

1 BEFORE THE WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

2  
3 JACK PETREE, FUTUREWISE, DEAN  
4 HAVERSTRAW, CAITAC USA CORP and  
5 ROBERT WIESEN,

6 Petitioner,

7  
8 v.

9 WHATCOM COUNTY,

10 Respondent.

11  
12 and

13  
14 ERIC AND ROBIN HITZ, FUTUREWISE and  
15 DAN MCSHANE,

16 Intervenor.

Case No. 08-2-0021c

**FINAL DECISION AND ORDER**

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19 **I. SYNOPSIS OF THE DECISION**

20 Petitioners Jack Petree, Robert Wiesen, and Caitac USA Corp challenge Whatcom County's  
21 designation of the Bellingham Urban Growth Area (UGA) adopted by Ordinance 2008-003  
22 as being undersized and thereby insufficient to accommodate Bellingham's projected 20-  
23 year population growth. In contending that Bellingham's UGA is undersized, Petitioners'  
24 assertions are based on (1) the County's obligation to accept the City of Bellingham's Land  
25 Capacity Analysis (LCA) because it did not challenge the adoption of City's Comprehensive  
26 Plan, (2) the County's rejection of the City of Bellingham's LCA without showing its work,  
27 and (3) the County's reliance on a LCA that was fatally deficient. Petitioners also contend  
28 that the County failed to consider the goals of the Growth Management Act (GMA) when  
29 designating the Bellingham UGA and that the designation itself does not comply with  
30 several of the GMA's goals.  
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1 Petitioners further challenge the consistency of the County's UGA designation with its  
2 comprehensive plan and County-wide Planning Policies and the lack of development  
3 regulations in the UGA to implement new UGA land use designations. Additionally,  
4 Petitioners claim that the King Mountain area should not have been added to the UGA  
5 because the County did not conduct an adequate environmental analysis.  
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7 This decision reiterates other decisions of this Board that have held it is a county's right and  
8 obligation to designate UGAs. In this instance, Whatcom County had no obligation to  
9 challenge Bellingham's comprehensive plan or LCA. After review of the recent Washington  
10 Supreme Court decision in *Thurston County v. Western Washington Growth Management*  
11 *Hearings Board*, the Board finds that upon a proper challenge to the validity of a UGA  
12 delineation, the County's Record must set forth an analytical analysis of assumptions  
13 utilized to make a UGA determination. That is, the County needs "to show its work" in  
14 developing its assumptions in order for a proper evaluation by the public and the Board as  
15 to whether or not the County's action in delineating the UGA complies with the GMA.  
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18 After our review of *Thurston County*, we find that to size the UGA in excess of the acreage  
19 required to accommodate the urban growth projection based upon any other reduction  
20 factor other than market factor is simply not authorized by the GMA.  
21

22 The Board finds that both the County and the City's future assumptions of how growth will  
23 occur in the Bellingham UGA are imprecise. The Record also shows Bellingham's relatively  
24 low density, lack of sprawl reducing measures, inability to deliver urban services to a large  
25 part of the UGA, and its commitment to consider measures to increase density inside the  
26 UGA. For these reasons, the Board finds the County's choice of market factor and LCA  
27 assumptions are not clearly erroneous.  
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29 The Board also finds that other evidence in the record does not demonstrate that the  
30 Bellingham UGA designation was not guided by GMA goals nor is it inconsistent with the  
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1 County's comprehensive plan policies or countywide planning policies related to urban  
2 growth.

3  
4 Due to the programmatic nature of the County's environmental analysis, the County's action  
5 in designating the UGA constituted a non-project action and, as such, greater flexibility is  
6 allowed to achieve compliance with State Environmental Protection Act (SEPA). The Board  
7 concludes that the Final Environmental Impact Statement (FEIS) included a reasonably  
8 thorough discussion of the significant aspects of the probable environmental consequences  
9 of the actions taken to accommodate the projected population growth and its related  
10 environmental impacts. Therefore, Petitioners have not carried their burden of proof to  
11 establish that the County's FEIS failed to comply with the SEPA.  
12

13  
14 The Board finds an inconsistency between the County's comprehensive plan map and the  
15 text of its comprehensive plan and the comprehensive plan's land use designations for the  
16 UGA's URMX zone. The Board also finds a lack of development regulations to implement  
17 the comprehensive plan land use map's designations. However, because this is early in the  
18 planning period, this area is not served by urban services, and the County continues to hold  
19 this area at a density of one unit per five acres, the Board will not grant Petitioners' request  
20 for invalidity at this time.  
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22  
23 **II. PROCEDURAL HISTORY**

24 See Appendix A.  
25

26 **III. PRELIMINARY MATTERS**  
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28 A. City of Bellingham's *Amicus* Brief

29 **Positions of the Parties**

30 The City of Bellingham requests the Board grant it *amicus* status for the following reasons:  
31 (1) the substantial effect of this case's outcome on the City, (2) the City's familiarity with the  
32 issues, and (3) the substantial amount of time and resources the City expended on planning

1 for this area. The City declares that the reason it did not file for intervenor status was  
2 because it believed the City's Resolution No. 2008-03 clearly stated its position. The City  
3 asserts the briefs of Petitioners misrepresent the City's position.<sup>1</sup>

4  
5 Petitioner Petree objects to granting the City's *amicus* status because it shows the City's  
6 pattern of inconsistent action.<sup>2</sup> Petitioners Petree and Wiesen both assert that Bellingham's  
7 adopted Comprehensive Plan represents a legitimate change supported by legitimate  
8 planning and Bellingham Resolution 2008-03 conflicted with the City's adopted planning  
9 documents.<sup>3</sup> Both Petitioners state the City has reversed this action with Resolution 2008-  
10 17, which it passed to settle a challenge to Resolution 2008-03, and that Resolution 2008-  
11 17 stated Resolution 2008-03 did not have any regulatory effect nor did it modify the City's  
12 Comprehensive Plan or land supply analysis.<sup>4</sup>

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14  
15 Petitioners Petree and Wiesen further contend the *amicus* brief unwinds and repudiates a  
16 legitimate settlement with the Petitioners.<sup>5</sup> These Petitioners also claim that allowing the  
17 City to file an *amicus* brief now prejudices the Petitioners who did not have time to build a  
18 case against the City.<sup>6</sup>

## 20 **Board Discussion**

21 WAC 242-02-280 allows persons whose interests are substantially affected by a case  
22 before the Board to request, by motion, *amicus* status. This WAC provision also sets forth  
23 the needed components for such a motion including the applicant's interest, applicant's  
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26 <sup>1</sup> City of Bellingham's Motion Requesting Amicus Status (August 7, 2008) at 2.

27 <sup>2</sup> Petitioner Petree's Response to the City of Bellingham's Amicus Brief at 1.

28 <sup>3</sup> Id. at 2 and Petitioner's Wiesen's Response to City of Bellingham's Motion Requesting Amicus Status at 1  
and 2.

29 <sup>4</sup> Petitioner Petree's Response to the City of Bellingham's Amicus Brief at 2 and Petitioner's Wiesen's  
Response to City of Bellingham's Motion Requesting Amicus Status at 2.

30 <sup>5</sup> Petitioner Petree's Response to the City of Bellingham's Amicus Brief at 3 and Petitioner's Wiesen's  
Response to City of Bellingham's Motion Requesting Amicus Status at 3.

31 <sup>6</sup> Petitioner Petree's Response to the City of Bellingham's Amicus Brief at 3 and Petitioner's Wiesen's  
32 Response to City of Bellingham's Motion Requesting Amicus Status at 3 and 4.

1 familiarity with the issues and scope of the argument presented, specific issues to which the  
2 brief will be directed, and the applicant's reason for believing additional argument is  
3 necessary. The applicant's brief can be filed no later than the deadline for the brief of the  
4 party it supports.

5  
6 The Board agrees that Whatcom County's designation of the Bellingham UGA will have a  
7 substantial effect on the City of Bellingham and the City should be allowed to explain its  
8 position. Bellingham's motion fulfills the conditions set forth in WAC 242-02-280. Further,  
9 the Board does not conclude that granting the City *amicus* status would prejudice the  
10 Petitioners. The City filed its brief on the date that Whatcom County's response brief was  
11 due, so Petitioners were afforded the same amount of time to reply to the City's brief that  
12 they would have had if the City had been granted Intervenor status.

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15 **Conclusion:** Based on the foregoing, the City of Bellingham's Motion for *Amicus* Status is  
16 GRANTED.

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18 B. County's Motion to Strike

19 **Positions of the Parties**

20 Whatcom County moves to strike the issue of whether the County had to "justify in writing"  
21 its decision designating the Bellingham UGA in the manner required by RCW  
22 36.70A.110(2). Whatcom County contends this issue was not identified in the Petitions for  
23 Review (PFR), the Prehearing Order, or the briefs for the Hearing on the Merits (HOM).  
24 Whatcom County asserts that it is unfair for Petitioners to be granted review of this issue by  
25 first presenting it at the HOM and in fact, RCW 36.70A.290(1) precludes the Board from  
26 considering an issue presented in this manner.<sup>7</sup>

27  
28  
29 Petitioner Wiesen responds that Whatcom County first raised the issue of whether the  
30 County had "justified in writing" its decision on the Bellingham UGA by arguing that the  
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<sup>7</sup> Motion to Strike Argument at 2.  
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1 *Thurston County*<sup>8</sup> decision abrogated the necessity to “show your work” and in doing so,  
2 merged the need to “show your work” with the written justification requirement in RCW  
3 36.70A.110(2).<sup>9</sup> Further Wiesen claims this issue was addressed in his brief when arguing  
4 whether Whatcom County was required to justify its use of a “safety factor” that reduced the  
5 City’s safety factor.<sup>10</sup>  
6

7 Petitioner Caitac joins in Petitioner Wiesen’s Brief.<sup>11</sup>  
8

### 9 **Board Discussion**

10 The Board agrees with both of Petitioners’ arguments. Petitioners raised the issue of  
11 whether the County had shown its work in regard to the land capacity analysis and the  
12 market factor in their PFRs. In briefing, Petitioners have pointed out the differences  
13 between the County’s and the City’s land capacity analysis. In both of these instances, the  
14 Board finds that Petitioners sufficiently raised the issue of whether its decision on  
15 Bellingham UGA’s designation needed to be “justified in writing” pursuant to RCW  
16 36.70A.110(2). Additionally, when the County raised *Thurston County* as a defense of  
17 Petitioners’ “show their work” argument, the “justified in writing” issue was placed before the  
18 Board. Further, during Board questions, the Board itself raised and discussed with the  
19 parties the “justified in writing” issue.  
20  
21

22  
23 **Conclusion:** Based on the foregoing, the County’s Motion to Strike is DENIED.  
24

## 25 **IV. BURDEN OF PROOF**

26 For the purposes of board review of the comprehensive plans and development regulations  
27 adopted by local government, the GMA establishes three major precepts: a presumption of  
28 validity; a “clearly erroneous” standard of review; and a requirement of deference to the  
29 decisions of local government.  
30

31 \_\_\_\_\_  
32 <sup>8</sup> *Thurston County v. WWGMHB*, Docket No. 80115-1, at 29 (Aug. 14, 2008, En Banc).

<sup>9</sup> Petitioner Wiesen’s Response to County’s Motion to Strike at 8 and 6.

<sup>10</sup> *Id.* at 7.

<sup>11</sup> Petitioner Caitac’s U.S.A. Corp’s Response to Whatcom County’s Motion to Strike Argument at 1 and 2.

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

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

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

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

12 In order to find the County's action clearly erroneous, the Board must be "left with the firm  
13 and definite conviction that a mistake has been made." *Department of Ecology v. PUD1*,  
14 121 Wn.2d 179, 201, 849 P.2d 646 (1993).  
15

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

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

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

1 **V. ISSUES TO BE DISCUSSED**

2 This matter challenges Whatcom County’s adoption of Ordinance No. 2008-003  
3 (Ordinance), which amended the Whatcom County Comprehensive Plan Map, Title 20  
4 Zoning Map, and the Urban Fringe Subarea Plan. Petitioners raise a total of 23 issues.  
5 The discussion of these issues in Petitioners’ briefs do not necessarily follow the order listed  
6 in the Prehearing Order. Petitioners Petree, Caitac, and Wiesen join in each others’ briefs.  
7

8 The challenges to Ordinance 2008-003 fall into these general categories:  
9

- 10 • Public participation,
- 11 • Accommodating projected growth through its designation of the Bellingham UGA,
- 12 • Bellingham’s land capacity analysis,
- 13 • “Show Your Work” regarding its land capacity analysis,
- 14 • Inconsistency of the designation of the Bellingham UGA with the Urban Fringe  
15 Subarea Plan (UFS) Plan, Whatcom County Comprehensive Plan, the Bellingham  
16 Comprehensive Plan, and Whatcom County’s Countywide Planning Policies  
17 (CWPPs), and
- 18 • Appropriate analysis through the State Environmental Policy Act (SEPA) of lands  
19 added to the UGA.

20 The complete text of each issue statement appears in the discussion below.

21 **VI. DISCUSSION OF THE ISSUES**

22 A. Public Participation and Docketing

23 **1. Public Participation**

24 **Issue 1:** Did the County fail to comply with the public participation process required by  
25 RCW 36.70A.020(11), RCW 36.70A.035, RCW 36.70A.070, and RCW 36.70A.140, in  
26 promulgating the Ordinance? (Wiesen 08-08; Haverstraw Pet/Ord; Caitac 08-12; Petree  
27 Pet/Ord 3.9)

28 **Issue 9(a):** Did the County fail to comply with the sequencing requirements of RCW  
29 36.70A.110, RCW 36.70A.130(2), RCW 36.70A.020, RCW 36.70A.035, RCW 36.70A.070,  
30 RCW 36.70A.140, and RCW 36.70A.290(2), where, inter alia, the County: (a) determined  
31 the Ordinance’s result first and, after doing so, created “facts” and a “record” to support that  
32 result?

The Board will discuss these two issues together.

1 **Positions of the Parties**

2 Petitioner Caitac argues the lack of evidence in the Record of any response to Petitioners'  
3 concerns shows Whatcom County failed to respond to facts that Petitioners and members of  
4 public presented. Caitac claims Whatcom County made its decision on the Bellingham UGA  
5 first as no facts support its pre-ordained position.<sup>12</sup>  
6

7 Whatcom County replies that the Record shows Caitac's pre-judgment claim is not  
8 supported by the Record and the County Council minutes reflect earnest debate on a  
9 myriad of issues.<sup>13</sup>  
10

11 **Board Discussion**

12 Caitac's issue statement contends the County violated the GMA's public participation  
13 requirements set out in RCW 36.70A.140, RCW 36.70A.035, and RCW 36.70A.070 and the  
14 GMA's public participation goal, RCW 36.70A.020(11). For the adoption of comprehensive  
15 plans, development regulations and amendments to development regulations and  
16 comprehensive plans, such as the expansion of the Bellingham Urban Growth Area (UGA),  
17 RCW 36.70A.140 requires the County to establish a public participation program which  
18 provides for early and continuous public participation and denotes specific requirements for  
19 this program. RCW 36.70A.035 requires the County to provide for adequate public notice of  
20 proposed GMA actions. RCW 36.70A.070 provides that GMA actions, like this amendment,  
21 are to be conducted according to the County's public participation program. The pertinent  
22 part of RCW 36.70A.020(11) to this argument states that counties and cities should  
23 encourage the involvement of citizens in the process to develop comprehensive plans and  
24 development regulations. Caitac does not claim that Whatcom County did not follow its  
25 adopted public participation program or failed to give adequate notice. Instead, Caitac  
26 argues the County violated these requirements because it did not respond to the public's  
27 comments and made its decision ahead of the public process.  
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<sup>12</sup> Petitioner Caitac's Prehearing Brief at 6 and 7.

<sup>13</sup> Whatcom County's Response Brief at 66.

1 No provision of the GMA or the County's code is cited by Petitioner to support its position  
2 that the County is required to respond directly or specifically to public comments.<sup>14</sup> What  
3 the GMA requires is for adequate notice to be given, opportunities to comment provided  
4 according to the County's public participation procedures, and that the County make its  
5 decision in accordance with GMA goals and requirements. While many counties and cities  
6 document comments received and their response to them, it is not a requirement of RCW  
7 36.70A.140, RCW 36.70A.035, or RCW 36.70A.070, nor does Caitac cite any provision of  
8 the Whatcom County Code which requires specific response. Even so, while the Record  
9 does not show that the County called out specifically the individual concerns of Caitac, the  
10 minutes of the County Council, especially those of the Planning and Community  
11 Development Committee, show that the County considered and discussed the concerns  
12 raised by these Petitioners.<sup>15</sup>  
13  
14

15 Likewise, the Board does not agree that the Record supports the allegation that the County  
16 made its decision ahead of the public process. In fact, the record supports the County's  
17 response that the County Council debated the recommendation from the Planning  
18 Commission of a zero percent market factor, discussion occurred on the definition of the  
19 market factor versus the safety factor, and debate took place on the range of the safety  
20 factor the County should adopt, including support for Bellingham's choices.<sup>16</sup>  
21  
22

23 Further, the GMA also does not give the Board authority to probe the thought processes of  
24 local decision makers. As this Board has stated:

25           The Board has the authority to decide whether the County follows their established  
26           process, whether their decision was within the alternatives considered by the public,  
27           and whether their decision was consistent with the GMA.<sup>17</sup>  
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30 <sup>14</sup> See *Better Brinnon v. Jefferson County*, WWGMHB Case No. 03-2-0007(Final Decision and Order,  
November 3, 2003).

31 <sup>15</sup> Exhibit 1347, Planning and Community Development Committee, June 19, 2007.

32 <sup>16</sup> *Id.*

<sup>17</sup> *Diehl v. Mason County*, WWGMHB 96-2-0023c(Order Denying Petitioner's Request to Supplement the  
Record, April 2,2003) quoted in *James Nelson v. San Juan County*, WWGMHB Case No. 06-2-0024c (Final  
Decision and Order, February 12, 2007) at 43.

1 ...we will review the process by which the ordinance was adopted, as well as the  
2 ordinance itself for consistency with the GMA, but we will not second guess the  
3 motivations of the legislative body.<sup>18</sup>

4 **Conclusion:** Based on the foregoing, Petitioners have not demonstrated that the County  
5 has violated the public participation goals and requirements of the GMA.

## 6 7 **2. Docketing**

8 **Issue 2:** Did the County fail to comply with RCW 36.70A.470, where the County acted via  
9 the Ordinance without complying with docketing requirements and procedures? (Caitac 08-  
10 12; Petree Pet/Ord)

### 11 **Positions of the Parties**

12 Petitioner Caitac argues the Ordinance was not coordinated with other proposed County  
13 plan revisions in violation of RCW 36.70A.470 and Whatcom County Code (WCC)  
14 20.10.030 and 20.10.040 that require the batching of proposed amendments for  
15 consideration once each year.<sup>19</sup>

16  
17  
18 The County responds that RCW 36.70A.470(2) requires the County to develop a procedure  
19 to allow citizens and others to suggest comprehensive plan and development regulations  
20 and that the County should consider suggestions for amendments on an annual basis. The  
21 County points out WCC 20.10.040 which establishes this docketing process and does not  
22 impose a duty for the County Council to consider or adopt amendments simultaneously.<sup>20</sup>

23  
24 In its Reply brief, Caitac additionally argues RCW 36.70A.130(2) requires batching of  
25 amendments to prevent planning entities from acting in quasi-judicial roles when they  
26 should be acting in broad policy making roles.  
27

### 28 **Board Discussion**

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32 <sup>18</sup> *James Nelson v. San Juan County*, WWGMHB Case No. 06-2-0024c(Final Decision and Order, February 12, 2007) at 43.

<sup>19</sup> Petitioner Caitac's Prehearing Brief at 43.

<sup>20</sup> Whatcom County's Response Brief at 35.

