

1 BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD
2 EASTERN WASHINGTON REGION
3 STATE OF WASHINGTON
4

5 RESPONSIBLE GROWTH * NE
6 WASHINGTON and SPOKANE
7 RIVERKEEPER,

8 Petitioners,

9 v.

10
11 PEND OREILLE COUNTY,

12 Respondent
13
14

CASE No. 23-1-0005

FINAL DECISION AND ORDER

15
16 **SYNOPSIS**

17 Pend Oreille County Board of Commissioners approved Resolution R-2023-08 which
18 amended the Comprehensive Plan, development regulations (including critical area
19 regulations), the Future Land Use Map, and the Zoning Map (collectively, Comprehensive
20 Plan Amendment). Notice of the action was published in The Newport Miner on
21 February 22, 2023. On April 19, 2023 Responsible Growth * NE Washington (RG*NEW) and
22 Spokane Riverkeeper (Petitioners) filed a Petition for Review, asserting approval of R-2023-
23 08 by the Spokane County Commissioners (County), violated the Growth Management Act
24 (GMA) because the “sweeping amendments to its Comprehensive Plan, Future Land Use
25 Map, and Development Regulations would open up large swaths of land previously off-limits
26 to residential development while failing to protect Rural Character of the County.” Petitioners
27 raised 40 legal issues the last being a request for invalidity. The Board found that the
28 Petitioners failed to meet their burden of proof on all the issues except for Issue 26, where
29 the Board found that the County failed to provide adequate notice and opportunity for
30 comment on the final version of the Resolution before a vote of the Board of County
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1 Commissioners and final adoption. The Resolution was remanded back to the County to
2 take necessary action to come into compliance with the GMA.

3 4 **I. INTRODUCTION**

5
6 Pend Oreille County began a process of public engagement in preparation for
7 development of revising its Comprehensive Plan and Development Regulations. On July 27,
8 2022, Pend Oreille County issued a threshold determination of nonsignificance (DNS) under
9 the State Environmental Policy Act (SEPA) for the Comprehensive Plan Amendment.
10 RG*NEW timely appealed the July 27, 2022 SEPA DNS to the county's hearing examiner,
11 who denied the appeal on November 22, 2022. (RG*NEW's previous appeal to the county
12 hearing examiner of a prior version of the DNS was decided partially in RG*NEW's favor on
13 January 25, 2022.) The Hearings Examiner's decision regarding the county's DNS, was also
14 appealed to the Growth Management Hearings Board.
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16 17 **II. PRELIMINARY MATTERS**

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19 The Petitioners challenged approval of R-2023-08 asserting it would substantially
20 change the rural character of the County. Additionally they assert the County failed to
21 analyze environmental and landscape impacts under SEPA, failed to conserve Natural
22 Resource Lands, that the County created an internally inconsistent Comprehensive Plan,
23 failed to adopt regulations implementing the new Industrial and Commercial Land Use
24 designations on the Future Land Use Map (FLUM), failed to provide notice and opportunity
25 for comment on the final resolution as amended by the Planning Commission, and failed to
26 use Best Available Science (BAS) in reducing the buffers for streams and wetlands.
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29 At the hearing on the merits, the Board found that the Petitioners and the County
30 presented conflicting data regarding whether the County provided opportunity for public
31 comment at the February 6, 2023 meeting of the County Commissioners, where the final
32 action was taken on Resolution 2023-08. The minutes and agenda for this meeting were not

1 part of the Record submitted to the Board in this matter. The Board requested these
2 documents without objection at the hearing on the merits, and the County provided both the
3 Agenda and minutes of that meeting.

4 5 **III. BOARD JURISDICTION AND STANDARD OF REVIEW**

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7 The Board finds the Petition for Review was timely filed, pursuant to
8 RCW 36.70A.290(2). The Board finds the Petitioners have standing to appear before the
9 Board, pursuant to RCW 36.70A.280(2)(a) and (b) and RCW 36.70A.210(6). The Board also
10 finds it has jurisdiction over the subject matter of the petition pursuant to
11 RCW 36.70A.280(1).

12 Comprehensive plans and development regulations, and amendments to them, are
13 presumed valid upon adoption.¹ This presumption creates a high threshold for challengers
14 as the burden is on the Petitioners to demonstrate that any action taken by the County does
15 not comply with the GMA². The Board is charged with adjudicating GMA compliance and,
16 when necessary, invalidating noncompliant plans and development regulations.³

17
18 The scope of the Board's review is limited to determining whether a county has
19 achieved compliance with the GMA only with respect to those issues presented in a timely
20 petition for review.⁴ The Board is directed to find compliance unless it determines that the
21 challenged action is clearly erroneous in view of the entire record before the Board and in
22 light of the goals and requirements of the GMA.⁵

23 24 **IV. ISSUES TO BE DISCUSSED**

25 This appeal challenges Pend Oreille County's approval of Resolution R-2023-08
26 (Resolution), which amended the County Comprehensive Plan Map, implementing
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29 ¹ RCW 36.70A.320(1).

30 ² RCW 36.70A.320(2).

31 ³ RCW 36.70A.280, RCW 36.70A.302.

32 ⁴ RCW 36.70A.290(1).

⁵ RCW 36.70A.320(3). In order to find the City's action clearly erroneous, the Board must be "left with the firm and definite conviction that a mistake has been committed." *Dep't of Ecology v. PUD 1, 121 Wn.2d 179, 201 (1993)*.

1 development regulations (including critical area regulations), the FLUM, and the Zoning Map
2 (collectively, Comprehensive Plan Amendment). This matter also challenges Pend Oreille
3 County's July 27, 2022, DNS under the State Environmental Policy Act for the
4 Comprehensive Plan Amendment. Petitioners raise a total of 40 issues. The discussion of
5 these issues in Petitioners' brief does not follow the order listed in the Prehearing Order.
6

7 The challenges to Resolution 2023-08 fall into these general categories:

- 8 • Public participation (Issue 26)
- 9 • Rural Character (Issues 1-4, 10-16, 19)
- 10 • Procedures to Adopt and Adoption of Amended Table of Permitted Uses (Issue
- 11 20) Natural Resource Lands and Critical Areas (Issue 21)
- 12 • Internal Consistency of Comprehensive Plan (Issues 16, 17, 23-25)
- 13 • Requirement to Adopt Implementing Development Regulations (Issue 22)
- 14 • Use of Best Available Science in Designation and Protection of Critical Areas (Issues
- 15 5-9, 18)
- 16 • State Environmental Policy Act (SEPA) Compliance. (Issues 27-35, 36, 37, 38, 39)
- 17 • Substantial Interference with the Goals and Requirements of the GMA (Issues 23-26,
- 18 40)

19 As much as possible, the Board's analysis groups and discusses issues by the
20 statute, regulation, or policy alleged to be violated. The complete text of each issue
21 statement under each category appears in the discussion below.

22 **V. LEGAL ANALYSIS AND DISCUSSION**

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24 As a preliminary matter, the Board will note that Petitioners in this case raise
25 numerous concerns, pointing to various facts and policies in the record, regarding
26 Resolution 2023-08. However, Petitioners' briefings often make conclusory arguments or
27 fails to provide comparative analysis applying the law to the facts of the case. As the Board
28 has previously pointed out, "it is for the Petitioners to make and support their assertions
29 [that] the challenged action violates the cited GMA provision; it is not the Board's
30

1 responsibility to decipher and construct arguments from a party's brief."⁶ Discrete issues
2 which clearly indicate which specific provision of the local government's decision failed to
3 comply with which specific goal or requirement of the GMA, coupled with some
4 comparative analysis of law and fact, is necessary for the Board's review. ⁷

5
6 **A. ABANDONED ISSUES**

7 Pursuant to WAC 242-03-590(1), failure of a party to brief an issue in the opening
8 brief is deemed abandonment of that issue.⁸ The Board was unable to find briefing on the
9 below issue:

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12 **Issue 15.** Do the newly-adopted development regulations at xx.64.100 Planned Unit
13 Development (PUD) fail to protect rural character by allowing PUDs in all zones except the
14 Natural Resource zone?⁹

15 As such, Issue 15 is deemed abandoned.

16
17 **B. PUBLIC PARTICIPATION (Issue 26)**

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19 **Issue 26:** Did the County's failure to provide notice and an opportunity for comment on
20 substantial changes to the proposed Comprehensive Plan, development regulations, and
21 table of permitted uses that were made after the comment period was closed violate the
22 Act's public participation goal (RCW 36.70A.020(11)), the Act's public notice provisions at
23 RCW 36.70A.035(2)(a), and the implementing regulations, WAC 365-196-600? ¹⁰

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27 ⁶ *Larson Beach Neighbors v. Stevens County*, EWGMHB 07-1-0013, Final Decision and Order (Oct. 6, 2008)
at 37 (hereinafter "*Larson Beach Neighbors II*").

28 ⁷ "[A party] can go hunting for relief on appeal with a rifle or a shotgun. The rifle is better. [T]he shotgun
29 approach may hit the target with something but it runs the risk of obscuring significant issues by dilution."
Gagan v. Am. Cablevision, Inc., 77 F.3d 951, 955 (7th Cir.1996) (Evans, J.).

30 ⁸ WAC 242-03-590(1); See *North Clover Creek v. Pierce Cnty.*, GMHB No. 10-3-0015, FDO (May 18, 2011) at
31 11 (An issue was abandoned when, other than repeating statutes in the statement of a legal issue, the
petitioners made no argument tied to those provisions).

32 ⁹ Prehr'g Order at 4.

¹⁰ Prehr'g Order at 6.

1 **Applicable Law – Issue 26**

2 **RCW 36.70A.020 – Planning Goals**

3 The following goals are adopted to guide the development and adoption of
4 comprehensive plans and development regulations of those counties and cities that
5 are required or choose to plan under RCW 36.70A.040. The following goals are not
6 listed in order of priority and shall be used exclusively for the purpose of guiding the
7 development of comprehensive plans and development regulations:

8 ***

9 **(11) Citizen participation and coordination.** Encourage the involvement of citizens
10 in the planning process and ensure coordination between communities and
11 jurisdictions to reconcile conflicts.***¹¹

12 **RCW 36.70A.035 Public participation — Notice provisions.**

13 ***

14 **(2)(a)** Except as otherwise provided in [RCW 36.70A.035(2)(b)], if the legislative body
15 for a county or city chooses to consider a change to an amendment to a
16 comprehensive plan or development regulation, and the change is proposed after the
17 opportunity for review and comment has passed under the county’s or city’s
18 procedures, an opportunity for review and comment on the proposed change shall be
19 provided before the local legislative body votes on the proposed change.***¹²

20 **WAC 365-196-600 Public participation.**

21 ***

22 **(9)** Considering changes to an amendment after the opportunity for public review has
23 closed.

24 **(a)** If the county or city legislative body considers a change to an amendment, and
25 the opportunity for public review and comment has already closed, then the county or
26 city must provide an opportunity for the public to review and comment on the
27 proposed change before the legislative body takes action.***¹³

28 **Board Analysis – Issue 26**

29 The GMA provides both a public participation goal and several statutory requirements
30 for implementing the public participation goal. This goal is set forth at RCW 36.70A.020(11),
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¹¹ Former RCW 36.70A.020(11), (2021).

¹² RCW 36.70A.035(2)(a). See also RCW 36.70A.035(2)(b)(i)-(v), (setting forth five exceptions to the requirement in .035(2)(a)).

¹³ WAC 365-196-600(9)(a), (2015). See also WAC 365-196-600(9)(d)(i)-(v) (mirroring the five exceptions provided in RCW 36.70A.035(2)(b)).

1 and provides “an umbrella under which all the GMA public participation requirements fit.”¹⁴
2 The Board has held that the public participation goal “articulates a premium on involving
3 citizens in the entire GMA planning process; and specifically emphasizes the importance of
4 public participation for comprehensive plans and development regulations.”¹⁵

5
6 RCW 36.70A.035(2)(a) specifically addresses the requirements for public review of
7 changes introduced after public comment is closed.¹⁶ RCW 36.70A.035(2) requires
8 additional analysis and opportunity for public participation if, after the close of the public
9 record, a change to a comprehensive plan is proposed which is outside of the scope of what
10 has been thus far analyzed and publicly noticed.¹⁷ As the Board has held,
11 RCW 36.70A.035(2) mandates that “the public must have an opportunity to be heard and
12 comment before an ‘11th hour’ change [that is not within the exceptions of
13 RCW 36.70A.035(2)(b)] is adopted as part of comprehensive plan.”¹⁸ “To inappropriately
14 truncate or eliminate the public’s opportunity to participate in the making of local
15 government policy would fly in the face of one of the Act’s most cherished planning goals
16 and separate the “bottom up” component of GMA planning from its true roots – the
17 people.”¹⁹

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22 Petitioners contend that the County “significantly changed” Rural Land Use Policies
23 #2 and #3 after the close of the final public comment period.²⁰ The Record shows that by

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25 ¹⁴ *McVittie v. Snohomish Cnty.* CPSGMHB No. 00-3-0016, Final Decision & Order (Apr. 12, 2001) at 16 (citing
26 RCW 36.70A.020(11))[hereinafter *McVittie V.*].

27 ¹⁵ *Id.*

28 ¹⁶ *Pilchuck Audubon Soc’y v. City of Mukilteo*, CPSGMHB No. 05-3-0029, Final Decision & Order (Oct. 10,
29 2005) at 17-18 [hereinafter *Pilchuck V.*].

30 ¹⁷ RCW 36.70A.035(2)(a)-(b).

31 ¹⁸ *Radabaugh v. City of Seattle*, CPSGMHB. No. 00-3- 0002, Final Decision & Order (July 26, 2000) at 16.

32 ¹⁹ *McVittie*, CPSGMHB No. 00-3-0016 at 14.

²⁰ Pet’rs’ Prehr’g Br. at 10. Petitioners’ issue statement references additional “substantial changes” to the proposed February 2021 “Comprehensive Plan, development regulations, and table of permitted uses, but Petitioners’ briefing under Legal Issue 26 fails to explicitly identify these alleged modifications. Pet’rs’ Prehr’g Br. at 9-11; Pet’rs’ Reply Br. at 4-5. As such, the Board’s analysis under Legal Issue 26 is limited to the only

1 February 16, 2021, a newly compiled draft of the Comprehensive Plan (February 2021 Draft
2 Comprehensive Plan) was ready for public review and comment.²¹ As circulated for public
3 review, Rural Land Use Policy #2 in the February 2021 Draft Comprehensive Plan read as
4 follows:

5 **“Rural Land Use Policy#2:** The Pend Oreille County Development Code will
6 permit residential development, forestry, agricultural, mining, and other
7 industrial activities in all rural areas of the County in accordance with the
8 provisions of this Comprehensive Plan. Provided that:

9 a. New industrial or mining uses will be permitted as Conditional Uses or
10 consistent with Zoning Classifications.”²²

11
12 On May 11, 2021, the County Planning Commission held a public hearing to consider
13 the February 2021 Draft Comprehensive Plan. The Record shows that the Planning
14 Commission closed the public record to verbal testimony upon adjournment of the May 11,
15 2021 public hearing.²³ On May 28, 2021 at 4:30 PM, the public record for written comments
16 closed.²⁴ It appears that it was unclear to the public what version of the Comprehensive
17 Plan the Planning Commission was reviewing during the February-May 2021 Workshops.
18 The Record shows the County was pretty messy with notice and minutes.
19

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21 On January 17, 2023, the Planning Commission held a hearing to deliberate the
22 January 2023 Comprehensive Plan with “with the intent of making a recommendation to the
23 Board of County Commissioners.”²⁵ The meeting was a “continuation the Public Hearing
24 from May 11, 2021,” and was closed to public testimony.²⁶ At the January 17, 2023
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27 alleged changes which were briefing (i.e., modifications to Rural Land Use Policies #2 and #3), which the
28 Petitioners contend were adopted without additional public process.

29 ²¹ Index 54, POC001324 (2/16/21 Planning Commission Minutes).

30 ²² Pet’rs’ Prehr’g Br. at 10, (citing Index 191, POC003404, Feb. 2021 Draft Comprehensive Plan).

31 ²³ Pet’rs’ Prehr’g Br. at 11 (public comment and testimony were allowed at the May 11, 2021 hearing); Index
32 59, POC001334 (5/11/21 Planning Commission Minutes, showing that all planning commission members were
in favor closing verbal testimony at said hearing).

²⁴ Index 59, POC001334 (5/11/21 Planning Commission Minutes).

²⁵ Index 293, POC007061 (1/17/23 Planning Commission Minutes).

²⁶ See *id.*, (1/17/23 Planning Commission Minutes, noting that the chairperson “reminded the attendees that
public testimony was closed...”).

1 Planning Commission hearing, County Planning staff shared that “updates were made to
2 address the comments provided by Futurewise that were received too late to address before
3 the previous meeting.”²⁷ In other words, these modifications and changes were made after
4 the May 11, 2021 public hearing and the public review and comment period. These changes
5 to the Comprehensive Plan were explained to the Planning Commission in a Comment
6 Response Matrix and included changes to Rural Land Use Policy #2.²⁸
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9 In the January 2023 Comprehensive Plan, the County renumbered Rural Land Use
10 Policy #2 as Rural Land Use Policy #3, and as the Petitioners correctly state, “significantly
11 changed” the language of the provision.²⁹ Specifically:
12

13 **Rural Land Use Policy#3:** The Pend Oreille County Development Code will permit
14 residential development, forestry, agricultural, mining, and rural and natural-resource
15 related industrial activities in rural and natural-resource designated areas of the
16 County in accordance with the provisions of this Comprehensive Plan (including
17 maintaining rural character), and consistent with Zoning Classifications.³⁰

18 Further, The County added a new Rural Land Use Policy #2,³¹ which states:

19 **Rural Land Use Policy #2:** Encourage rural land use activities and development
20 intensities that:

- 21 a. Are consistent with and build upon the existing character of the rural areas, and
22 do not result in rural sprawl
23 b. Avoid interference with resource land uses
24 c. Provide appropriate protections for critical areas
25 d. Strengthen the long-term viability of small communities and rural economic
26 activities
27 e. Are contained and limited within appropriate areas
28 f. Do not require or lead to extension of urban services or facilities, except as may
29 be permitted by the Comprehensive Plan.³²

29 ²⁷ Pet’rs’ Prehr’g Br. at 11, (citing Index 293, POC007061, 1/17/23 Planning Commission Minutes).

30 ²⁸ Index 293, POC007062 (1/17/23 Planning Commission Minutes); Index 69 (1/18/2023 Pend Oreille County Comprehensive Plan Comment Matrix).

31 ²⁹ Pet’rs’ Prehr’g Br. at 10.

32 ³⁰ Index 001, POC000023 (January 2023 Comprehensive Plan).

³¹ Pet’rs’ Prehr’g Br. at 10, (citing Index 001, POC000023, January 2023 Comprehensive Plan).

