

No. 44671-5-II

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION II

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

Appellants,

v.

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

Respondents.

**BRIEF OF RESPONDENT
WHATCOM COUNTY**

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I. INTRODUCTION

In this appeal, Appellants Eric Hirst, Laura Leigh Brakke, Wendy Harris, and David Stalheim (“Appellants”) challenge an order issued by the Growth Management Hearings Board (“Board”) affirming certain planning decisions made by Respondent Whatcom County (the “County”) under the Growth Management Act (“GMA”), RCW Chapter 36.70A. In its Compliance Order and Order Following Remand on Issue of LAMIRDs dated January 4, 2013 (the “Order”), the Board found that the County’s adoption of Policy 2DD-1 brought the County into compliance with the GMA.

Policy 2DD-1 requires the County to conduct an annual review of population growth in rural areas and, if there are discrepancies between projected and actual population growth, to take action to address the discrepancies. Appellant’s challenge to this policy is based on their incorrect assumption that the GMA requires the County to take immediate action to limit growth in rural areas that hypothetically could, over time, result in a violation of the GMA if the County did not take intervening action. Appellants’ arguments are not supported by the law or the facts. Rather than taking immediate, drastic action that may prove unnecessary, the County has opted to monitor annual growth and has committed to taking appropriate actions in the future to address any discrepancies on an annual basis.

The Board correctly interpreted the GMA to allow such a reasonable approach to growth management, and the Board's Order is supported by substantial evidence. The Board's Order gave appropriate deference to the County's planning choices, as required by the GMA, and this Court must give substantial weight to the Board's Order.

For these reasons, which are further discussed below, the County asks the Court to deny Appellants' appeal and affirm the Board's ruling that Policy 2DD-1 brought the County into compliance with the GMA.

II. COUNTERSTATEMENT OF ISSUES

The following issues are presented for review:

1. Did the Board correctly interpret RCW 36.70A.070 and RCW 36.70A.130(1)(d) when it concluded that the County had cured any inconsistency by adopting Comprehensive Plan Policy 2DD-1?
2. Was the Board's conclusion that Comprehensive Plan Policy 2DD-1 requires the County to reconcile inconsistencies, and therefore did not violate the GMA, supported by substantial evidence?

III. COUNTERSTATEMENT OF THE CASE

A. 2012 Final Decision and Order.

The Board's Order is the result of an administrative appeal of Whatcom County's Ordinance No. 2012-032, which amended the County's comprehensive plan and development regulations. The County adopted Ordinance No. 2012-032 to achieve compliance with the GMA in response to the Board's 2012 Final Decision and Order from a prior

Board case, GMHB Case No. 11-2-0010c (“2012 FDO”).¹

In the 2012 FDO, in addressing the issue of population allocation, the Board found that the County’s Comprehensive Plan amendments and development regulations permit a population in the County’s rural areas in excess of the population allocation provided for in the County Comprehensive Plan, thereby creating an inconsistency in violation of RCW 36.70A.070 and RCW 36.70A.130(1).² Key to the Board’s conclusion in the 2012 FDO was its concern that growth in excess of the population allocation could be shifted to the rural areas rather than occurring in the Urban Growth Areas, where the GMA anticipates the majority of growth will occur.

It bears emphasis that the Board did not find that the GMA directly requires the County to size and zone the rural areas to accommodate only the projected rural population. While RCW 36.70A.115 of the GMA requires Urban Growth Areas to be sized and zoned to accommodate only

¹ A relevant excerpt from the 2012 FDO, dated January 9, 2012, is attached as Appendix A (2012 FDO, pp. 118-121). The 2012 FDO is a chapter in a longer case history that stems from Futurewise’s wide-ranging appeal in 2005 of the County’s statutorily mandated seven year update of its comprehensive plan and development regulations in *Futurewise v. Whatcom County*, WWGMHB Case No. 05-2-0013, Final Decision and Order (September 20, 2005). The Supreme Court affirmed in part and reversed the Board’s decision in part in *Gold Star Resorts, Inc., v. Futurewise*, 167 Wn.2d 723, 222 P.3d 791 (2009). Following remand, the County revised the Rural Element of its comprehensive plan and its development regulations with its adoption of Ordinance No. 2011-013 on May 10, 2011. Futurewise challenged Ordinance No. 2011-013 in the context of compliance proceedings in case no. 05-2-0013, alleging the same issues as in its original appeal. Petitioners Hirst, Brakke, Harris, and Stalheim were allowed to participate in the compliance proceedings. In addition, all of the petitioners brought new challenges to the Ordinance No. 2011-013 on multiple grounds. These consolidated appeals led to the 2012 FDO.