1 Caitac cites RCW 36.70A.470(2), WCC 20.10.030 and WCC 20.10.040, all of which require  
2 the County to establish a docketing process to enable citizens and interested parties to  
3 suggest amendments to the County's Comprehensive Plan. While Petitioner declares that  
4 the County violated these provisions, evidence offered by the Petitioner shows the County  
5 did conduct the process to decide which amendments to consider for adoption in 2008.<sup>21</sup>  
6

7 Petitioner is correct that RCW 36.70A.130(2) requires that annual amendments to a  
8 comprehensive plan should be considered concurrently so that the cumulative effect of the  
9 various proposals can be ascertained. However, the Board cannot consider this argument  
10 for two reasons. First, the issue statements in the Petition for Review and the Prehearing  
11 Order do not allege a violation of RCW 36.70A.130(2). The Prehearing Order establishes  
12 the issues that the Board will review and Petitioners were given the opportunity to review  
13 and revise their issue statements and submitted them to the Board.<sup>22</sup> The Board did not  
14 change the issue statements and gave the Petitioners another week after the Prehearing  
15 Order was issued to object or suggest corrections. Caitac did not respond. Second, a  
16 violation of RCW 36.70A.130(2) was first raised in Caitac's Reply Brief. The Board will not  
17 consider arguments that were not included in the Prehearing Order.  
18  
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20  
21 **Conclusion:** Caitac has not carried its burden of proof in demonstrating that Whatcom  
22 County has violated RCW 36.70A.470(2) as they pertain to docketing.  
23

24 B. Failure to enhance park and recreational facilities

25 **Issue 4:** Does the Ordinance fail to comply with RCW 36.70A.020(9) by failing to enhance  
26 recreational opportunities and develop parks and recreation facilities? (Haverstraw Pet/Ord  
27 3.1)  
28

29 **Positions of the Parties**

30 Petitioner Haverstraw states that Caitac has plans to develop a master planned community  
31 which would include a state-of-the-art youth soccer complex upon this area's inclusion in the  
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<sup>21</sup> Exhibit 1376.

<sup>22</sup> Prehearing Order at 4.

1 Bellingham UGA. Haverstraw contends the Record establishes a substantial need for such  
2 a complex, strong community support, and that this type of complex cannot be built as part  
3 of infill development. Haverstraw further argues the County failed to consider RCW  
4 36.70A.020(9), when it rejected the City's recommendation to include this area within  
5 Bellingham's UGA.<sup>23</sup>  
6

7 The County maintains Haverstraw's arguments fail for several reasons. First, inadequate  
8 factual support exists that a youth soccer complex cannot be built absent adding Caitac's  
9 property to the UGA. According to the County, the only fact in the record is a letter from  
10 Haverstraw asserting this. Second, the County says Haverstraw does not address the  
11 presence of other large acreages in the designated UGA under single ownership, such as  
12 all of Queen Mountain and most of King Mountain. Finally, the County argues that Goal 9  
13 does not require expansion of the UGA for construction of a soccer complex if UGA  
14 expansion is not otherwise necessary to accommodate the 20-year growth forecast.<sup>24</sup>  
15  
16

### 17 **Board Discussion**

18 The GMA contains goals to guide the development of comprehensive plans and  
19 development regulations. RCW 36.70A.020(9), the open space and recreation goal of the  
20 GMA, includes the direction to "enhance recreational opportunities.. and develop parks and  
21 recreation facilities". The challenged Ordinance adopted an expansion of the Bellingham's  
22 UGA. The implementation of RCW 36.70A.020(9) applies to the entire comprehensive plan  
23 and the entire UGA, not just to this expansion area of the UGA.  
24  
25

26 RCW 36.70A.020(9) is a GMA goal. Consideration of that goal needs to be grounded in the  
27 assessment of the UGA's capital facilities needs for recreational facilities as evidenced in  
28 the Record. Although the evidence in the Record shows a great desire for a soccer  
29 complex and that advocates believe there is a need for such a facility, there is no evidence  
30 in the Record that shows what the County's level of service for soccer fields is, whether a  
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<sup>23</sup> Petitioner's Haverstraw's Prehearing Brief at 1 and 2.

<sup>24</sup> Whatcom County's Response Brief at 60.

1 deficiency for these recreational facilities exist, whether other suitable properties were  
2 considered and rejected, and that there is a need to expand the UGA in this location for just  
3 this single-purpose reason.

4  
5 **Conclusion:** Petitioner Haverstraw has not carried his burden of proof that the adoption of  
6 Ordinance 2008-003 did not comply with RCW 36.70A.020(9).

7  
8 **C. Designation of the Bellingham UGA**

9 All Petitioners<sup>25</sup> to this matter are concerned with how growth is being accommodated in  
10 Whatcom County, specifically as it pertains to the City of Bellingham's UGA. However, the  
11 Board reads the Petitioners' issues and arguments not solely as a concern for  
12 accommodating growth but, also questioning a key structural component within the GMA –  
13 the requirements for the sizing of a UGA. Petitioners' challenge is to Ordinance 2008-003,  
14 which amended the County's Comprehensive Plan Map, Title 20 Zoning Map, and the  
15 Urban Fringe Subarea Plan allowing for a minor expansion of the Bellingham UGA in order  
16 to accommodate the projected population growth. Petitioners' arguments that Whatcom  
17 County's designation of the Bellingham UGA violated the goals and requirements of the  
18 GMA include: (1) the failure of the County to adequately provide for the City's 20-year  
19 allocated population, (2) deficiencies in the County's land capacity analysis, and (3) a failure  
20 of the County to "show its work" for assumptions utilized to size the Bellingham UGA. The  
21 Board's discussion and analysis in regards to the Bellingham UGA relate in whole, or in  
22 part, to the following issues raised by Petitioners:  
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24  
25

26 **Issue 3:** Does the Ordinance fail to comply with RCW 36.70A.100; RCW 36.70A.010;  
27 RCW 36.70A.020(1), (2), (4), (5) and (12); RCW 36.70A.110; RCW 36.70A.115; and  
28 36.70A.210, because it is inconsistent with the requirement that the County and each city

29  
30  
31 <sup>25</sup> Petitioners are Wiesen, Caitac, and Petree. Petree's assertion focuses not on the County's action in sizing  
32 the UGA but on the GMA's requirement for GMA planning to be consistent, specifically the County in regards  
to its own County-wide Planning Policies (CWPP) which required the County to size its UGA in a manner  
consistent with the City's adopted land supply analysis. Thus, as to the specific issue of consistency, Petree's  
assertions will be addressed *infra*. See pages 54-55.

1 within it accommodate the growth that is projected to occur for the planning period?  
2 (Wiesen 08-08; Petree Pet/Ord; Haverstraw Pet/Ord; Caitac 08-12)

3 **Issue 5:** Does the Ordinance fail to comply with RCW 36.70A.010, and RCW  
4 36.70A.020(1) and (2), because the County failed to examine the extent to which the  
5 urban growth occurring within the County has been located within incorporated and  
6 unincorporated city UGAs as well as unincorporated County UGAs, and in failing to utilize  
7 best available data in determining how much land in each land use category will be  
8 needed to accommodate growth projected to occur in Bellingham and Whatcom County  
for the planning period? (Petree Pet/Ord 3.5)

9 **Issue 6:** Did the County fail to comply with RCW 36.70A.010; RCW.70A.020 (1), (2), (3),  
10 (4), (5), (11) and (12); RCW 36.70A.070; RCW 36.70A.110; RCW 36.70A.320; and RCW  
11 36.70A.3201, where the County failed to consider and comply with GMA goals and  
12 requirements as part of its purported review conducted in connection with the Urban  
13 Fringe Subarea Plan, and the resulting Ordinance's findings and conclusions are  
14 conclusory, confusing, unsupported, internally inconsistent, incorrect, and inadequate,  
15 and where the likely result of the Ordinance is the very uncoordinated and unplanned  
16 growth and sprawl the GMA was promulgated to avoid? (Caitac 08-12; Petree Pet/Ord  
3.1)

17 **Issue 7:** Does the Ordinance fail to comply with RCW 36.70A.110 because it  
18 incorporates an incomplete and erroneous land capacity review and evaluation? (Wiesen  
19 08-08; Haverstraw Pet/Ord; Petree Pet/Ord,)

20 **Issue 9(c):** Did the County fail to comply with the sequencing requirements of RCW  
21 36.70A.110, RCW 36.70A.130(2), RCW 36.70A.020, RCW 36.70A.035, RCW  
22 36.70A.070, RCW 36.70A.140, and RCW 36.70A.290(2), where, inter alia, the County:  
23 c. failed to timely appeal Bellingham's Ordinance 2006-06-058 adopting Bellingham's  
24 2006 Comprehensive Plan, and unilaterally and without analysis, changed  
25 Bellingham's adopted land-supply methodology, disregarding this Board's decision  
26 in *Macomber, et al. v. City of Bellingham*, Case No. 06-2-0022, where this Board  
held that the City's land-supply analysis was valid? (Caitac 08-12)

27 **Issue 10:** Has the County failed to "show its work" in making the assumption that  
28 adequate capacity to accommodate projected urban growth exists with no UGA  
29 expansion beyond that contemplated in Ordinance No. 2008-003, in violation of RCW  
30 36.70A.010; RCW 36.70A.100; RCW 36.70A.110; RCW 36.70A.115; and RCW  
31 36.70A.020(1)(2)(4)(5) and (12)? (Wiesen 08-08; Haverstraw Pet/Ord Petree Pet/Ord 3.6;  
Caitac 08-12)

32 **Issue 16:** Did the County fail to comply with GMA sequencing requirements, including RCW  
36.70A.110, as well as countywide planning policy C-2, by failing to timely appeal the City of

1 Bellingham's 2006 adoption of the City's comprehensive plan and thereby tacitly accept the  
2 City's comprehensive plan and obligating itself to provide the UGA called for in the City's  
3 comprehensive plan? (Petree Pet/Ord 3.13) (in pertinent part)<sup>26</sup>

4 **Issue 17:** Does the Ordinance fail to comply with RCW 36.70A.070 in that it fails to:  
5 a. appropriately consider the land-supply needs of the County and its cities and  
6 urban growth areas (UGA), including land-supply needs for housing, economic  
7 development, and environmental protection; and  
8 b. consider the potential impacts of the Ordinance on other neighboring  
9 jurisdictions like Skagit County? (Wiesen 08-08; Haverstraw Pet/Ord; Caitac 08-  
10 12; Petree Pet/Ord 3.7)

11 **Issue 19:** Does the Ordinance fail to comply with RCW 36.70A.010, RCW 36.70A.020(11),  
12 and RCW 36.70A.110, where the County unilaterally altered Bellingham's land-supply  
13 methodology and analysis? (Caitac 08-12; Petree Pet/Ord)

### 13 **Position of the Parties**

14 Wiesen combines argument as to Issues 3, 7, and 10 and his argument is three-fold,  
15 alleging the Ordinance violates the GMA by (1) failing to size the Bellingham UGA to include  
16 areas and densities sufficient to permit the urban growth projected to occur in the  
17 succeeding 20 years; (2) altering the Bellingham UGA that the City adopted without showing  
18 the County's work; and (3) by relying on a land supply analysis that is fatally deficient.<sup>27,28</sup>

19 Wiesen recognizes that although "subjective factors may be included in the UGA decision,  
20 such policy choices must be made in a measurable way and with sufficient documentation  
21 as to the rationale"<sup>29</sup> and it is the Record which "must provide support for the actions the  
22 jurisdiction has taken."<sup>30</sup> Wiesen contends the Record lacks facts, documentation, and  
23 analysis to support the County's decision; fails to explain or support the County's altering of  
24 the City's Land Supply Methodology Report, or in other words, its land capacity analysis  
25  
26

27  
28 <sup>26</sup> Compliance with CWPP C-2 is addressed infra at 54-55.

29 <sup>27</sup> Wiesen HOM Brief, at 1. This Petitioner's Brief focuses solely on Issues 3, 7, and 10 (see Footnote 43, at  
30 11).

31 <sup>28</sup> Petitioner Haverstraw adopts by reference the HOM Brief of Wiesen. *Haverstraw HOM Brief*, at 1.  
32 Haverstraw provides no additional arguments in regards to UGA sizing and growth accommodation, rather the  
Haverstraw HOM Brief focuses on the provision of recreational facilities.

<sup>29</sup> Wiesen HOM Brief, at 13 (citing to *Tacoma v. Pierce County*, CPSGMHB Case No. 94-3-0001, FDO (July 5,  
1994).

<sup>30</sup> Id. (citing to *McHugh v. Spokane County*, EWGMHB Case No. 05-1-0004, FDO (Dec. 16, 2005) and *Kitsap  
Citizens v. Kitsap County*, CPSGMHB Case No. 00-3-0019c, FDO (May 29, 2001)).

1 (LCA); and fails to support the County's "untenable" land capacity assumptions.<sup>31</sup> Wiesen  
2 sets forth several premises to support his position including: (1) the County failed to appeal  
3 the City's LCA and, as a result, the assumptions contained within the City's LCA are  
4 presumed valid and the County was precluded from taking a different approach and  
5 departing from the findings of this LCA;<sup>32</sup> (2) the County failed to provide a LCA of its own  
6 which would "justify the ordinance;"<sup>33</sup> and (3) the County altered various City assumptions,  
7 including the safety factor and planned densities and, therefore, impermissibly usurped the  
8 City's prerogative to plan within its own city limits.<sup>34</sup>  
9

10  
11 Caitac combines briefing on Issues 3, 5, 6, 9(c) and 10 and contends that with Ordinance  
12 2008-03 the County is encouraging sprawl and failing to serve the GMA's purpose of  
13 planning to accommodate growth.<sup>35</sup> Caitac's contentions are similarly founded, asserting:  
14 (1) the County's actions encourage sprawl by failing to accommodate growth; (2) the County  
15 erroneously concluded Bellingham's UGA did not need to be expanded despite evidence  
16 that the UGA was grossly undersized to accommodate projected residential and economic  
17 growth; and (3) the County erroneously rejected the City's land supply methodology without  
18 any justification.<sup>36</sup> However, Caitac's arguments differ from Wiesen's in two ways. First,  
19 Caitac focuses on an assumed requirement that the County was required to consider and  
20 balance the goals of the GMA and to document this consideration.<sup>37</sup> Second, Caitac asserts  
21 that the County's action does not comply with the GMA's goals including those pertaining to  
22 sprawl, housing, economic development, and the environment.<sup>38</sup>  
23  
24  
25

26  
27 <sup>31</sup> Wiesen HOM Brief, at 14.

28 <sup>32</sup> Wiesen HOM Brief, at 15-16.

29 <sup>33</sup> Wiesen HOM Brief, at 28.

30 <sup>34</sup> Wiesen HOM Brief, at 29-45.

31 <sup>35</sup> Caitac HOM Brief, at 3.

32 <sup>36</sup> Caitac HOM Brief, at 1-2. This Petitioner's Brief references Issues 1,2, 3, 5, 6, 9, 10, 11, 12, 13, 15, 17, 18, and 22. Caitac adopts by reference the arguments and discussions contained in the HOM Briefs of Wiesen, Haverstraw, and Petree as they pertain to Issues 3, 4, 5, 7, 8, 9a-9c, 10, 14, 15, 16,17, 18, 19, 20, 21, 22, and 23. *Caitac HOM Brief*, at 3.

<sup>37</sup> Caitac HOM Brief, at 5-7.

<sup>38</sup> Caitac HOM Brief, at 8-20.

1 In response, Whatcom County notes that it did not “build its own land supply analysis from  
2 scratch” but “for the most part, it utilized the land supply analysis that had been prepared by  
3 the City.”<sup>39</sup> The County contends the GMA gives the authority and responsibility to set  
4 UGAs to counties and therefore, the City’s LCA is not binding on the County and may be  
5 modified.<sup>40</sup> The County responds to what it sees as four arguments presented by the  
6 Petitioners: (1) past growth rates outside of the Bellingham UGA do not prove the UGA is  
7 too small;<sup>41</sup> (2) the City’s LCA did not result in a recommendation for an “overly restrictive”  
8 UGA;<sup>42</sup> (3) the selected “safety factor,” although modified from that of the City’s, was  
9 reasonable and within the bounds of the County’s discretion;<sup>43</sup> and (4) the County’s LCA  
10 assumes realistic infill assumptions for the City of Bellingham.<sup>44</sup>  
11

12  
13 Briefs in support of Whatcom County were filed by Intervenors Futurewise and McShane.<sup>45</sup>  
14 Like Whatcom County, Futurewise asserts that (1) the power to designate UGAs lies with  
15 the County and, thus, the City’s LCA does not create a directive the County must follow;<sup>46</sup>  
16 and (2) the County’s assumptions, specifically the “safety factor” were reasonable and  
17 reflect a traditional “land availability factor.”<sup>47</sup> McShane submits argument regarding (1) the  
18 “safety factor”<sup>48</sup> and (2) land supply constraints and sprawl.<sup>49</sup>  
19

20  
21 As noted *supra*, the City of Bellingham was granted *amicus* status in this proceeding and  
22 submitted briefing supporting the County’s decisions regarding the City’s UGA boundaries.<sup>50</sup>  
23  
24

25  
26 <sup>39</sup> Whatcom County Response, at 10.

27 <sup>40</sup> Whatcom County Response, at 47-49.

28 <sup>41</sup> Whatcom County Response, at 21-23.

29 <sup>42</sup> Whatcom County Response, at 24-38.

30 <sup>43</sup> Whatcom County Response, at 38-41.

31 <sup>44</sup> Whatcom County Response, at 41-47.

32 <sup>45</sup> Futurewise Response Brief in Support of Whatcom County (Futurewise Response); Dan McShane’s  
Response Brief to Petree, Wiesen, and Caitac USA (McShane Response).

<sup>46</sup> Futurewise Response, at 7-12.

<sup>47</sup> Futurewise Response, at 13-21.

<sup>48</sup> McShane Response, at 2-4.

<sup>49</sup> McShane Response, at 5-6.

<sup>50</sup> City of Bellingham’s Amicus Brief (Bellingham Amicus).

1 The City recognizes that its LCA was a recommendation and that the County has discretion  
2 to modify the market factor utilized by the City.<sup>51</sup>

3  
4 Petitioners filed Reply briefs. Within these replies, Petitioners responded to the facts and  
5 arguments raised by the County and reiterated those arguments previously made in the  
6 opening briefs.<sup>52</sup>

7  
8 **Board Discussion**

9 *Background – Designating UGAs*

10 The arguments presented by all parties pertain to the overarching concept of  
11 accommodating growth and relate to the appropriate size of the Bellingham UGA – a UGA  
12 which must be sized to accommodate growth expected to occur within the 20-year planning  
13 horizon. Thus, a basic understanding of the requirements for UGAs is necessary to fully  
14 comprehend the issue before the Board. Under the GMA planning framework, jurisdictions  
15 were first required to designate natural resource lands and critical areas.<sup>53</sup> Once these  
16 lands were designated, the GMA then required counties to designate UGAs within which  
17 urban growth was to be encouraged and outside of which growth could occur only if it was  
18 not urban in nature.<sup>54</sup> The GMA defines “Urban Growth Areas” to be:  
19  
20

21 [T]hose areas designated by a county pursuant to RCW 36.70A.110.<sup>55</sup>

22 And, the GMA further provides that “Urban Growth” is:

23 [G]rowth which makes intensive use of land for the location of buildings,  
24 structures, and impermeable surfaces to such a degree as to be incompatible  
25 with the primary use of land for the production of ... [agricultural products,  
26 forestry, mineral extraction] ... [or] rural uses, rural development, and natural  
27 resource lands designated pursuant to RCW 36.70A.170.<sup>56</sup>

28  
29  
30 <sup>51</sup> Bellingham Amicus, at 6-11.

31 <sup>52</sup> Wiesen Reply Brief; Caitac Reply Brief.

32 <sup>53</sup> RCW 36.70A.170; See *Redmond v. Central Puget Sound GMHB*, 136 Wn.2d 38 (1998).

<sup>54</sup> RCW 36.70A.110(1).

<sup>55</sup> RCW 36.70A.030(19).

<sup>56</sup> RCW 36.70A.030(18).

