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STATE OF WASHINGTON
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**COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON**

THURSTON COUNTY & CITY OF YELM,
Respondents,

v.

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS
BOARD & FUTUREWISE,
Appellants.

THURSTON COUNTY AND CITY OF YELM'S RESPONSE BRIEF

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I. INTRODUCTION

This appeal is about whether a Growth Management Hearings Board which found the urban growth area (“UGA”) compliant with the Growth Management Act can decide two months later that the same UGA is noncompliant based on outdated information.¹ The trial court said no as the challenge was outside the ten year review window for UGAs, was barred by the doctrine of issue preclusion, and was improperly decided because it was based upon outdated population data. CP² 175-177. Futurewise was the challenging party in both cases and participated in the hearing in which Thurston County’s UGAs were found Growth Management Act (“GMA”) compliant. CP 83; AR 678. However, Futurewise did not object to the finding of compliance in the first challenge and instead continued with its second challenge that was based on old population data which presented a more favorable position for Futurewise. CP 85. Futurewise’s strategy was fatal to its challenge of the Yelm UGA and this Court should uphold the decision of the Thurston County Superior Court that reversed the Growth Board.

¹ Due to the overlapping cases involved in this appeal, the facts are intricate. To make it easier to follow the basic facts in this case, a timeline is attached to this brief for illustrative purposes only. *See* Appendix A to this Brief.

² References to Clerk’s Papers will be designated as CP __; References to the Administrative Record as described under CP 54 will be designated as AR __.

II. STATEMENT OF THE CASE

A. Basic Overview Of The Facts.

In December 2006, the Thurston County Board of County Commissioners (“BOCC”) adopted Resolution 13734 which was Thurston County’s 2006 annual update of the Thurston County Comprehensive Plan. AR 207-293. This update involved amendments to a section of the Thurston County Comprehensive Plan entitled the Yelm/Thurston County Joint Plan (“Joint Plan”) (AR 212-276). This annual amendment included revisions of the population and housing stock elements in recognition of the then most recent population numbers and forecasts (July 2005). AR 262. Futurewise appealed the adoption of Resolution 13734 to the Western Washington Growth Management Hearings Board (“WWGMHB”) because it believed that Yelm’s UGA was too large and needed to be resized to be in compliance with the GMA. AR 1-4; AR 109-110. The WWGMHB agreed with Futurewise and issued a Final Decision and Order on July 28, 2008 holding that the Yelm UGA was out of compliance with the GMA. *Adams Cove Group, and Futurewise v. Thurston County*, WWGMHB Case No. 07-2-0005 (Final Decision and Order, July 28, 2008). AR 676-702.

Thurston County and the City of Yelm (hereinafter “County”) are adversely affected by this decision because *just two months previously*, the

WWGMHB had already found all of the UGAs in the County, including the City of Yelm's, in compliance in *1000 Friends of Washington v. Thurston County*, WWGMHB Case No. 05-2-0002 (Order Finding Compliance (UGAs), May 29, 2008). CP 82-88. In that case, compliance was found based upon *more recent (2007)* population data and an *updated* 2007 buildable lands report. AR 672. The annual update that is the subject of this appeal is based on obsolete population numbers and forecasts and did not have the benefit of the new buildable lands report. AR 262.

B. Procedural History Of WWGMHB Case Nos. 05-2-0002 (2005 Challenge) & 07-2-0005³ (2007 Challenge).

On November 22, 2004, Thurston County adopted Resolution No. 13234 which included the County's seven year update of its Comprehensive Plan *along with the ten year update of the County's UGAs*. AR 132-143. Futurewise (f/k/a 1000 Friends of Washington) challenged Thurston County's 2004 amendment of its Comprehensive Plan and on July 20, 2005, the WWGMHB found that Thurston County was out of compliance with the GMA. AR 145-182. As part of the Final Decision and Order and the Order on Motion for Reconsideration (AR 183-191), the WWGMHB ruled that Thurston County was out of compliance with the GMA because the

³ WWGMHB Case No. 07-2-0005 is the underlying case for purposes of this appeal. It involves the challenge by Futurewise to the County's adoption of Resolution No. 13734. AR 2.

County's UGAs were too large based upon the County's allocation of population growth to urban areas of the County. *1000 Friends of Washington v. Thurston County*, WWGMHB Case No. 05-2-0002 (Final Decision And Order, July 20, 2005). AR 146-147. Following the WWGMHB's 2005 decision on the County's 2004 update, Thurston County appealed the decision while at the same time working toward compliance as required by the GMA. AR 192-198. As part of the County's work plan, Thurston County expended considerable time and resources to evaluate and resize, if warranted, the County's UGAs. AR 195-198.

While the County worked on the issues stemming from Futurewise's 2005 challenge, the County proceeded with its annual Comprehensive Plan updates with the aim of keeping the plan current. The 2006 annual Comprehensive Plan amendment proposals included planned revisions to the Yelm/Thurston County Joint Plan section as follows: (1) minor clerical updates to clarify sections of the plan; (2) updates to include the most recent 20-year population projections, including the 2026 figures; (3) minor updates to text and maps to amend irrelevant, outdated references to short term UGA boundaries and include provisions for intergovernmental coordination in planning; (4) updates of the population, housing and buildable lands information using the most recent population numbers and projections; and (5) consolidation of

redundant policies. AR 199-200; AR 203; AR 208.

These proposed Yelm amendments first went to the Thurston County Planning Commission for review. On July 19, 2006, the Planning Commission approved a motion to schedule the Yelm updates for a public hearing. AR 295-296. At that July 19, 2006 meeting, the Planning Commission was provided the following information regarding the Yelm proposal as evidenced by an excerpt of the official minutes:

The County is working on the GMA urban growth area (UGA) sizing issues. There are areas near Yelm proposed for rezoning. An option is to change zoning within Yelm's UGA consistent with zoning outside of the UGA. Discussion ensued concerning the timing related to the comprehensive plan amendment and opportunity to consider zoning changes at this time and whether to delay scheduling a public hearing pending outcome of the UGA resizing project. Ms. McCormick said updating the comprehensive plan is important to Yelm. **The amendments are housekeeping in nature.**

AR 295 (emphasis added).

Following a September 20, 2006 public hearing in front of the Planning Commission, the Yelm proposal was forwarded to the BOCC with a recommendation of approval. AR 313. The BOCC also held a public hearing on the matter. AR 332. To assist the BOCC on the Yelm proposal, Thurston County planning staff provided a staff report to the BOCC. AR 339-342. An emboldened note on the Yelm proposal staff report provided:

Note: These amendments do not include proposals for changes to UGA zoning or UGA resizing. However, as a result of the Western Washington Growth Management Hearing Board decision in 2005, Thurston County is working on changes to county zoning. Once down zoning results are determined, UGA boundaries and the zoning within them will be reviewed for possible amendment action in 2007. If the UGA is resized, areas that are removed from the UGA will be rezoned, possibly to lower density.

AR 339-340.

After the BOCC public hearing on the “annual amendment,” the City of Yelm provided a written response on November 28, 2006 addressing comments previously provided by Futurewise. AR 377-378.

The following is an excerpt from the City’s letter:

The update to the Joint Plan does not ‘adopt’ the existing urban growth area but simply recognizes it as previously adopted, awaiting the County’s review of all urban growth areas within Thurston County. The City has specifically indicated so in the background material prepared in support of the proposed amendments, and this is also noted in Thurston County’s staff analysis of the proposed amendments.

AR 377.

On December 20, 2006, the BOCC adopted Resolution No. 13734 which amended the Thurston County Comprehensive Plan as part of

Thurston County's "annual"⁴ comprehensive plan amendment process. AR 207-293. On February 16, 2007, Futurewise and Adams Cove Group⁵ filed a Petition for Review with the WWGMHB challenging the amendments to the Thurston County Comprehensive Plan involving the changes to the Yelm/Thurston County Joint Plan section. AR 1-4. In the Petition, Futurewise stated its issue presented for review as:

Does the adoption of Resolution 13734 without re-sizing the Yelm Urban Growth Area fail to comply with RCW 36.70A.020 (1-2, 8-10, 12), 36.70A.040, 36.70A.070, 36.70A.110, 36.70A.115, 36.70A.120, and 36.70A.130?"

AR 2. The appeal filed by Futurewise covered one of the same issues being decided in Futurewise's GMA challenge in *1000 Friends of Washington v. Thurston County*, WWGMHB Case No. 05-2-0002: the size of the City of Yelm's UGA. CP 150. Futurewise acknowledged the duplicative nature of the appeal in the present challenge in its April 18, 2007 Response to Motion To Dismiss brought by the County:

Although not forming part of the County's legal argument, the County notes that this petition is duplicative of the

⁴ Resolution No. 13734 was *not* adopted as part of the Thurston County seven year review or ten year UGA review programs provided by RCW 36.70A.130(3) & (4) as such reviews had occurred just two years earlier. Instead, Resolution No. 13734 was adopted as part of Thurston County's annual update program. AR 207; AR 332; AR 333; AR 336.