² 2012 FDO, pp. 118-121.

the projected population, there is no similar requirement for rural lands. As the Board noted in its Order in this case, Whatcom County “is not required to undertake the analysis” mandated for certain counties under RCW 36.70A.215.³

Despite the lack of a specific requirement in the GMA requiring rural development capacity to be limited by the rural population allocation, however, the Board found that there was a plan inconsistency because 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.”⁴ As the Board’s discussion of this issue in both the 2012 FDO and the Order make clear, however, the Board’s finding was not made simply because the rural areas could ultimately accommodate more people than the population allocation for the planning period of 2008-2029 in its plan.⁵ Instead, the inconsistency, according to the Board in the 2012 FDO, arose because “the County has not planned to ensure that its comprehensive plan and development regulations,

³ Order, p. 27. The Board has acknowledged this legal principle in other cases, holding that RCW 36.70A.115 does not impose an obligation on counties to conduct a needs and capacity analysis for areas outside UGAs. *See, e.g., Friends of Skagit County, et al, v. Skagit County*, WWGMHB No. 07-2-0025c, Final Decision and Order, pp. 43-45 (May 12, 2008). With this holding, the Board rejected the argument that counties are required to prepare a capacity analysis for growth in rural areas (outside Urban Growth Areas) and to revise plans and regulations to address discrepancies between projected and actual growth in rural areas. The Board was persuaded by Skagit County’s argument that, if the legislature had intended to impose such a requirement in the GMA, it would have expressly done so, as it did for those counties subject to RCW 36.70A.215.

⁴ FDO, p. 121.

⁵ 2012 FDO, pp. 119-121; Order pp. 23-29.

considered together, allocate population consistent with the Comprehensive Plan's population allocation."⁶

The County responded to the Board's finding of noncompliance by adopting, in Ordinance No. 2012-032, new comprehensive plan policies that ensure the rural population is allocated consistent with the population allocation.

B. Relevant Amendments Adopted in Ordinance No. 2012-032.

Ordinance No. 2012-032 addressed a wide range of issues related to the County's rural element and rural development regulations, including the population allocation issue raised by Appellants in this appeal.⁷ Specifically, Ordinance No. 2012-032 adopted a County policy, Policy 2DD-1, which requires the County to conduct an annual review of population growth in rural areas.⁸ If there are discrepancies between projected and actual population growth, Policy 2DD-1 requires the County to take action to address the discrepancy. Policy 2DD-1 provides as follows: "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."⁹ Policy 2DD-1 prevents non-

⁶ 2012 FDO, p. 121.

⁷ See AR 4070-86 (Ordinance No. 2012-032); AR 4087-21 (Exhibit A to Ordinance No. 2012-032). Citations to "AR" are to the Administrative Record before the Board. As noted in the Amended Brief of Appellants, because this is a direct appeal from the GMHB, there is no Record of Proceedings before the Superior Court.

⁸ The Comprehensive Plan amendments at issue include additional text above Table 4, the addition of Figure 1 in Chapter One, and amended text in Policy 2DD-1. AR 4089-91, 4094-97.

⁹ AR 4097.

UGA population growth from exceeding the adopted allocation, thus curing any inconsistency.

Policy 2DD-1 states that actions to address a discrepancy “may include” changing the adopted growth projections during the Comprehensive Plan update required per RCW 36.70A.130(1) or changing development regulations to limit non-UGA growth.¹⁰ Nothing in Policy 2DD-1 limits the County actions that may be taken to these particular actions.¹¹

The Department of Commerce endorsed the County’s resolution to this issue in its letter of June 4, 2012.¹² In response to the Department’s request that the County specify the timing of the annual monitoring, the County inserted the current language that requires the monitoring report to be published by February 1 of each year.¹³

C. The Board’s Decision Upholding Policy 2DD-1.

The Board issued its Order upholding Policy 2DD-1 on January 4, 2013.¹⁴ In rejecting Appellants’ challenge to Policy 2DD-1, the Board found as follows: “first, the County had taken numerous actions to reduce over-capacity in its rural lands; second, the County has amended its Plan provisions to acknowledge the over-capacity; and third, the County has

¹⁰ *Id.* (emphasis added).