³² Index 001, POC000023 (January 2023 Comprehensive Plan).

1 Petitioners asserts that, contrary to RCW 36.70A.020(11) and
2 RCW 36.70A.035(2)(a), the Pend Oreille BOCC considered and adopted these changes to
3 Rural Land Use Policies #2 and #3 without providing the public with notice and additional
4 opportunity to comment.³³ The Record shows that on January 17, 2023, the Planning
5 Commission unanimously recommended that the BOCC adopt the January 2023
6 Comprehensive Plan as Resolution No. 2023-08.³⁴ At their regularly scheduled hearing on
7 February 6, 2023, the BOCC unanimously accepted the Planning Commission’s
8 recommendation and adopted the January 2021 Comprehensive Plan as Resolution 2023-
9 08.³⁵ The Record shows that the BOCC’s February 6, 2023 Agenda and Meeting Minutes
10 indicate that no opportunity for public review and comment on the proposed changes was
11 provided before the BOCC (i.e., the local legislative body) voted to adopt the January 2023
12 Comprehensive Plan.³⁶

13
14 The **Board finds and concludes** that the changes to Rural Land Use Policy #2 and
15 #3 were considered and adopted by the BOCC without further public process.
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18 The County’s briefing does not dispute that the Planning Commission made
19 significant changes to RLUP #2 and RLUP #3 after the close of public comment, and does
20 not contradict the fact that these changes were considered and adopted by the BOCC
21 without further opportunity for public review.³⁷ Instead, the County explains that the “Board
22 of County Commissioners is the legislative body of the County,” and that the “Planning
23 Commission is the recommendation body to the [Board of County Commissioners]” which
24 “receives and reviews information collected throughout the public process and adapts the
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27 _____
28 ³³ Pet’rs’ Prehr’g Br. at 10, 11.

29 ³⁴ Index 293, POC007062 (1/17/23 Planning Commission Minutes).

30 ³⁵ Index 1, POC000001-POC000003 (Resolution 2023-08). See also Index 0296, POC007098 (2/6/23 Pend
31 Oreille County Board of Commissioners Meeting Minutes).

32 ³⁶ Index 0295, POC007094 (2/6/2023 Pend Oreille County Board of Commissioners Meeting Agenda, showing
that public comment before the BOCC was scheduled for after the BOCC’s action on the Comprehensive Plan
update); Index 0296, POC007098-POC007099, (2/6/23 Pend Oreille County Board of Commissioners Meeting
Minutes, minutes establishing that BOCC received public comment only after the vote to adopt Resolution
2023-08).

³⁷ Resp’t Prehr’g Br. at 18-20.

1 Comprehensive Plan and Development Regulations in response to those comments.”³⁸ The
2 County cites to the Planning Commission’s January 17, 2023 recommendation to the BOCC
3 to illustrate the “process used by the Planning Commission over the course of the three-year
4 review process. Noting that the BOCC “adopted the recommendations of the Planning
5 Commission wholesale without further modifications to any of the documents reviewed by
6 the Planning Commission,”³⁹ the County concludes that it “complied with RCW
7 36.70A.035(2)(b) [sic] because no additional modifications were made by the legislative
8 body after the closing of the period of review and comment.”⁴⁰
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11 The Board disagrees. Under the County’s reasoning, RCW 36.70A.035(2)(a) would
12 be rendered meaningless. So long as its legislative body made no further changes, a local
13 government could circumvent the GMA’s early and continuous public participation
14 requirement by closing the public review and comment period and relying on its planning
15 commission to propose and recommend changes to a Comprehensive Plan update. This
16 misconstrues plain language of RCW 36.70A.035(2)(a). What is relevant to the factual
17 inquiry required under RCW 36.70A.035(2)(a) is whether the legislative body of a county or
18 a city (e.g., a board of county commissioners or a city council) chose to consider a change
19 to a comprehensive plan amendment and that change was proposed by the County after
20 the time for public review and comment had closed.⁴¹ That the Planning Commission, rather
21 than the BOCC, recommended or proposed the changes at issue presents a distinction
22 without a difference: the operative fact is that the change itself was made by the County
23 after the opportunity for review and comment had passed. That the BOCC adopted the
24 changes as recommended by the Planning Commission without further modification is
25 similarly non-dispositive: the operative fact is that the BOCC chose to consider proposed
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30 ³⁸ *Id.* at 19, (citing Index 0008; POC0000354, 1/17/23 Planning Commission Recommendation)

31 ³⁹ *Id.*, (citing Index 0001; POC000003).

32 ⁴⁰ *Id.*

⁴¹ *Larson Beach Neighbors, et al. v. Stevens Cnty.*, EWGMHB No. 04-1-0010, Final Decision & Order (Feb. 2, 2005) at 8 (discussing the use of the word “proposal” in RCW 36.70A.035(2)(a)) (hereinafter “*Larson Beach Neighbors I*”).

1 changes made by the County after the close of public review and voted to adopt the
2 proposed change without providing additional public process.

3
4 The County also contends “that [a]ccepting the argument of Petitioners would require
5 an infinite public review and comment periods for any changes to Comprehensive Plans and
6 Development Regulations made at any point in time.”⁴² As we have found previously, this
7 contention is disingenuous.⁴³ In the present matter, RCW 36.70A.035(2)(a) simply required
8 the BOCC to provide an additional opportunity for public review and comment when it chose
9 to consider the changes proposed by the Planning Commission to Rural Land Use Policy #2
10 and #3. If public participation raised credible problems or beneficial suggestions, the County
11 could then choose to make further changes to the proposed language as it deems
12 appropriate. Only in that case would the requirements of RCW 36.70A.035(2)(a) be
13 triggered.
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17 Petitioners argue that none of the five statutory exceptions to the additional review
18 and comment requirement of RCW 36.70A.035(2)(a) are applicable.⁴⁴ The County’s briefing
19 similarly cites the five statutory exceptions set forth in RCW 36.70A.035(2)(b), but does not
20 provide any analysis or evidence in the Record to support a conclusion that these
21 exceptions apply.⁴⁵ RCW 36.70A.035(2)(b)(i)-(v) provides exceptions to the GMA’s
22 additional opportunity for public review and comment requirement. However, none of these
23 exceptions apply to the facts in this case. Because the County did not prepare an EIS under
24 RCW 43.21C for the Comprehensive Plan Amendment, the changes made to Rural Land
25 Use Policy #2 and #3 were not within the range of alternatives considered an EIS.⁴⁶ The
26 changes to Rural Land Use Policy #2 and #3 do not correct typographical errors ((2)(b)(iii)),
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30 ⁴² Resp’t Prehr’g Br. At 19.

31 ⁴³ *Larson Beach Neighbors I*, EWGMHB No. 04-1-0010 at 9 (addressing an argument by the local government
32 that the RCW 36.70A.035(2)(a)’s requirement “would cause the County to have unending hearings”).

⁴⁴ RCW 36.70A.035(2)(b)(i).

⁴⁵ Resp’t Prehr’g Br. at 19.

⁴⁶ RCW 36.70A.035(2)(b)(i).

1 involve a capital budget decision ((2)(b)(iv)), or enact a moratorium or interim control
2 ((2)(b)(v)).⁴⁷

3
4 Neither the Record nor the briefing shows that the changes to Rural Land Use
5 Policies #2 and #3 were within the scope of alternatives available for public review
6 (RCW 36.70A.035(2)(b)(ii)). The Board finds no evidence to suggest that the specific
7 changes to Rural Land Use Policy #2 and #3 were publicly considered at various hearings,
8 and that the public was given opportunity to provide comment on them before the Planning
9 Commission prior to adoption by the BOCC on February 6, 2023.⁴⁸ As the Board has
10 previously held, the fact that the County received comments from certain citizens requesting
11 or discussing problems or changes that resulted in changes adopted later as amendments
12 “does not demonstrate that the public received an opportunity to comment on the
13 amendment later adopted by the County.”⁴⁹ In this case, there is nothing in the record to
14 show that the County gave the public notice that it had updated the February 2021 Draft
15 Comprehensive Plan in response to a comment by Futurewise, that the Board would be
16 considering a new version of the Comprehensive Plan that included these changes at its
17 hearing to adopt the Comprehensive Plan Update. As such, the Board finds that the
18 challenged modification was not among the scope of alternatives available for public
19 comment.
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24 The Board disagrees with Respondent’s argument that “[t]he County provided more
25 than ample opportunity for public participation in this process and complied with its
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29 ⁴⁷ RCW 36.70A.035(2)(b)(iii)-(v).

30 ⁴⁸ Compare RCW 36.70A.035(2)(b)(ii) with *Burrow v. Kitsap Cnty.*, CPSPGMHB Case No. 99-3-0018, Final
31 Decision & Order (Mar. 29, 2000), at 10 (addressing RCW 36.70A.035(2)(b)(ii), the Board in *Burrow* found that
32 the record demonstrated that the challenged proposals were within the scope of alternatives available for
public review, were publicly considered at various meetings, and that the public was provided opportunity to
comment before the Planning Commission and County Council).

⁴⁹ *Larson Beach Neighbors I* at 9.

1 obligations under RCW 36.70A.035(2)(b) [*sic*].”⁵⁰ The question under the GMA is not
2 whether the County provided “ample opportunity” for comment, but whether the County
3 provided additional opportunity to comment on changes adopted after the close of public
4 opportunity to comment as required by RCW 36.70A.035(2)(a). The Record shows that
5 significant changes to RLUP #2 and RLUP #3 were adopted after the close of the final
6 public comment period. The Record shows that the BOCC chose to consider and adopt
7 these changes, as recommended by the Planning Commission, without further notice or
8 opportunity for public review and comment. For these reasons, Board finds and concludes
9 that the County has failed to comply with RCW 36.70A.035(2)(a).
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12 Petitioners have carried their burden of proving that Pend Oreille County’s adoption
13 of Resolution 2023-08, specifically the amendments to Rural Land Use Policy #2 and #3,
14 without providing additional opportunity for public review and comment is clearly erroneous
15 and does not comply with RCW 36.70A.035(2)(a) and WAC 365-196-600(9)(a).
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18 Under Legal Issue 26, Petitioners also allege a violation of both
19 RCW 36.70A.035(2)(a) and RCW 36.70A.020(11). Thus, the Board reviews the issues to
20 determine whether the County complied with GMA requirements and was guided by the
21 corresponding goals.⁵¹ As noted above, public participation goal set forth at
22 RCW 36.70A.020(11) is the umbrella over *all* the GMA's public participation requirements
23
24
25

26 _____
27 ⁵⁰ Resp’t Prehr’g Br. at 20. The County’s briefing notes that the County “provided an additional opportunity to
28 comment on the 2022 SEPA Threshold Determination.” Resp’t Prehr’g Br. at 20 (citing Index 0002;
29 POC0000269). To the extent that the County argues that this satisfies RCW 36.70A.035(2)(a)’s additional
30 review and comment requirement, it is incorrect. As the Board has previously held, the “GMA establishes
31 public participation requirements separate from the SEPA.” *Tracy v. City of Mercer Island*, CPSGMHB No. 92-
32 3-0001, Final Decision & Order (Jan. 5, 1993) at 11. Further, neither the briefing nor the record shows that the
additional opportunity to comment on the 2022 SEPA Threshold Determination included public review and
comment sufficient to meet the requirements of RCW 36.70A.035(2)(a).

⁵¹ *McVittie V* at 19 (citing *Litowitz v. City of Federal Way*, CPSGMHB No. 96-3-0005, Final Decision & Order,
(Jul. 22, 1996), at 7 and *The Children’s Alliance, et al. v. City of Bellevue (Children’s II)*, CPSGMHB No. 96-3-
0023, Final Decision & Order, (Nov. 3, 1996), at 9).

1 and is implemented by the specific requirements of RCW 36.70A.035(2).⁵² Here, since the
2 County has been found noncompliant with the requirements of RCW 36.70A.035(2)(a), the
3 Board also finds that the County failed to be guided by RCW 36.70A.020(11). That is, the
4 County forestalled, rather than encouraged, the involvement of citizens in the planning
5 process. Therefore, the Board remands Resolution 2023-08 for compliance with the GMA.
6

7 **C. RURAL CHARACTER (Issues 1-4, 10-14, 19)**

8
9 **1. Rural Character - Legal Issue 1 - RCW 36.70A.070(5)(a)**

10 **Issue 1.** Did the county fail to develop a written record explaining how the rural element
11 harmonizes the planning goals in RCW 36.70A.020 and meets the requirements of this
12 chapter, as required by RCW 36.70A.070(5)(a)?⁵³

13 **Applicable Law – Legal Issue 1:**

14
15 **RCW 36.70A.070(5) Rural element.** Counties shall include a rural element including lands
16 that are not designated for urban growth, agriculture, forest, or mineral resources. The
17 following provisions shall apply to the rural element:

18 **RCW 36.70A.070(5)(a) Growth management act goals and local circumstances.**

19 Because circumstances vary from county to county, in establishing patterns of rural
20 densities and uses, a county may consider local circumstances, but shall develop a written
21 record explaining how the rural element harmonizes the planning goals in RCW 36.70A.020
22 and meets the requirements of this chapter.***

23 **Board Analysis – Legal Issue 1:**

24 In its discussion of law related to Issues 1-4, 10-16, 19, Petitioner does not cite the
25 language of RCW 36.70A.070(5)(a).
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27
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31

32 ⁵² *Id.*

⁵³ Prehr'g Order at 2.

1 The Petitioners' argument under Legal Issue 1 is limited to a restatement of the issue
2 itself:

3 [T]he county failed to develop a written record explaining how the rural element
4 harmonizes the planning goals in RCW 36.70A.020 and meets the requirements
5 of the GMA, as required by RCW 36.70A.070(5)(a).⁵⁴

6 Petitioners' briefing on Legal Issues 1 through 4 cites to:

- 7
- 8 • Excerpts of the Legislature's findings on rural lands;⁵⁵
- 9 • A 2015 Washington State Court of Appeals case for the following holding "The
10 purpose of the GMA is to control urban sprawl[.]"⁵⁶
- 11 • The GMA goal for reducing sprawl (RCW 36.70A.020(2)) together with an
12 excerpt of the preamble of RCW 36.70A.020 for the proposition that the
13 GMA's goal of reducing sprawl ""shall be used exclusively for the purpose of
14 guiding the development of comprehensive plans and development
15 regulations[.]"⁵⁷

16 Petitioners further cite excerpts of RCW 36.70A.020(9), (10), (13), stating that "[o]ther
17 GMA goals related to protecting rural character include retaining open space, conserving
18 fish and wildlife habitat, protecting the environment including air and water quality and the
19 availability of water, and preserving lands, sites, and structures, that have historical or
20 archaeological significance."⁵⁸ Petitioners' briefing fails to provide express legal analysis

21
22 ⁵⁴ Pet'rs' Prehr'g Br. at 2-3.

23 ⁵⁵ *Id.* at 2, (citing paragraphs 1 and 2 of RCW 36.70A.011).

24 ⁵⁶ *Id.*, (citing *Spokane Cnty. v. E. Wash. Growth Mgmt. Hrgs Bd.*, 188 Wn. App. 467, 484, 353 P.3d 680
(2015)).

25 ⁵⁷ *Id.*, (citing RCW 36.70A.020, .020(2)).

26 ⁵⁸ *Id.*, (citing excerpts of RCW 36.70A.020(9), (10), (13)). The full text of these Goals is provided below:

27 **RCW 36.70A.020(9) Open space and recreation.** Retain open space, enhance recreational
28 opportunities, conserve fish and wildlife habitat, increase access to natural resource lands and water,
29 and develop parks and recreation facilities.

30 **RCW 36.70A.020(10) Environment.** Protect the environment and enhance the state's high quality of
31 life, including air and water quality, and the availability of water.

32 **RCW 36.70A.020(13) Historic preservation.** Identify and encourage the preservation of lands, sites,
and structures, that have historical or archaeological significance.

1 connecting these provisions of statute and case law to the argument under Legal Issue 1
2 alleging a violation of RCW 36.70A.070(5)(c).

3
4 The GMA requires that local governments include eight mandatory elements in their
5 comprehensive plans, including a “rural element.”⁵⁹ The rural element must include “rural
6 element including lands that are not designated for urban growth, agriculture, forest, or
7 mineral resources.”⁶⁰ RCW 36.70A.070(5)(a) specifically allows counties to consider local
8 circumstances when planning this element, providing that:
9

10
11 Because circumstances vary from county to county, in establishing patterns of
12 rural densities and uses, a county may consider local circumstances, but shall
13 develop a written record explaining how the rural element harmonizes the
14 planning goals in RCW 36.70A.020 and meets the requirements of [the GMA]⁶¹

15 When considering local circumstances, there must be “a written record explaining
16 how the rural element harmonizes the planning goals in RCW 36.70A.020 and meets the
17 requirements of [the GMA].”⁶² The Board has read RCW 36.70A.070(5)(a) as “requiring a
18 written record in those instances where a county has considered local circumstances and
19 has established a pattern of densities and uses that would not be considered rural absent
20 the local circumstances.”⁶³
21

22
23 ⁵⁹ Former RCW 36.70A.070(5) (2021).

24 ⁶⁰ *Id.*

25 ⁶¹ RCW 36.70A.070(5)(a).

26 ⁶² *Id.*

27 ⁶³ *Futurewise v. Pend Oreille Cnty.*, EWGMHB No. 05-1-0011, Final Decision & Order (Nov. 1, 2006) at 20-21
28 (citing *Screen, et al. v. Kitsap Cnty.*, CPSGMHB No. 99-3-00012 coordinated with Consolidated CPSGMHB
29 No. 98-3-0032c, Final Decision & Order (Nov. 22, 1999) at 10 (*Screen II*)). See also *Screen II* at 10 (Finding
30 that “[a]llowing 1 dwelling unit per 20 acres is clearly a rural land use designation,” and holding that “[w]hile the
31 County certainly considered local circumstances in its approach to designating GMA forest lands and IRF
32 lands, the County did not rely on local circumstances to justify an atypical rural density or use”). The County
did not propose to establish patterns of densities and uses that would not be considered rural, absent the local
circumstances.”); *Sky Valley v. Snohomish Cnty.*, GMHB No. 95-3-0068c, Second Order on Compliance
(Sep. 8, 1998) at 10-13 (where county relied on local circumstances, the need for cottage industries, to justify
2.3-acre residential lots in rural area, the Board reviewed county’s written explanation and found that it had
failed to explain how the rural element harmonizes the planning goals because it only explained how its new
RR-RD designation achieved six of the GMA’s planning goals).