1 The GMA states that each city within a county must be included within a UGA but a UGA  
2 may also include unincorporated areas if those areas are characterized by urban growth or  
3 are adjacent to areas already characterized by urban growth.<sup>57</sup> A definition of  
4 “characterized by urban growth” has been provided, with this phrase meaning:

5 [L]and having urban growth located on it, or to land located in relationship to  
6 an area with urban growth on it as to be appropriate for urban growth.<sup>58</sup>  
7

8 The size of the UGA is based on the GMA’s requirement to include areas and a range of  
9 densities and uses, including greenbelts and open spaces, sufficient to permit the urban  
10 growth projected to occur for the succeeding 20-year period based on growth management  
11 population projections produced by the Office of Financial Management (OFM).<sup>59</sup> The  
12 GMA also provides that when determining the size of a UGA, a reasonable land market  
13 supply factor may be utilized and local circumstances may be considered in arriving at this  
14 market factor determination.<sup>60</sup> Recently, the Supreme Court provided clarity and further  
15 guidance as to the size of a UGA when the Court held:  
16

17  
18 ... [A]lthough the GMA does not explicitly limit the size of a UGA, to give  
19 meaning to the market supply factor provision and in light of the GMA goal of  
20 reducing sprawl, we hold *a county’s UGA designation cannot exceed the*  
21 *amount of land necessary to accommodate the urban growth projected by*  
22 *OFM, plus a reasonable land market supply factor.*<sup>61</sup>  
23

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24 <sup>57</sup> RCW 36.70A.110(3). The GMA reiterates urban growth should be located in UGAs and establishing the  
25 following hierarchy for location:

26 *First*, in areas already characterized by urban growth that have adequate existing public facility and  
27 service capacities to serve such development;

28 *Second*, in areas already characterized by urban growth that will be served adequately by a  
29 combination of both existing public facilities and services and any additional needed public facilities  
30 and services that are provided by either public or private sections; and

31 *Third*, in the remaining portions of the urban growth area. RCW 36.70A.110(3).

32 <sup>58</sup> RCW 36.70A.030(18).

<sup>59</sup> RCW 36.70A.110(2).

<sup>60</sup> *Id.*

<sup>61</sup> *Thurston County v. WWGMHB*, Docket No. 80115-1, at 29 (Aug. 14, 2008, En Banc) (Emphasis added).

The Court was addressing a previous holding by the Court of Appeals in *Diehl v. Mason County 94 Wn. App. 645 (1999)*, where the *Diehl* Court found the OFM population numbers set the minimum and maximum size of the UGA, essentially upholding previous Board cases which concluded the meaning of “sufficient” amounted to a not too little, not too much approach to GMA sizing.

1 Thus, the GMA sets forth the framework for delineating the boundaries of a UGA.

2  
3 *Authority to Designate UGAs*

4 1. Whatcom County Designates UGAs

5 It is Whatcom County that has the task of designating a UGA.<sup>62</sup> Therefore, in order to  
6 comply with the GMA and its stated duty, Whatcom County is required to size the  
7 Bellingham UGA to accommodate that portion of the OFM population allocated to the City  
8 and, if necessary, it may utilize a reasonable market factor. Nevertheless, coordination and  
9 consultation between a county and its cities underlies many aspects of the GMA, including  
10 the designation of UGAs. Therefore, the GMA requires counties to consult with each of its  
11 cities and attempt to reach agreement as to the location of the UGA.<sup>63</sup> However, if  
12 agreement cannot be reached, the County may designate a UGA as it deems appropriate  
13 so long as it justifies in writing its actions.<sup>64,65</sup> Thus, it is clear from the GMA that the  
14 ultimate responsibility for designating a UGA is that of Whatcom County and this Board has  
15 previously so held as is noted in *Building Association of Washington v. Clark County*:  
16  
17

18 RCW 36.70A.110(2) places the ultimate responsibility of sizing urban growth  
19 areas with the County. This includes the designation of the urban growth  
20 boundary and assumptions used to base the size of the UGA.<sup>66</sup>

21 **Conclusion:** The language of the GMA is clear – the ultimate authority to size UGAs  
22 resides with counties and, therefore, any assertions set forth within arguments presented in  
23 relationship to Issues 3, 5, 6, 7, 10, 17, or 19 that purport otherwise are not supported by  
24 the plain language of the GMA.  
25

26  
27  
28 <sup>62</sup> RCW 36.70A.110(1): Each county ... shall designate an urban growth area or areas ...

29 <sup>63</sup> RCW 36.70A.110(2). The Board notes that this provision addresses the initial designation of UGAs.

30 However, the Board finds and concludes these same provisions apply to future alterations of a UGA boundary.

31 <sup>64</sup> RCW 36.70A.110(2).

32 <sup>65</sup> See *Harader et al v. City of Winlock*, WWGMHB Case No. 06-2-0007, Final Decision and Order (Aug 30, 2006) (City has no ability or duty under the GMA to set or alter UGA boundaries); *Wells v. Whatcom County*, WWGMHB Case No. 97-2-0030 (Nov. 5, 1997)(County not a city has responsibility for UGA boundary); *Reading et al v. Thurston County*, WWGMHB Case No. 94-2-0019 (March 25, 1995).

<sup>66</sup> *Building Association of Washington v. Clark County*, WWGMHB Case No. 04-2-0038c (Amended Final Decision and Order, November 23, 2005) at 21.

1           2.       City of Bellingham Submits a Recommendation

2 One of the elements of the Petitioners' argument is that the City of Bellingham conducted an  
3 extensive analysis and review of its land use needs which resulted in a recommended size  
4 for the Bellingham UGA but, because the County did not challenge this action of the City,  
5 the County was precluded from altering the UGA in a manner which differed from that  
6 presented by the City.<sup>67</sup> The Board disagrees.  
7

8 Under the GMA it is the responsibility and duty of Whatcom County to establish UGA  
9 boundaries. Although the GMA does require a county to consult with its cities as to  
10 boundary lines, as noted above, cities have no power, in and of themselves, to delineate  
11 UGAs. Cities are only capable of submitting a recommendation for the location of the UGA  
12 and filing any objection with Washington State Department of Community, Trade and  
13 Development (CTED) over the UGA designation or filing an appeal before the Board.<sup>68</sup>  
14  
15

16 Further, the record shows that the City clearly viewed its adoption of its expanded UGA as a  
17 recommendation to the County.<sup>69</sup> Although initial disagreement did occur between the  
18 County and the City as to the sizing of the UGA, the City ultimately accepted the County's  
19 delineations of the UGA boundaries, as demonstrated by City of Bellingham Resolution  
20 2008-03.<sup>70</sup>  
21

22  
23 **Conclusion:** It is clear from RCW 36.70A.110(2) that Whatcom County has been given the  
24 authority to designate a UGA and was not bound to the recommendation presented by the  
25 City of Bellingham. In addition, the fact that the County didn't appeal the City's  
26 determination does not transform the City's recommendation into a binding mandate the  
27  
28

29 <sup>67</sup> See e.g. Wiesen HOM Brief, at 15; Wiesen Reply Brief, at 4. In Wiesen's Reply Brief, the petitioner  
30 attempts to clarify his argument to not be one that suggests a county can only designate a UGA as proposed  
31 by a city but, rather his argument was that when a county bases its UGA designation on a LCA prepared by a  
32 city, it must have first appeal that plan if a county seeks to change factors utilized.

<sup>68</sup> RCW 36.70A.110(2); RCW 36.70A.280(1); .280(2)(a).

<sup>69</sup> Exhibit 133, Bellingham Comprehensive Plan at LU-24, Exhibit 179, Resolution 2006-15 at 4. See also City  
of Bellingham *Amicus* Brief.

<sup>70</sup> Also see Bellingham *Amicus* Brief, at 3-4.

1 County was forced to follow. Nor does this alter the County's ultimate authority to  
2 designate UGAs.<sup>71</sup> The Record shows that the initial disagreement between the County  
3 and the City was resolved and the City ultimately accepted the County's delineations of the  
4 UGA boundaries *prior to* the County's adoption of the challenged Ordinance. Assertions set  
5 forth by Petitioners as to Issues 3, 5, 6, 7, 9(c), 10,16, 17, and 19 in this regard are not  
6 supported by the clear language of the GMA.  
7

8 *"Showing Your Work"*  
9

10 With Issue 10, Petitioners contend Whatcom County has failed to "show its work" in making  
11 the assumption that adequate capacity to accommodate projected urban growth exists  
12 given the UGA expansion authorized by Ordinance 2008-003. All Petitioners, whether via  
13 their own arguments or by incorporating the arguments of fellow Petitioners, asserted the  
14 County failed to justify how it came to its decision when sizing the Bellingham UGA.<sup>72</sup> The  
15 underpinning for this assertion is the County's reliance on a land supply methodology report  
16 prepared by the City of Bellingham which recommended a larger UGA than was ultimately  
17 adopted by the County, with the County modifying some of the assumptions without,  
18 according to Petitioners, showing why these modifications were done. In response to this  
19 assertion, the County appears not to dispute that it should demonstrate how it sized the  
20 UGA and sets forth its land capacity analysis process.<sup>73</sup>  
21  
22

23 Based on the statutory framework and the procedural guidelines established by Washington  
24 State Department of Community Trade and Economic Development (CTED), the Growth  
25

---

26 <sup>71</sup> The Board does not agree with Petitioner Wiesen that the decisions in the May 31, 2005 Final Decision and  
27 Order in *Irondale v. Jefferson County*, WWGMHB Case No. 04-2-0022 and March 12, 1995 Final Decision and  
28 Order in *Sky Valley v. Snohomish County*, CPSGMHB Case No. 95-1-0068c (Final Decision and Order, March  
29 12, 1996) are applicable here and do not support the position that the County needed to appeal the City's  
30 adoption of its land supply analysis. Likewise, Petitioner Wiesen misconstrues the August 28, 2007, Order  
31 Finding Compliance in *Macomber v. City of Bellingham*, WWGMHB Case No. 06-2-0022 in which he claims  
32 the Board upheld the City's land capacity analysis. In that decision, the Board found the City of Bellingham  
had remedied the previous inconsistencies between the level of service that it had established in its park  
element and its capital facilities element, based on its land capacity analysis but did not rule on assumptions  
Bellingham used for its recommendations on sizing its UGA.<sup>71</sup>

<sup>72</sup> See *e.g.*, *Petree HOM Brief*, at 13 and *Caitac HOM Brief*, at 37.

<sup>73</sup> See County Response Brief, at 9-47.

1 Boards have concluded that the GMA requires counties to designate UGAs which include  
2 areas and densities sufficient to permit the OFM projected twenty-year population growth  
3 and, in doing so, the County may utilize a reasonable market factor which respects local  
4 circumstances. In order to analyze whether the County has properly designated the UGA,  
5 all three Growth Management Hearings Boards have historically required a record which  
6 contains supporting documentation of these decisions – an evidentiary record that has been  
7 termed “Show Your Work”.  
8

9  
10 Less than a week prior to the Hearing on the Merits in this matter and the same day  
11 Petitioners’ Reply briefs were due, the Supreme Court issued its decision in *Thurston*  
12 *County v. Western Washington Growth Management Hearings Board (Thurston County)*  
13 which addressed the “Show Your Work” requirement as it relates to the market factor.<sup>74</sup>  
14 The question related to Issue 10 then becomes whether the Board’s “Show Your Work”  
15 requirement was ever authorized by the GMA or, as Petitioners to this matter asserted at  
16 oral argument, the Court’s holding in *Thurston County* did not abrogate the requirement but  
17 rather the case stands for the proposition that the County must support its actions in the  
18 record below to prevent *post hoc* analysis. A similar assertion was recently before the  
19 Board in *Panesko, et al. v. Lewis County*, in which the Board explained:<sup>75</sup>  
20

21 The phrase “show your work” was first used by the Central Puget Sound  
22 Growth Management Hearings Board to describe the explicit documentation of  
23 factors and data used by counties when undertaking the sizing of UGAs.<sup>76</sup>  
24 Because UGA sizing relies primarily on mathematical calculations and  
25 numerical assumptions, the Board concluded that such a showing of work was  
26 required in order to demonstrate the analytical rigor and accounting that  
27 supported the sizing and designation of UGAs; without which both the Board  
28 and interested citizens would have no criteria against which to judge a  
29

30 <sup>74</sup> *Thurston County v. WWGMHB*, Docket No. 80115-1 (Aug. 14, 2008 En Banc).

31 <sup>75</sup> *Panesko, et al v. Lewis County*, WWGMHB Case No. 08-2-000, at 7-10, Order on Reconsideration (Sept.  
32 11, 2008)(Internal Footnote Citations retained, Emphasis in Original).

<sup>76</sup> *Association of Rural Residents v. Kitsap County*, CPSPGMHB Case No. 93-3-0010, Final Decision and  
Order, at 35 (1994). The Eastern Washington Growth Management Hearings Board has also adopted this  
requirement – see *Knapp, et al v. Spokane County*, EWGMHB Case No. 97-1-0015c, Final Decision and  
Order (1997).

1 County's UGA delineation.<sup>77</sup> This requirement was subsequently adopted by  
2 this Board, however, it has since been clarified that requiring the record  
3 support a jurisdiction's actions does not amount to "justification" nor does it  
4 result in a shifting of the burden; the burden remains on the petitioner to  
5 demonstrate the analysis was clearly erroneous.<sup>78</sup>

6 The Board recognizes that, as with all legislative enactments, comprehensive  
7 plans and development regulations are presumed valid upon adoption.<sup>79</sup>  
8 However, a presumption is not evidence; its efficacy is lost when the opposing  
9 party adduces *prima facie* evidence to the contrary.<sup>80</sup> Therefore, the  
10 presumption of validity accorded to legislative enactments is not conclusive  
11 but rebuttable. In order to overcome the presumption, a petitioner must  
12 persuade the Board that the jurisdiction's action was clearly erroneous and to  
13 do so it must present clear, well-reasoned legal argument supported by  
14 appropriate reference to the relevant facts, statutory provisions, and case law  
15 which establishes that the GMA's requirements have not been met. Once a  
16 petitioner has overcome the presumption, the responding jurisdiction must  
17 then present evidence to contradict a petitioner's allegations.<sup>81</sup>

18 The Board recognizes the Supreme Court's holding that a requirement for the  
19 County to identify and prospectively justify its market factor in its  
20 comprehensive plan distorts the presumption of validity afforded to such  
21 enactments. **Thus, this Board finds that a local jurisdiction planning  
22 under the GMA is not required to explicitly identify or set forth a  
23 prospective justification for a market factor within its comprehensive  
24 plan.** However, the Board does not read the Court's holding in *Thurston  
25 County* as transforming the presumption of validity into a conclusive

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26 <sup>77</sup> *Futurewise et al v. Lewis County*, WWGMHB Case No. 06-2-0003, Final Decision and Order (2006); See  
27 coordinated cases *Klein v. San Juan County*, WWGMHB Case No. 02-0008, *Ludwig et al v. San Juan County*,  
28 WWGMHB Case No. 05-2-0019c, *Campbell et al v. San Juan County*, WWGMHB Case No. 05-2-0022c,  
29 Compliance Order/Final Decision and Order (2006); *Master Builders Association v. Snohomish County*,  
30 CSPGMHB Case No. 01-3-0016, Final Decision and Order (2001); *Hensley, et al v. Snohomish County*,  
31 CSPGMHB Case No. 03-3-0009c, Final Decision and Order (2003); *McAngus Ranch, et al v. Snohomish  
32 County*, CSPGMHB Case No. 99-3-0017, Final Decision and Order (2000).

<sup>78</sup> See coordinated cases *Abenroth v. Skagit County*, WWGMHB Case No. 97-2-0060c and *Skagit County  
Growthwatch v. Skagit County*, WWGMHB Case No. 07-2-0002, Final Decision and Order (2007)(citing to *Port  
Townsend v. Jefferson County*, WWGMHB Case No. 94-2-0006, Final Decision and Order (1994)); See also  
*Hensley, et al v. Snohomish County*, CSPGMHB Case No. 03-3-0009c, Final Decision and Order (2003).

<sup>79</sup> RCW 36.70A.320(1).

<sup>80</sup> *Bates v. Bowles White & Co*, 56 Wn.2d 374, 378 (1960) (citing *Kay v. Occidental Life Ins. Co.*, 28 Wn. (2d)  
300, 183 P. (2d) 181 (1947); *Gardner v. Seymour*, 27 Wn. (2d) 802, 180 P. (2d) 564 (1947)).

<sup>81</sup> *Wells v. WWGMHB*, 100 Wn. App. 657, 661 (2000).

1 presumption. The presumption of validity is rebuttable and remains as such.  
2 This very fact was noted by the Supreme Court when it stated:<sup>82</sup>

3 *Once a petitioner challenges the size of a county's UGA, the county*  
4 *may explain whether the difference between supply and demand is*  
5 *due to a land market supply factor or other circumstances. If the*  
6 *county asserts a land market supply factor was used in designating*  
7 *the UGA boundaries, the petitioner may argue the factor employed*  
8 *was clearly erroneous and unreasonable based on the facts in the*  
9 *record...*

10 Therefore, the purpose and function of the Board's "show your work"  
11 requirement is, and in this Board's view has always been, a demonstration by  
12 the County upon challenge of the facts and evidence supporting its action in  
13 response to a petitioner's *prima facie* case. There is no distortion of the  
14 presumption of validity or a shifting of the burden; the presumption is  
15 rebuttable by evidence and legal argument for which the County must present  
16 contrary evidence from the Record. Without having the ability to review  
17 supporting evidentiary documentation, the Board's ability to determine whether  
18 a jurisdiction has complied with the GMA would be irretrievably compromised.  
19 Therefore, the Board is not asking for the County to demonstrate it has  
20 complied with the GMA rather it is only requiring the County respond to  
21 assertions made by the petitioner that the County's actions were non-  
22 compliant with the GMA.

23 The Board notes that unlike the matters before the Supreme Court in *Thurston County* and  
24 the Board in *Lewis County*, the "work" requested to be "shown" by the Petitioners in this  
25 case does not pertain to just the County's determination of the market factor utilized but also  
26 to other land use capacity methodologies/assumptions which allegedly differ from the City's.

27 **Conclusion:** As to Petitioners' position in Issue 10 that Whatcom County was required to  
28 "Show its Work," the Board finds that upon a proper challenge to the validity of a UGA  
29 delineation, the County's Record must contain an analytical analysis for assumptions  
30 utilized to make a UGA determination. That is, the County needs "to show its work" in  
31 developing its assumptions in order for a proper evaluation by the public and the Board of  
32

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<sup>82</sup> *Thurston County v. WWGMHB*, Case No. 80115-1, at 32 (2008) (In relevant part, internal citations omitted, emphasis added).

1 whether or not the County's action in delineating the UGA complies with the GMA. Here,  
2 Petitioners have set forth a *prima facie* case contending that the Bellingham UGA is  
3 inappropriately sized and, therefore, Whatcom County's Record must show the needed  
4 analysis. The determination as to whether or not the County has actually "Shown its Work"  
5 is discussed below.  
6

### 7 *Land Capacity Analysis*

8 As noted above, all Petitioners raise issues<sup>83</sup> pertaining to the adequacy of the County's  
9 Land Capacity Analysis. At the heart of the required analysis for determining the  
10 appropriate size of the UGA is a Land Capacity Analysis (LCA)<sup>84</sup> in which the County  
11 determines if a UGA has sufficient capacity to absorb the projected growth. The LCA is a  
12 critical mechanism for the sizing of a UGA because it is utilized to determine how much  
13 urban land is needed. It is prospective – looking forward over the coming 20 years to see if  
14 there is enough land within the UGA to accommodate the growth that has been allocated to  
15 the area. However, part of this determination of how much land is available is filled with  
16 assumptions or "educated guesses" that lack absolute certainty and this uncertain nature  
17 was artfully explained to the Bellingham City Council by the Assistant City Attorney:  
18  
19

20 The level of detail should not be misinterpreted as meaning that the land supply  
21 analysis is a series of precise calculations resulting in an absolute correct result.  
22 Many of the calculations are based on assumptions about how land will develop over  
23 the next twenty years. These assumptions are a required part of the analysis, but  
24 ultimately are an educated attempt to predict the future behavior of property  
25 owners.<sup>85</sup>

26 This lack of precision permeates the entire process because the assumptions are largely  
27 qualitative, reach into the distant future, and reasonable people can disagree about them.  
28 Here, Petitioners have challenged the County's determination as to the size of the  
29

30 <sup>83</sup> Issues 3, 5, 7, and 17.

31 <sup>84</sup> The term Land Capacity Analysis (LCA) will be utilized by the Board. The document can go by a variety of  
32 names – Land Supply Analysis, Land Quantity Analysis, Urban Land Analysis, Land Supply Methodology  
Report – but no matter what the document is called it serves the same purpose – to review the supply and  
demand of land in order to accommodate growth.

<sup>85</sup> Exhibit 1302, April 10, 2006 Memo from Alan A. Marriner to Bellingham City Council.

