From:	Cnty 2025 Comp Plan
To:	Cnty 2025 Comp Plan; Tim Trohimovich
Cc:	Brooke Frickleton; Oliver Orjiako; Jose Alvarez
Subject:	FW: Comments on the Climate Element for the Planning Commission Public Hearing
Date:	Thursday, August 20, 2026 2:50:00 PM
Attachments:	image.png image.png image.png 2026-08-20 FW Comments on Comp Plan New Climate Decision PC.pdf 2026-08-17 Final Decision and Order.pdf image001.png image002.png image003.png image004.png

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Good day, Tim,

Thank you for submitting Futurewise's comments related to tonight's Public Hearing.

I am forwarding to additional staff. These will be added to the Comprehensive Plan Index of Record and brought to the attention of the Planning Commission.

Best,

Jeff Delapena
Program Assistant
COMMUNITY PLANNING

564.397.4558

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From: Tim Trohimovich <Tim@futurewise.org>
Sent: Thursday, August 20, 2026 12:29 PM
To: Cnty 2025 Comp Plan <comp.plan@clark.wa.gov>; Jeffrey Delapena <Jeffrey.Delapena@clark.wa.gov>
Cc: Brooke Frickleton <brooke@futurewise.org>

Subject: Comments on the Climate Element for the Planning Commission Public Hearing

EXTERNAL: This email originated from outside of Clark County. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Staff and Planning Commissioners:

Enclosed please find Futurewise's comments on the Climate Element for the Planning Commission Public Hearing on the Clark County Comprehensive Plan 2025 Update. We are also including the Board decision with this email.

Thank you for considering our comments. If you need anything else, please let me know.

Tim Trohimovich, AICP (he/him)
Director of Planning & Law

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August 20, 2026

Karl Johnson, Chair
Clark County Planning Commission
Clark County Community Planning
PO Box 9810
Vancouver, Washington 98666-9810

Dear Chair Johnson and Planning Commissioners:

Subject: Comments for the Planning Commission Public Hearing on the Clark County Comprehensive Plan 2025 Update on August 20, 2026 focusing on Climate Element Requirements

Sent via email: comp.plan@clark.wa.gov; jeffrey.delapena@clark.wa.gov;

Thank you for the opportunity to comment on the Clark County Comprehensive Plan 2025 Update. Futurewise's July 30, 2026, letter to the Clark County Planning Commission addressed several draft elements including the climate element requirements. This letter focuses on a recent Growth Management Hearings Board decision addressing the Growth Management Act's climate requirements and documents that the proposed greenhouse gas emissions reduction subelement and the proposed resiliency subelement violate the Growth Management Act.

Futurewise works throughout Washington State to support land-use policies that encourage healthy, equitable, and opportunity-rich communities, and that protect our most valuable farmlands, forests, and water resources. Futurewise has members and supporters across Washington State including in Clark County.

The proposed greenhouse gas emission reduction subelement violates RCW 36.70A.070(9)(d)(i).

The Growth Management Hearings Board (Board) was created in part to interpret the Growth Management Act (GMA) and determine what the GMA requires.[1] Courts give "'substantial weight' to the Board's interpretation of the GMA."[2]

[1] *Lewis Cnty. v. W. Washington Growth Mgmt. Hearings Bd.*, 157 Wn.2d 488, 498, 139 P.3d 1096, 1100 (2006).
[2] *Id.*

In a recent decision, the Board analyzed the climate goal and requirements for greenhouse gas emissions reduction subelements and resiliency subelements in RCW 36.70A.020(14) and RCW 36.70A.070(9). As to the greenhouse gas emissions reduction subelement, the Board concluded that "[i]t is up to each jurisdiction to create a program 'with a demonstrated ability to reduce emissions' in a manner which achieves" the state adopted greenhouse gas emission reduction targets.[3] The Board concluded that the legislature in RCW 36.70A.070(9)(d)(ii) "has directly required" the greenhouse gas emissions reduction subelement to be consistent with the Commerce Guidance for Climate elements or "a demonstration of equivalency based on 'scientifically credible projections and scenarios.'"[4]

Thurston County adopted different policies than those recommended by Commerce.[5] As the Board concluded:

> Here the County did not provide any scientifically credible projection analyzing how much GHG emission reduction its adopted policies would achieve. In the absence of such analysis, the County had no basis to conclude that its adopted policies for GHG emissions reduction would be equivalent to or better than those identified by Commerce. The County has not calculated the GHG emission reductions its policies will achieve. The County did not provide the required equivalency analysis and, therefore, failed to meet the requirements of RCW 36.70A.070(9)(d)(i).[6]

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[3] *South Sound Bird Alliance, Gordon White, Robert Metzger, and Futurewise v. Thurston County*, Growth Management Hearings Board Western Region (GMHBWR) Case No. 26-2-0013c, Final Decision and Order (Aug. 17, 2026), at 17 of [69] last accessed on Aug. 19, 2026, at: https://eluho2022.my.site.com/casemanager/s/eluho-document/a0Teq00001YYbDzEAL/20260817-final-decision-and-order and enclosed with this letter with the filename: "2026-08-17 Final Decision and Order.pdf."

[4] *South Sound Bird Alliance, Gordon White, Robert Metzger, and Futurewise v. Thurston County*, GMHBWR Case No. 26-2-0013c, Final Decision and Order (Aug. 17, 2026), at 17 of [69]. In the *South Sound Bird Alliance* the 2023 Commerce Guidance was applicable. Now, the Wash. State Dep't of Commerce, *Climate Element Planning Guidance* (Dec. 2025 Version 1.0) is in effect and this guidance if available at: https://www.commerce.wa.gov/growth-management/climate-planning/climate-planning-guidance/ and enclosed at the link on the last page of this letter and in a separate email with the filename: "2025 Climate Planning Guidance.pdf" sent along with Futurewise's Comment Letter to Planning Commission (July 30, 2026).

[5] *South Sound Bird Alliance, Gordon White, Robert Metzger, and Futurewise v. Thurston County*, GMHBWR Case No. 26-2-0013c, Final Decision and Order (Aug. 17, 2026), at 19 of [69].

[6] *Id.*

As the Futurewise's Comment Letter to Planning Commission (July 30, 2026) documented on pages 10 to 19, Clark County has also not proposed to adopt the policies recommended by Commerce. We have not been able to find any scientifically credible projection analyzing how much GHG emission reductions the Clark County climate policies would achieve. This violates the requirements of RCW 36.70A.070(9)(d)(i). Further, the scientifically credible projection must also include the urban growth area expansions and rural, agricultural, and forestry growth projections.

As Futurewise's Comment Letter to Planning Commission (July 30, 2026) recommended, Clark County should adopt the policies and regulations recommended by Commerce's *Clark County 2022 Greenhouse Gas Emissions Analysis*.[7] As the Board noted, "[t]he County "should select measurable policies with a clear path to local implementation."[8]

The proposed resiliency subelement violates RCW 36.70A.070(9)(d).

In addressing the resiliency subelement, the Board concluded its requirements are "action-forcing."[9] "While aspirational policies are certainly not wrong, there must be a body of 'goals, policies, and programs' consistent with best available science as a part of the resiliency subelement to meet the minimum requirements [of the GMA].[10] Further the Board wrote: "Vague general policies without clear, action-forcing implementation measures will not effectively address climate change resiliency in the manner envisioned by the Legislature, and the three minimum directives of RCW 36.70A.070(9)(e)(i) will not be achieved."[11] The Board concluded that Thurston "County failed to implement its climate element through development regulations and other action-forcing programs to ensure that the mandates of the statute are met."[12] As Futurewise's Comment Letter to Planning Commission (July 30, 2026) documented on pages 19 to 21, the proposed resiliency

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[7] Wash. State Dep't of Commerce Growth Management Services, *Clark County 2022 Greenhouse Gas Emissions Analysis* pp. 25 – 26. Pp. C-1 – C-7 (v3.5.1) last accessed on Aug. 20, 2026, at: https://deptofcommerce.app.box.com/s/7ldu8wigqhvfikj4omr0vl4szfpt7d8s and at the link on the last page of this letter and in a separate email with the filename: "CountyGHGAnalysisReport_Clark_20260618.pdf" sent along with Futurewise's Comment Letter to Planning Commission (July 30, 2026).
[8] *South Sound Bird Alliance, Gordon White, Robert Metzger, and Futurewise v. Thurston County*, GMHBWR Case No. 26-2-0013c, Final Decision and Order (Aug. 17, 2026), at 20 of [69].
[9] *Id.* at p. 23 of [69].
[10] *Id.*
[11] *Id.* at 25 of [69].
[12] *Id.* at 27 of [69].

element fails to include development regulations and other action-forcing programs to ensure that the mandates of the GMA are met.

The Board also wrote that "[g]oals and policies may be aspirational, but the subelement as a whole should provide clear goals, policies, and implementing measures with action-forcing requirements and deadlines (programs, development regulations, and funding commitments) that implement the minimum requirements of the statute. Without providing tangible, measurable action steps, the climate resiliency subelement adopted by County is not in compliance with the GMA."[13] As Futurewise's Comment Letter to Planning Commission (July 30, 2026) documented on pages 19 to 21, the proposed resiliency element fails to include action forcing requirements and deadlines. This violates the GMA.

Further, the Board wrote Thurston County's "policies fail to specifically identify overburdened communities. There is no evidence in the record that the County has collaborated with identified overburdened communities to jointly identify actions that will improve climate resiliency and prevent disparate impacts. The policies identified above are also of a limited scope and do not address the three minimum requirements of RCW 36.70A.070(9)(e)(i)(A), (B), and (C)."[14] Clark County's proposed resiliency element has the same violations of the GMA.[15]

For example, proposed Clark County Policy 14.1.8 provides that "[t]he county and municipalities shall improve environmental justice in each jurisdiction's climate element consistent with the environmental justice definition and policy requirements in Chapter 36.70A, including meaningful involvement with overburdened communities to identify policies that will benefit them. [GHG, RES]"[16] This policy does not identify the overburdened communities. Further, the deadline for Clark County to adopt a GMA compliant resiliency subelement including environmental justice provisions was December 31, 2025, not some undefined future date.[17]

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[13] *Id.* at 27 – 28 of [69].
[14] While the Board cited to Commerce's 2023 Commerce Guidance in addition to the statutes, the 2025 Commerce Guidance also includes the same requirements. Wash. State Dep't of Commerce, *Climate Element Planning Guidance* p. 83 (Dec. 2025 Version 1.0).
[15] Appendix I Climate Element Resource Documents Resource Document 1: List of Climate Goals and Policies Across All Chapters pp. 1 – 53.
[16] Appendix I Climate Element Resource Documents Resource Document 1: List of Climate Goals and Policies Across All Chapters p. 31.
[17] RCW 36.70A.130(1), (5)(b).

Thank you for considering our comments. If you require additional information, please contact me at telephone 206-343-0681 or email: tim@futurewise.org.

Very Truly Yours,



Tim Trohimovich, WSBA No. 22367
Director of Planning & Law

Enclosures at this link and for the Final Decision and Order in the email with this letter:

Clark Comp Plan

BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD

WESTERN REGION

STATE OF WASHINGTON

SOUTH SOUND BIRD ALLIANCE, GORDON WHITE, ROBERT METZGER, and FUTUREWISE, Petitioners, v. THURSTON COUNTY, Respondent, and BLACK LAKE QUARRY LLC, Intervenor Respondent.	**CASE No. 26-2-0013c** **FINAL DECISION AND ORDER**

SYNOPSIS

South Sound Bird Alliance, Gordon White, and Robert Metzger (together SSBA) and Futurewise (Futurewise) each separately challenged Thurston County's (County) adoption of Resolution No. 16574 and Ordinance No. 16575, both adopted on December 16, 2025. In its actions, the County adopted a ten-year periodic update of its comprehensive plan pursuant to RCW 36.70A.130(1)(a) and (5)(b), and adopted implementing development regulations. While the two appeals relate to completely separate issues, the Growth Management Hearings Board (Board) consolidated the two cases and considered them together. *See* RCW 36.70A.290(6).

Futurewise challenges the newly adopted climate element of the County's comprehensive plan, arguing that it violates numerous sections of the Growth

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Management Act (GMA). Futurewise also alleges that the County failed to amend its development regulations as a part of the update to require permit-exempt wells to comply with the GMA and RCW 90.44.050. SSBA challenges amendments to the future land use map and the official zoning map, redesignating and rezoning approximately 270 acres of land zoned Rural Residential- 20 acre (R 1/20) to Rural Resource Industrial (RRI) and requests that the Board make a determination of invalidity.

With respect to Futurewise's challenge, the Board concludes that the County's action in adopting its climate element was clearly erroneous, because neither of the adopted subelements (greenhouse gas emissions reduction and climate resiliency) is in compliance with RCW 36.70A.070(9) or RCW 36.70A.020(14). The Board also concludes that Futurewise's appeal is untimely with respect to its failure-to-revise challenge regarding development regulations to comply with RCW 36.70A.590 and RCW 90.44.050.

Turning to SSBA's challenge, the Board concludes that the County's adoption of the Black Lake Quarry (BLQ) rezone and future land use map amendments was clearly erroneous because the action was inconsistent with other provisions of the comprehensive plan. The Board also determines that the adoption of the BLQ rezone and future land use map amendments substantially interferes with fulfillment of the goals of the GMA. The Board therefore issues a determination of invalidity with respect to the rezone and future land use map amendments.

I. INTRODUCTION

The County conducted its ten-year comprehensive plan update pursuant to RCW 36.70A.130 and adopted the amendments to the comprehensive plan and development regulations on December 16, 2025. The Legislature intended for the update process to include an assessment of whether a comprehensive plan complies with recent amendments to the GMA and for analysis of changes in land use or population.[1] If a local

[1] RCW 36.70A.070(10); *Thurston County. V. Western Wash. Growth Mgmt. Hearings Bd.,* 164 Wn.2d 329, 344, 190 P.3d 38 (2008).

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jurisdiction fails to revise its comprehensive plan to comply with new or amended GMA requirements, a party may challenge the plan on that basis.[2] Both Futurewise and SSBA filed timely appeals of the County's update amendments, and the County has not challenged the standing of either petitioner.

Although this is a consolidated case, the facts and law applicable to each case are entirely separate. Therefore, the Board will address each in separate sections.

A. Futurewise Petition.

(i) Challenges to the County Climate and Resiliency Element.

Signed into law in 2023, HB 1181 made extensive changes to the GMA and other laws with respect to planning for climate change impacts. The new legislation requires changes to comprehensive plans and development regulations to establish a new climate element, along with other changes to elements related to transportation, the environment, and shorelines. The legislation also added a new climate goal to RCW 36.70A.020 and made changes to other goals to incorporate climate change planning into various aspects of the GMA. Goal 14 states:

> Climate change and resiliency. Ensure that comprehensive plans, development regulations, and regional policies, plans, and strategies under RCW 36.70A.210 and chapter 47.80 RCW adapt to and mitigate the effects of a changing climate; support reductions in greenhouse gas emissions and per capita vehicle miles traveled; prepare for climate impact scenarios; foster resiliency to climate impacts and natural hazards; protect and enhance environmental, economic, and human health and safety; and advance environmental justice.

The issues in this case revolve around the language in RCW 36.70A.070(9) and the scope of duties it imposes upon local jurisdictions to meaningfully incorporate climate

[2] *Thurston County,* 164 Wn.2d at 344; *see Skagit Surveyors & Engineers, LLC v. Friends of Skagit County.,* 135 Wn.2d 542, 558-59, 958 P.2d 962 (1998) (language of RCW 36.70A.280(1) authorizes the Board to determine whether actions or failures to act on the part of the county comply with the GMA).

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planning into their comprehensive plans and development regulations. Subsection (9) requires jurisdictions to adopt:

> [a] climate change and resiliency element that is designed to reduce overall greenhouse gas emissions and that must enhance resiliency to and avoid the adverse impacts of climate change, which must include efforts to reduce localized greenhouse gas emissions and avoid creating or worsening localized climate impacts to vulnerable populations and overburdened communities.

The statute requires a local jurisdiction's climate element to contain two subelements: a greenhouse gas emissions reduction subelement and a resiliency subelement.[3]

Futurewise challenges Thurston County's efforts to adopt both of these subelements.[4] With respect to the greenhouse gas emissions subelement, Futurewise alleges that the County has failed to identify actions it will take to reduce overall greenhouse gas emissions and has allowed development inconsistent with reducing greenhouse gas emissions.[5] Futurewise also challenges the climate resiliency subelement, alleging that the County's amendments to its plan fail to equitably enhance resiliency to, and avoid or substantially reduce the adverse impacts of climate change, and the amendments allow development inconsistent with climate resiliency.[6] In short, Futurewise alleges the County has not done enough to satisfy the mandates of the 2023 GMA climate amendments. Futurewise alleges that the County has adopted aspirational goals and policies, and even policies that may require some action, but have not been designed to provide quantifiable results in reducing the negative impacts of climate change. In addition, Futurewise alleges that other actions taken by the County will worsen climate impacts.[7]

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[3] RCW 36.70A.070(9)(b).
[4] Futurewise Brief at 2-3. Futurewise's Prehearing Brief will be cited as "Futurewise Brief" and its reply brief will be cited as "Futurewise Reply Brief."
[5] *Id.* at 4-18.
[6] *Id.* at 18-31.
[7] *See, e.g., id.* at 15 ("The allowance of rural area accessory dwelling units matter because the transport-related direct emissions of rural residents are three times those of inner city residents and 1.5 times those of suburban residents.")