1
2 The Petitioners in this case have not identified, either in their briefing or in oral
3 argument, which pattern of rural densities or uses established by the County in Resolution
4 2023-08 were justified by local circumstances such that the County’s action triggers the
5 RCW 36.70A.070(5)(a) requirement to develop a written record. Petitioners have not shown,
6 through reference to definitions, expert opinion, statutes, or past court and board decisions,
7 that any provision of Resolution 2023-08 would result in a pattern of densities and uses that
8 would typically not be considered rural. Petitioners argue that the County’s listing of the
9 fourteen Rural Land Use Policies “hardly appears to be harmonizing the goals in light of
10 local circumstances,” but fail to provide specific analysis of why these fourteen policies fail
11 to protect rural character contrary to RCW 36.70A.070(5)(a). The County cites several
12 provisions within the Comprehensive Plan that it argues “directly discussed the development
13 of the rural element as it harmonized the planning goals of the GMA within the
14 Comprehensive Plan.”⁶⁴ Petitioners’ briefing fails to explain why these provisions are
15 inconsistent with the requirements of RCW 36.70A.070(5)(a). The **Board finds and**
16 **concludes that** Petitioners have failed to make a *prima facie* case of noncompliance with
17 RCW 36.70A.070(5)(a), and thus fail to carry their burden of proof that the County’s action
18 was clearly erroneous under the GMA.
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22
23 **2. Rural Character - Legal Issues 2 and 3**

24 **Issue 2.** Did the county fail to adequately define (or “establish” in the words of the statute)
25 the rural character of the county in the newly-adopted Comprehensive Plan and, thus, left
26 itself unable to include measures that protect rural character, as required by RCW
27 36.70A.070(5)(c)?⁶⁵

28 **Issue 3.** Even if the county adequately defined (or “established” in the words of the statute)
29 the rural character of the county in the newly-adopted Comprehensive Plan, did the county
30

31 _____
32 ⁶⁴ Pet’rs’ Reply Br. at 2; Resp’t Br. at 8, (citing Comprehensive Plan Sections 1.3 and 2.3, Index 1, POC00016-17, 21-25).

⁶⁵ Prehr’g Order at 2.

1 fail to include measures in the Comprehensive Plan that protect rural character, as required
2 by RCW 36.70A.070(5)(c)?⁶⁶

3 **Applicable Law - Legal Issues 2 and 3:**

4
5 **RCW 36.70A.070(5) Rural element.** Counties shall include a rural element including lands
6 that are not designated for urban growth, agriculture, forest, or mineral resources. The
7 following provisions shall apply to the rural element:^{***}

8 **RCW 36.70A.070(5)(c) Measures governing rural development.** The rural element shall
9 include measures that apply to rural development and protect the rural character of the
10 area, as established by the county, by:

- 11 (i) Containing or otherwise controlling rural development;
- 12 (ii) Assuring visual compatibility of rural development with the surrounding rural area;
- 13 (iii) Reducing the inappropriate conversion of undeveloped land into sprawling, low-
14 density development in the rural area;
- 15 (iv) Protecting critical areas, as provided in RCW 36.70A.060, and surface water and
16 groundwater resources; and
- 17 (v) Protecting against conflicts with the use of agricultural, forest, and mineral resource
18 lands designated under RCW 36.70A.170.⁶⁷

18 **Board Analysis - Legal Issues 2 and 3:**

19 Petitioners' Prehearing Brief merely restates Legal Issue 2 as a conclusion: "The
20 county failed to adequately define (or 'establish' in the words of the statute) the rural
21 character of the county in the newly-adopted Comprehensive Plan and, thus, left itself
22 unable to include measures that protect rural character, as required by
23 RCW 36.70A.070(5)(c)."⁶⁸ The Petitioners' briefing does not explain what
24 RCW 36.70A.070(5)(c) requires with respect to an adequate definition of "the rural character
25 of the area." Specifically, it fails to discuss what it believes RCW 36.70A.070(5)(c) means by
26 "the rural character of the area, as established by the County," what the County must do to
27

28
29 _____
30 ⁶⁶ *Id.*

31 ⁶⁷ Former RCW 36.70A.070(5)(c) (2022). The Petitioners do not cite to a specific subsection of
32 RCW 36.70A.070(5)(c) under Legal Issue 2, but the Board reads Issue 3 as alleging a violation of .070(5)(c)(i)-
(v), setting forth five criteria governing measures that apply to rural development and protect the rural
character of the area.

⁶⁸ Pet'rs' Prehr'g Br. at 2. See Prehr'g Order at 2, (setting forth Legal Issue 2).

1 adequately “establish” rural character under the statute, and why failure to adequately
2 “establish” a definition of rural character renders the County “unable to include measures
3 that protect rural character, as required by RCW 36.70A.070(5)(c).”
4

5 In their briefing for Legal Issues 16 and 17, the Petitioners note that the Rural
6 Element of the Comprehensive Plan provides the GMA’s definition of Rural Character.⁶⁹
7 Petitioners argue that the Rural Lands section “merely parrots words of the GMA without
8 adopting the GMA’s suggested language as the county’s own,” but fail to set forth any
9 authority within the GMA that prescribes how the County must adopt such language.⁷⁰
10 Petitioners assert that RCW 36.70A.070(5)(c) “clearly contemplates refinement [of the
11 statutory definition of rural character] by the counties,” but does not cite case law or
12 previous Board decisions that support such a contention.⁷¹ As a whole, Petitioners’
13 prehearing briefing omits comparative analysis of how the statute applies to the facts and
14 circumstances of the County’s action in this case.
15
16

17
18 Petitioners are correct that the County did not “point to any definition of rural
19 character in its response.”⁷² However, their claim that this supports a conclusion that
20 “...petitioner is correct—the county failed to define rural character” shifts the burden of
21 proof. As noted above, the burden is squarely on the Petitioners to demonstrate
22 noncompliance with RCW 36.70A.070(5)(c). Had a *prima facie* challenge based on
23 RCW 36.70A.070(5)(c) been made in this case, Petitioners may be correct that the County’s
24 failure to direct the Board to evidence in the record demonstrating rural character had been
25 established could support a finding of noncompliance. They may be correct that the
26 County’s merely “[I]isting public hearings” does not by itself “demonstrate that rural
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31 ⁶⁹ Pet’rs’ Prehr’g Br. at 5, (citing Index 1, POC000019-20).

⁷⁰ *Id.* at 5-6.

⁷¹ *Id.* at 6.

⁷² Pet’rs’ Reply Br. at 1.

1 character has been defined.”⁷³ However, the Petitioner fails to make such a *prima facie*
2 case with respect to establishing rural character under RCW 36.70A.070(5)(c).

3
4 Under Legal Issue 3, Petitioners further argue that “[e]ven if the County did
5 adequately define (or ‘establish’ in the words of the statute) the rural character of the county
6 in the newly-adopted Comprehensive Plan, the county failed to include measures in the
7 Comprehensive Plan that protect rural character, as required by RCW 36.70A.070(5)(c).”⁷⁴
8 “For example, newly-adopted Rural Land Use Policy #10 violates RCW 36.70A.110(1) by
9 requiring the adoption of zoning classifications ‘to direct commercial uses to more populated
10 areas of the County[,]’ without specifying urban growth areas or precluding urban
11 commercial uses outside of UGAs.”⁷⁵ In other words, to support their argument under Legal
12 Issue 3, Petitioners’ Prehearing Brief provides a restatement of Legal Issue 4.⁷⁶
13
14

15
16 Petitioners are correct that a county’s failure to include measures to protect rural
17 character in its comprehensive plan would violate the GMA.⁷⁷ However, Petitioners’ briefing
18 otherwise fails to explain the requirements of RCW 36.70A.070(5)(c)(i)-(v), and does not
19 provide any analysis as to how RCW 36.70A.070(5)(c)(i)-(v) applies to the County’s
20 enactment of Resolution 2023-08. As the County notes, the Comprehensive Plan sets forth
21 fourteen Rural Land Use Policies.⁷⁸ The Record shows that the Comprehensive Plan also
22 sets forth a Rural Lands Zoning Density Criteria Matrix.⁷⁹ Apart from mentioning Rural Land
23
24

25 ⁷³ *Id.*

26 ⁷⁴ Pet’rs’ Prehr’g Br. at 3.

27 ⁷⁵ *Id.*, (citing Index 001, POC000024, Rural Land Use Policy #10). Rural Land Use Policy #10 states, in full:

28 **Rural Land Use Policy #10:** Pend Oreille County will adopt zoning classifications to direct
29 commercial uses to more populated areas of the County where necessary services exist to
accommodate them.

⁷⁶ See Prehr’g Order at 2, (setting forth Legal Issue 4).

30 ⁷⁷ *Kittitas Cnty. v. E. Wash. Growth Mgmt. Hr’gs Bd.*, 172 Wn.2d 144, 162, 256 P.3d 1193 (2011) (citing
31 RCW 36.70A.070(5)(c), and finding that “[t]he GMA requires that counties’ comprehensive plans include
provisions that protect rural areas...”).

32 ⁷⁸ Index 001, POC000023-000025.

⁷⁹ *Id.*, POC000045.

1 Use Policy #10, Petitioners' Prehearing Briefing does not offer any analysis to explain how
2 Rural Land Use Policy #s 1-9 and 11-14 are inconsistent with the requirements of
3 RCW 36.70A.070(5)(c)(i)-(v) such that they fail to protect rural character as required by
4 RCW 36.70A.070(5)(c).
5

6
7 Regarding Rural Land Use Policy #10, Petitioners' Prehearing Brief fails to provide
8 the linkage between the text of this Comprehensive Plan policy and
9 RCW 36.70A.070(5)(c)(i)-(v).⁸⁰ Specifically, their briefing does not explain how Rural Land
10 Use Policy #10's alleged noncompliance with RCW 36.70A.110(1) results in a failure to
11 protect rural character inconsistent with RCW 36.70A.070(5)(c)(i)-(v). More broadly, beyond
12 a cursory reference to the legislature's findings on Rural Lands and citing to case law
13 highlighting the GMA's emphasis on controlling urban sprawl, Petitioners' briefing does not
14 explain how the GMA's provisions governing UGAs in RCW 36.70A.110(1) relate to the
15 GMA's requirements for measures governing rural development and protecting rural
16 character within RCW 36.70A.070(5)(c).
17

18
19 Petitioners are correct that Rural Land Use Policy #10 omits language expressly
20 "specifying urban growth areas or precluding urban commercial uses outside of UGAs."
21 However, when read in full, the provision's requirement that the County "will adopt zoning
22 classifications to direct commercial uses to more populated areas of the County" is limited to
23 those areas "*where necessary services exist to accommodate them.*"⁸¹ Petitioners fail to
24 analyze the language in Rural Land Use Policy #10 requiring adopted zoning classifications
25 to "direct commercial uses...*where necessary services exist to accommodate them*" against
26 the requirements of RCW 36.70A.070(5)(c)(i)-(v).⁸² Petitioners have not demonstrated that
27
28
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31 ⁸⁰ As discussed below, Petitioners' Prehearing Briefing also fails to provide a linkage between Rural Land Use
32 Policy #10 and RCW 36.70A.110(1).

⁸¹ Index 1, POC000024 (emphasis added).

⁸² *Id.*

1 RCW 36.70A.070(5)(c)(i)-(v) obligates Rural Land Use Policy #10 to “[specify] urban growth
2 areas or [preclude] urban commercial uses outside of UGAs” to protect rural character.

3
4 Petitioners’ Reply Brief repeats their assertions set forth in Legal Issues 1 through 3
5 regarding the County’s failure to protect rural character as support for their argument that
6 the County created an internally inconsistent comprehensive plan (Legal Issues 16 and
7 17).⁸³ “Resolution R-2023-08 creates an internally inconsistent Comprehensive Plan by
8 failing to protect the county’s rural character in the ways described above in Section A, even
9 though the Comprehensive Plan states an intent to maintain the “the rural character of Pend
10 Oreille County.”⁸⁴ This is an excerpt of Comprehensive Plan Land Use Goal #2, which
11 states in full:
12

13
14 **Land Use Goal # 2:** Maintain the rural character of Pend Oreille County, including: forest
15 lands, agricultural lands, mining and natural resource-based industries, home-based
16 businesses, and recreational properties.⁸⁵

17 Petitioners may be correct that “[g]ood intentions are not enough to satisfy GMA’s
18 mandate to ‘include [in the Comprehensive Plan] measures that . . . protect the rural
19 character.’”⁸⁶ However, Petitioners’ burden is to prove that the measures that implement
20 Land Use Goal #2—namely, Rural Land Use Policies #s 1 through 14—fail to protect rural
21 character as required by RCW 36.70A.070(5)(a). As with Legal Issue 2, Petitioners have
22 failed to make that case.
23

24 25 **4. Rural Character - Legal Issue 4**

26 **Issue 4.** Does newly-adopted Rural Land Use Policy #10 violate RCW 36.70A.110(1) by
27 requiring the adoption of zoning classifications “to direct commercial uses to more populated
28
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30

31 ⁸³ Pet’rs’ Reply Br. at 3.

⁸⁴ *Id.* at 2, (citing Index 001, POC000021).

⁸⁵ Index 001, POC000021.

⁸⁶ Pet’rs’ Reply Br. at 2, (RCW 36.70A.070(5)(c)).

1 areas of the County” without specifying UGAs or precluding urban commercial uses outside
2 of UGAs?⁸⁷

3 **Applicable Law – Legal Issue 4:**

4
5 **RCW 36.70A.110 Comprehensive plans—Urban growth areas.**

6 **RCW 36.70A.110(1)** Each county that is required or chooses to plan under RCW
7 36.70A.040 shall designate an urban growth area or areas within which urban growth shall
8 be encouraged and outside of which growth can occur only if it is not urban in nature. Each
9 city that is located in such a county shall be included within an urban growth area. An urban
10 growth area may include more than a single city. An urban growth area may include territory
11 that is located outside of a city only if such territory already is characterized by urban growth
12 whether or not the urban growth area includes a city, or is adjacent to territory already
13 characterized by urban growth, or is a designated new fully contained community as defined
14 by RCW 36.70A.350. When a federally recognized Indian tribe whose reservation or ceded
15 lands lie within the county or city has voluntarily chosen to participate in the planning
16 process pursuant to RCW 36.70A.040, the county or city and the tribe shall coordinate their
17 planning efforts for any areas planned for urban growth consistent with the terms outlined in
18 the memorandum of agreement provided for in RCW 36.70A.040(8).

19
20
21
22
23 **Board Analysis – Legal Issue 4:**

24 As noted above, Petitioners’ briefing regarding Legal Issue 4 is limited to a
25 restatement of the issue itself as an example to support of Petitioners’ argument under
26 Issue 3 that the County failed to include measures in the Comprehensive Plan the protect
27 rural character. Specifically:

28 “For example, newly-adopted Rural Land Use Policy #10 violates RCW
29 36.70A.110(1) by requiring the adoption of zoning classifications ‘to direct
30 commercial uses to more populated areas of the County[,]’ without specifying urban
31 growth areas or precluding urban commercial uses outside of UGAs.”⁸⁸

32 Petitioners’ argument is based solely on the above excerpt of Rural Land Use
Policy #10, which they allege does not comply with RCW 36.70A.110(1). The Petitioners fail

⁸⁷ Prehr’g Order at 2.

⁸⁸ *Id.*, (citing Index 001, POC000024, Rural Land Use Policy #10).

1 to explain what RCW 36.70A.110(1) requires of the County. Petitioners’ briefing fails to
2 analyze the language in Rural Land Use Policy #10 requiring adopted zoning classifications
3 to “direct commercial uses...*where necessary services exist to accommodate them*” against
4 the requirements of RCW 36.70A.110(1),⁸⁹ and demonstrate that RCW 36.70A.110(1)
5 obligates Rural Land Use Policy #10 to “[specify] urban growth areas or [preclude] urban
6 commercial uses outside of UGAs.” For these reasons, the Board **finds and concludes** that
7 Petitioners failed to carry their burden of proof under Legal Issue 4.
8

9
10 **Rural Character - Planned Unit Development (PUD) Regulations (Issue 10-14)**

11 **Legal Issues – Rural Character – Planned Unit Development (PUD) Regulations**

12
13 **Issue 10.** Do the newly-adopted development regulations at xx.64.100 Planned Unit
14 Development (PUD) fail to assure visual compatibility of rural development with the
15 surrounding rural area because the requirement that “[t]o the maximum extent possible,
16 cluster lots shall be located so that common open space provides a buffer between the
17 cluster lots and adjacent properties and/or right of way” is ambiguous?⁹⁰

18 **Issue 11.** Do the newly-adopted development regulations at xx.64.100 Planned Unit
19 Development (PUD) fail to protect rural character by requiring clustering, which is not rural
20 in character and is not visually compatible with the surrounding rural area?⁹¹

21 **Issue 12.** Do the newly-adopted development regulations at xx.64.100 Planned Unit
22 Development (PUD) fail to assure visual compatibility of rural development with the
23 surrounding rural area because the requirement that “the buffer strip shall be of sufficient
24 size and type to provide a buffer of vegetation . . . fifty percent (50%) opaque year-round”
25 fails to assure visual compatibility?⁹²

26 **Issue 13.** Do the newly-adopted development regulations at xx.64.100 Planned Unit
27 Development (PUD) fail to protect rural character by allowing multi-family housing in rural
28 residential areas?⁹³

29
30 ⁸⁹ *Id.*

31 ⁹⁰ Prehr’g Order at 3.

32 ⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.* at 3-4.

1 **Issue 14.** Do the newly-adopted development regulations at xx.64.100 Planned Unit
2 Development (PUD) fail to protect rural character by allowing one-acre lots in rural
3 residential areas?⁹⁴

4 **Board Analysis – Legal Issues 10-14:**

5 Petitioners' Prehearing Brief raises several legal issues regarding the County's newly
6 adopted Planned Unit Development (PUD) Regulations, set forth at Sec. xx.64.100.⁹⁵
7 Broadly, the Petitioners argue that the regulations will allow development that is neither rural
8 in character nor visually compatible with the surrounding rural area.⁹⁶ Petitioners clarify that
9 their contention is not that PUDs are "*per se* unlawful in rural areas," but that the regulations
10 as adopted fail to provide "adequate sideboards" to assure protection of rural character and
11 assure visual compatibility with the surrounding rural area.⁹⁷

12 The burden of proof in a GMA challenge is the Petitioners' to carry. As the Board has
13 held, a fundamental aspect of successfully carrying this burden is identifying the provision of
14 the GMA that is the basis of an allegation of noncompliance.⁹⁸ While Petitioners' concern for
15 the protection of rural character is commendable, their briefing regarding the County's newly
16 adopted PUD regulations fails to identify any authority, GMA or otherwise, that imposes
17 legal obligations on the adoption of PUD regulations for rural areas.⁹⁹ In order to overcome
18 the presumption of validity, a petitioner must persuade the Board that the local government
19 has acted erroneously.¹⁰⁰ At the very minimum, a petitioner needs to state the provision of
20 the statute at issue, explain what that provision requires, and at least start the analysis of
21 law and fact comparing the challenged action to the requirement of the statute.¹⁰¹ Written or
22
23
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25

26 ⁹⁴ Prehr'g Order at 4.

