

No. 446-71-5-II

**IN THE COURT OF APPEALS, DIVISION TWO
OF THE STATE OF WASHINGTON**

ERIC HIRST, LAURA LEIGH BRAKKE, WENDY HARRIS and
DAVID STALHEIM,

Appellants,

v.

GROWTH MANAGEMENT HEARINGS BOARD, WESTERN
WASHINGTON REGION, and WHATCOM COUNTY,

Respondents.

AMENDED BRIEF OF APPELLANTS

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2013 OCT 22 AM 11:59
STATE OF WASHINGTON
COURT OF APPEALS
DIVISION TWO
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pm 10/21/13

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A. INTRODUCTION

Washington's Growth Management Act ("GMA") implements important state goals. As the Washington Supreme Court recently recognized, "[t]hrough the GMA, the legislature sought to minimize 'uncoordinated and unplanned growth, which it found to 'pose a threat to the environment, sustainable economic development, and the health, safety, and high quality of life enjoyed by residents of this state.'""¹

The key to achieving these goals is an internally consistent Comprehensive Plan implemented by consistent development regulations.² When Whatcom County ("County") adopts new Comprehensive Plan provisions, the GMA requires the entire plan to be internally consistent. When the County adopts development regulations, they must be consistent with an internally-consistent Comprehensive Plan.³

Whatcom County's Comprehensive Plan says that it provides for a population increase of **2,651** people outside of cities by the year 2029. In fact, Whatcom County's Comprehensive Plan and development regulations provide for a population increase of **33,696** people outside of

¹ *Kittitas County v. Eastern Wash. Growth Mgmt. Hearings Bd.*, 172 Wash.2d 144, 162, 256 P.3d 1193, 1202 (2011), quoting RCW 36.70A.010.

² "Development regulations" are "specific controls placed on development or land use activities by a county or city." WAC 365-196-800(1). "'Implement' in this context has a more affirmative meaning than merely 'consistent.' 'Implement' connotes not only a lack of conflict but also a sufficient scope to fully carry out the goals, policies, standards and directions contained in the comprehensive plan." *Id.* (internal citation omitted).

³ See RCW 36.70A.070 and RCW 36.70A.130(1).

cities by the year 2029. If not one person were born in, or moved into, the cities within Whatcom County, new development in the rural and agricultural areas could support the County's entire projected population growth through 2029.

Because of this discrepancy, in 2012 the Growth Management Hearings Board, Western Washington Region ("Board") correctly found that "the County has not planned to ensure that its comprehensive plan and development regulations, considered together, allocate rural population consistent with the Comprehensive Plan's population allocation."⁴ The Board found that the additional residential development allowed outside cities "conflicts with the goal of locating most population increases in the UGA and encourages sprawl."⁵

In 2013, the Board again found that "[t]here is inconsistency between the development capacity allowed in the County's rural areas and the population projections in the comprehensive plan."⁶ The Board

⁴ RP 3952, *Futurewise et al. v. Whatcom County*, Final Decision and Order (Case No. 11-2-0010c) and Order Following Remand on Issue of LAMIRDs (Case No. 05-2-0013) (Jan. 9, 2012) at 12-121 of 177 (hereinafter "2012 Order"). NOTE ON RECORD REFERENCES: Because this is a direct appeal from the GMHB, there is no Record of Proceedings, per se. **RP references refer to the record of the GMHB.** CP references refer to the Clerk's Papers.

⁵ RP 3952.

⁶ CP 46, *Futurewise/Governors Point v. Whatcom County*, Compliance Order and Order Following Remand on Issue of LAMIRDs, Growth Management Hearings Board, Western Washington Region, Case Nos. 11-2-0010c and 05-2-0013 (Jan. 4, 2013) at 27 of 93 (hereinafter "2013 Compliance Order"). This brief refers frequently to the relevant

explicitly found that “the County still can accommodate virtually all of its projected population increase in its rural lands, contrary to the GMA’s goal of promoting compact urban development and reducing sprawl.”⁷ Nonetheless, because the Board believed that the County had “taken important steps towards reducing the overcapacity” (although the overcapacity still exists), and *mistakenly* believed that a newly-adopted County policy⁸ would “reconcile inconsistencies. . .through an annual review process,”⁹ the Board found that the County’s Comprehensive Plan did not violate the GMA.¹⁰

As explained further below, the GMA’s requirement of internal consistency is mandatory. The County’s Comprehensive Plan and development regulations remain inconsistent. The Board’s conclusion that this inconsistency does not matter, despite the GMA’s clear mandate, is based on errors of fact and law and should be overturned.

B. ASSIGNMENTS OF ERROR

1. The Board’s conclusion that Comprehensive Plan Policy 2DD-1 requires the County to reconcile Comprehensive Plan and

portion of the Compliance Order, which is only seven pages long and is attached hereto as the Appendix for the Court’s ease of review.

⁷CP 47 (Appendix at 28 of 93), 2013 Compliance Order.

⁸ RP 004249-50, Comprehensive Plan Policy 2DD-1, Comprehensive Plan at 2-72. Policy 2DD-1 is set forth in its entirety and discussed below.

⁹ CP 48 (Appendix at 29 of 93), 2013 Compliance Order.

¹⁰ *Id.* (the County’s revised Comprehensive Plan “does not create an internal inconsistency which violates RCW 36.70A.070 (preamble) or RCW 36.70A.130”).

development plan inconsistencies, and therefore did not violate the GMA, was not based on substantial evidence.

2. The Board erred in its legal interpretation of the GMA requirement of internal consistency when it found that the GMA allows the County to defer internal consistency to a future date.

ISSUES RELATED TO ASSIGNMENTS OF ERROR

1. Was the Board's conclusion that Comprehensive Plan Policy 2DD-1 requires the County to reconcile Comprehensive Plan and development plan inconsistencies, and therefore did not violate the GMA, based on substantial evidence?
2. The GMA provides that "The [comprehensive] plan shall be an internally consistent document and all elements shall be consistent with the future land use map."¹¹ It also provides that "[a]ny amendment of or revision to a comprehensive land use plan shall conform to this chapter. Any amendment of or revision to development regulations shall be consistent with and implement the comprehensive plan."¹² Did the Board err in its legal interpretation of these GMA requirements when it found that the GMA allows the County to defer internal consistency to a future date?

¹¹ RCW 36.70A.070.

¹² RCW 36.70A.130(1)(d).

