plan that is adopted as part
31 of the Skagit County Comprehensive Plan. See City of Anacortes v. Skagit County, Case No. 07-2-0002 (

32 ¹⁸⁴ Ibid at 6.

- 1 18. Existing facilities with their locations and capacities are included in the Six-year
2 Capital Facilities Plan of Burlington-Edison School District 100, adopted in 2006, and
3 covering the years 2006 -2011.
- 4 19. The Subarea Plan discusses the UGA's park land needs to 2015, and the facilities
5 and possible locations of some, but not all the facilities needed to maintain its LOS
6 until 2015. Funding sources in the years beyond 2006 are not projected.
- 7 20. The Subarea Plan includes an analysis of the quantity of water needed to serve
8 Bayview Ridge to 2015, discusses improvements to storage facilities and concludes
9 that it has capacity to serve Bayview Ridge until 2015.
- 10 21. The Subarea Plan also states that the PUD's plan includes water system
11 improvements to serve the UGA by the year 2020, and the Water System Plan for
12 Public Utility District No.1 of Skagit County confirms this.
- 13 22. The PUD plan is incorporated in the 2003-2008 Skagit County CIP by virtue of its
14 being part of the Skagit County Coordinated Water System Plan that has been
15 adopted as part of the County's comprehensive plan.
- 16 23. Skagit County completed and adopted an extensive stormwater management plan in
17 April 2007 to manage storm water runoff in the 11,277 acre Bay View Ridge
18 Watershed. The Bayview Ridge UGA comprises 3,663 acres or about 32 per cent of
19 the watershed.¹⁸⁵
- 20 24. The storm water plan contains a capital facilities plan of proposed projects and their
21 cost estimates for Phase 1. These facilities are scheduled to be completed in 2011.
22 The stormwater plan indicates that these projects are the ones necessary "to reduce
23 or eliminate existing and /or future flooding conditions within the Bayview Ridge
24 UGA".
- 25 25. Resolution R20070227 states Skagit County will bear the costs of the storm-water
26 improvements and that these will be funded through various legally authorized
27
28
29
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31

32 ¹⁸⁵ Exhibit 333 at 2.1
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1 means, not limited to development contributions and the Skagit County Drainage
2 Utility.

3 26. The Burlington-Edison School District No. 100's Six –Year Capital Facilities Plan
4 covers the years 2006-2011 and discusses future projects, with their locations and
5 their capacities, and lists costs and funding sources through 2011.

6 27. The Subarea Plan discusses the fire facility needs of UGA until 2015, but neither the
7 Subarea Plan or the 2003-2008 Skagit County CIP include capital facility projects for
8 fire facilities over the 20 year planning period.

9 28. The plan discusses that negotiations on how to provide the UGA fire services have
10 not been completed.

11 29. The Bayview Ridge Capital Facility Plan contains a six-year capital facilities plan
12 that summarizes projects from 2001 -2006 to support the UGA's growth. The
13 County's most recent CIP does not satisfy the requirement for "a six-year plan that
14 will finance such capital facilities" as required by RCW 36.70A.070(3)(d) because
15 "such facilities" as are added through the Bayview Ridge Capital Facilities Plan were
16 not the subject of the County's 2003-2008 CIP.

17 30. The Skagit County Comprehensive Plan's Utility Element says maps showing the
18 major locations of the electricity and natural gas facilities serving Skagit County are
19 included in the Skagit County supplemental map portfolio. The Utility Chapter also
20 states that information relating to Utility Element requirements is contained in the
21 plans of the utility providers.

22 31. It is clear from the plain language of Subarea Plan that that there is no inconsistency
23 between the LOS standard for streets and intersections as set out in the Subarea
24 Plan and the Comprehensive Plan. In both cases, the County has adopted a LOS
25 standard of C for streets and D for intersections.

26 32. SCC 14.28.040(2)(6) (when read in conjunction with SCC 14.28.030 (3)) provides for
27 the denial of project permit approval where police services cannot meet the
28 established LOS standard.