1 Bellingham UGA, presenting their interpretation of facts and legal arguments which assert  
2 the County failed to show why it “selectively adopted and rejected components of the City’s  
3 Land Supply Methodology Report without any of its own independent analysis or  
4 verification”<sup>86</sup> and, in some regards, assert that the assumptions utilized by the City of  
5 Bellingham are more viable than those utilized by the County. Petitioners have set forth a  
6 *prima facie* challenge and it is now up to the County to respond to these assertions in order  
7 to support its decision in sizing the Bellingham UGA.  
8

9  
10 *Bellingham UGA “Market” Factor*

11 What is ultimately under challenge is the County’s LCA and whether, with this analysis, the  
12 County has *sized* the Bellingham UGA to accommodate the urban growth projected to occur  
13 in the next 20 years, which is its ultimate duty and responsibility under the GMA. As noted  
14 *supra*, Whatcom County was not required to utilize the LCA prepared by the City nor was it  
15 required to adopt the UGA boundaries as recommended by the City. Now that the sizing of  
16 its UGA has been challenged and Petitioners have presented fact and argument which  
17 sufficiently question the County’s action, the County needs to provide the analysis which  
18 supports the sizing of the City’s UGA so that the Board may review that action for  
19 compliance with the GMA.  
20

21  
22 Petitioners’ challenge in this matter pertains primarily to assumptions made in regards to the  
23 “safety factor” or “market factor” and also includes assumptions related to planned densities,  
24 the lack of zoning regulations, the amount of land needed for parks and public facilities,  
25 particularly stormwater facilities, and the future availability of vacant or re-developable  
26 lands. The Board reiterates that its role is not to determine whether one assumption is  
27 better than another assumption or to substitute its judgment for that of the County. Rather,  
28 its role is to ensure that the County’s actions comply with the goals and requirements of the  
29 GMA, in this case – that the Bellingham UGA is sized to accommodate its allocated  
30

31  
32  

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<sup>86</sup> Wiesen HOM Brief, at 14.  
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1 population projections. The adopted projected population growth allocated to the  
2 Bellingham UGA for the 2002-2022 planning period is 31,600 people.<sup>87</sup>

3  
4 Pursuant to RCW 36.70A.190, the Department of Community, Trade, and Economic  
5 Development (CTED) has been authorized to adopt technical assistance and procedural  
6 criteria in order to facilitate the adoption and implementation of compliant comprehensive  
7 plans and development regulations. CTED's procedural guidelines for designating UGAs  
8 are found at WAC 365-195-335, with these guidelines reiterating the GMA's dictate that  
9 counties are the final arbitrator of a UGA's size and boundary. As for technical assistance,  
10 not only does CTED provide assistance and guidance in planning and achieving effective  
11 solutions to managing growth and development, but in order to perform this function CTED  
12 has prepared several resource documents for jurisdictions to utilize when designating UGAs  
13 including: *Issues in Designating Urban Growth Areas: Part I: Providing Adequate Urban*  
14 *Land Supply, Art & Science in Designation Urban Growth Areas, Part II: Suggestions for*  
15 *Criteria and Densities, and Buildable Lands Program Guidelines.*<sup>88</sup>

16  
17  
18 A Summary of UGA Land Supply was prepared by Whatcom County.<sup>89</sup> The Board sees this  
19 document as representative of the County's LCA. The LCA indicates the total acreage for  
20 vacant and underdeveloped lands (both in regards to residential land as well as commercial  
21 and industrial), subtracts for critical areas, infrastructure, and public uses, and then reduces  
22 the net buildable acreage by a "market availability factor" (16 percent for residential, 25  
23 percent for commercial/industrial) to arrive at the net available buildable acreage. Based  
24 on this analysis, the Bellingham UGA has 1,205 acres of net available residential lands and  
25 710 acres of net available commercial/industrial lands. The LCA utilizes an overall planned  
26  
27

28  
29 <sup>87</sup> Ordinance 2008-003, at 5 (Finding of Fact 31).

30 <sup>88</sup> The first two resource documents were both drafted by the CTED in 1992, the third in 2000. The parties to  
31 these proceedings rely primarily on *Part I* of the CTED guidance documents which is found as Index 131.  
32 Pursuant to WAC 242-02-660, the Board takes Official Notice of CTED's 2000 document. The Board  
recognizes that Whatcom County is not a "Buildable Lands" County as provided for in RCW 36.70A.215.  
However, the County selected to base its urban land supply analysis on the updated information contained  
within CTED's Buildable Lands document.

<sup>89</sup> Index 152, Appendix D.

1 density of 11 dwelling units/acre (du/acre) and an average household size of 2.10  
2 persons/du which results in the UGA capability of providing residential capacity for a  
3 population of 31,624, a surplus in population accommodation of 23 acres. As for  
4 commercial/industrial land, the LCA establishes a projected need of 694 acres, resulting in a  
5 surplus of 16 acres.  
6

7 A key contention of the Petitioners in this matter is the use of a “safety factor.” CTED’s  
8 1992 Methodology was relied on by the City of Bellingham and the use of a safety factor is  
9 supported by the Petitioners. This methodology sets forth six steps for providing adequate  
10 land supply in the UGA.<sup>90</sup> This six-step system permits adjustments to the total land  
11 acreage based on “suitability,” “availability,” and “safety”. Although a realistic approach, the  
12 Board notes this methodology was established *prior* to the Legislature’s adoption of EHB  
13 1305 which amended the GMA to include the provision of a reasonable land market supply  
14 factor and, therefore, if the Legislature had wished for cities and counties to utilize such a  
15 variety of factors to adjust the available land supply as was addressed by the CTED  
16 publication it would have amended the GMA accordingly.<sup>91</sup> This, the Legislature did not do  
17 and, therefore, by the GMA’s own terms, a UGA may be adjusted only to reflect a  
18 reasonable land market supply factor.  
19  
20  
21

22 In addition, the Board reads the GMA as authorizing the use of a reasonable land market  
23 supply factor which is intended to reduce the total net buildable acreage of land within a  
24 UGA by a set percentage to account for the fact that not all buildable land will be developed  
25

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26  
27 <sup>90</sup> CTED’s 1992 documents contains 6 steps: 1: Identify vacant, partially-used, and under-utilized land (Gross  
28 Available Land Supply); 2: Determine development limitations (e.g. critical areas); 3: Determine lands for  
29 public purpose (e.g. infrastructure such as right-of-way, utilities; schools, parks); 4: Determine lands suitability  
30 for development (e.g. social/economic reasons – historic lands, resource lands, market constraints); 5:  
31 Determine lands availability for development (e.g. withheld from development for investment or personal  
32 reasons); and 6: Provide additional land area where uncertainty is high (e.g. a safety factor to account for  
inherent uncertainties).

<sup>91</sup> See EHB 1305 (1995 c 400 (partial veto), passed April 20, 1995). Pursuant to WAC 242-02-660, the Board takes Official Notice of this legislative enactment. The Board assumes the Legislature is well informed on growth management issues and thus, the Legislature was aware of CTED’s 1992 Methodology at the time of amendment.

1 within the 20-year planning horizon. Whether a jurisdiction calls this adjustment a land  
2 availability factor, a market factor, a safety factor, or a cushion – it serves the same  
3 purpose. The Board recently articulated the purpose of a market factor in *Panesko v. Lewis*  
4 *County*, explaining:<sup>92</sup>

5 A market factor represents the estimated percentage of net developable acres  
6 contained within a UGA that, due to fluctuating market forces, is likely to  
7 remain undeveloped over the course of the 20-year planning period. The  
8 market factor recognizes that not all developable land will be put to its  
9 maximum use because of such things as owner preference, cost, stability,  
10 quality, and location and, therefore, the GMA permits jurisdictions to include  
11 within a UGA not only the area necessary to accommodate projected growth  
12 but allows as a —safety factor - the market factor – expressed as a  
percentage related to total acreage.

13 Support for this interpretation can be seen in the Supreme Court’s recent holding in  
14 *Thurston County* when the Court noted:<sup>93</sup>

15 A market factor represents the estimated percentage of net developable acres  
16 contained within a UGA that, due to idiosyncratic market forces, is likely to  
17 remain undeveloped over the course of the twenty-year planning cycle.

18 Thus, Petitioners’ contention that Bellingham was permitted to use a “land availability factor”  
19 intended to reflect that not all developable land will be available for development and a  
20 “safety factor” intended to provide for an excess of land so as to assure affordability is not  
21 supported by the GMA. To size the UGA in excess of the acreage required to  
22 accommodate the urban growth projection based upon any other reduction factor other than  
23 market factor is simply not authorized by the GMA.  
24

25  
26 If a jurisdiction chooses to utilize a market factor, it must be reasonable. In dispelling the  
27 Boards’ historical 25 percent baseline market factor, the Supreme Court stated that the  
28 reasonableness of a market factor depends on local circumstances and may therefore vary  
29 from jurisdiction to jurisdiction.<sup>94</sup> According to the Record, Whatcom County utilized a 10  
30

31  
32 <sup>92</sup> *Panesko, et al v. Lewis County*, WWGMHB Case No. 08-2-0007c, FDO at 19-20 (Aug. 15,2008).

<sup>93</sup> *Thurston County*, Docket 80115-1, at 31.

<sup>94</sup> *Thurston County*, Docket 80115-1, at 32.

1 percent market factor in comparison to the 25 percent “combined” market factor utilized by  
2 the City of Bellingham.<sup>95</sup> Petitioners assert that the City’s factor is supported by a  
3 comprehensive analysis which included consideration of downtown infill development,  
4 waterfront redevelopment, second home purchasers, and ability to extend utilities to enable  
5 annexation and that similar analysis was not performed by the County, resulting in an  
6 arbitrary selection of a market factor. What Petitioners misconstrue is that all assumptions  
7 utilized when developing a LCA are, by their very nature, “educated guesses” and as such  
8 are open to varying analysis.  
9

10  
11 The City of Bellingham reduced the land supply estimates within the UGA based on two  
12 premises – a “land availability factor” and a “safety factor.” The “land availability factor” is  
13 based on an overall effective reduction of eight percent in land availability due to a loss of  
14 infill capacity due to the following factors including: (1) underdeveloped land within the City  
15 in areas where the zoning does not provide for minimum densities (2) resistance by property  
16 owners to development, (3) the likelihood of partially developed property to re-develop, and  
17 (4) the low densities being achieved in the URMX zone currently.<sup>96</sup> Similarly, the other  
18 portion of the City’s combined market factor – labeled as a “safety factor” - is based on a  
19 list of “uncertainties and unknowns” such as (1) the length of time clean-up of the waterfront  
20 might take, (2) the amount of downtown re-development, (3) competition for land in the  
21 downtown area for residential, commercial, and industrial uses, (4) speed of development  
22 in the UGA, and (5) a need to lessen constraints on available land to keep land more  
23 affordable and provide for more housing choice.<sup>97</sup> Varying percentages were utilized to  
24 reduce the available land supply, ranging from zero percent to 25 percent, to reflect these  
25 uncertainties without any quantitative analysis to show how the City determined these  
26 percentages. The Board sees the City’s market factor percentage as simply a rough  
27  
28  
29  
30

31  
32 <sup>95</sup> The combined effect of the City’s two factors – 8 percent for “land availability” and 17 percent for “safety” –  
totaling 25 percent. *See Index 141*, at 6-10.

<sup>96</sup> Exhibit 141, at 6-7.

<sup>97</sup> *Id.* at 8-10.

1 assumption in much the same way the Petitioners see the County's market factor as  
2 speculative.

3  
4 Within the Ordinance's Findings, the County noted that allowing for a reduction in land  
5 based on historic underbuilding understates the land's future development potential. The  
6 Ordinance also notes a basis for the County's differences with other City assumptions  
7 including (1) the City's ability to sustain its level of service for parks; (2) the County's  
8 assumption that existing public facilities could accommodate a higher percentage of new  
9 growth; (3) single-family homes on existing lots and ADUs would need less of a land  
10 reduction factor for storm water facilities than the City assumed; and (4) the County's  
11 assumption that more partially developed land and units in "Old Town" would develop. Even  
12 so, the Ordinance confirmed listed uncertainties, such as the level and speed of  
13 development, did warrant a "modest" market factor which the County determined was 10  
14 percent.<sup>98</sup> The Record shows the County's consideration of varying percentage levels for  
15 the market factor<sup>99</sup> and the Board, giving due deference to the County's discretion in  
16 planning decisions as required by RCW 36.70A.320 and .3201, does not conclude that a 10  
17 percent market factor is unreasonable in light of local circumstances relevant to the  
18 Bellingham UGA.  
19  
20

21  
22 In making its assumptions, the City looked to its past performance and existing regulations.  
23 In contrast, the County looked prospectively to the future potential for land within the UGA if  
24 the City were to include additional sprawl reducing measures such as minimum densities in  
25 residential neighborhoods, provisions to allow for accessory dwelling units,<sup>100</sup> the prohibition  
26 of allowing single-family dwelling units in multi-family zones, and restructuring of the City's  
27 TDR program to achieve higher densities – all of which were actions recommended to  
28

29  
30 \_\_\_\_\_  
<sup>98</sup> Exhibit 1432 at 8 and 9 (Finding of Facts 47 and 49).

31 <sup>99</sup> See e.g. Index 1241 presenting three scenarios with market factors ranging from zero percent to 25 percent;  
Index 1243; Index 1244; Index 1246; Index 1330.

32 <sup>100</sup> RCW 36.70A.400 requires that cities with a population of over 20,000 to include provisions for accessory  
dwelling units in their development regulations. It is not unreasonable, therefore, to expect that Bellingham to  
do this.

1 Bellingham by CTED in order to increase City densities and address capacity shortfalls.<sup>101</sup>  
2 At the time of enactment of Ordinance 2008-003, the County recognized that the City of  
3 Bellingham had failed to implement the strategies suggested by CTED<sup>102</sup> and for that  
4 reason, the Petitioners argue, the County cannot rely on them when calculating land needs.  
5 The City's policies also support these kinds of actions.<sup>103</sup>  
6

7 The Board further notes Petitioners' concern over Bellingham's prerogative to plan for the  
8 level of density it desires within the City's borders. However, when raising this concern  
9 Petitioners reference the City's "recommended safety factor" which, according to the City's  
10 own analysis, is not based on permitted densities but rather on unknowns and uncertainties  
11 related to the speed and level of development, both for housing and employment, a trend for  
12 second home purchases, and housing affordability. Although a UGA boundary drawn  
13 smaller than Bellingham may have originally recommended will undoubtedly entail changes  
14 in how the City will accommodate its allocated growth, this does not displace the City's  
15 authority to plan within its borders. Given the GMA's directive to counties to assign UGA  
16 boundaries, it is a statutorily permissible restraint.  
17  
18

19 As the Board has noted *supra*, planning for a UGA is prospective – looking 20 years into the  
20 future. The Ordinance and the EIS note that although Bellingham is the 11th most populous  
21 city in the state, it ranks 26th in density of 44 cities over 20,000.<sup>104</sup> The Ordinance further  
22 notes that the City's current density is 2,741 people per square mile and the City's plan  
23 would increase the density to 3,623 people per square mile, or approximately 5.66 people  
24 per acre.<sup>105</sup> Additionally, the City acknowledged that currently about 40 percent of the UGA  
25 does not have access to a city water and sewer line.<sup>106</sup> County-wide planning policies  
26  
27  
28  
29

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30 <sup>101</sup> Exhibit 1432, Ordinance 2008-003 at 7, Exhibit 1302.

31 <sup>102</sup> Exhibit 1432, Ordinance 2008-003 at 7.

32 <sup>103</sup> Exhibit 141, Bellingham's Comprehensive Plan at F-5 – F-8, LU-29.

<sup>104</sup> Exhibit 1432 at 5.

<sup>105</sup> *Id.*

<sup>106</sup> 179 at 16 (Finding of Fact 65).

1 prohibit development at urban densities until services can be delivered.<sup>107</sup> Further, as noted  
2 *supra*, Bellingham delivered a Resolution to the County *prior* to the County's adoption of the  
3 Ordinance, which clearly stated that Bellingham supported the County's determination to  
4 adopt a smaller UGA than originally recommended.<sup>108</sup> With this City Resolution Bellingham  
5 also committed to considering changes to its plan and development regulations required to  
6 accommodate growth within the City's UGA in the upcoming year after the County's  
7 decision.<sup>109</sup> Therefore, based on the prospective planning aspect of the UGA, the relative  
8 low density currently being achieved in the City of Bellingham, the lack of sprawl reducing  
9 measures in Bellingham's current development regulations, the inability of the City to  
10 deliver urban services to a large portion of the UGA, and the City's commitment to consider  
11 measures to enable the achievement of Whatcom County's assumptions as to the  
12 Bellingham UGA, the Board does not find it clearly erroneous for the County to base its land  
13 capacity assumptions on measures not yet adopted by the City. Further, the City has time to  
14 implement these measures and has made a commitment to consider making these  
15 measures a reality early in the planning period.  
16  
17

18  
19 **Conclusion:** The Board finds and concludes that Whatcom County's selected market  
20 factor is permissible under the GMA, RCW 36.70A.110(2), and is reasonable in light of local  
21 circumstances. Although the County selected a market factor that was less than the one  
22 recommended by the City of Bellingham and advocated by the Petitioners, the County's  
23 action was not clearly erroneous in light of the GMA's directive for Whatcom County to  
24 delineate UGA boundaries which accommodate the 20-year projected population growth.  
25 Therefore, Petitioners have failed to carry their burden of proof that the City's land capacity  
26 analysis does not comply with RCW 36.70A.110 as set forth in Issues 3, 5, 6, 7, and 17.  
27  
28  
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30  
31

32 \_\_\_\_\_  
<sup>107</sup> County Comprehensive Plan at C-7 (CWPP F-12) and 5-2.

<sup>108</sup> Exhibit 1456.

<sup>109</sup> *Id.*

1 In addition, in regards to Petitioners' Issue 10 which alleged that the County failed to "Show  
2 its Work," the Board's review of the County's Land Capacity Analysis and the related  
3 Record, contains the necessary analysis to satisfy the County's duty in this regard.  
4

5 **D. Failure to Consider or Be Consistent with GMA Goals**

6 **Issue 6:** Did the County fail to comply with RCW 36.70A.010; RCW.70A.020 (1), (2), (3),  
7 (4), (5), (11) and (12); RCW 36.70A.070; RCW 36.70A.110; RCW 36.70A.320; and RCW  
8 36.70A.3201, where the County failed to consider and comply with GMA goals and  
9 requirements as part of its purported review conducted in connection with the Urban Fringe  
10 Subarea Plan, and the resulting Ordinance's findings and conclusions are conclusory,  
11 confusing, unsupported, internally inconsistent, incorrect, and inadequate, and where the  
12 likely result of the Ordinance is the very uncoordinated and unplanned growth and sprawl  
the GMA was promulgated to avoid? (Caitac 08-12; Petree Pet/Ord 3.1)

13 In this section, the Board will address whether the County considered and was guided by  
14 Goals 1, 2, 3, 4, 5, and 12 as raised in this issue statement as well as in other issue  
15 statements where violations of RCW 36.70A.020 are alleged. Goal 11 is discussed in the  
16 public participation section *supra*. Although not specifically raised within this issue  
17 statement, the Board notes Goal 9 is discussed in the open space/recreation section *supra*.  
18

19 **1. Consideration of GMA Goals**

20 **Positions of the Parties**

21 Caitac asserts that the Record does not show Whatcom County considered the goals of the  
22 GMA, as required by RCW 36.70A.020, and is supported by various Western and Central  
23 Puget Sound Growth Management Hearings Boards' cases.<sup>110</sup> In response to Caitac's  
24

25 \_\_\_\_\_  
26  
27 <sup>110</sup>Caitac's Prehearing Brief at 7, 41 and 42. To support this assertion, Caitac cites to the CPSGMHB's holding  
28 in *Gutschmidt v. Mercer Island*, Case No. 92-3-0006, and contends this case requires the Record to contain  
29 evidence that the County considered the GMA's goals, repeatedly using the word "documentation" or  
30 contending the Record was devoid of any meaningful discussion. However, in *Gutschmidt* the CPSGMHB  
31 noted that although it supported CTED's recommendation that a CP should include a section addressing the  
32 statutory goals and such a recommendation was a practical one, it was not a mandatory requirement.  
Rather, the Board stated that it "*strongly recommends that the document itself or a part of the underlying  
record contain such a discussion, so that there can be no question that planning goals were 'considered' ...  
whether a local jurisdiction decides to explicitly consider the planning goals in writing remains in the  
jurisdiction's discretion ... whether the planning goals are just mentally considered or discussed in writing, the  
hurdle that the document in question must clear is achieving compliance with the GMA.*"

1 claim that consideration of the goals of the GMA must be reflected in the Record, the  
2 County maintains that the GMA contains no such procedural requirement. The County cites  
3 *Association of Rural Residents v. Kitsap County (Rural Residents)*<sup>111</sup> to support its  
4 argument.<sup>112</sup>  
5

## 6 **Board Discussion**

7 RCW 36.70A.020 states:

8       The following goals are adopted to guide the development and adoption of  
9 comprehensive plans and development regulations of those counties and cities that  
10 are required or choose to plan under RCW 36.70A.040. The following goals are not  
11 listed in order of priority and shall be used exclusively for the purpose of guiding the  
12 development of comprehensive plans and development regulations...