⁵ Adams Cove Group was dismissed as a party in WWGMHB case No. 07-2-0005 Final Decision and Order dated July 28, 2008 as Adams Cove Group lacked standing to participate. AR 685-687. Additionally, this Court entered a ruling in this matter signed by Commissioner Schmidt on August 28, 2009 that dismissed Adams Cove Group's appeal.

compliance process in 05-2-0012. This is hopefully foreshadowing by the County that they will ***finally bring the Yelm UGA into compliance with the GMA*** as part of that proceeding. If they do, this petition will become moot, and Petitioners will happily move to dismiss it.

AR 391 (emphasis added).⁶

Recognizing that the County was updating the population figures as part of WWGMHB case No. 05-2-0002 and that the County was working on a new buildable lands report, Futurewise agreed on four separate occasions to place WWGMHB case No. 07-2-0005 on hold. AR 402-425. These extensions lengthened the schedule for the 2007 challenge over one year. AR 402-425.

On May 22, 2008, while the 2007 challenge was on hold, the WWGMHB held its compliance hearing for *1000 Friends of Washington v. Thurston County*, WWGMHB Case No. 05-2-0002. CP 83. Futurewise participated in the hearing but failed to voice an objection to compliance. CP 83. On May 29, 2008 the WWGMHB did in fact rule on the compliance action in *1000 Friends of Washington v. Thurston County*, WWGMHB Case No. 05-2-0002. CP 82-88. The WWGMHB found that all of Thurston County's UGAs, including the City of Yelm's, were in compliance with the GMA. *1000 Friends of Washington v. Thurston*

⁶ The Futurewise quotation contains a typo as the case number should read 05-2-0002.

County, WWGMHB Case No. 05-2-0002 (Order Finding Compliance (UGAs), May 29, 2008). CP 87-88. In the Order Finding Compliance (UGAs), the WWGMHB articulated for the parties, including Futurewise, the steps taken by the County towards compliance.

On remand, the County took a number of steps to comply with RCW 36.70A.110, specifically the Compliance Report describes the County's actions:

1. Established a moratorium on subdivisions in several areas of the County;
2. Contracted with the Thurston Regional Planning Council (TRPC) to perform technical analysis to determine the capacity of the urban growth areas (UGAs) to accommodate growth and any excess capacity through the Buildable Lands Report (BLR);
3. Updated the BLR, subsequent to the adoption of the Rural Rezoning and Limited Areas of More Intensive Rural Development amendments, to reflect the associated shift in population from rural to urban areas;
4. Updated population forecast and allocation information;
5. Evaluated the sizing of UGAs based on updated information;
6. Worked in cooperation with cities and the public to determine an acceptable market factor and address local circumstances;
7. Held work sessions and public hearings, at which public comment and testimony was received, regarding the amendments and issues; and
8. Determined that the County's UGAs were appropriately sized to accommodate the anticipated 20-year forecasted population, with the exception of the Tumwater UGA which was reduced in size, and adopted Resolution No. 14034 and Ordinance No. 14035 to reflect this determination.

CP 86. The WWGMHB also specifically addressed the Yelm UGA and provided, “[o]nly the City of Yelm, due to unique local circumstances, has a market factor of greater than 25 percent.” CP 87 at footnote 7. As a party to the 2005 challenge, Futurewise was served by the WWGMHB with a copy of the Order Finding Compliance (UGAs). CP 90. Futurewise did not appeal this order, did not challenge the updated population figures or challenge the Buildable Lands Report as used by Thurston County to meet the compliance requirements of the WWGMHB.

Two months after the decision finding the County’s UGAs compliant with the GMA, the same WWGMHB ruled in the 2007 challenge that Yelm’s UGA was not in compliance with the GMA. AR 677. The problem is that the WWGMHB based its decision on outdated information. *Adams Cove Group, and Futurewise v. Thurston County*, WWGMHB Case No. 07-2-0005 (Final Decision and Order, July 28, 2008). AR 676-700. On August 26, 2008, the WWGMHB denied the City of Yelm and Thurston County’s Motion for Reconsideration. *Adams Cove Group, and Futurewise v. Thurston County*, WWGMHB Case No. 07-2-0005 (Order On Motion For Reconsideration, August 26, 2008). AR 719-725.

Thurston County appealed the decision in the 2007 challenge to Thurston County Superior Court. The Superior Court held:

A. The WWGMHB erroneously interpreted and applied the law when it determined that the Futurewise challenge was timely.

B. The WWGMHB erroneously interpreted and applied the law when it determined that Futurewise's action was not barred by the doctrine of issue preclusion.

C. The WWGMHB erroneously interpreted and applied the law when it found that Futurewise met its burden of proof based on outdated population figures and allocations.

D. The WWGMHB order finding that the Yelm UGA is out of compliance with the Growth Management Act (GMA) is not supported by evidence that is substantial when viewed in light of the whole record.

E. The Petition filed by Thurston County and the City of Yelm is hereby GRANTED and the Board's Final Decision and Order dated July 28, 2008, and its Order On Motion For Reconsideration dated August 26, 2008, concluding that the Yelm UGA was noncompliant with the GMA is REVERSED;

CP 177. Following the issuance of the Superior Court order, Futurewise appealed to this Court. CP 179-212.

III. ARGUMENT

A. Standard Of Review.

This appeal arises under the provisions of the Administrative Procedure Act, ch. 34.05 RCW, the applicable sections which provide as follows:

(3) Review of agency orders in adjudicative proceedings. The court shall grant relief from an agency order in an adjudicative proceeding only if it determines that:

...

- (c) The agency has engaged in unlawful procedure or decision-making process, or has failed to follow a prescribed procedure;
- (d) The agency has erroneously interpreted or applied the law;
- (e) The order is not supported by evidence that is substantial when viewed in light of the whole record before the court, which includes the agency record for judicial review, supplemented by any additional evidence received by the court under this chapter;

RCW 34.05.570(3).

Courts reviewing appeals arising under the Growth Management Act (ch. 36.70A RCW) must also consider that the Legislature requires Growth Boards to grant “deference” to the decisions of the County. RCW 36.70A.3201. In addition, under the state’s Growth Management Act, the decision of the County is “presumed valid,” with the burden on Futurewise to demonstrate on the basis of the record that the matter at issue was not in compliance with the Act’s goals and requirements. RCW 36.70A.320(1) & (2). In furtherance of the deference element, the Legislature adopted a stringent standard of review and provided that in any appeal, the Growth Board “shall find compliance unless it determines that the action by the ... County ... is clearly erroneous in view of the entire record before the board and in light of the goals and requirements of this chapter.” RCW 36.70A.320(3).

A good case summarizing the legal basis for review is *Thurston County v. Hearings Bd.*, 164 Wn.2d 329, 190 P.3d 38 (2008), in which the

Supreme Court provided a summary of the roles of Growth Boards and the standards for legal review.

A comprehensive plan is presumed valid, and “[t]he board shall find compliance unless it determines that the action by the state agency, county, or city is clearly erroneous in view of the entire record before the board and in light of the goals and requirements of [the GMA].” RCW 36.70A.320(3). “To find an action ‘clearly erroneous,’ the Board must have a ‘firm and definite conviction that a mistake has been committed.’” *Lewis County v. W. Wash. Growth Mgmt. Hearings Bd.*, 157 Wn.2d 488, 497, 139 P.3d 1096 (2006) (quoting *Dep’t of Ecology v. Pub. Util. Dist. No. 1 of Jefferson County*, 121 Wn.2d 179, 201, 849 P.2d 646 (1993)). The party petitioning for review of a comprehensive plan has the burden of demonstrating the local government’s actions failed to comply with the GMA. RCW 36.70A.320(2). A board must defer to a local government’s decisions that are consistent with the GMA. RCW 36.70A.3201.

On review, we stand in the same position as a superior court reviewing a board’s decision. *Lewis County*, 157 Wn.2d at 497. Judicial review of board actions is governed by the Administrative Procedure Act, chapter 34.05 RCW. *Quadrant Corp. v. Cent. Puget Sound Growth Mgmt. Hearings Bd.*, 154 Wn.2d 224, 233, 110 P.3d 1132 (2005). The party appealing a board’s decision has the burden of demonstrating the invalidity of the board’s actions. RCW 34.05.570(1)(a). A board’s decision may be challenged on nine different bases. RCW 34.05.570(3).

We review issues of law de novo. *Lewis County*, 157 Wn.2d at 498. Substantial weight is accorded to a board’s interpretation of the GMA, but the court is not bound by the board’s interpretations. *City of Redmond v. Cent. Puget Sound Growth Mgmt. Hearings Bd.*, 136 Wn.2d 38, 46, 959 P.2d 1091 (1998). A board’s order must be supported by substantial evidence, meaning there

is “a sufficient quantity of evidence to persuade a fair-minded person of the truth or correctness of the order.” *Id.* (quoting *Callecod v. Wash. State Patrol*, 84 Wn. App. 663, 673, 929 P.2d 510 (1997)). “On mixed questions of law and fact, we determine the law independently, then apply it to the facts as found by the agency.” *Lewis County*, 157 Wn.2d at 498 (quoting *Thurston County v. Cooper Point Ass'n*, 148 Wn.2d 1, 8, 57 P.3d 1156 (2002)). Finally, it should be noted that from the beginning the GMA was “riddled with politically necessary omissions, internal inconsistencies, and vague language.” *Quadrant Corp.*, 154 Wn.2d at 232 (quoting Richard L. Settle, *Revisiting the Growth Management Act: Washington's Growth Management Revolution Goes to Court*, 23 Seattle U. L. Rev. 5, 8 (1999)). The “GMA was spawned by controversy, not consensus” and, as a result, it is not to be liberally construed. *Woods v. Kittitas County*, 162 Wn.2d 597, 612 n.8, 174 P.3d 25 (2007) (quoting Settle, *supra*, at 34).