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(ii) Failure to Act Challenge with Respect to RCW 36.70A.590 and Permit-Exempt Wells.

RCW 36.70A.590 was enacted in 2018[8] in legislation designed to ensure that water is available to support development. RCW 36.70A.590 states:

> For the purposes of complying with the requirements of this chapter relating to surface and groundwater resources, a county or city may rely on or refer to applicable minimum instream flow rules adopted by the department of ecology under chapters 90.22 and 90.54 RCW. Development regulations must ensure that proposed water uses are consistent with RCW 90.44.050 and with applicable rules adopted pursuant to chapters 90.22 and 90.54 RCW when making decisions under RCW 19.27.097 and 58.17.110.

Futurewise alleges that the GMA broadly requires protection of surface water and groundwater resources.[9] Further, Futurewise alleges that RCW 36.70A.590 requires the adoption of development regulations that limit any withdrawal of public groundwaters by a permit-exempt well to no more than 5,000 gallons per day pursuant to RCW 90.44.050.[10]

B. <u>South Sound Bird Alliance, Gordon White, and Robert Metzger (SSBA) Petition.</u>

SSBA challenges an official zoning map and future land use map amendments enacted as part of the County's periodic update known as the Black Lake Quarry (BLQ) Amendments. The BLQ Amendments redesignated and rezoned 270 acres of land from Rural-20 (R 1/20) District to Rural Resource Industrial (RRI) District.[11] SSBA contends this rezone amendment conflicts with a number of comprehensive plan policies and provisions

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[8] *See* Laws of 2018, ch. 1, § 102 (enacting ESSB 6091, 65th Leg. Reg. Sess.).
[9] Futurewise Prehearing Brief at 31-32; *see* RCW 36.70A.070(1) (The land use element shall provide for the protection of the quality and quantity of groundwater used for public water supplies."); RCW 36.70A.070(5)(c)(iv) ("The rural element shall include measures that apply to rural development and protect the rural character of the area, as established by the county, by: . . . protecting surface and groundwater resources.").
[10] Futurewise Brief at 31-33.
[11] SSBA Brief at 1. SSBA's Prehearing Brief will be cited as "SSBA Brief" and its reply brief will be cited as "SSBA Reply Brief." The redesignation and rezone will be referred to collectively as the "rezone" or "rezone amendment."

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of the GMA.[12] Specifically, SSBA argues that the Thurston County Board of County Commissioners failed to consider the comprehensive plan's policies establishing decision criteria for rezones. In addition, SSBA alleges that the land being rezoned is environmentally constrained, in that it contains Category 1 and 2 Critical Aquifer Recharge Areas (CARAs), is adjacent to the Black River Corridor which contains threatened salmon species and Oregon spotted frog habitat, and borders the Black River Unit of the Billy Frank, Jr. Nisqually National Wildlife Refuge.[13] SSBA also alleges that the rezone was approved based on the following false assumptions: 1) there is a scarcity of RRI-zoned land in the County; 2) the rezone would prevent the existing Black Lake Quarry (BLQ) mine from conducting below-water-table mining; 3) the rezone would require BLQ to conduct reclamation; and 4) the rezone would set aside 24 acres of land for habitat conservation.[14] SSBA also requests that the Board enter a determination of invalidity pursuant to RCW 36.70A.302, alleging that the continued validity of the BLQ amendments substantially interferes with the fulfillment of the goals of the GMA in RCW 36.70A.020(2), (3), (9), and (10).

II. BOARD JURISDICTION

The Board finds that both Petitions for Review were timely filed, pursuant to RCW 36.70A.290(2). The Board finds both Petitioners have standing to appear before the Board pursuant to RCW 36.70A.280(2)(b). The Board also finds it has jurisdiction over the subject matter of the petitions pursuant to RCW 36.70A.280(1).

III. STANDARD OF REVIEW

Comprehensive plans and development regulations, and amendments to them, are presumed valid upon adoption.[15] This presumption creates a high threshold for

[12] *Id.* at 1.
[13] *Id.* at 3-7.
[14] *Id.* at 23-29.
[15] RCW 36.70A.320(1).

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challengers as the burden is on the petitioners to demonstrate that any action taken by a county is not in compliance with the GMA.[16] The Board is charged with adjudicating GMA compliance and, when necessary, invalidating noncompliant plans and development regulations.[17]

The scope of the Board's review is limited to determining whether a county has achieved compliance with the GMA only with respect to those issues presented in a timely Petition For Review.[18] The Board is directed to find compliance unless it determines that the challenged action is clearly erroneous in view of the entire record before the Board and in light of the goals and requirements of the GMA.[19]

Any challenge that was not briefed, or was inadequately briefed, by a petitioner is considered abandoned.[20]

IV. ANALYSIS AND DISCUSSION

A. Futurewise Petition For Review Issues.

Issue No. 1. Did Thurston County's adoption of Resolution No. 16574 and Ordinance No. 16575 violate RCW 36.70A.020 and (14); RCW 36.70A.070; RCW 36.70A.070(5); RCW 36.70A.070(9); RCW 36.70A.095; RCW 36.70A.100; RCW 36.70A.120; RCW 36.70A.130(1)(a), (1)(e), and (5)(b); RCW 36.70A.190; RCW 36.70A.210; RCW 36.70A.290(2); WAC 365-196-443; and Thurston County Countywide Planning Policies 3.1, e., f, and g. because the comprehensive plan's Chapter Two Climate, Chapter Three Land Use, and Chapter Eight Transportation and the amended development regulations fail to identify the actions the jurisdiction will take during the planning cycle to reduce overall greenhouse gas emissions, do not comply with the greenhouse gas emissions reduction subelement requirements, the climate

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[16] RCW 36.70A.320(2).
[17] RCW 36.70A.280; RCW 36.70A.302.
[18] RCW 36.70A.290(1).
[19] RCW 36.70A.320(3). To find a county'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, 849 P.2d 646 (1993).
[20] *Futurewise v. Snohomish County.,* 9 Wn.App. 391, 404, 444 P.3d 1228 (2019)('[T]he Board has also explained that a party's inadequately briefed issues are treated the same as unbriefed issues when the briefing provides 'insufficient supporting facts and legal arguments' to satisfy the party's burden of proof.")(Citations omitted).

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goal, and the cited requirements, and allow development and facilities, inconsistent with reducing greenhouse gas emissions?

As briefed by Futurewise, Issue 1 examines the requirements of RCW 36.70A.070(9)(d)(i), which states:

> The greenhouse gas emissions reduction subelement of the comprehensive plan, and its related development regulations, must identify the actions the jurisdiction will take during the planning cycle consistent with the guidelines published by the department pursuant to RCW 70A.45.120 that will:
>
> > (A) Result in reductions in overall greenhouse gas emissions generated by transportation and land use within the jurisdiction but without increasing greenhouse gas emissions elsewhere in the state;
> >
> > (B) Result in reductions in per capita vehicle miles traveled within the jurisdiction but without increasing greenhouse gas emissions elsewhere in the state; and
> >
> > (C) Prioritize reductions that benefit overburdened communities in order to maximize the cobenefits of reduced air pollution and environmental justice.
>
> (ii) Actions not specifically identified in the guidelines developed by the department pursuant to RCW 70A.45.120 may be considered consistent with these guidelines only if:
>
> > (A) They are projected to achieve greenhouse gas emissions reductions or per capita vehicle miles traveled reductions equivalent to what would be required of the jurisdiction under the guidelines adopted by the department; and
> >
> > (B) They are supported by scientifically credible projections and scenarios that indicate their adoption is likely to result in reductions of greenhouse gas emissions or per capita vehicle miles traveled.
>
> (iii) A jurisdiction may not restrict population growth or limit population allocation in order to achieve the requirements set forth in this subsection (9)(d).

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Some further background information is necessary to understand the context of Futurewise's challenge. As part of HB 1181, the Legislature required the Washington State Department of Commerce (Commerce) to publish "guidelines that specify a set of measures counties and cities may implement" via their comprehensive plans and development regulations to reduce greenhouse gas emissions (GHG).[21] The law requires that the guidelines must be based on the most recent GHG report prepared by the Departments of Ecology and Commerce pursuant to RCW 70A.45.020(2).[22] Commerce also provided services to certain counties, including Thurston, that are required to adopt a GHG emissions reduction subelement, including producing a GHG inventory and draft goals and policies.[23] For The County, Commerce issued a report entitled "Thurston County 2022 Greenhouse Gas Emissions Analysis.[24] These two different sources of guidance are relevant to this case, and will be described in separate subsections below.

(i) Department of Commerce, Thurston County 2022 Greenhouse Gas Emissions Analysis (LAS)

The County is one of eleven counties in the State of Washington that is required to develop and adopt a greenhouse gas emissions reduction subelement as part of its new climate change element.[25] To accomplish this, the County entered into an interagency agreement with Commerce, which provided grant funding and services to aid the County in development and adoption of its GHG emissions reduction subelement.[26] As part of this contract work, Commerce published the "Thurston County 2022 Greenhouse Gas Emissions Analysis" or "Local Action Scenario,"[27] which provides an inventory report of Thurston County's total emissions (including direct and indirect emissions from industry, agriculture and other sectors); and its "core" emissions, which includes "sectors over which

[21] RCW 70A.45.120(1).
[22] *Id.*
[23] *IR-I, REC-028,* Bates No. 00093-110.
[24] *IR-I, REC-028,* Bates No. 00750.
[25] RCW 36.70A.095; *see IR-I, REC-028,* Bates No. 00750.
[26] *IR-I, REC-028*, Bates No. 00093-00110.
[27] *IR-I, REC-028*, Bates No. 00747 (LAS).

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the county governments often have the most influence through local policy mechanisms such as local codes/regulations . . . "[28] This document will be referred to as "the LAS" in this decision.

The LAS provides a detailed discussion of the County's greenhouse gas (GHG) emissions profile and includes forecasts of GHG emissions based on three different scenarios:

1) Business-As-Usual (BAU), which assumes no action is taken and assumes the projected population and economic growth;

(2) Adjusted Business-As-Usual (ABAU), which models estimated emissions reduction from existing federal, state, and regional policies; and

(3) Additional Local Action, which models estimated emissions reduction from local strategies such as Vehicle Miles Traveled (VMT) reduction and building energy efficiency.[29]

The LAS provides the following graphic to indicate the needs for emission reductions to meet the Washington State GHG emission reduction targets (45% by 2030, 70% by 2040, and 95% by 2050), with all reductions below the bright pink line representing potential emissions reductions that could be contributed by the local government:[30]

[28] *Id.*, Bates No. 00750.
[29] *Id.*, Bates No. 00771.
[30] *Id.*, Bates No. 00772.

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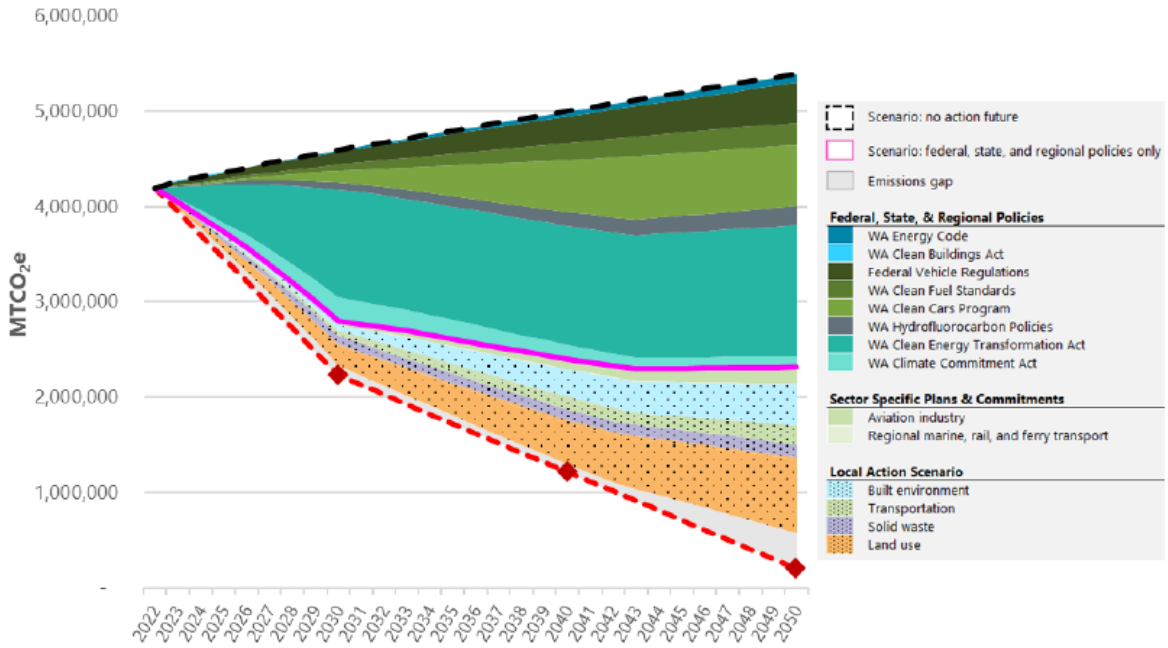
FIGURE 15. FORECASTED GHG EMISSIONS AND REDUCTIONS UNDER THREE SCENARIOS - ALL EMISSIONS.



The LAS also provides the percentage contribution of "core emissions"[31] and all other emissions under the emissions forecast for 2050, based on the above three scenarios:[32]

Findings Summary

A summary of key findings from the 2022-2050 forecast and scenario analysis is provided in Table 4 below for both the core and all emissions sources.

TABLE 4. EMISSIONS FORECAST FOR 2050, UNDER THREE SCENARIOS (% CHANGE COMPARED TO 1990 BASELINE).

Scenario	Core Emissions	All Emissions
Business-as-Usual	+42%	+33%
Adjusted Business-as-Usual	-69%	-43%
Local Action	-93%	-86%

Emission levels for 1990 were estimated based on state-level emissions trends between 1990 and 2022.

[31] *Id.,* Bates No. 00771 (Core emissions that were included in the inventory include emissions from electricity, natural gas, on-road vehicles, solid waste generation and disposal, and wastewater treatment processes.).

[32] *IR-I, REC-028*, Bates No. 00771.

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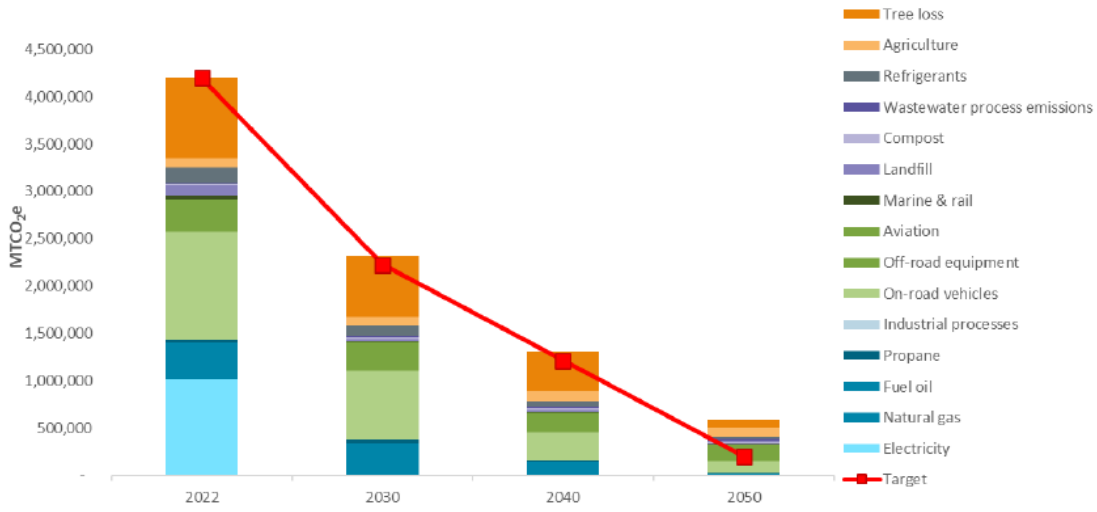
The LAS also broke down levels of potential forecasted emissions reductions for "core" and "remaining" emissions sources:[33]

FIGURE 17. FORECASTED GHG EMISSIONS AND REDUCTIONS UNDER THREE SCENARIOS ($MTCO_2E$) - ALL EMISSIONS.



The Board of County Commissioners adopted the GHG inventory conducted by Commerce in this document as well as the statewide emissions targets as part of its comprehensive plan.[34] Commitment to the 2050 statewide emission targets requires commitment to scenario (3) (local action), with emissions reductions as set out in the table above.

The LAS also provides "reduction strategies" as "key GHG emission reduction strategies for focus in Thurston County's comprehensive plan update . . . " These include the following:

- Reduce energy consumption in new and existing residential and commercial buildings through: 1) supporting clean building energy sources and 2) energy efficient building design and retrofits. Local action scenario to transition to renewably building energy sources would reduce Thurston County's built environment emissions, which made up 34% of 2022 countywide emissions.

[33] *Id.,* Bates No. 00775.
[34] *IR-I, REC-353*, Bates No.10538 (Findings 62, 63).

