Date: February 7, 2014

Public Hearing Date: Tentatively Scheduled for March 25, 2014

Prepared by: Jeremy Davis, Senior Planner Thurston County

Proponents: Thurston County

Action Requested: Amendment of Comprehensive Plan and associated development code to be consistent with state law and recent case law.

Proposal Description: Remove the language in the Comprehensive Plan referring to the term “quasi-judicial” and amend the associated development code to be consistent with this, and with changes enacted in 2011 to Chapter 2.05 TCC.

☐ Map Changes ☒ Text Changes ☐ Both ☐ Affects Comprehensive Plans/documents ☒ Affects Jurisdictions: Thurston County

ISSUE:

The language in the Comprehensive Plan and the four Thurston County zoning ordinances is out of date and needs to be amended to be consistent with state law, recent case law, and amendments to Chapter 2.05 of the Thurston County Code (TCC) enacted in 2011.

BACKGROUND:

The Board of County Commissioners included an item on the 2009-10 Comprehensive Plan Amendment Official Docket to review and revise Chapter 2.05 TCC, Chapter 11 in the Comprehensive Plan, and the four zoning ordinances. The revision of Chapter 2.05 TCC was completed in 2011.

The Board of County Commissioners included an item on the 2013-14 Comprehensive Plan Amendment Docket to complete the task from the 2009-10 docket. In summary, the amendments in Attachments A and B include the following:
- Amend Comprehensive Plan Chapter 11 Plan Amendments to remove language referring to quasi-judicial comprehensive plan amendments, and to make the chapter consistent with the 2011 amendments to Chapter 2.05 TCC. Amend the Comprehensive Plan glossary and Chapter 12 to ensure consistency.

- Amend Chapter 2.05 to include current provisions for site specific land use plan amendments and their associated rezonings from the four zoning ordinances. This includes mailed notice, and that the published notice for the three urban area zoning ordinances needs to be published in a newspaper of general circulation in the Olympia, Lacey or Tumwater Urban Growth Area (UGA).

- Amend Title 20 Zoning to remove the quasi-judicial language for site-specific rezones that require a comprehensive plan amendment, and make the amendment process consistent with Chapter 2.05 TCC.

- Amend Title 21, the Zoning Ordinance for the Lacey Urban Growth Area to remove references to quasi-judicial language for site-specific rezones that require a comprehensive plan amendment, and make the amendment process consistent with Chapter 2.05 TCC.

- Amend Title 22, the Tumwater UGA Zoning Ordinance to remove references to quasi-judicial language for site-specific rezones that require a comprehensive plan amendment, and make the amendment process consistent with Chapter 2.05 TCC.

- Amend Title 23, the Olympia UGA Zoning Ordinance to remove references to quasi-judicial language for site-specific rezones that require a comprehensive plan amendment, and make the amendment process consistent with Chapter 2.05 TCC.

**PRELIMINARY ANALYSIS:**

In most of Thurston County, a Comprehensive Plan land use plan amendment is required to make a zoning map change. The land use designation in the Comprehensive Plan is the same as the zoning designation, except in a few limited circumstances and in the unincorporated area of the UGA for the cities of Yelm, Tenino, and Rainier where the zoning remains Rural Residential One Unit per Five Acres until the property is annexed by the city. Keeping these areas at a 1/5 zoning is consistent with the policies in the plans.

Zoning changes where there is no corresponding comprehensive plan amendment are classified as a project permit under state law (RCW 36.70B.020(4)), and are appealable under the Land Use Protection Act (LUPA) (Chapter 36.70C RCW) which governs appeals of project permits.

Amending a Comprehensive Plan and development regulations are legislative processes governed by Chapter 36.70A RCW, the Growth Management Act, and for Thurston County, Chapter 35.63 RCW, Planning Commissions.

The Growth Management Act requires that development regulations be consistent with the Comprehensive Plan. Zoning district designations are considered development regulations. The Comprehensive Plan land use map and the joint plan land use maps determine the land use
Recent case law has shed some light on the ongoing question on whether or not a site-specific rezoning that requires a comprehensive plan amendment is a project permit subject to Chapter 36.70B RCW and LUPA, or if it is a legislative action to make the zoning map consistent with comprehensive plan land use map amendments.

In an August 2013 decision for Kittitas County v. Kittitas County Conservation Coalition (No. 30728-0-III), the Court of Appeals reviewed a Kittitas County decision on a site-specific comprehensive plan amendment and rezoning. The requested rezoning was not consistent with the current land use designation in the comprehensive plan. Kittitas amended the comprehensive plan to allow the requested zoning district, and amended the zoning map to change the zoning district so it would be consistent with the comprehensive plan.

The decision was appealed. A contested point in the appeal was who had jurisdiction to hear the appeal. Was it appealable under the GMA or under LUPA? Under the GMA it would be appealed to the Growth Management Hearings Board, under LUPA it would be appealed to Superior Court. The analysis is in “Section A. Jurisdiction” of the decision which is located in Attachment C.

The Appeals Court found that the decision was appealable under the GMA. While it was a site-specific zoning change, the zoning change required a comprehensive plan amendment in order to be approved. LUPA only applies when a zoning change is already authorized by the comprehensive plan. In the instant case, the zoning change was a development regulation amendment because it implements a comprehensive plan amendment.

In a September 2013 decision for Spokane County v. Eastern Washington Growth Management Hearings Board (No. 30725-5-III), the Appeals Court reached the same conclusion. This was the second decision on the same case. The first decision was issued in 2011 by the Appeals Court for Spokane County v. Eastern Washington Growth Management Hearings Board, 160 Wn. App. 274 P.3d 1050. The second more recent 2013 decision includes a more robust analysis than the 2011 decision. The analysis is in “Section B. Jurisdiction” of the decision.

Under state law, comprehensive plan amendments are not considered quasi-judicial actions. Comprehensive Plan amendments and other legislative actions are specifically excluded from being classified as a quasi-judicial action in the Appearance of Fairness Doctrine (Chapter 42.36 RCW). The Appearance of Fairness Doctrine in RCW 42.36.010 reads as follows:

“RCW 42.36.010 Local land use decisions.

Application of the appearance of fairness doctrine to local land use decisions shall be limited to the quasi-judicial actions of local decision-making bodies as defined in this section. Quasi-judicial actions of local decision-making bodies are those actions of the legislative body, planning commission, hearing examiner, zoning adjuster, board of adjustment, or boards which determine the legal rights, duties, or privileges of specific parties in a hearing or other contested case proceeding. Quasi-judicial actions do not include the legislative actions adopting, amending,
or revising comprehensive, community, or neighborhood plans or other land use planning documents or the adoption of area-wide zoning ordinances or the adoption of a zoning amendment that is of area-wide significance.”

**Consistency with Countywide Planning Policies**
The proposed amendments are consistent with the Countywide Planning Policies, and do not affect the current joint planning process in the joint planning agreements with the Cities of Olympia, Lacey, and Tumwater.

**SEPA:**
The County issued a Determination of Nonsignificance on February 6, 2014.

**NOTIFICATION:**
Notice for the public hearing will be published in The Olympian on at least 20-days prior to the public hearing per TCC Chapter 2.05 Growth Management Act Public Participation. A notice will also be sent out to the Planning Department’s email list.

**PUBLIC COMMENT:**
Public testimony will be taken during the public hearing. There have been no written comments received at the writing of the staff report. Public testimony will be forwarded to the Board of County Commissioners for their review.

**THURSTON COUNTY PLANNING COMMISSION RECOMMENDATION:**
The Thurston County Planning Commission has recommended approval of the proposed amendments as shown in the attachments to this staff report.

**THURSTON COUNTY STAFF RECOMMENDEDATION:**
Staff recommends approval of amendment of the Comprehensive Plan and associated development code and the removal of language and removal of the language in the Comprehensive Plan referring to the term “quasi-judicial”; and amend the associated development code to be consistent with the changes and changes enacted in 2011 to Chapter 2.05 TCC.

**ATTACHMENTS:**

- Attachment A Comprehensive Plan Amendments
- Attachment B Code Amendments
- Attachment C Court Case Decisions
Attachment A

Comprehensive Plan Amendments
CHAPTER ELEVEN -- PLAN AMENDMENTS

This chapter provides information about the process for amending the Comprehensive Plan and related plans.

Appendix D includes, for reference, the adopting resolutions for all amendments to the Comprehensive Plan since its initial adoption in 1975. All amendments are incorporated into this revised Comprehensive Plan.

I. GENERAL PROVISIONS

A. Growth Management Act-Compliance with State Law:

1. All amendments to this Comprehensive Plan must conform to the Washington State Constitution.

2. All amendments to this Comprehensive Plan must conform with the requirements of the Washington State Growth Management Act, Chapter 36.70A RCW.

3. All amendments to this Comprehensive Plan must conform with the requirements of other applicable state laws. Other state laws that may apply include the Planning Commission Act (Chapter 35.63 RCW), the State Environmental Policy Act (Chapter 43.21C RCW), the Subdivision Act (Chapter 58.17 RCW), the Shoreline Management Act (Chapter 90.58 RCW), the Watershed Management Act (Chapter 90.82 RCW), and other laws regarding drinking water, water rights, municipal services, and pollution control.

B. Timing:

1. Proposed amendments to this Comprehensive Plan will be considered no more frequently than once per year, and all proposals will be considered concurrently so the cumulative effect of the various proposals can be ascertained. Information about the County’s annual schedule for processing Comprehensive Plan amendments is available from the Development Services Planning Department. The table shown below describes, in general, the amendment review process.

2. The County may adopt amendments more frequently than once per year if an emergency exists, or if otherwise permitted by law.

3. In addition to the amendment schedule described above, the Comprehensive Plan will be reviewed amended every seven (7) years, beginning in 2004, pursuant to the timelines established in RCW 36.70A.130.

The next major review for the Thurston County Comprehensive Plan is due on June 30, 2016. A major review is currently required every eight years. This deadline may
change due to state and local government budget issues. The last major update was due at the end of 2011. State law was amended to push this date to the June 30, 2016 deadline due to state and local government budget issues.

II. TYPES OF COMPREHENSIVE PLAN AMENDMENTS

A. Multiple Processes

The Thurston County Comprehensive Plan is composed of numerous separate plan documents, including this Comprehensive Plan which focuses on the rural area, joint plans for each Urban Growth Area in the County, subarea plans for specific geographic areas of the County, and functional plans, such as the Sewerage General Plan and the Grand Mound Water General Plan. All plan amendments are considered only once per year. Joint plan amendments require review by both the County and the city or town for which the urban growth area is established. In some cases, the city, town, or County proposes the change; in other cases, the amendment is proposed by a member of the public. All amendments are reviewed by the Thurston County Planning Commission, with final decision by the Board of County Commissioners.

The docketing process for considering amendments to the Thurston County Comprehensive Plan is in Growth Management Public Participation, Chapter 2.05, Thurston County Code. Docketing refers to the process of establishing and maintaining a list of proposals that may be considered by the Board for possible amendment of the Comprehensive Plan. Dockets are useful for providing information about amendment proposals that may be considered by Thurston County in advance of public hearings and other review procedures. This chapter also establishes the County’s minimum public participation and notification requirements when amending the Comprehensive Plan and associated development regulations.

For information about the different processes for amending the Comprehensive Plan, contact the Development Services Planning Department or check the Department website www.thurstonplanning.org or www.co.thurston.wa.us/permitting/.

B. Legislative and Quasi-Judicial Amendments

1. Whether a proposed action is characterized as legislative or quasi-judicial is a legal determination made on a case-by-case basis. A decision that formulates a general policy applicable to a broad class of situations and to a large number of parcels and persons, not readily identifiable, is generally legislative in nature.

A decision that applies an existing policy to a specific number of parcels in readily identifiable ownership is generally a quasi-judicial action. Furthermore, a decision
which formulates policy yet affects relatively few individuals will generally be characterized as a quasi-judicial action, regardless of who applied for the change.

Plan amendments that apply to a specific site, frequently in conjunction with an identifiable development proposal, may be initiated by an applicant. For further information, contact the Development Services Department.