13 In regard to its claim that RCW 36.70A.020 requires the Record to show the County  
14 considered the goals of the GMA, Caitac cites *Berschauer v. City of Tumwater*  
15 (*Berschauer*)<sup>113</sup> and *Whatcom Environmental Council v. Whatcom County (Whatcom*  
16 *Environmental Council)*<sup>114</sup> to support its position. To bolster its position the County cites  
17 *Rural Residents*. *Whatcom Environmental Council* does not specifically address the  
18 question of consideration of GMA goals but rather found Whatcom County out of  
19 compliance because no evidence in the record supported its decision. The Central Puget  
20 Sound Growth Management Hearings Board has been explicit in holding that the Record  
21 need not demonstrate consideration of GMA goals:  
22

23       ...no tangible procedural demonstration will be instituted nor will the Board attempt to  
24 read the collective minds of the County's elected officials or staff to determine  
25 whether they considered the GMA's planning goals...Instead, the ultimate test of  
26 consideration of the goals remains to determine whether the County's actions were  
27  
28  
29

---

30 <sup>111</sup> *Association of Rural Residents v. Kitsap County*, CPSGMHB Case No. 93-3-0010 (Final Decision and  
31 Order, June 3, 1994).

<sup>112</sup> Whatcom County's Response Brief at 71.

<sup>113</sup> *Berschauer v. City of Tumwater*, WWGMHB Case No. 94-2-0002 (Final Decision and Order, July, 1994).

<sup>114</sup> *Whatcom Environmental Council v. Whatcom County*, WWGMHB Case No. 94-2-0009 (Final Decision and  
Order, November, 1994).

1 substantively guided by those goals---whether the actions comply with the planning  
2 goals.<sup>115</sup>

3 In *Berschauer*, this Board said:

4 We analyze Petitioner's assertions on non-compliance in the context of the following  
5 framework. (1) Is the plan the result of considered application of appropriate goals  
6 and requirements of the Act?... (3) Was the deliberation and decision-making process  
7 reasoned? (a) Is the plan supported by reasoned choices based upon appropriate  
8 factors actually contained or considered in the record?<sup>116</sup>

9 The Record before the Board in this matter demonstrates that the subject matter of the cited  
10 GMA goals was before the Whatcom County Council and that discussion occurred. Even  
11 though the County Council did not refer to specific goals, the minutes of the County  
12 Council's Planning and Development Committee show that the County was concerned  
13 about considering the appropriate goals of the GMA when designating a UGA, including  
14 sprawl, affordable housing, housing choice, concurrency for transportation and other capital  
15 facilities, protecting critical areas and conserving resource lands.<sup>117</sup> For example, the  
16 August 8, 2008 minutes of the County's Planning and Development Committee reflect the  
17 issue raised by Caitac in regard to sprawl:  
18

19 McShane asked about development in the County. They are seeing high permit  
20 numbers. He asked if there is information on the numbers of permits that are in  
21 either suburban enclaves or existing urban growth areas. Hart said that they do now  
22 and he will distribute that information.<sup>118</sup>

23  
24 However, as our colleagues at the Central Board noted, the ultimate test of whether the  
25 County considered the goals is in the determination of whether the challenged action was  
26  
27

28  
29 <sup>115</sup> *Rural Residents* at 14 and 15. This decision specifically clarifies the Board's holding in *Gutschmidt* which is  
30 cited by Caitac to assert that the Central Board held that documentation of consideration of GMA goals.

31 <sup>116</sup> *Berschauer* at 3.

32 <sup>117</sup> Exhibit 1347, Planning and Community Development Committee, December 12, 2006, at 9 (housing); June  
19, 2007 at 11 and 12 (economic development); December 1, 2007 at 5, May 1, 2007 at 6-7, May 22, 2007 at  
4 and 5, and May 8, 2007 at 3 (concurrency); May 5, 2007 at 5 (resource lands); May 8, 2007 at 4 and 5  
(transportation); March 3, 2007 at 5 (neighborhood character); May 1, 2008 at 2-5 (environmental protection).

<sup>118</sup> Exhibit 1347, Planning and Community Development Committee, August 8, 2006, at 6 and 7.

1 guided by those goals. The Board's determination as to whether the County's decision was  
2 guided by the goals of the GMA is set forth below.

3  
4 **Conclusion:** The Board finds that although the GMA requires Whatcom County to consider  
5 the enumerated planning goals of RCW 36.70A.020 in order to guide the development of  
6 the Comprehensive Plan and related Development Regulations, nothing in the GMA  
7 requires a specific delineation of such consideration. The Record before the Board clearly  
8 demonstrates the GMA's goals, although not explicitly referenced, were before the County  
9 Council during the process that led to the adoption of Ordinance 2008-03 and deliberation  
10 and contemplation as to the issues related to the goals occurred. The Board further finds  
11 that the consideration of the GMA's goals is ultimately determined by an evaluation as to  
12 whether or not the County's action was guided by the GMA's goals, as required by RCW  
13 36.70A.020. However, the Board concludes that the GMA does not set forth a substantive  
14 requirement for such consideration. Rather the determination as to whether or not  
15 Whatcom County considered the goals is whether their action was guided by the goals as  
16 required by RCW 36.70A.020.  
17  
18

## 19 2. Planning within the Guidance of GMA Goals

20  
21 Caitac attacks the designation of the Bellingham UGA on the grounds that it does not  
22 comply with GMA goals, particularly in relationship to directing growth to urban areas,  
23 sprawl reduction, affordable housing, economic development, and environmental protection  
24 goals. Caitac states this is because the County has essentially adopted the Final  
25 Environmental Impact Statement's (FEIS) Alternative One, the No-action Alternative. Caitac  
26 bases this allegation on Bellingham's lack of adoption of measures to increase infill and the  
27 County's minimal expansion of the UGA. According to Caitac, the FEIS describes the No-  
28 Action Alternative as sprawl-producing, because it will push growth from Bellingham, the  
29 largest employment center, into the unincorporated areas of the County and other county  
30 UGAs, increasing traffic congestion, air pollution, and pressure on resource lands, and  
31  
32

1 threatening critical areas.<sup>119</sup> Caitac supports its argument by pointing out that school district  
2 populations in other parts of Whatcom County are increasing at a greater rate than the  
3 Bellingham School District. Caitac also points to the fact that permits issued between 2003-  
4 2005 numbered 3,319 in unincorporated parts of the County outside of UGAs and  
5 accommodated 5,310 persons, 2.5 percent more than was projected.<sup>120</sup>  
6

7 The County responds that it did not adopt exactly any one of the alternatives set forth in the  
8 FEIS, but says the alternative it adopted was closest to Alternative 4.<sup>121</sup> The County  
9 argues Petitioners cite no sources to show that the UGA's size is driving up land prices or  
10 causing high growth rates in the UGA. The County counters that other reasons could  
11 account for growth outside of UGAs, including the natural attractiveness of those areas,  
12 grandfathered lots in rural areas and resource lands, oversized UGAs elsewhere, failure of  
13 rural zoning and agricultural conservation measures to conserve agricultural land, lack of  
14 minimum densities in city UGAs, and the development of suburban enclaves.<sup>122</sup>  
15  
16

### 17 **Board Discussion**

18 To evaluate whether or not the County complied with GMA goals, the Board needs to  
19 consider how the County complied with GMA requirements that support these goals. As  
20 noted *supra* in the Board's discussion as to the sizing of the Bellingham UGA, the Board  
21 found Whatcom County complied with RCW 36.70A.110, the requirements for designating  
22 UGAs, therefore, it follows that the County most likely complied with RCW 36.70A.020(1)  
23 and ( 2).  
24

25  
26 Below the Board will consider if other evidence presented by Petitioners demonstrates the  
27 Bellingham's UGA designation failed to comply with RCW 36.70A.070(1), (2), (4), and (5).  
28 However, the Board notes no argument raised by Petitioners that challenges the County's  
29 failure to comply with Goal 12, the GMA's concurrency goal, and the issue statements do  
30

31  
32 <sup>119</sup> Petitioner's Caitac's Prehearing Brief at 14 and 15.

<sup>120</sup> Id. at 17 and 18.

<sup>121</sup> *Whatcom County's Response Brief* at 74 and 75.

<sup>122</sup> Id. at 22 and 23.

1 not contain any reference to RCW 36.70A.020(10), the environmental protection goal. As  
2 such, the Board concludes Petitioners have abandoned any claim in relationship to a  
3 violation of Goal 12 and are barred from raising Goal 10 as a violation of this provision of  
4 the GMA was not asserted within Petitioners' issues.

5  
6 RCW 36.70A.020(1) states:

7 Encourage development in urban areas where adequate public facilities and  
8 services exist or can be provided in an efficient manner.

9  
10 RCW 36.70A.020(2) states:

11 Reduce the inappropriate conversion of undeveloped land into sprawling, low-  
12 density development.

13 Caitac argues that because the County essentially adopted Alternative One – No Action  
14 Alternative, which the FEIS states cannot provide for Bellingham's anticipated 20 year  
15 growth, the County's action will promote sprawl. The Board does not view the County's  
16 decision the same way Caitac does. While the County did not adopt Alternative Four in its  
17 entirety, it did not adopt Alternative One - the No-action Alternative. The Bellingham UGA  
18 that the County adopted was based on assumptions which combined aspects of Alternative  
19 Two - the Infill Alternative, with Alternative Four –Infill and Adjusted UGA, by adding some,  
20 but not all of the five-year review areas, and an additional area, in order to accommodate  
21 projected growth. The FEIS advises that Alternative Two meets UGA requirements and it  
22 also shows that Alternative Two causes the least impact on sprawl followed by Alternative  
23 Four.<sup>123</sup> Likewise, the FEIS shows that Alternative Two and Alternative Four had the least  
24 impacts on air pollution, water supply, and other environmental considerations.

25  
26  
27  
28 Additionally, development in compliant UGAs other than the Bellingham UGA does not  
29 constitute sprawl. Whether these UGAs are compliant with the GMA is not before the Board  
30 at this time, and they can be considered appropriate places for urban growth according to  
31 RCW 36.70A.110, and RCW 36.70A.020(1) and (2). Further, while Caitac notes permit data  
32

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<sup>123</sup> FEIS at 2.3, 2.4, 2.6, and 2.9.  
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1 for a three year period of time shows that permits outside the UGA have increased more  
2 than they have inside the UGAs, a County staff report indicates that between 1995 and  
3 2002, 88.3 percent of the County's growth has occurred within city UGAs, while only 11.7  
4 percent has occurred in unincorporated parts of the County, including its two non-municipal  
5 UGAs.<sup>124</sup>  
6

7 Similarly, the Board is not convinced that the data regarding growth in school districts not  
8 associated with the City of Bellingham shows there is a direct link between the size of the  
9 Bellingham UGA and sprawl because of the lack of housing opportunities. The Board  
10 agrees with the County that there are other reasons families with children are choosing to  
11 live in areas not served by the Bellingham School District and that school district boundaries  
12 are comprised of areas that do correspond to UGA boundaries.  
13  
14

15 **Conclusion:** On review of this additional evidence, the Board finds that Petitioners failed to  
16 demonstrate that the size of the Bellingham UGA does not comply with RCW 36.70A.020(1)  
17 and .020(2).  
18

19 *Housing (Goal 4)*

20 **Positions of the Parties**

21 The arguments that Caitac makes about sprawl also apply to its position on housing choices  
22 and housing affordability. Caitac also argues that the County's action reduces the choices  
23 for single-family housing that a larger UGA would have given. Additionally, Caitac and  
24 Wiesen attack the County's assumption on how much land will be available for multi-family  
25 housing and its affordability. Both of these Petitioners base their assertions on (1) the  
26 County's alleged faulty assumption about the waterfront area's capability to be developed  
27 during the planning period due to the time and money it will take to clean up the site's toxic  
28 waste, (2) their contention that the demand for second homes will reduce Bellingham's  
29 multi-family housing supply, and (3) their reliance on the past performance of downtown  
30  
31  
32

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<sup>124</sup> Exhibit 153 at 9.  
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1 housing development and lack of available lots in the downtown area.<sup>125</sup> To buttress its  
2 claim concerning the lack of affordable housing and need to increase land supply to provide  
3 for more affordable housing, Caitac claims that a 2005 report shows that, at that time,  
4 Bellingham had only a three month supply of housing, ranking 43<sup>rd</sup> in the state for housing  
5 supply.<sup>126</sup>

6  
7 Whatcom County replies that its assumption on how to accommodate housing choices and  
8 affordability is based on smaller, more affordable lots and an increase in multi-family  
9 housing.<sup>127</sup> As to the availability of land for multi-family housing in the waterfront and  
10 downtown areas, the County says its agrees that uncertainty about the development of  
11 downtown and the waterfront exists and that is why a 10 percent market factor was utilized  
12 in the County's LCA. The County emphasizes that there will be opportunities to review  
13 these uncertainties as it completes its 10-year update next year and during the required  
14 seven-year review.<sup>128</sup> In regard to second homes, the County maintains that the  
15 percentage used by Petitioners to estimate demand for second homes represents the  
16 demand for second homes countywide, including resort-oriented areas near the water and  
17 the mountains like Blaine, Birch Bay, and Columbia Valley where the demand for second  
18 homes is greater.<sup>129</sup> As for the 2005 housing report indicating a short supply of housing, the  
19 County states that this is a three-month "snapshot in time" and does not relate the supply to  
20 housing prices.<sup>130</sup>

## 21 **Board Discussion**

22 RCW 36.70A.020 (4), the GMA's housing goal, states:

23  
24 Encourage the availability of affordable housing to all economic segments of  
25 the population of this state, promote a variety of residential densities and  
26 housing types, and encourage preservation of existing housing stock.  
27  
28

29  
30 <sup>125</sup> Wiesen's Prehearing Brief at 23 and 24.

31 <sup>126</sup> Caitac's Prehearing Brief at 39.

32 <sup>127</sup> *Whatcom County's Response Brief* at 72.

<sup>128</sup> *Id.* at 40.

<sup>129</sup> *Id.* at 30.

<sup>130</sup> *Id.* at 23.

1 As stated *supra*, the Board views the County's choice for the Bellingham UGA designation  
2 as a combination of Alternative Two-Infill and Alternative Four - Infill and UGA Adjustment.  
3 The Board notes the FEIS concludes Alternative Three, Expansion without Infill, would  
4 have the least impact on housing prices due to a less restricted land supply, but it would  
5 have the most impact on sprawl. The FEIS discusses how Alternative Two could provide  
6 housing on smaller lots and a wide variety of relatively affordable housing types, but also  
7 might have the most impact on housing prices due to more constraint on the land supply.<sup>131</sup>  
8 Alternative Four - Infill and UGA Adjustment option falls in the middle of these alternatives  
9 as far as impacts on housing. The Board acknowledges that the County choice does not  
10 include all the scenarios that Alternative Four analyzed, but notes the County's choice  
11 assumes more infill measures will be adopted and includes less land than the scenarios  
12 analyzed. The FEIS presents a classic GMA dilemma, the difficult responsibility that local  
13 governments face in trying to harmonize GMA goals. That is why the 10-year review of  
14 UGAs and the seven-year review of comprehensive plans are so important, so cities and  
15 counties can weigh this delicate balance.  
16  
17

18  
19 Caitac and Wiesen argue that land supply in the Bellingham UGA does not meet RCW  
20 36.70A.020(4), the GMA's housing goal, as to range of housing choices, particularly for  
21 single-family housing, and does not ensure enough available land and affordable housing  
22 options. For the Board to determine this, it must know what goals the City and County have  
23 set for themselves. Caitac argues the goal of most people is single-family home ownership  
24 and the County's UGA designation will limit that choice. However, the goals that the County  
25 and the City must meet are the goals that they set out in their comprehensive plans. Here,  
26 the goal that is discussed and documented in Bellingham's plan is that two thirds of future  
27 housing needs will be met by multi-family units.<sup>132</sup> Caitac does not point out the City's or  
28 the County's goals for affordability and how the designation of the Bellingham UGA deters  
29 the City or the County from meeting the County's or City's goals.  
30  
31  
32

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<sup>131</sup> FEIS at 2.10 and 2.9

<sup>132</sup> Index 141, Bellingham's Comprehensive Plan, LU-15.

1 Caitac and Wiesen assert the goal Bellingham has set for a mix of housing types is not  
2 possible due to County's faulty assumptions about how quickly the downtown and  
3 waterfront areas will develop and how much land will be available for development in the  
4 downtown area based on past performance. Petitioners do not fault the City for using a 25  
5 percent combined land availability and market factor, but conclude the County's 10 percent  
6 market factor is not realistic.  
7

8 The County and the City differed on how to define this uncertainty. Again, the Board finds  
9 this a case of dueling assumptions about predicting uncertainty in determining future land  
10 supply, where the Board must decide how much weight to give to reality versus possibility  
11 when evaluating the market factor. For instance, until the costs of waterfront clean-up are  
12 known, it is hard to predict how this will affect affordability of waterfront area units and the  
13 relationship to affordability of housing within the County as a whole. The Record shows  
14 eight percent of the housing county-wide is for second homes, and the data included in the  
15 work on Whatcom County's population forecasts recognizes that a large number of second  
16 homes occur in the Birch Bay, Columbia Valley, Blaine, and Point Roberts study areas.<sup>133</sup>  
17 On that basis, the Board is not convinced by Petitioners' contention that the County should  
18 have assumed that eight percent of the new multi-family units built in Bellingham will be  
19 used as second homes thereby decreasing the UGA's housing supply. Further, while the  
20 2005 report on evaluating housing supply is an indicator that housing supply is something  
21 the County should continue to evaluate, it is not proof that Bellingham does not have an  
22 adequate housing supply.  
23  
24  
25

26 **Conclusion:** The FEIS points out that housing affordability and supply will continue to be  
27 an issue that Bellingham and the County will need to vigilantly assess, the progress of  
28 housing development in the downtown and waterfront areas needs the County's and City's  
29 careful scrutiny, and the infill measures assumed by the County and which the City has  
30 committed to consider need to be implemented. Here, Petitioners have failed to  
31  
32

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<sup>133</sup> Exhibits 132 at 4 and 5, and Exhibit 141, Appendix 3 at 9.  
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1 demonstrate how the County and City are falling short of adopted housing goals or how the  
2 County's choice of a market factor for recognizing these uncertainties will not succeed in  
3 providing an adequate and affordable supply for all types of housing over the 20-year  
4 planning period. For these reasons, the Board concludes that Petitioners have not carried  
5 their burden that the designation of the Bellingham UGA does not comply with RCW  
6 36.70A.020(4).  
7

8 *Economic Development*

9 **Positions of the Parties**

10 Caitac contends that Whatcom County has also failed to provide for Bellingham's industrial  
11 and commercial growth because it did not consider the following factors: (1) the loss of  
12 several job producing properties, (2) pressure from residential uses for land due to an  
13 inadequate supply will decrease the City's commercial and industrial land supply, and (3)  
14 the inadequacy of Whatcom County's assumption that tall buildings will accommodate the  
15 City's residential, jobs, and commercial needs during the planning period.<sup>134</sup>  
16  
17

18 The County affirms that its LCA evaluated commercial and industrial land needs and, if the  
19 Board finds its residential LCA compliant, its LCA for Bellingham's commercial and industrial  
20 needs must also be compliant.  
21

22 **Board Discussion**

23 RCW 36.70A.020 (5), the GMA's economic development goal, states:  
24

25 Encourage economic development throughout the state that is consistent with  
26 adopted comprehensive plans, promote economic opportunity for all citizens of  
27 this state, especially for unemployed and for disadvantaged persons, promote  
28 the retention and expansion of existing businesses and recruitment of new  
29 businesses, recognize regional differences impacting economic development  
30 opportunities, and encourage growth in areas experiencing insufficient  
31 economic growth, all within the capacities of the state's natural resources,  
32 public services, and public facilities.