Thurston County v. Hearings Bd., 164 Wn.2d 329, 340-342, 190 P.3d 38 (2008) (footnote omitted).

At the WWGMHB hearing, Futurewise, not Thurston County, had the burden of demonstrating the WWGMHB’s decision was erroneous. Pursuant to RCW 36.70A.320(2), the burden was on Futurewise “to demonstrate that any action taken by a ... county ... under this chapter is not in compliance with the requirements of this chapter.” The only exception is when a county is subject to a determination of invalidity. RCW 36.70A.320(4). The WWGMHB did not issue a determination of invalidity in *Adams Cove Group, and Futurewise v. Thurston County*,

WWGMHB Case No. 07-2-0005 (Final Decision and Order, July 28, 2008). AR 676-702. As part of its decision, the Thurston County Superior Court held that Futurewise did not meet its burden of proof.

B. The Thurston County Superior Court Correctly Found Futurewise's Challenge To The WWGMHB To Be Untimely.

In 1994, the Thurston County Board of County Commissioners adopted the final UGA for the City of Yelm. AR 397. This final UGA remained unchallenged for approximately ten years until the County adopted Resolution No. 13234 which involved the County's seven year review of its Comprehensive Plan along with the County's first ten year review of its UGAs. AR 132-143. After adoption of Resolution No. 13234 on November 22, 2004, Futurewise petitioned the WWGMHB for, among other things, a finding that the County's UGAs were out of compliance with the GMA. In that case, Futurewise successfully argued that the GMA *mandated ten year UGA review* (RCW 36.70A.130 (3)) allows a challenge to a UGA even though the adopting resolution does not amend the longstanding UGA if certain circumstances exist. *Thurston County v. Hearings Bd.*, 164 Wn.2d 329, 347, 190 P.3d 38 (2008).

The current Futurewise challenge *again* takes issue with the size of the UGA, specifically the Yelm UGA, even though (1) the Yelm UGA

boundaries weren't *considered* part of Thurston County's 2006 annual review, (2) the 2006 annual review was not part of the County's seven or ten year reviews⁷, and (3) the County has already dealt with this issue as part of Futurewise's separate and distinct 2005 challenge through a compliance hearing which actually did involve the seven and ten year reviews. The Washington Supreme Court rejected a similar challenge involving the seven year review.

If we were to allow a party to challenge every aspect of a comprehensive plan for GMA compliance every seven years, the floodgates of litigation initially closed by the 60-day appeal period would be reopened. Aspects of plans previously upheld on appeal could be subjected to a new barrage of challenges because a party could argue it is challenging a county's failure to update a provision, rather than reasserting its claim against the original plan. *See, e.g., Thurston County*, 137 Wn. App. at 798-80 (allowing Futurewise's challenge to the County's UGA designations despite an earlier board decision upholding part of the County's UGA because the new challenge is based on the 2004 update). Because the legislature has not condoned such a result, we choose to limit challenges for failures to update comprehensive plans to those provisions that are directly affected by new or recently amended GMA provisions.

Thurston County v. Hearings Bd., 164 Wn.2d 329 at 345.

The GMA requires a challenge to a comprehensive plan amendment be filed within 60 days of publication of a notice of adoption. RCW

⁷ The Supreme Court held that "[a] party may challenge a county's failure to revise its UGA designations during a ten year update only if there is a different OFM population projection for the county." *Thurston County v. Hearings Bd.*, 164 Wn.2d at 347.

36.70A.290(2). Futurewise failed to challenge the 1994 establishment of Yelm's UGA. Futurewise now attempts to challenge Yelm's UGA through a petition involving Resolution No. 13734 adopted in 2006. However, Resolution No. 13734 did not consider a change to Yelm's UGA boundaries. Instead it provided for the following: (1) minor clerical updates to clarify sections of the plan; (2) updates to include the most recent 20-year population projections, including the 2026 figures; (3) minor updates to text and maps to amend irrelevant, outdated references to short term UGA boundaries and include provisions for intergovernmental coordination in planning; (4) updates of the population, housing and buildable lands information using the most recent population numbers and projections; and (5) consolidation of redundant policies. AR 199-200; AR 203; AR 208.

The case of *Montlake Cmty. Club v. Hearings Bd.*, 110 Wn. App. 731, 43 P.3d 57 (2002), supports Thurston County's argument that Futurewise's challenge is untimely. In *Montlake*, the petitioner wanted to appeal a level of service standard/methodology found in the city's comprehensive plan that was implemented in 1994. *Id.* at 732-733. The petitioner appealed a 1998 comprehensive plan amendment that provided updated information about existing traffic levels as part of a subarea planning process. *Id.* at 733-40. The court upheld the board's ruling that,

“Petitioner’s opportunity to challenge the City’s ‘screenline’ LOS [level of service] methodology was five years ago when the City adopted its comprehensive plan in 1994. Petitioner cannot now challenge the City’s LOS methodology...Petitioner’s opportunity to challenge the City’s concurrency ordinance lapsed long before the present challenge was filed.” *Id.* at 738.

The same is true for the challenge of the Yelm UGA in the current case. The County’s approval of an amendment to its Joint Plan with Yelm did not involve changing the UGA boundaries; nor did it involve changing the methodology of how the UGA boundaries were created. Both the City and the County made that point clear throughout the public process. Futurewise has not challenged any part of the County’s Comprehensive Plan that was amended during the 2006 annual amendment process. Instead, Futurewise challenged the Yelm UGA boundary, an item not considered during the 2006 amendment process.

Futurewise argues that *amendments* to a comprehensive plan can be challenged within 60 days of publication of the amendment adoption notice. *See* Brief of Appellant Futurewise, pp. 13-14. The County agrees that Comprehensive Plan amendments may be challenged under the GMA. RCW 36.70A.290(2). However, the *amendments* made under the challenged action in this case were amendments to population numbers,

not to the UGA boundaries. Futurewise could have challenged the population numbers if it believed they were wrong or were being adopted improperly. However, Futurewise did not challenge the amendments, it challenged the Yelm UGA boundary. The problem with Futurewise's argument is that the Yelm UGA boundary was not reviewed as part of the County's 2006 amendments and, therefore, was not subject to challenge.

The only other argument Futurewise makes is to cite to a case that involved a ten year review. The County agrees that during a ten year review, a challenge to a county's UGA is permitted under the GMA and case law. However, the citations presented by Futurewise regarding challenging a UGA are distinguishable as the Court in *Thurston County v. Hearings Bd.*, 164 Wn.2d 329, 190 P.3d 38 (2008), was addressing a situation involving Thurston County's ten year review. *Id.* at 347. Futurewise misinterprets RCW 36.70A.130(3) by implying that an amendment to population data is automatically a ten year UGA review. What RCW 36.70A.130(3)(a) states is that Thurston County "shall review, at least every ten years, its designated urban growth area or areas..." RCW 36.70A.130(3)(a). It is the County choice, not Futurewise's, when the UGA review will take place as long as its done at least once every ten years. As the above facts provide, the County made it clear throughout the

entire process that the updating of population data was not part of a ten year review or a UGA boundary review.

If Futurewise wished to challenge the Yelm UGA outside of a ten year UGA review, it should have done so after the 1994 adoption as that is the only time the Yelm UGA boundary has been considered as part of a County action. The trial court correctly ruled that the WWGMHB erroneously interpreted and applied the law when it determined that the Futurewise challenge was timely.

C. UGAs Can Only Be Challenged Following A Ten-Year Update To The Comprehensive Plan.

RCW 36.70A.130(3)(a) states:

Each county that designates urban growth areas under RCW 36.70.A.110 shall review, at least every ten years, its designated urban growth area or areas, and the densities permitted within both the incorporated and unincorporated portions of each urban growth area. In conjunction with this review by the county, each city located within an urban growth area shall review the densities permitted within its boundaries, and the extent to which the urban growth occurring within the county has located within each city and the unincorporated portions of the urban growth areas.

RCW 36.70A.130(3)(a). Recently, the Washington Supreme Court ruled that challenges to UGAs are not unlimited.

A party may challenge a county's failure to revise its UGA designations *during a ten year update* only if the OFM population projection for the county changed.