2. In evaluating whether a proposed amendment is quasi-judicial or legislative, the Development Services Department will use the criteria described in 1, above, and the following criteria:

a. Would the proposed amendment support or conflict with existing Comprehensive Plan goals and policies? Amendments that include or require changes to broadly applied policies are generally legislative amendments.

b. Would the proposed amendment support or conflict with existing interjurisdictional policies or agreements? Amendments that would require changes to such policies or agreements are generally legislative amendments.

c. Would the proposed amendment support or conflict with County-Wide Planning Policies? Proposed Comprehensive Plan amendments that would require amendments to the County-Wide Planning Policies are legislative amendments and cannot be initiated by an applicant.

d. Any amendments to urban growth area boundaries are generally legislative amendments.

III. APPEALS

A. Growth Management Hearings Board Review:

Challenges to amendments to the Comprehensive Plan or related plans that are within the jurisdiction of the Growth Management Hearing Board, shall be processed according to the law governing such challenges.

B. Judicial Review:

Judicial appeals to review any decision concerning the amendment of the Comprehensive Plan, including related plans, must meet all procedural requirements provided by law. The plaintiff bringing any such action shall pay the full cost of transcription of the record prepared for judicial review.
### Table 11-1: GENERAL STEPS FOR ANNUAL COMPREHENSIVE PLAN AMENDMENTS

<table>
<thead>
<tr>
<th>County-Initiated Amendments</th>
<th>Joint Plan Amendments</th>
<th>Quasi-Judicial Citizen Initiated Amendments</th>
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</thead>
<tbody>
<tr>
<td>Staff Development of Proposals and Public Involvement</td>
<td>Staff Development of Proposals and Public Involvement and Cities/Towns Submit Amendments</td>
<td>Applicant Prepares Complete Application and SEPA document(s)</td>
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<td>Internal Staff Review and Initial County Commissioner Review</td>
<td>Cities/Towns Submit Amendments; Internal Staff Review and Initial County Commissioner Review</td>
<td>Internal Staff Review and Initial County Commissioner Review</td>
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<td>Final Docketing Decision by the Board</td>
<td>Final Docketing Decision by the Board</td>
<td>Final Docketing Decision by the Board</td>
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<td>Thurston County Planning Commission (TCPC) Briefing</td>
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<td>TCPC Public Hearing(s) and Recommendation</td>
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Quasi-Judicial Amendments. Whether a proposed action is characterized as legislative or quasi-judicial is a legal determination made on a case-by-case basis. A decision which applies an existing policy to a specific number of parcels in readily identifiable ownership is generally a quasi-judicial action. Furthermore, a decision which formulates policy yet affects relatively few individuals will generally be characterized as a quasi-judicial action.
Chapter Eleven describes the process for amending this Comprehensive Plan. This Appendix contains a list of the resolutions adopting amendments to this Plan. Reference copies of the resolutions are available at the Development Services Department. Adoption of Capital Facilities Plan updates usually occurs with the adoption of the annual County budget and may not be listed below.

(Resolution 11589, 12/15/97)

**APPENDIX D**

**LIST OF PLAN AMENDMENTS**

<table>
<thead>
<tr>
<th>Date Adopted:</th>
<th>Description of Amendment</th>
<th>Resolution Number</th>
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<tr>
<td>May 12, 1986</td>
<td>Boston Harbor Sewerage General Plan</td>
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<td>July 20, 1987</td>
<td>Boston Harbor Water General Plan</td>
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<td>January 11, 1988</td>
<td>Grand Mound Sewerage General Plan</td>
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<td>April 17, 1990</td>
<td>Thurston County Sewerage General Plan</td>
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<td>June 4, 1990</td>
<td>Tamoshan Comprehensive Water System Plan</td>
<td>9472</td>
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<td>November 16, 1992</td>
<td>Nisqually Sub-Area Plan and Zoning</td>
<td>Ord. 10199</td>
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<td>April 20, 1993</td>
<td>Grand Mound Water General Plan</td>
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<td>August 16, 1993</td>
<td>Amendments to Resource Lands Element</td>
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<td>April 11, 1994</td>
<td>Amendments to West Olympia Urban Growth Management Boundaries</td>
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<td>April 18, 1994</td>
<td>Capital Facilities Plan 1994-1999</td>
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<td>May 9, 1994</td>
<td>Carlyon Beach Sewerage General Plan</td>
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<td>July 25, 1994</td>
<td>Comprehensive Plan for Olympia and the Olympia Growth Area</td>
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<td>August 22, 1994</td>
<td>City of Tenino Comprehensive Plan for Growth Management and the Joint Comprehensive Plan for Growth Management</td>
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<td>December 5, 1994</td>
<td>Lacey and Thurston County Joint Plan for the Lacey Urban Growth Area</td>
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<td>December 12, 1994</td>
<td>1994 Olympia Joint Plan Updates</td>
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<td>February 27, 1995</td>
<td>City of Yelm Comprehensive Plan Joint Plan with Thurston County</td>
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<td>April 17, 1995</td>
<td>Town of Rainier Comprehensive Plan for Growth Management and Joint Comprehensive Plan with Thurston County for Growth Management in the Rainier Urban Growth Area</td>
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<td>April 17, 1995</td>
<td>Tumwater/Thurston County Joint Plan</td>
<td>10895</td>
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<tr>
<td>April 17, 1995</td>
<td>Thurston County Comprehensive Plan Growth Management Amendments</td>
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<tr>
<td>June 12, 1995</td>
<td>Bucoda Urban Growth Boundary Correction</td>
<td>10949</td>
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<td>December 11, 1995</td>
<td>1995 Clean-Up Amendments</td>
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<td>July 15, 1996</td>
<td>Rochester Subarea Plan</td>
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<td>July 29, 1996</td>
<td>Tenino Urban Growth Boundary Correction</td>
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<td>August 26, 1996</td>
<td>Tumwater Urban Growth Boundary Correction</td>
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<td>December 23, 1996</td>
<td>Annual Amendments: Thurston County Comprehensive Plan and the Joint Plans with Olympia, Tumwater, Lacey, and Yelm.</td>
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<td>December 15, 1997</td>
<td>Annual Amendments: Thurston County Comprehensive Plan and Joint Plans with Olympia, Tumwater, Yelm, Tenino and Rainier</td>
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<td>December 21, 1998</td>
<td>Annual Amendments: Thurston County Comprehensive Plan and Joint Plans with Olympia, Tumwater, Yelm, Tenino and Rainier</td>
<td>11866</td>
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<td>December 20, 1999</td>
<td>Annual Amendments: Thurston County Comprehensive Plan and Joint Plans with Olympia, Tumwater, Yelm, Tenino and Rainier</td>
<td>12108</td>
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<tr>
<td>November 13, 2000</td>
<td>Annual Amendments: Thurston County Comprehensive Plan, Nisqually Sub-Area Land Use Plan, and Joint Plans with the cities of Tumwater, Lacey, and Yelm.</td>
<td>12356</td>
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<td>August 27, 2001</td>
<td>Annual Amendments: Thurston County Comprehensive Plan and Joint Plans with the cities of Olympia, Lacey, Tumwater, and Yelm.</td>
<td>12576</td>
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<td>July 8, 2002</td>
<td>Annual Amendments: Thurston County Comprehensive Plan and Joint Plan with the city of Tumwater.</td>
<td>12788</td>
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<td>November 10, 2003</td>
<td>Annual Amendments: Thurston County Comprehensive Plan and Joint Plans with the cities of Tumwater, Lacey, and Olympia in partial satisfaction of the seven-year update requirement of the Growth Management Act.</td>
<td>13039</td>
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<td>November 22, 2004</td>
<td>SEVEN YEAR UPDATE: Thurston County Comprehensive Plan and Joint Plans with the cities of Tumwater, Rainier, Bucoda, and Tenino. Establishing an urban growth area for Bucoda.</td>
<td>13234</td>
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<td>December 19, 2005</td>
<td>Annual Amendment: Lacey joint plan land use map, housing and utilities chapter updates; Olympia transportation and housing chapter updates; and adding the Grand Mound Water Service Plan to the Thurston County Comprehensive Plan.</td>
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<td>Date Adopted:</td>
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<td>December 20, 2006</td>
<td>Annual Amendment: Yelm joint plan updates including planning parameters, land use chapter, housing chapter, and new population forecast; Grand Mound Subarea Plan update to transportation chapter.</td>
<td>13734</td>
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<td>December 20, 2006</td>
<td>Annual Amendment: Thurston County Comprehensive Plan mineral resource land map designation.</td>
<td>13736</td>
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<tr>
<td>December 20, 2006</td>
<td>Annual Amendment: Thurston County urban growth area and future land use map; and Tenino joint plan urban growth area and zoning maps, updates to the background chapter, and population forecast updates.</td>
<td>13737</td>
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<tr>
<td>May 30, 2007</td>
<td>Compliance Amendment: Amend the designation criteria in the Thurston County Comprehensive Plan to comply with a Growth Management Hearings Board order.</td>
<td>13815</td>
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<td>June 18, 2007</td>
<td>Compliance Amendment: Amend the Thurston County Comprehensive Plan land use chapter to add designations for Limited Areas of More Intensive Rural Development (LAMIRD) to comply with a Growth Management Hearings Board order.</td>
<td>13833</td>
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<td>August 27, 2007</td>
<td>Compliance Amendment: Amend the Thurston County Comprehensive Plan to add three new land use designations to comply with a Growth Management Hearings Board order.</td>
<td>13885</td>
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<td>December 18, 2007</td>
<td>Annual Amendment: Ground Mound Water System amendments; Olympia joint plan utilities and environment chapter and transportation chapter; Tumwater joint plan parks and recreation chapter; Yelm joint plan introduction chapter and transportation chapter.</td>
<td>13986</td>
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<tr>
<td>Date Adopted:</td>
<td>Description of Amendment</td>
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<td>March 3, 2008</td>
<td>Compliance Amendment: Resize the North County Urban Growth Area removing a portion of the Tumwater Urban Growth Area to comply with a Growth Management Hearings Board Order.</td>
<td>14034</td>
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<tr>
<td>December 29, 2008</td>
<td>Annual Amendments: Amend the land use and zoning to designate agricultural lands; amend the land use and zoning for two site-specific amendments in the north county urban growth area; and redesignate and rezone properties removed from the Tumwater Urban Growth Area with Resolution No. 14035.</td>
<td>14180</td>
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<tr>
<td>July 15, 2009</td>
<td>Compliance Amendment: Amend the agricultural lands of long term commercial significance designation criteria and amend the future land use map accordingly to comply with a Growth Management Hearings Board order.</td>
<td>14254</td>
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<tr>
<td>September 7, 2010</td>
<td>Annual Amendment: Change the land use and zoning in the Tumwater Urban Growth Area, resize the Urban Growth Area to remove properties impacted by high ground water; change the land use and zoning in the Maytown area; change the criteria for mineral lands designation; and update the joint plants with Olympia and Lacey.</td>
<td>14401</td>
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<tr>
<td>April 17, 2012</td>
<td>Compliance Amendment: Amend the mineral lands designation criteria to comply with a Growth Management Hearings Board decision on Resolution No. 14401.</td>
<td>14739</td>
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<td>Date Adopted:</td>
<td>Description of Amendment</td>
<td>Resolution Number</td>
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<tr>
<td>January 8, 2013</td>
<td>Annual Amendment: Change the land use and zoning in the Olympia Urban Growth Area to change the land use and zoning for the French Road and Chambers study areas; update the parks and recreation element; add a health and human services chapter, and reconsider two areas designated as Long Term Agriculture.</td>
<td></td>
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</tbody>
</table>


Attachment B
Thurston County Code Amendments
Amendments to the Thurston County Code regarding legislative rezoning amendments
Chapter 2.05 and Titles 20, 21, 22, and 23

11/20/2013

Part I: Chapter 2.05

A. Section 2.05.030 TCC, Minimum Public Participation Measures, shall be amended to read as follows:

... E. Public Hearings.

1. A public hearing shall be held before the Thurston County planning commission for amendments to comprehensive plans, zoning ordinances, or other proposals as required by law. Other proposals may be referred to the planning commission at the discretion of the board of county commissioners. The board of county commissioners also usually holds a public hearing prior to amending comprehensive plans and development regulations. Citizens may participate in public hearings by attending and offering verbal testimony or by submitting written comments to the county in advance of the public hearing.