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- Reduce passenger vehicle travel within the county, including through changes in land use, transportation infrastructure (transit, walking, bicycling), and commuting options/modes. A reduction in passenger VMT would reduce Thurston County's communitywide on-road emissions from passenger vehicles, which made up 19% of 2022 emissions.
- Facilitate the transition to electric vehicles through expansion of reliable EV charging infrastructure and public education on options and available incentives/rebates. Local action to support transitioning passenger and freight vehicles to electric would reduce Thurston County's passenger and freight vehicle-on-road emissions, which made up 27% of 2022 communitywide emissions.
- Limit tree loss and support low-carbon land practices such as sustainable forestry, agriculture, and livestock management. Reducing tree loss emissions and emissions from agricultural practices in Thurston County would reduce land use emissions, which made up 23% of 2022 communitywide emissions.[35]

There are additional reduction strategies recommended for the County in Tables 6 and 7, which quantify the proportion of local strategy reductions in percentages.[36] In Appendix C, the LAS provides a list of model goals and policies, drawn from Commerce's "Climate Menu of Measures," which is attached to a second guidance document, described below.[37]

(ii) Department of Commerce Climate Element Planning Guidance (December 2023) (2023 Commerce Guidance)

Aside from the LAS, Commerce produced a more generally applicable interim climate element guidance document in December 2023, for use by jurisdictions such as Thurston whose periodic updates were due by December 31, 2025.[38] This document will be referred to as "the 2023 Commerce Guidance" in this decision. The 2023 Commerce Guidance is explicitly referred to in RCW 36.70A.070(9)(d)(i), which states: "The greenhouse gas emissions reduction subelement of the comprehensive plan, and its related development regulations, must identify the actions the jurisdiction will take during

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[35] *IR-I, REC-028,* Bates No. 00753-754.
[36] *Id.,* Bates No. 00773-774.
[37] *Id.,* Bates No. 00797-805.
[38] RCW 70A.45.120(3); *IR-I REC-483*, Bates No. 21371, Wash. State Dep't of Commerce, *Climate Element Planning Guidance* (Dec. 2023) (2023 Commerce Guidance).

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the planning cycle **consistent with the guidelines published by the department pursuant to RCW 70A.45.120 . . . "**(Emphasis added).

The 2023 Commerce Guidance is also referred to in RCW 36.70A.070(9)(d)(ii), which provides that for the GHG emissions reduction subelement, the actions or policies adopted by local jurisdictions "may be considered consistent" with the 2023 Commerce Guidance

> **only if:** . . . they are "projected to achieve greenhouse gas emissions reductions or per capita vehicle miles traveled reductions **equivalent to what would be required of the jurisdiction under the guidelines adopted by the department;** and . . . they are supported by scientifically credible projections and scenarios that indicate their adoption is likely to result in reductions of greenhouse gas emissions or per capita mile traveled. (Emphasis added).

(iii) Futurewise Challenge in Issue 1

Futurewise challenges Thurston County's adoption of a GHG reduction element on the basis that it did not follow the 2023 Commerce Guidance.[39] Futurewise first points to the mandatory language in Goal 14 and RCW 36.70A.070(9)(d)(i).[40] It then asserts that since the County adopted a target of 95% reduction in GHG emissions by 2050, it should have adopted the strategies and policies identified in the LAS, which provided a demonstrated pathway to achieving the adopted emission reductions. Futurewise alleges that since the County did not adopt all of these strategies and because many of the strategies it did adopt were not measurable with a clear path to local implementation, the subelement is not consistent with the 2023 Commerce Guidance and therefore inconsistent with the statute.[41] As a component of this argument, Futurewise criticizes numerous strategies in the plan as vague or aspirational with unquantifiable outcomes, and argues that the County was required to adopt policies "that have a demonstrated ability

[39] "2023 Commerce Guidance" is referred to in RCW 36.70A.070(9)(d)(i) as "guidelines published by the department pursuant to RCW 70A.45.120." For the purposes of this decision, that reference refers to the Washington State Department of Commerce, Climate Element Planning Guidance (December 2023).
[40] Futurewise Brief at 2-3.
[41] *Id.* at 4.

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to reduce greenhouse gas emissions in order to achieve the statewide greenhouse gas emissions."[42]

(iv) County's Response to Issue 1

The County responds with a number of arguments. First of all, the County asserts that the 2023 Commerce Guidance does not consist of a mandatory list of policies for GHG reduction; it is merely an advisory document.[43] Because the document was not created through rulemaking, the County argues that it does not have mandatory effect.[44] Further, the County emphasizes language in the document that affords discretion to the local jurisdiction to select policies that fit the needs and circumstances of the jurisdiction, such as "[y]our jurisdiction may develop its own goals and policies, as well as select ones by Commerce's Menu of Measures, to address minimum requirements."[45] The County also characterizes a local GHG emissions reduction program as "an iterative process that does not require immediate implementation of development codes and capital projects for newly adopted goals and policies."[46] Rather than a mandatory set of policies, the County urges that a phased approach was anticipated by the Legislature, and to interpret the Act otherwise would be [t]o penalize a jurisdiction for initiating, but not fully integrating and adopting its full suite of regulations, . . . [with] the perverse effect of delaying meaningful work, potentially to meeting the very goals and targets set by the Legislature."[47]

(v) Board Analysis

The task before the Board is "to focus on the plain meaning of the words in the Growth Management Act, and if the Act is not ambiguous we are to apply that plain meaning as an expression of legislative intent without considering extrinsic sources."[48]

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[42] 2023 Commerce Guidance at 42; Futurewise Brief at 4-18.
[43] Thurston County's Response to Futurewise's Prehearing Brief at 11. Thurston County's Brief will be cited as "Response Brief."
[44] *Id.*
[45] *Id.*
[46] Response Brief at 8 (capitalization and bold face omitted).
[47] Response Brief at 10.
[48] *Friends of Clark County & Futurewise v. Clark County,* GMHB No. 16-2-0002, Order on Summ. J. at 6 (Sept. 9, 2016).

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There is no dispute between the parties about the mandatory nature of the language in both Goal 14 and RCW 36.70A.070(9)(d)(i); Goal 14 requires local jurisdictions to "**ensure**" that GMA plans and regulations adapt and mitigate the effects of a changing climate.

RCW 36.70A.070(9)(d)(i) requires that the plan and development regulations "**must identify the actions"** the local jurisdiction will take that "**will** . . . **[r]esult in reductions"** in GHG emissions generated by land use and transportation and in per capita vehicle miles traveled within the jurisdiction. The Act further requires local jurisdictions to commit to actions that "**will . . . [p]rioritize**" reductions that benefit overburdened communities. The Board interprets the plain language of Goal 14 and RCW 36.70A.070(9)(d)(i) to mean that the Legislature is mandating local jurisdictions to enact policies that will result in demonstrable and measurable GHG emissions reductions in the minimum categories.

The Climate Commitment Act directs Commerce to include in its guidance "a set of measures counties and cities may implement via updates to their comprehensive plans and development regulations **that have a demonstrated ability to . . . reduce greenhouse gas emissions . . . "**[49] In response to that language, Commerce provided a "Menu of Measures" in the 2023 Guidance that includes policies "with a demonstrated ability to reduce emissions."[50] The Menu of Measures was also the source of policies suggested to the County in the 2022 LAS.[51] As indicated earlier, RCW 36.70A.070(9)(d) includes three minimum requirements for local GHG emissions reductions: 1) transportation and land use; 2) per capita vehicle miles traveled within the jurisdiction; and

[49] RCW 70A.45A.120(1) (emphasis added).
[50] 2023 Commerce Guidance at 42, 62, & App. L.
[51] The County also argues that the 2022 LAS is not the document referred to in RCW 36.70A.070(9)(d)(i), so the LAS is entitled to no deference. The Board agrees that it is not the document specifically identified in RCW 36.70A.070(9)(d)(i) and therefore this decision focuses on the requirements of the 2023 Commerce Guidance. However, it is a distinction without a difference. As stated above, the 2022 LAS goals, strategies, and policies (Appendix C) all derive from the "Menu of Measures" in the 2023 Commerce Guidance. In addition, we give significant weight to the LAS in recognition of the Department's administrative expertise in this field. *See Futurewise, Kian Bradley, and Trevor Reed v. City of Mercer Isl.*, GMHB No. 25-3-0003, Final Decision and Order at 39-40 (Aug. 1, 2025).

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3) prioritization of reductions that burden overburdened communities in order to maximize the co-benefits of reduced air pollution and environmental justice.

Given the mandatory language in the statute and the goal, we disagree with the County's assertion that statute contemplates an "iterative process that does not require immediate implementation of development codes and capital projects."[52] The statute doesn't explicitly require immediate action, but it does contemplate that the local jurisdiction will achieve their emission reduction targets in alignment with the state adopted target schedule up to 2050.[53] In practical terms, the Legislature is mandating action by local jurisdictions. It is up to each jurisdiction to create a program "with a demonstrated ability to reduce emissions" in a manner which achieves those targets.

The County makes several arguments asserting the 2023 Commerce Guidance is advisory in nature, none of which is compelling. First, it argues that only Commerce rulemaking is entitled to deference by the Board and, since the 2023 Commerce Guidance was not enacted by rule, it is entitled to no deference. But there is no need for the Board to accord deference or significant weight, because here the Legislature has directly required consistency with the 2023 Commerce Guidance within the statute;[54] or if not consistency, a demonstration of equivalency based on "scientifically credible projections and scenarios."[55]

Based on the above, our read of the statute is that through the requirement of consistency with Commerce guidance, the Legislature ensured that local jurisdictions will meet a minimum standard with respect to reducing GHG emissions. To achieve this goal, the Legislature tasked Commerce to come up with those standards, which they did in a *Menu of Measures* attached as Appendix L to the 2023 Commerce Guidance. The LAS

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[52] Response Brief at 8 (capitalization and bold face omitted).
[53] *See* 2023 Commerce Guidance at 43 ("Jurisdictions should use 2022 as their emissions baseline year and set incremental targets that lead to achieving net zero emissions in 2050, consistent with Washington's statewide target.").
[54] RCW 36.70A.070(9)(d)(i).
[55] RCW 36.70A.070(9)(d)(ii).

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provided a template to the County to meet the minimum standards required by the Legislature.

RCW 36.70A.070(9)(d)(ii) provides discretion to local jurisdictions to enact policies that depart from those that Commerce has identified, with a big caveat: they must be supported by scientifically credible projections that can establish GHG emission reductions and the policy must be crafted to likely reduce GHGs. In other words, in this alternative scenario the local jurisdiction must show its work to demonstrate that its policies will achieve reductions equivalent to those of Commerce, at least with respect to the minimum standards. The County did not do either.

We note that the Legislature's direct reference to the Commerce guidance manuals required under RCW 70.45A.120 puts this "guidance" on a different level than that reviewed under the usual standards of deference to interpretation of Commerce rules or guidance examined in other cases. Given that the Legislature **required** consistency with Commerce Guidance unless the local jurisdiction is able to demonstrate equivalent reductions through other policies, we read the Act to require a local jurisdiction to adopt Commerce's policies for the minimum requirements unless it is willing to do its own rigorous analysis to demonstrate it will likely meet the reduction targets through different policies. We also note that Commerce did fund the LAS specifically for Thurston County, including an appendix containing specific goals, strategies, and policies "with a demonstrated ability to reduce emissions" that would have provided the County with a safe harbor on appeal had it adopted the minimum standards.[56]

The 2023 Commerce Guidance reinforces the Board's interpretation of the mandatory nature of the Act and the need for quantitative data that demonstrates the effectiveness of the policies in reaching GHG emissions reduction goals.[57] While the 2023 Commerce Guidance is couched in "shoulds" and "mays," local jurisdictions should not assume that means that compliance with the statute is optional. The 2023 Commerce

[56] Thurston County 2022 Greenhouse Gas Emissions Analysis, *IR-I, REC 028*, Bates 0747;
[57] 2023 Commerce Guidance at 42, 60-61.

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Guidance indicates that mandatory jurisdictions, such as the County, are guided to select what is known as "Pathway 3" in the Guidance, which requires the local jurisdiction to create a GHG emissions inventory and adopt GHG goals and policies based on emissions inventory modeling results.[58] The Guidance states:

> Your jurisdiction may develop its own goals and policies, as well as select ones from Commerce's Menu of Measures to address [the] minimum requirements. **Policies that are not specifically identified in the Menu of Measures will be considered consistent with the guidance if they are measurable and supported scientifically credible projections and scenarios that indicate their adoption is likely to result in reductions of GHG emissions or per capita VMT**.[59]

The County opted to adopt different policies than those recommended by Commerce. As stated above, in so doing, the County should have provided in the record an analysis in the record with "scientifically credible projections" that establishes equivalent reductions to those identified by Commerce. The County argues that it is not legally required to follow every specific recommended action listed and the Board should defer to local discretion.[60] While it is true that the County has a choice to avoid Commerce policies on the minimum standards, in that instance the GMA requires that it provide a technically rigorous and scientifically credible analysis of how the policies it selected will meet the GHG emissions reduction goals adopted in the comprehensive plan.

Here the County did not provide any scientifically credible projection analyzing how much GHG emission reduction its adopted policies would achieve. In the absence of such analysis, the County had no basis to conclude that its adopted policies for GHG emissions reduction would be equivalent to or better than those identified by Commerce. The County has not calculated the GHG emission reductions its policies will achieve. The County did not provide the required equivalency analysis and, therefore, failed to meet the requirements of RCW 36.70A.070(9)(d)(i).

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[58] *Id.* at 44.
[59] *Id.* at 42-43 (emphasis added).
[60] Response Brief at 12.

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All the policies adopted by the County are detailed by Futurewise in an attempt to demonstrate how they do not meet the requirements of the statute. We agree with Futurewise that the County did not adopt policies reflecting the minimum standards as set forth in the 2023 Commerce Guidance, but we will not scrutinize each adopted policy. It is incumbent on the County, on remand, to put together a group of goals, policies, development regulations, and actions that meet the minimum standards of the GMA as explained in this decision, in a manner that reflects the County's local circumstances. The County "should select measurable policies with a clear path to local implementation."[61]

Issue No. 2. Did Thurston County's adoption of Resolution No. 16574 and Ordinance No. 16575 violate RCW 36.70A.020 and (14); RCW 36.70A.070; RCW 36.70A.070(1); RCW 36.70A.070(5); RCW 36.70A.070(9); RCW 36.70A.095; RCW 36.70A.100; RCW 36.70A.120; RCW 36.70A.130(1)(a), (1)(e), and (5)(b); RCW 36.70A.190; RCW 36.70A.210; RCW 36.70A.290(2); WAC 365-196-443; and Thurston County Countywide Planning Policy 10.2 because the comprehensive plan's Chapter Two Climate, Chapter Three Land Use, Chapter Four Environment, Recreation, and Open Space, Chapter Eight Transportation, and Chapter Nine Capital Facilities and the amended development regulations fail to equitably enhance resiliency to, and avoid or substantially reduce the adverse impacts of, climate change and the climate goal and related requirements and allow development and facilities inconsistent with climate resiliency?

Futurewise also challenges the resiliency subelement of the County's climate element, along with related policies required under RCW 36.70A.070(9). RCW 36.70A.070(9)(e)(i) states:

> The resiliency subelement must equitably enhance resiliency to, and avoid or substantially reduce the adverse impacts of, climate change in human communities and ecological systems through goals, policies, and programs consistent with the best available science and scientifically credible climate projections and impact scenarios that moderate or avoid harm, enhance the resiliency of natural and human systems, and enhance beneficial opportunities. The resiliency subelement must prioritize actions that benefit overburdened communities that will disproportionately suffer from compounding environmental impacts and will be most impacted by natural

[61] 2023 Commerce Guidance at 42.

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> hazards due to climate change. Specific goals, policies, and programs of the resiliency subelement must include, but are not limited to, those designed to:
>
> (A) Identify, protect, and enhance natural areas to foster resiliency to climate impacts, as well as areas of vital habitat for safe passage and species migration;
>
> (B) Identify, protect, and enhance community resiliency to climate change impacts, including social, economic, and built environment factors, that support adaptation to climate impacts consistent with environmental justice; and
>
> (C) Address natural hazards created or aggravated by climate change, including sea level rise, landslides, flooding, drought, heat, smoke, wildfire, and other effects of changes to temperature and precipitation patterns.

Futurewise asserts noncompliance and makes three related arguments to support its challenge: 1) the County failed to adopt any new development regulations implementing its own directive commitments to sea-level-rise setbacks, wildlife-hazard standards, and habitat migration corridors; 2) the Plan does not meet the statute's "designed to" standard because its policies merely copy the statutory requirements without committing the County to any action; 3) the Plan violates RCW 36.70A.070(9)(e)(i)'s mandate to "prioritize actions that benefit overburdened communities" because the policies requote the statutory imperative without any demonstrable allocation, sequencing, or measurable outcome benefitting those communities.[62]

In its briefing, the County provides lists of policies and matches them to statutory requirements, alleging that the list shows how the County is meeting each of the statutory requirements.[63] It also argues that the statute provides no timelines for targeted results and the GMA does not require immediate adoption of development regulations for newly adopted policies and plans.[64] It cites the County's implementation Plan policies, which provide timelines for certain policies and plans.[65] In addition, the County argues that

[62] Futurewise Reply Brief at 14-22.
[63] Response Brief at 22-29.
[64] *Id.* at 9.
[65] *Id.* at 29-30.