---

<sup>134</sup> Petitioner Caitac's Prehearing Brief at 13 and 14.

1 Caitac's allegations about factors the County and City did not consider when determining its  
2 commercial and industrial land supply needs is another attack on the market or safety  
3 factors that the City and the County used. The record on land available for industrial and  
4 commercial land is somewhat unclear. The City's land supply analysis shows Bellingham  
5 needs 694 acres to accommodate commercial/industrial land. In determining its land  
6 supply, the County's land supply analysis shows it used a 25 percent land availability factor  
7 to account for the uncertainties which reduced the land supply from 1,205 to 710 acres.<sup>135</sup>  
8 A County staff report also has a graph depicting a surplus, albeit small, of commercial and  
9 industrial lands.<sup>136</sup> However, an analysis of the numbers presented in Appendix D shows  
10 that the City has a surplus of 266 acres of available commercial/industrial land, 40 acres  
11 more than Petitioners asserted were needed by the City.  
12

13	Vacant/Undeveloped:	1830 acres
14	Less critical areas/infrastructure/public use:	<550 acres>
15	Net Buildable Acreages	1280 acres
16	Less 25% market factor	<u>&lt;320 acres&gt;</u>
17	Net Available Acreage:	960 acres

18  
19  
20 As with the assumptions about land supply for affordable housing, while the Petitioners  
21 have presented the Board with reasons why they believe that the market factor should be  
22 more, the Board has no way of assessing exactly what the market factor should be and  
23 what percentage should be assigned to this uncertainty. Here the County has accounted for  
24 uncertainty and has shown that it has adequate supply of commercial/industrial land.  
25

26 **Conclusion:** Petitioners have failed to carry their burden of proof that the County's supply  
27 of industrial and commercial land is inadequate, which is the grounds for their argument that  
28 the County is not encouraging economic development. Therefore, on the basis of this  
29  
30  
31  
32

<sup>135</sup> Exhibit 152, Appendix D.

<sup>136</sup> Index 152 – Graph: UGA Net Available Buildable Commercial/Industrial.

1 argument, the Board finds that Petitioners have not demonstrated that the designation of the  
2 Bellingham UGA is not guided by RCW 36.70A.020(5).

3  
4 E. Sequencing/Inconsistencies

5 1. **Failure to adopt policies and regulations to implement**  
6 **Ordinance/Inconsistencies Among the UFS Comprehensive Plan Land Use**  
7 **Map, UFS Plan, and Development Regulations**

8 **Issue 9(b):** Did the County fail to comply with the sequencing requirements of RCW  
9 36.70A.110, RCW 36.70A.130(2), RCW 36.70A.020, RCW 36.70A.035, RCW 36.70A.070,  
10 RCW 36.70A.140, and RCW 36.70A.290(2), where, inter alia, the County (b) adopted the  
11 Ordinance and accompanying maps without the necessary explanatory text or “a plan,  
12 scheme, or design for each” element mandated by the statute, and the necessary  
development regulations and planning policies that would allow their implementation.

13 **Issue 11 (in relevant part):** Does the Ordinance fail to comply with the internal consistency  
14 requirement of RCW 36.70A.070, because it is internally inconsistent as a document and is  
15 also inconsistent with provisions of the County’s comprehensive plan, including:

- 16 a. The text of the Urban Fringe Subarea Plan, which has not been updated...  
17 d. The plan’s land use designations and other measures affecting density. (Wiesen 08-  
18 08; Caitac 08-12; Haverstraw Pet/Ord 3.2; Petree Pet/Ord)

19 **Issue 15:** Does the Ordinance fail to comply with RCW 36.70A.070, RCW 36.70A.100, and  
20 RCW 36.70A.210, where the Ordinance does not include development regulations or  
21 planning policies that would allow its implementation or include a “plan, scheme, or design”  
22 for the same? (Petree Pet/Ord 3.12; Caitac 08-12)

23 The Board will discuss these issues together. Additionally, in their arguments addressing  
24 Issues Three and Ten, Petitioners contend that the County’s land capacity analysis and its  
25 failure to show its work does not comply with RCW 36.70A.115 because Whatcom County  
26 has not adopted development regulations to implement the URMX zone. Further, in  
27 arguments claiming the designation of the Bellingham UGA is not consistent the County’s  
28 comprehensive plan and county-wide planning policies, they raise the issue of  
29 noncompliance with RCW 36.70A.115. The Board will address that part of their arguments  
30 here.  
31

32 **Positions of the Parties**

1 Petitioners' Positions

2 Petitioner Caitac contends that the Ordinance failed to adopt any text, zoning, or  
3 development regulations to implement the Ordinance as required by WAC 365-195-810 and  
4 gives no indication when it will do so. As an example of inconsistencies between the Plan  
5 and text, Caitac points to the Dewey Valley Planning Area map attached to the Ordinance  
6 which shows urban uses and the plan which describes a rural area. As an example of the  
7 failure to adopt development regulations, Caitac's points to the adoption of a URMX 6-12  
8 zone which Caitac alleges doesn't exist in any planning document nor in the zoning code.  
9 Caitac asserts that comprehensive plan or zoning designations without regulations to  
10 implement them are meaningless.<sup>137</sup>  
11

12  
13 Petitioner Wiesen argues the failure to adopt the URMX zoning designations that the  
14 County relies on to accommodate growth in the Bellingham UGA does not comply with  
15 RCW 36.70A.110 and RCW 36.70A.115. Wiesen maintains RCW 36.70A.110 requires that  
16 UGAs include areas and densities sufficient to provide for projected growth and RCW  
17 36.70A.115 requires that "taken collectively...comprehensive plans and/or development  
18 regulations provide sufficient capacity of land suitable for development."<sup>138</sup>  
19

20  
21 County's Position

22 To answer Caitac's claim that failure to amend the text creates inconsistencies in the  
23 Subarea Plan, the County asserts this Petitioner has not established the failure to make  
24 corresponding changes in the text actually created inconsistencies in the Urban Fringe  
25 Subarea Plan (UFS Plan or UFSP). The County says when King and Queen Mountain were  
26 included in the Bellingham UGA, they were given a URMX designation, which is described  
27 in the UFS Plan with policies to support this designation, therefore, it is not necessary to add  
28 new policies.<sup>139</sup>  
29

30  
31  
32 <sup>137</sup> Petitioner Caitac's Prehearing Brief at 25 -27.

<sup>138</sup> Petitioner Wiesen's Prehearing Brief at 41.

<sup>139</sup> Whatcom County's Response Brief at 58 and 59.

1 Responding to Caitac's charge that the lack of development regulations to implement the  
2 URMX zone is a violation of RCW 36.70A.070, the County contends RCW 36.70A.070  
3 requires consistency between the mandatory elements of a comprehensive plan and the  
4 lack of development regulations is not a matter of internal consistency but one of external  
5 consistency. According to the County, external consistency is required to ensure  
6 development regulations are consistent with comprehensive plans and since the zoning  
7 map did not cause a change in comprehensive plan policies, no internal or external  
8 consistency exists.  
9

10  
11 As for the lack of implementing development regulations, the County replies it does not  
12 question that development regulations need to be consistent with the comprehensive plan.  
13 However, the County argues Caitac only cites WAC 365-195-810 which is guidance from  
14 CTED and fails to cite any language from the GMA which sets forth this requirement.  
15

16 The County maintains that since the UGA is expanded to accommodate growth over the 20-  
17 year planning period, the entire UGA does not need to be designed for growth during the  
18 first year of the planning period. The County further argues it has policies that prohibit  
19 urban growth in the UGA before urban services are available and the UFS Plan  
20 contemplates that the URMX zone will be held to a one dwelling unit per five acre density  
21 until urban services are available. The County states that this is not a sequencing issue, but  
22 a question of whether development regulations are consistent with comprehensive plans.<sup>140</sup>  
23  
24

## 25 **Board Discussion**

### 26 *Inconsistencies between the maps and the text*

27 RCW 36.70A.070 states (Emphasis added, in pertinent part):

28 The comprehensive plan of a county or city that is required or chooses to plan under  
29 RCW 36.70A.040 shall consist of a map or maps, and descriptive text covering  
30 objectives, principles, and standards used to develop the comprehensive plan. *The*  
31 *plan shall be an internally consistent document and all elements shall be consistent*  
32 *with the future land use map. ... (emphasis added)*

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<sup>140</sup> Whatcom County's Response Brief at 63 -65.

1 An examination of the maps attached to the Ordinance show that the Comprehensive Plan  
2 Land Use Map and Official Zoning Map are one and same.<sup>141</sup> The Dewey Valley Planning  
3 Area map shows urban uses<sup>142</sup> while the text of the Dewey Valley Planning Area describes  
4 rural uses and does not describe the comprehensive plan and zoning map adopted land use  
5 designations.<sup>143</sup> The lack of text to describe the adopted comprehensive land use map  
6 designations and the inconsistency between the comprehensive land use map and the UFS  
7 Plan does not comply RCW 36.70A.070.  
8

9  
10 The UFS Plan was adopted in 1997<sup>144</sup> and the policies do not appear to have been  
11 amended since then. The UFS Plan is a Sub-Area Plan for Whatcom County's  
12 Comprehensive Plan and, as such, is considered an element of the Comprehensive Plan for  
13 which consistency is required.<sup>145</sup> From an examination of this plan element, the Board  
14 finds that the policies are general and intended to guide the expansion of the Bellingham  
15 urban growth area and apply to that process today as it did in 1997. In the one area that  
16 Caitac calls to our attention - the URMX land use designation - the policies appear to be as  
17 appropriate now as they were then to guide development in the area. However, the  
18 description of the URMX designation calls for a *minimum* of four dwelling units per acre  
19 (dua)<sup>146</sup> while the land use maps adopted by the Ordinance appear to provide for *at least* six  
20 dua.<sup>147</sup> Increasing densities in this zone is one of the critical assumptions in Whatcom  
21 County's land capacity analysis. While USF Plan policies prevent development of this area  
22 until urban services are available, which could be sometime in the future, the UFS Plan  
23 should indicate what density will ultimately be required. The URMX map land use  
24 designation and the text of the UFS Plan are not consistent in this regard.  
25  
26  
27

28  
29 \_\_\_\_\_  
141 Exhibit 1432, Ordinance 2008-003, Exhibit A at Maps 1-16.

30 142 Id. at Map 9.

31 143 Exhibit 128.

32 144 UFS Plan at 1.

145 RCW 36.70A.080(2) provides: A comprehensive plan may include, where appropriate, subarea plans, each of which is consistent with the comprehensive plan.

146 UFS Plan, Policy 2.2 at 11.

147 Exhibit 1432, Ordinance 2008-003, Exhibit A at Maps 1-16.

1            *Lack of County Implementing Regulations*

2 Likewise, the URMX comprehensive plan and zoning map designations appears to allow a  
3 *maximum* density of 10 dwelling units per acre in some URMX zones and 24 units in  
4 others.<sup>148</sup> The County concedes that it has not yet adopted the corresponding zoning  
5 regulations. The County is correct that this is a question of external consistency. A more  
6 appropriate citation for the violation in Petitioners' issue statements would be RCW  
7 36.70A.040 or RCW 36.70A.130(1)(d). Wiesen's references to RCW 36.70A.110 and RCW  
8 36.70A.115 are more on point, although RCW 36.70A.110 requires that the comprehensive  
9 plan show that the land use designations include the densities and intensities to provide for  
10 the UGA's projected population. The comprehensive plan map and the zoning map show  
11 the appropriate densities. Nevertheless, as Wiesen points out, without the appropriate  
12 zoning designations these areas cannot achieve densities on which the County's urban  
13 growth areas rely.<sup>149</sup> Similarly, Caitac is correct that these land use designations cannot be  
14 instituted without corresponding development regulations.  
15  
16

17 The Board recognizes the County most likely has time to institute these changes to the text  
18 and the zoning code before urban development is likely to occur in these areas. Still,  
19 Petitioners make the appropriate argument that an inconsistency exists between the  
20 comprehensive land use map and the Urban Fringe Subarea Plan, and there is a lack of  
21 implementing development regulations. RCW 36.70A.115 requires that the comprehensive  
22 plan and development regulations provide for densities that achieve the UGA's projected  
23 population. In this instance, unlike the Bellingham regulations that the County is relying on  
24 to achieve the densities to accommodate growth in the UGA, the County has control over  
25 instituting these development regulations, and should have done so at the time of plan  
26 adoption. Even so, this failure is not enough to find the designation of the Bellingham UGA  
27 noncompliant, since the County's comprehensive plan and zoning map shows its  
28  
29  
30  
31

32 \_\_\_\_\_  
<sup>148</sup> Exhibit 1432, Exhibit C, WCC 2024.

<sup>149</sup> Petitioner Wiesen's Prehearing Brief at 46.

1 commitment to establish these densities. Nevertheless, the County needs to establish  
2 development regulations to implement the URMX zone.

3  
4 **Conclusion:** Based on the foregoing, the comprehensive plan map and text of the UFS  
5 Plan are not consistent, and thus do not comply with RCW 36.70A.070. The lack of  
6 development regulations to implement the adopted densities in the URMX zone does not  
7 comply with RCW 36.70A.115.  
8

9 **2. Inconsistencies with the Ordinance and Inconsistencies Of the Ordinance with**  
10 **the Whatcom County Comprehensive Plan (CP)**

11 **Issue 11 (in relevant part):** Does the Ordinance fail to comply with the internal consistency  
12 requirement of RCW 36.70A.070, because it is internally inconsistent as a document and is  
13 also inconsistent with provisions of the County's comprehensive plan, including: b. Urban  
14 Fringe Subarea Plan policies 1.01, 1.05, 1.08, 1.11, and 1.12; and c. Comprehensive Plan  
15 goals 2A, 2C, 2R, 2T, 2DD, 4F, 4K, and 9D, and policies 2A-7, 2N-1, 2P-1, 2T-4, 2DD-1,  
16 4F-1, 4F-3, 9D-3, 9D-4, 9D-5, and 4K-2.

17 *Ordinance Inconsistencies*

18 **Positions of the Parties**

19 Petitioner Caitac argues that the Ordinance is inconsistent as a document because it refers  
20 to the ten-year update of UGAs, contains baseless conclusions, merely adopts maps, and  
21 uses illogical recitals to justify minimal expansion of the UGA. Caitac repeats many of the  
22 same arguments that it previously used to attack the County's actions adopted by the  
23 Ordinance which are addressed in other parts of this order.<sup>150</sup>

24  
25  
26 The County responds the GMA does not require internal consistency within the adopting  
27 ordinance.<sup>151</sup>

28  
29 **Board Discussion:**  
30  
31  
32

<sup>150</sup> Petitioner Caitac's Prehearing Brief at 22-25.

<sup>151</sup> Whatcom County's Response Brief at 51 and 52.

1 The Board agrees with the County. RCW 36.70A.070 requires consistency among  
2 elements of the comprehensive plan, not between the provisions of the adopting ordinance.  
3 The Board knows of no provision of the GMA that requires provisions of an adopting  
4 ordinance to be consistent, and the Petitioners fail to direct the Board to any other provision  
5 of the GMA which sets forth such a requirement.  
6

7 **Conclusion:** Caitac has failed to carry its burden of proof that RCW 36.70A.070 requires  
8 the Ordinance itself to comply with the consistency requirements of the GMA.  
9

### 10 3. Inconsistencies with Whatcom County Countywide Planning Policies (CWPPS)

11 **Issue 12:** Does the Ordinance fail to comply with RCW 36.70A.070, RCW 36.70A.080,  
12 RCW 36.70A.115, and RCW 36.70A.210, where the Ordinance is internally inconsistent as  
13 a document, as well as inconsistent with Whatcom County's County-wide Planning Policies;  
14 Urban Fringe Subarea Plan text, goals, and policies; and Comprehensive Plan goals,  
15 policies, and land use designations and other measures that affect density, as these County  
16 documents pertain to matters that include housing, economic development, and protection  
17 of rural lands and the environment? (Petree Pet/Ord 3.2)

18 **Issue 13:** Does the Ordinance fail to comply with RCW 36.70A.210 and RCW 36.70A.100,  
19 because it is inconsistent with countywide planning policies C.1, C.2, C.3.a, C.3.b, C.4, C.5,  
20 D.5, F.11, G.1, H.1 and K.1? (Wiesen 08-08; Haverstraw Pet/Ord 3.3; Caitac 08-12; Petree  
21 Pet/Ord)

22 *Inconsistencies with UFS Policies, Whatcom County Comprehensive Plan Policies,  
23 and Countywide Planning Policies (CWPPs) - Policies for Accommodating Growth*

### 24 Positions of the Parties

25 Caitac argues that because the Ordinance does not accommodate Bellingham's future  
26 growth, it is inconsistent with *all* the goals and policies in the County's plans relating to the  
27 requirement to accommodate future growth and CWPP C. 2.<sup>152</sup>

28  
29 Whatcom responds that all of Caitac's charges of external and internal consistencies  
30 depend on Caitac's assumed premise that the approved UGA expansion does not provide  
31  
32

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<sup>152</sup> Petitioner Caitac's Prehearing Brief at 28 and 29.  
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1 enough land to accommodate expected growth. According to the County, because the UGA  
2 is not undersized, Caitac's arguments must fail.<sup>153</sup>

#### 3 4 **Board Discussion**

5 CWPP C.2 requires:

6       The size of urban growth areas should be consistent with adopted local  
7       policies and capital facilities plans.

8  
9 The Board has found *supra* that Whatcom County, in adopting Ordinance 2008-03, allowing  
10 for a minimal expansion of the Bellingham UGA did accommodate Bellingham's 20-year  
11 projected growth.

12  
13 **Conclusion:** Because the Board has found that the County's designation of the Bellingham  
14 UGA accommodates the City's projected growth, Caitac has failed to demonstrate that the  
15 action adopted by the Ordinance is inconsistent with UFS Plan Policies, Whatcom County  
16 Comprehensive Plan Policies, and CWPP C.2, relating to accommodating Bellingham's  
17 future urban growth.

#### 18 19       *Inconsistencies Related to CWPPs for Providing Affordable Housing and Range of* 20       *Housing Types*

21 Petree does not provide the Board with any specific references to any policies in the UFS  
22 Plan, the County's Comprehensive Plan, or the CWPPs. With the exception of CWPP C.2  
23 which is addressed *supra*, Petree fails to cite a single policy to support the allegation  
24 asserted in Issue 12. The Board concludes that Issue 12 is not only not specific enough for  
25 the Board to analyze, but Petitioners appear to have abandoned the basis for this issue  
26 except for a single CWPP.  
27

28  
29 Caitac claims the minimal expansion of the UGA bars Bellingham from providing affordable  
30 housing and is not consistent with CWPP G.1 through G.4 Caitac maintains the County  
31 was presented with testimony regarding the significant shortage of housing types, especially  
32

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<sup>153</sup> Whatcom County's Response Brief at 58 and 59.

1 affordable and single-family housing, which would occur within the UGA if the Ordinance  
2 was adopted. Caitac alleges the County excluded most of the land from the UGA that the  
3 City was counting on to provide a significant share of its single-family homes and cites its  
4 earlier argument that the lack of development regulations to implement the URMX zone  
5 results in the loss of even more housing units.<sup>154</sup>  
6

7 The County argues that these arguments are just “bootstrap” arguments to Petitioners  
8 previous arguments challenging the County’s LCA.<sup>155</sup>  
9

### 10 **Board Discussion**

11 Petitioners present the Board with a laundry list of CWPPs with which they allege the  
12 County’s action in designating the Bellingham UGA is not consistent. However, the only  
13 policy that is cited in the issue statement that is subsequently discussed in Caitac’s HOM  
14 Brief is CWPP G.1. Therefore, this is the only policy the Board will discuss and the Board  
15 assumes Caitac has abandoned all claims in relationship to the other CWPPs. CWPP G.1  
16 states:  
17

18           The county and the cities shall develop a definition for affordable housing. They  
19           should take actions to ensure a balance of housing and economic growth  
20           consistent with each jurisdictions’ employment base and diverse income levels  
21           and to reduce commuting times and traffic congestion.