2. Public hearings shall be held at times and locations convenient to the public.

3. Notification of public hearings shall describe the time, place and purpose of the hearing, and shall be published in the county’s official newspaper of record at least twenty days prior to the public hearing, unless a waiver has been granted by the Thurston County board of commissioners, subject to the following criteria:

   a. Publishing the notice within the period of time otherwise required by law will afford adequate notice to the public; and

   b. The waiver is necessary to allow action to be taken in a timely manner.

4. A waiver still requires notification at least ten days prior to a public hearing. News releases shall be mailed to local media announcing public hearings. Additional notification measures shall also be employed as appropriate.
5. For site specific land use plan amendments only, written notice shall also be mailed not less than ten days before the hearing to all owners of property under consideration and property owners within three hundred feet of the property involved if it is located within an urban growth area and within five hundred feet of the property involved if it is located outside an urban growth area, using for this purpose the names and addresses of owners as shown on the records of the Thurston County assessor.

6. Notice of public hearing for comprehensive plan amendments and development code amendments in the unincorporated urban growth area for the cities of Olympia, Tumwater, and Lacey shall be given by publishing the required notice in a newspaper of general circulation within the affected unincorporated urban growth area.

74. Proposals shall be available at least twenty days prior to public hearings; refer to Section 2.05 030B3 above.

The new text in parts 5 and 6 above is based on the text being removed from Titles 20, 21, 22, and 23, and will ensure the same level of notification to surrounding property owners is continued.

Part II. Title 20 Zoning

A. Section 20.59.010 TCC shall be amended to read as follows:

20.59.010 Legislative and quasi-judicial characterization.

1. Rezones that are necessary to implement an amendment to a comprehensive plan or comprehensive plan land use map are considered a development code amendment and are classified as a Type IV Legislative Decision in Chapter 20.60 TCC.

2. Rezones that do not require an amendment to a comprehensive plan are classified as a Type III Quasi-Judicial Decision in Chapter 20.60 TCC.

Whether a proposed action is characterized as legislative or quasi-judicial is a legal determination made on a case-by-case basis. However, a decision which applies an existing policy to a specific situation, at the request of a few number of persons, and which involves a limited number of parcels in readily identifiable ownership is generally a quasi-judicial action, whereas a decision which formulates a general policy applicable to a broad class of situations and to a large number of parcels and persons, not readily identifiable, is generally legislative in nature. Furthermore, a decision which formulates policy yet affects relatively few individuals, or a decision which requires correct factual determinations for the application of pre-existing criteria, regardless of the number of persons affected, will generally be characterized as a quasi-judicial action.
According to RCW 42.36.010, quasi-judicial actions do not include legislative actions. Amending comprehensive plans is a legislative action. A follow-up amendment to the zoning map to implement the comprehensive plan amendment is considered a development code amendment, and is not appealable as a permit action under LUPA. Please see the staff report for further analysis.

B. Chapter 20.59.020 shall be amended to read as follows:


Requests for quasi-judicial Site-specific rezones shall be processed as follows:

1. Applications for quasi-judicial Site-specific rezones that are required as a result of a proposed Comprehensive Plan amendment shall be processed with the proposed Comprehensive Plan amendment in the manner prescribed in Section 20.59.050 below.

2. Applications for all other quasi-judicial Site-specific rezones that do not require a comprehensive plan amendment shall be heard and decided by the hearing examiner in the manner prescribed by Section 20.60.020(3) and Chapter 2.06 TCC.

C. Section 20.59.030 TCC shall be amended to read as follows:

20.59.030 Quasi-judicial Site-specific rezone—Standard of review.

The proposed rezone shall be evaluated with reference to the purpose, intent and applicable standards of the Comprehensive Plan, this title and other applicable laws. All relevant facts may be considered to determine if the public interest would be served by the proposed rezone.

D. Section 20.59.030 TCC shall be amended to read as follows:

20.59.050 Legislative rezones or text amendments.

1. Legislative rezones or text amendments and site-specific rezones that are a result of a comprehensive plan amendment shall be reviewed by the planning commission and board of county commissioners pursuant to the procedure prescribed by Chapter 35.63 RCW, Chapter 36.70A RCW, and Chapter 2.05 TCC, provided that upon receipt of the recommendation of the planning commission, the clerk of the board of Thurston County commissioners shall set a date for public hearing by the board. The clerk shall cause notice of the time, place and purpose of the hearing to be published in a newspaper of general circulation in the county at least ten days before the hearing.

2. Quasi-judicial rezones that are required as a result of a proposed Comprehensive Plan amendment and quasi-judicial rezones and map amendments initiated by the county shall also be reviewed by the planning commission and board of county commissioners. Staff to the planning commission shall schedule a hearing. Notice of public hearing shall
describe the time, place and purpose of the hearing, and shall be published and mailed ten
days before the hearing, and shall be given as follows:

a. Publication. Notice shall be published in a newspaper of general circulation in the
   county.

b. Written Notice. In addition to the notice of public hearing required in subsection 
   (2)(a), for quasi-judicial rezones or map amendments only, copies of the notice 
   shall be sent by mail not less than ten days prior to the date of the hearing to all 
   owners of property under consideration and property owners within three hundred 
   feet of the property involved if it is located within an urban growth area and 
   within five hundred feet of the property involved if it is located outside an urban 
   growth area, using for this purpose the names and addresses of owners as shown 
   on the records of the Thurston County assessor.

The notice provisions above are proposed to be moved to Chapter 2.05 Growth Management 
Public Participation.

E. Section 20.60.015 TCC shall be amended to read as follows:

20.60.015 Application types and classification.

Applications for zoning actions, as listed in Table 2, shall be subject to a Type I, Type II, Type 
III or Type IV review process.

... 4. A Type IV process involves the creation, implementation or amendment of land use 
policies or regulations. It also includes site-specific (or quasi-judicial) rezones for which 
a corresponding Comprehensive Plan amendment is required.

The procedure for processing Type IV amendments is located in TCC 22.60.020(4). Chapter 
20.59 TCC and chapter 2.05 TCC are referenced.
F. Section 20.60.020 TCC shall be amended to read as follows:

<table>
<thead>
<tr>
<th>Permit/ Review Staff/ Director</th>
<th>Hearing Examiner (open hearing)</th>
<th>Planning Commission (open hearing)</th>
<th>Board of County Commissioners (closed hearing)</th>
<th>Review Process Timeline</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Type I</td>
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<tr>
<td>...</td>
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</tr>
<tr>
<td>Site-Specific (quasi-judicial) rezones**</td>
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<td>D**</td>
<td>A</td>
<td></td>
</tr>
<tr>
<td>Comprehensive Plan and zoning text amendments and legislative rezones</td>
<td>R</td>
<td>R</td>
<td>D* (open hearing)</td>
<td></td>
</tr>
</tbody>
</table>

** Site-specific rezones for which a corresponding joint plan amendment is required, which are approved by the board of county commissioners follows the process for comprehensive plan and zoning text amendments and legislative rezones.

*The double ** are being moved from next to the “D” next to “site-specific rezones.”*
Part III. Title 21 Zoning Ordinance for the Lacey Urban Growth Area

A. Section 21.81.030 TCC shall be amended to read as follows:

21.81.030 Application types and classification.

Applications for zoning actions, as listed in Illustration 1 of this chapter, shall be subject to a Type I, Type II, Type III or Type IV review process.

D. A Type IV process involves the creation, implementation or amendment of land use policies or regulations. It also includes site-specific (or quasi-judicial) rezones for which a corresponding joint plan amendment is required.

B. Illustration 1. Permit review Matrix in Section 21.81.040 shall be amended to read as follows:

<table>
<thead>
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<th>Permit/ Review</th>
<th>Staff/ Director</th>
<th>Hearing Examiner (open hearing)</th>
<th>Planning Commission (open hearing)</th>
<th>Board of County Commissioners (closed hearing)</th>
<th>Review Process Timeline</th>
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<tr>
<td>Site-Specific rezones**</td>
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<td>...</td>
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<td></td>
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</tbody>
</table>

** Except for site-specific rezones for which a corresponding joint plan amendment is required, which are approved by the board of county commissioners.

The double ** are being moved from next to the “D” next to “site-specific rezones.”

C. Section 21.96.010 TCC shall be amended to read as follows:

21.96.010 Quasi-judicial Rezoning amendments.

Whenever public necessity, convenience or general welfare requires, the provisions of this title or the zoning map may be amended in conjunction with individual land use applications in accordance with the following procedures:
A. Requests for a site-specific quasi-judicial rezone when the proposed zoning map amendment is consistent with the comprehensive plan and joint plan are classified as a Type III Hearing Examiner Decision in Chapter 21.81 TCC, and shall be initiated by:

1. A verified application of one or more owners of property which is proposed to be reclassified, filed with the department; or

2. The adoption of a motion by the board of county commissioners requesting the hearing examiner to set the matter for hearing.

B. Applications for quasi-judicial Legislative rezones that are required as a result of a proposed Comprehensive Plan amendment shall be processed with the proposed Comprehensive Plan amendment in the manner prescribed in Section 21.96.020C below.

C. Amendments or Site-Specific Rezones—Application Forms. The department shall prescribe the forms to be used for quasi-judicial site-specific rezones when the proposed zoning amendment does not require a comprehensive plan or joint plan amendment. The department may prepare and provide forms for such purposes and prescribe the type of information to be provided. No application shall be accepted unless it complies with such requirements.

D. Quasi-Judicial Amendments and Site-Specific Rezones—Public Hearings. Requests for quasi-judicial site-specific rezones shall be heard in the manner prescribed by chapter 21.81 TCC, by the hearing examiner in the manner prescribed by Chapter 2.06 TCC. Notice of public hearing on any such proposed rezone shall describe the time, place and purpose of the hearing, and shall be published and mailed ten days before the hearing, and shall be given as follows:

1. Publication. Notice shall be published in a newspaper of general circulation in the county.

2. Written Notice. Written notice shall be mailed to the owners of record of all property lying within three hundred feet of the property proposed for rezoning. Written notice shall also be mailed to the applicant and owner of the property proposed for rezoning.

Chapter 21.81 classifies site-specific rezones as a Type III application, which includes hearing examiner review. The notification requirements for the public hearing are the same as noted above. Chapter 21.81 also requires a notice of application. The City of Lacey code Chapter 16.96 and the Development Guidelines classify all rezones as legislative actions, and all go for Planning Commission and City Council Review. The like the unincorporated UGA, the City’s land use and zoning designations match.
The published notice requirement for the public hearing in Chapter 2.05 is actually more stringent than noted above as it requires a 20-day notice, unless waived. The written notice requirement is proposed to be added to 2.05.030.

D. Section 21.96.020 TCC shall be amended to read as follows:

21.96.020 Legislative rezones or text amendments.

Whenever public necessity, convenience or general welfare requires, the provisions of this title or the zoning map may be amended in those instances not involving individual land use permit applications after recommendation by the planning commission to the board of county commissioners.

A. Amendments of the text of this title or the zoning map may be initiated in such cases by the board of county commissioners, the city of Lacey, the planning commission, and citizens through the docketing process specified in chapter 2.05 TCC:

1. The adoption of a motion by the board of county commissioners requesting the planning commission to set the matter for hearing and recommendation;

2. A recommendation by the planning commission to the board of county commissioners; or

3. Initiation of an amendment through the joint planning process between the city of Lacey and Thurston County.

B. Legislative rezones or text amendments shall be reviewed by the planning commission and board of county commissioners pursuant to the procedures prescribed by Chapter 35.63 RCW, Chapter 36.70A.RCW, and chapter 2.05 TCC, provided that upon receipt of the recommendation of the planning commission, the clerk of the board of Thurston County commissioners shall set a date for public hearing by the board. The clerk shall cause notice of the time, place and purpose of the hearing to be published in a newspaper of general circulation in the county ten days before the hearing.