- 1 33. The comprehensive plan allocates residential growth to “Burlington/County” in the
2 amount of 3,420 (see Table 3-4) to the year 2015. This allocation was intended for
3 the Bayview Ridge UGA.
- 4 34. The Subarea Plan discusses the need for this allocation to the Bayview Ridge UGA
5 by reviewing the capacity of five major municipal UGAs to accommodate this
6 projected growth. After concluding, in consultation with those cities, that most of
7 them could not accommodate extra growth due to environmental and infrastructure
8 limitations, the County determined to allocate that growth to Bayview Ridge.
9
- 10 35. There are 681 homes and a population of 1,634 people currently in the Bayview
11 Ridge UGA.
- 12 36. Utilizing the projected residential population of 3,420 for 2015 in the comprehensive
13 plan, the County subtracted 1,634 as the existing residential population and
14 concluded that the Bayview Ridge UGA should house 1,786 new residents by 2015.
15
- 16 37. At densities of four dwelling units per acre and an average of 2.4 persons per
17 household, the net need for new residential development in the Bayview Ridge UGA
18 is approximately 186 acres of land. Adding approximately 46 acres due to a 25%
19 market factor yields a need for 233 acres of residential land.
- 20 38. In addition, the Subarea Plan adds another 211 residents, apparently by working
21 backwards from an area of 705 acres to reach the population figure that would justify
22 the entire acreage. The County’s analysis gives no other reason for adding this
23 population nor does it show how this total population of 3,631 squares with the
24 allocation in the comprehensive plan of 3,420.
- 25 39. The City and the Bayview Ridge UGA are noncontiguous. Intervening agricultural
26 land and flood plain make intervening land unsuitable for urban growth.
- 27 40. The Bayview Ridge UGA is a UGA which had no residential component prior to this
28 time and which is centered, not on an existing city, but on an airport.
- 29 41. Although the plan calls for a minimum of four dwelling units per acre, there are no
30 adopted regulations to ensure that.
31
32

- 1 42. Without some mechanism to assure minimum urban densities, the new residential
2 portions of the UGA are likely to become suburban sprawl.
- 3 43. Table 3-5 of the comprehensive plan shows a total of 750 acres of new
4 commercial/industrial land allocated to Bayview Ridge prior to the adoption of
5 Ordinance 020060007. The Bayview Ridge UGA has been sized to accommodate
6 those 750 acres of new commercial/industrial land.
- 7
8 44. Subarea Plan Policies 3A-1.5, 3A-1.9 and 4A-2.6 encourage mixed use
9 development, especially the mix of commercial and light industrial uses with
10 residential units in a PRD. The development regulations for the Bayview Ridge UGA
11 limit the uses in the industrial zones to industrial and related uses. SCC 14.16.180
12 and 14.16.190.
- 13 45. The LOS standard for streets and intersections in the Bayview Ridge UGA as set out
14 in both the Subarea Plan and the Comprehensive Plan is an LOS standard of C for
15 streets and D for intersections.
- 16 46. Some of the information relied upon in the plan to set an LOS for fire service is out of
17 date.
- 18 47. For fire services, the Subarea Plan notes that “the optimum configuration of district
19 boundaries to protect final build-out of the Bayview Ridge UGA is *under discussion*”
20 and “Negotiations ensuring a coordinated approach to delivery of fire protection
21 serves are *in process*”
- 22 48. SCC 14.28.040(2)(6) and SCC 14.28.030(3) provide for the denial of project permit
23 approval where police services cannot meet the established LOS standard.
- 24 49. The Subarea Plan reflects that there is currently a surplus of commissioned deputies
25 available in the Sheriff’s Office available to serve the Bayview Ridge Subarea.
- 26 50. As to sewer service, the Bayview Ridge Subarea Plan indicates that Phase II of the
27 City of Burlington waste-water treatment plan expansion project will provide sufficient
28 capacity to treat sufficient flows through 2015.
- 29
30
31
32