¹¹ The Draft Environmental Impact Statement for the County’s 2009 UGA Review lists additional potential actions that can be taken to limit rural growth, along with a discussion of their potential effectiveness as well as benefits and disadvantages. AR 4600-05.

¹² AR 5289-92.

¹³ *See id.*

¹⁴ A relevant excerpt from the Board’s Order is attached as Appendix B (Order, pp. 23-29).

adopted an annual review process for monitoring and taking corrective action.”¹⁵

The Board listed more than ten separate actions taken by the County to reduce designated residential capacity in rural areas.¹⁶ The Board acknowledged Appellants’ complaint that the County could still accommodate virtually all of its projected population increase in its rural lands, but found the County in compliance with the GMA because the County had acknowledged the issue and adopted a mechanism to reconcile any inconsistencies between the Comprehensive Plan and development regulations.¹⁷

In the compliance proceedings before the Board, the County did not dispute that its rural development capacity likely exceeds the population allocation, but the County did dispute Appellants’ calculation of the specific quantities of population capacity and allocated 21-year growth projection available.¹⁸ The Board acknowledged this fact in its Order.¹⁹ In their opening brief, Appellants continue to incorrectly assert that the “Comprehensive Plan says that it provides for a population increase of 2,651 people outside of cities by the year 2029.”²⁰ Appellants’

¹⁵ Order, p. 27.

¹⁶ *Id.*, pp. 27-28.

¹⁷ *Id.*, p. 28. The Board specifically found that “the annual review process undertaken in Policy 2DD-1 is a ‘measure to contain and control rural development’ that complies with RCW 36.70A.070(5)(c)(i).” *Id.*

¹⁸ See AR 4057-60.

¹⁹ Order, p. 24 (“While disputing Hirst’s calculation of the discrepancy, the County responds that their annual review will address any inconsistencies between actual and projected population and zoned capacity, whether through changing development regulations to limit non-UGA growth or changing growth projections.”).

²⁰ Amended Brief of Appellants, pp. 1-2. To arrive at this number, Appellants subtracted

assertion is based on 2010 census figures, which are not the same as the population projections in the County's Comprehensive Plan. The population allocations in the Comprehensive Plan were adopted in 2009, in Ordinance No. 2009-071, prior to the issuance of the 2010 census.²¹ The comments preceding Table 4 in the Comprehensive Plan are instructive:

The 2008 population estimates—and, by extension, the 2029 population projections—rely on OFM estimates that were based on 2000 census figures. After the 2010 census data were released, ORM revised its population estimates for the years between 2000 and 2010. As shown in Figure 1, the revised estimate for the total 2008 County population is more than 6,000 persons higher than the one used to develop the Table 4 population projections. OFM did not provide revised estimates for the UGA (or non-UGA) population in the years between 2000 and 2010, but Figure 1 shows an estimate of the non-UGA population assuming the proportion of non-UGA population held constant at about 32% of total County population in those years. The revised OFM estimates are shown in Figure 1 for illustrative purposes only; neither these estimates nor any projections based on them are adopted in this plan. The projections used in Table 4 and elsewhere in this plan will be revised using the most current OFM estimates and projections during the next UGA review, due in 2016.

the new 2010 census estimate of 65,041 from the Comprehensive Plan's adopted 2029 projection of 67,392 (which was adopted based on previous census and OFM estimates), and concluded that the Comprehensive Plan's growth allocation for rural areas allows for only 2,651 additional people by 2029. Based on this calculation, they in effect argue that 68% of the projected non-UGA population growth allocation of 8300, or 5,649 people, occurred during the first two years of a 21-year plan. However, this is impossible. The OFM intercensal estimates show a countywide population increase of only 3,465 (201,140-197,675) between 2008 and 2010. See Ex. R-094, pp. 2-5. In short, Appellants ask the Court to believe that only 2,651 people are remaining in the non-UGA population allocation, which requires the Court to find that the non-UGA areas in the County gained significantly more people in two years than the entire County did in the same two years.

²¹ AR 4089.

Outside the UGAs there is a large number of undeveloped tax parcels. While it is not clear exactly how many of these tax parcels are legally buildable lots, the total number of potential new dwelling units could theoretically accommodate population growth in excess of the rural population projection. However, because adequate land capacity is available for growth within urban growth areas, growth is not forced into the rural areas. Through the monitoring process described in Policies 2S-5 and 2DD-1 of this plan, the County will evaluate development activity in comparison with these urban and rural growth projections and take action as necessary to address discrepancies if any are identified.²²

Of the total net growth for the entire County of 56,755 projected between 2008 and 2029, Table 4 indicates a projected growth of 8,300 for the unincorporated areas.