C. STATEMENT OF THE CASE

1. The County's 2011 Amendments to the Comprehensive Plan and the Board's 2012 Order

On May 10, 2011, the Whatcom County Council adopted Ordinance No. 2011-013, amending the Whatcom County Comprehensive Plan. The amendments included, *inter alia*, the County's response to the Supreme Court's decision in *Gold Star Resorts, Inc. v. Futurewise*, 167 Wn.2d 723 (2009), which held that "the County must revise its comprehensive plan to conform to 1997 amendments to the GMA [Growth Management Act] that set out criteria for establishing limited areas of more intensive rural development and rural densities."¹³

Hirst and other parties¹⁴ filed petitions before the Growth Management Hearings Board, Western Washington Region ("Board"), contesting the compliance of the 2011 amendments with the GMA. On January 9, 2012, the Board issued a Final Decision and Order and Order Following Remand on Issue of LAMIRDS in *Futurewise/Governors Point v. Whatcom County*, Growth Management Hearings Board, Western Washington Region, Case Nos. 11-2-0010c and 05-2-0013 (Jan. 9, 2012) ("2012 Order"). The Board found that the County had not complied with

¹³ *Gold Star Resorts, Inc. v. Futurewise*, 167 Wn.2d 723, 726 (2009). Sixteen years later, the County's Comprehensive Plan still does not conform to these 1997 requirements. See 2013 Compliance Order at 90-95 (noncompliance and invalidity findings).

¹⁴ The City of Bellingham, Futurewise, and Governors Point Development Company also filed petitions.

the GMA in a number of respects, including the requirement for internal consistency.

Central to this appeal is the Board's determination "that the County has created an inconsistency between the population allocation to the rural areas allowed by the County's development regulations and the allocation elsewhere provided for in the Comprehensive Plan."¹⁵

- The Board observed that the County had "adopt[ed] land use designations that provide capacity for **all** its projected population growth to occur in rural lands."¹⁶
- The Board addressed a "fundamental problem, and that is the County's own growth allocation to rural areas."¹⁷
- The Board found "that the County has not planned to ensure that its comprehensive plan and development regulations, considered together, allocate rural population consistent with the Comprehensive Plan's population allocation. The additional residential development allowed in the County LAMIRDs conflicts with the goal of locating most population increases in UGAs and encourages sprawl."¹⁸

¹⁵ RP 003835, 2012 Order at 4 of 177.

¹⁶ RP 003870, 2012 Order at 39 of 177 (emphasis in original).

¹⁷ RP 003950, 2012 Order at 119 of 177.

¹⁸ RP 003952, 2012 Order at 121 of 177.

The Board's conclusion that the County had violated the GMA was based on its finding that the County's "Comprehensive Plan amendments and development regulations permit a population in the County rural areas far in excess of the allocation elsewhere provided for in the County Comprehensive Plan, thereby creating Plan inconsistency in violation of RCW 36.70A070 (preamble) and RCW 36.70A130(1)."¹⁹ This issue was one of the issues subject to the Board's order to the County to "bring its Comprehensive Plan and associated Development Regulations into compliance with the Growth Management Act."²⁰

2. The County's 2011 Amendments to the Comprehensive Plan and the Board's 2012 Order

The County did not appeal the Board's ruling on the internal inconsistency issue. To address this issue (and other issues remanded to the County, which are not at issue in this appeal), the County adopted Ordinance 2012-032 ("Ordinance"). The Ordinance added Policy 2DD-1 to the Comprehensive Plan.

Policy 2DD-1 requires the County to monitor the number of permits issued each year and provides that the County "may" change its

¹⁹ *Id.*

²⁰ RP 004003, 2012 Order at 172 of 177.

population allocation “during the comprehensive plan update required per RCW 36.70A.130(1).”²¹

Because this policy did not result in internally consistent Comprehensive Plan and development regulations, Hirst et al. objected to a finding of compliance based on the Ordinance.²² On January 4, 2013, the Board issued its Compliance Order, responding to the County’s assertion of compliance and Hirst et al.’s objections.

The 2013 Compliance Order states that “[t]here is inconsistency between the development capacity allowed in the County’s rural areas and the population projections in the comprehensive plan. This was the basis

²¹ RP 004249-50, Comprehensive Plan at 2-72. Policy 2DD-1 states in its entirety as follows:

Concentrate growth in urban areas per the population projections in Chapter 1 of this plan, and recognize rural lands as an important transition area between urban areas and resource areas. By February 1 of each year the department will publish a report that monitors residential development outside the urban growth areas during the previous year and compares that data with the adopted population growth projections for those areas. If it is apparent that growth occurring outside the urban growth areas is inconsistent with adopted projections, the County shall take action to address the discrepancy. Actions may include changing the allocation of the projected population growth during the comprehensive plan update required per RCW 36.70A.130(1) or changing development regulations to limit growth outside the urban growth areas.

The referenced update originally was required by 2012, but the Legislature extended the date to 2016. RCW 36.70A.130(5)(b).

²² Futurewise also objected to a finding of compliance. The remaining original parties in the Futurewise/Governors Point case (the City of Bellingham and Governors Point Development Co., Triple R. Residential Construction, Inc. and the Sahlin Family) did not participate in the proceedings that resulted in the Compliance Order and have not filed Notices of Appearance in the present appeal. While Futurewise is not an appellant in this case, it filed a Notice of Appearance in Thurston County Superior Court on February 22, 2013 and a “Concurrence in the Hirst Application for a Certificate of Appealability” on February 26, 2013.

for noncompliance identified in the FDO on Remand.²³ It further found that the County’s amended Comprehensive Plan “acknowledges the overcapacity”.²⁴ Nonetheless, the 2013 Compliance Order concluded that “the County’s Policy 2DD-1 on population allocation does not create an internal inconsistency which violates RCW 36.70A.070(preamble) or RCW 36.70A.130.”²⁵

3. Direct Review by the Court of Appeals

The Administrative Procedure Act (“APA”) authorizes direct review of the decisions of environmental boards, including the Growth Management Hearings Board, and provides that a Board should issue a certificate of appealability if it “finds that delay in obtaining a final and prompt determination of the issues would be detrimental to any party or the public interest and either: (i) fundamental and urgent statewide or regional issues are raised; or, (ii) the proceeding is likely to have significant precedential value.”²⁶ In deciding whether to accept direct review, the Court of Appeals considers the same criteria.²⁷

²³ CP 46 (Appendix at 27 of 93), 2013 Compliance Order.

²⁴ CP 48 (Appendix at 29 of 93), 2013 Compliance Order.

²⁵ *Id.*

²⁶ RCW 34.05.518(3)(b).

²⁷ RCW 34.05.518 (5).