- 1 51. Subarea Plan Table 7-4 “Planned Park Projects 2001-2006” is already out of date in
2 2007 and relies on 1998 cost data for proposed parks projects.
- 3 52. Policy 6A-1.2(a) creates an exception to transportation LOS standards if the
4 proponents make a fair share contribution to a regional improvement in the case of
5 sites located where regional improvements are the only means to improve or
6 maintain the level of service existing prior to the development. The exception
7 contains the further limitation that the improvement must be planned for construction
8 within five years.
- 9
- 10 53. Policy 6A-1.2(a) allows a reduction below the adopted LOS where there is no
11 reasonable assurance the regional improvement will be constructed. While the
12 exception provides that while regional improvements must be planned for
13 construction within five years, there is no requirement that there be a strategy for
14 funding these improvements.
- 15
- 16 54. Subarea Policy 6A-1.2(c) creates another exception from the concurrency
17 requirement for “Other exceptions . . . if consistent with the policy intent”.
- 18 55. CPP 12.9 provides:
- 19 New development shall pay for or provide for its share of new infrastructure
20 through impact fees or as a condition of development through the
21 environmental review process.
- 22
- 23 56. Petitioners failed to brief or argue Issues 17 and 19.
- 24 57. Petitioners do not offer evidence to demonstrate how a project that is SEPA exempt
25 would have an impact on the local infrastructure that would not be addressed by the
26 County’s existing mitigation measures
- 27 58. SCC 14.28.105(13) allows urban levels of development without concurrent urban
28 levels of public sewer service.
- 29 59. While the Subarea Plan indicates that the City of Burlington has sewer capacity to
30 serve the UGA, no evidence exists in the record about how and when the residential
31 areas in particular will be served.
- 32

1 60. SCC 14.28.105(13) allows urban development in the Bayview Ridge UGA without
2 ensuring that public sewer will be available when that urban development occurs and
3 allows for development that could preclude the urban development for which the
4 UGA is designated.
5

6 **Findings of Fact Related to Determination of Invalidity**

7 61. SCC 14.28.105(13) generally requires that any development in the Bayview Ridge
8 UGA connect to public sewer as a condition of approval.

9 62. However, SCC 14.28.105(13) contains an exception to the requirement to connect to
10 public sewer that allows urban levels of development, both residential and industrial,
11 on holding tanks if there is no sewer line within 200 feet.
12

13 63. The exemption to the requirement for public sewer in SCC 14.28.105(13) does not
14 ensure that public facilities and services necessary to support development will be
15 adequate to serve the development at the time the development is available for
16 occupancy.
17

18 64. Urban levels of development require urban levels of service and key among urban
19 services is public sewer.
20

21 **VII. CONCLUSIONS OF LAW**

22 A. The Board has jurisdiction over the parties and subject matter of WWGMHB Case Nos.
23 97-2-0060c and 07-2-0002.

24 B. Petitioners Skagit Growthwatch, Citizens to Protect Bayview Ridge and Gerald Steel
25 have standing to bring the petition in WWGMHB Case No. 07-2-0002.

26 C. Participant Friends of Skagit County has standing to participate WWGMHB Case No. 97-
27 2-0060c.

28 D. Petitioners Skagit Growthwatch, Citizens to Protect Bayview Ridge and Gerald Steel
29 have standing to participate WWGMHB Case No. 97-2-0060c.
30

31 E. The petition in WWGMHB Case No. 07-2-0002 was timely filed.
32

- 1 F. Intervenors Bouslog Investments LLC, JBK Investments LLC, and John Bouslog have
2 standing to participate in WWGMHB Case No. 97-2-0060c and WWGMHB Case No. 07-2-
3 0002.
- 4 G. Skagit County has failed to update its comprehensive plan policies and development
5 regulations in the time required by RCW 36.70A.130(4).
- 6 H. The use of the comprehensive plan planning period (1995-2015) for the Subarea Plan is
7 consistent between the comprehensive plan and the Subarea Plan as required by RCW
8 36.70A.070 and 36.70A.080(2).
- 9 I. The Bayview Ridge Capital Facilities Plan does not summarize projects and funding for
10 the six-year period following the establishment of the Bayview Ridge UGA as required by
11 RCW 36.70A.070(3)(d). Furthermore, it is not consistent with the most recent Skagit County
12 CIP, which should also cover the same period, so it does not comply with RCW 36.70A.070.
13
- 14 J. The Subarea Plan complies with RCW 36.70A.070(4) in regard to the Bayview Ridge
15 UGA. With the exception of public sewer service, the Subarea Plan for the Bayview Ridge
16 UGA, complies with the requirements of RCW 36.70A.070(3)(a).
- 17 K. The capital facilities element for the Bayview Ridge UGA storm water facilities complies
18 with RCW 36.70A.070(1).
- 19 L. The capital facilities element for the Bayview Ridge UGA storm-water drainage and
20 public safety facilities complies with RCW 36.70A.070 (3)(b) and (c).
- 21 M. The capital facilities element for the Bayview Ridge UGA water provider, Skagit County
22 PUD No. 1, complies with RCW 36.70A. 070 (3) (b) and (c).
- 23 N. The Bayview Ridge UGA capital facilities element for fire districts and the Burlington
24 Edison School District do not comply with RCW 36.70A.070 (3) (b) and (c).
- 25 O. The six-year CIP for the Bayview Ridge Subarea does not comply with RCW 36.70A.070
26 (3) (d).
- 27 P. Petitioners have not carried their burden of proof that the County has set inadequate,
28 ambiguous, unreliable, inconsistent levels of service that do not comply with RCW
29 36.70A.020(1), (2), (5) and (12) and 36.70A.070, -.130, -.110, -.115, and -.210.