After the Board concluded that Policy 2DD-1 brought the County into compliance with the GMA, Appellants appealed the Board's Order and sought direct review by this Court, which was granted on June 10, 2013.²³

IV. ARGUMENT

A. Standard of Review.

Appellants seek review of the Board's Order under two prongs of the Administrative Procedure Act (APA), RCW Chapter 34.05. First, Appellants argue that the Board incorrectly interpreted two provisions of the GMA (RCW 36.70A.070 and RCW 36.70A.130(1)(d)) when it found that the County had cured any inconsistency by adopting Policy 2DD-1.²⁴

²² *Id.*

²³ Amended Brief of Appellants, p. 10.

²⁴ Amended Brief of Appellants, pp. 11-12 (citing RCW 34.05.570(3)(d)).

Second, Appellants argue that the Board's Order is not supported by substantial evidence.²⁵

Appellants admit that this Court must give substantial weight to the Board's legal interpretations.²⁶ Appellants further admit that the GMA requires the Board to give deference to the County's planning actions.²⁷ In RCW 36.70A.3201, the legislature took the unusual step of adopting findings to emphasize this deference:

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

The Washington Supreme Court has elaborated on the broad deference that the Board must grant to County actions:

²⁵ *Id.*, pp. 12-13 (citing RCW 34.05.570(3)(e)).

²⁶ *Id.*, pp. 11-12 (citing RCW 36.70A.5790(3)(d); *City of Redmond*, 136 Wn.2d 38, 45, 959 P.2d 1091 (1998)).

²⁷ Amended Brief of Appellants, p. 13, n. 39 (citing *Kittitas County v. Eastern Wash. Growth Mgmt. Hearings Bd.*, 172 Wn.2d 144, 162, 256 P.3d 1193, 1202 (2011), quoting RCW 36.70A.010).

In the face of this clear legislative directive, we now hold that deference to county planning actions, that are consistent with the goals and requirements of the GMA, supersedes deference granted by the APA and courts to administrative bodies in general . . . While we are mindful that this deference ends when it is shown that a county's actions are in fact a "clearly erroneous" application of the GMA, we should give effect to the legislature's explicitly stated intent to grant deference to county planning decisions. Thus a board's ruling that fails to apply this "more deferential standard of review" to a county's action is not entitled to deference from this court.²⁸

In a Board proceeding, the burden is on the petitioner to demonstrate that the County's actions are not in compliance with the GMA.²⁹ When reviewing a challenge to the County's actions, the Board is required to 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 [the GMA]."³⁰ To find an action "clearly erroneous," the Board must have a "firm and definite conviction that a mistake has been committed."³¹

B. The Board Correctly Interpreted the GMA.

Despite the clearly established law that counties are not required to conduct a capacity analysis for rural lands to ensure rural growth does not exceed projections, Appellants seek to achieve the same result under the

²⁸ *Quadrant Corporation v. State Growth Management Hearings Board*, 154 Wn.2d 224, 238, 110 P.3d.1132 (2005) (internal citations omitted).

²⁹ RCW 36.70A.320(2).

³⁰ RCW 36.70A.320(3).

³¹ *Dep't of Ecology v. Pub. Util. Dist. No. 1 of Jefferson County*, 121 Wn.2d 179, 201, 849 P.2d 646 (1993).

auspices of a purported “internal inconsistency.” No such inconsistency exists, and the Board correctly interpreted the GMA when it concluded that the County had cured any inconsistency by adopting Comprehensive Plan Policy 2DD-1. The Board’s conclusion was based on its interpretation of two provisions of the GMA: RCW 36.70A.070 and RCW 36.70A.130(1)(d). These provisions require the County’s Comprehensive Plan to be both “internally consistent” and consistent with the County’s development regulations.³² The Board concluded that, with the adoption of Policy 2DD-1, which requires the County to reconcile any inconsistencies, the County had complied with RCW 36.70A.070 and RCW 36.70A.130(1)(d).