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Futurewise wrongly criticizes the policies for word choices that are aspirational in nature, especially in areas in which the County has no authority to force action.[66] Finally, the County states that the County's resiliency subelement does conform with the statute's direct to prioritize overburdened communities, citing five policies in the Plan.[67]

The plain language of the GMA in RCW 36.70A.070(9)(e)(i) is mandatory: the subelement "must equitably enhance resiliency to, and avoid or substantially reduce the adverse impacts of, climate change in human communities and ecological systems through goals, policies, and programs consistent with best available science . . . ". RCW 36.70A.070(9)(e)(i) also requires that local jurisdictions "must prioritize actions that benefit overburdened communities that will disproportionately suffer from compounding environmental impacts and will be most impacted by natural hazards due to climate change." The statute also states:

> Specific goals, policies, and programs the resiliency subelement must include, but are not limited to, those designed to:
>
> (A) Identify, protect, and enhance natural areas to foster resiliency to climate impacts, as well as areas of vital habitat for safe passage and species migration;
>
> (B) Identify, protect, and enhance community resiliency to climate change impacts, including social, economic, and built environment factors, that support adaptation to climate impacts consistent with environmental justice; and
>
> (C) Address natural hazards created or aggravated by climate change, including sea level rise, landslides, flooding, drought, heat, smoke, wildfire, and other effects of changes to temperature and precipitation patterns.[68]

While the climate resiliency subelement language does not set specific targets in the same manner that the GHG emissions reduction subelement language does, it is no

[66] *Id.* at 30-31.
[67] *Id.* at 31-32.
[68] RCW 36.70A.070(9)(e)(i).

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less mandatory, and includes the minimum standards that each jurisdiction is required to meet.

We examine each of Futurewise's arguments in the sections below.

(i) Was the County required to adopt development regulations to implement the climate resiliency subelement?

It is undisputed that while the County did adopt a resiliency subelement, it adopted no amendments to development regulations to implement the plan. Futurewise argues that the County's enactment violates RCW 36.70A.120 and RCW 36.70A.130(1)(e) because the policies are unenforceable without development regulations.[69] It asserts there are numerous examples of regulatory gaps between policies and regulations.[70] The County argues that the statute does not include a specific timeline for targeted results, and the County's plan sets reasonable implementation timeframes.[71] Further, the County asserts that the regulatory structure of the GMA does not require an immediate adoption of regulations for the implementation of newly adopted policies and plans, relying on *Brinnon Grp. v. Jefferson County,* 159 Wn. App. 446, 476-77 (2011) and WAC 365-196-500(1).[72]

As with the GHG emission reduction element, we read the plain language of the climate resiliency subelement as containing action-forcing requirements. While aspirational policies are certainly not wrong, there must be a body of "goals, policies, **and programs**" consistent with best available science as a part of the resiliency subelement to meet the minimum requirements.[73]

We conclude that the use of the term "programs" in RCW 36.70A.070(9)(e)(i) means that the Legislature intended that local jurisdictions do something more than adopt goals and policies. The term "programs" is not defined by the Act, so we look to the

[69] Futurewise Brief at 25.
[70] *Id.* at 26-30.
[71] Response Brief at 29.
[72] *Id.* at 7-9.
[73] RCW 36.70A.070(9)(e)(i)(emphasis added).

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standard dictionary definition for its meaning.[74] Merriam-Webster Dictionary defines "program" as "a plan or system under which action may be taken toward a goal."[75] Applying this definition in the context of the resiliency subelement, "program" means an initiative or implementation measure under which action will be taken. This could include adoption or funding of a program, or adoption of a development regulation. The Board reviews the following policies as examples:

- County Policy CL-8.B.1: "Provide technical and financial assistance (e.g., grants and loans) to encourage improved manure and fertilizer management . . . "[76]

This policy provides a specific, tangible action that has been shown to provide benefits in the agricultural sector toward climate resiliency. This policy should also be implemented through an implementation measure which outlines the concrete steps that will be taken to implement the policy in the near future. The Board was unable to identify any implementation measure for this policy in Appendix B of the comprehensive plan.

- County Policy CL-7.A.6: "Protect and restore natural ecosystems that sequester and store carbon, such as forests, wetlands, prairies, and estuaries."[77]

Again, this policy does provide a specific directive with mandatory language that, while broad, could be implemented through a series of different actions such as conservation programs and development regulations. However, the implementation measure related to this policy contains a number of "action items" that provide vague promises related to this policy, such as IP-CL-21: "Create and strengthen land use policies focused on preserving and restoring native and climate adapted vegetation habitats."[78] The implementation

[74] *Baxter v. Western Wash. Univ*., 20 Wn. App. 2d 646, 659 (2021) (to determine meaning, a court considers the standard definition of the precise term used in the statute).
[75] Merriam-Webster. (n.d.). Program. In Merriam-Webster.com dictionary. Available at https://www.merriam-webster.com/dictionary/program
[76] *See* Response Brief at 27.
[77] *See id.* at 26.
[78] *IR-I, REC-353*, Bates No. 11060.

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action item appears to say nothing more specific than the policy, which in and of itself is vague and general. It only requires more policies, not a program or a development regulation under which action will be taken. The only timeline given is "ongoing."

Vague general policies without clear, action-forcing implementation measures will not effectively address climate change resiliency in the manner envisioned by the Legislature, and the three minimum directives of RCW 36.70A.070(9)(e)(i) will not be achieved.

The 2023 Commerce Guidance contains an extensive process recommended to local jurisdictions to develop a climate resiliency subelement.[79] While there is no express requirement in the statute to follow the 2023 Commerce Guidance as there is with the GHG emission reductions subelement, we accord substantial weight to the Commerce guidelines due to the agency's expertise on the subject of climate change and resiliency.[80] The 2023 Commerce Guidance states:

> The Growth Management Act requires that development regulations be consistent with and implement the comprehensive plan . . . In addition to adopting a comprehensive plan climate element with goals and policies, your jurisdiction must adopt the necessary development regulations.[81]

This statement echoes the requirements of the Act at RCW 36.70A.040(4) and RCW 36.70A.130(1)(e), both of which require implementation of comprehensive plans through development regulations. We disagree with the County's assertion that there is no requirement in the GMA to adopt development regulations to implement the plan. Ever since the inception of GMA, the adoption of development regulations to implement the comprehensive plan has been a foundational requirement of the GMA.[82]

We do not read *Brinnon Grp. v. Jefferson County,* 159 Wn. App. 446, 476-77 (2011) as a departure from that analysis. In *Brinnon Grp.,* the Petitioners alleged an internal

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[79] 2023 Commerce Guidance, pp.15-41.
[80] *Mercer Is.,* GMHB No. 25-3-0003, at 39-40.
[81] 2023 Commerce Guidance at 70.
[82] See *Kittitas County Conservation, Ridge & Futurewise v. Kittitas County*, GMHB No. 10-1-0013 Final Decision and Order (June 6, 2011).

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inconsistency based on the Brinnon subarea plan, which identified a "conceptual" master planned community location in the subarea plan. In agreeing with the Board that there was no inconsistency, the court of appeals specifically noted that the subarea plan contained text that stated, "The land use maps provided are for initial discussion purposes only and do not constitute land use designation proposals."[83] The court found that because the subarea plan was only conceptual, it did not preclude the land use designation established by the site-specific comprehensive plan amendment on internal consistency grounds.[84]

The *Brinnon Grp.* case does not stand for the proposition that there is no requirement to adopt development regulations to implement comprehensive plan directives, as the County argues. The case is limited to its facts and presents an entirely different question unrelated to the need for implementation of the mandatory requirements of RCW 36.70A.070(9)(e)(i). *Brinnon Grp.* involved the development of a master planned community, which is an optional feature of the GMA, and the challenge involved internal consistency between two (arguable) plan elements.[85]

WACs adopted by Commerce reinforce the need for implementation of the comprehensive plan through development regulations:

> **WAC 365-196-800** Relationship between development regulations and comprehensive plans.
>
> (1) Development regulations under the act are specific controls placed on development or land use activities by a county or city. **Development regulations must be consistent with and implement comprehensive plans adopted pursuant to the act.**
>
> "Implement" in this context has a more affirmative meaning than merely "consistent." See WAC 365-196-210. **"Implement" connotes not only a lack of conflict but also a sufficient scope to fully carry out the goals, policies, standards and directions contained in the comprehensive plan.[86]**

[83] *Brinnon Grp*., at 476-77.
[84] *Id*.
[85] *Id.*
[86] WAC 365-196-800(1)(emphasis added).

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We agree with Commerce's interpretation here, and conclude that a requirement to "implement" the comprehensive plan goes beyond internal consistency. It requires the comprehensive plan and development regulations to function as an integrated whole to fulfill the requirements of the GMA. That is especially true when the statute phrases requirements in the form of mandates, as it does for the climate element.

We conclude that the County failed to implement its climate element through development regulations and other action-forcing programs to ensure that the mandates of the statute are met.

(ii) Does the Plan fail to meet the statute's "designed to" standard because its policies merely copy the statutory requirements without committing the County to any action?

Futurewise states that while it supports three of the policies in the County's resiliency subelement, it challenges the remaining resiliency policies as "impermissibly aspirational" and argues that they do not satisfy the "must address standards."[87]

The 2023 Commerce Guidance identifies minimum requirements for developing a climate resilience subelement which include the three minimum policy areas identified in the statute.[88] These policy areas are broad and include many pressing problems attributed to climate change, including: sea level rise, landslides, flooding, drought, heat, smoke, wildfire, habitat, species migration, natural area resilience, and community resilience.[89]

We agree with Futurewise that many of the County's policies are very broadly worded and fail to direct specific action. Goals and policies may be aspirational, but the subelement as a whole should provide clear goals, policies, and implementing measures with action-forcing requirements and deadlines (programs, development regulations, and funding commitments) that implement the minimum requirements of the statute. Without

[87] Futurewise Brief at 23.
[88] 2023 Commerce Guidance, at 16; *see* RCW 36.70A.070(9)(e)(i)(A), (B), and (C).
[89] RCW 36.70A.070(9)(e)(i)(A), (B), and (C).

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providing tangible, measurable action steps, the climate resiliency subelement adopted by County is not in compliance with the GMA.

The County has done extensive and noteworthy planning in its effort to put together its resiliency subelement.[90] It developed the Thurston County Climate Mitigation Plan in 2020 with regional partners.[91] That document outlines in detail the impacts of climate change within Thurston County.[92] The County appears to have amassed an extensive amount of information to aid it in complying with the requirements of RCW 36.70A.070(9)(e), but it has not provided a menu of action-forcing policies with clear avenues for implementation. The 2023 Commerce Guidance states that the resilience subelement must have at least one resilience goal and supportive policy for each climate-exacerbated hazard that is relevant to the jurisdiction, and indicates that the *Menu of Measures*, contained as an appendix to the 2023 Commerce Guidance, "denotes highest-priority policies, based on their effectiveness, number of co-benefits, potential to promote equity and justice, and other criteria."[93]

The Board recognizes that the County does not have authority to take actions outside of its jurisdictional authority. However, there are many areas within the County's authority in which it can address and improve climate resiliency, but it has not clearly addressed the minimum requirements in its policies or implementation measures. The Board also recognizes there are funding constraints, but many actions would only require prioritization of existing resources. The 2023 Commerce Guidance provides examples of policies that are framed as action-forcing requirements and could provide a template.[94] The following is just one example of a goal with policies:[95]

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[90] *IR-I,REC-353*, Bates No. 10589-609.
[91] *IR-I,REC-353*, Bates No. 10592-93.
[92] *IR-I,REC-353*, Bates No. 10593-609.
[93] 2023 Commerce Guidance at 37.
[94] *Id.* at 69.
[95] *Id.*

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Climate Goal 6 (CG 6): Ensure that development and redevelopment projects are resilient to the impacts of climate change. [*Measure #8*]

CG 6 Policies:

6-1 In areas with significant vulnerability to climate hazards, facilitate and support long-term community visioning including consideration of managed retreat. [*Measure #465*]

6-2 Review required buffers and setbacks for steep slopes and shorelines vulnerable to erosion exacerbated by climate change, and establish new minimums, if necessary, so that improvements are not required to protect structures during their expected life. [*Measure #19*]

6-3 Consider future climate conditions during siting and design of capital facilities, including changes to temperature, rainfall, and sea level, to help ensure they function as intended over their planned life cycle. [*Measure #439*]

6-4 Identify and implement strategies for reducing residential development pressure in the wildland-urban interface. [*Priority measure #444*]

The Board concludes that the resiliency subelement does not comply with the requirements of RCW 36.70A.070(9)(e)(i) because it does not include specific goals, policies, and programs designed to (A) identify, protect, and enhance natural areas to foster resiliency to climate impacts, as well as areas of vital habitat for safe passage and species migration; (B) identify, protect, and enhance community resiliency to climate change impacts, including social, economic, and built environment factors, that support adaptation to climate impacts consistent with environmental justice; and (C) address natural hazards created or aggravated by climate change, including sea level rise, landslides, flooding, drought, heat, smoke, wildfire, and other effects of changes to temperature and precipitation patterns.

(iii) Does the Plan violate RCW 36.70A.070(9)(e)(i)'s mandate to "prioritize actions that benefit overburdened communities" because the policies requote the statutory imperative without any demonstrable allocation, sequencing, or measurable outcome benefitting those communities?

Futurewise extends the same basic arguments regarding other requirements of the resiliency subelement to the County's response to the following mandate in RCW 36.70A.070(9)(e)(i): "The resiliency subelement must prioritize actions that benefit

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overburdened communities that will disproportionately suffer from compounding environmental impacts and will be most impacted by natural hazards due to climate change."

Specifically, Futurewise argues that to "prioritize" requires more than mention; it requires demonstratable allocation, sequencing, or a measurable outcome tied to identified communities, not a general commitment to consider equity as one factor among others.[96] It further alleges that the County has failed to identify specific communities, what investments will be prioritized, and what sort of program developments will occur.[97] While Futurewise acknowledges that the County did some of this work through its Vulnerability Assessment, it asserts that 2023 Commerce Guidance requires the County's policies to provide concrete identification of overburdened communities and explicit direction of priority measures toward them.[98] It asserts that the adopted policies do not make the connection.[99] Futurewise singles out Policy CL-5.A.1, CL-5.A.2, and CL-5.A.3 as not identifying specific communities or directing a specific priority action toward them.[100]

The County states that the planning commission selected policies directly tied to overburdened communities.[101] It also states that the following policies address overburdened communities:

> CL-1.A.1 requires environmental justice audits before new zoning designations or rezones.
>
> CL-1.B.7 directs accessible and affordable weatherization in overburdened communities, particularly higher-density areas.
>
> CL-1.C.3 fosters partnerships with organizations and educational institutions serving overburdened communities to implement energy education and incentive programs that reduce energy-cost burdens.

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[96] Futurewise Reply Brief at 20.
[97] *Id.* at 20.
[98] *Id.* at 29.
[99] *Id.*
[100] *Id.*
[101] Response Brief at 31.

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> CL-1.D.3 facilitates community-owned renewable-energy generation projects and prioritizes placement in historically underserved communities.[102]

The 2023 Commerce Guidance provides an extensive discussion of this requirement.[103] It specifically states: "Jurisdictions must identify the overburdened communities and vulnerable populations in their scopes of work in order to determine if the proposed climate element measures are equitable. They must also collaborate with these stakeholders to adequately determine if a measure may enable or prevent disparate impacts."[104]

While in some instances the above policies provide the type of action steps required by the statute, the policies fail to specifically identify overburdened communities. There is no evidence in the record that the County has collaborated with identified overburdened communities to jointly identify actions that will improve climate resiliency and prevent disparate impacts. The policies identified above are also of a limited scope and do not address the three minimum requirements of RCW 36.70A.070(9)(e)(i)(A), (B), and (C).

The Board concludes that the County failed to comply with the requirements of RCW 36.70A.070(9)(e)(i)'s requirement "to prioritize actions that benefit overburdened communities that will disproportionately suffer from compounding environmental impacts and will be most impacted by natural hazards due to climate change."

In summary, the Board concludes that the actions of the County in adopting a climate resiliency element as a part of Ordinance 16575 (REC 352) and Resolution 16574 (REC 353) were clearly erroneous and not in compliance with RCW 36.70A.070(9)(e)(i) because the policies are, for the most part, vague and aspirational without a clear path to implementation through development regulations and other programs. Accordingly, they do not meet the statute's requirement to equitably enhance resiliency to, and avoid or substantially reduce the adverse impacts of climate change in human communities and

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[102] *Id.* at 32.
[103] 2023 Commerce Guidance at 16-41 & 72-87.
[104] *Id.* at 72.

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ecological systems through goals, policies and programs consistent with best available science and scientifically credible climate projections and impact scenarios.[105]

As indicated above, the County's plan update did not include specific goals, policies, and programs "designed to:" (A) Identify, protect and enhance natural areas;(B) Identify, protect, and enhance community resiliency to climate change impacts; and (C) Address natural hazards created or aggravated by climate change, including sea level rise, landslides, flooding, drought, heat, smoke, wildfire, and other effects of changes to temperature and precipitation patterns.[106] Finally, the update also fail to meet RCW 36.70A.070(9)(e)(i)'s requirement to prioritize actions that benefit overburdened communities that will disproportionately suffer from compounding environmental impacts and will be most impacted by natural hazards due to climate change. The County failed to identify overburdened communities and failed to collaborate with those communities to create an action menu to reduce or avoid climate change related impacts.