Thurston County v. Hearings Bd., 164 Wn.2d 329, 347 (2008) (emphasis added). As stated above, the adoption of Resolution 13734 to update population figures for the Yelm area was not part of a ten year UGA update. AR 208. That update began in 2004 and was completed in 2008. AR 133; CP 82-88. It wouldn't make sense for the County to begin a ten year update every two years. Also, it doesn't make sense to allow a challenge to a UGA if a County is doing minor housekeeping amendments to keep the most current information in the Comprehensive Plan. Population numbers are used for many planning purposes, not just for UGA sizing. If challenges were allowed any time a change was made to provide more accurate information, counties would never update plans until forced to. The legislature provided a reasonable approach by requiring UGAs to be reviewed every ten years.

Futurewise trivializes the action of reviewing the boundaries of UGAs. This differs from how the legislature has set up the GMA regarding UGAs. The legislature purposely provided a lengthy interval between UGA reviews. All of the provisions of a comprehensive plan, except UGAs, are required to be reviewed every 7 years. RCW 36.70A.130. Only UGAs are given the longer ten year interval for review. RCW 36.70A.130(3)(a). The Washington Supreme Court clarified this provision by limiting a party's ability to challenge a UGA *during a ten year update* to situations only where the OFM population projection has changed. *Thurston County v.*

Hearings Bd., 164 Wn.2d 329, 347, 190 P.3d 38 (2008). Clearly, the review of UGA boundaries is not considered a trivial activity.

In *Thurston County v. Hearings Bd.*, the Court provides a helpful summary regarding UGAs and how they relate to the GMA.

The legislature enacted the GMA in 1990 to address concerns related to “uncoordinated and unplanned growth” in the State and “a lack of common goals expressing the public's interest in the conservation and the wise use of our lands.” RCW 36.70A.010. The GMA provides a “framework” of goals and requirements to guide local governments who have “the ultimate burden and responsibility for planning.” RCW 36.70A.3201. Great deference is accorded to a local government's decisions that are “consistent with the requirements and goals” of the GMA. *Id.* The GMA's goals include encouraging development in urban areas and reducing rural sprawl. RCW 36.70A.020(1), (2).

The GMA requires counties to develop a “comprehensive plan,” which sets out the “generalized coordinated land use policy statement” of the county's governing body. Former RCW 36.70A.030(4) (1997). Among other things, the comprehensive plan must designate a UGA “within which urban growth shall be encouraged and outside of which growth can occur only if it is not urban in nature.” RCW 36.70A.110(1).

Thurston County v. Hearings Bd., 164 Wn.2d 329, 336-337, 190 P.3d 38 (2008). The legislature provided a long and arduous process for creating UGAs that involved the development of interim UGAs and required consultation with the cities. RCW 36.70A.110. The legislature recognized this complex process and created a system where UGAs could only be challenged once every ten years following a County's UGA

review. RCW 36.70A.130(3)(a). To argue that a County should have to address the size of its UGAs *anytime* it adopts the State's new population forecasts trivializes the process. If the legislature intended to allow UGA challenges each time the State provides new population numbers⁸, it would have stated so in the GMA. Instead the legislature requires a county to review its UGAs every ten years. The Growth Board erred when it ignored this clear provision of the GMA.

Additionally, the implication that updating population forecasts turns a ministerial action into a complex ten year UGA review has no support in the law and goes against several principles of statutory construction. First, "statutes should be construed to effect their purpose and unlikely, absurd or strained consequences should be avoided." *State v. Fjermestad*, 114 Wn.2d 828, 835, 791 P.2d 897 (1990). Reading the GMA to allow for a ten year review every time population numbers are changed will have strained consequences. Jurisdictions will not risk updating population numbers when new figures are released as to do so would open the expansive and costly UGA review. Counties would then plan and maintain comprehensive plans with outdated population numbers.

⁸ RCW 43.62.035 requires the Office of Financial Management to provide GMA population projections to each county at least once every five years or upon the availability of decennial census data, whichever is later. RCW 43.62.035.

A second principle of statutory construction that applies here is that, “courts must not construe statutes so as to nullify, void or render meaningless or superfluous any section or words of same.” *Taylor v. Redmond*, 89 Wn.2d 315, 319, 571 P.2d 1388 (1977). Allowing Futurewise to challenge the County’s UGA outside of its ten year review window would nullify RCW 36.70A.130(3)(a). If one reads the provision as Futurewise interprets it, there would be no need for a ten year review. Instead, it would read that UGAs can be challenged any year the County updates any population data. This goes against the principles of statutory construction and must be rejected as a matter of law.

As stated above, a challenge to the size of Yelm’s UGA is only permitted if it is brought within 60 days after publication of a notice describing the action taken by the County *as part of its ten year UGA review*. RCW 36.70A.290(2); RCW 36.70A.130(3)(a). Futurewise properly appealed the ten year review in its *earlier* challenge of the County’s 2004 action that specifically described it as the ten year UGA review. The Washington Supreme Court recognized the County’s 2004 action as the ten year UGA review. *Thurston County v. Hearings Bd.*, 164 Wn.2d 329, 337, 190 P.3d 38 (2008). Futurewise has not provided any evidence that suggests the 2006 action of adopting Resolution 13734 was part of the County’s ten year UGA review. Instead, all of the evidence

shows otherwise and provides that the County was only doing ministerial amendments to its Comprehensive Plan. AR 339-340; AR 377-378; AR 207-208. The Futurewise challenge to the Yelm UGA was outside the ten year review and was, therefore, untimely.

D. The Doctrine Of Issue Preclusion Applies To The Duplicative Challenge Brought By Futurewise.

Initially, the County would like to address Futurewise's argument that the County "never argued before the Western Board that res judicata or collateral estoppel barred Futurewise's claims..." *See* Brief of Appellant Futurewise, pg. 25-26. Contrary to that assertion, the doctrines of issue preclusion and res judicata were debated by both sides to the WWGMHB. Verbatim Report of Proceedings (VRP), July 2, 2008, pp. 27, 29, 30, 35, 36, 37; AR 684; AR 699. Furthermore, while *specifically arguing* against the doctrines, Futurewise did not formally object to the WWGMHB's consideration of res judicata or issue preclusion. VRP 35-37. Futurewise's contention that the County never made these arguments must be disregarded.

Courts have reviewed growth management hearings board decisions under the doctrines of res judicata and issue preclusion. *City Of Arlington v. Hearings Bd.*, 164 Wn.2d 768, 791-796, 193 P.3d 1077 (2008). Any claim that a growth board's limited jurisdiction allows it to

ignore the legal principles of res judicata/issue preclusion and reconsider an issue decided in a prior case is directly contrary to settled case law. *Lejeune v. Clallam County*, 64 Wn. App. 257, 823 P.2d 1144, *review denied*, 119 Wn.2d 1005 (1992). As the Court of Appeals made clear in that case, administrative tribunals such as the hearings board lack inherent power to re-decide their own decisions once they have become final. *Id.* at 271. *Lejeune* has been cited with approval by the Supreme Court. *Hilltop Terrace Ass'n v. Island County*, 126 Wn.2d 22, 31, 891 P.2d 29 (1995); *St. Joseph Hosp. v. Dep't of Health*, 125 Wn.2d 733, 744, 887 P.2d 891 (1995). It was also cited with approval in *Jefferson County v. Lakeside Indus.*, 106 Wn. App. 380, 388, 23 P.3d 542 (2001), *review denied*, 145 Wn.2d 1029 (2002) ["Claim and issue preclusion apply to both judicial and quasi-judicial decisions." (citing *Lejeune*)], and *Clallam County v. Hearings Bd.*, 130 Wn. App. 127, 132, 121 P.3d 764 (2005), *review denied*, 163 Wn.2d 1053 (2008) ["Res judicata, or claim preclusion, applies to quasi judicial administrative agency decisions." (citing *Lejeune*)].

In the case at hand, the issue involving the size of the Yelm UGA was previously litigated by the same parties in *1000 Friends of Washington v. Thurston County*, WWGMHB Case No. 05-2-0002. AR145-182. A final decision was rendered in that matter when the

WWGMHB issued its Order of Compliance finding all of Thurston County's UGAs compliant with the GMA. *1000 Friends of Washington v. Thurston County*, WWGMHB Case No. 05-2-0002 (Order Finding Compliance (UGAs), May 29, 2008). CP 82-88. Futurewise is now attempting a second bite of the apple by challenging Resolution 13734 and arguing the same issue, the Yelm UGA is too large. The WWGMHB held that the previous case did not preclude the second challenge to the Yelm UGA. AR 699. However, the facts do not support the WWGMHB's conclusion. This situation of attempting to relitigate an issue is why the doctrine of issue preclusion exists.

“When a subsequent action is on a different claim, yet depends on issues which were determined in a prior action, the relitigation of those issues is barred by collateral estoppel.” Collateral estoppel, or issue preclusion, requires

“(1) identical issues; (2) a final judgment on the merits; (3) the party against whom the plea is asserted must have been a party to or in privity with a party to the prior adjudication; and (4) application of the doctrine must not work an injustice on the party against whom the doctrine is to be applied.”

“In addition, the issue to be precluded must have been actually litigated and necessarily determined in the prior action.”

City of Arlington v. Hearings Bd., 164 Wn.2d 768, 792, 193 P.3d 1077

(2008) (footnotes omitted).