C. Rezones, text amendments initiated by the county, and quasi-judicial rezones that are required as a result of a proposed Comprehensive Plan amendment, shall also be reviewed by the planning commission and board of county commissioners. Staff to the planning commission shall schedule a hearing. Notice of public hearing shall describe the time, place and purpose of the hearing, and shall be published and mailed ten days before the hearing, and shall be given as follows:

1. Publication. Notice shall be published in a newspaper of general circulation in the county.
2. Written Notice. Written notice shall be mailed to the owners of record of all property lying within three hundred feet of the property proposed for rezoning. Written notice shall also be mailed to the applicant and owner of the property proposed for rezoning.
Part IV. Title 22 Tumwater UGA Zoning Ordinance

A. Section 22.60.010 TCC shall be amended to read as follows:

22.60.010 Initiation.

A. Amendments or modifications to the text of this title, amendments that are required as a result of a proposed Comprehensive Plan amendment, or any general area rezones may be initiated as specified in chapter 2.05 TCC, as follows:

1. By the planning commission; or

2. By the board of county commissioners.

B. Applications for site-specific rezones may be initiated as follows:

1. By the planning commission; or

2. By the board of county commissioners; or

3. By the property owners, as follows: by filing with the department an application by petition of one or more owners of property setting forth the proposed rezone, which petition shall be on a standard form as prescribed by the department and available at the department. The application form shall be accompanied by a fee as established by resolution of the board of county commissioners to help defray the cost of handling the petition, no part of which is refundable.

Chapter 2.05 GMA Public Participation includes the process for proposing and amending the comprehensive plan and development regulations.

B. Section 22.60.015 TCC shall be amended to read as follows:

22.60.015 Quasi-judicial rezones. Rezoning process.

A. Applications for quasi-judicial site-specific rezones that are required as a result of a proposed Comprehensive Plan amendment shall be processed with the proposed Comprehensive Plan amendment in the manner prescribed in Section 22.60.020A, and are classified as a Type IV Legislative Decision.

B. Applications for all other quasi-judicial site-specific rezones where a comprehensive plan amendment is not required shall be decided by the hearing examiner in accordance with the criteria set forth in Section 22.60.040, and the procedures set forth in Chapter 22.62, and are classified as a Type III Hearing Examiner Decision. Applications shall include the information required in Chapter 22.62.
C. Section 22.60.020 TCC shall be amended to read as follows:

22.60.020 Procedure—Notice.
A. Notice for proposed amendments that are a result of a comprehensive plan amendment, an area wide rezone, and modifications to the text shall be provided as specified in chapter 2.05 TCC.

BA. Proposed amendments and modifications to the text, quasi-judicial rezones that are required as a result of a proposed Comprehensive Plan amendment, or area wide rezones shall be first heard by the planning commission and the recommendation of the planning commission shall be forwarded to the board of county commissioners. The planning commission and board of county commissioners shall hold public hearings on any such proposed amendment, modification or area wide rezone. Notice of public hearings which shall be given by publishing in a newspaper of general circulation within the Tumwater UGA not less than ten days prior to the date of the hearing. The publication shall specify the time and place of the hearing, and nature of the matter before the hearing body.

B. In addition to the notices of public hearing required in subsection A of this section, for quasi-judicial rezones or map amendments only, copies of the notice shall be sent by mail not less than ten days prior to the date of the hearing to all owners of property under consideration and property owners within three hundred feet of the exterior boundaries of the property involved, using for this purpose the names and addresses of owners as shown on the records of the Thurston County assessor.

Notice provisions are proposed to be moved to Chapter 2.05 TCC. Leaving the notice text in subsection B above will require any notice rezoning that is subject to the hearings examiner or the board of county commissioners to be advertized in a newspaper of general circulation in the Tumwater UGA. In the past, the County has selected the Nisqually Valley News as its newspaper of record. The NVN is not in general circulation in the Tumwater UGA.

Chapter 22.62 already requires public notice to be mailed to property owners within 300 feet for site-specific rezones that do not require a comprehensive plan amendment. A mailed notice provision is proposed to be included in Chapter 2.05 TCC for site-specific rezones that require a comprehensive plan amendment.

D. Section 22.60.040 TCC shall be amended to read as follows:

22.60.040 Change of zone boundary.

For the purpose of establishing and maintaining sound, stable, and desirable development within the Tumwater UGA, amending the joint land use plan and the rezoning of land for site-specific amendments is to be discouraged and allowed only under certain circumstances, as provided hereafter. The comprehensive plan land use map and the zoning map is the result of a detailed and comprehensive appraisal of the Tumwater UGA’s present and future needs regarding land use allocation, and as such, should not be amended unless to correct a manifest error or because
of changed or changing conditions in a particular area of the Tumwater UGA in general. Rezoning shall only be allowed if the applicant demonstrates by clear and convincing evidence that:

A. The site-specific comprehensive plan land use designation or zoning designation to be rezoned was designated in error and as presently designated, is inconsistent with the policies and goals of the Tumwater Joint Plan;

B. Conditions in the area for which the site-specific land use plan amendment or rezoning is requested have changed or are changing to such a degree that it is in the public interest to encourage a redevelopment, or change in land use for the area; or

C. The proposed site-specific land use plan amendment or rezoning is necessary in order to provide land for a community-related use which was not anticipated at the time of the adoption of the Tumwater Joint Plan, and that such site-specific land use plan amendment or rezoning will be consistent with the policies of the Tumwater Joint Plan.

Adding in the language above is meant to clarify that the criteria for a site-specific rezoning apply even when amending the land use map in the comprehensive plan. Currently the City applies the criteria to both site-specific land use plan amendments and site-specific rezonings.

E. Section 22.62.020 TCC shall be amended to read as follows:

22.62.015 Application types and classification.

Applications for zoning actions, as listed in Table 22.62, shall be subject to a Type I, Type II, Type III or Type IV review process.

...  

D. A Type IV process involves the creation, implementation or amendment of land use policies or regulations. It also includes site-specific (or quasi-judicial) rezones for which a corresponding Joint Plan amendment is required.

The procedure for processing Type IV amendments is located in TCC 22.62.020(D). Chapter 22.60 TCC and chapter 2.05 TCC.
F. Table 22.62 TCC in Chapter 22.62 TCC shall be amended to read as follows:

<table>
<thead>
<tr>
<th>Permit/ Review</th>
<th>Staff/ Director</th>
<th>Hearing Examiner (open hearing)</th>
<th>Planning Commission (open hearing)</th>
<th>Board of County Commissioners (closed hearing)</th>
<th>Review Process Timeline</th>
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<td>Type I</td>
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<td></td>
</tr>
<tr>
<td>Site-Specific rezones**</td>
<td>R</td>
<td>D**</td>
<td>A</td>
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</tbody>
</table>

** Site-specific rezones for which a corresponding joint plan amendment is required, which are approved by the board of county commissioners follows the process for joint plan and zoning text amendments and legislative rezones.

*The double ** are being moved from next to the “D” next to “site-specific rezones.”*
Part V. Title 23 Olympia UGA Zoning Ordinance

A. Section 23.58.010 TCC shall be amended to read as follows:

23.58.010 Initiation.

A. Amendments or modifications to the text of this title, site-specific rezones that require a comprehensive plan amendment, or any general area rezones may be initiated following the docketing process specified in Chapter 2.05 TCC as follows:

1. By the planning commission; or

2. By the board of county commissioners.

B. Applications for site-specific rezones that do not require a comprehensive plan amendment may be initiated as follows:

1. By the planning commission; or

2. By the board of county commissioners; or

3. By the property owners, as follows: by filing with the department a petition of one or more owners of property setting forth the proposed rezone, which petition shall be on a standard form as prescribed by the department and available at the department. The application form shall be accompanied by a fee as established by resolution of the board of county commissioners to help defray the cost of handling the petition, no part of which is refundable.

B. Section 23.58.015 TCC shall be amended to read as follows:

23.58.015 Quasi-judicial Site-specific rezones.

A. Applications for quasi-judicial site-specific rezones that are required as a result of a proposed Comprehensive Plan amendment shall be processed with the proposed Comprehensive Plan amendment in the manner prescribed in Section 23.58.020A and Chapter 2.05 TCC.

B. Applications for all other quasi-judicial site-specific rezones that do not require a comprehensive plan amendment shall be decided by the hearing examiner in accordance with the criteria set forth in Section 23.58.040, and the procedures set forth in Chapter 2.06 TCC.
C. Section 23.58.020 TCC shall be amended to read as follows:

23.58.020 Procedure—Notice.

A. Notice for proposed amendments that are a result of a comprehensive plan amendment, an area wide rezone, and modifications to the text shall be provided as specified in chapter 2.05 TCC.

B. Proposed amendments and modifications to the text, quasi-judicial site-specific rezones that are required as a result of a proposed Comprehensive Plan amendment, or area wide rezones shall be first heard by the planning commission and the recommendation of the planning commission shall be forwarded to the board of county commissioners. The planning commission and board of county commissioners shall hold public hearings on any such proposed amendment, modification or area wide rezone. Notice of public hearings which shall be given by publishing in a newspaper of general circulation within the Olympia UGA not less than ten days prior to the date of the hearing. The publication shall specify the time and place of the hearing, and nature of the matter before the hearing body.

B. In addition to the notices of public hearing required in subsection A of this section, for quasi-judicial rezones or map amendments only, copies of the notice shall be sent by mail not less than ten days prior to the date of the hearing to all owners of property under consideration and property owners within three hundred feet of the exterior boundaries of the property involved, using for this purpose the names and addresses of owners as shown on the records of the Thurston County assessor.

Chapter 23.72 already requires public notice to be mailed to property owners within 300 feet for site-specific rezones that do not require a comprehensive plan amendment. A mailed notice provision is proposed to be included in Chapter 2.05 TCC for site-specific rezones that require a comprehensive plan amendment.

C. Section 23.58.040 TCC shall be amended to read as follows:

23.58.040 Change of zone boundary.

For the purpose of establishing and maintaining sound, stable, and desirable development within the Olympia UGA, amending the joint land use plan and the rezoning of land for site specific amendments is to be discouraged and allowed only under certain circumstances, as provided hereafter. The comprehensive plan land use map and the zoning map is the result of a detailed and comprehensive appraisal of the Olympia UGA's present and future needs regarding land use allocation, and as such, should not be amended unless to correct a manifest error or because of changed or changing conditions in a particular area of the Olympia UGA in general. Rezoning shall only be allowed if the applicant demonstrates by clear and convincing evidence that:
A. The site-specific comprehensive plan land use designation or zoning designation land to be rezoned was zoned in error and as presently designated, is inconsistent with the policies and goals of the Olympia Joint Plan;

B. Conditions in the area for which the site-specific land use plan amendment or rezoning is requested have changed or are changing to such a degree that it is in the public interest to encourage a redevelopment, or change in land use for the area; or

C. The proposed site-specific land use plan amendment or rezoning is necessary in order to provide land for a community-related use which was not anticipated at the time of the adoption of the Olympia Joint Plan, and that such site-specific land use plan amendment or rezoning will be consistent with the policies of the Olympia Joint Plan.

Adding in the language above is meant to clarify that the criteria for a site-specific rezoning apply even when amending the land use map in the comprehensive plan. Currently the City applies the criteria to both site-specific land use plan amendments and site-specific rezonings.

D. Section 23.72.030 TCC shall be amended to read as follows:

23.72.030 Application types and classification.

Applications for zoning actions, as listed in Table 72.01 of this chapter, shall be subject to a Type I, Type II, Type III or Type IV review process.

D. A Type IV process involves the creation, implementation or amendment of land use policies or regulations. It also includes site-specific (or quasi-judicial) rezones for which a corresponding joint plan amendment is required.

The procedure for processing Type IV amendments is located in TCC 22.62.020(D). Chapter 22.60 TCC and chapter 2.05 TCC.
F. Table 72.01 TCC in TCC 23.72.040 shall be amended to read as follows:

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<th>Permit/Review Staff/ Director</th>
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<th>Planning Commission (open hearing)</th>
<th>Board of County Commissioners (closed hearing)</th>
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<tr>
<td>Site-Specific rezones**</td>
<td>R</td>
<td>D**</td>
<td>A</td>
<td>✓</td>
</tr>
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<td>D* (open hearing)</td>
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</tr>
<tr>
<td>...</td>
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</tr>
</tbody>
</table>

** Site-specific rezones for which a corresponding joint plan amendment is required, which are approved by the board of county commissioners follows the process for joint plan and zoning text amendments and legislative rezones.