27 ⁹⁵ *Id.*; Pet'rs Prehr'g Br. at 3-4; Index 1, POC000242–248. As noted above, the Petitioners' Prehearing Brief
28 did not address Issue 15, which appears to take issue with POCDC xx.64.100.1. It is thus deemed abandoned.

29 ⁹⁶ *Id.*

30 ⁹⁷ Pet'rs' Reply Br. at 2.

31 ⁹⁸ *Kent CARES, et al. r v. City of Kent*, CPSGMHB. No. 03-3-0012, Final Decision and Order (Dec. 1, 2003) at
32 7.

⁹⁹ Pet'rs' Prehr'g Br. at 3-4; Pet'rs' Reply Br. at 3.

¹⁰⁰ *FACT v. City of Bellevue*, CPSGMHB No. 02-3-0014, Final Decision and Order (Mar. 17, 2003) at 6.

¹⁰¹ *Riparian Owners, et al v. Ferry Cnty.*, GMHB No. 09-1-0012, FDO (Apr. 15, 2010) at 8-9, (citing *Larson Beach Neighbors II* at 37).

1 oral pleadings that lack these attributes are insufficient to overcome the presumption of
2 validity.

3
4 Here, Petitioners have not provided the requisite analysis to meet their burden of
5 proof. Petitioners' brief first argues that the new PUD regulations fail to protect rural
6 character because the subsection of the code requiring buffering and clustering for
7 residential PUDs is "ineffective."¹⁰² The challenged provision reads, in relevant part:
8

9
10 **xx.64.100 Planned Unit Development (PUD)**

11 This chapter includes provisions that allow flexibility in how development and
12 uses can be configured and phased on a site, provided that the following
13 conditions are met to the satisfaction of the County:***

14 H. Buffering, Clustering: Residential PUDs shall provide for the clustering of
15 dwelling units. Clustered lots shall be accessed by interior road systems. *To the*
16 *maximum extent possible, cluster lots shall* be located so that common open
17 space provides a buffer between the cluster lots and adjacent properties and/or
18 right of way. When this is not possible, the development shall be designed to
19 provide at a minimum one of the following:

20 1. Cluster lots that abut surrounding properties or right of way shall be at least
21 seventy five percent (75%) of the minimum lot size standard for the subject
22 parcel.

23 2. Cluster lots that abut surrounding properties or rights of way shall be
24 separated from adjacent properties or rights of way by a minimum buffer strip of
25 one hundred feet (100'). At a minimum, proposed or existing landscaping and
26 vegetation within the buffer strip shall be of sufficient size and type to provide a
27 buffer of vegetation six feet (6') in height and fifty percent (50%) opaque year-
28 round within three (3) years of planting. New landscaping materials shall consist
29 of a combination of native trees and shrubs. Variations to these standards may
30 be permitted where the applicant can demonstrate that unique topographic
31 conditions provide sufficient buffering, such as intervening waterways, ridges or
32 ravines, or other land features.¹⁰³

¹⁰² Pet'rs' Prehr'g Br. At 3, (citing RIN 001, POC000248).

¹⁰³ Index 001, POC000248 (emphasis added).

1
2 Petitioners argue that because the phrase “to the maximum extent possible” modifies
3 the word “shall,” it “turns what should be a rule to provide a buffer between the clustered
4 PUD lots and adjacent properties into a suggestion.”¹⁰⁴ The Petitioners do not cite a
5 provision of the GMA that would be violated by the above regulatory approach to buffering
6 cluster lots.¹⁰⁵
7

8 Petitioners also argue that the “new PUD regulations require (without a maximum
9 size limit) clustering and allow one-acre lots and multi-family units” and that “the visual
10 buffering requirements for “these urban-style developments are subject to visual buffering
11 requirements” that are “too threadbare to be effective.”¹⁰⁶ They assert that “[p]assing
12 motorists and pedestrians would be all too aware of the urban-style development thinly
13 veiled behind” the fifty percent opacity screen required by the PUD regulations, and thus
14 “[v]isually [*sic*] compatibility is not assured.”¹⁰⁷ Finally, the Petitioners contend that new PUD
15 regulations “fail to protect rural character because they allow multi-family housing in rural
16 residential areas,” and the “greater number of units equates to higher traffic volumes”
17 inconsistent with rural character.”¹⁰⁸ These arguments fail for the same reason as the
18 Petitioners’ assertion under Legal Issue 10: they fail to identify a provision of the GMA or
19 any other authority that serves as a basis for their allegation of non-compliance. The Board
20 **finds and concludes** that Petitioners have failed to carry their burden of proof on issues
21 10-14.
22
23
24

25 **5. Rural Character – Table of Permitted Uses (Issues 19, 20)**

26 **Issue 19.** Does the amended Table of Permitted Uses fail to protect rural character as
27 required by RCW 36.70A.070(5) by allowing commercial and light industrial uses in rural
28

29
30 ¹⁰⁴ Pet’rs’ Prehr’g Br. At 3, (citing RIN 001, POC000248).

¹⁰⁵ The Board also notes that as defined in the Comprehensive Plan, the term “shall” means “mean that it is mandatory for the County to carry out the policy, even if a time frame is not included.” Index 1, POC000120.

¹⁰⁶ Pet’rs’ Prehr’g Br. At 4, (citing POC000242–POC000248).

¹⁰⁷ *Id.* (citing RIN 001, POC000248).

¹⁰⁸ *Id.*

1 and rural residential areas as conditional uses without requirements assuring that conditions
2 will be imposed to protect rural character as required by RCW 36.70A.070(5)?¹⁰⁹

3 **Issue 20.** Did the county fail to follow proper procedures in adopting the amended Table of
4 Permitted Uses or fail to adopt the newly-amended Table of Permitted Uses, because there
5 is no record of a vote to adopt it and purported amendments to it noted in the county’s
6 response to comments (e.g., Response to Comment No. 69) do not appear in the most
7 recent copy of the Table of Permitted Uses available on the county’s website?¹¹⁰

8 **Applicable Law – Rural Character – Table of Permitted Uses (Issues 19, 20):**

9 **RCW 36.70A.070. Comprehensive plans — Mandatory elements.**

10
11 The comprehensive plan of a county or city that is required or chooses to plan under
12 RCW 36.70A.040 shall consist of a map or maps, and descriptive text covering objectives,
13 principles, and standards used to develop the comprehensive plan. The plan shall be an
14 internally consistent document and all elements shall be consistent with the future land use
15 map. A comprehensive plan shall be adopted and amended with public participation as
16 provided in RCW 36.70A.140. Each comprehensive plan shall include a plan, scheme, or
17 design for each of the following:***

18 **RCW 36.70A.070(5) Rural element.** Counties shall include a rural element including lands
19 that are not designated for urban growth, agriculture, forest, or mineral resources. The
20 following provisions shall apply to the rural element:***¹¹¹

21 **Board Analysis – Issue 20 (as to the Table of Permitted Uses):**

22 Petitioners first argue that the County had either failed to adopt or failed to follow the
23 proper procedures to adopted an amended Table of Permitted Uses (“TOPU”) in conjunction
24 with Resolution 2023-08.¹¹² They also note that Resolution 2023-08 “nowhere even
25 mentions the terms “table of permitted uses” or “TOPU”—not in its description of the
26 Planning Commission’s recommendations and not in its resolutions.”¹¹³ Petitioners’ do not
27 identify any authority, GMA or otherwise, that prescribes the way a local jurisdiction adopts
28

29
30 ¹⁰⁹ Prehr’g Order at 4-5.

31 ¹¹⁰ *Id.* At 5.

32 ¹¹¹ RCW 36.70A.070(5), (2022);

¹¹² Pet’rs’ Prehr’g Br. At 31.

¹¹³ Pet’rs’ Reply Br. At 10, (citing POC000001–000003).

1 its comprehensive plan or development regulation.¹¹⁴ Specifically, Petitioners do not cite
2 any GMA provision that governs what must be included within the text of an adopting
3 Ordinance or Resolution.

4
5 The County asserts that the TOPU was considered as part of the Planning
6 Commission's January 17, 2023 Recommendation to the BOCC on the Comprehensive
7 Plan Update.¹¹⁵ Specifically, the Record shows that the Planning Commission's January 17,
8 2023 Recommendation to the BOCC explained that the Comprehensive Plan Update
9 "generally performs the following actions:

10
11
12 (i) Updates the Pend Oreille County Comprehensive Plan and Development
13 Regulations to better reflect current conditions and areas for future development.

14 (ii) Amends the Pend Oreille County Table of Permitted Uses to include new zoning
15 designations.

16 (iii) Amends the Pend Oreille County Development Regulations to include new zoning
17 designations and to update subdivisions and other regulations; and

18 (iv) Amend the zoning and Future Land Use Map designations consistent with the
19 criteria found in the Rural Lands Zoning Density Criteria Matrix set forth in Table 2-8
20 of the *Pend Oreille County Comprehensive Plan*;

21 (v) Amend the Natural Resource land designations based upon a County-wide
22 comprehensive review of agricultural, mineral and forest lands in the County,
23 confirming and updating the lands of long-term commercial significance designated in
24 the County."¹¹⁶

25 The County cites Index 120 and Index 125 as the "properly adopted" TOPU and
26 Zoning Map (respectively), and notes that both were identified as part of the action in the
27 2022 SEPA Checklist.¹¹⁷ The Petitioners indicate that the "2020 Proposed TOPU" at Index
28

29
30 _____
31 ¹¹⁴ Pet'rs' Prehr'g Br. At 31.

¹¹⁵ Resp't Prehr'g Br. At 24, (citing Index 8, POC000353).

¹¹⁶ Resp't Prehr'g Br. At 24, (citing Index 0008, POC000353) (emphasis added).

¹¹⁷ Resp't Prehr'g Br. At 24, (citing Index 0120, POC001705; Index 0125 POC001734-1737; Index 0005; POC000295).

1 173 is the “most recent copy of the [TOPU] available on the county’s website.”¹¹⁸ Petitioners
2 appear correct that the adopted documents which follow Resolution 2023-08 do not include
3 the amended TOPU as recommended for adoption by the Planning Commission and
4 ultimately adopted by the BOCC.¹¹⁹ They are also correct that Resolution 2023-08 does not
5 otherwise explain where the adopted TOPU is located.¹²⁰ However, the Petitioners again fail
6 to cite any authority prescribing the fashion in which a TOPU or zoning map must be
7 adopted by a County. Petitioners do not directly discuss or contradict the County’s
8 statement that the TOPU and Zoning Map (set forth at Index 120 and Index 125,
9 respectively) were duly adopted by the BOCC under Resolution 2023-08.¹²¹ The Record
10 shows that the County adopted an amended TOPU as part of Resolution 2023-08.¹²² The
11 Board **finds and concludes** that Petitioners have failed to carry their burden of proof on
12 Issue 20.
13

14 15 **Board Analysis – Issue 19 – TOPU and Rural Character**

16
17 Petitioners then argue that even if the County validly adopted the amended TOPU, “it
18 fails to protect rural character as required by RCW 36.70A.070(5) because it allows
19 commercial and light industrial uses in rural and rural residential areas as conditional uses,
20 without requirements assuring that conditions will be imposed to protect rural character as
21 required by RCW 36.70A.070(5).”¹²³ Petitioners fail to clearly identify the conditional use
22 regulations at issue, explain how RCW 36.70A.070(5) governs commercial and light
23 industrial uses regulations in rural and rural residential areas, and state why these
24 regulations fail to comply with the statute. For Petitioners to state simply the challenged
25 action does not comply with the GMA, without citing to the provision, stating what the
26 provision requires, and setting forth argument comparing the requirement to the challenged
27
28

29
30 ¹¹⁸ *Id.* at 31, (citing Index 173, POC0002854).

¹¹⁹ Pet’rs’ Reply Br. at 10.

¹²⁰ Index 1, POC00001-3.

¹²¹ Pet’rs’ Reply Br. at 2, 9-10.

¹²² Index 120.

¹²³ Pet’rs’ Prehr’g Br. at 31; Pet’rs’ Reply Br. at 10.

1 action is conclusory and does not satisfy the burden of proof the Petitioners must carry in
2 demonstrating the County's actions were clearly erroneous.¹²⁴

3
4 Petitioners are correct that the County's briefing lacks a response to their argument
5 that the County "failed to protect rural character as required by RCW 36.70A.070(5) by
6 allowing commercial and light industrial uses in rural and rural residential areas as
7 conditional uses without requirements assuring that conditions will be imposed to protect
8 rural character as required by RCW 36.70A.070(5)."¹²⁵ However, the County does not bear
9 the burden of showing compliance under the GMA. The burden is on Petitioners to make a
10 prima facie case of noncompliance. The Board **finds and concludes** that Petitioners have
11 failed to carry their burden of proof on issue 19.
12

13
14
15 **C. NATURAL RESOURCE LANDS AND CRITICAL AREAS (Issues 20, 21)**
16

17 **Issue 20.** Did the county fail to follow proper procedures in adopting the amended Table of
18 Permitted Uses or fail to adopt the newly-amended Table of Permitted Uses, because there
19 is no record of a vote to adopt it and purported amendments to it noted in the county's
20 response to comments (e.g., Response to Comment No. 69) do not appear in the most
21 recent copy of the Table of Permitted Uses available on the county's website?¹²⁶

22 **Issue 21.** Do the county's newly-amended Table of Permitted Uses and development
23 regulations' allowance of non-resource land uses on designated natural resource lands fail
24 to conserve natural resource lands in violation of RCW 36.70A.060(1)?¹²⁷

25 **Applicable Law – Issue 21:**

26 **RCW 36.70A.060 Natural resource lands and critical areas — Development**
27 **regulations.**

28 **(1)(a)** Each county that is required or chooses to plan under RCW 36.70A.040, and each
29 city within such county, shall adopt development regulations on or before September 1,
30

31 ¹²⁴ *Larson Beach Neighbors II*, at 37.

¹²⁵ Pet'rs' Reply Br. at 2, 10.

¹²⁶ Prehr'g Order at 5.

¹²⁷ *Id.*

1 1991, to assure the conservation of agricultural, forest, and mineral resource lands
2 designated under RCW 36.70A.170. Regulations adopted under this subsection may not
3 prohibit uses legally existing on any parcel prior to their adoption and shall remain in effect
4 until the county or city adopts development regulations pursuant to RCW 36.70A.040. Such
5 regulations shall assure that the use of lands adjacent to agricultural, forest, or mineral
6 resource lands shall not interfere with the continued use, in the accustomed manner and in
7 accordance with best management practices, of these designated lands for the production
8 of food, agricultural products, or timber, or for the extraction of minerals...***

8 **WAC 365-196-815 Conservation of natural resource lands.**

9 (1) Requirements.

10 (a) Counties and cities planning under RCW 36.70A.040 must adopt development
11 regulations that assure the conservation of designated agricultural, forest, and mineral lands
12 of long-term commercial significance. If counties and cities designate agricultural or forest
13 resource lands within any urban growth area, they must also establish a program for the
14 purchase or transfer of development rights.

15 (b) "Conservation" means measures designed to assure that the natural resource lands will
16 remain available to be used for commercial production of the natural resources designated.
17 Counties and cities should address two components to conservation:

18 (i) Development regulations must prevent conversion to a use that removes land from
19 resource production. Development regulations must not allow a primary use of agricultural
20 resource lands that would convert those lands to nonresource purposes. Accessory uses
21 may be allowed, consistent with subsection (3)(b) of this section.

22 (ii) Development regulations must assure that the use of lands adjacent to designated
23 natural resource lands does not interfere with the continued use, in the accustomed manner
24 and in accordance with the best management practices, of these designated lands for the
25 production of food, agricultural products, or timber, or for the extraction of minerals.¹²⁸

26 **Board Analysis – Issue 20 – TOPU and Natural Resource Lands**

27 Petitioners' argument that the County's amended TOPU's and the Development
28 Regulations' "allowance of non-resource land uses on designated natural resource lands
29 [fails] to conserve natural resource lands in violation of RCW 36.70A.060(1)" is unavailing
30 for the same reasons as discussed above regarding Petitioners' arguments under Legal
31 Issues 19 and 20.¹²⁹ Petitioners assert that the TOPU allows non-resource land uses on

32 ¹²⁸ 2010.

¹²⁹ Pet'rs' Prehr'g Br. at 31-32; Pet'rs' Reply Br. at 10.

1 designated natural resource lands,¹³⁰ but Petitioners' briefing fails to cite which specific
2 provisions of the TOPU are inconsistent with RCW 36.70A.060(1).¹³¹

3
4 **Board Analysis – Issue 21:**

5 Petitioners argue that the County's "newly-amended Development Regulations and
6 purportedly amended [TOPU] allow non-resource land uses on designated natural resource
7 lands, thereby failing to conserve natural resource lands in violation of
8 RCW 36.70A.060(1)."¹³² In support of this argument, Petitioners direct the Board to two
9 versions of the same USFS April 2021 Map of the proposed Stimson Land Exchange to
10 demonstrate that "[a]pproximately 30,000 acres of federal land are to be privatized in the
11 proposed Stimson/USFS proposed land swap."¹³³ Petitioners assert that "Resolution R-
12 2023-08 redesignates these lands from Public Lands (where residential development is
13 prohibited) to Natural Resource lands,"¹³⁴ a point that the County does not contest.¹³⁵
14 Petitioners' Reply further explains that "[r]esidential development was prohibited on those
15 30,000 acres, because they were designated Public Lands."¹³⁶
16
17
18

19 Petitioners' clearest allegation of non-compliance is that Resolution 2023-08's
20 re-designation of the 30,000 acres of lands conveyed by the U.S. Forest Service to the
21 County fails to conserve natural resource lands in violation of the requirements of RCW
22
23

24
25 ¹³⁰ Pet'rs' Prehr'g Br. at 31; Pet'rs' Reply Br. at 10.

26 ¹³¹ Pet'rs' Prehr'g Br. at 31-32; Pet'rs' Reply Br. at 10. *See also* Pet'rs' Prehr'g Br. at 4-5; Pet'rs' Reply Br. at 2
27 (Petitioners' briefing on Issue 21 regarding conservation of natural resources lands consistent with RCW
28 36.70A.060(1) similarly fails to identify the specific provisions of R-2023-08 that are the focus of the allegation
29 of noncompliance.)

30 ¹³² Pet'rs' Prehr'g Br. At 4.

31 ¹³³ *Id.* (citing Index 188, POC00364; Index 261).

32 ¹³⁴ Pet'rs' Prehr'g Br. At 4; *See also* Pet'rs' Prehr'g Br. At 33, (citing Index 038, POC001256 to establish that
"Resolution R-2023-08...eliminates the former Public Lands designation on more than 200,000 acres where
single family residential development was prohibited").