Hirst applied to the Board²⁸ for a Certificate of Appealability, which the Board issued on March 15, 2013. The Board's Certificate of Appealability agrees that all of the statutory criteria are met.²⁹ Hirst filed a Notice of Discretionary Review in Thurston County Superior Court on March 22, 2013³⁰ and a Motion for Discretionary Review on April 5, 2013. Following oral argument on May 22, 2013, this Court granted direct review on June 10, 2013.³¹

²⁸ CP 114-123, *Futurewise/Governors Point Development Co. v. Whatcom County*, WWGMHB Case Nos. 11-2-0010c and 05-2-0013, Application for a Certificate of Appealability (Feb. 19, 2013).

²⁹ CP 130-138, *Futurewise/Governors Point Development Co. v. Whatcom County*, WWGMHB Case Nos. 11-2-0010c and 05-2-0013, Certificate of Appealability (Thurston County Superior Court No. 13-2-00267-9) at 7 of 7 (March 15, 2013).

³⁰ CP 139-238, *Hirst et al. v. Growth Mgmt. Hearings Bd., Western Wash. Region*, Notice of Discretionary Review to Ct. of Appeals, Div. II, No.: 13-2-00267-9 (WWGMHB Case No. 11-2-0010c) (March 22, 2013).

³¹ *Hirst et al. v. Growth Mgmt. Hearings Bd., Western Wash. Region*, Case No. 44671 -5 -11, Ruling Accepting Direct Review (July 10, 2013).

D. ARGUMENT

1. Standard of Review

The Board's decisions are reviewed under the APA, chapter 34.05 RCW, and based on the record made before the Board. The burden of demonstrating the invalidity of the Board's decision is on the party asserting the invalidity.³² All levels of the court, from superior court to the Supreme Court, apply the provisions of RCW 34.05 directly to the record before the agency.³³

This appeal is based on two provisions of RCW 34.05.570(3). The first provision, RCW 34.05.570(3)(d), provides that the court shall grant relief from an agency order when it determines that the agency "has erroneously interpreted or applied the law." The courts review errors of law under this provision de novo.³⁴

Under RCW 34.05.570(3)(d), this court conducts a de novo review of the Board's conclusions of law.³⁵ In reviewing growth management hearings board decisions, courts give substantial weight to a board's

³² *Thurston County v. Cooper Point Ass'n*, 148 Wash.2d 1, 7-8, 57 P.3d 1156, 1159-60 (2002); RCW 34.05.570(1)(a).

³³ *City of Redmond v. Cent. Puget Sound Growth Mgmt. Hearings Bd.*, 136 Wash.2d 38, 45, 959 P.2d 1092, 1093 (1998) ("*City of Redmond*").

³⁴ *Kittitas County v. Eastern Wash. Growth Mgmt. Hearings Bd.*, 172 Wash.2d 144, 155, 256 P.3d 1193 (2011) ("*Kittitas County*").

³⁵ RCW 34.05.570(3)(d). See also *City of Redmond*, 136 Wn.2d 38, 45, 959 P.2d 1091 (1998).

interpretation of the GMA.³⁶ The court is the final arbiter, however, and it is not bound by the Board's interpretation. As the Supreme Court has explained:

[W]e accord deference to an agency interpretation of the law where the agency has specialized expertise in dealing with such issues, but we are not bound by an agency's interpretation of a statute. As we stated in *Overton v. Wash. State Econ. Assistance Auth.*, 96 Wash.2d 552, 555, 637 P.2d 652 (1981):

Where an administrative agency is charged with administering a special field of law and endowed with quasi-judicial functions because of its expertise in that field, the agency's construction of statutory words and phrases and legislative intent should be accorded substantial weight when undergoing judicial review. . . .

We also recognize the countervailing principle that it is ultimately for the court to determine the purpose and meaning of statutes, even when the court's interpretation is contrary to that of the agency charged with carrying out the law.³⁷

The second provision, RCW 34.05.570(3)(e), provides that relief shall be granted when the order is not supported by evidence that is substantial when viewed in light of the whole record before the court. Courts review challenges under this provision by determining whether there is "a sufficient quantity of evidence to persuade a fair-minded person of the truth or correctness of the order."³⁸

³⁶ *Kittitas County*, 172 Wash.2d at 154.

³⁷ *City of Redmond*, 136 Wn.2d 38 at 46.

³⁸ *Kittitas County*, 172 Wash.2d at 154 (internal quotation marks and citations omitted).

While boards must give deference to county planning processes,³⁹ this deference is limited by the requirements of the GMA. As the Supreme Court has stated:

“Local governments have broad discretion in developing [comprehensive plans] and [development regulations] tailored to local circumstances.” Local discretion is bounded, however, by the goals and requirements of the GMA. In reviewing the planning decisions of local governments, the Board is instructed to recognize “the broad range of discretion that may be exercised by counties and cities *consistent with the requirements of this chapter*” and to “grant deference to counties and cities in how they plan for growth, *consistent with the requirements and goals of this chapter*.” RCW 36.70A.3201.⁴⁰

The Supreme Court has stated that the Board’s deference to the County under the relevant “clearly erroneous” “is neither unlimited nor does it approximate a rubber stamp.”⁴¹ The Board must “give the county’s actions a ‘critical review’ and is a ‘more intense standard of review’ than the arbitrary and capricious standard.”⁴² This standard requires a “critical review,” not a “rubber stamp,” of a county’s assurance of future compliance.⁴³

³⁹ *Id.*

⁴⁰ *King County v. Cent. Puget Growth Mgmt. Hearings Bd.*, 142 Wn.2d 543, 561, 14 P.3d 133 (2000) (internal citation omitted, emphasis in original).

⁴¹ *Swinomish Indian Tribal Cmty v. W. Wash. Growth Mgmt. Hearings Bd.*, 161 Wn. 2d 415, 435 n.8, 166 P.3d 1198, 1209 n.8 (2007).

⁴² *Id.* (citations omitted).

⁴³ *Id.* (rejecting the dissent’s argument that the Board was required to “give the proper ‘deference’ to the county’s ‘assurance[.]’ of future compliance” under the “clearly erroneous” standard).

2. The GMA Requires Development Regulations to Implement the Provisions of an Internally Consistent Comprehensive Plan, Based on Realistic Population Projections.

Population projections are the starting point for planning under the GMA, and a keystone to the internal consistency issue. As stated in a law review article that the Board's 2012 Order described as "cogent," noting further that the article was "cited with approval by [the Washington Supreme Court] in the *Thurston County v. WWGMHB* decision":⁴⁴

"There can be no effective growth management without [the use of population growth projections]." Making informed planning decisions for the long-term growth of a community or a region requires knowing with a high degree of certainty the number of people that will be affected by those decisions. Significant land use issues ranging from transportation infrastructure, housing, and capital facilities to specific zoning questions such as allowable density levels and the location of residential and commercial development, cannot be meaningfully addressed without a reasonably accurate estimate of how much the population of an area will increase or decline.