*The double ** are being moved from next to the “D” next to “site-specific rezones.”*
Attachment C
Court Cases
Spokane County appeals for the second time an Eastern Washington Growth Management Hearings Board decision that invalidated the County's planning actions in amendment 07-CPA-05. See Spokane County v. E. Wash. Growth Mgmt. Hr'gs Bd. (Spokane County I), 160 Wn. App. 274, 250 P.3d 1050, review denied, 171 Wn.2d 1034 (2011) (holding the hearings board had subject matter jurisdiction to review amendment 07-CPA-05). The hearings board decided the County had failed to comply with the Growth Management Act (GMA), chapter 36.70A RCW, and the State
No. 30725-5-III  
*Spokane County v. E. Wash. Growth Mgmt. Hr'gs Bd.*

Environmental Policy Act (SEPA), chapter 43.21C RCW, when it adopted amendment 07-CPA-05. The superior court affirmed on remand from *Spokane County I.*

Although *Spokane County I* explained the hearings board's jurisdiction extended to both the comprehensive plan amendment and the concurrent rezone, the County asserts the hearings board lacks jurisdiction over the rezone. Specifically, the County contends the hearings board lacked authority to review the rezone because it is a site-specific land use decision within the superior court's exclusive jurisdiction under the Land Use Petition Act (LUPA), chapter 36.70C RCW. We again reject this contention because the rezone was not authorized by the then-existing comprehensive plan, but rather implements the comprehensive plan amendment, over which the hearings board had jurisdiction. Additionally, we reject the County's contentions that the hearings board's decision fails to accord proper deference, lacks substantial evidence, erroneously interprets and applies the law, and is arbitrary and capricious. Accordingly, we affirm.

**FACTS**

In December 2004, McGlades LLC purchased a 4.2 acre land parcel in Spokane County, on which the prior owners had operated a produce store that did not conform to the property's Urban Reserve zone designation. In June 2005, McGlades obtained building and restaurant permits, and expanded its nonconforming use into a market and bistro. McGlades soon applied unsuccessfully for a conditional use permit, requesting further expansion to include an asphalt driveway and drive-through espresso service, asphalt parking lot with spaces for 39 vehicles, outdoor dining and entertainment with
seating for 64 patrons, and on-site alcohol consumption. McGlades then proposed amendments to the County's comprehensive plan map and zoning map that would change the property's comprehensive plan category and zone designation to Limited Development Area (Commercial). In July 2006, while the County contemplated the proposal, McGlades obtained a temporary use permit and presumably began expansion. But McGlades soon closed its business when the temporary use permit expired in January 2007. McGlades does not participate in this second appeal. The facts are unchanged from *Spokane County I*, 160 Wn. App. at 278-80.

In September 2007, the County issued a SEPA environmental checklist and corresponding determination of nonsignificance for McGlades's proposal and seven others. The County concluded SEPA did not require environmental impact statements because the proposals presented "no probable significant adverse impacts." Administrative Record (AR) at 59, 63. Specifically, the County characterized the proposals as nonproject actions, leaving much of the required environmental analysis "[t]o be determined if site specific developments are proposed." AR at 43. Neighboring landowners Dan Henderson, Larry Kunz, and Neil Membrey unsuccessfully appealed the County's threshold determination to the County Hearing Examiner.

On December 21, 2007, the Board of County Commissioners passed Resolution 07-1096, adopting McGlades's proposal along with seven others during the annual comprehensive plan amendment cycle. The resolution incorporated McGlades's proposal as amendment 07-CPA-05. Neighboring landowners Kasi Harvey-Jarvis, Dan Henderson, Larry Kunz, and Neil Membrey, along with the Neighborhood Alliance of
Spokane County v. E. Wash. Growth Mgmt. H'gs Bd.

Spokane (collectively the Neighbors), successfully appealed the resolution to the hearings board. The hearings board decided (1) amendment 07-CPA-05 designated a new Limited Area of More Intensive Rural Development (LAMIRD) without observing applicable GMA requirements, (2) the environmental checklist was inadequate under SEPA because it did not fully disclose or carefully consider amendment 07-CPA-05’s probable long-term effects, and (3) amendment 07-CPA-05 is invalid because its continued validity would substantially interfere with fulfilling the GMA’s goals of promoting urban growth, reducing sprawl, and protecting the environment.

The superior court reversed the hearings board’s decision upon the County’s appeal and this court reversed the superior court’s decision upon the Neighbors’ appeal. Spokane County I, 160 Wn. App. 274. On remand, the superior court affirmed the hearings board’s decision. The County again appealed to this court.

REVIEW STANDARD

We review a hearings board decision under the Administrative Procedure Act (APA), chapter 34.05 RCW. Feil v. E. Wash. Growth Mgmt. H’gs Bd., 172 Wn.2d 367, 376, 259 P.3d 227 (2011); see RCW 34.05.510. We apply APA standards directly to the hearings board record, performing the same function as the superior court. City of Redmond v. Cent. Puget Sound Growth Mgmt. H’gs Bd., 136 Wn.2d 38, 45, 959 P.2d 1091 (1998); see RCW 34.05.526. The party challenging the hearings board decision (here the County) bears the burden of proving it is invalid. RCW 34.05.570(1)(a). The decision is invalid if it suffers from at least one of nine enumerated infirmities. RCW 34.05.570(3). We must grant relief from the decision if, as relevant here:
(b) The order is outside the statutory authority or jurisdiction of the agency conferred by any provision of law;
(c) The agency has engaged in unlawful procedure or decision-making process, or has failed to follow a prescribed procedure;
(d) The agency has erroneously interpreted or applied the law;
(e) The order is not supported by evidence that is substantial when viewed in light of the whole record . . . ; [or]

(i) The order is arbitrary or capricious.

RCW 34.05.570(3)(b)-(e), (i).

Our review is de novo under RCW 34.05.570(3)(b) through (d), determining whether the decision contains a legal error. *Kittitas County v. E. Wash. Growth Mgmt. Hr'gs Bd.*, 172 Wn.2d 144, 155, 256 P.3d 1193 (2011). We accord a hearings board's interpretation of the GMA "substantial weight." *King County v. Cent. Puget Sound Growth Mgmt. Hr'gs Bd.*, 142 Wn.2d 543, 553, 14 P.3d 133 (2000). But the interpretation does not bind us. *City of Redmond*, 136 Wn.2d at 46.

We apply the substantial evidence review standard to challenges under RCW 34.05.570(3)(e), determining whether there exists ""a sufficient quantity of evidence to persuade a fair-minded person of the truth or correctness of the order.'"’ *City of Redmond*, 136 Wn.2d at 46 (quoting *Callecod v. Wash. State Patrol*, 84 Wn. App. 663, 673, 929 P.2d 510 (1997)). We view the evidence ""in the light most favorable to . . . the party who prevailed in the highest forum that exercised fact-finding authority.'’ *City of Univ. Place v. McGuire*, 144 Wn.2d 640, 652, 30 P.3d 453 (2001) (quoting *State ex rel. Lige & Wm. B. Dickson Co. v. County of Pierce*, 65 Wn. App. 614, 618, 829 P.2d 217 (1992)). Doing so ""necessarily entails accept[ing] the factfinder's views regarding the
credibility of witnesses and the weight to be given reasonable but competing inferences." Id. (quoting Lige & Wm. B. Dickson Co., 65 Wn. App. at 618).

We apply the arbitrary and capricious review standard to challenges under RCW 34.05.570(3)(i), determining whether the decision constitutes "willful and unreasoning action, taken without regard to or consideration of the facts and circumstances surrounding the action." City of Redmond, 136 Wn.2d at 46-47 (quoting Kendall v. Douglas, Grant, Lincoln & Okanogan Counties Pub. Hosp. Dist. No. 6, 118 Wn.2d 1, 14, 820 P.2d 497 (1991)). "Where there is room for two opinions, an action taken after due consideration is not arbitrary and capricious even though a reviewing court may believe it to be erroneous." Id. at 47 (quoting Kendall, 118 Wn.2d at 14).

ANALYSIS

A. Law of the Case

The Neighbors argue Spokane County I precludes the County's contention that the hearings board lacked subject matter jurisdiction over the rezone. The County responds Spokane County I solely decided the hearings board had jurisdiction over the comprehensive plan amendment. We agree with the Neighbors but, as explained below, we choose to clarify the principles we established in Spokane County I.

"The law of the case doctrine provides that once there is an appellate court ruling, its holding must be followed in all of the subsequent stages of the same litigation." State v. Schwab, 163 Wn.2d 664, 672, 185 P.3d 1151 (2008) (citing Roberson v. Perez, 156 Wn.2d 33, 41, 123 P.3d 844 (2005)). Thus, "questions determined on appeal, or which might have been determined had they been presented,
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will not again be considered on a subsequent appeal if there is no substantial change in the evidence." Folsom v. County of Spokane, 111 Wn.2d 256, 263, 759 P.2d 1196 (1988) (quoting Adamson v. Traylor, 66 Wn.2d 338, 339, 402 P.2d 499 (1965)). We retain discretion on whether to apply the doctrine:

The appellate court may at the instance of a party review the propriety of an earlier decision of the appellate court in the same case and, where justice would best be served, decide the case on the basis of the appellate court's opinion of the law at the time of the later review.

RAP 2.5(c)(2).

In Spokane County I, the superior court ruled the hearings board lacked jurisdiction to review the comprehensive plan amendment and concurrent rezone because they together constituted a site-specific land use decision within the superior court's exclusive jurisdiction under LUPA. 160 Wn. App. at 280. The Neighbors sought this court's relief, contending "the change here, site specific or not, amounted to an amendment of the County's comprehensive plan and therefore review was properly with the Hearings Board" under the GMA. Id. McGlades responded "this was a site-specific rezone over which the Hearings Board had no jurisdiction." Id. The County deferred to McGlades's argument on this issue. Resp't Spokane County's Resp. Br. at 5, Spokane County I, 160 Wn. App. 274 (No. 28350-0-III). We reversed the superior court and affirmed the hearings board, reasoning:

Growth management hearings boards have exclusive authority to rule on challenges alleging that a governmental agency is not in compliance with the requirements of the GMA. The hearings boards have jurisdiction to review petitions challenging whether a county's comprehensive plan, development regulations, and permanent amendments to the plan comply with the GMA. A hearings board does "not have jurisdiction to decide
challenges to site-specific land use decisions because site-specific land use decisions do not qualify as comprehensive plans or development regulations."

"Site-specific rezones authorized by an existing comprehensive plan are treated differently from amendments to comprehensive plans or development regulations. [LUPA] governs site-specific land use decisions and the superior court has exclusive jurisdiction over petitions that challenge site-specific land use decisions. However, "[t]he superior court may decide only whether a site-specific land use decision complies with a comprehensive plan and/or development regulation," not whether the rezone complies with the GMA. LUPA does not apply to local land use decisions "that are subject to review by a quasi-judicial body created by state law, such as . . . the growth management hearings board."

The GMA does not make a distinction between site-specific and general comprehensive plan map amendments. Nor does the GMA recognize a single reclassification approach of "site specific Comprehensive Plan Maps," urged by McGlades. The Hearings Board had jurisdiction to review the petition.

We . . . reverse the decision of the superior court ruling that the Eastern Washington Growth Management Hearings Board did not have jurisdiction over the comprehensive plan amendment.

Id. at 280-81, 283, 286 (second alteration and first omission in original) (emphasis added) (citations omitted).

In sum, Spokane County I held the hearings board had GMA authority to consider the Neighbors' petition. Because the Neighbors' petition alleged "Spokane County unlawfully amend[ed] the Spokane County Comprehensive Plan and County Zoning map," AR at 1 (emphasis added), the Spokane County I court explained the hearings board had subject matter jurisdiction to review both the comprehensive plan amendment and concurrent rezone under the GMA, thereby rejecting McGlades's site-specific rezone arguments. Contrary to law of the case principles, the County again contends, as did McGlades in Spokane County I, that the hearings board lacked
jurisdiction to review the rezone because it is a site-specific land use decision within the superior court's exclusive jurisdiction under LUPA. Even so, we exercise our discretion to further clarify the rule we established in *Spokane County* I.