¹³⁵ Pet'rs' Prehr'g Br. At 4; Resp't Br. At 12-13. *See also* Pet'rs' Prehr'g Br. At 33, (citing Index 038,
POC001256 to establish that "Resolution R-2023-08...eliminates the former Public Lands designation on more
than 200,000 acres where single family residential development was prohibited").

¹³⁶ Pet'rs' Reply Br. At 2.

1 36.70A.060(1). Petitioners identifies facts within the Record showing that the lands
2 proposed by the U.S. Forest Service for exchange were portions of the Colville National
3 Forest.¹³⁷ The proposed “Draft Natural Resource Future Land Use Designation Map” and
4 Zoning Map as adopted both show that at least some of the parcels conveyed, if not all,
5 were redesignated from Public Lands to Natural Resource Lands.¹³⁸ The TOPU and the
6 Zoning Map as adopted show that single family residences are a use permitted outright
7 under the natural resource designation.¹³⁹
8

9
10 However, Petitioners’ bare contention that because the “Natural Resource”
11 designation “allows residential development,” it “does not assure conservation of these
12 forested lands” fails to link the statute to the facts and circumstances of this case.¹⁴⁰
13 Petitioners’ assert that “[a]s Forest Lands of Long-Term Commercial Significance, they
14 should be conserved for long-term commercial forestry use, not chopped up into residential
15 lots.”¹⁴¹ This is unavailing because Petitioners fail to explain the basis in statute or
16 regulation for the contention that the conveyed parcels constitute “forest lands of long-term
17 commercial significance,” and do not explain what legal obligations the GMA imposes on the
18 same.
19

20 Petitioners fail to explain what RCW 36.70A.060(1) requires and or provide analysis
21 comparing the statutory requirement to the challenged action—in this case, the County’s re-
22 designation of the lands conveyed in the land swap.
23
24

25 The County’s Response on Issue 21 states that the “plain text of the GMA...explicitly
26 permits accessory uses in natural resource lands.”¹⁴² This language is in fact found in the
27

28
29 ¹³⁷ *Id.* At 4-5; Pet’rs’ Reply Br. At 2 (each citing Index 188, POC00364; Index 261).

30 ¹³⁸ *Compare* Index 38, POC0001256 *with* Index 125, POC POC001734-1737; Index 120

31 ¹³⁹ Index 0120, POC001705; Index 0125 POC001734-1737

32 ¹⁴⁰ Pet’rs’ Prehr’g Br. At 4.

¹⁴¹ *Id.* At 4-5, (citing Index 040, POC001271, “A primary consideration for all resource lands is that the designated land must have long-term commercial significance.”).

¹⁴² Resp’t Prehr’g Br. At 12.

1 plain text of the GMA’s procedural criteria for adopting development regulations governing
2 the conservation of natural resource lands. It states, in relevant part:

3
4 Development regulations must prevent conversion to a use that removes land
5 from resource production. Development regulations must not allow a primary
6 use of agricultural resource lands that would convert those lands to nonresource
7 purposes. Accessory uses may be allowed, consistent with [WAC 365-196-
8 815(3)(b), setting forth examples of lawful innovative zoning techniques].¹⁴³

9 Petitioners cite the first sentences of this provision (i.e., “Development regulations
10 must prevent...resource production”) and reply that although accessory uses may be
11 permitted on natural resource lands, “Resolution R-2023-08 would permit single family
12 residential development outright on these lands as a primary permitted use.”¹⁴⁴ Petitioners’
13 briefing does not provide any further analysis sufficient to demonstrate how this rises to a
14 violation of RCW 36.70A.060(1).
15

16
17 The Petitioners appear correct that the County’s response “ignores 30,000 acres of
18 federal land are to be privatized in the proposed Stimson/USFS proposed land swap.”¹⁴⁵ But
19 various facts and cursory references to the challenged provision, statute, and regulation are
20 insufficient to make a *prima facie* case that re-designation of these lands from Public to
21 Natural Resources violates RCW 36.70A.060(1).
22

23
24 The Board **finds and concludes** that Petitioners have failed to carry their burden of
25 proof on issues 20 and 21.
26

27 **D. INTERNAL CONSISTENCY OF COMPREHENSIVE PLAN (Issues 16, 17, 23-25)**
28

29 **Issue 16.** The amendments to the Comprehensive Plan, Table of Permitted Uses, and
30 development regulations allow increased residential development and increased residential
31

32 ¹⁴³ WAC 365-196-815(1)(b)(i).

¹⁴⁴ Pet’rs’ Reply Br. At 2.

¹⁴⁵ *Id.* (Index 188, POC00364; RIN 261).

1 density in rural areas and on natural resource lands through various means, including but
2 not limited to (1) Rural Land Use Policy #3, (2) the text and map amendments changing
3 Public Lands to Natural Resource lands, (3) the new Commercial and Industrial land use
4 designations, and (4) the development regulations at xx.64.100 Planned Unit Development
5 (PUD). Do the amendments create an internal inconsistency with the Plan’s Rural goals and
6 policies (which seek to protect “rural character” which, in turn, is defined to limit land uses to
7 those which are “compatible with the use of the land by wildlife and for fish and wildlife
8 habitat”). [sic]¹⁴⁶

8 **Issue 17.** Do the amendments referenced in Issue 16 create an internal inconsistency with
9 the Plan’s capital facility element (which was not updated to address the increased need for
10 fire protection capital facilities to serve the increased residential development) and,
11 therefore, violate the internal consistency requirement in RCW 36.70A.070 (preamble)?¹⁴⁷

12 **Issue 23.** Does the county’s redesignation and rezoning of the area around the former
13 Ponderay Newsprint Company papermill (which includes an archeological district
14 recognized by the federal government, the state, and the Tribe) from R5 and NR20 to the
15 new Industrial zone fail to protect important cultural resources, in violation of
16 RCW 36.70A.020(13) and create an internally inconsistent plan in violation of
17 RCW 36.70A.070 (preamble)?¹⁴⁸

18 **Issue 24.** Did the county’s redesignation and rezoning of the area around the former
19 Ponderay Newsprint Company papermill from R5 and NR20 to the new Industrial zone
20 violate the Act’s internal consistency requirement, RCW 36.70A.070 (preamble) because
21 the county failed to simultaneously evaluate the need and amend its capital facilities
22 element to provide for public facilities and services to accommodate industrial development
23 of that land?¹⁴⁹

24 **Issue 25.** Did the county’s redesignation and rezoning of the area surround the former
25 Ponderay Newsprint Company papermill from R5 and NR20 to the new Industrial zone fail
26 to protect floodplains and wetlands in violation of RCW 36.70A.020(5), (9) and (10) and
27 create an internally inconsistent plan in violation of RCW 36.70A.070 (preamble), because
28 the county ignored and abandoned the conservation overlay and open space designations
29 provided under the draft sub-area plan, which it also abandoned?¹⁵⁰

30 ¹⁴⁶ Prehr’g Order at 4.

31 ¹⁴⁷ *Id.*

¹⁴⁸ *Id.* at 5.

32 ¹⁴⁹ *Id.*

¹⁵⁰ *Id.* at 5-6.

1 **Applicable Law – Issues 16, 17, 23-25 –Consistency**

2 **RCW 36.70A.070. Comprehensive plans — Mandatory elements.**

3
4 The comprehensive plan of a county or city that is required or chooses to plan under
5 RCW 36.70A.040 shall consist of a map or maps, and descriptive text covering objectives,
6 principles, and standards used to develop the comprehensive plan. The plan shall be an
7 internally consistent document and all elements shall be consistent with the future land use
8 map. A comprehensive plan shall be adopted and amended with public participation as
9 provided in RCW 36.70A.140:***

9 **RCW 36.70A.130 Comprehensive Plans — Review procedures and schedules***¹⁵¹**

10
11 ***^{(1)(d)} Any amendment of or revision to a comprehensive land use plan shall conform to
12 this chapter. Any amendment of or revision to development regulations shall be consistent
13 with and implement the comprehensive plan.***

14 **WAC 365-196-500. Internal consistency.**

15
16 **(1)** Comprehensive plans must be internally consistent. This requirement means that
17 differing parts of the comprehensive plan must fit together so that no one feature precludes
18 the achievement of any other.

19 **(2)** Use of compatible assumptions. A county or city must use compatible assumptions in
20 different aspects of the plan.

21 (a) A county or city should use common numeric assumptions to the fullest extent possible,
22 particularly in the long-term growth assumptions used in developing the land use, capital
23 facilities and other elements of the comprehensive plan.

24 (b) If a county or city relies on forecasts, inventories, or functional plans developed by other
25 entities, these plans might have been developed using different time horizons or different
26 boundaries. If these differences create inconsistent assumptions, a county or city should
27 include an analysis in its comprehensive plan of the differences and reconcile them to
28 create a plan that uses compatible assumptions.

29 **(3)** The development regulations must be internally consistent and be consistent with and
30 implement the comprehensive plan.***

31
32

¹⁵¹ Former RCW 36.70A.130 (2022)

1 **Board Analysis – Legal Issues 16-17:**

2 The Petitioners allege that Resolution 2023-08 violates the GMA’s requirement that
3 comprehensive plans must be internally consistent.¹⁵² The Board has long held “that a
4 finding of inconsistency requires a showing of actual conflict between competing provisions,
5 where the policies cannot be reconciled.”¹⁵³ The GMA’s consistency requirement “means
6 that differing parts of the comprehensive plan ‘must fit together so that no one feature
7 precludes the achievement of any other.’”¹⁵⁴ The Board has identified three questions to
8 guide analysis of consistency in any case:
9

- 10
- 11 • Do the development regulations implement the comprehensive plan goals and
12 policies?
 - 13 • Do any of the development regulation’s features preclude achievement of any of the
14 Comprehensive Plan policies?
 - 15 • Have the Petitioners shown actual conflict between Comprehensive Plan policies and
16 the new developments regulations?¹⁵⁵

17 In answering these questions, the Board looks to the Petitioners’ briefs for
18 identification of the language of the Resolution alleged to be inconsistent with specific
19 language in the Comprehensive Plan (existing or newly adopted), an explanation of how
20 implementation of the Resolution precludes achievement of or is in direct conflict with a
21 Comprehensive Plan policy, or the failure of development regulations (existing or newly
22 adopted) to implement the Comprehensive Plan.¹⁵⁶ “Generally speaking, adequate briefing
23 requires not only identification of the inconsistency, but also legal analysis and an
24

25 _____
26 ¹⁵² Pet’rs’ Prehr’g Br. At 5-7; Pet’rs’Reply Br. at 3.

27 ¹⁵³ *Sterling v. King Cnty, et al*, GMHB 22-3-0005, Order on Dispositive Motions and Order of Dismissal (Oct. 5,
28 2022); *See also Seattle Coaln. for Affordability, Livability, & Equity, et al. v. City of Seattle*, GMHB No. 19-3-
29 0011c, Final Decision & Order (Dec. 30, 2019) at 50-53 (providing overview of GMA consistency
30 requirements) [hereinafter *SCALE*]; *Ray, et al. v. City of Olympia, WWGMHB No. 02-2-0013*, FDO (June 11,
31 2003) at 1 (“A finding of inconsistency requires a showing of actual conflict between competing provisions of a
32 city’s planning policies and development regulations.”).

¹⁵⁴ *Brinnon Grp. v. Jefferson Cnty*, 159 Wn. App. 446, 476-77, 245 P.3rd 789 (2011) (quoting WAC 365-196-
500(1)).

¹⁵⁵ *SCALE*, GMHB No. 19-3-0011c at 52, (citing *Cook v. City of Winlock*, GMHB No. 09-2-0013c, Final
Decision and Order (October 8, 2009) at 34-35).

¹⁵⁶ *SCALE* at 52-53; *Cook*, GMHB No. 09-2-0013c at 35.

1 application of the law to the facts.”¹⁵⁷ In other words, in order to satisfy their burden of proof
2 to show an inconsistency with the Comprehensive Plan, Petitioners must point to specific
3 language in the challenged provisions of Resolution 2023-08 “that are incompatible with or
4 thwart specific language in the existing Comprehensive Plan.”¹⁵⁸ Petitioners’ briefing falls
5 short on the identification of inconsistency, legal analysis, and application of the law to the
6 facts required in this case.
7

8 Under Issues 16 and 17, Petitioners have not identified specific language in the (1)
9 newly adopted Rural Land Use Policy #3,¹⁵⁹ (2) text and map amendments changing Public
10 Lands to Natural Resource lands (where residential development is allowed),¹⁶⁰ (3) new
11 Commercial and Industrial land use designations,¹⁶¹ and (4) PUD regulations (xx.64.100)¹⁶²
12 that is incompatible with or thwarts specific language in the Comprehensive Plan as
13 adopted under Resolution 2023-08. That each of these amendments allegedly allow
14 “increased residential development and density in rural areas and on natural resource lands
15 through various means” does not by itself establish those amendments “create an internal
16 inconsistency with the Comprehensive Plan’s Land Use and Rural Land Use goals and
17 policies, which seek to maintain the ‘the rural character of Pend Oreille County.’”¹⁶³ As the
18 Board discussed under Legal Issues 1 through 3 above, Petitioners have not demonstrated
19 that the County failed to establish rural character, “failed to adopt a [Comprehensive Plan]
20 with rural policies” that protect the rural character of the area, or otherwise failed to comply
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26 ¹⁵⁷ SCALE at 53, (citing *Tulalip Tribes of Wash. v. Snohomish Cnty.*, CPSGMHB No. 96-3-0029 (Final
27 Decision and Order, January 8, 1997) at 7; *Samson v. City of Bainbridge Island*, CPSGMHB No. 04-3-0013,
28 Final Decision and Order (January 19, 2005) at 6).

29 ¹⁵⁸ *Coyne, et al. v. City of W. Richland*, GMHB No. 13-1-0005, Final Decision & Order (Mar. 5, 2014) at 14.

30 ¹⁵⁹ Petitioners later discuss Rural Land Use Policy #3 under Legal Issue 26.

31 ¹⁶⁰ Petitioners reference the re-designation of Public Land as Natural Resource Lands, but do not expressly
32 cite the regulation at issue. See, *supra*, Board’s analysis of Legal Issue 21.

¹⁶¹ The Board understands the “new Commercial and Industrial land use designations” to be those set forth at
POCC xx.26.030, which is discussed by Petitioners under Legal Issue 22. Pet’rs’ Prehr’g Br. at 7-8; Pet’rs’
Reply Br. at 3-4.

¹⁶² Legal Issues 10 through 15.

¹⁶³ Pet’rs’ Prehr’g Br. at 5, (citing RIN 001, POC000021.).

1 with RCW 36.70A.070(5)(c).¹⁶⁴ Petitioners do not otherwise present persuasive evidence to
2 suggest that the County has failed to adopt policies or development regulations to
3 implement the Rural Element of the Comprehensive Plan sufficient to assure protection of
4 rural character.¹⁶⁵ In this case, Petitioners neither identify specific language within Rural
5 Land Use Policy #1 through 14 that is incompatible with the Comprehensive Plans definition
6 of Rural Character (which adopts the GMA's definition of the term), nor explain of how
7 implementation of these policies precludes achievement of or is in direct conflict with the
8 Comprehensive Plan's definition of rural character.¹⁶⁶

10
11 As Petitioners note, the Rural Element of the Comprehensive Plan provides the
12 GMA's definition of Rural Character.¹⁶⁷ Per RCW 36.70A.030(23), "[r]ural character' refers
13 to the patterns of land use and development established by a county in the rural element of
14 its comprehensive plan:

- 15
16 (a) In which open space, the natural landscape, and vegetation predominate
17 over the built environment;
18 (b) That foster traditional rural lifestyles, rural-based economies, and
19 opportunities to both live and work in rural areas;
20 (c) That provide visual landscapes that are traditionally found in rural areas and
21 communities;
22 (d) That are compatible with the use of the land by wildlife and for fish and
23 wildlife habitat;
24 (e) That reduce the inappropriate conversion of undeveloped land into
25 sprawling, low-density development;
26 (f) That generally do not require the extension of urban governmental services;
27 and

28
29 ¹⁶⁴ *Id.* at 6.

¹⁶⁵ *Id.* at 1-4, 5-7, 11-14, 31-35; Reply at 1-3, 5, 9-10.

¹⁶⁶ Pet'rs' Prehr'g Br. at 1-4, 5-7. See also Index 1, POC000020 (Comprehensive Plan, Definition of Rural Character); *Id.* at POC000023-25 (Rural Land Use Policies).

¹⁶⁷ Pet'rs' Prehr'g Br. at 5-6, (citing Index 1, POC000020). Petitioners refer to a more recent statutory definition of "rural character." Pet'rs' Prehr'g Br. at 6, (citing RCW 36.70A.030(35), (2023)). The Board applies the provisions of the GMA that were in effect at the time the County took the challenged action.

1 (g) That are consistent with the protection of natural surface water flows and
2 groundwater and surface water recharge and discharge areas.¹⁶⁸

3 Petitioners' briefing on these issue appears to restate its argument set forth in Legal
4 Issue 21, asserting that Resolution R-2023-08 "fosters the predominance of the built
5 environment over the natural landscape by opening up thousands of acres (in addition to
6 the Stimson swap lands) to residential development where none was allowed before."¹⁶⁹
7 However, as with Legal Issue 21, Petitioners do not identify what specific language in R-
8 2023-08 conflicts with or would preclude achievement of the Comprehensive Plan's stated
9 goal to maintain "patterns of land use and development...[i]n which open space, the natural
10 landscape, and vegetation predominate over the built environment." Petitioners argue that
11 Resolution R-2023-08 "harms fish and wildlife habitat by reducing the minimum buffers for
12 wetlands and riparian habitat areas without any evidence that the county considered best
13 available science regarding these critical area buffers."¹⁷⁰ This is a restatement of
14 Petitioners' arguments under Legal Issues 5 through 9 and Legal Issue 18, and is unavailing
15 for similar reasons. Petitioners identify no specific language in POC xx.36, POC xx.36.040,
16 or POC xx.36.060 nor any argument as to precisely how these development regulations
17 conflict with or would preclude achievement of the Comprehensive Plan's stated goal to
18 maintain "patterns of land use and development...[t]hat are compatible with the use of the
19 land by wildlife and for fish and wildlife habitat."
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24 Petitioners argument with regard to Issues 16 and 17 that Resolution R-2023-08 "is
25 not consistent with the protection of natural surface water flows and groundwater and
26 surface water recharge and discharge areas, because surface waters in the county like the
27 Little Spokane River depend on scarce groundwater inflow to maintain minimum instream
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¹⁶⁸ Former RCW 36.70A.030(23)(a)-(g) (2021). See also Index 1, POC000020, (same text, absent statutory
31 citation).

¹⁶⁹ Pet'rs' Prehr'g Br. at 6.

32 ¹⁷⁰ *Id.* at 6, (citing RIN 176, POC002896–2898; xx.36.040.G.3-Table 1 and following struck-through text;
RIN 178, POC002957–959; see also RIN 001, POC000173–175).