Contrary to what Futurewise argues, the issues are identical and the doctrine of issue preclusion applies to this case. The issue in the

previous case and the current case are identical with respect to challenging the size of the Yelm UGA in a GMA appeal to the WWGMHB. The parties are identical as both actions involve Futurewise and Thurston County. Also, in the first case, *1000 Friends of Washington v. Thurston County*, WWGMHB Case No. 05-2-0002, the issue was litigated and a final judgment was reached prior to the subsequent decision. Finally, there is no injustice to Futurewise as it had a full and fair opportunity to challenge the Yelm UGA in the prior action. It is important to note that when the WWGMHB found the Yelm UGA GMA compliant in the 2005 case, both Futurewise and the WWGMHB had the current Thurston County Comprehensive Plan⁹ in front of them which contained the population data that Futurewise was utilizing for the 2007 challenge as well as the updated population data. Futurewise chose not to object to a finding of compliance and the WWGMHB found compliance and specifically pointed to the Yelm UGA as compliant based on unique local

⁹ The Yelm Joint Plan is not separate and distinct from the Thurston County Comprehensive Plan, but is part of the Thurston County Comprehensive Plan. Under the framework of the County-Wide Planning Policies, the County developed joint plans with each city and town that proposed an urban growth area that extends into the unincorporated county. Joint Plans provide the Comprehensive Plan for these urban growth areas *and are adopted as a part of this Comprehensive Plan, although they appear in separate documents.* Thurston County Comprehensive Plan, Chapter One—Introduction, p. 1-8 (emphasis added). *See* Appendix B.

circumstances.

Only the City of Yelm, due to unique local circumstances, has a market factor of greater than 25 percent. Yelm's market factor is 35 percent. See Ordinance 14035.

...

Conclusion: Based on Thurston County's adoption of Resolution No. 14034 and Ordinance 1403[5] and the lack of objections by the Petitioner to a finding of compliance, the Board finds that the County's actions cure its non-compliance with RCW 36.70A.110.

...

VIII. ORDER The County's adoption of Resolution No. 14034 and Ordinance No. 14035 cures the non-compliance of Thurston County's Urban Growth Areas with the GMA.

1000 Friends of Washington v. Thurston County, WWGMHB Case No. 05-2-0002 (Order Finding Compliance (UGAs), May 29, 2008, pg. 6-7). CP 87-88. Two months later, the WWGMHB held the same Yelm UGA was too large based on the same Comprehensive Plan that was in front of it in the previous challenge.

While both cases were pending, Futurewise acknowledged the duplicative nature of the two challenges in its April 18, 2007 Response to the Motion To Dismiss in the case involving the Yelm UGA:

Although not forming part of the County's legal argument, the County notes that this petition is duplicative of the compliance process in 05-2-00[0]2. This is hopefully foreshadowing by the County that they will finally bring the Yelm UGA into compliance with the GMA as part of that proceeding. If they do, this petition will become moot, and Petitioners will happily move to dismiss it. Until the County re-sizes the Yelm UGA, however, there is no legal basis for dismissal.

AR 391. This was reinforced when Futurewise agreed to continue the 2007 challenge on four occasions as the 2007 case “may become moot if it is determined that the Yelm UGA is GMA compliant with or without changes based on new information obtained through the 2007 buildable lands report...” AR 402; AR 408; AR 414; AR 420. The WWGMHB did determine that the Yelm UGA was GMA compliant without changes to the UGA boundary based on new population information from the 2007 Buildable Lands Report. CP 82-90. Having found the Yelm UGA GMA compliant based on updated population data, the WWGMHB was barred by the doctrine of issue preclusion from re-deciding that issue.

Any argument that the WWGMHB didn't have the new population data in front of them in the 2007 challenge must be rejected. The Washington Administrative Code provides that a growth board may officially notice ordinances and resolutions enacted by counties, as well as orders and decisions of growth boards. WAC 242-02-660(4) & (6). In this case, the record is clear that the WWGMHB anticipated and did take notice of both the new population data adopted by Resolution No. 14034 and its own Order Finding Compliance (UGAs) in the 2005 challenge. First, Futurewise provided to the WWGMHB in its 2007 challenge

excerpts from Resolution 14034 that contained the new, updated population information. AR 667; AR 670-672. Second, the WWGMHB had just heard and decided the 2005 challenge that contained the new population information which became part of the current Comprehensive Plan. CP 82-88. Third, the WWGMHB considered the new information in the 2007 challenge when it granted the four extensions in that matter. AR 402-425. Fourth, the WWGMHB clearly took notice of Resolution 14034 as provided in the Final Decision and Order in the 2007 challenge. AR 676; AR 688. Fifth, the WWGMHB took notice of the new population data in the Order on Reconsideration in the 2007 challenge when it stated that the “County and City know this information is outdated as well.” AR 722. Sixth, both Resolution No. 14034 and Resolution No. 13734 were adopted and were part of the current Thurston County Comprehensive Plan at the time of the decision in the 2007 challenge. As can be seen, all of the information was in front of the WWGMHB prior to the compliance decision in the 2005 challenge and prior to the Final Decision and Order in the 2007 challenge. The Thurston County Superior Court properly held that the doctrine of issue preclusion barred Futurewise’s second challenge (2007 challenge) to the Yelm UGA.

E. The Thurston County Superior Court Properly Found That The WWGMHB Decision Was Not Supported By Substantial Evidence And That Futurewise Failed To Meet Its Burden Of Proof.

Futurewise's 2007 challenge was based entirely upon information that both Futurewise and the WWGMHB knew was outdated.

More to the point, the County and City know this information is outdated as well, yet it remains in the Plan. The County should amend the Yelm Joint Plan accordingly.

Adams Cove Group, and Futurewise v. Thurston County, WWGMHB Case No. 07-2-0005 (Order On Motion For Reconsideration, August 26, 2008). AR 722. The new buildable lands report which provided the most current population data was presented to the County in 2007. AR 672. Both the WWGMHB and Futurewise were aware of the new Buildable Lands Report as evidenced by the four agreed orders placing the 2007 challenge on hold (recognizing that a new 2007 Buildable Lands Report was forthcoming). AR 402-425. The 2007 Futurewise challenge was based on population information from July 2005 that included a footnote that new information would be forthcoming in 2007. AR 224; AR 236; AR 262.

As provided above, Futurewise had the burden to prove that the County's Comprehensive Plan is clearly erroneous in view of the entire

record. There is not substantial evidence supporting the WWGMHB's decision. The evidence in the record provides:

1. All of the County's UGAs, including the City of Yelm's, were found in compliance by the WWGMHB based on 2007 figures provided from a 2007 Buildable Lands Report. AR 672; *1000 Friends of Washington v. Thurston County*, WWGMHB Case No. 05-2-0002 (Order Finding Compliance (UGAs), May 29, 2008). CP 82-88.

2. The WWGMHB and Futurewise relied on outdated information. AR 224; AR 236; AR 262; AR 722.

The WWGMHB and Futurewise both treated the outdated figures as if they were accurate. Basing arguments on population figures that have since been updated in another section of the Comprehensive Plan does not meet the burden of proving that a UGA boundary is *clearly erroneous*. No party in any case, criminal or civil, can meet a burden of proof using evidence that all the parties and the judge know is false. Futurewise can't get around the fact that the Thurston County Comprehensive Plan was updated with new population data. Contrary to what the WWGMHB stated (AR 688), the Yelm Joint Plan is not separate and distinct from the Thurston County Comprehensive Plan, but is part of the Thurston County Comprehensive Plan.

Under the framework of the County-Wide Planning Policies, the County developed joint plans with each city and town that proposed an urban growth area that extends into the unincorporated county. Joint Plans provide the Comprehensive Plan for these urban growth areas *and are*

adopted as a part of this Comprehensive Plan, although they appear in separate documents.

Thurston County Comprehensive Plan, Chapter One—Introduction, p. 1-8 (emphasis added). *See* Appendix B.

Futurewise is unable to prove that the Yelm UGA is too large based on 2005 figures when the Comprehensive Plan provides updated population figures that are significantly different from the 2005 numbers. AR 608; AR 672. Futurewise relied on the July 2005 population forecasts showing a total population for the City of Yelm and its UGA of 10,560 in 2026 and 11,480 in 2030. AR 608. However, the updated numbers provide that Yelm and its UGA is forecasted to have a population of 22,400 in 2028. AR 672. The older figures Futurewise used show a population of 11,480 in year 2030; 10,920 *less* people than the new, unchallenged population forecast for 2028. It must be noted that the WWGMHB found all of the County's UGAs compliant based on the updated population figures. Futurewise attempts to confuse the issue by inferring that Yelm's population numbers were reduced. *See* Brief of Appellant Futurewise, pg. 5. The record shows that the City of Yelm and its UGA is forecasted for exponential growth. AR 672. Futurewise did not meet its burden using known, outdated population figures. Furthermore, the WWGMHB decision was based on outdated population data and, therefore, was not supported by substantial evidence.

Finally, the WWGMHB's attempt to rule on the outdated population data to provide substantial evidence was improper. The WWGMHB does not have jurisdiction over issues outside of the Petition for Review. AR 109-118; RCW 36.70A.290(1).