### B. Jurisdiction

The issue is whether the hearings board had subject matter jurisdiction to review amendment 07-CPA-05's rezone under the GMA. The County contends the rezone is within the superior court's exclusive jurisdiction under LUPA. We review the hearings board's assertion of jurisdiction de novo. RCW 34.05.570(3)(b); *Kittitas County*, 172 Wn.2d at 155.

Certain local governments like Spokane County must "adopt a comprehensive plan under [the GMA] and development regulations that are consistent with and implement the comprehensive plan." RCW 36.70A.040(3)(d), (4)(d), (5)(d). If a county amends its comprehensive plan, it must concurrently adopt or amend consistent implementing development regulations. WAC 365-196-805(1). A comprehensive plan is a county's "generalized coordinated land use policy statement." RCW 36.70A.030(4). Development regulations are a county's "controls placed on development or land use activities . . . , including . . . zoning ordinances." RCW 36.70A.030(7). But a "decision to approve a project permit application" is not a development regulation, even if it appears in a legislative resolution or ordinance. *Id.* Instead, a project permit approval is a "land use decision" under LUPA. RCW 36.70C.020(2)(a). Project permit applications include proposals for "site-specific rezones authorized by a comprehensive plan" but
exclude proposals for "the adoption or amendment of a comprehensive plan . . . or
development regulations." RCW 36.70B.020(4).

Regional hearings boards have exclusive jurisdiction to review petitions alleging
a county did not comply with the GMA in adopting or amending its comprehensive plan.
or development regulations.\(^1\) Former RCW 36.70A.280(1)(a) (2003); former RCW
36.70A.290(2) (1995); Somers v. Snohomish County, 105 Wn. App. 937, 945, 21 P.3d
1165 (2001). Additionally, hearings boards may review petitions alleging a county did
not comply with SEPA in adopting or amending its comprehensive plan or development
regulations. Former RCW 36.70A.280(1)(a), .290(2). But hearings boards "do not have
jurisdiction to decide challenges to site-specific land use decisions because [those]
decisions do not qualify as comprehensive plans or development regulations." Woods
v. Kittitas County, 162 Wn.2d 597, 610, 174 P.3d 25 (2007); see RCW 36.70A.030(4),
(7); RCW 36.70B.020(4); RCW 36.70C.020(2)(a). Instead, the superior court has
exclusive jurisdiction under LUPA to review site-specific land use decisions not subject
to review by quasi-judicial agencies like hearings boards. Former RCW
36.70C.030(1)(a)(ii) (2003); Woods, 162 Wn.2d at 610.

Here, whether the hearings board had subject matter jurisdiction to review
amendment 07-CPA-05's rezone depends on whether it is an amendment to a
development regulation under the GMA or a project permit approval under LUPA.
Woods, 162 Wn.2d at 610; see RCW 36.70A.030(7); RCW 36.70B.020(4). The rezone

\(^1\) The Eastern Washington Growth Management Hearings Board has jurisdiction
over such petitions arising from counties "east of the crest of the Cascade Mountains,"
including Spokane County. Former RCW 36.70A.250(1)(a) (1994).
was certainly site specific. See Woods, 162 Wn.2d at 611 n.7 (stating a site-specific rezone is a change in the zone designation of a "specific tract" at the request of "specific parties") (quoting Cathcart-Maltby-Clearview Cmty. Council v. Snohomish County, 96 Wn.2d 201, 212, 634 P.2d 853 (1981))). But the parties dispute whether the rezone was or needed to be "authorized by a comprehensive plan." RCW 36.70B.020(4).

Under RCW 36.70B.020(4), a site-specific rezone is a project permit approval solely if "authorized by a comprehensive plan"; otherwise, it is "the adoption or amendment of a . . . development regulation[]." We must interpret this language so as to give it meaning, significance, and effect. See In re Parentage of J.M.K., 155 Wn.2d 374, 393, 119 P.3d 840 (2005) (stating a court must not "simply ignore" express terms when interpreting a statute); State ex rel. Baisden v. Preston, 151 Wash. 175, 177, 275 P. 81 (1929) (stating a court must interpret a statute as a whole so that, if possible, "no clause, sentence, or word shall be superfluous, void, or insignificant" (quoting Wash. Mkt. Co. v. Hoffman, 101 U.S. 112, 115-16, 25 L. Ed. 782 (1879)); Murray v. Dep't of Labor & Indus., 151 Wash. 95, 102, 275 P. 66 (1929) (a court must, if possible, interpret a statute so as to give every word or phrase "meaning" as well as "significance and effect" (internal quotation marks omitted)). As we noted in Spokane County I, to be "authorized by a comprehensive plan" within the meaning of RCW 36.70B.020(4), the rezone had to be "allowed by an existing comprehensive plan." 160 Wn. App. at 281-83.
Spokane County v. E. Wash. Growth Mgmt. Hr’gs Bd. (emphasis added); see also Woods, 162 Wn.2d at 612 n.7, 613; Wenatchee Sportsmen Ass’n v. Chelan County, 141 Wn.2d 169, 179-80, 4 P.3d 123 (2000).

The County argues it initially sought a site-specific rezone of McGlades’s property but, under local zoning codes, the rezone was not possible without changing the property’s existing comprehensive plan category from Urban Reserve to Limited Development Area (Commercial). The County explains it made the necessary change by amending the comprehensive plan and concurrently rezoning the property. Nonetheless, the County contends the rezone was “separate and distinct” from the comprehensive plan amendment. Appellant Spokane County’s Opening Br. at 11. We disagree. Notably, the County concedes the rezone required a comprehensive plan amendment to take effect. This inexorably intertwined the rezone and the comprehensive plan amendment, making them interdependent and putting them in the same basket for hearings board review. In other words, the rezone was premised on and carried out the comprehensive plan amendment. Therefore, the rezone is not a project permit approval under LUPA because the then-existing comprehensive plan did not authorize it. Instead the rezone is an amendment to a development regulation under the GMA because it implements the comprehensive plan amendment. Thus, the hearings board’s decision is within its statutory authority. See RCW 34.05.570(3)(b).

Dictum in Coffey v. City of Walla Walla, 145 Wn. App. 435, 187 P.3d 272 (2008), does not require a different conclusion. There, the city amended its comprehensive plan but did not rezone the property. Id. at 438. The Coffey court held the superior court lacked subject matter jurisdiction to review the comprehensive plan amendment
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under LUPA because the hearings board had exclusive jurisdiction to do so under the GMA. *Id.* at 441. The Coffey court continued,

> It is not uncommon for those hoping to develop property to seek both a comprehensive plan amendment and a rezone of property in the same proceeding. Anyone seeking to challenge both aspects of a ruling granting both requests would by statute have to appeal to two entities: the [hearings board] for the comprehensive plan amendment and superior court for the rezone.

*Id.* at 442. This statement was unnecessary to the Coffey court's holding because the city amended its comprehensive plan but did not rezone the property. Additionally, this statement is true solely if a rezone is site specific and authorized by a then-existing comprehensive plan. In making this statement, the Coffey court did not consider whether a rezone that implements a comprehensive plan amendment can be an amendment to a development regulation.

Considering all, we hold a site-specific rezone is a project permit approval under LUPA if it is authorized by a then-existing comprehensive plan and, by contrast, is an amendment to a development regulation under the GMA if it implements a comprehensive plan amendment. In sum, the hearings board had subject matter jurisdiction to review amendment 07-CPA-05's rezone for compliance with both the GMA and SEPA. See former RCW 36.70A.280(1)(a), .290(2).

C. Hearings Board Decisions

The issue is whether the hearings board erred by invalidating amendment 07-CPA-05 on grounds the County did not comply with the GMA or SEPA in adopting it. We review the hearings board's factual findings for substantial evidence, legal
conclusions de novo, and order for arbitrariness or capriciousness. RCW 34.05.570(3)(d)-(e), (i); Kittitas County, 172 Wn.2d at 155; City of Redmond, 136 Wn.2d at 46-47.

A hearings board may decide a petition alleging a county did not comply with the GMA or SEPA in adopting or amending its comprehensive plan or development regulations. Former RCW 36.70A.280(1)(a), .290(2). The petitioner (here the Neighbors) bears the burden of proving noncompliance. RCW 36.70A.320(2). But a county has "broad discretion in adapting the requirements of the GMA to local realities." Quadrant Corp. v. Cent. Puget Sound Growth Mgmt. Hr'gs Bd., 154 Wn.2d 224, 236, 110 P.3d 1132 (2005); see former RCW 37.70A.320(1) (1997). Thus, a hearings board must presume validity and find compliance unless the county's planning action is "clearly erroneous in view of the entire record before the board and in light of the goals and requirements of [the GMA]." RCW 36.70A.320(1), (3). A county's planning action is clearly erroneous if it leaves a hearings board with a "firm and definite conviction that a mistake has been committed." King County, 142 Wn.2d at 552 (quoting Dep't of Ecology v. Pub. Util. Dist. No. 1, 121 Wn.2d 179, 201, 849 P.2d 646 (1993)).

Where a hearings board finds noncompliance with the GMA or SEPA, it may wholly or partially invalidate the county's planning action if "continued validity . . . would substantially interfere with the fulfillment of the goals of [the GMA]." Former RCW 36.70A.302(1) (1997). The GMA's goals include, as relevant here:

(1) Urban growth. Encourage development in urban areas where adequate public facilities and services exist or can be provided in an efficient manner.
(2) Reduce sprawl. Reduce the inappropriate conversion of undeveloped land into sprawling, low-density development.

(10) Environment. Protect the environment and enhance the state's high quality of life, including air and water quality, and the availability of water.


We begin with GMA noncompliance. The County challenges the hearings board's decision that amendment 07-CPA-05 designated a new LAMIRD without observing applicable GMA requirements. A comprehensive plan amendment must “conform to [the GMA].” RCW 36.70A.130(1)(d). But “the GMA is not to be liberally construed.” Woods, 162 Wn.2d at 612 & n.8, 614 (citing Skagit Surveyors & Eng'rs, LLC v. Friends of Skagit County, 135 Wn.2d 542, 565, 958 P.2d 962 (1998)). Thus, a comprehensive plan must obey the GMA's clear mandates. See Thurston County v. W. Wash. Growth Mgmt. Hr'gs Bd., 164 Wn.2d 329, 341-42, 190 P.3d 38 (2008). A newly adopted or amended development regulation must be “consistent with and implement the comprehensive plan.” RCW 36.70A.040(3)(d), (4)(d), (5)(d); RCW 36.70A.130(1)(d); see WAC 365-196-805(1). But “a comprehensive plan is a 'guide' or 'blueprint' to be used when making land use decisions.” Citizens for Mount Vernon v. City of Mount Vernon, 133 Wn.2d 861, 873, 947 P.2d 1208 (1997) (quoting Barrie v.
Kitsap County, 93 Wn.2d 843, 849, 613 P.2d 1148 (1980)). Thus, a development regulation need not strictly adhere but must "generally conform" to the comprehensive plan. Id. (quoting Barrie, 93 Wn.2d at 849).

A county's comprehensive plan must contain "a rural element including lands that are not designated for urban growth." RCW 36.70A.070(5); see WAC 365-196-425. This rural element "may allow for limited areas of more intensive rural development, including necessary public facilities and public services." RCW 36.70A.070(5)(d); see WAC 365-196-425(6). A county must "minimize and contain the existing areas or uses of more intensive rural development" by adopting measures providing they "shall not extend beyond the[ir] logical outer boundary . . . , thereby allowing a new pattern of low-density sprawl." RCW 36.70A.070(5)(d)(iv); see WAC 365-196-425(6)(c)(i)(B)-(E).

Existing areas "are clearly identifiable and contained [within] . . . a logical boundary delineated predominately by the built environment." RCW 36.70A.070(5)(d)(iv); WAC 365-196-425(6)(c)(i)(C). In fixing a LAMIRD's logical outer boundary, the county must address "the need to preserve the character of existing natural neighborhoods and communities," "physical boundaries, such as . . . streets and highways, and land forms and contours," and "the prevention of abnormally irregular boundaries." RCW 36.70A.070(5)(d)(iv)(A)-(C); see WAC 365-196-425(6)(c)(i)(D)(I)-(III).