To provide the accuracy needed as a basis for expensive, important long-term investments in infrastructure and capital facilities, the state Office of Financial Management provides counties with the population projections to be used for planning under the GMA.⁴⁵ Based on the OFM

⁴⁴ Brent D. Lloyd, *Accommodating Growth or Enabling Sprawl? The Role of Population Growth Projections in Comprehensive Planning Under the Washington State Growth Management Act*, 36 Gonz. L. Rev. 73, 91 (2000/2001) (internal citation omitted).

⁴⁵ RCW 43.62.035 provides:

projection, Whatcom County's adopted population projection for 2029 is 247,755.⁴⁶ All of the County's planning is based on this population figure.

The County's Comprehensive Plan uses the adopted population projection to allocate growth to urban and rural areas (Table 4 of Chapter 1).⁴⁷ The Board's 2012 Order explains the significance of the County's population allocation:

Table 4 allocates 67,692 people to unincorporated rural Whatcom County. The 2010 population census shows there are 65,041 people in the County rural areas, thus allowing for only 2,651 additional people by 2029. **Hirst's unrebutted evidence demonstrates that vacant lots in existing rural areas can**

The office of financial management shall determine the population of each county of the state annually as of April 1st of each year and on or before July 1st of each year shall file a certificate with the secretary of state showing its determination of the population for each county. The office of financial management also shall determine the percentage increase in population for each county over the preceding ten-year period, as of April 1st, and shall file a certificate with the secretary of state by July 1st showing its determination. At least once every five years or upon the availability of decennial census data, whichever is later, the office of financial management shall prepare twenty-year growth management planning population projections required by RCW 36.70A.110 for each county that adopts a comprehensive plan under RCW 36.70A.040 and shall review these projections with such counties and the cities in those counties before final adoption. The county and its cities may provide to the office such information as they deem relevant to the office's projection, and the office shall consider and comment on such information before adoption. Each projection shall be expressed as a reasonable range developed within the standard state high and low projection. The middle range shall represent the office's estimate of the most likely population projection for the county. If any city or county believes that a projection will not accurately reflect actual population growth in a county, it may petition the office to revise the projection accordingly. The office shall complete the first set of ranges for every county by December 31, 1995.

⁴⁶ RP 004243, Comprehensive Plan, Ch. 1.

⁴⁷ RP 004242-43, Comprehensive Plan, Ch. 1. See RP 004242-43 ("Table 4 shows how the total projected 2029 population would be distributed assuming: 1) that all of the UGAs have been annexed into existing cities; 2) that each urban area receives a share of the county's overall growth; and 3) that the portion of growth to urban areas is approximately 85% of county-wide growth, with the balance to rural areas.")

accommodate 33,696 additional people, where only 2,651 are expected and the parcels created by the County's LAMIRD designations alone result in the potential for an increase in population of 4,512. Hirst argues, and **the Board agrees, that the County has not planned to ensure that its comprehensive plan and development regulations, considered together, allocate rural population consistent with the Comprehensive Plan's population allocation. The additional residential development allowed in the County LAMIRDs conflicts with the goal of locating most population increases in UGAs and encourages sprawl.**⁴⁸

Thus, the County's Comprehensive Plan and development regulations create the capacity to build far more rural residential housing than the County has planned for, thereby providing for a population capacity in the County that far exceeds the County's adopted OFM population figure and creating sprawl.

How could this happen? Simply, the County did not consider its own population allocation when it adopted planning and zoning measures. The reason for this may be, as the Board noted in its 2013 Compliance Order, that the GMA does not specifically require the County to conduct an annual analysis of land use data.⁴⁹ As the Board correctly concluded, however, the absence of a GMA requirement to conduct a particular type of analysis **does not excuse the County from the GMA's consistency**

⁴⁸ RP 003952, 2012 Order at 121 of 177 (emphasis added).

⁴⁹ CP 45-46 (Appendix at 26-27 of 93), 2013 Order, discussing RCW 36.70A.215 (requires specified counties, not including Whatcom County, to conduct an annual collection of data on urban and rural land uses).

requirement.⁵⁰ In any event, the County cannot credibly claim to be unaware of the fact that the rural population provided for by its Plan and development regulations grossly outstrips the population allocation in its Plan. The 2012 Order specifically advised the County of this fact.⁵¹

In both the 2012 Order and the 2013 Order, the Board acknowledges that the County is subject to the GMA's consistency requirement. In both the 2012 Order and the 2013 Order, the Board found that the Comprehensive Plan is internally inconsistent. As stated in the 2013 Order: "There is inconsistency between the development capacity allowed in the County's rural areas and the population projections in the comprehensive plan. This was the basis for noncompliance identified in the FDO on remand."⁵²

While recognizing the ongoing, uncured internal inconsistency in the Comprehensive Plan, and further recognizing that the GMA does not allow internal inconsistency, the Board nonetheless did not find that the internal inconsistency violated the GMA. Errors of fact and law combined to result in this erroneous conclusion, as discussed in the following sections.

⁵⁰CP 46 (Appendix. at 27 of 93), 2013 Order ("Whatcom County is not required to undertake the analysis required by [RCW 36.70A].215. However, Whatcom is still subject to the consistency requirement of RCW 36.70A.070 (preamble).")

⁵¹ RP 003952, 2012 Order at 121 of 177.

⁵² CP 46 (Appendix at 27 of 93), 2013 Compliance Order.

3. The Board’s Conclusion that a Comprehensive Plan Policy that Merely States What the County “May” Do Was Sufficient to Establish Comprehensive Plan and Development Regulation Consistency Was Not Supported by Substantial Evidence.

The County did not respond to the Board’s 2012 Order by amending its Comprehensive Plan and development regulations to ensure that they were consistent. Instead, it adopted Policy 2DD-1, which provides:

By February 1 of each year the department will publish a report that monitors residential development outside the urban growth areas during the previous year and compares that data with the adopted population growth projections for those areas. If it is apparent that growth occurring outside the urban growth areas is inconsistent with adopted projections, the County shall take action to address the discrepancy. Actions **may** include changing the allocation of the projected population growth during the comprehensive plan update required per RCW 36.70A.130(1) or changing development regulations to limit growth outside the urban growth areas.⁵³

The Board’s analysis of this policy in its 2013 Compliance Order contains several errors of fact. First, the Board stated that this annual review process would “assess population growth and *potential* rural land discrepancies.”⁵⁴ It is not clear why the Board refers to “*potential* rural land discrepancies” when the Board had already found *existing* rural land discrepancies. The internal inconsistency already existed and was not, in any sense, “potential.” The County’s annual review process is merely a

⁵³ RP 004250, Comprehensive Plan (emphasis added).