(1) All requests for review to a growth management hearings board shall be initiated by filing a petition that includes a detailed statement of issues presented for resolution by the board. The board shall render written decisions articulating the basis for its holdings. *The board shall not issue advisory opinions on issues not presented to the board in the statement of issues, as modified by any prehearing order.*

RCW 36.70A.290(1) (emphasis added). The only issue brought in the Petition for Review is that the Yelm UGA must be reduced in size. After finding the Yelm UGA compliant in WWGMHB case No. 05-2-0002 based on updated and unchallenged population figures now located in the Thurston County Comprehensive Plan, the issue of downsizing the Yelm UGA was resolved. Since Futurewise didn't take issue in its Petition with the population numbers themselves, that can't be a basis for a finding of noncompliance by the WWGMHB.

While it is true that the outdated provisions of the Joint Plan are not consistent with the most current figures located in other portions of the Comprehensive Plan, Futurewise failed to raise the issue of inconsistent Comprehensive Plan provisions in its Petition and objection to the

WWGMHB. Nor did Futurewise raise an issue of inaccurate population figures (partially because the outdated figures help its case).

Having found the Yelm UGA compliant with the GMA just two months previously, the WWGMHB erred by basing noncompliance on population figures that it knew were outdated. The finding of non-compliance was a round-about way of ordering the County to update the Yelm Joint Plan with the more recent population numbers already located in other parts of the Comprehensive Plan. The WWGMHB made this clear when it stated:

More to the point, the County and City know this information is outdated as well, yet it remains in the Plan. The County should amend the Yelm Joint Plan accordingly.

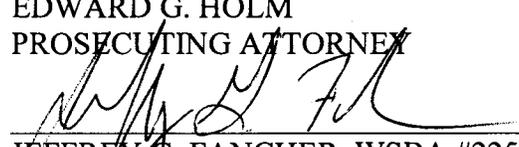
Adams Cove Group, and Futurewise v. Thurston County, WWGMHB Case No. 07-2-0005 (Order On Motion For Reconsideration, August 26, 2008). AR 722. Since Futurewise did not raise the issue of outdated or conflicting information in its Petition, the WWGMHB erred when it based its decision on the fact that the County had not updated the population information in the Yelm Joint Plan. The Thurston County Superior Court properly found that the WWGMHB decision was not supported by substantial evidence and that Futurewise failed to meet its burden of proof.

IV. CONCLUSION

The Brief of Appellant Futurewise attempts to cloud the issues by focusing on the outdated population numbers and trivializing the act of changing UGA boundaries. The facts speak for themselves. The Futurewise challenge to the size of Yelm's UGA is completely based on outdated population figures. Furthermore, the Thurston County Comprehensive Plan, which includes the joint plans for the cities, was updated with 2007 population figures. Based on the new 2007 population numbers, all of the UGAs, including Yelm, were found to be GMA compliant during an action in which Futurewise was a party. Futurewise can't then challenge the same UGA boundaries based on outdated population figures located in the same Thurston County Comprehensive Plan. This Court should uphold the decision of the Thurston County Superior Court that reversed the WWGMHB.

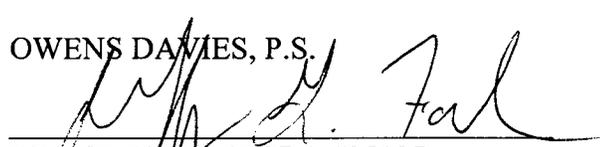
DATED this 23rd day of December, 2009.

EDWARD G. HOLM
PROSECUTING ATTORNEY



JEFFREY G. FANCHER, WSBA #22550
Deputy Prosecuting Attorney
Attorneys for Thurston County

OWENS DAVIES, P.S.



for: BRENT DILLE, WSBA #25137 *per email authorization*
Attorneys for City of Yelm

A copy of this document was e-mailed in the manner agreed upon by counsel of record to the following individual(s) on December 29, 2009.

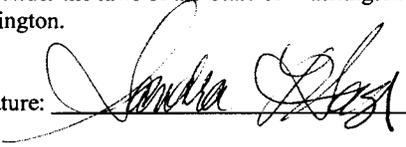
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I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct. Olympia, Washington.

Date: 12/29/09

Signature: 

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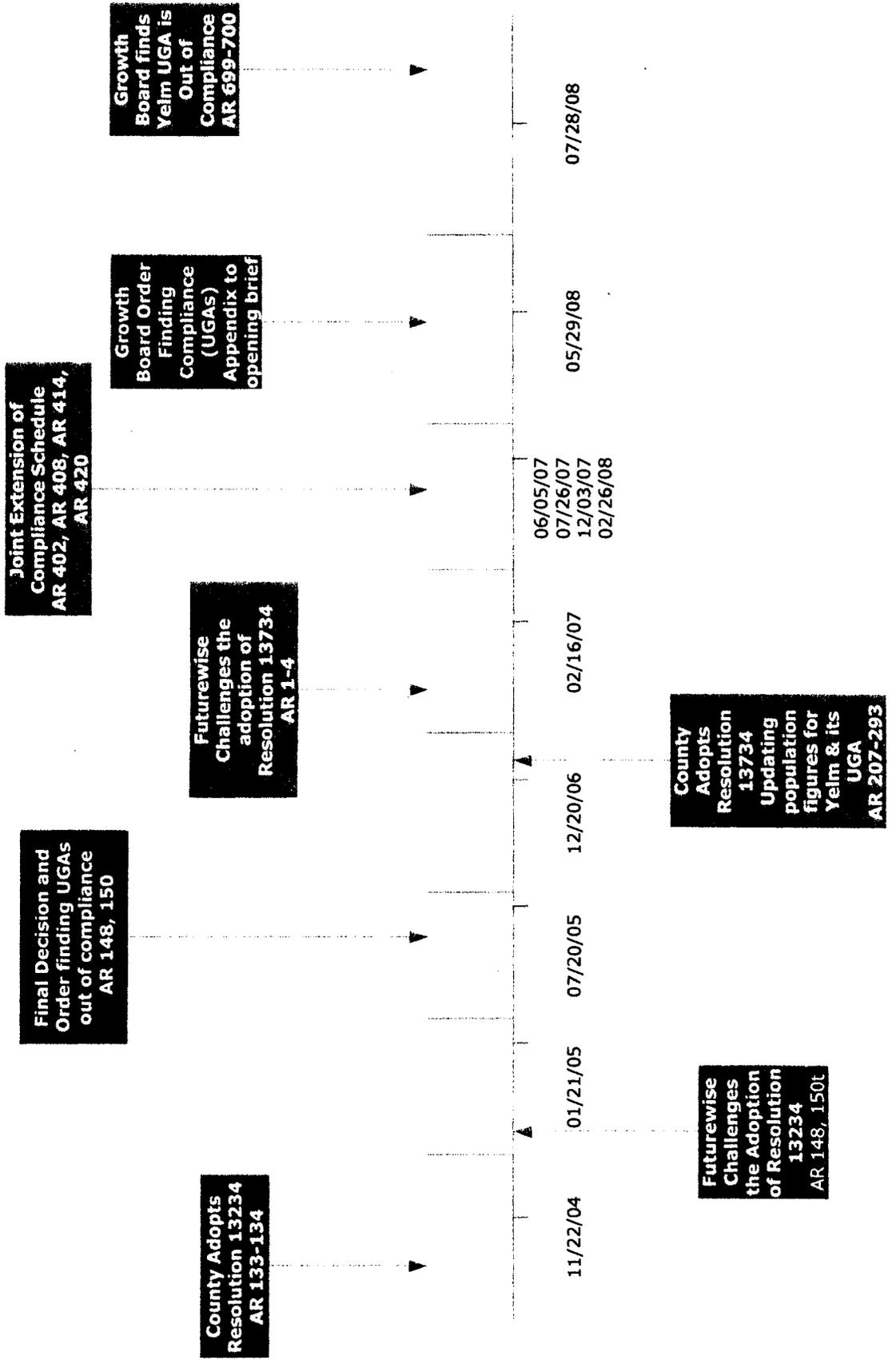
APPENDIX

- A. Timeline for illustrative purposes.
- B. Thurston County Comprehensive Plan, Chapter One—
Introduction.

PROCEDURAL TIMELINE

2005 Case

2007 Case



CHAPTER ONE -- INTRODUCTION

I. VISION FOR THURSTON COUNTY

People have chosen to live and work in Thurston County for many reasons. The county provides a diversity of environments and lifestyle choices such as urban, rural, and small town, all within a short distance of one another. The wholesome quality of life offered by the county includes a clean environment, job opportunities, easy access to work, recreation and shopping, regional health facilities, education and cultural activities, a variety of human services and a peaceful, uncrowded atmosphere.

Thurston County is anticipating continued high growth. That growth presents a challenge for the future. The county seeks to maintain and enhance its quality of life while achieving the benefits of growth and minimizing any negative side effects. The vision for Thurston County defines the future toward which the county is moving. It identifies how the county will respond to growth and change. This vision is expressed in terms of the following value statements.

Support and Preserve the Human Environment: Promotion of the human environment encompasses a range of activities including social and health services, job opportunities, education, public safety, recreation, and cultural events. Variety and accessibility of services and activities are important aspects of a quality human environment.