Consistent with these rules, the County's rural element allows for LAMIRDs in Policy RL.5.2:

The intensification and infill of commercial . . . areas shall be allowed in rural areas consistent with the following guidelines:
a) The area is clearly identified and contained by logical boundaries, outside of which development shall not occur. These areas shall be designated and mapped within the Limited Rural Development category of the Comprehensive Plan map.

b) The character of neighborhoods and communities is maintained.

d) The intensification is limited to expansion of existing uses or infill or new uses within the designated area ...

SPOKANE COUNTY COMPREHENSIVE PLAN (SCCP): RURAL LAND USE Policy RL.5.2(a)-(b), (d). The County designed this policy to advance Goal RL.5a: "Provide for ... commercial uses in rural areas that serve the needs of rural residents and are consistent with maintaining rural character." SCCP: RURAL LAND USE Goal RL.5a.

Here, the hearings board decided the comprehensive plan amendment did not conform to RCW 36.70A.070(5)(d)(iv)(A) through (C), while the concurrent rezone was not consistent with and did not implement Goal RL.5a or Policy RL.5.2(a) through (b) and (d). The County raises four arguments in opposition.

First, the County argues the hearings board erroneously found amendment 07-CPA-05 noncompliant with the GMA because it is based on the pre-amendment comprehensive plan and development regulations, which complied with the GMA. However, an amendment's GMA compliance is independent from that of a pre-amendment planning document. See RCW 36.70A.040(3)(d), (4)(d), (5)(d); RCW 36.70A.070; RCW 36.70A.130(1)(d). Notably, the hearings board found amendment 07-CPA-05 failed to minimize and contain the intensification and infill of commercial use within the logical outer boundary the comprehensive plan originally fixed in 2001. This finding is a verity on appeal because the County did not assign error to it. See RAP
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10.3(g)-(h); Hilltop Terrace Homeowner’s Ass’n v. Island County, 126 Wn.2d 22, 30, 891 P.2d 29 (1995). Indeed, a staff report to the county commissioners supports this finding, stating,

The requested change from Urban Reserve to Limited Development Area (Commercial) is generally not consistent with Policy RL.5.2 [and, thus, the GMA].

The Limited Development Area . . . Commercial was designated south of Day Mt Spokane Road and adjacent to both side [sic] of Highway 2 based on existing land uses, zones, comprehensive planning policies and the public process that resulted in the adoption of the original GMA County Comprehensive Plan in November of 2001. If approved the Limited Development Area Commercial would be extended to the north side of Day Mt. Spokane Road and to property which is not fronting or adjacent to Limited Development Areas with actual frontage of Highway 2.

AR at 553. Accordingly, the County’s argument fails.

Second, the County argues the hearings board erroneously interpreted Goal RL.5a and Policy RL.5.2 as requiring public necessity for McGlades’s market and bistro because the GMA does not require such need and the comprehensive plan is a mere guide. But the GMA provides LAMIRDs may contain “necessary public facilities and public services.” RCW 36.70A.070(5)(d). And, amendment 07-CPA-05 would not generally conform to the comprehensive plan if it provided commercial uses in rural areas regardless of local need. The County cannot escape its obligation to observe Goal RL.5a and Policy RL.5.2 by characterizing them as a mere guide.

Third, the County argues the hearings board erroneously found no demonstrated public necessity for McGlades’s market and bistro, considering the full-service restaurants existing nearby, because the community gave widespread support for the
business. But desires are different than needs. The County does not identify any evidence demonstrating public need. Instead, the County suggests public desire is enough because the GMA offers flexibility, ensuring community-oriented planning responsive to local circumstances. We do not reweigh the evidence. Even if we disagreed with the hearings board, it is a verity that amendment 07-CPA-05 established an improper outer LAMIRD boundary.

Finally, the County argues the hearings board erroneously found McGlades’s market and bistro disrupted the neighborhood’s rural character because the business assimilated well in an increasingly urban area. But the County does not dispute the hearings board’s assessment of increased traffic, noise, and lighting. Again, we do not reweigh the evidence. And again, even if we disagreed with the hearings board, it is a verity that amendment 07-CPA-05 established an improper outer LAMIRD boundary.

In sum, the record shows the comprehensive plan amendment does not conform to the GMA, while the concurrent rezone is not consistent with and does not implement the comprehensive plan. A sufficient quantity of evidence exists to persuade a fair-minded person the County did not comply with the GMA in adopting amendment 07-CPA-05. In reaching this decision, the hearings board correctly interpreted and applied the law upon thorough reasoning with due consideration for the facts. Therefore, the hearings board did not err in finding GMA noncompliance.

We turn now to SEPA noncompliance. The County challenges the hearings board’s decision that the environmental checklist was inadequate under SEPA because it did not fully disclose or carefully consider amendment 07-CPA-05’s probable long-
term effects. Under SEPA, a county must include an environmental impact statement with any proposal the lead agency's responsible official decides would "significantly affect[] the quality of the environment." RCW 43.21C.030(2)(c); WAC 197-11-330(1).

An agency must make this threshold determination where, as here, the proposal is an "action" and is not "categorically exempt." Former WAC 197-11-310(1) (2003). The agency must use an environmental checklist to assist its analysis and must document its conclusion in a determination of significance or nonsignificance. Former WAC 197-11-315(1) (1995); WAC 197-11-340(1), -360(1).

The agency must base its threshold determination on "information reasonably sufficient to evaluate the environmental impact of a proposal." WAC 197-11-335. In GMA planning, the agency should tailor the "scope and level of detail of environmental review" to fit the proposal's specifics. WAC 197-11-228(2)(a). Thus, for a nonproject action, such as a comprehensive plan amendment or rezone, the agency must address the probable impacts of any future project action the proposal would allow. WASH. STATE DEP'T OF ECOLOGY, supra, § 4.1, at 66; see WAC 197-11-060(4)(c)-(d). The purpose of these rules is to ensure an agency fully discloses and carefully considers a proposal's environmental impacts before adopting it and "at the earliest possible stage."

3 See WAC 197-11-704(2)(b)(ii). Specifically, amendment 07-CPA-05 is a nonproject action because it involves "[t]he adoption or amendment of comprehensive land use plans or zoning ordinances." Id.

4 See RCW 43.21C.229, .450; WAC 197-11-305, -800; SPOKANE COUNTY CODE 11.10.070-.075, .180. Additionally, while a county may forego SEPA analysis if its comprehensive plan and development regulations "provide adequate analysis of and mitigation for the specific adverse environmental impacts of the project action," this exception does not apply to amendment 07-CPA-05 because it is a nonproject action. RCW 43.21C.240(1); see also RCW 43.21C.240(2); WAC 197-11-158.
An agency may not postpone environmental analysis to a later implementation stage if the proposal would affect the environment without subsequent implementing action. RICHARD L. SETTLE, THE WASHINGTON STATE ENVIRONMENTAL POLICY ACT § 13.01[1], at 13-15 to -16 (1987 & Supp. 2010); see WAC 197-11-060(5)(d)(i)-(ii).

Here, the hearings board found the County's checklist ignored the probable impacts of any future commercial development amendment 07-CPA-05 would allow and improperly postponed environmental analysis to the project review stage. The County raises two arguments in opposition.

First, the County argues the hearings board contradicted its later statement that future commercial development is speculative given the property's existing growth. This claimed inconsistency makes no difference because McGlades clearly intended to reopen and expand its market and bistro under the proposal.5 And, the proposal would allow McGlades or its successors to replace the business with a variety of other commercial uses.6 Either result could significantly affect environmental quality, as

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5 McGlades's application for a conditional use permit requested expansion to include an asphalt driveway and drive-through espresso service, asphalt parking lot with spaces for 39 vehicles, outdoor dining and entertainment with seating for 64 patrons, and on-site alcohol consumption. The hearing examiner noted this expansion "is likely if the site is rezoned." AR at 178. The hearing examiner clarified, "McGlades . . . seeks to reopen the business, and to expand it under the [Limited Development Area (Commercial)] zone." AR at 172.

6 The Limited Development Area (Commercial) zone designation allows taverns and pubs, theaters and performing arts centers, circuses, storage facilities, business complexes, financial institutions, vehicle repair shops, mortuary service centers, medical
discussed below. Regardless, the hearings board properly recognized the checklist could not postpone environmental analysis to the project review stage because amendment 07-CPA-05 approved the property's existing nonconforming use, thereby affecting the environment even if McGlades or its successors never pursue subsequent project action.

Second, the County argues the hearings board undervalued the checklist's thorough contents. But the checklist failed to adequately address the proposal. Apart from reciting it in a background section with seven other comprehensive plan amendments and concurrent rezones, the checklist did not mention amendment 07-CPA-05. Assuming this omission was a scrivener's error, the checklist still lacked required particularity. Though amendment 07-CPA-05 varied greatly from the other seven proposals, the checklist attempted to address them all with broad generalizations. The checklist did not tailor its scope or level of detail to address the probable impacts on, for example, water quality, resulting from amendment 07-CPA-05 specifically. While the property is near potable water wells in a Critical Aquifer Recharge Area with high susceptibility, the proposal could “allow an on-site [wastewater disposal] system that will fail thus resulting in the degradation of the local environment.” AR at 562. Despite these concerns, the checklist repeated formulaic language postponing environmental analysis to the project review stage and assuming compliance with applicable standards. Thus, the checklist lacked information reasonably sufficient to evaluate the proposal's environmental impacts.
In sum, the record shows the County failed to fully disclose or carefully consider amendment 07-CPA-05's environmental impacts before adopting it and at the earliest possible stage. This is a sufficient quantity of evidence to persuade a fair-minded person the County did not comply with SEPA in adopting the proposal. In reaching this decision, the hearings board correctly interpreted and applied the law upon thorough reasoning with due consideration for the facts. Therefore, the hearings board did not err in finding SEPA noncompliance.

We turn now to invalidity based on GMA and SEPA noncompliance. The County challenges the hearings board's determination that amendment 07-CPA-05 is invalid because its continued validity would substantially interfere with fulfilling the GMA's environmental protection goal. To fulfill this goal, the GMA requires a county to designate critical areas and adopt development regulations protecting them. RCW 36.70A.060(2), .070(5)(c)(iv), .170(1)(d); WAC 365-196-485(2), (3)(a), (c)-(d). Critical areas include "areas with a critical recharging effect on aquifers used for potable water." RCW 36.70A.030(5)(b); WAC 365-196-200(5)(b). A county must use "the best available science in developing policies and development regulations to protect the functions and values of critical areas." RCW 36.70A.172(1); WAC 365-196-485(1)(b), (3)(d).

Here, the hearings board found by failing to comply with SEPA in adopting amendment 07-CPA-05, the County threatened a Critical Aquifer Recharge Area with high susceptibility and disused the best available science for mitigating probable environmental impacts. This, the hearings board concluded, substantially interfered
with fulfilling the GMA's environmental protection goal. The County argues the hearings board ignored the permit review McGlades's market and bistro underwent at each expansion in the years preceding the comprehensive plan amendment and concurrent rezone. But the County failed to adopt any such environmental analysis, incorporate it by reference, or include it by addendum. See WAC 197-11-600, -625 to -635. The mere existence of additional supporting documents cannot excuse the County's failure to include them in the planning process.

The record shows the County's SEPA noncompliance threatened a Critical Aquifer Recharge Area with high susceptibility and disused the best available science for mitigating probable environmental impacts. This is a sufficient quantity of evidence to persuade a fair-minded person amendment 07-CPA-05's continued validity would substantially interfere with fulfilling the GMA's environmental protection goal. In reaching this decision, the hearings board correctly interpreted and applied the law upon thorough reasoning with due consideration for the facts. Therefore, the hearings board did not err in determining invalidity on SEPA grounds.

Moreover, we note the hearings board additionally determined invalidity on GMA grounds, specifying that amendment 07-CPA-05's continued validity would substantially interfere with fulfilling the GMA's urban growth promotion and sprawl reduction goals. The County vaguely assigned error to this determination then abandoned the error claim by failing to argue it. See RAP 10.3(a)(6), (g)-(h); Howell v. Spokane & Inland Empire Blood Bank, 117 Wn.2d 619, 624, 818 P.2d 1056 (1991). Thus, the hearings board did not err in determining invalidity on GMA grounds.
Considering all, the hearings board's decision is supported by substantial evidence in light of the whole record, does not erroneously interpret or apply the law, and is not arbitrary or capricious. See RCW 34.05.570(3)(d)-(e), (i). Therefore, we conclude the hearings board did not err by invalidating amendment 07-CPA-05.