The Board correctly interpreted both provisions of the GMA at issue in this appeal. First, the Board interpreted RCW 36.70A.070 as requiring an “internally consistent” Comprehensive Plan. Based on this interpretation, the Board concluded that Policy 2DD-1 eliminated any internal inconsistency by acknowledging the rural capacity issue and adopting a mechanism to reconcile inconsistencies. Second, the Board interpreted RCW 36.70A.130(1)(d) as requiring future amendments to the County’s development regulations to be consistent with the Comprehensive Plan. Based on this interpretation, the Board concluded that Policy 2DD-1 eliminated any inconsistency between the

³² RCW 36.70A.070 (“The plan shall be an internally consistent document . . .”); RCW 36.70A.130(1)(d) (“Any amendment of or revision to development regulations shall be consistent with and implement the comprehensive plan.”).

Comprehensive Plan and development regulations. Because Policy 2DD-1 requires the County to take actions to address any discrepancy between growth occurring outside UGAs and adopted projections, any future amendment to the County's development regulations will be consistent with the Comprehensive Plan.

Appellants incorrectly suggest that the Board's decision allows the County to "defer" internal inconsistency to a future date.³³ This argument is based on Appellants' misunderstanding of the inconsistency identified by the Board. That inconsistency arose from the fact that, before the County adopted Policy 2DD-1, its Comprehensive Plan did not recognize the potential for future growth in rural areas to exceed the rural population projection. By expressly recognizing this possibility and adopting a mechanism to prevent it from happening, the County has eliminated the inconsistency.

Similarly, Appellants' concerns regarding the County's mechanism for ensuring growth does not exceed population projections are misplaced. The County's policy provides for adjustment through the annual amendment cycle. Any growth in excess of projections would not happen overnight. The County's population growth is projected over a 21-year period. Appellants' arguments, which suggest that the County must take immediate action to change its growth projections or its development regulations, are based on the incorrect assumption that inconsistency arises

³³ Amended Brief of Appellants, pp. 18-24.

from a present, hypothetical possibility that growth in rural areas could exceed population projected to occur in rural areas. This assumption is incorrect.

The flaw in Appellants' reasoning can be seen in its arguments regarding vesting of development permit applications.³⁴ To support their arguments, Appellants rely on the following statements by the Board: "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"; and "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."³⁵

Appellants' reliance on these statements is misplaced, for two reasons. First, the Board's statements must be read in the context of its finding of compliance. If the Board had believed that excessive growth could actually vest in rural areas before the County had an opportunity to react (as part of the annual review process required by Policy 2DD-1), the Board would have found the County out of compliance and issued a finding of invalidity, which would have prevented such vesting.³⁶ Because the Board found the County in compliance with the GMA, the Board's

³⁴ *Id.*, pp. 22-24.

³⁵ *Id.*, pp. 22-23.

³⁶ See RCW 36.70A.302 (authorizing the Board to issue a finding of invalidity, which prevents new development permit applications from vesting).

statement cannot be read to support Appellants' argument that the County is still out of compliance. Second, there is no evidence in the record to support Appellants' suggestion that excessive growth could vest before the County had an opportunity to react. Appellants cannot prove, or even credibly argue, that the County's 21-year projected population growth will vest in rural areas within one year.

In fact, the record shows that very little growth is likely to vest in rural areas over the next year. Whatcom County permit data indicates that county-wide permit activity during the first two years of the planning period of 2008-2029 would have accounted for a net population gain of less than 700.³⁷ This figure is the best available estimate of actual growth in the County during this two-year period. Unlike Appellants' asserted figures, which exceed the countywide growth from 2008-2010, a population gain of less than 700 is consistent with the overall growth that is estimated to have occurred countywide during this time. Moreover, Table 4 allocates 15% of the County's 2008-2029 projected population growth to the non-UGA areas, and a population growth of approximately 700 during this two-year period represents a per-year population growth consistent with the adopted projections.³⁸ In short, there is no basis for Appellants' contention that the current rate of rural growth is outpacing the rate of growth necessary to ensure that the County does not allow growth beyond the allocated growth of 8,300 people over the course of the

³⁷ AR 4606-07 (County analysis of data); AR 4608-61 (underlying data).

³⁸ *Id.*; see also AR 4089 (Table 4).

21-year planning period.

Thus, the Board correctly interpreted the GMA when it concluded that Policy 2DD-1 eliminated any inconsistency under RCW 36.70A.070 and RCW 36.70A.130(1)(d).