Continue Commitment to Public Participation: Thurston County has a strong tradition of open government and public participation in its policy making. County officials are highly committed to the principle that people affected by decisions should be given every opportunity to be involved in the decision-making process. Early and continuous public participation is encouraged through the amendment process for this Plan and associated regulations. See Chapter 11 for a description of the plan amendment process, and visit the Thurston County web page at www.co.thurston.wa.us/permitting for more information on how you can participate.

Preserve the Natural Environment, Water Quality and Open Spaces; Conserve the Natural Resource Base: We recognize our role as stewards of our natural resources and trustees for the future quality of human life. The quality of our county environment is a special feature that draws people to our area. We must monitor, protect, and enhance that environment. Maintenance of the quality of our water resources is an important concern because of human health, recreation, fisheries and aquaculture activities. Conservation of our farm and forest land base is important to ensure that these lands will be available to future generations. Our open spaces are valuable as visual and physical buffers, wildlife habitat and recreation sites. Open spaces can separate land uses and provide relief from homogeneous developments.

Promote Economic Health and Diversified Economic Activities: Support for new and existing businesses is essential to Thurston County's financial well-being. Active support of

Thurston County Economic Development Council's mission of job creation is of special importance because of the need to diversify our economic base. It is now heavily reliant on state government.

Economic activities provide jobs and income for county residents and tax base for our public services. A local economy that encompasses a wide spectrum of commercial and industrial endeavors provides wider job opportunities suited to all skill levels in the work force. Recognition and support also needs to be extended to the job creating opportunities in natural resource based economic activities including forestry, agriculture, aquaculture and mining as well as in residential and other construction activities. Tourism's economic impact is of increasing importance and value to the county.

Enough land needs to be available for a variety of economic activities to operate in convenient and appropriate locations. Roads, sewer, water, and other services required by economic activities need to be planned. Responsive and understandable permit processes are also important to a positive business climate. Development requirements should consider the long-term effects of any new development. Such requirements and processes need to resolve key questions of impact on the community's natural resources and ability to provide services to the development.

It is an important premise of this plan that the whole document relates to the county's economic development. For example, the county's educational, health, and recreational facilities, and its environmental quality, all play an important role in the area's economic health and attractiveness for economic development.

Promote Variety and Accessibility of Living Environments: The diverse environments ranging from urban to rural, small town, shoreline, agriculture, and forest contribute to choice in lifestyles available to county residents.

Manage Growth Effectively: Effective management of growth can protect the variety of living styles in the county, keep service costs to a minimum and preserve the natural environment. Concentration of urban growth in existing centers will protect rural and resource areas from urban sprawl. At the same time, urban areas can provide diversity through varied densities, land uses, parks, open spaces, and environmentally sensitive areas.

Maintain and Improve a Safe, Effective Transportation System: Our transportation system is a key to the economic vitality of the region. Safe bike and pedestrian facilities, public transportation and linkages between all modes (bus, train, air) are important elements of the system.

II. AUTHORITY FOR PLANNING

Thurston County adopts this Comprehensive Plan under the authority of the Washington State Growth Management Act (GMA), RCW 36.70A. Other legislation, including the Planning Commission Act (RCW 35.63), provide additional authority for and the procedures to be followed in guiding and regulating the physical development of the county. The Comprehensive Plan provides for the county's physical and other development and is designed to:

- Encourage the most appropriate use of land.
- Lessen traffic congestion and accidents.
- Secure safety from fire.
- Provide adequate light and air.
- Prevent overcrowding of land.
- Avoid undue concentration of population.
- Promote coordinated development of unbuilt areas.
- Encourage formation of neighborhood or community units.
- Secure an appropriate allotment of land area in new developments for all the requirements of community life.
- Conserve and restore natural beauty and other natural resources.
- Encourage and protect access to direct sunlight for solar energy systems.
- Facilitate the adequate provision of transportation, water, sewerage, and other public uses and requirements, including protection of the quality and quantity of ground water used for public water supplies.
- Review [the] drainage, flooding, and stormwater runoff in the area and nearby jurisdictions and provide guidance for corrective actions to mitigate or cleanse those discharges that pollute Puget Sound or waters entering Puget Sound.

The GMA is designed to reduce or mitigate the negative effects of uncoordinated and unplanned population growth. The following goals from the Act are used to guide the development and adoption of this Comprehensive Plan and its associated development regulations:

1. *Urban growth.* Encourage development in urban areas where adequate public facilities and services exist or can be provided in an efficient manner.
2. *Reduce sprawl.* Reduce the inappropriate conversion of undeveloped land into sprawling, low-density development.
3. *Transportation.* Encourage efficient multimodal transportation systems that are based on regional priorities and coordinated with county and city comprehensive plans.
4. *Housing.* Encourage the availability of affordable housing to all economic segments of the population of this state, promote a variety of residential densities and housing types, and encourage preservation of existing housing stock.

5. *Economic development.* Encourage economic development throughout the state that is consistent with adopted comprehensive plans, promote economic opportunity for all citizens of this state, especially for unemployed and for disadvantaged persons, and encourage growth in areas experiencing insufficient economic growth, all within the capacities of the state's natural resources, public services, and public facilities.
6. *Property rights.* Private property shall not be taken for public use without just compensation having been made. The property rights of landowners shall be protected from arbitrary and discriminatory actions.
7. *Permits.* Applications for both state and local government permits should be processed in a timely and fair manner to ensure predictability.
8. *Natural resource industries.* Maintain and enhance natural resource-based industries, including productive timber, agricultural, and fisheries industries. Encourage the conservation of productive forest lands and productive agricultural lands, and discourage incompatible uses.
9. *Open space and recreation.* Encourage the retention of open space and development of recreational opportunities, conserve fish and wildlife habitat, increase access to natural resource lands and water, and develop parks.
10. *Environment.* Protect the environment and enhance the state's high quality of life, including air and water quality, and the availability of water.
11. *Citizen participation and coordination.* Encourage the involvement of citizens in the planning process and ensure coordination between communities and jurisdictions to reconcile conflicts.
12. *Public facilities and services.* Ensure that those public facilities and services necessary to support development shall be adequate to serve the development at the time the development is available for occupancy and use without decreasing current service levels below locally established minimum standards.
13. *Historic preservation.* Identify and encourage the preservation of lands, sites, and structures that have historical or archaeological significance.

III. THE COMPREHENSIVE PLAN AND ITS ROLE IN THE COUNTY'S PLANNING SYSTEM

A. The Role of the Comprehensive Plan:

The Thurston County Comprehensive Plan provides a legally recognized framework for making decisions about land use in Thurston County. Thurston County's

Comprehensive Plan directs the county's future physical growth through several mechanisms.

1. Guidance for Development Regulations. The County's development regulations, such as the zoning ordinance, must be consistent with the policies in this Comprehensive Plan as well as related plans, like the Thurston County Sewerage General Plan.
2. Guidance for Capital Facilities Planning. The County's Capital Facilities Plan must include the public facilities needed to accommodate the population growth anticipated in the Comprehensive Plan. It also must ensure that levels of service adopted within the Plan can be maintained. Secondly, the Comprehensive Plan provides the framework for decisions about public facilities and services (such as where facilities should be located to support planned growth). It is intended that special districts and other agencies use the plan in preparing their functional plans for delivering services.
3. Guidance for Specific Land Use Permit Applications. In reviewing applications for land use permits, such as special use permits or large residential developments, the staff or hearings examiner refer to the Comprehensive Plan or more specific related plans, such as joint plans, in determining whether the application should be approved.
4. Guidance for Related Plans. Plans that are adopted by reference within this Comprehensive Plan (see discussion of joint plans and specialized plans below) must be consistent with the policies contained within this Plan, which serve as the overall framework for all County land use policies.
5. Guidance for Related Inter-Local Agreements. Occasionally the County and other jurisdictions within the County enter into voluntary agreements for various purposes, such as to coordinate policies of mutual interest, the use of shared facilities, and the accomplishment of mutual goals. Examples include annexation agreements with cities and the LOTT agreement for the regional sewage treatment facility. Such agreements are useful tools for implementing Comprehensive Plan policy when interjurisdictional cooperation is necessary or just more efficient.
6. Guidance for Various County Programs. Many of the policies within this Plan refer to County programs or projects needed to fulfill the goals of the Plan. For example, one of the strategies for conserving farmlands in the County is to develop and implement a Purchase of Development Rights program.

B. Joint Plans and Other Specialized Plans:

The Comprehensive Plan is the plan that guides several other kinds of specialized plans undertaken by the county: Joint plans, subarea plans, and functional plans.

Plans prepared to date in each of these categories are described in Appendix C. Goals, objectives, and policies on the county's planning system, citing its types of plans, and their interrelationships, is found in the section of policies on "Land Use Decision-Making" in Chapter Two--Land Use.