⁵⁴ CP 47 (Appendix at 28 of 93), 2013 Compliance Order.

counting mechanism, intended to determine when the inconsistency is manifested through permits. The review process did not make the inconsistency “potential.”

This is not merely a matter of semantics. The ability to plan for future growth is essential to the success of the GMA. *Planning* is different from *reacting*. The County’s policy 2DD-1 keeps in place the “**vacant lots in existing rural areas [that] can accommodate 33,696 additional people, where only 2,651 are expected.**”⁵⁵ The County continues to *plan* to provide roads, emergency services, and other public services for only 2,651 people. Only when more than 2,651 additional people live in the rural areas might the County (possibly) *react*.

The Board’s second factual error is its completely unfounded conclusion that the County will even *react*. The Board inaccurately states that Policy 2DD-1 “adopts a mechanism to reconcile inconsistencies between its [Comprehensive Plan and development regulations] through an annual review process.”⁵⁶ In fact, Policy 2DD-1 adopts no such thing. Although Policy 2DD-1 includes the words “the County shall take action to address the discrepancy,” it goes on to provide that this action “**may** include changing the allocation of the projected population growth **during**

⁵⁵ RP 003952, 2012 Order at 121 of 177 (emphasis added).

⁵⁶ CP 48 (Appendix at 29 of 93), 2013 Compliance Order.

the comprehensive plan update required per RCW 36.70A.130(1).”⁵⁷

This update is not required until 2016⁵⁸, at the earliest - assuming that the County completes its update on time and that it decides to address its current inconsistency at that future date. Nothing in Policy 2DD-1 requires the County to address its current inconsistency. Preparing an internally consistent Comprehensive Plan, with consistent development regulations, is an action that the County “may,” or may not, decide to take in the future under Policy 2DD-1.

In short, the County maintained its internal inconsistency when it revised its Comprehensive Plan. It may *react* to the results of its internal consistency – or it may do nothing, unless it decides to take any action when it completes its 2016 Comprehensive Plan. The Board’s conclusion that the County’s annual review mechanism “reconciles” the existing inconsistencies is simply wrong.

4. The Board’s Decision to Allow the County to Defer Internal Consistency was Clearly Erroneous.

Even if Policy 2DD-1 actually required the County to “reconcile” existing inconsistencies, which it does not, the GMA does not grant the County the discretion to decide when or whether its Comprehensive Plan and development regulations will become internally consistent.

⁵⁷ RP 004250, Comprehensive Plan (emphasis added).

⁵⁸ RCW 36.70A.130(5)(b).

Accordingly, the Board made an error of law when it found that the GMA is satisfied by future promises of consistency.

Internal consistency is “[o]ne of the [Growth Management] Act’s most important mandates. . . meaning that all provisions within a comprehensive plan must be consistent with the future land use map and capable of concurrent implementation.”⁵⁹ Development regulations are the means by which implementation occurs. This means that development regulations must “fully carry out the goals, policies, standards and directions contained in the comprehensive plan.”⁶⁰

The Board’s 2013 Compliance Order did not find that the County’s development regulations implement the policies of the Comprehensive Plan. Rather, it found that, “as Hirst persuasively documents, the County still can accommodate virtually all of its projected population increase in its rural lands, contrary to the GMA goal of promoting compact urban development and reducing sprawl.”⁶¹ The County’s development regulations do not implement the policies of the Comprehensive Plan, and the County’s conclusion that this was not a GMA violation is clearly erroneous as a matter of law and is not supported by substantial evidence.

⁵⁹ Brent D. Lloyd, *Accommodating Growth or Enabling Sprawl? The Role of Population Growth Projections in Comprehensive Planning Under the Washington State Growth Management Act*, 36 Gonz. L. Rev. 73, 84-85 (2000/2001).

⁶⁰ WAC 365-196-800(1).

⁶¹ CP 47 (Appendix at 28 of 93), 2013 Compliance Order.

In its Certificate of Appealability, the Board agreed that delay would be detrimental because “nothing in the County’s Comprehensive Plan or development regulations prevents the vesting of development rights to accommodate virtually all of the County’s projected population in rural lands, establishing patterns of sprawl and detracting from compact urban development. The GMA recognizes these interests.”⁶²

The Board’s reference to vested rights reflects one of the reasons for the consistency requirement. In general, development rights vest in Washington when a complete application has been filed. Whatcom County’s vesting ordinance incorporates the broadest possible definition of “permits or licenses” that vest under existing land use and zoning laws when an application is submitted.⁶³ Thus, development rights are not determined by the *issuance* of permits. Whatcom County’s patterns of land use and population allocation are determined when applications are *submitted* for permits.

As the 2013 Compliance Order states, “[t]he County acknowledges that the population capacity of developable rural parcels exceeds the

⁶² See, e.g., RCW 36.70A.020(1) and (2) (encourage development in urban areas; reduce sprawl).

⁶³ See Whatcom County Code 20.04.031 (provides for the vesting, upon submission of a complete application, of “[a]ny land use or environmental permit or license required from a local government for a project action, including but not limited to building permits, subdivisions, binding site plans, planned unit development permits, site plan review, permits or approvals required by critical areas ordinances, site specific rezones authorized by a comprehensive plan or subarea plan. . .”).

population allocated to the non-UGA [Urban Growth Area] areas in the CP,”⁶⁴ violating the GMA’s consistency requirement. Through Policy 2DD-1, the County only monitors residential development *permits*; it does not monitor development *applications*. As a result, the County does not know whether *vested development rights* in rural areas are consistent with the population allocated to the non-UGA areas, and has no mechanism to correct inconsistencies created by vested applications.

The Board found that “there is evidence in the record of ongoing applications for subdivision approvals and permits, indicating a **high risk for project vesting** during the pendency of this case.”⁶⁵ The requirement of consistency must be contemporaneous, rather than a vague, potential future prospect, or the vesting of development rights will overcome the GMA’s policies ensuring that compact urban development is encouraged and sprawl is limited.

As the Board stated in its Certificate of Appealability, in support of its finding that the matter involves an issue of fundamental regional importance, “the population projections determine infrastructure needs that must be accurately and consistently reflected in a comprehensive land use plan”.⁶⁶ If this were not the case, planning under the GMA would be

⁶⁴ CP 43 (Appendix at 24 of 93), 2013 Compliance Order.

⁶⁵ CP 108, 2013 Compliance Order at 90 of 93 (emphasis added).