1 flow.”¹⁷¹ They further assert that “[t]he county’s action would result in an increase in permit-
2 exempt residential wells that would draw from scarce groundwater and likely reduce the
3 already inadequate level of groundwater inflow that feeds surface water flows.”¹⁷² As the
4 Board has previously observed, the alleged impacts of a Comprehensive Plan Amendment
5 do not demonstrate an inconsistency within the Comprehensive Plan.¹⁷³
6
7

8 In response to Petitioners’ argument regarding the Resolution R-2023-08’s
9 inconsistency with “the protection of natural surface water flows and groundwater and
10 surface water recharge and discharge areas,” the County lists Rural Land Use Policies #2
11 and #7 as well as Environmentally Sensitive Area Policies #5 and 7 as establishing
12 standards for “patterns of land use and development...[t]hat are consistent with the
13 protection of natural surface water flows and groundwater and surface water recharge and
14 discharge areas.”¹⁷⁴ Environmental Sensitive Area Policy #5 states that:
15

16 The Pend Oreille County Development Code will include provisions to require
17 Project Sponsors documentation that water is physically and legally available,
18 and meets drinking water standards, and to insure that the proposed method
19 of sewage disposal will not pollute ground or surface water.¹⁷⁵
20

21 Petitioners’ Reply acknowledges that Environmentally Sensitive Area Policy #5 calls
22 for “developers to document water availability and attention to sewage disposal,” and
23 reiterate the argument that “the development regulations do not require that documentation
24 for permit-exempt domestic wells.”¹⁷⁶ The Board understands the Petitioners to assert that
25 this “gap” in the development regulations (i.e., the lack of a requirement for developers to
26 document permit-exempt domestic wells) coupled with “opening up thousands of acres to
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28 ¹⁷¹ Pet’rs’ Prehr’g Br. at 6, (citing RIN 200; RIN 202; RIN 222; RIN 291). See also Pet’rs’ Reply Br. at 3,
29 (“Resolution R-2023-08 is not consistent with the protection of natural surface water flows and groundwater
30 and surface water recharge and discharge areas”).

30 ¹⁷² Pet’rs’ Prehr’g Br. at 6-7, (RIN 222, POC005481–5485; RIN 291, POC007051–7059).

31 ¹⁷³ Coyne, GMHB No. 13-1-0005 at 14.

32 ¹⁷⁴ Resp’t Br. at 15, (citing Index 0001; POC00026); Index 0001, POC000020.

¹⁷⁵ Index 0001; POC00026.

¹⁷⁶ Pet’rs’ Reply Br. at 3, (citing Index 0001; POC00026).

1 residential development where none was allowed before” constitutes an inconsistency with
2 the provision of the Rural Element requiring that the County establish “patterns of land use
3 and development...[t]hat are consistent with the protection of natural surface water flows
4 and groundwater and surface water recharge and discharge areas.”¹⁷⁷ However, adequate
5 briefing requires more than an identification of the inconsistency: it requires comparative
6 legal analysis and an application of the law to the facts. Petitioners fail to do so here.
7

8
9 Petitioners conclude their argument under I Issues 16 and 17 by stating that “[t]he
10 new Development Regulations that authorize the new uses are inconsistent with the
11 aforementioned Comprehensive Plan goals and policies, too, in violation of
12 RCW 36.70A.130(1)(d).”¹⁷⁸ Even assuming that “new development regulations” refer to the
13 newly adopted development regulations at POC xx.65.100 and xx.26.030 (“establishment of
14 zoning districts”), this briefing fails to provide any specific evidence of an inconsistency with
15 the Rural Element of the Comprehensive Plan. Petitioners’ briefing under Legal Issue 17 is
16 limited to the following restatement of the issue itself: “Resolution R-2023-08 creates an
17 internal inconsistency with the Plan’s capital facilities element (which was not updated to
18 address the increased need for fire protection capital facilities to serve the increased
19 residential development) and, therefore, violates the internal consistency requirement in
20 RCW 36.70A.070 (preamble) and GMA Goal 12.”¹⁷⁹ Petitioners’ Reply simply reiterates this
21 argument, and notes that the “County did not respond to this issue at all.”¹⁸⁰ This shifts the
22 burden of proof. “The burden is not on the County to show consistency; the burden is on the
23 challenger to show inconsistency.”¹⁸¹ Here, the Petitioners fail to show where the alleged
24 inconsistency lies. The Board **finds and concludes** that Petitioners have failed to carry
25 their burden of proof on issues 16 and 17.
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30 ¹⁷⁷ Pet’rs’ Reply Br. at 3, (citing Pet’rs’ Prehr’g Br. at 25); Index 1, POC000020

31 ¹⁷⁸ Pet’rs’ Prehr’g Br. at 7.

32 ¹⁷⁹ *Id.*

¹⁸⁰ Pet’rs’Reply Br. at 3.

¹⁸¹ *Leenstra v. Whatcom Cnty.*, WWGMHB No. 03-2-0011, Final Decision & Order (Sept. 26, 2003) at 15.

1 **Board Analysis – Issues 23-25 – Internal Inconsistency:**¹⁸²

2 Petitioners’ Issues 23, 24, and 25 each involve the County’s action with respect to the
3 former Ponderay Newsprint Company Papermill site located within the City of Cusick’s
4 UGA.¹⁸³

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- Per Petitioners’ Prehearing Briefing under Issue 25, the County’s “[r]edesignation and rezoning of the area surrounding the former Ponderay Newsprint Company papermill in Cusick from R5 and NR20 to the new Industrial zone” allows “heavy industrial uses on lands with floodplains and wetlands that should be conserved.”¹⁸⁴ Petitioners assert that this “creates an internally inconsistent plan in violation of RCW 36.70A.070 (preamble), because the county “ignored and abandoned the conservation overlay and open space designations” developed under a site specific draft sub-area plan.”¹⁸⁵
 - Per Petitioners’ Prehearing Briefing under Issue 24, “[t]he draft subarea plan had evaluated the need to amend the Comprehensive Plan’s capital facilities element and identified capital improvement that would need to be made ‘to achieve the Goals of the Cusick/Usk Urban Growth Area Plan.’”¹⁸⁶ In abandoning the subarea plan and simply designating the area surrounding the former Ponderay Newsprint Company papermill as “industrial,” the Petitioners contend that the County “violated the [GMA’s] internal consistency requirement, RCW 36.70A.070 (preamble)...because the county failed to simultaneously evaluate the need for, and amend its capital facilities element to, provide for public facilities and services to accommodate industrial development of that land.”¹⁸⁷
 - Per Petitioners’ Prehearing Briefing under Issue 23, the “draft subarea plan would have protected cultural resources in the area around the former Ponderay Newsprint Company papermill (which includes an archeological district recognized by the federal government, the state, and the Tribe).”¹⁸⁸ The Petitioners assert that “in abandoning the subarea plan and simply designating the area surrounding the former Ponderay Newsprint Company papermill ‘industrial,’” the County “failed to protect

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28 ¹⁸² Petitioners’ allegations of non-compliance with the goals and requirements of the GMA made under Legal
29 Issues 23 through 25 are addressed below in Section H.

30 ¹⁸³ Pet’rs’ Prehr’g Br. at 12, (citing Index 1, 000036).

31 ¹⁸⁴ *Id.* at 11, 12.

32 ¹⁸⁵ *Id.* at 12-13.

¹⁸⁶ *Id.* at 13, (citing RIN 225, POC006005).

¹⁸⁷ Pet’rs’ Prehr’g Br. at 13-14.

¹⁸⁸ *Id.* at 14.

1 important cultural resources...and created an internally inconsistent plan in violation
2 of RCW 36.70A.070 (preamble).”¹⁸⁹

3 Regarding Ponderay Newsprint Company Papermill site, the Comprehensive Plan as
4 adopted by Resolution R-2023-08 states, in relevant part:

5
6 “Cusick’s Urban Growth Area includes the existing city limits, an area southwest
7 of city limits, Osprey Landing and the community of Usk...A Cusick/Usk UGA
8 subarea planning effort is underway that will further refine future development
9 plans for this area. Development of the subarea planning effort is coordinated
10 by a steering and executive committee and guided by several planning
11 principles. The draft subarea plan includes draft goals and policies,
12 recommended zoning and development regulations, capital improvements and
13 other information. The subarea plan is expected to be adopted by the County,
14 Cusick and the Kalispel tribe in 2020 or 2021.”¹⁹⁰

15 Petitioners indicate that both the “old and newly-adopted” Comprehensive Plans
16 reference the aforementioned “Cusick/Usk UGA subarea planning effort,” and the County’s
17 response does not contest this point.¹⁹¹ An August 2022 comment by the Kalispel Tribe of
18 Indians within the Record indicates that the Cusick/Usk UGA and the old Ponderay
19 Newsprint property were “identified in the 2005 Comprehensive Plan as an area that
20 needed a more micro-level planning effort.”¹⁹² Development of a subarea plan began in
21 2016, when County received a grant from the Washington State Department of Commerce
22 in the amount of \$250,000 for the effort.¹⁹³ As cited by Petitioners, the Record shows Draft
23 Cusick/Usk Subarea Plan was guided by “[several] planning principles[,]” including:

- 24
25 ***3. Utilize the principles of consensus-based decision making to promote the
26 highest levels of cooperation and collaboration.
27 4. Respect the sovereignty of the Kalispel Tribe and seek outcomes that are
28 consistent with the sovereign interests of the Tribe.

29
30 ¹⁸⁹ *Id.*

¹⁹⁰ Index 1, 000036.

¹⁹¹ Pet’rs’ Prehr’g Br. at 12, (citing Index 1, 000036); Resp’t Br. at 20-21. See, e.g., Index 191, POC003416 (Feb. 2021 Draft of Comprehensive Plan, setting forth same text).

¹⁹² Index 242, POC005961; Pet’rs Prehr’g Br. at 13, (citing POC000926). See also Index 255, POC005993.

¹⁹³ *Id.*

- 1 5. Identify and preserve sites that have historical or archaeological significance.
- 2 6. Protect the environment including air and water quality, and the availability of
- 3 water.
- 4 7. Avoid and minimize to the greatest extent possible through planning,
- 5 engineering, and design, potential adverse impacts on the environment and
- 6 cultural resources.
- 7 8. Review and revise the UGA boundaries to include areas characterized by the
- 8 urban levels of development, or that are reasonably served by urban services.
- 9 9. Identify and protect natural resource lands not suitable for development.
- 10 10. Identify and appropriately zone land most suitable for commercial and
- 11 industrial uses.***¹⁹⁴

12 Per the Petitioners, through “[I]mplementing [these] guiding principles,” the Draft
13 Subarea Plan “analyzed the area surrounding the former Ponderay Newsprint Company
14 papermill and carefully set aside and protected significant amounts of land in an “Open
15 Space/Conservation” future land use designation.”¹⁹⁵ Petitioners cites June 30, 2017 Draft
16 Cusick/Usk UGA Future Land Use Map that illustrates the draft Usk-Open
17 Space/Conservation Designation, and notes that the “County and interested parties
18 (including the Kalispel Tribe) expended considerable effort and money on creating the draft
19 subarea plan.”¹⁹⁶ However, despite these efforts, the Record shows County never adopted
20 or otherwise made a decision on the Draft Subarea Plan.¹⁹⁷ Instead, as noted by the
21 Petitioners, Resolution 2023-08 “simply [blankets] the [entire Ponderay Papermill] site with
22 its new “Industrial” designation.”¹⁹⁸

23
24 Petitioners’ Reply clarifies that their argument is not that the “county violated the
25 GMA by failing to adopt the draft sub-area plan for this site.”¹⁹⁹ Rather, the Petitioners
26 contend that the County violated the GMA by failing to protect critical areas and cultural
27 resources on the Ponderay Newsprint site, and that those critical areas and cultural
28

29 ¹⁹⁴ Pet’rs Prehr’g Br. at 12-13, (citing Index 255, POC005993-5994).
30 ¹⁹⁵ Pet’rs Prehr’g Br. at 13.
31 ¹⁹⁶ *Id.* at 13, (citing RIN 167, POC002815). POC00926, (comment from Kalispel Tribe).
32 ¹⁹⁷ POC00926, (comment from Kalispel Tribe).
¹⁹⁸ Pet’rs Prehr’g Br. at 13, (citing RIN 126, POC001754; POC000926).
¹⁹⁹ Pet’rs’Reply Br. at 5.

1 resources would have been protected had the County adopted the Draft Subarea Plan.²⁰⁰
2 Instead, Petitioners assert, the County “simply blanketed the entire site with its new
3 industrial designation” and the “development regulations do not specify the uses, density
4 limits, lot size and coverage specifications, setbacks, or buffers that apply in the new
5 industrial zone.”²⁰¹
6

7
8 The Board acknowledges the Petitioners’ disappointment regarding the outcome (or
9 lack thereof) of the development process for the Cusick/Usk Subarea Plan, and commends
10 Petitioners’ evident concern to support protection of critical areas and cultural resource
11 sites. However, Petitioners again to point to specific text the County’s new Industrial
12 designation for the former Ponderay Newsprint Papermill site that is incompatible with or
13 thwarts implementation of specific language within the newly-adopted Comprehensive Plan
14 relevant to conservation of floodplains and wetlands, capital facilities, and protection of
15 important cultural resources.
16

17
18 The Board **finds and concludes** that the Petitioners have failed to demonstrate
19 conflict between the Resolution and policies in the newly-adopted Comprehensive Plan, or
20 that the Resolution precludes the achievement of those policies.
21

22 **E. Requirement to Adopt Implementing Development Regulations (Issue 22)**

23 **Issue 22.** Did the County fail to adopt regulations implementing its new Industrial and
24 Commercial land use designations on the FLUM [Future Land Use Map] in violation of
25 RCW 36.70A.040(4)(d)?²⁰²
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31 _____
200 *Id.*

201 *Id.*

202 Prehr’g Order at 5.
32

1 **Board Analysis – Issue 22**

2 The GMA requires a jurisdiction's development regulations to be consistent with, and
3 implement, its comprehensive Plan.²⁰³ RCW 36.70A.130(1)(e) requires, in relevant part, that
4 “amendment of or revision to development regulations shall be consistent with and
5 implement the comprehensive plan.”²⁰⁴
6

7
8 Petitioners assert under Issue 22 that the County’s development regulations “fail to
9 implement the [Comprehensive Plan’s] and FLUM’s new Industrial and Commercial” zoning
10 designations.²⁰⁵ The County responds that Petitioners fail to cite any authority to suggest
11 that the way the County implements its Comprehensive Plan for commercial and industrial
12 uses is insufficient.²⁰⁶ The Board agrees with the County. The Record contains a zoning
13 map providing the location of the commercial and industrial land use designations which
14 was adopted by the BOCC under Resolution 2023-08.²⁰⁷ Further, as noted by the County,
15 these zones are implemented by several development regulations that set “guidelines and
16 requirements for all commercial and industrial uses” within the County.²⁰⁸ Binding site plan
17 applications may only receive approval upon a finding by that “the proposal is in conformity
18 with [the development regulations] and applicable land division, zoning, critical areas,
19 shoreline management, and other land use regulations” have been met.²⁰⁹ Additionally,
20 “Development Regulation section xx.26.050, entitled Development Standards, establishes
21 standards and requirements for the clustering of dwellings, setbacks and buffering,
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25

26 ²⁰³ See RCW 36.70A.040(3), (4)(d); WAC 365-196-500(3).

27 ²⁰⁴ RCW 36.70A.130(1)(e).

28 ²⁰⁵ Pet’rs’ Reply Br. at 3-4; Pet’rs’ Prehr’g Br. at 7-8.

29 ²⁰⁶ Resp’t Br. at 17.

30 ²⁰⁷ Index 125.

31 ²⁰⁸ Resp’t Br. at 17, (citing environmental standards applicable to all proposals within the County, including the
32 critical areas ordinances (xx.36.020) (Index 0001, POC000164-POC000165), wetlands (xx.36.040(B)) (Index
0001, POC000168), wetland buffers (xx.36.040(G)) (Index 0001, POC000172), shorelines (xx.36.040(D)(1))
(Index 0001, POC000169-000170), geologically hazardous areas xx.36.050(E) (Index 0001, POC000187-
000195)).

²⁰⁹ Resp’t Br. at 17-18, (citing Index 0001, POC000230)).

1 neighborhood impacts, parking, water access, road standards, and proposed measures to
2 comply with the comprehensive plan, shoreline master plan, and other applicable laws.”²¹⁰
3

4 Petitioners fail to provide analysis as to why the development regulations cited by the
5 County are insufficient to meet the requirements of RCW 35.70A.040, RCW
6 36.70A.130(1)(d), and WAC 365-196-500. The Board **finds and concludes** that Petitioners
7 have failed to carry their burden of proof on Issue 22.
8

9
10 **F. Use of Best Available Science in Designation and Protection of Critical Areas**
11 **(Issues 5-9, 18)**

12 **Issue 5.** Do the newly adopted development regulations at Chapter XX.36 Environmentally
13 Sensitive Areas fail to protect key riparian functions by reducing stream buffers to an extent
14 not supported by best available science? Prehr’g Order at 2.

15 **Issue 6.** Do the newly adopted development regulations at xx.36.040 Wetlands fail to
16 protect key wetland functions and values by reducing wetland minimum buffers to an extent
17 not supported by best available science? Prehr’g Order at 2-3.

18 **Issue 7.** Do the newly adopted development regulations at xx.36.040 Wetlands fail to
19 ensure that the existing conditions of those designated critical areas will be maintained by
20 reducing wetland minimum buffers to an extent not supported by best available science?
21 Prehr’g Order at 3.

22 **Issue 8.** Do the newly adopted development regulations at xx.36.060 Fish and Wildlife
23 Habitat Conservation Areas fail to protect all functions and values of those designated
24 critical areas by reducing the buffers for various types of streams to an extent not supported
25 by best available science? Prehr’g Order at 3.

26 **Issue 9.** Do the newly adopted development regulations at xx.36.060 Fish and Wildlife
27 Habitat Conservation Areas fail to ensure that the existing conditions of those designated
28 critical areas will be maintained by reducing the buffers for various types of streams to an
29 extent not supported by best available science? Prehr’g Order at 3.

30 **Issue 18.** Did the County fail to follow best available science and fail to provide a reasoned
31 justification for departing from best available science in amending the development
32 regulations related to critical areas, in violation of RCW 36.70A.172? Prehr’g Order at 4.

²¹⁰ Resp’t Br. at 18, (citing Index 0001, POC000150-000151).