Issue No. 3. Did Thurston County's adoption of Resolution No. 16574 and Ordinance No. 16575 violate RCW 36.70A.020, (10), and (14); RCW 36.70A.070; RCW 36.70A.070(1); RCW 36.70A.070(5); RCW 36.70A.120; RCW 36.70A.130(1)(a), (1)(e), and (5)(b); and RCW 36.70A.290(2); RCW 36.70A.590; and RCW 90.44.050 because the comprehensive plan's Chapter Three Land Use and Chapter Four Environment, Recreation, and Open Space and the amended development regulations fail to require permit exempt wells to comply with the requirements of the Growth Management Act and RCW 90.44.050?

Futurewise argues that during the periodic update, the County failed to revise its development regulations to comply with RCW 36.70A.590.[107] RCW 36.70A.590 was enacted by the Legislature in 2018 and requires that "[d]evelopment regulations must ensure that proposed water uses are consistent with RCW 90.44.050 and applicable rules adopted pursuant to chapters 90.22 and 90.54 RCW when making decisions under RCW

[105] RCW 36.70A.070(9)(e)(i).
[106] *Id.*
[107] Futurewise Brief at 32.

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19.27.097 and RCW 58.17.110." Futurewise cites several Washington Supreme Court cases in support of its argument.[108]

Futurewise alleges that the County is required to enact development regulations limiting groundwater withdrawals that exceed 5,000 gallons per day as required by RCW 90.44.050, but has failed to do so. Futurewise further argues that because RCW 36.70A.590 was enacted in 2018, the County should have enacted new development regulations in compliance with the statute by December 31, 2025.

The County argues that the claim brought by Futurewise is time-barred, citing *Thurston County v. Western Washington Growth Mgmt. Hrgs. Bd.*, 164 Wn.2d 329, 190 P.3d 38, 45 (2008).[109] The County points out RCW 36,70A.590 became effective on January 19, 2018,[110] prior to the adoption of the County's last periodic update on November 12, 2019.[111] In addition, the County also argues that its sanitary code already requires water availability findings.[112]

Futurewise responds that this issue is not time-barred because none of the findings in Resolution 16574 or Ordinance 16575 (adopted December 16, 2025) acknowledged Engrossed Substitute Senate Bill (ESSB) 6091 or RCW 36.70A.590. In support of its claim Futurewise cites *City of Snoqualmie v. King County,* a 2013 Board case.[113] There the Board found that RCW 36.70A.130(1) requires that periodic updates of comprehensive plans and development regulations include "a finding that a review and evaluation has been made and identifying the revision made or that a revision was not needed and the reasons therefor."[114]

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[108] *See Dep't of Ecology v. Campbell & Gwinn, LLC*, 146 Wn.2d 1, 14, 43 P.3d 4, 11 (2002); *Kittitas County v. Eastern Wash. Growth Mgmt. Hrgs. Bd.,* 172 Wn.2d 144, 180, 256 P.3d 1193, 1210 (2011).
[109] Response Brief at 32.
[110] Laws of 2018, ch. 1, § 102 (enacting ESSB 6091, 65th Leg. Reg. Sess.
[111] *Id.* at 34-35 (citing Res. 15836 and Ord. 15837);
[112] Response Brief at 35; *see* Thurston County Sanitary Code, Article III, § 7.2.
[113] *City of Snoqualmie v. King County,* GMHB No. 13-3-0002 Final Decision and Order (Aug. 12, 2013).
[114] *Id.* at 42-43.

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We don't disagree that RCW 36.70A.590 incorporates water availability requirements into the GMA, specifically the limited use of permit-exempt wells for development. We also agree with Futurewise that the County has not demonstrated that it has implemented this GMA requirement in county code. The County's citation to its sanitary code is inapposite because that code requires review of water quality and quantity of a groundwater source for safe drinking water supply purposes, which has to do only with the physical availability of water and its quality as safe drinking water.[115] The sanitary code is an environmental health code enacted pursuant to RCW 70.05.060 and 70.46.060, not a development regulation under the GMA.[116] The County has not pointed out any GMA development regulation implementing RCW 36.70A.590.

The question the Board is left with is whether Futurewise is foreclosed from this challenge as a "failure-to-revise" because RCW 36.70A.590 was effective in January 2018, nearly two years before the County's 2019 update. Review of the *Thurston County* case indicates that the County is correct. In that case, the court reviewed the periodic update statute, RCW 36.70A.130(1) and stated:

> The intended for the update process to include an assessment of whether a comprehensive plan complies with recent amendments to the GMA. RCW 36.70A.070(9) ("[i]t is the intent that new or amended elements required after January 1, 2002, be adopted concurrent with the scheduled update provided in RCW 36.70A.130"). The update process "provides the vehicle for bringing plans into compliance with recently enacted GMA requirements and for recognizing changes in land usage or population. It creates no 'open season' for challenges previously decided or time barred." . . .

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[115] Thurston County Sanitary Code, Article III, § 7.2. This code does not appear in the record, but both the County and Futurewise have cited it in their briefing. We take official notice of the Thurston County Sanitary Code § 7.2 pursuant to WAC 242-03-630(4).

[116] Thurston County Sanitary Code, Article III, § 7.1 (citing authority granted under WAC chapters 246-290, 246,291, and 173-160). The first two citations have to do with the implementation of safe drinking water laws which address protection of public health with respect to water quality and physical availability, and the third citation refers to minimum construction requirements for commissioning and decommissioning a well).

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> Limiting the scope of failure-to-revise challenges recognizes the original comprehensive plan was legally deemed GMA compliant. **A comprehensive plan is presumed valid upon adoption, RCW 36.70A.320(1), and is conclusively deemed legally compliant if it is not challenged within 60 days. The seven year update does not strip the original comprehensive plan of its legal status as GMA compliant, and we will not presume the intended such a drastic measure in the absence of statutory language to that effect.** If the laws have not changed, the comprehensive plan remains GMA compliant.[117]

Futurewise argues that the County failed to do an appropriate analysis in its findings to show why a revision to the code was not necessary, in either the 2019 or the 2025 periodic update, and therefore, the issue is not time-barred, citing *City of Snoqualmie*.[118] In *Snoqualmie,* the Board reviewed the central requirement of RCW 36.70A.130(1)(a), which states: "[e]xcept as otherwise provided, a county or city shall take legislative action to review and, if needed, revise its comprehensive land use plan and development regulations to ensure the plan and regulations comply with the requirements of this chapter . . . "[119] The Board focused on the definition of the term "legislative action," which is defined as follows: "Legislative action means the adoption of a resolution or ordinance following notice and public hearing indicating at a minimum, a finding that a review and evaluation has occurred and identifying the revisions made, or that a revision was not needed and the reasons therefor."[120] Pursuant to this definition, the Board found that although King County performed the required update, if failed to provide any findings related to why a certain revision was not needed; specifically, by articulating "how its existing comprehensive plan policies and process comply with SHB 1825."[121] The Board concluded that "[t]he County's failure to revise or explain in the 2012 CP update does not

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[117] *Thurston County v. W. Wash. Growth Mgmt. Hearings Bd.*, 164 Wn.2d 329, 344-345 (emphasis added).
[118] Futurewise Reply Brief at 23-24.
[119] *City of Snoqualmie* at 42-43.
[120] RCW 36.70A.130(1)(c).
[121] *City of Snoqualmie* at 43.

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meet the requirements of RCW 36.70A.130(1) as construed by the *Thurston County* court."[122] The Board remanded King County's ordinance on that basis.[123]

The Board does not read the *City of Snoqualmie* case to be inconsistent with the general rule of the *Thurston County* case. In *City of Snoqualmie*, the Board allowed the City's failure-to revise challenge, because King County's failed to update its plan during a periodic update and did not explain why it did not need to revise its plan in response to recently adopted legislation. The distinction is that the City had challenged the validity of the plan within 60 days of adoption, or as part of the first periodic update after the legislation went into effect. Citation to this case would be more compelling had Futurewise brought the challenge after the 2019 periodic update. Here, Futurewise argues we should hear a failure-to-revise challenge that should have been brought in 2019. Given the language of the *Thurston County* decision cited above, the Board has no authority to hear this challenge because Thurston County's plan was deemed conclusively legally compliant after the 60-day timeline expired in 2019. Futurewise Issue 3 is dismissed.

B. <u>South Sound Bird Alliance, White and Metzger (SSBA) Legal Issues.</u>

Black Lake Quarry LLC (BLQ) submitted a proposal to amend the future land use map and zoning map for four parcels from Rural Residential 1/20 (R 1/20) to Rural Resource Industrial (RRI) through the County's comprehensive plan docket process.[124] The property is located at 4741 88th Avenue SW and contains four assessor parcels for a total of (approximately) 270 acres.[125] Below is a map of the proposal:[126]

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[122] *Id.*
[123] *Id.*
[124] *IR-II, REC-634*, Bates No. 24528. The County put the BLQ proposal on the docket.
[125] *IR-II, REC-634*, Bates No. 24528.
[126] *IR-II, REC-634*, Bates No. 24530.

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Figure 1. Aerial photo of 4741 88th Ave SW, *parcels 12718310000, 1371344000, 13724110000, 13724140000*

(i) Description of the Site

The staff report for the BLQ proposal indicates that these four parcels have been used as a gravel pit since the 1980s.[127] The Thurston County Hearing Examiner approved a special use permit with conditions in 2018 for the mine use.[128]

Surrounding uses include open space, residential, and agriculture.[129] Parcels to the west are a part of the Black River Unit of the Billy Frank, Jr. Nisqually National Wildlife Refuge (National Wildlife Refuge), which is owned and managed by the United States Fish and Wildlife Service (USFWS). The Black River winds its way through the National Wildlife Refuge and serves as an important tributary to the Chehalis River.[130] The below map illustrates the proposal's proximity to the National Wildlife Refuge and the Black River itself, while also illustrating Type I, II, and III critical aquifer recharge areas (CARAs) on the site:[131]

[127] *IR-II, REC-634*, Bates No. 24530.
[128] *IR-II, REC-658*, Bates No. 28453.
[129] *IR-II, REC-634*, Bates No. 24529.
[130] *IR-II, REC-634*, Bates No. 24529.
[131] *IR-II, REC-634*, Bates No. 24589.

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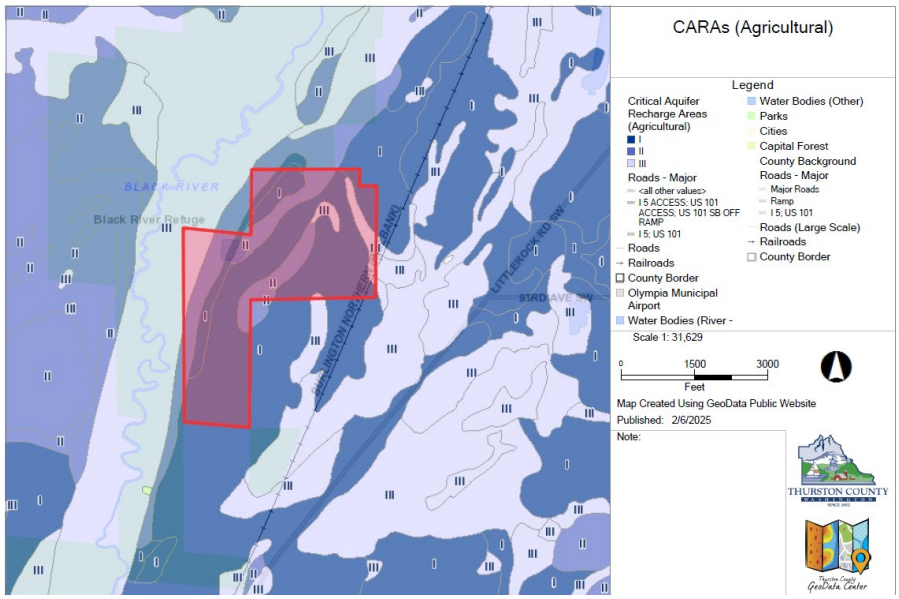

According to the staff report, the (previous) R 1/20 zoning allows for mostly residential and resource uses such as agriculture, mining, and forestry.[132] The RRI zoning allows for more intensive uses, including service and retail uses, lumber mills, manufacturing, and manufacture of stone, brick, and concrete products.[133] The staff report confirmed that if the site is rezoned RRI, the site could be developed at a higher intensity than its current state, including a maximum lot coverage by hard surfaces of 60%.[134] The staff report also indicated that "[t]he requested zoning may impact surrounding neighborhoods through increased noise, traffic, and environmental impact, and may provide additional commercial activity."[135]

The site itself includes steep slopes, frequently flooded areas, high groundwater hazard areas, shoreline areas, hydric soils, prairie soils, mazama pocket gopher soils and areas, Oregon spotted frog areas, wetlands, fish and wildlife habitat conservation areas,

[132] *IR-II, REC-634*, Bates No. 24529.
[133] TCC 20.29.020.
[134] *IR-II, REC-634*, Bates No. 24529; *see* TCC 20.29.040(3).
[135] *IR-II, REC-634*, Bates No. 24529.

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knotweed containment sites, noxious weed sites, and critical aquifer recharge areas.[136] As stated above, the proposal area is directly adjacent to the Black River and the National Wildlife Refuge, owned and managed by the USFWS.[137] According to the USFWS:

> The Black River Unit consists of a large, complex mosaic of wetland, riparian, and upland habitats surrounding a low-lying river. These diverse habitats include river and tributary channels, locally rare and unique bog, shrub swamp, riparian forest, emergent marsh, seasonally flooded non-native grassland, dry non-native grassland, and mixed forest. Drainage from the nearby Black Hills creates Stony, Dempsey, and Waddell Creek tributaries, as well as many seeps and springs. This low-gradient, meandering river of tannin-stained, slow-moving, nearly silt-free water flows southwesterly with a floodplain that is subject to frequent surface flooding during winter and spring.
>
> Within the boundary of the Unit, there is spawning and rearing habitat and migration corridors for steelhead, cutthroat trout, and coho and Chinook salmon. 150 species of migratory birds, including waterfowl and neotropical songbirds, are found here. The Olympic mudminnow, a state-endemic and state species of concern, survives in the Unit. The federally threatened and state endangered Oregon spotted frog survives here thanks to the complex system of wetlands and connections to the river. Some of the largest Oregon spotted frog population in Washington State are found here.[138]

(ii) Locational Guidelines in the Comprehensive Plan

The staff report indicates that the requested rezone must meet certain Locational Guidelines located in the comprehensive plan:[139]

- ***Land Capability and Environmental Characteristics*:** land should be capable of supporting industrial development with minimum constraints; land should be level and free of critical areas.
- ***Natural Resources:*** development should not detrimentally impact natural resource uses.

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[136] *IR-II, REC-634*, Bates No. 24532.
[137] *IR-II, REC-634*, Bates No. 24532.
[138] *IR-II, REC-634*, Bates No. 24532.
[139] *IR-II, REC-634*, Bates No. 24533-34.

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- ***Utilities:*** utility services should be appropriate to serve the rural area and the intensity of proposed industrial activity. Uses are limited to those that can be served by onsite septic systems without adversely affecting groundwater.
- ***Transportation:*** Rural industrial uses should either rely on rail service or be within close proximity to a freeway interchange or state highway. According to staff, the rail line nearby is abandoned, and the site is not adjacent to the freeway. It is accessed by Littlerock Road, which is a county arterial.
- ***Existing Land Uses:*** Uses within this designation should be compatible with rural character, which includes functional and visible components. The functional component describes that lands are put to uses that are dependent on a rural setting. An industry that has no orientation to rural or resource based activities is not dependent on a rural location. Uses with noise, traffic, or light are incompatible with rural character. The visual component describes the visual attributes of the rural landscape. If the visual character of the rural landscape is unduly disrupted or altered by a proposed use, then it is incompatible with rural character. Site design, landscaping, design and construction of internal and access roads and building scale should reinforce the set boundaries and rural nature of the industrial area.

Other "General Decision-Making Guidelines are 1) community preference identified through public process; 2) impacts on economy, employment, and tax base; and 3) easy to identify boundaries."[140]

(iii) Planning Commission Review

The Planning Commission recommended denial of the proposed rezone.[141] Their findings of fact specifically highlighted adjacency to the Black River Corridor and the fact that the area contains Oregon spotted frog habitat; the site contains mapped potential

[140] *IR-I, REC-353*, Bates No. 10640.
[141] *IR-II, REC-636*, Bates No. 24619.