1 Q. The Utility Element of Bayview Ridge Subarea Plan, combined with County's
2 Comprehensive Plan, complies with RCW 36.70A.070 (4).

3 R. The allocation of 1,786 new residents to the Bayview Ridge UGA to 2015 and the
4 inclusion of 233 acres of land for new residential development comply with the requirements
5 of RCW 36.70A.110 to size a UGA in accordance with its population allocation.
6

7 S. The allocation of an additional 211 residents to 2015 (a total population of 3,631) to the
8 Bayview Ridge UGA and an additional 45-74 acres fails to comply with the requirements of
9 RCW 36.70A.110 for urban growth areas to be sized according to their population
10 allocation.

11 T. The addition of population in the Subarea Plan beyond that in the comprehensive plan
12 and the inconsistent use of population and residential land figures in the Subarea Plan itself
13 violates the requirements of RCW 36.70A.070 for an internally consistent comprehensive
14 plan; as does.
15

16 U. The failure to ensure that new residential development within the new UGA will occur at
17 urban densities fails to comply with RCW 36.70A.110 and Goals 1 and 2 of the GMA
18 (36.70A.020(1) and (2)) to encourage urban growth and reduce sprawl.

19 V. The sizing of the Bayview Ridge UGA to include 750 acres of new commercial/industrial
20 land is consistent with the allocation for that purpose adopted in the comprehensive plan in
21 2000. It therefore complies with RCW 36.70A.070 and 36.70A.080(2). The challenge to the
22 allocation itself is untimely. RCW 36.70A.290(2).
23

24 W. The exceptions to level of service (LOS) standards created by Policy 6A-1.2(a) allow a
25 LOS to be degraded indefinitely and are therefore not compliant with RCW 30.70A.070(6).

26 X. The broad grant of administrative discretion to vary from the established LOS created by
27 Policy 6A-1.2(c) also is noncompliant with RCW 36.70A.070(6).
28

29 Y. The County has adequate means in place to implement CPP 12.9 in compliance with
30 RCW 36.70A.070 and Goal 12 (RCW 36.70A.020(12)).

31 Z. SCC 14.28.105(13) fails to comply with RCW 36.70A.110, requiring urban levels of
32 service for urban development, and the concurrency goal (Goal 12).

1 AA. The exemption to the general requirement for hook-up to public sewer as a condition of
2 approval found in SCC 14.28.105(13) substantially interferes with the fulfillment of Goal 12
3 and is therefore invalid.

4
5 **VIII. ORDER**

6 The County is required to achieve compliance in accordance with this decision within 180
7 days of the date of this order. However, if the County wishes to pursue compliance in
8 conjunction with its update of its comprehensive plan policies and development regulations
9 pursuant to RCW 36.70A.130, the Board will entertain a motion within 30 days of the date of
10 this order for an alternative schedule.
11

12 Unless changed by subsequent order, the following shall be the schedule for compliance in
13 the coordinated cases:
14

15 Compliance Due	February 6, 2008
16 Compliance Report (County to file 17 and serve on all parties)	February 13, 2008
18 Any Objections to a Finding of 19 Compliance Due	March 6, 2008
20 County's Response Due	March 27, 2008
21 Compliance Hearing (location to be 22 determined)	April 4, 2008

23 **The Board incorporates the findings and conclusions of its Order on Issue No. 1-**
24 **Failure to Timely Adopt Update Required by RCW 36.70A.130(4), April 27, by**
25 **reference in this final decision and order.**
26

27 Dated this 6th day of August, 2007.
28

29 _____
30 Margery Hite, Board Member
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Holly Gadbow, Board Member

James McNamara, 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)