1 **Applicable Law (Issues 5-9, 18)**

2 **RCW 36.70A.172. Critical areas — Designation and protection — Best available**
3 **science to be used.**

4
5 (1) In designating and protecting critical areas under this chapter, counties and cities shall
6 include the best available science in developing policies and development regulations to
7 protect the functions and values of critical areas. In addition, counties and cities shall give
8 special consideration to conservation or protection measures necessary to preserve or
9 enhance anadromous fisheries.***

9 **WAC 365-195-915 Criteria for including the best available science in developing**
10 **policies and development regulations.**

11 (1) To demonstrate that the best available science has been included in the development of
12 critical areas policies and regulations, counties and cities should address each of the
13 following on the record:

14 (a) The specific policies and development regulations adopted to protect the functions and
15 values of the critical areas at issue.

16 (b) The relevant sources of best available scientific information included in the decision-
17 making.

18 (c) Any nonscientific information—including legal, social, cultural, economic, and political
19 information—used as a basis for critical area policies and regulations that depart from
20 recommendations derived from the best available science. A county or city departing from
21 science-based recommendations should:

22 (i) Identify the information in the record that supports its decision to depart from science-
23 based recommendations,

24 (ii) Explain its rationale for departing from science-based recommendations; and

25 (iii) Identify potential risks to the functions and values of the critical area or areas at issue
26 and any additional measures chosen to limit such risks. State Environmental Policy Act
27 (SEPA) review often provides an opportunity to establish and publish the record of this
28 assessment.***

29 **Board Analysis (Issues 5-9, 18)**

30
31 The GMA requires all counties and cities to designate critical areas “where
32 appropriate.”²¹¹ Critical areas” as defined by the GMA include wetlands as well as fish and
wildlife habitat conservation areas.²¹² Once designated, local governments must adopt

²¹¹ RCW 36.70A.170(1)(d).

²¹² RCW 36.70A.030(11).

1 development regulations to protect identified critical areas.²¹³ The GMA requires that local
2 governments “include the best available science in developing policies and development
3 regulations to protect the functions and values of critical areas...”²¹⁴ The GMA’s requirement
4 that local governments include best available science (“BAS”) is implemented by the
5 administrative code sections under WAC 365-195. Neither the statute nor the regulations
6 provide a precise definition of “best available science,” but the courts have generally
7 interpreted the phrase to require local governments to analyze valid scientific information in
8 a reasoned process.²¹⁵ The record must contain evidence of BAS as well as evidence that
9 the local government considered the best available science substantively in its development
10 of the critical areas ordinance.²¹⁶

11
12
13 Petitioners’ Legal Issues 5, 6, 7, 8, and 9 allege that the County violated
14 RCW 36.70A.172 by failing to include Best Available Science (“BAS”) when amending the
15 County’s Environmentally Sensitive Areas Code (POCC Ch. xx.36).²¹⁷ Specifically, the
16 Board understands Petitioners to argue that the following provisions were developed absent
17 inclusion of BAS:
18

- 19
20 • POCC Chapter XX.36 Environmentally Sensitive Areas fails to protect key
21 riparian functions by reducing stream buffers (Issue 5)
22
23 • POCC xx.36.040 Wetlands “fails to protect key wetland functions and values
24 by reducing wetland minimum buffers and fails to ensure that the existing conditions
25 of those designated critical areas will be maintained by reducing wetland minimum
26 buffers.” (Issues 6 and 7).

27 ²¹³ RCW 36.70A.060(2).

28 ²¹⁴ RCW 36.70A.172(1)

29 ²¹⁵ *Kitsap All. of Prop. Owners v. Cent. Puget Sound Growth Mgmt. Hearings Bd.*, 160 Wn. App. 250, 267, 255
30 P.3d 696, 705 (2011) (citing *Ferry County v. Concerned Friends of Ferry County*, 155 Wn.2d 824, 835 n.9, 123
31 P.3d 102 (2005)).

32 ²¹⁶ *Kitsap All. of Prop. Owners v. Cent. Puget Sound Growth Mgmt. Hr’gs Bd.*, 160 Wn. App. at, 267 (citing
Honesty in Env’tl. Analysis & Legislation (HEAL) v. Cent. Puget Sound Growth Mgmt. Hearings Bd., 96 Wn.
App. 522, 532, 979 P.2d 864 (1999); *Whidbey Env’tl. Action Network v. Island Cnty*, 122 Wn. App. 156,, 122
Wn. App. 156, 171 93 P.3d 885 (2004) (*WEAN*)).

²¹⁷ Pet’rs’ Prehr’g Br. at 14-15; Index 1, POC000164-208 (POCC Ch. xx.36).

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- 5
- POCC xx.36.060 Fish and Wildlife Habitat Conservation Areas fails to protect all functions and values of those designated critical areas by reducing the buffers for various types of streams, and fails to ensure that the existing conditions of those designated critical areas will be maintained by reducing the buffers for various types of streams (Issues 8 and 9)

6 To determine compliance with RCW 36.70A.172, the Board looks to the factors set
7 forth *1000 Friends v. Anacortes* as acknowledged by the state Supreme Court in *Ferry*
8 *County v. Concerned Friends*.²¹⁸ Those factors are:

9

10 (1) The scientific evidence contained in the record,

11

12 (2) Whether the analysis by the local decision-maker of the scientific evidence and
13 other factors involved a reasoned process; and

14 (3) Whether the decision made by the local government was within the parameters of
15 the Act as directed by the provisions of RCW 36.70A.172(1).²¹⁹

16 Contrary to the Petitioners' contention under Issues 5 through 7, the Record contains
17 scientific information regarding wetland buffer widths.²²⁰ The County engaged with private
18 consultants for the purpose of evaluating Best Available Science for the critical habitats
19 within the County as required for its Environmentally Sensitive Areas Code.²²¹ The Record
20 further shows that the steps taken in analyzing this information constitute a reasoned
21 process.²²²

22

23

24

25 The County responds that "Petitioners fail to highlight the across-the-board
26 consideration of Best Available Science used when the County updated the Development
27

28 ²¹⁸ *Hendrickson, et al. v. City of Kenmore*, GMHB No. 16-3-0002, Final Decision & Order (Nov. 28, 2016) at 17
29 (citing *1000 Friends v. Anacortes*, WWGMHB No. 03-2-0017, FDO (Feb. 10, 2004); *Friends of Ferry Cnty., et*
30 *al. v. W. Wash. Growth Mgmt. Hr'gs Bd.*, 155 Wn.2d 824, 835, 123 P.3d 102 (2005)).

31 ²¹⁹ *Hendrickson*, GMHB No. 16-3-0002 at 17.

²²⁰ Resp. Br. at 22, (citing Index 34, POC001242-47).

²²¹ Resp't Prehr'g Br. at 2.

32 ²²² Index 34, POC001246, ("these values will meet the Department of Ecology's minimum standards and Fish and Wildlife. Incorporate a reference to the Memo (The Science Justifies Both Buffer Options)").

1 Regulations.”²²³ The Board agrees. The County considered wetland buffer widths through
2 the Planning Commission process.²²⁴ The County noted at a December 2020 Planning
3 Commission workshop “that it was continuing a discussion with Washington State
4 Department of Fish and Wildlife.”²²⁵ In setting the buffers at issue, the Record shows that
5 the County relied upon an analysis produced for neighboring Stevens County, as referenced
6 within the 2022 SEPA Checklist that it prepared in 2022.²²⁶ The basis for relying on this
7 analysis is set forth in a separate memo entitled “Best Available Science applied with Policy
8 Considerations for Pend Oreille County Sensitive Areas Code Update.”²²⁷
9

10
11 Under Legal Issue 18, Petitioners assert that POCC xx.36.060.E.5(b)-(d) fails to
12 follow the BAS and provide a reasoned justification for deviating from the BAS on stream
13 buffers.²²⁸ To support this assertion, Petitioners’ briefing cites a 2020 peer-reviewed
14 scientific study prepared by WDFW for the proposition that “none of the riparian buffers the
15 County is proposing are wide enough to perform [key ecological functions of riparian areas]
16 and so the buffers violate the GMA.”²²⁹ Regarding stream buffers, the County must go
17 through the process outlined in WAC 365-195-915 and provide a reasonable justification for
18 deviating from BAS in accordance with WAC 365-195-915(1)(c)(i)-(iii). As noted above, the
19 County relied on a report drafted for neighboring Stevens County to develop its stream
20 buffers and explains this reliance in a separate memo.²³⁰ Petitioners’ briefing fails to
21 address the substance of the County’s explanation in this memo. The Board finds that the
22 County has given a reasonable justification for deviating from the Stream Buffer widths,
23 providing an explanation.
24
25

26
27 ²²³ Resp’t Br. at 22.

28 ²²⁴ Resp’t Br. at 22, (Index 0034, POC 001242-001247, stating that the County used the “Best Available
29 Science for wetland ratings by the Department of Ecology which was updated in 2018).

30 ²²⁵ Resp’t Br. at 22, (Index 0048; POC001303).

31 ²²⁶ *Id.* at 22, 23 (citing Index 0005, POC 000291-000323). See also Index 294, (Apr. 7 2021 Anchor QEA
32 Memo).

²²⁷ Index 69, POC001649-1412.

²²⁸ Pet’rs’ Prehr’g Br. at 15.

²²⁹ Pet’rs’ Prehr’g Br. at 15, (citing Index 178, POC002959; Index 179, POC003117).

²³⁰ Index 294, (Apr. 7 2021 Anchor QEA Memo); Index 69, POC001649-1412.

1
2 **The Board finds** that the County has provide a reasonable justification for
3 deviation.²³¹

4 The Board **finds and concludes** that Petitioners have failed to carry their burden of
5 proof on issues 5-9 and 18.
6

7 **G. State Environmental Policy Act (SEPA) (Issues 27-35, 36, 37, 38, 39)**
8

9 **1. Issues 27-35 - SEPA**

10 **Issue 27.** Did the County violate the State Environmental Policy Act by failing to base its
11 threshold determination on adequate information sufficient to evaluate the environmental
12 impacts of rezoning 65% of the county, eliminating the Public Lands zoning designation,
13 and opening up the County to more impactful uses than are currently permitted, including
14 but not limited to light and heavy industrial uses, in violation of RCW 43.21C.030(2), and
15 WAC 197-11-080; -330; and -335?²³²

16 **Issue 28.** Did the County violate RCW 43.21C.030(2), and WAC 197-11-080; -330; and -
17 335 by failing to base its threshold determination on adequate information regarding impacts
18 to wetlands and riparian habitat areas?²³³

19 **Issue 29.** Did the County violate RCW 43.21C.030(2), and WAC 197-11-080; -330; and -
20 335 by failing to base its threshold determination on adequate information regarding impacts
21 to wildlife (e.g., lynx and habitat fragmentation)?²³⁴

22 **Issue 30.** Did the County violate RCW 43.21C.030(2), and WAC 197-11-080; -330; and -
23 335 by failing to base its threshold determination on adequate information regarding impacts
24 to critical aquifer recharge areas?²³⁵

25 **Issue 31.** Did the County violate RCW 43.21C.030(2), and WAC 197-11-080; -330; and -
26 335 by failing to base its threshold determination on adequate information regarding impacts
27 to important critical areas and irreplaceable cultural resources on the former papermill
28 site?²³⁶

29 _____
30 ²³¹ Resp't at 14-15.

²³² Prehr'g Order at 6.

²³³ *Id.*

²³⁴ *Id.*

²³⁵ *Id.*

²³⁶ *Id.* at 6-7.

1 **Issue 32.** Did the County violate RCW 4Issue 3.21C.030(2), and WAC 197-11-080; -330;
2 and -335 by failing to base its threshold determination on adequate information regarding
3 impacts of sprawl in rural areas?²³⁷

4 **Issue 33.** Did the County violate RCW 43.21C.030(2), and WAC 197-11-080; -330; and -
5 335 by failing to base its threshold determination on adequate information regarding impacts
6 of increased fire hazards?²³⁸

7 **Issue 34.** Did the County violate RCW 43.21C.030(2), and WAC 197-11-080; -330; and -
8 335 by failing to base its threshold determination on adequate information regarding how
9 climate change could exacerbate impacts of the proposal?²³⁹

10 **Issue 35.** Did the County violate RCW 43.21C.030(2), and WAC 197-11-080; -330; and -
11 335 by failing to base its threshold determination on adequate information regarding the
12 impacts of legitimizing nonconforming uses by making them permitted uses in a wholesale
13 fashion across more than one half million acres of land?²⁴⁰

14 **2. Issues 36-38 - SEPA**

15 **Issue 36.** Did the county violate RCW 43.21C.030(2), and WAC 197-11-055, -080; and -330
16 by improperly deferring analysis of the proposal's effects, including the direct, indirect, and
17 cumulative impacts, to the project stage and by failing to fully consider the factors in
18 WAC 197-11-330(3)?

19 **Issue 37.** Did the County violate the State Environmental Policy Act by failing to carefully
20 consider the range of probable impacts of allowing formerly prohibited types of residential,
21 industrial, and/or commercial development on hundreds of thousands of acres throughout
22 the county, which will encourage or tend to cause those types of developments to be built,
23 including short-term and long-term effects and effects that are likely to arise or exist over the
24 lifetime of a proposal or, depending on the particular proposal, longer, in violation of
25 WAC 197-11-060(4)(c)? Prehr'g Order at 7.

26 **Issue 38.** Did the County violate the State Environmental Policy Act by failing to carefully
27 consider the cumulative impacts of the increased development allowed by the proposal on
28 forest fires (and public facilities and services related to avoiding and fighting forest fires);
29 groundwater; endangered or threatened fish and wildlife and their habitat (e.g., bull trout
30 and lynx); endangered or threatened plant species or their habitat (e.g., white pine); streams

31 ²³⁷ *Id.* at 7.

32 ²³⁸ *Id.*

²³⁹ *Id.*

²⁴⁰ *Id.*

1 and lakes; rural character and other elements of the environment, in violation of WAC 197-
2 11-330(3)? Prehr'g Order at 7-8.

3 **3. Issue 39 - SEPA**

4
5 **Issue 39.** Did the County violate SEPA's requirement that an environmental impact
6 statement be prepared prior to a decision on a proposal with probable significant adverse
7 environmental impacts in violation of RCW 43.21C.030(2)(c) and WAC 197-11- 360(1)?
8 Prehr'g Order at 8.

9 **Applicable Law - Issues 27-35, 36-38, 39**

10 RCW 43.21C.030(2)(c) requires all branches of government of the state to include an
11 EIS for every recommendation or report on proposals for legislation and other major actions
12 significantly affecting the quality of the environment.²⁴¹ Washington law requires that
13 "unquantified environmental amenities and values will be given appropriate consideration in
14 decision making along with economic and technical considerations."²⁴² Under existing law,
15 EISs are required under RCW 43.21C.030(2) only when a proposal has "significant"
16 environmental effects.²⁴³

17
18 **Incomplete or unavailable information.** The disclosure and investigation of the
19 environmental impacts are not unlimited, and only those actions that have a probable,
20 significant adverse environmental impact are required to prepare an EIS.²⁴⁴ SEPA does not
21 require an agency to obtain all vital information before acting.²⁴⁵ Action may be taken
22 without "essential" information if it would be exorbitantly costly to obtain²⁴⁶, or without
23 "important" information if "the means to obtain it are speculative or not known".²⁴⁷ In such
24 instances, the agency must weigh the need for the action with the severity of possible
25
26
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29 ²⁴¹ RCW 43.21C.030(2)(c).

30 ²⁴² RCW 43.21C.030(2)(b).

31 ²⁴³ RCW 43.21C.030(2).

32 ²⁴⁴ RCW 43.21C.030; WAC 197-11-080.

²⁴⁵ WAC 197-11-080.

²⁴⁶ WAC 197-11-080 (3)(a).

²⁴⁷ WAC 197-11-080 (3)(b).

1 adverse impacts which would occur if the agency were to decide to proceed in the face of
2 uncertainty.²⁴⁸

3 **Threshold Determination Process.** SEPA represents Washington's requirement
4 that agencies engage in environmental review. WAC 197-11-330 specifies a process for
5 determining whether a proposal is likely to have a probable significant adverse
6 environmental impact.²⁴⁹ The threshold standard under which an EIS is required is when
7 there is a "major action significantly affecting the quality of the environment."²⁵⁰ The
8 threshold determination process first requires that an applicant prepare an environmental
9 checklist which identifies the potential impacts of an action.²⁵¹ The agency then reviews the
10 environmental checklist and issues a threshold determination based on the proposed action,
11 the information in the checklist (WAC [197-11-960](#)), and any additional information furnished
12 under WAC [197-11-335](#) and [197-11-350](#).²⁵² Only those actions which have a probable
13 significant adverse environmental impact are required to prepare an EIS.²⁵³

14
15
16 **Standard of Review.** The agency has the burden of showing *prima facie* compliance
17 with the procedural requirements of SEPA.²⁵⁴ A threshold determination that an EIS is not
18 required is reviewed under the "clearly erroneous" standard.²⁵⁵ Under this standard, courts
19 will only overturn the agency's determination if, "after reviewing all the evidence, it is left with
20 the definite and firm conviction that the agency committed a mistake."²⁵⁶

21 The "clearly erroneous" standard provides a broader review than the "arbitrary or
22 capricious" standard because it mandates a review of the entire record and all the evidence
23 rather than just a search for substantial evidence to support the administrative finding or
24

25
26
27 ²⁴⁸ WAC 197-11-080 (3)(b)

28 ²⁴⁹ WAC 197-11-330(1)(b)

29 ²⁵⁰ RCW 43.21C.030(2)(c).

30 ²⁵¹ WAC 197-11-330.

31 ²⁵² WAC 197-11-330(1)(b).

32 ²⁵³ RCW 43.21C.030; WAC 197-11-080.

²⁵⁴ *Juanita Bay Valley Cmty. Ass'n v. City of Kirkland*, 9 Wn. App. 59, 73, 510 P.2d 1140 (1973).

²⁵⁵ *Chuckanut Conservancy v. Dep't of Nat. Res.*, 156 Wn. App. 274, 286, 232 P.3d 1154 (2010).

²⁵⁶ *Lands Council v. Wash. State Parks & Recreation Comm'n.*, 176 Wn. App. 787, 795 (2013).

1 decision.²⁵⁷ Review under the “clearly erroneous standard” is broad, and the search for
2 significant environmental impacts must be considered in light of the public policy of
3 SEPA.²⁵⁸ The public policy of SEPA is the consideration of environmental values²⁵⁹. In any
4 action involving an attack on a determination by a governmental agency relative to the
5 requirement or the absence of the requirement, or the adequacy of a “detailed statement,”
6 the decision of the governmental agency must be accorded substantial weight.²⁶⁰
7

8 **Board Analysis – Issues 27-35, 36-38, 39**
9

10 Petitioners first argue that the County failed to base its threshold determination on
11 adequate information. The Board understands Petitioners to argue that the County failed to
12 base its threshold determination on adequate information regarding:
13

- 14 • Impacts of the rezone, including allowing light and heavy industrial uses in areas
15 where these are not currently permitted (Issue 27);
- 16 • Impacts to Wetlands and Riparian Habitat Areas (Issue 28);
- 17 • Impacts to wildlife (Issue 29);
- 18 • Impacts to critical aquifer recharge areas (Issue 30);
- 19 • Impacts to important critical areas and irreplaceable cultural resources (Issue 31);
- 20 • Impacts of sprawl in rural areas (Issue 32);
- 21 • Impacts of increased fire hazards (Issue 33);
- 22 • Climate change impacts (Issue 34); and
- 23 • Impacts of converting nonconforming uses to permitted uses (Issue 35).²⁶¹

24 Petitioners argue that the County failed to analyze under SEPA the probable
25 significant adverse environmental impacts caused by the adoption of the Comprehensive
26 Plan Amendment . Petitioners request the Board to order the County to prepare an EIS.
27
28
29

30 ²⁵⁷ *Nor. Hill Pres. & Prot. Ass'n v. King County Council*, 87 Wn.2d 267, 275, 552 P.2d 674 (1976).