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wetlands, shoreline areas, fish and wildlife habitat conservation areas, critical aquifer recharge areas, geologically hazardous areas, and frequently flooded areas; and the fact that the site is adjacent on all sides to low-intensity rural uses and is outside the urban growth area or other areas that support more intensive development.[142]

(iv) The Rezone and Redesignation Action

On December 16, 2025, the Thurston County Board of County Commissioners (BOCC) took two actions to redesignate and rezone the Black Lake Quarry from R 1/20 to RRI. The BOCC adopted Resolution No. 16574 amending the comprehensive plan, effective on the date of adoption (Dec. 16, 2025).[143] Also on December 16, 2025, the BOCC adopted a companion zoning ordinance, amending the County's Official Zoning Map with identical findings and an identical map. [144]

The following map was adopted both the zoning ordinance and the comprehensive plan resolution:[145]

[142] *IR-II, REC-636*, Bates No. 24619-20.
[143] *IR-I, REC-353*, Bates No. 10549 (findings); 11304 (map). In Section I of the Resolution, the BOCC adopted findings for the "Black Lake Quarry Land Use and Zoning Amendment." The BOCC finding (1) states: "The Black Lake Quarry Land Use Amendment and Associated Rezone updates the Thurston County Future Land Use Map. It also updates the Official Zoning Map Thurston County, Washington in corresponding Ordinance."
[144] *IR-I, REC-352*, Bates No.10353 (findings); 10527-28 (map).
[145] *IR-I, REC-353*, Bates No. 11304. The adopted map identifies the applicant as Black Lake Quarry LLC. The map described the "project info" as "+/- 270 acres."

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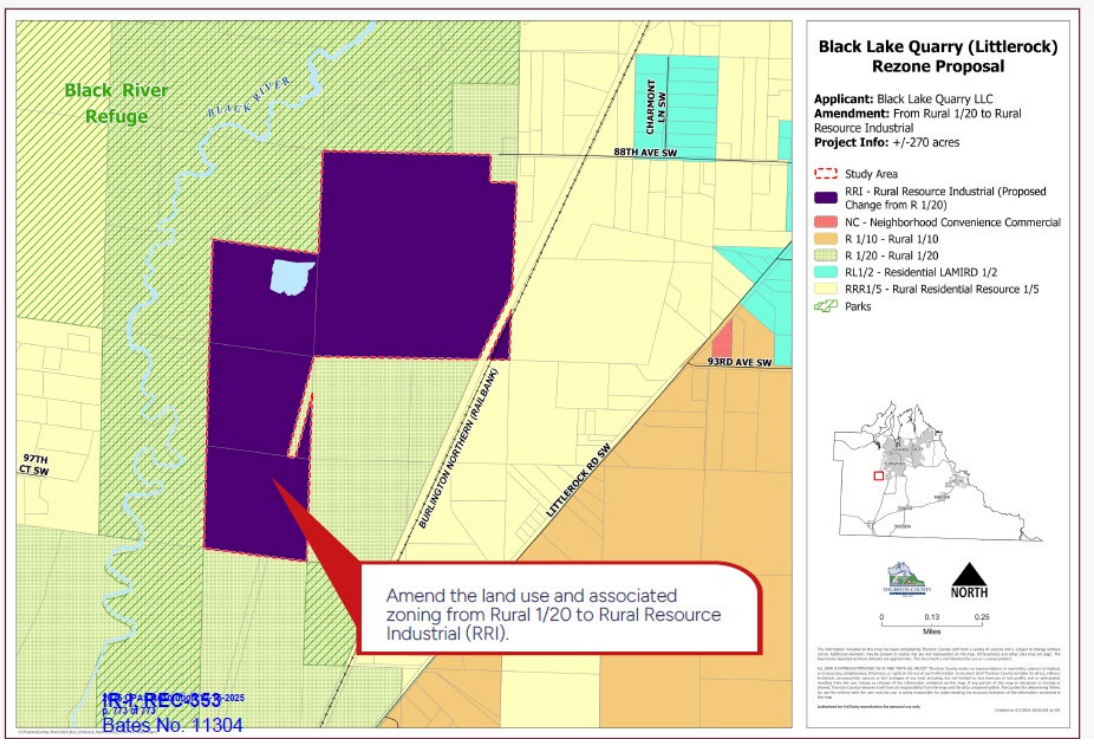

According to the findings in Ordinance No. 16575 and Resolution No. 16574, the County amended the future land use map "to change the land use designation of approximately 270 acres (Parcels 127183100000, 137344000, 13724110000, 13724140000) at 4741 88th Ave SW from Rural One Dwelling per 20 Acres (R 1/20) to Rural Resource Industrial (RRI).[146] The BOCC included the following finding in both the ordinance and the resolution:

> 10. The Board has determined that the proposed land use and rezone amendment provides land use and zoning for rural resource industries that support natural resources and the rural economy, without increasing or requiring urban services, and is consistent with rural character.[147]

[146] *IR-I, REC-353*, Bates No. 10549.
[147] BLQ Response Brief at 15; *IR-I, REC-353*, Bates No. 10549.

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BLQ describes the proposal as actually being a rezone for 247 acres, not 270 acres, based on a revision to the proposal that maintained approximately 24 acres in R 1/20.[148] And although BLQ acknowledges that the BOCC approved the full 270-acre rezone, it describes that outcome as a "scrivener's error" which does not correctly reflect the proposal as approved.[149]

It does appear from the discussion at the BOCC meeting at which the rezone was approved that at least some of the commissioners were under the impression that there was a 24-acre set aside for critical areas adjacent to the Black River.[150] However, the Board cannot agree that the error, if there was one, is a scrivener's error. The BOCC did not address the 24-acre set aside in its findings in Ordinance 16575 or Resolution 16574. It is also not otherwise clear from the record that the BOCC intended to carve out the 24-acre area. The record demonstrates that the BOCC adopted a 270-acre rezone from R 1/20 to RRI, with no inclusion of a 24-acre set aside. Therefore, we conclude that BLQ's characterization of the alleged error as a "scrivener's error" is inaccurate. This action does not meet the definition of a scrivener's error as the Board has identified in a previous case.[151] That definition is found in RCW 36.70A.035(2)(b)(iii), which addresses clerical errors as exceptions for public review and comment:

> (b) An additional opportunity for public review and comment is not required under (a) of this subsection if:
>
> > (iii) The proposed change only **corrects typographical errors, corrects cross-references, makes address or name changes, or clarifies language of a proposed ordinance or resolution without changing its effect.** (Emphasis added).

[148] Black Lake Quarry Response Brief at 3. Black Lake Quarry's Response Brief will be cited as "BLQ Response Brief."
[149] BLQ Response Brief at 3.
[150] *IR-II, REC-683* (transcript of December 2, 2025 BOCC meeting).
[151] *See Comm. Lodging Operators of Chelan County, LLC, v. Chelan County,* GMHB No. 21-1-0007 at 12-13 (Mar. 24, 2022).

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An alleged error that allows for a rezone of 24 acres is more than a "typographical error" or other language clarification, since it materially modifies the effect of the action. As a result, the Board must consider the rezone[152] to be for the full 270 acres.

(v) The GMA Challenge By SSBA

SSBA's Petition For Review contained a total of 10 issues challenging the rezone. At the Hearing on the Merits, SSBA withdrew Issues 6 and 13. SSBA also failed to address Issue 10. After reviewing the entire record on this matter and considering the arguments of the parties, the Board finds that the rezone is not in compliance with the GMA because in adopting the rezone/redesignation, the BOCC failed to address the Locational Guidelines in the comprehensive plan and failed to consider the specific rezone decision requirements in comprehensive plan policies LU-1.B.10 and LU-1.B.11. Because the BOCC failed to address the required decision criteria for rezones in its own comprehensive plan, the rezone is inconsistent with and fails to implement the plan. The Board also finds the rezone to be clearly erroneous because while BLQ relies heavily on the assertion that 24 acres of the rezone will be excerpted from the proposal to protect habitat for the Oregon spotted frog and other species in the Black River Corridor, the 24-acre area remains within the area rezoned/redesignated to RRI. The Board concludes that the rezone and redesignation decision violates the internal consistency requirements of the GMA, and is firmly convinced a definite mistake has been made, based on the following analysis.

Issue No. 4. Did the County violate RCW 36.70A.070 and RCW 36.70A.040(3)'s internal consistency requirement by adopting amendments inconsistent with the locational guidelines for Rural (1/20) and Rural Resource Industrial designations, found at pages 3-18 and 3-33 to 3-35 of the Land Use Element of the Comprehensive Plan, because the properties are within the Black River corridor, lack proximity to transportation infrastructure, contain more than minimal environmental constraints, not free of critical areas, outside of urban water and sewer services, and where allowed uses will cause significant adverse effects to surface and groundwater?

[152] Since the parties refer to the action as a "rezone," the Board will refer to it in the same manner even though it was actually a rezone and a redesignation. The Petition For Review appeals both redesignation and the rezone, but refers to both as a "rezone." Petition For Review, at 2.

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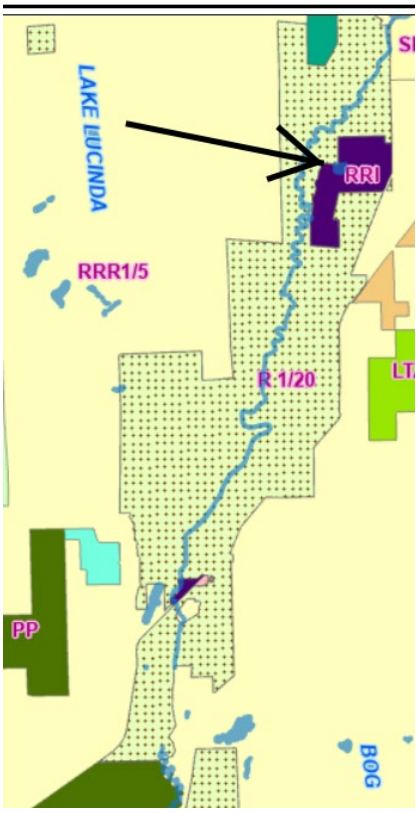
SSBA asserts that the 270-acre rezone violates the Locational Guidelines for RRI designations because the properties are within the Black River Corridor, the area lacks proximity to transportation infrastructure, and the area contains more than minimal environmental constraints, including critical areas. Further, SSBA alleges the area is outside the service area for urban water and sewer and will cause significant adverse effects to surface and groundwater.



SSBA's first argument has to do with proximity to the Black River Corridor.[153] SSBA alleges that the property was expressly zoned R 1/20 to protect the Black River Corridor, which originally encompassed the entire proposal site.[154] The map portion on this page shows the R 1/20 zoning designation in relation to the Black River.[155]

SSBA cites TCC 20.09B.010, the purpose statement for the Rural-One Dwelling Unit per Twenty Acres (R 1/20) zone:

> **(1)** Protect public health and safety by minimizing development and **avoiding incompatible uses in environmentally sensitive and hazardous areas such as the Black River Corridor, the Nisqually Bluff**, **and parcels completely covered by critical areas;**
>
> (2) Provide greater opportunities for protecting critical areas and creating open space corridors;

[153] The Board reviewed the map attached to Ordinance 16575 and Resolution 16574, which appears on page 42 of this decision. The scale on the map shows that the area zoned Rural Resource Industrial extends to less than 0.13 miles (687 feet) from the Black River; and the map shows the rezoned area borders the "Black River Refuge." The Board takes official notice of these facts pursuant to WAC 242-03-640(1)(c).
[154] SSBA Reply Brief at 5; Bates No. 34688.
[155] Bates No. 34688.

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(3) Provide for low density residential uses, agriculture, forestry, conservation and associated uses appropriate for a rural area that do not require urban services; and

(4) Provide for mining through a special use permit process.(Emphasis added).

SSBA also argues that the Locational Guidelines expressly indicate that the RRI designation is appropriate only where industrial development can occur with "minimal environmental constraints" and should generally be "free of critical areas."[156] With respect to critical areas, SSBA alleges following: 1) a majority of the site is either Category I or Category II Critical Aquifer Recharge Areas (CARAs); 2) large portions of the property contain High Groundwater Hazard Areas; 3) the property contains designated critical habitat for the Oregon spotted frog; 4) approximately 14.24 acres of the property are frequently flooded areas within the 100-year floodplain; 5) a portion of the property is within the Natural Environment under the Thurston County Shoreline Master Program; and 6) the site includes steep slopes, hydric soils, prairie soils, mazama pocket gopher soils and areas, fish and wildlife habitat conservation areas, knotweed containment sites, and noxious weed sites.[157] SSBA also calls out the comprehensive plan Locational Guidelines for RRI, which state that the RRI zone is appropriate if it can support industrial uses "without significant adverse effects on surface or groundwater."[158]

SSBA points out that the Locational Guidelines of the comprehensive plan, as reprinted above, "signal caution in making certain land use designations" when there are widespread constraints or sensitive areas on the property.[159] The Guidelines indicate that in that situation, either many uses that might otherwise be permitted in the designation might not be permitted due to the constraints, or that sensitive areas may be harmed or destroyed.[160]

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[156] *See IR-I, REC-353*, Bates No. 10663.
[157] SSBA Brief at 11.
[158] SSBA Brief at 11; *see IR-I, REC 353* Bates No. 10663.
[159] *IR-I, REC-353*, Bates No. 10639.
[160] *IR-I, REC-353*, Bates No. 10639.

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BLQ counters that SSBA's argument that the property lies within the "Black River Corridor" is factually incorrect.[161] BLQ states that "the minor portion of the Property adjacent to the Black River was excluded from the proposal during the review, and should remain designated as R 1/20."[162] BLQ claims there are few critical areas, based on the Hearing Examiner's 2018 decision, and that "the RRI designation is fully consistent with the land at issue."[163] BLQ also contends that the RRI designation is appropriate for areas that are not served by sewer and can support natural resource-based economic activities.[164] Finally, BLQ states that SSBA ignores the fact that the CARA regulations will preclude certain uses including asphalt, cement, and concrete plants, chemical manufacturing uses that use or generate more than two hundred twenty pounds of hazardous waste or materials per month.[165] BLQ also points to the groundwater monitoring that has occurred onsite for 23 years as a part of the mining operation as a positive.[166]

The Board has reviewed the Locational Guidelines and their applicability to the rezone. The Board finds that the BOCC did partially address the Locational Guidelines in Finding 10 in the ordinance. While Finding 10 did not address the Guidelines related to environmental constraints, it did expressly find that "the proposed land use and rezone amendment provides land use and zoning for rural resource industries that support natural resources and the rural economy, without increasing or requiring urban services, and is consistent with rural character."[167]

The question remains concerning whether the BOCC's decision adequately considered the environmental constraints of the property in accordance with the Locational Guidelines. The zoning code and vicinity map supports SSBA's argument that the property

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[161] BLQ Response Brief at 11.
[162] *Id.* at 11-12.
[163] *Id.* at 12.
[164] *Id.* at 13.
[165] *Id.*
[166] *Id.*
[167] *IR-I, REC-353*, Bates No. 10549.

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is part of a corridor for protection of the Black River through R 1/20 zoning,.[168] As demonstrated by the county's own maps, the site is entirely covered by Type 1, 2, or 3 CARAs.[169] While it is true that the County has regulations to limit certain uses in CARAs, the Locational Guidelines caution against locating RRI in areas with critical areas without reference to how critical areas regulations might mitigate harm ("[l]and should be generally be level and free of critical areas.").[170] In addition, there are numerous other critical area concerns as verified by the staff report that have not been addressed by the BOCC in its findings.

While the Board generally accords deference to the legislative authority to balance competing requirements of the comprehensive plan to make decisions on land use designations, the BOCC has not provided any findings related to the environmental constraints of the property and how they affect its suitability as industrially zoned property. Based on the evidence in the record, it is difficult to characterize the site as containing "minimal environmental constraints." Specifically, the Guidelines for the RRI designation state: "*Land should be capable of supporting industrial development with minimal environmental constraints. Particularly important is the ability to support uses without significant adverse effects on surface or groundwater. Land should generally be level and free of critical areas."*[171] The ordinance and resolution also did not include any finding regarding effects of industrial uses in an area of high groundwater hazard, including the 60% impervious surface area allowance.

SSBA has met its burden to show that the area is encumbered with critical areas and the rezone as adopted appears to violate the Locational Guidelines on its face, particularly the sentences quoted in italics above. Because the BOCC did not address these issues at all in its written findings, the adoption of the 270-acre rezone conflicts with

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[168] *IR-I, REC-353*, Bates No. 11304.
[169] *IR-II, REC-627*, Bates No. 24378.
[170] *IR-I, REC-35*3, Bates No. 10663.
[171] *IR-I, REC-353*, Bates No. 10663 (emphasis added).

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the Locational Guidelines of the comprehensive plan. The Board is left with the firm conviction that a mistake has been made and concludes that the County's action in approving the rezone was clearly erroneous.

Issue No. 5. Did the County violate RCW 36.70A.040(3), RCW 36.70A.070, and RCW 36.70A.130(1)(e) by adopting amendments that conflict with Policies LU-1.B.10 and LU-1.B.11, where the record affirmatively shows noncompliance and/or where there is an absence of analysis or evidence demonstrating compliance with the policies' mandatory criteria?

SSBA argues that the rezone does not comply with policies LU-1.B.10 and LU-1.B.11 of the comprehensive plan. Both of these policies address criteria that relate to rezoning or redesignating property.

(i) *LU-1.B.10*

LU-1.B.10 states:[172]

> Rezoning of any parcel with a rural designation to a different designation should only occur when one or more of the following apply:
>
> a. Circumstances have substantially changed since the current land use designation/zoning was adopted and the definition, characteristics or locational guidelines for the current district no longer apply.
>
> b. The rezone would promote the general welfare of the affected community.
>
> c. The rezone would maintain or enhance environmental quality.
>
> d. Thurston County pursues a legislative rezone.