1. Joint Plans. Years prior to the GMA, the cities of Lacey, Olympia and Tumwater, and the county established a ground-breaking agreement for managing growth around the cities (the Urban Growth Management Agreement). This agreement established an urban growth boundary, and called for an innovative, collaborative approach to planning for the unincorporated portion of the urban growth area: joint planning. The joint planning concept was carried over to the County-Wide Planning Policies, and is now required for all unincorporated urban growth areas around cities and towns. (Refer to Appendix C for further discussion of the County-Wide Planning Policies.)

Joint plans serve as the Comprehensive Plans for the unincorporated areas within the urban growth boundaries for the cities and towns within the county. They are integral parts of this Comprehensive Plan, although they appear in separate documents. Joint plans are further discussed in Chapter 2-Land Use.

2. Subarea Plans. Subarea plans are detailed plans for specific geographic areas of the county. These types of plans are discussed in Chapter 2- Land Use.
3. Special Purpose (Functional) Plans. Functional plans cross subarea or urban growth boundaries and pertain to a certain subject such as sewers, stormwater, open space, or historic resources. As with the sub-area plans, functional plans use goals and policies and the urban-rural framework from the Comprehensive Plan to guide their development and implementation. Examples of functional plans include the County Bicycle Plan, the Stormwater Management Plan, the Boston Harbor Sewerage Plan, and the Comprehensive Parks, Recreation, Trails and Natural Resource Preserve Plan 2020. Some of these plans are developed for the county as a whole; others apply to parts of the county.

C. Time Horizon:

The Comprehensive Plan is meant to be a long-term guide for development in the county. The GMA requires the county to plan for and to accommodate the population growth projected over the next 20 years. This plan shows how the county will accommodate the 20-year projected growth. In determining the extent and distribution of uses permitted on the land, this plan focuses primarily on the physical characteristics of the land. To assure that the Comprehensive Plan, joint plans and subarea plans keep pace with any changing conditions and citizen

desires, periodic review and evaluation of the land use designations and policies should be undertaken.

IV. HOW THIS DOCUMENT IS USED BY OTHERS

Besides guiding the County's own decisions, this plan is intended to aid a broad range of public and private users, including community groups, builders, developers, Thurston County officials and other government agencies.

It Informs the Public: As the framework for other plans and regulations that govern the location and intensity of land uses throughout unincorporated Thurston County, the plan indicates, in a general sense, how and where development will change the County's landscape. The plan also indicates to the public how likely Thurston County would be to approve changes in plans, zoning, or other regulations that apply to an area or a specific parcel.

It Informs Other Public Entities: It is intended that cities and other public agencies use the Comprehensive Plan as they develop plans and make project decisions. The cities, in cooperation with Thurston County, will use the plan in updating their own comprehensive plans, growth policies, joint plans with the county and proposals to annex county territory. Federal, state, and regional agencies also will use the plan in making project decisions.

Why It Uses "Should" Instead of "Shall": The Comprehensive Plan is a broad policy document intended to guide more specific land use decisions in the future. Regulations, such as zoning and building codes or road construction standards, are detailed rules applied uniformly, with little discretion. Therefore, although the Comprehensive Plan carries legal weight when applied to specific land use decisions, it uses the word "should" rather than the nondiscretionary "shall" found in regulations.

V. HISTORY OF AMENDMENTS TO THE COMPREHENSIVE PLAN

Thurston County's first Comprehensive Plan was adopted in 1975. This initial plan set the stage for the introduction of countywide zoning and environmental protection regulations--critical features of land development in that period of very high population growth; the County's population grew by more than 60 percent during the 1970's. The 1975 Plan also introduced policies for economic development, the provision of public services, transportation, natural resource protection, and other features typical of comprehensive plans.

The first major overhaul of the Comprehensive Plan was adopted in 1988 after four years of preparatory work, extensive public review, and policy development. Among the changes introduced in 1988 was a greater emphasis on concentrating population growth in existing urban areas where the necessary public services and facilities could be provided more cost-efficiently. That plan included the State's first urban growth management boundaries which were established for the north county cities. Another innovative approach to growth

management in the Plan was the concept of joint planning between the County and cities. Joint planning enabled the County to better coordinate land development policies in areas likely to be annexed by cities or towns in the foreseeable future. This early experience with coordinated, cooperative planning with its neighboring jurisdictions put the County ahead of the pack when the Growth Management Act was passed in 1990, requiring coordination in planning.

The 1988 planning process also involved a close examination of natural resource lands issues, particularly, how best to preserve scarce agricultural lands and forest lands. These proved to be difficult issues to address. The 1988 Plan added detail to the County's housing strategies, included a chapter on Historic Resources, reinforced economic development efforts, and expanded policies to correspond to increasing information about environmental protection needs. The Plan stepped up the County's sophistication in public services and facilities planning, paying particular attention to maximizing efficiencies and reducing costs. While the 1975 Plan's transportation chapter focused on needed road improvements, the 1988 Plan recognized the relationship between land use and a variety of transportation needs. In summary, the 1988 Comprehensive Plan left the County well-positioned to respond to the requirements of the 1990 Growth Management Act; whereas many jurisdictions were required to make quantum leaps in policy direction in a very short timeframe.

The 1995 update of the Comprehensive Plan brought the Plan into full compliance with the Growth Management Act (GMA). All the changes made were either to respond to GMA requirements or to update the 1988 material. The work needed to comply with the GMA began with the adoption of County-Wide Planning Policies (by the cities and county) to ensure a consistent planning approach throughout the County. Next came the classification and designation of natural resource lands, moving forward in an area of high importance and interest in Thurston County. That work was integrated into a rural zoning analysis that resulted in a stronger delineation of urban lands from rural lands in the County's zoning regulations, also required under the GMA. At the same time, the County developed the GMA-required critical areas ordinance for the protection of important and vulnerable environmental features. Additional chapters of the plan were added to comply with the elements required under GMA.

Under the framework of the County-Wide Planning Policies, the County developed joint plans with each city and town that proposed an urban growth area that extends into the unincorporated county. Joint Plans provide the Comprehensive Plan for these urban growth areas and are adopted as a part of this Comprehensive Plan, although they appear in separate documents.

This 1995 Comprehensive Plan was developed in the context of the timelines provided under the GMA. Public participation improved the direction of the Plan through comments made at Open Houses held both at the beginning of the Plan development, and after the first draft was reviewed by the Thurston County Planning Commission. Public hearings were held before both the Planning Commission and the Thurston County Board of Commissioners to further involve the public in the Plan's development. Separate joint plan

adoption processes provided additional opportunities for the public to direct the County's growth.

The Plan is periodically amended according to an annual amendment process and a seven-year review cycle required by the Growth Management Act (RCW 36.70A.130). In 2003, major amendments to Chapter 3- Natural Resource Lands and Chapter 9- Natural Environment updated county policies for natural resource protection. The 2004 amendments to the Comprehensive Plan and associated development regulations updated the remaining chapters of the plan under the GMA. In 2007, Chapter 2 – Land Use was further updated for GMA compliance.

Annual and periodic reviews ensure that the Plan keeps pace with changing legal requirements and community needs. The plan amendment process is described in Chapter 11.

The participation of the County's citizens in shaping the County's physical and social landscape has, and will continue to be, the most important feature of Thurston County's planning history.

VI. SETTING

Geography, Area, Climate, Economy, Population Projections

Thurston County, situated at the southern end of Puget Sound, includes land forms varying from coastal lowlands in the north county, to cascade foothills in the southeast. Generally though, the county is a region of prairies and rolling lowlands, broken by minor hills and a few peaks which rise to elevations of about 2,600 feet. There are over 90 miles of Puget Sound coastline, three major river basins, and over 100 lakes and ponds in Thurston County.

The county contains a total area of 737 square miles, or 471,713 acres. Approximately 688 square miles (440,545 acres), or 93 percent of the total area, lies in unincorporated Thurston County. The remaining seven percent is divided among the seven incorporated cities and towns of Olympia, Lacey, Tumwater, Bucoda, Rainier, Tenino, and Yelm. Major landowners in the unincorporated county include the State of Washington (including Capitol Forest), the federal government (including Fort Lewis and Nisqually Wildlife Refuge), and private timber companies.

Thurston County's climate is influenced by Puget Sound and the marine air masses that move through the region from the Pacific Ocean. Summers are warm and generally dry, while winters are mild and wet. Yearly rainfall, highest in the northwest county at about 60 inches per year, decreases towards the southeast to about 40 inches per year around Alder Lake. Mean annual temperature in Olympia is 50.0 degrees Fahrenheit.

The economy of Thurston County is greatly influenced by state government. As the seat for state government, Thurston County is home to the full range of state offices. In addition to state government, the other economic base industries involve the manufacturing and agricultural forestry/fisheries sectors. Also very important as a major employer is the trade and services sector, including health services. Thurston County serves as a regional health care center.

Thurston County has been among the fastest growing counties in the state since the 1960s. During the 1990s, the County grew at an annual rate of 2.5 percent, adding over 46,000 new residents between 1990 and 2000. The cities and urban growth areas experience the fastest growth rates. Most of the County's population growth is due to immigration. The 2003 population was approximately 214,800. Projections show over 330,000 people living in the county in the year 2025, an increase of 35 percent. Chapter 2-Land Use describes population growth trends in the urban and rural areas of the county.