31 ²⁵⁸ *Id.*

32 ²⁵⁹ *Id.*

²⁶⁰ RCW 43.21C.090.

²⁶¹ Pet'rs' Prehr'g Br. at 21-31.

1 The issue here is whether the DNS was clearly erroneous because the approval of t
2 Comprehensive Plan Amendment was a "major action significantly affecting the quality of
3 the environment" such that an EIS was required under RCW 43.21C.030(2)(c). A major
4 action significantly affects the environment, triggering the EIS requirement "whenever more
5 than a moderate effect on the quality of the environment is a reasonable probability."²⁶²

6 The Board **finds and concludes** that the County complied with the procedural
7 requirements of SEPA by providing an adequately thorough SEPA checklist demonstrating
8 non-significance and addressing the potential for a likely significant impact for the
9 nonproject actions.
10

11
12 In *Spokane County v. Eastern Washington Growth Management Hearings Board*, the
13 court determined that to meet the SEPA requirement of considering environmental impacts
14 at the earliest stage, an agency must address the probable impacts "of any future project
15 action" allowed by a comprehensive plan amendment or rezone.²⁶³ These rules aim to
16 ensure the agency fully discloses and carefully considers the proposal's environmental
17 impacts before adopting it and at the earliest possible stage.²⁶⁴ The agency may not
18 postpone environmental analysis to a later implementation stage if the proposal will affect
19 the environment without subsequent implementing action.²⁶⁵
20

21
22 While SEPA does not require a county to evaluate a laundry list of unrelated
23 environmental considerations, it does require that the County evaluate probable significant
24 environmental impacts.²⁶⁶ While the law provides some flexibility in the level of detail
25 necessary to review a nonproject action, nothing authorizes a county to ignore
26 environmental impacts and to defer analysis to some later and unidentified process
27
28
29

30 ²⁶² *Nor. Hill Pres. & Prot. Ass'n*, 87 Wn.2d at 278.

31 ²⁶³ *Spokane Cnty. v. E. Wash. Growth Mgmt. Hearings Bd.*, 176 Wn. App. 555, 579, 309 P.3d 673 (2013).

32 ²⁶⁴ WAC 197-11-060(4)(c)-(d).

²⁶⁵ WAC 197-11-060(5)(d)(i)-(ii).

²⁶⁶ WAC 197-11-402(1).

1 completely.²⁶⁷ When considering a nonproject action, the agency conducting the
2 environmental review must consider the maximum potential development under various
3 zoning classes; however, not every remote or speculative consequence need be
4 considered.²⁶⁸ The probability of significant impact is a determining factor in whether an EIS
5 is required.²⁶⁹

7 Washington courts have held that certain nonproject actions, even in the absence of
8 development proposals, may require a Determination of Significance (“DS”) and the
9 preparation of an EIS. This policy aims to avoid the so-called “snowballing effect,” where
10 momentum triggered by initial decisions lacking an EIS might push a project forward, and
11 environmental consequences are discovered too late²⁷⁰.

13
14 In *King County v. Washington State Boundary Review Board for King County*, the
15 Supreme Court held that an EIS should have been prepared for a city’s proposed
16 annexations, and the preparation of a DNS was erroneous.²⁷¹ The Court laid out the
17 general rule that an EIS is required, even in the absence of a specific development proposal
18 or immediate change in land use, if “based on the totality of the circumstances, future
19 development is probable following the action and if that development will have a significant
20 adverse effect upon the environment.”²⁷² The Court held that development was very
21 probable based on the intended uses listed in the environmental checklists. Therefore, an
22 EIS was needed, although no official proposals had yet been submitted for the development
23 of the properties.²⁷³

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28 ²⁶⁷ See e.g., WAC 197-11-442(2).

29 ²⁶⁸ *Heritage Baptist Church v. Cent. Puget Sound Growth Mgmt. Hr’gs Brd.*, 2 Wn. App.2d 737, 753, 413 P.3d
590 (2018).

30 ²⁶⁹ *King County v. Wash. State Boundary Review Bd.*, 122 Wn.2d 648, 662-63, 860 P.2d 1024 (1993).

31 ²⁷⁰ *King County*, 122 Wn.2d at 664.

32 ²⁷¹ *King County*, 122 Wn.2d. at 666

²⁷² *Id.* at 663.

²⁷³ *Id.* at 665.

1 Building upon *King County*, in *Spokane County v. Eastern Washington Growth*
2 *Management Hearings Board*, the court determined that to meet the SEPA requirement of
3 considering environmental impacts at the earliest stage, an agency must address the
4 probable impacts “of any future project action” allowed by a comprehensive plan
5 amendment or rezone.²⁷⁴
6

7
8 In *Hood Canal, et al. v. Jefferson County*, the Board struck down an effort of
9 Jefferson County to defer the evaluation of environmental impacts because the proposed
10 action was a nonproject comprehensive plan action, stating:
11

12 The County argues that the review that was conducted at this stage was
13 appropriate because the County has flexibility in preparing an EIS and a general
14 discussion of the impacts of alternate proposals is proper because the
15 comprehensive plan affected a land use designation. WAC 197-11- 442(1) and
16 (4). However, this regulation does not excuse the County from an analysis and
17 evaluation of environmental impacts of alternatives; it just means that the
18 impacts and alternatives may be discussed “in the level of detail appropriate to
19 the scope of the nonproject proposal and to the level of planning for the
20 proposal.” WAC 197-11-442(2). WWGMHB No. 03-2-0006 (Final Decision and
21 Order, August 15, 2003) at 15.

22 In contrast, cases where a DNS was affirmed for nonproject actions involved either
23 vague proposals or adequately thorough SEPA checklists demonstrating non-significance.
24 For example, in *Millwood Citizens Preserving Neighborhood Integrity v. City of Millwood*, the
25 Board found the tentative proposal for a park was “so vague that it was impossible to
26 determine environmental impacts.”²⁷⁵ The amendment in question changed only the land
27 use designation of two lots but not the zoning, so the action caused no change in allowed
28 uses, and the DNS was appropriate.²⁷⁶ In *Murden Cove Preservation Association v. Kitsap*
29 *County*, the DNS for a rezone was upheld because the decision was based on extensive
30

31 _____
32 ²⁷⁴ *Spokane Cnty.*, 176 Wn. App. 555.

²⁷⁵ EWGMHB No. 19-1-0005 (Final Decision and Order, May 18, 2020) at 9.

²⁷⁶ *Id.*

1 information obtained and analyzed in the checklist. ²⁷⁷The application and checklist
2 discussed increased traffic, available water and electrical services, proposed business
3 operations, and more.²⁷⁸
4

5 In this case, Petitioners argue that although the Comprehensive Plan Amendment is
6 a nonproject action, the courts have been very clear that even nonproject actions must still
7 undergo full SEPA review and cannot evade SEPA review by deferring analysis until later
8 phases of the proposal.²⁷⁹ Petitioners argue that the County failed to base its SEPA DNS
9 on adequate information regarding the impacts of turning prohibited uses into permitted
10 uses; the impacts to critical areas and wildlife habitat; and the impacts to sprawl in rural
11 areas, attendant increased fire danger, and how climate change could exacerbate these
12 impacts.²⁸⁰ Furthermore, Petitioners specifically address in Issue 36 whether the County
13 met the procedural requirements of SEPA as part of its review of the Comprehensive Plan
14 Amendment \.
15
16

17
18 The County provides the 2022 DNS results from a multi-year review process and a
19 prior SEPA appeal. The County argues that it complied with the procedural requirements of
20 SEPA by disclosing and carefully considering the Comprehensive Plan Amendment's
21 environmental impacts before adopting it and at the earliest possible stage. The County
22 asserts that it acknowledged and disclosed that property zoning changes would occur and
23 included in the Checklist the identification of the development that could be permitted in
24 each of the Comprehensive Plan designations and various zoning designations under the
25 Comprehensive Plan Amendment, which presumed that certain zones would be hanged
26 from their current designations to new designations.²⁸¹
27
28
29

30 ²⁷⁷ *Murden Cove Pres. Asso v. Kitsap Cty.*, 41 Wn. App. 515, 704 P.2d 1242 (1985).

31 ²⁷⁸ *Id.*

²⁷⁹ *Pet'rs' Preh'rg Br. at 19*

32 ²⁸⁰ *Pet'rs' Reply Br. at 6*

²⁸¹ *Resp't Br at 30-32.*

1 The County provides that while the totality of the action would include zone changes,
2 it found the consequences of those changes to be remote and speculative.²⁸² The County
3 explains that it carefully analyzed the probability of prospective development and found that
4 the long-term potential for development of the County is slight. Furthermore, the County
5 found that the projections for growth within the County are a total growth of 895 persons
6 through 2039, or 45 persons per year, which does not give rise to a probably significant
7 adverse environmental impact.
8

9
10 Like the decision in *Murden Cove Preservation Association v. Kitsap County*, the
11 Board finds that an EIS is not required because the County's checklist contained extensive
12 information analyzing the Comprehensive Plan Amendment's environmental impacts. The
13 County acknowledged that potential growth could occur in its Checklist and that such
14 development may have an impact. That said, the County has shown that such impacts do
15 not give rise to a probably significant adverse environmental impact.
16

17
18 **The Board finds:** that the County actually analyzed probable significant adverse
19 environmental impacts for the Comprehensive Plan Amendment and made a prima facie
20 case of compliance with SEPA.
21

22
23 Thus, **the Board concludes:** that an EIS is not required since such impacts do not give rise
24 to a probably significant adverse environmental impact, and the Petitioners failed to show in
25 the record that the decision by the County to issue a DNS for the Comprehensive Plan
26 Amendment was clearly erroneous.
27

28 **H. Substantial Interference with the Goals and Requirements of the GMA (Issues**
29 **1, 23-25, 26, 40)**

30 **Issue 40.** Would continued validity of the amendments substantially interfere with fulfillment
31 of the goals of the GMA? Prehr's Order at 8.
32

²⁸² *Id.* at 32.

1
2 **Applicable Law – Issues 23-25, 26, 40**

3 **RCW 36.70A.302 Growth management hearings board—Determination of**
4 **invalidity—Vesting of development permits—Interim controls.**

5 (1) The board may determine that part or all of a comprehensive plan or development
6 regulations are invalid if the board:

7 (a) Makes a finding of noncompliance and issues an order of remand under RCW
8 36.70A.300;

9 (b) Includes in the final order a determination, supported by findings of fact and
10 conclusions of law, that the continued validity of part or parts of the plan or regulation
11 would substantially interfere with the fulfillment of the goals of this chapter; and

12 (c) Specifies in the final order the particular part or parts of the plan or regulation that
13 are determined to be invalid, and the reasons for their invalidity.^{***283}

14 **Board Analysis – Issue 40; Goals Compliance raised under Issues 1-4, 17, 26, 23-25,**
15

16 A determination of invalidity is based on a finding that continued validity of a local
17 government’s action “would substantially interfere with the fulfillment” of a GMA Goal. As
18 noted above in the Board’s analysis of Legal Issue 26, where legal Issues are stated to
19 suggest that GMA goals have been violated in conjunction with specific implementing
20 provisions in the statute, the Board looks first to the more specific requirements sections of
21 the statute to determine compliance.²⁸⁴ If noncompliance with the more specific
22 requirements of the GMA is found, the Board then returns to the corresponding goal to
23 determine whether invalidity is warranted.²⁸⁵

24
25 The Petitioners argue under Legal Issue 40 that Resolution 2023-08 “substantially
26 interferes with the GMA goal to involve citizens in the planning process and ensure
27 coordination between communities and jurisdictions to reconcile conflicts.”²⁸⁶ As discussed
28 above in the Board’s analysis of Legal Issue 26, the County’s adoption of Resolution 2023-
29

30 ²⁸³ RCW 36.70A.302(1).

31 ²⁸⁴ *McVittie V* at 24-25, (citing *Litowitz*, CPSGMHB No. 96-3-0005 and *Children’s II*, CPSGMHB No. 96-3-
0023).

32 ²⁸⁵ *McVittie V* at 25.

²⁸⁶ *Pet’rs’ Prehr’g Br.* at 34, (citing RCW 36.70A.020(11)).

1 08 was clearly erroneous and non-compliant with the public participation requirements of
2 RCW 36.70A.35(2)(a) as implemented by WAC 365-196-600(9)(a).²⁸⁷ RCW 36.70A.035(2)
3 requires additional public process “if, subsequent to public hearing, a change to a
4 comprehensive plan is proposed which is outside the scope of what has thus far been
5 analyzed and publicly noticed,” and is a specific statutory requirement that implements RCW
6 36.70A.020(11).²⁸⁸ Because the County failed to comply with the specific requirements of
7 RCW 36.70A.35(2)(a), it also failed to be guided by RCW 36.70A.020(11). The Board is
8 remanding Resolution 2023-08 to the County with direction to the County to comply with the
9 requirements of the GMA.
10

11
12 Where the GMA’s specific notice and public participation requirements have been
13 violated, the Board has sometimes held local government actions invalid.²⁸⁹ “Invalidation
14 prevents projects from vesting to a flawed regulation during the period of remand.”²⁹⁰ In the
15 present case, however, Petitioners fail to provide facts or analysis concerning the risk of
16 vesting in the during the remand period. Further, the County has options for expeditious
17 compliance that limit the likelihood of projects vesting to a non-compliant regulation. The
18 Board establishes an abbreviated compliance schedule accordingly and declines to enter an
19 order of invalidity.
20

21
22 Under Legal Issue 40, Petitioners further cite to GMA Goals 1 (Urban growth), 2
23 (Reduce sprawl), 9 (Open space and recreation), 10 (Environment), and 13 (Historic
24 preservation).²⁹¹ These Goals were discussed in conjunction with Petitioners’ allegations of
25
26

27 ²⁸⁷ See, *supra*, Pt. V.B, (Public Participation – Issue 26).

28 ²⁸⁸ *Pilchuck V*, CPSGMHB No. 05-3-0029 at 18.

29 ²⁸⁹ *Pilchuck V* at 21, (citing *Kelly v. Snohomish Cnty.*, CPSGMHB No. 97-3-0012c, Final Decision & Order (July
30 30, 1997) (County redesignated land as commercial at the last minute at the last meeting); *Homebuilders v.*
31 *Bainbridge Island*, CPSGMHB No. 00-3-0014, Final Decision & Order (Feb. 26, 2001) (City notice indicated
32 revision of wetland regulations without more specific information about how wetlands would be affected);
WHIP/Moyer v. Covington, CPSGMHB No. 03-3-0006c, Final Decision & Order (July 31, 2003) (City adopted
last minute rezoning)).

²⁹⁰ *Pilchuck V* at 21.

²⁹¹ *Pet’rs’ Prehr’g Br.* at 32-34.

1 noncompliance with specific statutory requirements under Legal Issues 1 through 4, 16
2 through 17, and 23 through 25. Petitioners also allege a violation of Goal 12 (Public facilities
3 and services) under Legal Issues 17 and 24, as well as a violation of Goal 5 (Economic
4 development) under Legal Issue 25.²⁹² As discussed above in the Board's analysis of these
5 Legal Issues, the Petitioners have failed to carry their burden of proof to demonstrate a
6 substantive violation of the specific GMA requirements that implement these Goals.
7

8 VI. ORDER

9
10 Based upon review of the Petition for Review, the briefs and exhibits submitted by the
11 parties, the GMA, prior Board orders and case law, having considered the arguments of the
12 parties, and having deliberated on the matter, the Board finds and concludes that, with the
13 exception of Issue 26, regarding notice and public participation, Petitioners have failed to
14 show in the record facts that satisfy their burden of proof that Resolution R-2023-08 violates/
15 the GMA.
16

17 With regard to Issue 26, the Board finds and concludes that the changes to Rural
18 Land Use Policy #2 and #3 were considered and adopted by the BOCC without adequate
19 public process in violation of RCW 36.70A.035(2)(a) and RCW 36.70A.020(11).
20

21 Pend Oreille County Resolution R-2023-08 is remanded to the County to take further
22 action in accordance with this order.
23

24 The following compliance schedule shall apply:

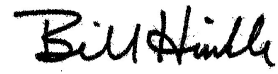
25 Item	26 Date Due
27 Compliance Due	28 April 12, 2024
29 Compliance Report/Statement of Actions Taken to 30 Comply and Index to Compliance Record	31 April 26, 2024
32 Objections to a Finding of Compliance	May 10, 2024
Response to Objections	May 17, 2024

²⁹² *Id.* at 7, 12, 13-14.

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Compliance Hearing <u>Zoom Meeting</u>	June 4, 2024 10:00 am
Meeting ID: 838 1623 8527 Passcode: 393338	

SO ORDERED this 16th day of October, 2023.



Bill Hinkle, Board Member
Presiding Officer



James McNamara, Board Member

Note: This is a final decision and order of the Growth Management Hearings Board issued pursuant to RCW 36.70A.300.²⁹³

²⁹³ Should you choose to do so, a motion for reconsideration must be filed with the Board and served on all parties within ten days of mailing of the final order. WAC 242-03-830(1), WAC 242-03-840. A party aggrieved by a final decision of the Board may appeal the decision to Superior Court within thirty days as provided in RCW 34.05.514 or 36.01.050. The petition for review of a final decision of the board shall be served on the board but it is not necessary to name the board as a party. See RCW 36.70A.300(5) and WAC 242-03-970. It is incumbent upon the parties to review all applicable statutes and rules. The staff of the Growth Management Hearings Board is not authorized to provide legal advice.

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Appendix A: Procedural matters

On January 3, 2018, Petitioners filed their petition for review.

On January 17, 2018, Order on Intervention, granted to J.R. Simplot Company.

On January 24, 2018, Prehearing Conference held telephonically.

On January 26, 2018, Prehearing Order issued.

The Briefs filed by the parties are referenced in this order as follows:

- Petitioners’ Prehearing Brief, March 27, 2018;
- Walla Walla County’s Response Brief, April 17, 2018;
- Petitioners’ Reply Brief, May 1, 2018;

Hearing on Merits of Petition, held May 8, 2018.