SSBA argues that the rezone does not comply with Policy LU-1.B.10's requirements (a) through (d). With respect to changed circumstances, SSBA asserts that there are no changed circumstances meriting a rezone from R 1/20 to RRI.[173] Mining has existed on the property for decades as a temporary special use, the environmental significance of the Black River Corridor has not changed, the site is not adjacent to natural resource lands,

[172] LU-1.B.10(d), *IR-I, REC-353*, Bates No. 10677.
[173] SSBA Brief at 13.

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and the site is not in close proximity to state highways, the interstate, or operating rail lines.[174]

BLQ first emphasizes that the operative verb in this policy is "should," not "shall." BLQ argues that changed circumstances do apply precisely because of the mining use, such that "the R 1/20 designation no longer cleanly applies, as there are no homes on the property."[175]

We will address the "should" v. "shall" argument highlighted by BLQ later in this decision. The test of changed circumstances, embedded in the County's comprehensive plan, is a well-established legal test to ensure a rezone is in the public interest and to prevent spot rezones.[176] The basic doctrine requires that "the proponent of a rezone must show a substantial change in circumstances since the last zoning or amendment unless the proposed rezone implements the policies of the comprehensive plan."[177] Case law establishes a variety of factors that courts consider when determining whether there is a demonstration of substantial change in circumstances, including changes in public opinion, in local land use patterns, and on the property itself.[178]

The policy applies only to rural designations and first directs the decision maker to examine whether the definition, characteristics or locational guidelines for the current rural district no longer apply. In the Locational Guidelines, the primary land uses for R 1/20 are "open space, outdoor recreation, residential, agriculture, forestry and compatible mineral extraction approved through a special use process."[179] The Guidelines further state that the designation: 1) may contain forests, mineral resources, critical areas, and soils suitable for agriculture; 2) allowed uses do not require provision of urban services or utilities; and

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[174] SSBA Brief at 13.
[175] BLQ Response Brief at 15-16.
[176] *See Parkridge v. Seattle,* 89 Wn.2d 454, 462-63, 573 P.2d 359 (1978)(proponents of rezone had burden of proof in demonstrating that conditions had substantially changed since the original zoning such that a rezone was required in the public interest).
[177] *Henderson v. Kittitas County,* 124 Wn. App.747, 754, 100 P.3d 842 (2004).
[178] *Henderson,* 124 Wn. App. at 754, 100 P.3d 842 (2004).
[179] *IR-I, REC-353*, Bates No. 10647.

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3) residences, agriculture, forestry, mineral extraction, open space, or undeveloped land may be present.

We see no evidence of a substantial change of circumstances on the property as contemplated by the Locational Guidelines and the zoning code. Contrary to BLQ's assertion, one of the express purposes of the R 1/20 zone is to "[p]rovide for mining through a special use process."[180] The fact that the property has been used as a mine rather than for single-family residences does not provide evidence of a change in circumstances; to the contrary, the mining use is consistent with R 1/20 zoning. We agree with SSBA that there is no evidence of a substantial change in circumstances.

The second criterion (b) is whether the rezone would promote the general welfare of the community. SSBA argues that 1) "[t]he overwhelming weight of public testimony opposed the proposal;" 2) the TRPC Buildable Lands Study confirmed there is a significant excess of available industrial land within existing urban growth areas; and 3) the rezone is not in the public interest.[181]

BLQ argues that the Board determined that the rezone would promote the general welfare of the affected community when it adopted the following finding:

> 10. The Board has determined that the proposed land use and rezone amendment provides land use and zoning for rural resource industries that support natural resources and the rural economy, without increasing or requiring urban services, and is consistent with rural character.[182]

The Board disagrees with BLQ's assertion that this finding addresses the general welfare. While this statement relates to perceived benefits to natural resource industries and the rural economy, it does not encompass the general welfare as a whole, which is better reflected in the adopted Locational Guidelines in the plan. General welfare is related to police power and the general authority for zoning, which encompasses a broad

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[180] TCC 20.09B.010.
[181] SSBA Brief at 13.
[182] BLQ Response Brief at 15; *IR-I, REC-353*, Bates No. 10549.

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spectrum of public policy goals.[183] We do not interpret the BOCC's finding 10 to provide a positive indication that the BOCC determined that this rezone "promotes the general welfare of the affected community" as required by LU-1.B.10(b).

Moreover, the BOCC did not address the impacts of the rezone on the "affected community" as the criterion requires, which includes the nearby residents in R 1/20 and the National Wildlife Refuge. The staff report indicates that impacts of the rezone will include increases in noise, traffic, light, environmental impact and commercial activity.[184] The Locational Guidelines indicates these types of impacts are incompatible with rural character.[185]

The third criterion (c) is whether the rezone will maintain or enhance environmental quality. SSBA argues that the rezone will allow a number of industrial uses that will introduce major sources of pollutants and risk of groundwater contamination.[186] In addition, SSBA asserts that the industrial uses will be harmful to salmon in the nearby Black River, which is designated critical habitat for threatened species of salmon.[187]

BLQ asserts that the area of the rezone has been under environmental review for decades with groundwater monitoring occurring on a regular basis.[188] In addition, BLQ points out that the County issued a determination of nonsignificance (DNS) under the State

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[183] RCW 36.70.010 states that the purpose of chapter 36.70 RCW, which establishes basic zoning laws in Washington State:

> The purpose and intent of this chapter is to provide the authority for, and the procedures to be followed in, guiding and regulating the physical development of a county or region through correlating both public and private projects and coordinating their execution with respect to all subject matters utilized in developing and servicing land, all to the end of assuring the highest standards of environment for living, and the operation of commerce, industry, agriculture and recreation, and assuring maximum economies and conserving the highest degree of public health, safety, morals and welfare.

[184] *IR-II, REC-634,* Bates No. 24529.
[185] *IR-II, REC-634,* Bates No. 2453-34.
[186] SSBA Brief at 13.
[187] SSBA Brief at 14.
[188] BLQ Response Brief at 15.

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Environmental Policy Act (SEPA) for the proposal concluding there would be no probable significant adverse environmental impacts, and the DNS was not challenged.[189]

BLQ's argument may suffice to answer questions or appeals under SEPA, which has its own procedural requirements. This appeal asks whether the rezone complies with GMA's requirements. The GMA requires that a non-project rezone be consistent with the comprehensive plan. The intensification of use that will be allowed under the RRI zone is tested through the Locational Guidelines and policies such as LU-1.B.10. As already stated, the rezone is inconsistent these policies, especially since the BOCC failed to consider them. SEPA compliance is not a proxy for GMA compliance in this context. Even if the impacts listed in the county's GMA plan criteria for rezones were not classified as significant by the county in issuing the DNS, the DNS is a procedural determination to determine whether an EIS is required. SEPA determinations alone cannot stand in for an evaluation of plan-listed rezone criteria. The rezone ordinance did not contain analysis of the Locational Guidelines or other rezone criteria, or citation to any studies or reports providing that analysis.

The intensification of use that will be allowed under the RRI zone will result in adverse environmental impacts, even if they were not classified as significant by the county in issuing the DNS. The staff report evaluated the plan criteria and the intensification of use and resulting impacts to the surrounding area in the form of noise, traffic, light, and development incompatible with a rural landscape.[190] In addition, the BOCC did not even address the plan's list of environmental issues that should be considered in its findings, even though the record reveals that this property contains sensitive habitat adjacent to the Black River. The Board agrees with SSBA that the rezone will not maintain or enhance environmental quality and therefore does not meet the criteria (c) of Policy LU-1.B.10.

[189] BLQ Response Brief at 15.
[190] *IR-II, REC-634*, Bates No. 24529.

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We note that the fourth criteria of LU-1.B.10 is whether "Thurston County pursues a legislative rezone" and is not applicable to this appeal. No party has argued that this rezone has been pursued by the County, nor has the County even submitted briefing on this appeal. Further, the future land use map and zoning map both indicate that BLQ is the applicant.[191]

Finally, as BLQ points out, Policy LU-1.B.10 uses "should" rather than "shall" as the operative language. BLQ urges that the policy is not mandatory because the requirement is not stated as an imperative.[192] The Board notes that the context of the policy is that the rezone "should only occur" if it meets one or more of the criteria, which suggests a more mandatory reading. Regardless, the Board has held that the term "should" in policy documents must be construed to have a specific directive meaning.[193] While there may be a qualitative difference between "should" and "shall," we hold that a comprehensive plan policy cannot simply be ignored because it contains the word "should." Here the BOCC failed to address any of these requirements directly and therefore did not determine whether the rezone met the requirements of the comprehensive plan. The rezone is inconsistent with LU-1.B.10 because it does not meet any of the criteria. Internal consistency means that planning policies and regulations must not make it impossible to carry out one provision of a plan or regulation and also carry out others.[194] In this case, the rezone policies requiring the BOCC to consider certain criteria in enacting a rezone were ignored. The Board is firmly convinced that a mistake has been made and the failure to address the requirements of LU-1.B.10 was clearly erroneous.

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[191] *IR-I, REC-353*, Bates No. 11304. The adopted map identifies the applicant as Black Lake Quarry LLC.
[192] BLQ Response Brief at 16.
[193] *Whidbey Envtl. Action Network v. Growth Mgmt. Hr'gs Bd.,* No. 80093-1-I, 2020 Wash. App. LEXIS 569 at 26 (Ct. App. Mar. 9, 2020) *(quoting City of Snoqualmie v. King County, CPS*GMHB No. 92-3-0004 (FDO, Mar. 1, 1993) (unpublished).
[194] *Futurewise v. Whatcom County.,* GMHB No. 11-2-0010c Final Decision and Order at 121 (Jan. 9, 2012).

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(ii) LU-1.B.11.

LU-1.B.11 states:

If rezoning is requested for a portion of a land use designation:

a. The impact of a proposed rezone on landowners remaining in the original designation should be evaluated and considered;

b. The proposed rezone should only be allowed if there is projected to be minimal adverse impact on neighboring landowners and on the continued use of a rural district for natural resource-based industries or conservation purposes;

c. Regular, easily definable boundaries should be maintained; and

d. The rezoning should not increase the demand for urban levels of service.

SSBA asserts that the County's approval of the rezone violates every safeguard in the criteria of LU-1.B.11, specifically: 1) the impact on landowners remaining in the original designation was not evaluated and considered; 2) the BOCC did not determine whether the adverse impact would be minimal on neighboring landowners and on the continued use of a rural district of natural resource-based industries or conservation purposes; 3) the rezone does not follow logical boundaries, it is "a 270-acre industrial island in a sensitive rural corridor" and creates "a sprawling industrial use across the rural county;" and 4) industrial use of the property consumes significantly more energy and generates higher VMT than the R 1/20 designation, due to the lack of public transit in the area and likely truck traffic to industrial facilities.[195]

BLQ maintains that all four criteria of the policy have been met and again quotes the BOCC finding no. 10 that relates to the rural economy and support of natural resource industries.[196]

The Board does not see any evidence that the BOCC considered impacts to landowners within the remaining designation or that adverse impacts would be minimal on neighboring properties and uses as discussed in the previous section. In particular, the County staff report has documented impacts both to the National Wildlife Refuge and to

[195] SSBA Brief at 15-16.
[196] BLQ Response Brief at 17*; IR-I, REC-353*, Bates No. 10549.

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neighboring property owners who would live next to the industrial uses.[197] There is no evidence in the record that the BOCC considered any of that information as a part of their decision. We agree with SSBA that the siting of an industrial zone directly adjacent to the National Wildlife Refuge is problematic. The Locational Guidelines also require close proximity to the interstate or state highway, because it will increase VMT through the rural area and draw more urban services into this area through employee and customer traffic in the rezone area. Again, the BOCC wholly failed to consider these issues in making its decision on the rezone.

We reiterate our determination regarding LU-B.1.10 that is equally applicable to LU-B.1.11: the BOCC failed to address any of these requirements directly and therefore did not determine whether the rezone met the requirements of the comprehensive plan. While we accord deference to local choices, especially in the rural area, we cannot accord deference to this decision because the BOCC failed to follow its own criteria when it considered the rezone. The Board is firmly convinced that a mistake has been made and the failure to address the requirements of LU-1.B.11 was clearly erroneous.

Issue No. 6. Did the County violate RCW 36.70A.040(3), RCW 36.70A.070, and RCW 36.70A.130(1)(e)'s consistency requirements by adopting amendments that are inconsistent with Comprehensive Plan Policies NR-8.A.1, NR-8.A.2, and NR-9.A.1, where conflicts cannot be avoided or minimized, the land is characterized by a predominance of environmental constraints, allowed uses will adversely impact adjacent or nearby land uses, and post-extractive uses will conflict with those identified at permitting? *WITHDRAWN BY PETITIONER.*

Issue No. 7. Did the County violate RCW 36.70A.040(3), RCW 36.70A.070, and RCW 36.70A.130(1)(e)'s consistency requirements and fail to be guided by RCW 36.70A.020(10) by adopting amendments that are inconsistent with Policies EROS-2.A.2 and EROS-2.A.3 where the rezone authorizes permanent intensive industrial activity in extreme and highly sensitive aquifer recharge areas?

[197] *IR-II, REC-634*, Bates No. 24529-34.

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Issue No. 8. Did the County violate RCW 36.70A.040(3), RCW 36.70A.070, and RCW 36.70A.130(1)(e)'s consistency requirements and fail to be guided by RCW 36.70A.020(10) by adopting amendments inconsistent with Policies EROS 3.A.1, EROS 3.A.2, EROS 3.A.4, EROS 3.A.5, EROS-6.A.1, EROS 6.A.5. EROS 6.A.8, EROS 6.A.14, and EROS 6.A.16 where the rezone authorizes permanent intensive industrial activity on properties immediately adjacent to a national wildlife refuge, critical fish and wildlife habitat, listed species, and a natural shoreline designation?

Issue No. 9. Did the County fail to be guided by the goals in RCW 36.70A.020(2), (3), (4), (5), (9), (10), and (14) by adopting amendments inconsistent with Comprehensive Plan policies and locational guidelines identified above, where the subject properties lie within the Black River corridor; lack proximity to transportation infrastructure, and where allowed uses will conflict with existing land uses and cause direct harm to critical areas, fish and wildlife, and a national wildlife refuge?

In Issues 7,8, and 9, SSBA challenges the rezone as inconsistent with numerous plan policies and seven goals of the GMA. Each of these issues seeks to compare a map amendment to a single policy or goal and asks the Board to find inconsistency on that basis. The court of appeals addressed a similar issue in *Spokane County v. E. Wash. Growth Mgmt. Hearings Board,* 173 Wn. App. 310, 333, 293 P.3d 1248 (2013). There, the court reviewed a map amendment to determine whether it advances a certain policy in the comprehensive plan:

> The comprehensive plan contains dozens of planning goals and policies. It is unlikely that any map amendment would advance all of them. In identifying 13 goals to guide local comprehensive planning, the Legislature itself cautioned that it was not listing goals in order of priority and that its identification of the goals "shall be used exclusively for the purpose of guiding the development of comprehensive plans and development regulations." RCW 36.70A.020. Goals considered by local governments in comprehensive planning may be mutually competitive at times. *Quadrant Corp.*, 154 Wn.2d at 246 (quoting Richard L. Settle, *Washington's Growth Management Revolution Goes to Court*, 23 Seattle U. L. Rev.5, 11 (1999)). For that reason, if a map amendment meaningfully advances other comprehensive plan goals and policies, a finding by the growth board that it fails to advance another—if it fails to advance, for example, a goal of encouraging high density residential development on sites having good access to a major arterial—that alone cannot be an invalidating

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> inconsistency. The weighing of competing goals and policies is a fundamental planning responsibility of the local government.[198]

Like the *Spokane County* case, this map amendment may advance one or more policies in the comprehensive plan or goals of the GMA, while failing to advance others. As stated above, the weighing of competing goals and policies is the fundamental responsibility of local government.

(i) Issue 7.

In Issue 7, SSBA contends that the BLQ rezone proposal to RRI creates an irreconcilable conflict with Policies EROS-2.A.2 and EROs 2.A.3. EROS-2.A.2 states: "Protect groundwater quality and prevent aquifer contamination, degradation, and depletion through the comprehensive management of groundwater in conformance with . . ." an array of federal, state, and local laws, as well as local plans to protect groundwater and aquifers.[199] EROS-2.A.3 states: "Determine if there are areas where low summer stream flows or elevated instream water temperature may, now or in the future, imperil anadromous or native resident fish. If such areas are identified, the county should devise and implement development restrictions and management practices as necessary to sustain fish life."[200]

(a) EROS-2.A.2.

SSBA first argues that the rezone of the property precludes achievement of EROS-2.A.2 because of the rezone will allow an increase in impervious surface coverage from approximately 5% in R 1/20 to 60% under RRI.[201] SSBA also expresses concern that the RRI zoning will allow intensive industrial uses that are significant sources of nitrogen, chemical and other pollutants.[202] BLQ replies that SSBA is misreading the policy as a

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[198] *Spokane County,* 173 Wn.App. at 333.
[199] *IR-I, REC-353*, Bates No. 10707.
[200] *IR-I, REC-353*, Bates No. 10707.
[201] SSBA Brief at 17-18.
[202] SSBA Brief at 18.

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general directive to protect groundwater, rather than a requirement to comply with existing federal, state, and local law with respect to groundwater.

The Board agrees with BLQ that the policy speaks to development of a system to protect groundwater quality and prevent aquifer contamination in compliance with an array of federal, state and local law and regulations. It does not imply a direct criterion applicable to a rezone. While the rezone's impact on groundwater resources is a concern, this policy simply requires the county to regulate in compliance with the law.