⁶⁶ CP 135, Certificate of Appealability at 6.

little more than an exercise on paper. For example, in future updates of its Comprehensive Plan, the County could decide, without repercussions, to preserve the status quo: a Comprehensive Plan that states that areas outside the UGAs will acquire very few additional people, despite the reality that the County's plan, zoning, and existing vested and undeveloped lots can *in fact* accommodate the County's entire projected population increase. This "paper allocation" of rural population would prevent the County from planning appropriately for the additional infrastructure that is needed in order to service sprawling rural development. It also would violate the GMA goals of reducing sprawl and encouraging compact urban growth.

E. CONCLUSION

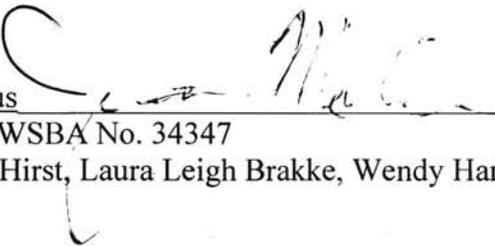
Whatcom County's Comprehensive Plan and development regulations are not internally consistent and violate the Growth Management Act. Hirst et al. respectfully request that the Court of Appeals:

1. Reverse and set aside the agency action that resulted in an internally inconsistent Comprehensive Plan and development regulations with respect to the allocation of population to rural areas;

2. Remand the matter to the Growth Management Hearings Board for further proceedings consistent with the GMA; and
3. Grant such other relief to which petitioner is entitled and as the Court deems just and equitable.

Respectfully submitted on this 21st day of October, 2013.

NOSSMAN LLP


/s/ Jean O. Melious

Jean O. Melious, WSBA No. 34347

Attorney for Eric Hirst, Laura Leigh Brakke, Wendy Harris, and David Stalheim

APPENDIX
EXCERPT FROM THE 2013 ORDER ADDRESSING RURAL POPULATION

Futurewise/Governors Point v. Whatcom County, Compliance Order and Order Following Remand on Issue of LAMIRDS, Growth Management Hearings Board, Western Washington Region, Case Nos. 11-2-0010c and 05-2-0013 (Jan. 4, 2013) at 23-29 of 93.

1 development or restrict the spread of R2A designations (including the RRDO Overlay), and
2 (c) the County's LAMIRD provisions were noncompliant. The FDO upheld the policies as
3 "assuring a variety of rural densities" as required by RCW 36.70A.070(5)(b) on the condition
4 that the forthcoming measures to contain and control rural development would address the
5 distribution of rural densities.⁶⁶
6

7 To address the GMA requirement for the two measures shown above the County amended
8 its rural land goals and policies as shown in County Exhibit R-075. Beginning with Goal 2-
9 DD "Retain the character and lifestyle of rural Whatcom County,"⁶⁷ the County combined
10 measures (i) and (iii) into Policy 2-DD-1 and -2 and then cross-referenced other goals and
11 county codes. The Board reviews (1) the rural population allocation, (2) variety of rural
12 densities, and (3) rural clustering provisions of Goal 2-DD in this section, but will address
13 LAMIRDs and Rural Neighborhoods in a subsequent section of this order.
14

15
16 *a. Population Allocation - Policy 2DD-1⁶⁸*

17 Positions of the Parties

18 As a measure to contain and control rural development, the County adopted Policy 2DD-1
19 requiring an annual review of population growth in rural areas and, if there are
20 discrepancies between projected and actual population growth, the County is required to
21 adjust their plan and development regulations. Petitioners argue that Policy 2DD-1 does not
22 meet RCW 36.70A.070 or RCW 36.70A.130 to resolve plan inconsistencies. Petitioners
23 restate the FDO findings that the County's comprehensive plan amendments and
24 development regulations:
25

26 **... permit a population in the County rural areas far in excess of the**
27 **allocation elsewhere provided for in the County Comprehensive Plan,**
28 **thereby creating Plan inconsistency in violation of RCW 36.70A.070**
29 **(preamble) and RCW 36.70A.130(1).⁶⁹ (emphasis added)**

30
31 ⁶⁶ FDO at 73: "[T]hese provisions, when brought into compliance by the adoption of appropriate 'measures' as
32 indicated above and in the context of sub-area plans, assure a variety of rural densities." (emphasis added)

⁶⁷ Ex. R-075 at 9

⁶⁸ See Ex. R-075 at 9-10.

⁶⁹ FDO at 121.

1 Petitioners complain that rather than planning ahead to reconcile inconsistencies between
2 the population increases and land available, the County will instead retroactively review
3 population and land discrepancies beginning in 2016. By example, Petitioner Hirst argues
4 the 2010 Census already shows a population increase of 6,000 new residents for which the
5 County has not planned. Next, Hirst used existing public information to project future
6 population increases and compared those increases with available non-urban lots.⁷⁰ Hirst
7 calculates existing and potential development outside UGAs can accommodate a population
8 up to 116,968, where only 67,692 rural residents are projected in Table 4 of the Plan.⁷¹
9 Accommodating this growth in the rural area not only violates GMA anti-sprawl principles
10 but increases costs to the County, Hirst argues. Hirst references Whatcom County's
11 Transportation Plan which states increasing population in rural areas will be more
12 expensive, bringing more traffic and higher rural home prices.⁷² With this knowledge,
13 Petitioner Hirst argues the County must not wait until 2016 to update its Comprehensive
14 Plan to address discrepancies in rural land densities, increases in population and the capital
15 costs which come with unplanned growth. The County's CP and DRs are inconsistent if the
16 CP projects one level of population growth, whereas the DRs and zoning allow much higher
17 population. This inconsistency violates RCW 36.70A.070 and .130, according to Hirst.
18
19
20

21 The County acknowledges that the population capacity of developable rural parcels
22 exceeds the population allocated to the non-UGA areas in the CP.⁷³ While disputing Hirst's
23 calculation of the discrepancy, the County responds that their annual review will address
24 any inconsistencies between actual and projected population and zoned capacity, whether
25 through changing development regulations to limit non-UGA growth or changing growth
26 projections.
27
28
29

30 ⁷⁰ Hirst Ex. C-683, Letter to County Executive and County Council, calculating non-UGA 2010 census
31 population of 65,041 and non-UGA land capacity for an additional 51,927, based on existing, pending
32 application and potential lots.

⁷¹ Hirst Objections at 60-69.

⁷² Hirst Ex. C-683 at 7 quoting Whatcom's Transportation Plan.

⁷³ County Response to Objections, at 64, Ex. R-075A, p. 2-3, Table 4.