C. **The Board's Order is Supported by Substantial Evidence.**

Appellants suggest that the Board's Order was not supported by substantial evidence because, according to Appellants, Policy 2DD-1 merely states what the County "may" do.³⁹ Appellants incorrectly interpret Policy 2DD-1 as giving the County the option of not taking action to address a discrepancy between actual growth and projected growth in rural areas.⁴⁰ The plain language of Policy 2DD-1 requires the County to take action to address any such discrepancy.

Appellants admit that the Policy includes the words "the County shall take action to address the discrepancy," but suggest that the subsequent use of the word "may" somehow eliminates the County's obligation to take action.⁴¹ Contrary to Appellants' arguments, the word "may" refers to the County's choice of tools available to address the discrepancy and does not qualify the County's fundamental self-imposed obligations to take some action. The word "may" appears in a phrase describing two possible actions that the County could take to address a discrepancy: "Actions may include changing the allocation of the

³⁹ Amended Brief of Appellants, p. 18.

⁴⁰ *Id.*, pp. 18-20.

⁴¹ *Id.*, p. 19 (emphasis added).

projected population growth during the comprehensive plan update required per RCW 36.70A.130(1) or changing the development regulations to limit growth outside the urban growth areas.”⁴²

This language does not, as suggested by Appellants, give the County the option of deferring action or taking no action in the face of a discrepancy. If the County fails to take appropriate action to resolve a discrepancy identified as part of its annual review process, it will have to answer to the Board. Any party, including the Appellants, can file a Petition for Review with the Board to address whether the County’s failure to cure the discrepancy places the County out of compliance with the GMA. The Board certainly will not tolerate the type of delay that Appellants argue is allowed by Policy 2DD-1. If no discrepancy is identified until the 2016 update, revising the population allocation will be one way to address the inconsistency in 2016. If there is a discrepancy in 2013, however, the County cannot ignore it until the required 2016 update. In such a case, other solutions such as amending development regulations to limit growth outside of Urban Growth Areas may be necessary.

The County cannot tie the hands of a future legislative body by dictating what it must enact in the future.⁴³ That is a choice that the legislative body will have to make at the time, and if the action is insufficient, the County will be answerable to the Board. Moreover, the

⁴² AR 4097.

⁴³ See *Washington State Farm Bureau Federation v. Gregoire*, 162 Wn.2d 284, 290, 174 P.3d 1142 (2007).

Board and this Court must presume that the County will carry out its obligation to monitor rural growth in good faith.⁴⁴

In short, the Board's conclusion that Policy 2DD-1 requires the County to take appropriate action is supported by substantial evidence. The Board should reject Appellants' arguments and affirm the Board's conclusion.

V. CONCLUSION

For the reasons stated herein, the County respectfully asks the Court to deny Appellants' appeal and affirm the Board's ruling that Policy 2DD-1 brought the County into compliance with the GMA.

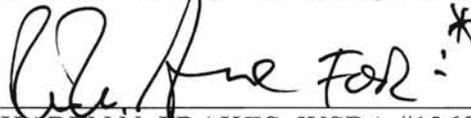
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⁴⁴ See *Sky Valley, et al. v. Snohomish County*, CPSGMHB No. 95-3-0068c, Order on Compliance, p. 8 (October 2, 1997) ("While Petitioners characterize the County's monitoring as 'hollow' . . . , the Board must presume that the County will act in good faith . . . If, as a result of this urban and rural monitoring, the County concludes that the GMA or the Plan is not being met, it has the authority and the obligation to take appropriate action."). *Central Puget Sound Regional Transit Authority v. City of Tukwila*, CPSGMHB No. 99-3-0003, Final Decision and Order, p. 11 (September 15, 1999).

APPENDIX A

FDO Excerpt
January 9, 2012

1 The total area affected by the Board's 2005 decision in the vicinity of Cain Lake was 859
2 acres.²³³ Of those acres, only 363 in the western portion were included in this LAMIRD. This
3 area contains a series of subdivisions platted decades ago, with considerable development
4 in 1990 and since. The remaining acres were down-zoned to R5A.
5

6
7 In examining the evidence of the 1990 built environment, as shown by the 1991 aerial
8 photo, the Board concludes that there was considerable development west of Cain Lake
9 Road. While Petitioner appears to argue that the area east of Cain Lake Road was largely
10 undeveloped, that area is not proposed for inclusion in the LOB.
11

12 **Conclusion:** The Board concludes that Petitioner has not carried its burden of proof to
13 demonstrate that the County committed clear error in designating the Cain Lake LAMIRD
14 LOB.
15