22 This issue is similar to the issue discussed *supra* regarding whether the Bellingham UGA  
23 designation complied with RCW 36.70A.020(2), the GMA’s sprawl reducing goal.  
24 Again, in evaluating whether or not the Bellingham UGA is achieving this balance the Board  
25 needs more definition on the goals for balancing housing that the County and City hope to  
26 achieve, and the diversity in income levels that the City and County are trying to  
27 accommodate. In their arguments discussed *supra* regarding how the size of the adopted  
28 Bellingham UGA promotes sprawl and does not encourage urban growth in urban areas,  
29 Petitioners pointed out that Bellingham has most of the employment base and more single-  
30  
31  
32

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<sup>154</sup> Petitioner Caitac’s Prehearing Brief at 29 and 30.

<sup>155</sup> Whatcom County’s Response Brief at 58 and 59.

1 family housing is being dispersed to rural areas and other municipal UGAs. In that  
2 discussion, the Board addressed how Alternative Two - Infill and Alternative Four - Infill  
3 and Adjusted UGA, which the County adopted in part, will make transit more feasible, and  
4 will reduce traffic congestion more than the other alternatives.  
5

6 **Conclusion:** Based on the information in the record, Petitioners have not carried their  
7 burden of proof that the designation of the Bellingham UGA does not comply with CWPP  
8 G.1.  
9

#### 10 4. Inconsistencies with Bellingham's Plan

11 **Issue 17(b):** Does the Ordinance fail to comply with RCW 36.70A.070 in that it fails to:  
12 b. consider the potential impacts of the Ordinance on other neighboring jurisdictions like  
13 Skagit County? (Wiesen 08-08; Haverstraw Pet/Ord; Caitac 08-12; Petree Pet/Ord  
14 3.7)

15 **Issue 18:** Does the Ordinance fail to comply with RCW 36.70A.100, because it is  
16 inconsistent with the City of Bellingham's comprehensive plan? (Wiesen 08-08; Haverstraw  
17 Pet/Ord; Caitac 08-12; Petree Pet/Ord 3.7)

18 **Issue 20:** Does the Ordinance fail to comply with RCW 36.70A.070, RCW 36.70A.100, RCW  
19 36.70A.115, and RCW 36.70A.210, as well as countywide planning policy C-3b, by failing to  
20 provide a consistent means or method to resolve disputes among jurisdictions relating to  
21 inconsistencies in collection and analysis of data? (Petree Pet/Ord 3.10)

#### 22 Positions of the Parties

23 Caitac contends that the designation of the Bellingham UGA adopted by the Ordinance  
24 violates RCW 36.70A.100 which requires coordination and consistency between plans of  
25 cities and counties that share common borders or related regional issues. Caitac's main  
26 contention is Whatcom County's designation of the UGA makes Bellingham's  
27 Comprehensive Plan unworkable because it eliminates the land from the UGA where  
28 Bellingham intended to locate most of its single-family housing. Caitac also argues here  
29 that Bellingham could not unilaterally change the County's safety factor and the County's  
30  
31  
32

1 adopted UGA's lack of a safety factor greatly reduces the amount of land for single-family  
2 housing.<sup>156</sup>

3  
4 Petitioners, at oral argument, said attempts to reconcile the two plans, particularly the land  
5 capacity analysis failed, and that the Resolution adopted by the City should not be  
6 considered because it was adopted by the Bellingham City Council without public  
7 participation.  
8

9 **Board Discussion:**

10 The CWPP C-3b raised by Petitioners states:

11         The determination of each Urban Growth Area shall be based upon a land needs  
12 analysis that incorporates reasonable market factors and addresses the ability of  
13 the area to provide for urban levels of density and services. Urban areas shall  
14 permit a range of densities and uses. In recognition of local diversity, the market  
15 factor and range of densities used may be different among each Urban Growth  
16 Area.

17 RCW 36.70A.100 require the plans of neighboring cities and counties to be coordinated and  
18 consistent. Compliance with RCW 36.70A.115 and RCW 36.70A.070 are discussed  
19 elsewhere in this order. CWPP C-3.b requires Whatcom County's UGAs to be based on  
20 reasonable market factors and the Board has previously determined that the market factor  
21 utilized by Whatcom County in its LCA for the Bellingham UGA was reasonable in light of  
22 local circumstances. The Board has also decided that the County has the authority to  
23 designate UGAs and determine the land capacity analysis. The Record before the Board  
24 shows that Whatcom County and the City of Bellingham made attempts to reconcile their  
25 differing land capacity analyses, but in the end those attempts failed. As discussed *supra*,  
26 the Board determined that the County's process did not violate the process for working with  
27 cities on UGAs described in RCW 36.70A.110, and how before the County adopted the  
28 Ordinance, the City pledged in Resolution 2008-03 to work on the consideration of  
29 measures to implement the County-designated UGA.  
30  
31  
32

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<sup>156</sup> Petitioner's Caitac's Opening Brief at 32 and 33.  
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1 As to Petitioners' assertion that the City's plan and the County's plan are not coordinated  
2 and consistent as RCW 36.70A.100 requires, the Board notes that coordination and  
3 consistency does not equate to plans being mirror images. Therefore, the Board finds that  
4 because the County has the authority to designate UGAs, which has been found compliant  
5 *supra*, it is the City's obligation to modify its plan to ensure consistency. To hold otherwise  
6 would distort the authority given to the County by the GMA in regard to UGA designation  
7 because it would require counties to designate a UGA pursuant to a city's demands.  
8

9  
10 The Board finds no argument that addresses consistency with other plans such as Skagit  
11 County.

12  
13 **Conclusion:** Petitioners have failed to carry their burden of proof that the County has not  
14 complied with RCW 36.70A.100 or CWPP C-3.b in the designation of the UGA adopted by  
15 the Ordinance.  
16

17 F. Environmental Review of Need for UGA Expansion

18 **Issue 21:** Does the Ordinance fail to comply with RCW 36.70A.110 because the land it  
19 adds to the Bellingham Urban Growth Area is not suitable for urban growth? (Wiesen 08-08;  
20 Haverstraw Pet/Ord; Caitac 08-12; Petree Pet/Ord)

21 **Issue 22:** Did the County fail to comply with RCW 36.70A.010, RCW 36.70A.110, RCW  
22 36.70A.020, RCW 43.21C.020, RCW 43.21C.030, RCW 43.21C.031, and RCW  
23 43.21C.034, where the Ordinance adds land to Bellingham's UGA: that was not considered  
24 or analyzed in the July 1, 2004, joint City-County Final Environmental Impact Statement  
25 (FEIS); for which appropriate environmental review as not been conducted, and where the  
26 County disregards impacts associated with its failure to appropriately expand the City of  
Bellingham's UGA, as identified in the FEIS? (Caitac 08-12; Petree Pet./Ord 3.11)

27 The Board shall discuss these issues together.  
28

29 *Failure to consider the environmental impacts for King Mountain*

30 **Positions of the Parties**

31 Petree argues that when Whatcom County adopted of the Ordinance it violated the State  
32 Environmental Policy Act "SEPA" because it added land to the Bellingham UGA for which

1 the County failed to conduct the necessary environmental review.<sup>157</sup> More specifically,  
2 Petree states that the EIS set forth a number of urban growth alternatives and evaluated the  
3 environmental impacts associated with five separate five-year review areas.<sup>158</sup> The  
4 Ordinance added two areas to the UGA – Queen Mountain and King Mountain. Queen  
5 Mountain is one of the County’s five-year review areas. However, the Ordinance also added  
6 a portion of a non-five year review area referred to as King Mountain.<sup>159</sup> Petree asserts  
7 much of the King Mountain Area that was added to the UGA was outside of the scope of the  
8 EIS. The County’s failure to analyze the portion of the King Mountain Area included in the  
9 Ordinance as part of the EIS before adding it to the UGA is the basis for Petree’s challenge.

10  
11  
12 The County, citing WAC 197-11-442 (2), contends the environmental impact statement  
13 (EIS), being programmatic in nature, was only required to discuss the potential impacts in  
14 the level of detail appropriate to the scope of a non-project proposal and to the level of  
15 planning for the proposal.<sup>160</sup> The County further suggests the EIS analysis was not specific  
16 to any of the potential five-year review areas.<sup>161</sup> Rather, the County contends the EIS  
17 focused on four potential growth scenarios and the impacts that would result from following  
18 one of the scenarios or a variation of them. Furthermore, the County states that even  
19 though the analysis was not specific to King Mountain, there were numerous references to  
20 King Mountain in the EIS. Those references include mention of slope stability, erosion  
21 features, potential as a wildlife corridor, the existence of Spring Creek, and other features.  
22 Finally, the County points out that a significant portion of the King Mountain Area was  
23 included in the analysis of the Stewart-Smith five year review area.  
24  
25

## 26 **Board Discussion**

27 RCW 43.21C.020, RCW 43.21.030, and RCW 43.21C.031 cited by Petitioner require that  
28 counties shall include a report on legislation and major actions affecting the environment  
29

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30  
31 <sup>157</sup> Petree Prehearing Brief at 2.

32 <sup>158</sup> Id. at 3.

<sup>159</sup> Whatcom County Ordinance No.2008 – 003.

<sup>160</sup> Whatcom County Response Brief, at 73.

<sup>161</sup> Id. at 75.

1 and analyze significant environmental impacts. The Washington courts (and Growth  
2 Management Hearings Boards) review an EIS under the rule of reason, which requires the  
3 EIS to contain a "reasonably thorough discussion of the significant aspects of the probable  
4 environmental consequences" of a proposed action.<sup>162</sup> Additionally, an agency's  
5 determination of adequacy of an EIS shall be afforded substantial weight<sup>163</sup>. Further, just  
6 as with the other GMA challenges, Petitioner must carry the burden that the County's SEPA  
7 analysis is clearly erroneous.<sup>164</sup>  
8

9  
10 Where a governmental action involves a non-project proposal, greater flexibility is allowed to  
11 achieve substantial compliance with SEPA. In that regard, WAC 197-11-442 provides in  
12 pertinent part as follows:

13 (2)The lead agency shall discuss impacts and alternatives in the level of detail  
14 appropriate to the scope of the non-project proposal and to the level of planning  
15 for the proposal. Alternatives should be emphasized. In particular, agencies are  
16 encouraged to describe the proposal in terms of alternative means of  
17 accomplishing a stated objective (see WAC 197-11-060 (3)). Alternatives  
18 including the proposed action should be analyzed at a roughly comparable level  
of detail, sufficient to evaluate their comparative merits.

19 (3)If the non-project proposal concerns a specific geographic area, site specific  
20 analyses are not required, but may be included for areas of specific concern.  
21 The EIS should identify subsequent actions that would be undertaken by other  
22 agencies as a result of the non-project proposal, such as transportation and utility  
23 systems.

24 (4)The EIS's discussion of alternatives for a comprehensive plan . . . shall be  
25 limited to a general discussion of the impacts of alternate proposals for policies  
26 contained in such plans. . . The EIS content may be limited to a discussion of  
27 alternatives which have been formally proposed or which are, while not formally  
proposed, reasonably related to the proposed action.

28 The Board finds that the EIS was designed to provide an environmental review and  
29 evaluation of four alternative growth management scenarios in relationship to the  
30

31  
32 <sup>162</sup> *Citizens Alliance to Protect Our Wetlands v. City of Auburn*, 126 Wn.2d. 356, 362.

<sup>163</sup> RCW 43.21C.090.

<sup>164</sup> See *Durland v. San Juan County*, WWGMHB Case No. 00-2-0062c(Final Decision and Order, July 10, 2001).

1 Bellingham UGA.<sup>165</sup> The goal of those scenarios was to accommodate Bellingham's  
2 projected population growth. The four scenarios were:

- 3 1.) No action: Assumes existing plans and zoning regulations will accommodate  
4 Bellingham's projected population.
- 5 2.) Infill: Increase density in Bellingham and the existing UGA to accommodate  
6 projected growth.
- 7 3.) Adjusted UGA: Assumes existing plans and zoning regulations within the City  
8 and UGA and an adjustment of UGA boundaries to increase the land supply  
9 to accommodate projected growth.
- 10 4.) Infill and Adjusted UGA: Increase density in Bellingham and the existing UGA  
11 and adjust UGA boundaries to accommodate projected growth.<sup>166</sup>  
12

13 Thus, the analysis in the EIS was intended, in part, to provide Whatcom County with  
14 information in anticipation of the possible adoption of a new UGA boundary for the City of  
15 Bellingham. That information addressed, in a general nature, the environmental impacts  
16 that could be expected under the four growth management scenarios. The EIS addressed  
17 impacts to, among other things, the earth, agricultural land, air quality, water resources,  
18 plants and animals, natural and scenic resources, environmental health, accommodation of  
19 population and housing needs, transportation, utilities, and related concerns.  
20

21  
22 While it is true that the EIS addressed the five-year review areas, it examined environmental  
23 impacts in a very limited fashion. However, the description of the alternatives in the EIS was  
24 focused on the four growth accommodation scenarios, not the listed five-year review  
25 areas.<sup>167</sup> While the five-year review areas did not include all of King Mountain, a  
26 significant portion of the added King Mountain area was included in the Stewart-Smith Five  
27 Year Review Area analysis. King Mountain was also referenced throughout the EIS.<sup>168</sup>  
28  
29  
30

---

31 <sup>165</sup> Exhibit 129, pg. 1 – 1.

32 <sup>166</sup> Exhibit 129 (FEIS), Chapter 1, page 1-2.

<sup>167</sup> Id. at Chapter 4, pgs. 4-43 through 4-50.

<sup>168</sup> id. at pgs. 3-1, 3-2, 3-4, 3-5, 3-42, 3-56, 4-18, 4-125.

1 Initially, the Board is mindful of RCW 43.21C.090 which provides that the County's action is  
2 to be afforded substantial weight. With that statute in mind the Board concludes that the  
3 EIS included a reasonably thorough discussion of the significant aspects of the probable  
4 environmental consequences of the actions taken to accommodate the projected population  
5 growth and its related environmental impacts. The Ordinance constituted a non-project  
6 action and, as such, greater flexibility is allowed to achieve compliance with SEPA. The EIS  
7 addressed impacts and alternatives at a level of detail appropriate to the scope of the  
8 proposal and to the level of planning being considered.<sup>169</sup> Furthermore, WAC 197-11-442(3)  
9 makes clear that site specific analysis is not required for a non-project proposal.  
10

11  
12 **Conclusion:** Based on the foregoing, the Board finds that Petitioners have not carried their  
13 burden of proof that the County's environmental analysis for the Bellingham UGA did not  
14 comply with RCW 43.21C.020 and RCW 43.21.030.  
15

16 *Lack of Analysis of Final UGA Designation Scenario*

17 Caitac argues the Ordinance Whatcom County adopted did not adopt any of the scenarios  
18 analyzed for Alternative Four by the FEIS, and therefore because the County did not adopt  
19 any of the scenarios analyzed, the Bellingham UGA adopted by Ordinance 2008-003 does  
20 not comply with SEPA.<sup>170</sup> As noted *supra*, the Ordinance discloses that the designation of  
21 the Bellingham UGA most closely resembles the FEIS's Alternative Four – Infill and  
22 Adjusted UGA.  
23

24  
25 A stated goal of the FEIS was to provide an environmental assessment of a range of  
26 reasonable alternatives to accommodate projected population growth.<sup>171</sup> As stated in  
27 Section 1.8 of the FEIS, "Various elements of the alternatives are not mutually exclusive  
28 and may be combined in a preferred alternative, to be determined through the public  
29 process."  
30

31  
32 <sup>169</sup> WAC 197-11-442(2).

<sup>170</sup> Petitioner's Caitac Prehearing Brief at 14 and 15.

<sup>171</sup> FEIS introduction, chapter 1, section 1.1.

1 Alternative Four proposes a combined emphasis on infill development as described in  
2 Alternative Two and the inclusion of one or more 5-Year Review Areas *or other areas* as  
3 described in Alternative Three. Alternative Three similarly includes a reference to "other  
4 appropriate areas" and contains the following reference: ". . . this alternative *may also*  
5 *consider other areas* for UGA inclusion as deemed appropriate."<sup>172</sup>  
6

7 According to RCW 36.70A.035, as long as an option chosen is within the scope presented  
8 by the environmental documents, the proposal can be considered by the County without  
9 further public process. As discussed *supra* the County chose an option that included  
10 Alternative Two, which the FEIS analysis advised complied with the GMA, and part of  
11 Alternative Four – Infill and Adjusted UGA that added land to the UGA. While the part of  
12 King Mountain that was added was not included in the FEIS analysis, the related impacts  
13 were generally addressed, and the amount of land added to the GMA was within the scope  
14 of the alternatives analyzed in the FEIS.  
15  
16

17 The Petitioners' Issue Statements set forth allegations that the expansion of the UGA not  
18 only violated SEPA but also raise the issue that it does not comply with RCW 36.70A.110.  
19 All Petitioners have devoted the majority of their briefs to arguing that the County's  
20 designation of the Bellingham UGA does not provide enough buildable land. In arguing that  
21 the land added is not an "appropriate" addition to the UGA, the Board addressed Petitioners'  
22 contention that because of inadequate environmental analysis for King Mountain, it should  
23 not be added to the UGA. However, the Board discerns no argument that the addition of  
24 land that was added and was not needed to accommodate Bellingham's projected growth  
25 violates RCW 36.70A.110(3).  
26  
27

28 **Conclusion:** Even though the action designating the Bellingham UGA was not the same as  
29 any of the scenarios analyzed for the Infill and Adjusted UGA alternative, the proposal  
30 eventually adopted by the County was within the scope of the scenarios analyzed by the  
31  
32

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<sup>172</sup> FEIS at 1-13 (Emphasis added).  
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1 FEIS. Therefore, the Board finds that Petitioners have failed to carry their burden of proof  
2 that the designation of the Bellingham UGA does not comply with RCW 43.21C.020, RCW  
3 43.21C.030, RCW 43.21C.031, RCW 43.21C.034, and RCW 36.70A.110.

4  
5 G. Abandoned Issues

6 **Issue 8:** Does the Ordinance fail to comply with RCW 36.70A.130(3), and be guided by  
7 RCW 36.70A.020(1) and (2), because it incorrectly sequences the required review of UGAs  
8 by deciding on an isolated UGA expansion in advance of the required countywide  
9 assessment at a time when the County was overdue in completing its 10-year review?  
(Wiesen 08-08; Haverstraw Pet/Ord; Petree Pet/Ord)

10  
11 **Issue 14:** Does the Ordinance fail to comply with the GMA consistency requirements of  
12 RCW 36.70A.070, RCW 36.70A.100, and RCW 36.70A.210 by its inconsistent use of base  
13 years? (Caitac 08-12; Petree Pet/Ord)

14 At argument, Petitioner Petree stated that he had abandoned his argument regarding  
15 sequencing listed as Issue 8 in the Prehearing Order and argued in his brief. Petitioner  
16 Petree is the only petitioner to raise this issue. Similarly, the Board can find no argument  
17 addressing the inconsistent use of base years raised in Issue 14.

18  
19 An issue not addressed in a petitioner's brief is considered abandoned.<sup>173</sup>

20  
21 **Conclusion:** Petitioner abandoned Issue 8. Petitioners did not address Issue 14, therefore  
22 it is considered abandoned.

23  
24 H. Invalidity

25 **Issue 23:** Does continued validity of the Ordinance substantially interfere with the goals of  
26 RCW ch. 36.70A? (Wiesen 08-08; Haverstraw Pet/Ord; and Caitac 08-12; Petree Pet/Ord)

27 **Positions of the Parties**

28  
29 Petitioner Petree argues that the Ordinance should be held invalid because the County  
30 failed to perform any environmental review of the King Mountain Area prior to adding it to  
31 the UGA. Additionally, Petree contends that the failure to adopt development regulations for  
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<sup>173</sup> See *WEC v. Whatcom County*, WWGMHB 95-2-0071 (Final Decision and Order, December 12, 1995).