1 Board Discussion

2 RCW 36.70A.070 (preamble) provides: "The comprehensive plan shall be an internally
3 consistent document and all elements shall be consistent with the future land use map." The
4 first mandatory element of the Plan, the Land Use Element, "shall include population
5 densities, building intensities, and estimates of future population growth." RCW
6 36.70A.070(1). Logically, thus, the population densities and building intensities must be
7 consistent with the estimates of future growth.
8

9
10 The GMA provides each county shall designate Urban Growth Areas (UGAs) "within which
11 urban growth shall be encouraged and outside of which growth can occur only if it is not
12 urban in nature."⁷⁴ Each county shall include designations of UGAs in its comprehensive
13 plan (CP).⁷⁵ The GMA contemplates that cities and counties will work together and shall
14 attempt to reach agreement on the correct **size** for a UGA.⁷⁶ A county's UGA designation
15 "cannot exceed the amount of land necessary to accommodate the urban growth projected
16 by OFM, plus a reasonable land market supply factor."⁷⁷ Thus, the GMA is explicit about
17 capacity for **urban** growth. Based on OFM population projections, the County's
18 Comprehensive Plan must ensure that Urban Growth Areas and cities "shall include areas
19 and densities sufficient to permit the **urban growth** that is projected to occur in the county
20 or city for the succeeding twenty-year period."⁷⁸
21
22

23 The GMA is not explicit with respect to **rural** population, and the parties argue the GMA
24

25 _____
26 ⁷⁴ RCW 36.70A.110(1).

27 ⁷⁵ RCW 36.70A.110(6).

28 ⁷⁶ RCW 36.70A.110(2).

29 ⁷⁷ *Thurston County v. W. Wash. Growth Mgmt. Hearings Bd.*, 164 Wn.2d 329, 352, 190 P.3d 38 (2008).

30 ⁷⁸ RCW 36.70A.110(2) Based upon the growth management population projection made for the county by the
31 office of financial management, the county and each city within the county shall include areas and densities
32 sufficient to permit the urban growth that is projected to occur in the county or city for the succeeding twenty-
year period.

RCW 36.70A.115: "Counties and cities that are required or choose to plan under RCW 36.70A.040 shall
ensure that, taken collectively, adoption of and amendments to their comprehensive plans and/or development
regulations provide sufficient capacity of land suitable for development within their jurisdictions to
accommodate their allocated housing and employment growth... consistent with the twenty-year population
forecast from the office of financial management."

1 says nothing about rural allocations. This creates a dilemma and a real likelihood of rural
2 areas being over-zoned and creating sprawl.⁷⁹

3
4 While the Board appreciates the detailed population analysis by Petitioner Hirst, the
5 complaint hinges on whether the County's plan allows development capacity in *rural* areas
6 inconsistent with the Plan's adopted population projections. Reviewing the governing
7 statutes, the Board finds that RCW 36.70A.215(1) requires a population/land capacity
8 evaluation for counties and cities to establish "urban densities within urban growth areas"⁸⁰
9 and (2)(a) requires an "annual collection of data on urban and rural land uses...to determine
10 the quantity and type of land suitable for development." However, RCW 36.70A.215(7) limits
11 this evaluation to the "buildable lands" counties with the following:
12

13 The provisions of this section shall apply to counties, and the cities within
14 those counties, that were greater than one hundred fifty thousand in
15 population in 1995 as determined by office of financial management
16 population estimates and that are located west of the crest of the Cascade
17 mountain range. ***Any other county planning under RCW 36.70A.040 may***
18 ***carry out the review, evaluation, and amendment programs and***
procedures as provided in this section. (emphasis added)

19 Whatcom County was never designated by OFM as a buildable lands county.⁸¹ Given this
20

21 ⁷⁹ Brent D. Lloyd, *Accommodating Growth or Enabling Sprawl? The Role of Population Growth Projections in*
22 *Comprehensive Planning Under the Washington State Growth Management Act*, 36 Gonz. L.Rev. 73, at 141-
142

23 ⁸⁰RCW 36.70A.215 (1): "...The purpose of the review and evaluation program shall be to: (a) Determine
24 whether a county and its cities are achieving ***urban densities within urban growth areas*** by comparing
25 growth and development assumptions, targets, and objectives contained in the countywide planning policies
and the county and city comprehensive plans with actual growth and development that has occurred in the
26 county and its cities..."(emphasis added)

27 RCW 36.70A.215 (2): "The review and evaluation program shall: (a) Encompass land uses and activities both
28 within and outside of urban growth areas and provide for annual collection of data on urban and rural land
uses, development, critical areas, and capital facilities to the extent necessary to determine the quantity and
29 type of land suitable for development, both for residential and employment-based activities."

30 ⁸¹ The Commerce guidelines at WAC 365-196-315(2)(a) and (b) provide: "The following counties ... must
31 establish and maintain a buildable lands program as required by RCW 36.70A.215: Clark, King, Kitsap, Pierce,
32 Snohomish, and Thurston. If another county or city establishes a program containing features of the buildable
lands program, they are not obligated to meet the requirements of RCW 36.70A.215."

Department of Commerce Website: [http://www.commerce.wa.gov/Services/localgovernment/
GrowthManagement/Growth-Management-Planning-Topics/Pages/Buildable-Lands.aspx](http://www.commerce.wa.gov/Services/localgovernment/GrowthManagement/Growth-Management-Planning-Topics/Pages/Buildable-Lands.aspx): "The Buildable
Lands Program was adopted as an amendment to the GMA in 1997, (RCW 36.70A.215). It is a review and
evaluation program aimed at determining if ***six Western Washington counties - Snohomish, King, Kitsap,***

1 statutory parameter, for counties planning ahead to accommodate increased population, the
2 Board finds that because Whatcom County is not designated as a "buildable lands"
3 community, Whatcom County is not required to undertake the analysis required by .215.
4 However, Whatcom is still subject to the consistency requirement of RCW 36.70A.070
5 (preamble). There is inconsistency between the development capacity allowed in the
6 County's rural areas and the population projections in the comprehensive plan. This was the
7 basis for noncompliance identified in the FDO on Remand.
8

9
10 With the adoption of Ordinance 2012-032, the Board finds, first, the County has taken
11 numerous actions to reduce over-capacity in its rural lands; second, the County has
12 amended its Plan provisions to acknowledge the over-capacity; and third, the County has
13 adopted an annual review process for monitoring and corrective action.
14

15 Since the *Gold Star* remand, Whatcom County has reduced its designated residential
16 capacity in rural areas. By adoption of Ordinance 2011-013 and 2012-032 the County:

- 17 • Downzoned rural lands to 1 unit per 5 acres or greater, with limited exceptions for R-
18 2A.
- 19 • Adopted Policy 2MM-1 restricting Rural Neighborhoods with R-2A designation to
20 areas containing smaller-lot development in 2011 so as to prohibit their expansion.
- 21 • Restricted RRDO to Rural Neighborhoods which shall not be expanded. 2MM-2.
- 22 • Reduced the number of LAMIRDs in Ordinance 2011-013.
- 23 • Adopted Policy 2DD-2.A.1 to prohibit expansion of LAMIRDs.
- 24 • Eliminated LAMIRDs for Eliza Island, Fort Bellingham and North Bellingham in
25 Ordinance No 2012-032.
- 26 • Decreased the size of Type I LAMIRDs to Logical Outer Boundaries.
- 27 • Downsized boundaries for Emerald Lake, Van Wyck, Smith/Axton in Ordinance 2012-
28 032.
- 29 • Downzoned areas overlapping the Chuckanut Wildlife Corridor in Cain Lake,
30 Chuckanut, Lake Samish, South Bay, and Wickersham (Rezone to R-5A and adjust
31 LAMIRD boundaries).
- 32 • Downzoned 504 acres in the Lake Whatcom Watershed to protect water quality.