16 **F. Population Allocation to LAMIRDs and Rural Areas**

17
18 **Hirst Issue 4:** *Did the County's adoption of the Ordinance, Sections 1, 2, and 3, fail to*
19 *comply with RCW 36.70A.115 and 36.70A.110, requiring that amendments to*
20 *comprehensive plans and development regulations provide sufficient capacity of land to*
21 *accommodate housing and employment growth as adopted in the applicable countywide*
22 *planning policies and consistent with the twenty-year population forecast, RCW*
23 *36.70A.070(1), requiring future population growth estimates in the land use element, RCW*
24 *36.70A.070(5), requiring appropriate rural growth and limiting LAMIRDs, RCW*
25 *36.70A.020(1) and (2), encouraging development in urban areas and discouraging sprawl,*
26 *RCW 36.70A.030(15)(16) and (19), RCW 36.70A.130(1), RCW 36.70A.210, establishing*
27 *countywide planning policies as the framework to ensure city and county comprehensive*
28 *plan consistency, and RCW 36.70A.070 (preamble) requiring internal consistency, because*
the designation and zoning of rural land and LAMIRDs results in population and
employment that exceeds the allocation of housing and employment to Rural areas and
substantially impedes the goal of accommodating housing and employment in urban areas?

29 **Discussion**

30
31

32 ²³³ Ex. R-001, p.22.

1 Hirst argues that the Comprehensive Plan and development regulations violate the GMA
2 because they permit additional population to be allocated to rural areas far in excess of the
3 prior allocation -- 33,696 additional people where only 2,651 are expected.²³⁴

4
5 In response, the County argues that the Board addressed this very argument in *Friends of*
6 *Skagit County, et al, v. Skagit County*²³⁵ where the Board held that RCW 36.70A.115 does
7 not impose an obligation on counties to conduct a needs and capacity analysis for areas
8 outside the UGAs and that that provision does not require a rural lands analysis but instead
9 merely requires the County to ensure sufficient capacity of land for development to
10 accommodate the growth allocated in the County's countywide planning policies. To the
11 extent that Petitioner is making this argument, and Hirst disputes that they are, the Board
12 agrees with the County that RCW 36.70A.115 creates no such obligation.
13

14
15 However, the County does not address what the Board finds to be a more fundamental
16 problem, and that is the County's own growth allocation to rural areas. As noted in a cogent
17 law review article cited with approval by our Court in the *Thurston County v. WWGMHB*²³⁶
18 decision,

19
20 How to allocate population growth is a threshold policy decision that reflects what
21 portion of the projected countywide growth will be directed into each area of the
22 county. Like all other GMA-related decisions, a county's allocations to both UGAs
23 and rural areas must be substantially guided by the Act's policy goals in order to
24 be in compliance with the GMA. A finding of noncompliance or invalidity could be
25 warranted if a county's allocations fail to: (1) channel growth into UGAs and
26 discourage sprawling development patterns; or (2) account for realistic indicators
27 of future development, such as the presence of undeveloped residential lots in
28 rural areas, that will invariably effect the distribution of population growth
29 throughout the county. Once the allocations are made, a county should ensure
30 that the size and density levels of its UGAs and rural areas are commensurate

31 ²³⁴ Hirst Brief at 49.

²³⁵ WWGMHB No. 07-2-0025c, Final Decision and Order, pp. 43-45 (5/12/2008).

32 ²³⁶ 165 Wn.2d 329 (2008)

1 with the allocations and consistent with the requirements for urban and rural
2 densities.²³⁷

3 The author also points out:

4 Quite unlike the requirements for UGAs, which make size and density dependent
5 on OFM growth forecasts, the Act on its face provides no such direction to
6 counties in determining how much land should be included in rural areas or what
7 range of rural densities is acceptable. Indeed, specific mention of OFM projections
8 within the GMA itself is confined to the provisions concerning UGAs, planned
9 master communities, and resorts. Despite the absence of an explicit statutory link
10 between rural comprehensive planning and population projections, however,
11 several board decisions have held that counties must allocate OFM's countywide
12 projection among both the urban and rural areas within their borders. This
13 requirement was first announced in *Edmonds v. Snohomish County*, a 1993 case
14 in which the Central Board held that counties must allocate the OFM projection
15 among all "incorporated and unincorporated UGAs and non-UGAs." Allocation is
16 necessary, the Board observed, "in order to achieve the consistency and
17 coordination of comprehensive plans ... and to give force and effect to the [UGA]
18 designations as required by RCW 36.70A.110."(citations omitted)²³⁸