(b) EROS-2.A.3.

SSBA argues that the RRI rezone jeopardizes fish species of concern (coho and chinook salmon, steelhead, and cutthroat) in the Black River and its tributaries because of higher impervious surface limits and increase of water depletion in this area.[203] SSBA also argues that EROS-2.A.3 requires "restrictions" to sustain fish.[204]

BLQ argues that SSBA's argument is misplaced because the policy requires the County to devise and implement development regulations to protect fish, it does not require the rezone action to protect fish. BLQ contends that SSBA has failed to meet its burden with respect to this issue.

The Board agrees with BLQ that the policy prescribes enactment of development regulations to protect fish and does not specify a criterion applicable to the rezone action. SSBA has not shown a consistency violation under the GMA.

(ii) Issue 8.

SSBA challenges the RRI rezone as inconsistent with 9 different comprehensive plan policies. In a manner similar to Issue 7, SSBA describes the challenge as follows: "the rezone is inconsistent with and fails to implement the nine Comp Plan policies designed to protect surface water, fish and wildlife habitat, and the natural functions of wetlands and waterways."[205] SSBA's challenge fails because SSBA has not met is burden

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[203] *Id*.
[204] *Id*.
[205] SSBA Reply Brief at 17.

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of proof to show how the rezone will actually affect each of these environmental resources. While SSBA relies heavily on the increased amount of impervious surface that would be allowed under RRI, it does not point to any studies or scientific references that show that there will be impacts as a result of the increase in impervious surface on this property. This challenge is different than that in Issues 4 and 5, in that the policies and guidelines involved in those Legal Issues are directed specifically to the process for analyzing rezones. By contrast, the policy inconsistencies alleged in Issues 7 and 8 seek to directly find the rezone inconsistent with a number of more general requirements "designed to protect surface water, fish and wildlife habitat, and the natural functions of wetlands and waterways."[206] Most of these requirements are directives to create critical areas regulations and other similar development regulations.

The Board concludes that SSBA failed to meet its burden of proof on this issue. In addition, most of the policies cited by SSBA prescribe enactment of development regulations; to take them a step beyond their intended reach to directly test a rezone is not the intent of the consistency requirements of the GMA. The Board would then run into the problem identified with that approach by the Court of Appeals in the *Spokane County* case, as discussed above.

(iii) Issue 9.

SSBA attempts to challenge the rezone on the basis of five of the goals listed in RCW 36.70A.020. This challenge fails because it suffers from the same problem as Issues 7 and 8. The court in *Spokane County* rejected the idea that the Board could find that a map amendment did not advance a particular goal, when, as recognized by the court, "[g]oals considered by local governments in comprehensive planning may be mutually competitive at times."[207]

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[206] *Id.*

[207] *Spokane County*., 173 Wn.App. at 333 (quoting *Quadrant Corp. v. Central Puget Sound Growth Mgmt. Hrgs. Bd*., 154 Wn.2d 224, 246, 110 P.3d 1132 (2005)).

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We conclude that SSBA has failed to meet its burden of proof on Issues 7,8, and 9 and therefore dismiss them.

Issue No. 10. Did the County violate RCW 36.70A.070(5)(a) and (c) and fail to be guided by the goals set forth in RCW 36.70A.020(2), (3), (4), (5), (9), (10), and (14) by adopting amendments without adopting regulations and/or Rural Element policies that protect rural character and the affected environment and without preparing a written record demonstrating how the Rural Element harmonizes the GMA's goals and satisfies statutory requirements in the context of the rezone?

Petitioners failed to provide any argument on this issue in their prehearing brief; therefore, the Board dismisses Issue 10.

Issue No. 11. Did the County violate RCW 36.70A.070, RCW 36.70A.320(3), and/or RCW 36.70A.215 because the record lacks evidence demonstrating a need for additional Rural Resource Industrial land and instead relied on planning assumptions not reevaluated after contemporaneous amendments affecting the Industrial Lands Study, and because the County relied on unsupported assumptions that the rezone would maintain or enhance environmental quality?

Issue No. 12. Did the County violate RCW 36.70A.320(3) because the decision was clearly erroneous in that it relied on incorrect, unsupported, or inconsistent planning assumptions and failed to consider relevant facts and long-term environmental consequences reflected in the record?

Issue No. 13. Did the County fail to comply with TCC 20.59.030 by adopting the amendment to the official zoning code, where the rezone is inconsistent with the purpose, intent and applicable standards of the Comprehensive Plan and does not serve the public interest? *WITHDRAWN BY PETITIONER.*

In Issues 11 and 12, SSBA argues that the BOCC's decision was erroneous because the BOCC members relied upon inaccurate and inconsistent assumptions having to do with reclamation, the Industrial Lands Study, whether 24 acres of the proposal was taken out of the proposal, and the intensity of uses in the RRI zone.[208] To demonstrate

[208] SSBA Brief at 26-28.

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this allegation, Petitioner relies on the statements made by BOCC members and others during meetings prior to the adoption of the rezone.

The Board does not see a cognizable issue raised by Petitioners in Issues 11 and 12. Their argument is not based upon any requirement of the GMA, and the citation to RCW 36.70A.320(3) is inapposite, as that statute simply provides the standard of review the Board uses in this case and does not impose any specific requirement on the County in terms of the rezone. The Board does not rely on a particular Commissioner's statement as evidence of legislative intent or assumptions the BOCC collectively may or may not have had when enacting the rezone.[209]

Accordingly, SSBA Issues 11 and 12 are dismissed.

Summarizing the Board's analysis of SSBA's challenge through Issues 4-12, the Board determines that County's adoption of Ordinance 16575 (REC 352) and Resolution 16574 (REC 353) is clearly erroneous because the Thurston County Board of County Commissioners failed to consider Policies LU-B.1.10 and LU-B.1.11 and the Locational Guidelines for Rural Resource Industrial Lands (contained at pp. IR-I, REC 353, Bates No. 10662-64) before it adopted the Black Lake Quarry Rezone, causing the rezone action to be internally inconsistent with the comprehensive plan within the meaning of RCW 36.70A.040(3), RCW 36.70A.070, and RCW 36.70A.130(1)(e). The Board is left with the firm and definite conviction that a mistake has been made. The rezone is remanded to the County for further action in compliance with this Order.

Issue No. 14. Should the Board enter a determination of invalidity under RCW 36.70A.302 on grounds that continued validity of the Black Lake Quarry Land Use Amendments would substantially interfere with the fulfilment of the goals of the Growth Management Act in RCW 36.70A.020(2), (3), (4), (5), (9), (10), and (14)?

[209] *See Watson v. City of Seattle,* 189 Wn.2d 149, 162-63, 401 P.3d 1 (2017) ("Statements by individual legislators do not show legislative intent.") (Citations omitted).

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SSBA has requested that the Board make a determination of invalidity under RCW 36.70A.302 because the continued validity of the BLQ land use amendment would substantially interfere with the fulfillment of the goals of the GMA, specifically Goals 2, 3, 9, and 10.[210] With respect to Goal 2, which is the anti-sprawl goal, SSBA argues that the rezone is isolated in the heart of a rural corridor, surrounded on multiple sides by R 1/20 zoning and bordering on the National Wildlife Refuge.[211] It further argues that there is no functioning transportation network to support it because the site lacks freeway access, is unserved by public transit, and has no active rail service.[212] SSBA also alleges a significant excess of developable industrial land is already available within urban growth areas.[213]

With respect to Goal 3, SSBA states that the goal calls for a transportation system that will reduce GHG emissions and per capita vehicle mile traveled.[214] SSBA argues that the rezone is "poorly suited for industrial development by any transportation metric. It is not near any interstate interchange . . . Freight movement to and from the site would require extended truck trips on rural roads."[215] SSBA also asserts that commercial activities and employee vehicle trips to and from the site will frustrate Goal 3's requirement that the transportation system reduce GHG emissions and per capita vehicle mile traveled.

With respect to Goal 9,which relates to open space, enhanced fish and wildlife habitat and parks and recreation, SSBA urges that the reclamation originally required by the Hearing Examiner and which is required under R 1/20 but not RRI, would have helped to provide a restored ecosystem on the site.[216] It argues that the rezone will result in "permanently degraded habitat in one of the most ecologically sensitive corridors in

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[210] SSBA Brief at 31. Challenges under other goals not briefed by SSBA (Goals 4 and 5) were not briefed, and the Board considers those challenges abandoned.
[211] *Id.* at 32.
[212] *Id.*
[213] *Id.*
[214] *Id.* at 33.
[215] *Id.* at 33.
[216] *Id.*

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Thurston County."[217] For similar reasons, SSBA contends that Goal 10, the environment goal, is also violated.[218]

BLQ argues that this case is distinguishable from cases in which the Board has found invalidity in the past.[219] It further states that "[c]ontinued validity of the amendments . . . would not authorize unrestricted industrial development, convert undisturbed conservation land to general industrial use or prevent the County from fulfilling . . . GMA goals . . . "[220] Without citation to authority, BLQ argues that "the rezone would not eliminate the environmental controls that apply to the Property and future RRI development."[221]

RCW 36.70A.302(1) provides that:

> (1) The board may determine that part or all of a comprehensive plan or development regulations are invalid if the board:
>
> (a) Makes a finding of noncompliance and issues an order of remand under RCW 36.70A.300;
>
> (b) Includes in the final order a determination, supported by findings of fact and conclusions of law, that the continued validity of part or parts of the plan or regulation would substantially interfere with the fulfillment of the goals of this chapter; and
>
> (c) Specifies in the final order the particular part or parts of the plan or regulation that are determined to be invalid, and the reasons for their invalidity.

The first criterion for a finding of invalidity is met with a finding of noncompliance and a remand of the Black Lake Quarry rezone within Ordinance 16575 and Resolution No. 16574. The Board concludes the first criteria is met, as it finds that the rezone is internally inconsistent with the comprehensive plan within the meaning of RCW 36.70A.040(3), RCW 36.70A.070, and RCW 36.70A.130(1)(e).

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[217] *Id.* at 33-34.
[218] *Id.* at 34.
[219] BLQ Response Brief at 40.
[220] *Id.*
[221] *Id.*

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The second criterion requires the Board to find that the continued validity of the Black Quarry rezone would substantially interfere with the fulfillment of the goals of the GMA. The Board resolves that question by agreeing with SSBA that the rezone substantially interferes with fulfillment of the goals of the GMA, based on the following findings:

A. The rezone interferes with Goal 2, because the rezone will convert undeveloped land into sprawling development of an industrial nature. The Board highlights the Locational Guidelines' requirement that "[w]hen sited in rural areas, industrial uses should be clustered as much as possible, **so they don't create sprawling intensive uses across the rural county."**[222] This rezone will result in an island of industrial uses surrounded by R 1/20 zoning and the National Wildlife Refuge. It will likely attract substantial traffic on a rural road network. There will be visual impacts inconsistent with rural character.[223] The result will be sprawl. The Board also agrees with SSBA that the rezone does not meet the comprehensive plan's Locational Guidelines, in that this property is not near an interstate interchange or even a state highway. Industrial traffic and employee traffic will be traveling upon rural roads near and adjacent to an important natural corridor. While the Board recognizes the existing mining use currently involves truck traffic, the rezone will open the door to more intense traffic impacts, as well as noise, light, traffic, and environmental impact. In addition, commercial uses are allowed, which will draw traffic into this area that is currently adjacent R 1/20 zoning, which includes agriculture, residential uses, and the National Wildlife Refuge. Moreover, the BOCC failed to consider the impacts of this intensification of use in a rural area in their findings on the record, which indicates that the goals and the requirements of the GMA were not thoroughly considered when the BOCC took its action.

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[222] *IR-I, REC-353,* Bates No. 10663 (emphasis added).
[223] *Id.,* Bates No. 10661-62 ("Industrial areas and development shall be functionally and visually compatible with the surrounding rural area and uses to protect the rural character.").

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B. The Board finds that the continued validity of the Black Lake Quarry rezone will substantially interfere with Goal 3, which states, "Encourage efficient multimodal transportation systems that will reduce greenhouse gas emissions and per capita miles traveled, and are based on regional priorities and coordinated with county and city comprehensive plans." The rezone thwarts fulfillment of this goal, because new businesses will increase single-occupancy vehicle use by employees and customers, as there is no transit service in the area. In addition, it will draw trucks and service vehicles a distance off the highway and onto the rural road network. As stated above in Finding A, the result of the rezone will be more intensive traffic patterns, more vehicle miles traveled, and more greenhouse gas emissions, all of which frustrate the reductions of emissions targeted by Goal 3.

C. The Board finds that the continued validity of the Black Lake Quarry rezone will substantially interfere with Goal 9, which states, "Retain open space and green space, enhance recreational opportunities, enhance fish and wildlife habitat, increase access to natural resource lands and water, and develop parks and recreation facilities." As determined in this decision, the proximity of this industrial rezone to the National Wildlife Refuge is problematic. Surrounding uses include open space, residential, and agriculture.[224] As documented in the staff report and as indicated by the USFWS, the Black River is host to a number of threatened and sensitive species. The site itself includes steep slopes, frequently flooded areas, high groundwater hazard areas, shoreline areas, hydric soils, prairie soils, mazama pocket gopher soils and areas, Oregon spotted frog areas, wetlands, fish and wildlife habitat conservation areas, knotweed containment sites, noxious weed sites, and critical aquifer recharge areas.[225] Rezoning property adjacent to the National Wildlife Refuge to allow industrial and commercial uses is the antithesis of retaining open and green space or enhancing fish and wildlife habitat. The staff report

[224] *IR-II, REC-634*, Bates No. 24529.
[225] *IR-II, REC-634*, Bates No. 24532.

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does an excellent job of detailing the environmental sensitivity of this area. Unfortunately, the record before the BOCC does not reflect any consideration of these values.

D. The Board finds that the continued validity of the Black Lake Quarry rezone will substantially interfere with fulfillment of Goal 10, which states, "Protect and enhance the environment and enhance the state's high quality of life, including air and water quality, and the availability of water." Water quality issues are also of concern, as the area is part of a high groundwater hazard area and nearly the entire site is covered by critical aquifer recharge areas. Again, the BOCC did not provide a record that reflects consideration of this GMA goal or measures to prevent or mitigate harm to the environmental sensitivity of the site.

E. The Board finds and concludes that failure to ensure that the rezone is consistent with the adopted policies of the comprehensive plan substantially interferes with fulfillment of the goals of the GMA, as explained above.

V. ORDER

Based upon review of the Petitions For Review, the briefs and exhibits submitted by the parties, the GMA, prior Board orders and case law, having considered the arguments of the parties, and having deliberated on the matter, the Board finds and orders:

- Thurston County's adoption of Ordinance 16575 (REC 352) and Resolution 16574 (REC 353) is clearly **erroneous** because the adopted plan is not in compliance with RCW 36.70A.070(9), RCW 36.70A.070(9)(d), or RCW 36.70A.090(e).
- Thurston County's adoption of Ordinance 16575 (REC 352) and Resolution 16574 (REC 353) is clearly **erroneous** because the Thurston County Board of County Commissioners failed to consider Policies LU-B.1.10 and LU-B.1.11 and the Locational Guidelines for Rural Resource Industrial Lands (contained at pp. IR-I, REC 353, Bates No. 10662-64) before it adopted the

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Black Lake Quarry Rezone, causing the rezone action to be internally inconsistent with the comprehensive plan within the meaning of RCW 36.70A.040(3), RCW 36.70A.070, and RCW 36.70A.130(1)(e).

- That portion of Ordinance 16575 and Resolution 16574 pertaining to the Black Lake Quarry Rezone, with findings located at *IR-I, REC-353*, Bates No. 10549 (findings); 11304 (map) and *IR-I, REC-352* Bates No.10353 (findings); 10527-28 (map) is determined to be **INVALID** under RCW 36.70A.302.
- All other challenges to Ordinance 16575 and Resolution 16574 are **denied.**
- The Board **remands** Ordinance 16575 and Resolution 16574 to the County to take legislative action in accordance with the following schedule:

Item	Date Due
Compliance Due	February 16, 2027
Compliance Report/Statement of Actions Taken to Comply and Index to Compliance Record	March 2, 2027
Objections to a Finding of Compliance	March 16, 2027
Response to Objections	March 26, 2027
Compliance Hearing Zoom link to be provided at a later date.	**April 6, 2027** 9:00 a.m.

Length of Briefs – A brief of 15 pages or longer shall have a table of exhibits and a table of authorities. WAC 242-03-590(3) states: "Clarity and brevity are expected to assist a board in meeting its statutorily imposed time limits. A presiding officer may limit the length of a brief and impose format restrictions." **Compliance Report/Statement of Actions Taken to Comply shall be limited to 30 pages, 40 pages for Objections to Finding of Compliance, and 10 pages for the Response to Objections.**

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SO ORDERED this 17th day of August, 2026.

Barbara Ehrlichman, Board Member

Alex Sidles, Board Member

Rick Eichstaedt, Board Member

Note: This is a final decision and order of the Growth Management Hearings Board issued pursuant to RCW 36.70A.300.[226]

[226] Any party may file a motion for reconsideration of this order with the Board within ten days of service of the final order, as specified in WAC 242-03-830 or .840. Any 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; RCW 36.01.050. *See also* RCW 36.70A.300(5); 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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