1 the King Mountain area would allow this area to develop at rural densities as opposed to  
2 urban densities. Petree maintains that these rural densities should not be allowed to  
3 vest.<sup>174</sup>

4  
5 The County responds that the URMX zone applied to the King Mountain Area is a conscious  
6 decision by the County and City to hold the property at rural zoning until such time as the  
7 City is prepared to extend public facilities and services, annex property, and apply  
8 Bellingham's urban zoning. Further, the County asserts this property is not immediately  
9 needed to accommodate urban growth but is required solely to address demand over the  
10 next 20 years. Whatcom County states that its rural zoning does not permit lots smaller  
11 than five acres, and while this is not ideal for further parcelization and urban development, it  
12 does not preclude it from occurring in the future when urban densities can be achieved.  
13 The County points out that this property is in single ownership, so not likely to be  
14 subdivided. For these reasons, the County argues the Board should not impose  
15 invalidity.<sup>175</sup>

16  
17  
18 **Board Discussion**

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

23  
24  
25 In this Final Decision and Order, the only challenged actions that the Board has found  
26 noncompliant with the GMA were the County's comprehensive plan map and the text of the  
27 UFS subarea plan-were not consistent so did not comply with RCW 3670A.070 and the  
28 County's failure to adopt development regulations for the ultimate implementation of the  
29 URMX zone violated of RCW 36.70A.115. The County states that this area is not served by  
30 urban services. County policies prohibit areas without urban services from developing at  
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<sup>174</sup> Petitioner Petree's Prehearing Brief at 14 and 15.

<sup>175</sup> Whatcom County's Response Brief at 79.

1 urban densities.<sup>176</sup> The Board has found in the past that it is appropriate to keep land in  
2 rural densities until urban services can be delivered.<sup>177</sup> While the Board agrees with the  
3 County's statement that a density of less than one unit per five acres would be better at  
4 assuring full build out of urban densities in the future, this Board has found that one dwelling  
5 unit per five acres is an appropriate density to hold land in the UGA for future urban  
6 development until urban services arrive.<sup>178</sup> Petitioner Petree has not shown that vesting at  
7 such densities would preclude future urban development in the URMX zone.  
8

9  
10 **Conclusion:** Petitioner has failed to demonstrate that an imposition of invalidity is needed  
11 at this time to prevent development that would result in the preclusion of urban development  
12 in the future once the necessary public facilities and services are available. The Board  
13 declines to impose invalidity at this time.  
14

## 15 VI. FINDINGS OF FACT

- 16 1. Whatcom County is a county located west of the crest of the Cascade Mountains  
17 that is required to plan pursuant to RCW 36.76A.040.
- 18 2. Whatcom County passed Resolution 2008-007 (Resolution) that asserted that it  
19 had completed the review of its UGAs as required by RCW 36.70A.130(3) and  
20 Ordinance 2008-003 (Ordinance) that amended the comprehensive plan and  
21 zoning maps to show amendment to the Urban Fringe Subarea Plan and the  
22 Bellingham UGA on February 12, 2008.
- 23 3. Petitioners Wiesen, Caitac, Haverstraw, and Petree filed timely petitions for  
24 review.
- 25 4. Intervenors Hitz, Futurewise, and Dan McShane filed motions requesting  
26 intervention.
- 27 5. Petitioner Caitac offers no evidence to show how the adoption of the Ordinance  
28 violates RCW 36.70A.470.  
29

30  
31 <sup>176</sup> CWPP F-12.

32 <sup>177</sup> See *Advocates for Responsible Development and John Diehl v. Mason County* (Compliance Order on Plan and Development Regulations –Sewer in the Belfair UGA (November 11, 2007) at 15 and 16.

<sup>178</sup> See *Ludwig v. San Juan County*, WWGMHB Case No.05-2-0019c (Final Decision and Order/Compliance Order (Lopez Island UGA), April 19, 2006).

- 1 6. No evidence in the record shows what the City of Bellingham's level of service is  
2 for soccer fields, whether a deficiency for these recreational facilities exists,  
3 whether other suitable properties were considered and rejected, and whether there  
4 is a need to expand the UGA in this location for these reasons.
- 5 7. City Resolution 2006-15, entitled (in pertinent part), "A Resolution Recommending  
6 Amendments to the Whatcom County Urban Fringe Subarea Plan (UFS) and  
7 Bellingham's Urban Growth Area(UGA)," demonstrates the City was making a  
8 recommendation to Whatcom County regarding its urban growth boundary.
- 9 8. Although initial disagreement did occur between the County and the City, the City  
10 ultimately accepted the County's delineations of the UGA boundaries, as  
11 demonstrated by City of Bellingham Resolution 2008-003.
- 12 9. The adopted projected population growth allocated to the Bellingham UGA for the  
13 2002-2022 planning period is 31,600 people.
- 14 10. CTED's 1992 Methodology for providing adequate land supply in a UGA  
15 recommended a six-step system and was relied on by the City of Bellingham.
- 16 11. This six-step system permits adjustments to the total land acreage based on  
17 "suitability," "availability," and "safety".
- 18 12. CTED's methodology was established *prior* to the Legislature's adoption of EHB  
19 1305 which amended the GMA to include the provision of a reasonable land  
20 market supply factor.
- 21 13. According to the Record, the County utilized a 10 percent market factor in  
22 comparison to the 25 percent "combined" market factor utilized by the City.
- 23 14. The City's own analysis is not based on permitted densities but rather on  
24 unknowns and uncertainties related to the speed and level of development, both  
25 for housing and employment, a trend for second home purchases, and housing  
26 affordability.
- 27 15. The Ordinance and the EIS note that although Bellingham is the 11<sup>th</sup> most  
28 populous city in the state, it is 26<sup>th</sup> in density of 44 cities over 20,000.  
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- 1 16. The City's current density is 2,741 people per square mile and the City's plan  
2 would increase the density to 3,623 people per square mile, or approximately 5.66  
3 people per acre.
- 4 17. The City acknowledged that currently it is capable of providing public facilities and  
5 services in only about 40 percent of the UGA.
- 6 18. CWPP F-12 prohibits development at urban densities until services can be  
7 delivered.
- 8 19. In City Resolution 2008-003, the City committed to considering changes to its plan  
9 and development regulations required to accommodate growth in the City's UGA  
10 in the year after the County's decision.
- 11 20. The Record before the Board in this matter demonstrates that the subject matter of  
12 the cited GMA goals was before the Whatcom County Council and that discussion  
13 occurred.
- 14 21. The UGA that the County adopted was based on FEIS assumptions that combined  
15 aspects of Alternative Two - the Infill Alternative with Alternative Four –Infill and  
16 Adjusted UGA, by adding some, but not all of the five-year review areas, and an  
17 additional area.
- 18 22. The FEIS analysis states that Alternative Two meets UGA requirements.
- 19 23. The FEIS also shows that Alternative Two has the least impact on sprawl allowed  
20 by Alternative Four.
- 21 24. Alternative Two and Alternative Four also show that these alternatives have the  
22 least impacts on air pollution, water supply, and other environmental  
23 considerations.
- 24 25. A County staff report indicates that between 1995 and 2002, 88.3 percent of the  
25 County's growth has occurred in city UGAs, while 11.7 percent has occurred in  
26 unincorporated parts of the County, including its two non-municipal UGAs.
- 27 26. The FEIS discusses how Alternative Two – Infill would provide housing on smaller  
28 lots and wide variety of relatively affordable housing types, but also might have  
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- the most impact on housing prices due to more constraint on the land supply.  
However, this alternative has the least impact on sprawl and the environment.
27. The FEIS points out that while Alternative Three- Expansion without Infill, has the least impact on housing prices due to a less restricted land supply, it has the most impact on sprawl. Alternative Four - Infill and UGA Adjustment option falls in the middle of these alternatives as far as impacts on sprawl and housing.
28. The goal that is discussed and documented in Bellingham's plan is that two thirds of future housing needs will be met by multi-family units.
29. Caitac does not point out the City's or the County's goals for affordability or how the designation of the Bellingham UGA deters the City or the County from meeting the County's or City's goals.
30. Until the costs of clean-up are known, it is hard to predict how this will affect affordability of Waterfront area units and determine how this will affect the County and the City's affordability goals.
31. The record shows eight percent of the housing countywide is for second homes, and information included with Whatcom County's population forecasts recognize that a large number of second homes occur in the Birch Bay, Columbia Valley, Blaine, and Point Roberts study areas.
32. The record shows that the County accounted for uncertainty in considering the amount of land needed for commercial and industrial land in its UGA and provided enough land to accommodate those needs for the next 20 years.
33. The Dewey Valley Planning Area map shows urban uses while the text of the Dewey Valley Planning Area describes rural uses and does not describe comprehensive plan and zoning map adopted land use designations. The description of the URMX designation calls for a minimum of four dwelling units per acre while the land use maps adopted by the Ordinance appear to provide for at least six dwelling units per acre.

- 1 34. The URMX comprehensive plan and zoning map designations allow maximum  
2 densities of 10 to 24 dwelling units per acre. The County concedes that it has not  
3 yet adopted the corresponding zoning regulations.
- 4 35. The FEIS was designed to provide an environmental review and evaluation of four  
5 alternative growth management scenarios: 1) No Action, 2) Infill, 3) Adjusted UGA,  
6 and 4) Infill and Adjusted UGA.
- 7  
8 36. The analysis in the FEIS was intended in part to provide Whatcom County with  
9 information in anticipation of possible adoption of a new UGA boundary for the City  
10 of Bellingham.
- 11 37. While the FEIS addressed the five-year review areas, it examined environmental  
12 impacts in a very limited fashion. However, the description of the alternatives in the  
13 FEIS was on the four growth accommodation scenarios, not the listed five-year  
14 review areas.
- 15  
16 38. While the five-year review areas did not include all of King Mountain, a significant  
17 portion of the added King Mountain area was included in the Stewart-Smith Five  
18 Year Review Area analysis. King Mountain was also referenced throughout the  
19 FEIS.
- 20  
21 39. The Ordinance constituted a non-project action.
- 22 40. The FEIS stated, "Various elements of the alternatives are not mutually exclusive  
23 and may be combined in a preferred alternative, to be determined through the  
24 public process .."
- 25  
26 41. Alternative Four proposes a combination of emphasis on infill development as  
27 described in Alternative Two and inclusion of one or more Five-Year Review  
28 Areas *or other areas* as described in Alternative Three.
- 29  
30 42. Alternative Three similarly includes a reference to "other appropriate areas".  
31 Alternative Three includes the following reference: ". . . this alternative *may also*  
32 *consider other areas* for UGA inclusion as deemed appropriate." (emphasis  
added).

- 1 43. Even though the designation of the Bellingham UGA that the County adopted was  
2 not the same as any of the scenarios analyzed for the Infill and Adjusted UGA  
3 alternative, the proposal eventually adopted by the County was within the scope of  
4 the scenarios analyzed by the FEIS.  
5  
6 44. At argument, Petitioner Petree stated that he had abandoned his argument  
7 regarding sequencing listed as Issue 8 in the Prehearing Order and argued in his  
8 brief.  
9  
10 45. The Board can find no argument addressing the inconsistent use of base years  
11 raised in Issue 14.  
12  
13 46. Petitioner Petree has not shown that vesting at densities that would preclude  
14 future urban development is imminent in the URMX zone.  
15  
16 47. Any Finding of Fact later determined to be a Conclusion of Law is adopted as  
17 such.

## 18 VII. CONCLUSIONS OF LAW

- 19 A. The Board has jurisdiction over the parties and subject matter of this case.  
20 B. Petitioners have standing for the issues that they have raised.  
21 C. Intervenors have been given leave to participate on the issues raised by  
22 Petitioners Caitac and Wiesen.  
23 D. Petitioner Caitac has not carried its burden of proof that the County has  
24 violated RCW 36.70A.470(2).  
25 E. Petitioner Haverstraw has not carried his burden of proof that the County failed  
26 to comply with RCW 36.70A.020(9).  
27 F. Whatcom County has been given the authority to designate a UGA and was  
28 not bound to the recommendation presented by the City of Bellingham  
29 pursuant to RCW 36.70A.110(2).  
30 G. Petitioners have set forth a *prima facie* case contending that the Bellingham  
31 UGA is inappropriately sized.  
32

- 1 H. Whatcom County's selected market factor is reasonable in light of local  
2 circumstances pursuant to RCW 36.70A.110(2) and RCW 36.70A.3201.
- 3 I. Petitioners have failed to carry their burden of proof that the City's land  
4 capacity analysis does not comply with RCW 36.70A.110(2).
- 5 J. The County's Land Capacity Analysis and the related Record, contains the  
6 necessary analysis to satisfy the County's duty to "show its work" pursuant to  
7 RCW 36.70A.110.
- 8 K. The GMA does not set forth a substantive requirement for specific  
9 consideration of GMA goals. What the GMA requires is that the Board's  
10 determination of whether or not Whatcom County considered the goals shall  
11 be based on whether its action was guided by the goals as required by RCW  
12 36.70A.020.
- 13 L. Petitioners have not demonstrated that the size of the Bellingham UGA does  
14 not comply with RCW 36.70A.020(1), (2), (4) and (5).
- 15 M. Petitioners have not demonstrated how the County and City are falling short of  
16 adopted housing goals, and how the County's choice of a market factor for  
17 cushioning these uncertainties will not succeed in providing an adequate and  
18 affordable supply of all types of affordable housing. For those reasons,  
19 Petitioners have not shown that the designation of the Bellingham UGA does  
20 not comply with RCW 36.70A.020(4).
- 21 N. Petitioners have failed to demonstrate that Whatcom County's LCA is not  
22 adequate to meet its 20-year demand for industrial and commercial needs.  
23 They have therefore not carried their burden of proof that the designation of  
24 the Bellingham UGA does not comply with RCW 36.70A.020(5).
- 25 O. The lack of text to describe the adopted comprehensive land use map  
26 designations and the inconsistency between the comprehensive land use map  
27 and the Subarea Plan does not comply with RCW 36.70A.070.
- 28 P. The lack of development regulations to implement the adopted densities in the  
29 URMX zone does not comply with RCW 36.70A.115.
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- Q. The Board knows of no provision of the GMA that requires provisions of an adopting ordinance to be consistent.
- R. Caitac has not carried its burden of proof that the adopting Ordinance itself must comply with the consistency requirements of the GMA.
- S. Because the Board has found that the County's designation of the Bellingham UGA accommodates the City's future growth, Caitac has not demonstrated that the action adopted by the Ordinance is inconsistent with UFS Plan, policies, Whatcom County Comprehensive Plan Policies, and CWPP C.2, relating to accommodating Bellingham's future urban growth.
- T. Based on the information in the record, Petitioners have not carried their burden of proof that the designation of the Bellingham UGA does not comply with CWPP G.1.
- U. Petitioners have not carried their burden of proof that the County has not complied with RCW 36.70A.100 or CWPP C-3.b. in designating the Bellingham UGA.
- V. The FEIS included a reasonably thorough discussion of the significant aspects of the probable environmental consequences of the actions taken to accommodate the projected population growth and its related environmental impacts.
- W. The FEIS addressed impacts and alternatives at a level of detail appropriate to the scope of the proposal and to the level of planning being considered.
- X. Petitioners have not carried their burden of proof that the County's environmental analysis for the Bellingham UGA did not comply with RCW 43.21C.020, RCW 43.21.030, RCW 43.21C.031, or RCW 43.21C.034.
- Y. Petitioner Petree has abandoned Issue 8 and Issue 14 is considered abandoned.
- Z. Petitioner Petree has not demonstrated that an imposition of invalidity is needed at this time to prevent development that would preclude future urban development.

1 AA. Any Conclusion of Law later determined to be a Finding of Fact is  
2 adopted as such.  
3  
4

5 **VIII. ORDER**

6 Whatcom County must take legislative action to make its comprehensive plan and  
7 comprehensive plan/zoning map consistent with its comprehensive plan pursuant to RCW  
8 36.70A.070 and its URMX zoning regulations consistent with its comprehensive plan/zoning  
9 map pursuant to RCW 36.70A.115 within 180 days according to the following schedule:  
10

Item	Date Due
<b>Compliance Due on</b>	<b>May 12, 2009</b>
Statement of Actions Taken and Index to Compliance Record Deadline	May 26, 2009
Objections to a Finding of Compliance Deadline	June 9, 2009
Response to Objections Deadline	June 30, 2009
<b>Compliance Hearing</b>	July 9, 2009

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18 ENTERED this 13th day of October, 2008.  
19  
20

21 \_\_\_\_\_  
Holly Gadbow

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23  
24 \_\_\_\_\_  
James McNamara

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27 \_\_\_\_\_  
William P. Roehl  
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29  
30 Pursuant to RCW 36.70A.300 this is a final order of the Board.

31 **Reconsideration.** Pursuant to WAC 242-02-832, you have ten (10) days from the  
32 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

1 three copies of the petition for reconsideration, together with any argument in  
2 support thereof, should be filed by mailing, faxing or delivering the document directly  
3 to the Board, with a copy to all other parties of record and their representatives.  
4 Filing means actual receipt of the document at the Board office. RCW 34.05.010(6),  
5 WAC 242-02-330. The filing of a petition for reconsideration is not a prerequisite for  
6 filing a petition for judicial review.

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

10 Enforcement. The petition for judicial review of this Order shall be filed with the  
11 appropriate court and served on the Board, the Office of the Attorney General, and all  
12 parties within thirty days after service of the final order, as provided in RCW  
13 34.05.542. Service on the Board may be accomplished in person, by fax or by mail,  
14 but service on the Board means actual receipt of the document at the Board office  
15 within thirty days after service of the final order.

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

17  
18  
19 **APPENDIX A**  
20

21 **Case No. 07-2-0009.**

22 On August 27, 2007, the Board issued Order on Petitioner's Motion in *Robert Wiesen v.*  
23 *Whatcom County*, WWGMHB Case No. 07-2-0009. That order found that Whatcom County  
24 had failed to review its UGA boundaries, the densities permitted within the UGA boundaries,  
25 and the extent to which urban growth occurring within the county has located within each  
26 city and unincorporated portions of the UGAs within the timeframe established by RCW  
27 36.70A.130(3).<sup>179</sup> That order established February 25, 2008 as the compliance deadline for  
28 review of the County's UGAs.  
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<sup>179</sup> *Robert Wiesen v. Whatcom County*, WWGMHB Case No. 07-2-0009 (Order on Motions, August 27, 2007)  
at 7. In *Wiesen v. Whatcom County*, WWGMHB 06-2-0008, the Board decided that Whatcom County had ten  
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October 13, 2008  
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1 Whatcom County passed Resolution 2008-007 (Resolution) that asserted that it had  
2 completed the review of its UGAs as required by RCW 36.70A.130(3) and Ordinance 2008-  
3 003 (Ordinance) that amended the comprehensive plan and zoning maps to show  
4 amendment to the Urban Fringe Subarea Plan and the Bellingham UGA on February 12,  
5 2008.  
6

7 **Case No. 08-2-0021c**

8 Robert Wiesen and Caitac, filed petitions for review challenging Resolution 2008-007 and  
9 Ordinance 2008-003 on March 10, and March 13, 2008. The Board consolidated these  
10 cases to become WWGMHB Case No. 08-2-0012c on March 20, 2008. Dean Haverstraw  
11 and Futurewise, filed petitions for review challenging both the Resolution and Ordinance on  
12 April 11, 2008 and Jack Petree filed a petition for review challenging those same actions on  
13 April 14, 2008. The new petitions were consolidated with WWGMHB Case No. 08-2-0012c  
14 and with WWGMHB Case No. 07-2-0009 to become WWGMHB Case No. 08-2-0021c.  
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17 The Board granted the motions of Dan McShane, Futurewise, and Erin and Robin Hitz to  
18 intervene.  
19

20 The Board received a stipulation from the County and Petitioners that stipulated among  
21 other things that the County was not in compliance in regard to its 10-year review of UGAs  
22 and that the Petitioners would withdraw challenges to the 10-year review. The County and  
23 Petitioners could not agree on a compliance schedule. After a compliance hearing the  
24 Board issued an order finding the County in noncompliance with regard to its 10-year UGA  
25 review, dismissed challenges in the petitions related to the 10-year review, and set a  
26 compliance date of June 30, 2009.<sup>180</sup>  
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31 years from the date of designation of its UGAs to complete review of its UGAs and the densities within them.  
32 That deadline for the review of Whatcom County's UGAs was established as May 23, 2007.

<sup>180</sup> Order Finding Noncompliance with RCW 36.70A.130(3), Dismissing Issues Related to Resolution 2008-007, and Setting a Compliance Schedule (July 2, 2008).

1 A prehearing order was issued on July 1, 2008, as well as an order allowing Petitioners to  
2 supplement the record with some requested items and denying other items' addition.

3 All parties and intervenors submitted timely briefs, except for Robin and Erin Hitz who did  
4 not submit a brief. The City of Bellingham moved for amicus status the day the County's  
5 brief was due. This order grants the City amicus status.  
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7 A hearing was held in Bellingham, WA on August 20, 2008.  
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9 After the hearing the County moved to strike portions of Petitioners' HOM argument. This  
10 order denies that motion.  
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