Pierce, Thurston and Clark - and their cities have an adequate amount of residential, commercial, and industrial land to meet the growth needs adopted in their GMA comprehensive plans." (emphasis added)

- 1 • Adopted Policy 2DD-A.3 to prohibit short subdivisions outside UGAs and LAMIRDS

2 Even with these actions, as Hirst persuasively documents, the County still can
3 accommodate virtually all of its projected population increase in its rural lands, contrary to
4 the GMA goal of promoting compact urban development and reducing sprawl.⁸² The
5 County's revised Plan introductory section on Population Projections acknowledges the
6 apparent discrepancy.⁸³ The Plan states:

8 Outside the UGAs there is [sic] a large number of undeveloped tax parcels.
9 While it is not clear exactly how many of these tax parcels are legally
10 buildable lots, the total number of potential new dwelling units could
11 theoretically accommodate population growth in excess of the rural population
12 projection. . . . Through the monitoring process described in Policies 2S-5 and
13 2DD-1 of this plan, the County will evaluate development activity in
14 comparison with these urban and rural growth projections and take action as
15 necessary to address discrepancies if any are identified.⁸⁴

15 Thus, the County has adopted an annual review process, allowed by the GMA as a
16 discretionary action, to assess population growth and potential rural land discrepancies. The
17 County has voluntarily undertaken this monitoring and response process as provided in
18 RCW 36.70A.215(7): "Any other county planning under RCW 36.70A.040 may carry out the
19 review, evaluation, and amendment programs and procedures as provided in this section."
20

21 Policy 2DD-1 of the rural element provides:⁸⁵

22 By February 1 of each year the department will publish a report that monitors
23 residential development outside the urban growth areas during the previous
24 year and compares that data with the adopted population growth projections
25 for those areas. If it is apparent that growth occurring outside the urban
26 growth areas is inconsistent with adopted projections, the County *shall take*
27 *action* to address the discrepancy. Actions may include changing the
28 allocation of the projected population growth during the comprehensive plan
29 update required per RCW 36.70A.130(1) or changing development
30 regulations to limit growth outside the urban growth areas.

31 ⁸² RCW 36.70A.020(1) and (2).

32 ⁸³ Ex. R-075, p. 2, text for Table 4: Whatcom County Population Projections and Distribution.

⁸⁴ *Id.*

⁸⁵ Ex. R-075, p. 10

1 The Board finds the County, by adoption of Ordinance 2012-032, has taken important steps
2 toward reducing the overcapacity of its rural lands in order to contain and control rural
3 development. The County's amended Plan acknowledges the overcapacity and adopts a
4 mechanism to reconcile inconsistencies between its CP and DR through an annual review
5 process. Given the posture of this case, the Board does not find Policy 2DD-1 to be clearly
6 erroneous.⁸⁶
7

8 **Conclusion:** The Board concludes the County's Policy 2DD-1 on population allocation
9 does not create an internal inconsistency which violates RCW 36.70A.070(preamble) or
10 RCW 36.70A.130. The annual review process undertaken in Policy 2DD-1 is a "measure to
11 contain and control rural development" that complies with RCW 36.70A.070(5)(c)(i).
12

13
14 *b. Variety of Rural Densities*

15 Among other required provisions in the Rural Element of a Comprehensive Plan, the GMA
16 states that "[t]he rural element shall provide for a variety of rural densities."⁸⁷ The Supreme
17 Court has held that "the Plan itself must include something to assure the provision of a
18 variety of rural densities . . . A comprehensive plan that is silent on the provision of a variety
19 of rural densities (and other protective measures for rural areas) effectively allows rezones
20 that circumvent the GMA."⁸⁸
21

22
23 Positions of the Parties

24 Futurewise asserts: "In the Board's order finding that the rural element lacked adequate
25 measures to protect rural character, the Board upheld the county's policies as providing for
26 a variety of rural densities, in part because of the belief that the measures to protect rural
27

28 ⁸⁶ The Board notes, however, that the 2010 Census population figures show an unplanned increase of 6,000
29 residents for Whatcom County and observes that if the County waits until 2016 to review its UGA updates (as
30 stated on page 2 of 33 in County Ex. R-075), then the County may miss opportunities to effectively plan for
31 inevitable increased rural population and the ensuing capital costs. Whereas, if the County began annual
32 population/land use reviews in 2013, it may benefit by knowing about increased demands on its capital
facilities and services.

⁸⁷ RCW 36.70A.070(5)(b).

⁸⁸ *Kittitas County v. Eastern Washington Growth Management Hearings Board*, 172 Wn. 2d 144, at 169
(2011).

DECLARATION OF SERVICE

I, Jean Melious, certify that I am a resident of the State of Washington, residing or employed in Bellingham. I am over 18 years of age, and not a party to the above entitled action. I declare that on October 21st, 2013, I caused the following documents to be served on the following parties in the manner indicated: Amended **Brief of Appellant**.

Washington State Court of Appeals
 Division Two
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Original and one copy

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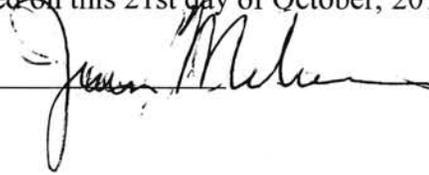
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<input type="checkbox"/>	By Federal Express or Overnight Mail prepaid
<input checked="" type="checkbox"/>	By Email (by agreement): tim@futurewise.org

<input type="checkbox"/>	By United States Mail postage prepaid
<input type="checkbox"/>	By Legal Messenger or Hand Delivery
<input type="checkbox"/>	By Federal Express or Overnight Mail prepaid
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Signed and certified on this 21st day of October, 2013,

/s/ Jean Melious
Jean Melious



CLERK OF SUPERIOR COURT
2013 OCT 22 AM 11:59
STATE OF WASHINGTON
BY _____