16 The County's Comprehensive Plan allocates growth to urban and rural areas based on the
17 Office of Financial Management's (OFM) twenty-year forecast. This allocation is depicted in
18 the Plan at Table 4. As the County Comprehensive Plan notes:

19 **Table 4** shows how the total projected 2029 population would be distributed
20 assuming: 1) that all of the UGAs have been annexed into existing cities; 2) that
21 each urban area receives a share of the county's overall growth; and 3) that the
22 portion of growth to urban areas is approximately 85% of county-wide growth,
23 with the balance to rural areas.²³⁹

24 Table 4 allocates 67,692 people to unincorporated rural Whatcom County. The 2010
25 population census shows there are 65,041 people in the County rural areas, thus allowing
26 for only 2,651 additional people by 2029. Hirst's unrebutted evidence demonstrates that
27

28
29
30 ²³⁷ Brent D. Lloyd *Accommodating Growth or Enabling Sprawl? The Role of Population Growth Projections in*
31 *Comprehensive Planning under the Washington State Growth Management Act*, 36 Gonz. L. Rev.73, at 141-
32 142.

²³⁸ *Id.* at 130

²³⁹ Whatcom County Comprehensive Plan at 1-6.

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

10 The Board concludes that the County's Comprehensive Plan amendments and
11 development regulations permit a population in the County rural areas far in excess of the
12 allocation elsewhere provided for in the County Comprehensive Plan, thereby creating Plan
13 inconsistency in violation of RCW 36.70A.070 (preamble) and RCW 36.70A.130(1).
14

15
16 **Conclusion:** The Board concludes that Hirst has not carried its burden to establish a
17 violation of RCW 36.70A.115. However, the Board concludes that its Comprehensive Plan
18 amendments and development regulations permit a population in the County rural areas far
19 in excess of the allocation elsewhere provided for in the County Comprehensive Plan,
20 thereby creating Plan inconsistency in violation of RCW 36.70A.070 (preamble) and RCW
21 36.70A.130(1). Other alleged GMA violations raised in Hirst's Issue 4 were either not
22 argued and are deemed abandoned, or were not persuasive.
23

24
25 **G. Chuckanut/Lake Whatcom/South Bay Rural Density**

26 **Bellingham Issue 3a:** *Did the amendments redesignating and rezoning the rural area*
27 *violate GMA's requirements under RCW 36.70A.020(1), .020(2), .020(10), .020(12), .040,*
28 *.070 (preamble), .070(3), .070(5)(a -d), .070(6), .110(1), .120²⁴⁰, because the amendments,*

29
30
31 ²⁴⁰ In its argument the City fails to cite any of these sections nor explain how they are violated by the County
32 density overlay. Instead it "incorporates by reference" the discussion in Issue 2 which pertains to LAMIRDS. It
is not for the Board to make the City's argument for them.

APPENDIX B

Board Order Excerpt
January 4, 2013

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-1*⁶⁸

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
indicated above and in the context of sub-area plans, assure a variety of rural densities." (emphasis added)

32 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**
19 **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-
23 142

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
26 and the county and city comprehensive plans with actual growth and development that has occurred in the
27 county and its cities..."(emphasis added)

26 RCW 36.70A.215 (2): "The review and evaluation program shall: (a) Encompass land uses and activities both
27 within and outside of urban growth areas and provide for annual collection of data on urban and rural land
28 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."

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

31 Department of Commerce Website: [http://www.commerce.wa.gov/Services/localgovernment/
32 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)

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

Even with these actions, 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.⁸² The County's revised Plan introductory section on Population Projections acknowledges the apparent discrepancy.⁸³ The Plan states:

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

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

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

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.

⁸² RCW 36.70A.020(1) and (2).

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).

No. 446-71-5-II

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION II

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

Appellants,

v.

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

Respondents.

CERTIFICATE OF SERVICE

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COURT OF APPEALS
STATE OF WASHINGTON

I, Amanda Kleiss-Acres, declare under penalty of perjury and the laws of the State of Washington that, on November 20, 2013, I caused the following documents to be served on the persons listed below in the manner shown:

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DATED this 20th day of November, 2013.

A handwritten signature in black ink, appearing to read 'Amanda Kleiss-Acres', written over a horizontal line.

Amanda Kleiss-Acres