D. Deference

The issue is whether the hearings board erred by failing to accord the County's planning actions proper deference. The County contends the hearings board engaged in an unlawful procedure or decision-making process, or failed to follow a prescribed procedure, by withholding such deference. We review the hearings board's procedures and decision-making processes de novo. RCW 34.05.570(3)(c); Kittitas County, 172 Wn.2d at 155.

A hearings board must defer to a county's planning action if it is consistent with the GMA's goals and requirements. Former RCW 36.70A.3201 (1997); Quadrant Corp., 154 Wn.2d at 238. GMA deference to county planning actions supersedes APA deference to administrative adjudications. Quadrant Corp., 154 Wn.2d at 238. Thus, we will not defer to a hearings board if it fails to accord a county the required deference. Id. But a hearings board accords a county the required deference by properly applying the GMA's clearly erroneous review standard. Id.

Here, the hearings board initially presumed the County's comprehensive plan amendment and concurrent rezone were valid but ultimately found them clearly erroneous in light of the entire record and the GMA's goals and requirements. Again, the hearings board's decision is supported by substantial evidence in light of the whole record.
record, does not erroneously interpret or apply the law, and is not arbitrary or
capricious. Thus, the hearings board properly applied the GMA's clearly erroneous
review standard. See RCW 36.70A.320(1), (3); King County, 142 Wn.2d at 552. By
doing so, the hearings board accorded the County's planning actions the required
deferece. See Quadrant Corp., 154 Wn.2d at 238. In sum, the hearings board did not
engage in an unlawful procedure or decision-making process, or fail to follow a
prescribed procedure. See RCW 34.05.570(3)(c).

E. Attorney Fees and Costs

The Neighbors request an award of attorney fees and costs, citing chapter 4.84
RCW. The Regulatory Reform Act, RCW 4.84.370, does not authorize an award
because it does not apply to the County's comprehensive plan amendment or
concurrent rezone, and the Neighbors did not prevail before the county commissioners
or hearing examiner. See Heller Bldg., LLC v. City of Bellevue, 147 Wn. App. 46, 64,
(1997). Likewise, the Equal Access to Justice Act, RCW 4.84.340 through .360, does
not authorize an award because it does not apply against the hearings board. See
Bd., 97 Wn. App. 98, 100-01, 982 P.2d 668 (1999). Therefore, we deny the Neighbors'
request.
No. 30725-5-III
Spokane County v. E. Wash. Growth Mgmt. Hrs'gs Bd.

Affirmed.

WE CONCUR:

Kulik, J.

Brown, J.

Kulik, J.

Siddoway, A.C.J.
IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

KITTITAS COUNTY, a political subdivision of the State of Washington, Appellant, v.

KITTITAS COUNTY CONSERVATION and FUTUREWISE, And ELLISON THORP PROPERTY, LCC and ELLISON THORP PROPERTY II, LCC, And EASTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD, Respondents.

PUBLISHED OPINION

No. 30728-0-III

BROWN, J. — Development opponents Kittitas County Conservation Coalition and Futurewise (collectively Futurewise) ask us to reinstate a decision the Eastern Washington Growth Management Hearings Board entered against development proponents Kittitas County (the County), Ellison Thorp Property LLC, and Ellison Thorp
No. 30728-0-III
Kittitas County v. Kittitas County Conservation Coal.

Property II LLC (collectively Ellison), but which the superior court dissolved. The hearings board invalidated the County’s planning actions in amendments 10-12 and 10-13 after finding and concluding the County did not, in adopting them, comply with the Growth Management Act (GMA), chapter 36.70A RCW, or the State Environmental Policy Act (SEPA), chapter 43.21C RCW. The superior court held, and the County and Ellison now contend, the hearings board lacked subject matter jurisdiction to review the County’s rezone because it is a site-specific land use decision within the superior court’s exclusive jurisdiction under the Land Use Petition Act (LUPA), chapter 36.70C RCW. Additionally, the County and Ellison contend the hearings board’s decision lacks substantial evidence, erroneously interprets and applies the law, and is arbitrary and capricious. We reject their contentions and reverse.

FACTS

In June 2010, Ellison proposed two amendments to the County’s comprehensive plan map and zoning map “for the purpose of developing the Thorp Travel Center consisting of a truck stop, restaurant and hotel and RV park.” Administrative Record (AR) at 13, 14. The first proposal, amendment 10-12, expanded a Type 3 Limited Area of More Intensive Rural Development (LAMIRD) from 12 to 30.5 acres within the property’s Agriculture Study Overlay. The second proposal, amendment 10-13, changed the property’s comprehensive plan category from Rural to Commercial and changed its zone designation from Agriculture 20 to Commercial Highway.

The proposed development would cover over 29 acres, comprising a 4,000 square foot fuel station, a 10,000 square foot retail store, a 5,000 square foot retail
store, a 6,000 square foot restaurant, a 24,000 square foot hotel with 50 units, a 5,000 square foot recreational vehicle park with 45 spaces, and parking lots with spaces for hundreds of cars and trucks. These uses would operate 24 hours a day, employ up to 140 people, and generate $10.9 million annually. The proposed development would require new roads and a six-acre septic or sewer reserve area. Surrounding uses are mainly agricultural.

The proposed development would be located next to Interstate Highway 90. The existing LAMIRD encompasses a fuel station and retail store located across the highway from the proposed development, and an energy utility and office building located next to the proposed development. A truck stop once stood on a small portion of the existing LAMIRD located next to the proposed development.

Apparently, Ellison submitted a SEPA environmental checklist on June 10, 2010 but the County made no corresponding threshold determination. Then, the County issued a SEPA environmental checklist on October 15, 2010 and a corresponding determination of nonsignificance on November 2, 2010. The determination of nonsignificance stated, "There is no agency administrative appeal ([Kittitas County Code (KCC)] 15.04.210 and 15B.05.010)." AR at 465. Thus, Futurewise did not appeal the determination of nonsignificance to any county-level official.

On December 21, 2010, the Board of County Commissioners enacted Ordinance 2010-14, adopting Ellison’s proposals along with five others during the annual comprehensive plan amendment cycle. The hearings board invalidated the County’s
planning actions upon Futurewise’s appeal. The superior court dissolved the hearings board’s decision. The County and Ellison appealed.

REVIEW STANDARD

We review the hearings board decision under the Administrative Procedure Act (APA), chapter 34.05 RCW. *Feil v. E. Wash. Growth Mgmt. Hr'gs Bd.*, 172 Wn.2d 367, 376, 259 P.3d 227 (2011); see RCW 34.05.510. We apply APA standards directly to the hearings board record, performing the same function as the superior court. *City of Redmond v. Cent. Puget Sound Growth Mgmt. Hr'gs Bd.*, 136 Wn.2d 38, 45, 959 P.2d 1091 (1998); see RCW 34.05.526. The party challenging the hearings board decision (here the County and Ellison) bears the burden of proving it is invalid. RCW 34.05.570(1)(a). The decision is invalid if it suffers from at least one of nine enumerated infirmities. RCW 34.05.570(3). We must grant relief from the decision if, as relevant here:

(b) The order is outside the statutory authority or jurisdiction of the agency conferred by any provision of law;

(d) The agency has erroneously interpreted or applied the law;

(e) The order is not supported by evidence that is substantial when viewed in light of the whole record . . . ; [or]

(i) The order is arbitrary or capricious.

RCW 34.05.570(3)(b), (d)-(e), (i).

Our review is de novo under RCW 34.05.570(3)(b) or (d), determining whether the decision contains a legal error. *Kittitas County v. E. Wash. Growth Mgmt. Hr'gs Bd.*, 172 Wn.2d 144, 155, 256 P.3d 1193 (2011). We accord the hearings board’s
Kittitas County v. Kittitas County Conservation Coal.


We apply the substantial evidence review standard to challenges under RCW 34.05.570(3)(e), determining whether there exists "a sufficient quantity of evidence to persuade a fair-minded person of the truth or correctness of the order." City of Redmond, 136 Wn.2d at 46 (quoting Callecod v. Wash. State Patrol, 84 Wn. App. 663, 673, 929 P.2d 510 (1997)). We view the evidence "in the light most favorable to . . . the party who prevailed in the highest forum that exercised fact-finding authority." City of Univ. Place v. McGuire, 144 Wn.2d 640, 652, 30 P.3d 453 (2001) (quoting State ex rel. Lige & Wm. B. Dickson Co. v. County of Pierce, 65 Wn. App. 614, 618, 829 P.2d 217 (1992)). Doing so "necessarily entails accept[ing] the factfinder's views regarding the credibility of witnesses and the weight to be given reasonable but competing inferences." Id. (quoting Lige & Wm. B. Dickson Co., 65 Wn. App. at 618).

We apply the arbitrary and capricious review standard to challenges under RCW 34.05.570(3)(i), determining whether the decision constitutes "willful and unreasoning action, taken without regard to or consideration of the facts and circumstances surrounding the action." City of Redmond, 136 Wn.2d at 46-47 (quoting Kendall v. Douglas, Grant, Lincoln & Okanogan Counties Pub. Hosp. Dist. No. 6, 118 Wn.2d 1, 14, 820 P.2d 497 (1991)). "Where there is room for two opinions, an action taken after due consideration is not arbitrary and capricious even though a reviewing court may believe it to be erroneous." Id. at 47 (quoting Kendall, 118 Wn.2d at 14).
ANALYSIS

A. Jurisdiction

The issue is whether the hearings board had subject matter jurisdiction to review amendment 10-13’s rezone under the GMA. The County and Ellison contend the rezone is within the superior court’s exclusive jurisdiction under LUPA. We review the hearings board’s assertion of jurisdiction de novo. RCW 34.05.570(3)(b); Kittitas County, 172 Wn.2d at 155.

Certain local governments like Kittitas County must “adopt a comprehensive plan under [the GMA] and development regulations that are consistent with and implement the comprehensive plan.” RCW 36.70A.040(3)(d), (4)(d), (5)(d). If a county later amends its comprehensive plan, it must concurrently adopt or amend consistent implementing development regulations. WAC 365-196-805(1). A comprehensive plan is a county’s “generalized coordinated land use policy statement.” RCW 36.70A.030(4). Development regulations are a county’s “controls placed on development or land use activities . . ., including . . . zoning ordinances.” RCW 36.70A.030(7). But a “decision to approve a project permit application” is not a development regulation, even if it appears in a legislative ordinance or resolution. Id. Instead, a project permit approval is a “land use decision” under LUPA. RCW 36.70C.020(2)(a). Project permit applications include proposals for “site-specific rezones authorized by a comprehensive plan” but exclude proposals for “the adoption or amendment of a comprehensive plan . . . or development regulations.” RCW 36.70B.020(4).
The hearings board has exclusive jurisdiction to review petitions alleging a county did not comply with the GMA in adopting or amending its comprehensive plan or development regulations.\(^1\) RCW 36.70A.280(1)(a); former RCW 36.70A.290(2) (1995); *Somers v. Snohomish County*, 105 Wn. App. 937, 945, 21 P.3d 1165 (2001).

Additionally, the hearings board may review petitions alleging a county did not comply with SEPA in adopting or amending its comprehensive plan or development regulations. RCW 36.70A.280(1)(a); former RCW 36.70A.290(2). But the hearings board “do[es] not have jurisdiction to decide challenges to site-specific land use decisions because [those] decisions do not qualify as comprehensive plans or development regulations.” *Woods v. Kittitas County*, 162 Wn.2d 597, 610, 174 P.3d 25 (2007); see RCW 36.70A.030(4), (7); RCW 36.70B.020(4); RCW 36.70C.020(2)(a). Instead, the superior court has exclusive jurisdiction under LUPA to review site-specific land use decisions not subject to review by quasi-judicial agencies like the hearings board. RCW 36.70C.030(1)(a)(ii); *Woods*, 162 Wn.2d at 610.

Here, whether the hearings board had subject matter jurisdiction to review amendment 10-13’s rezone depends on whether it is an amendment to a development regulation under the GMA or a project permit approval under LUPA. *Woods*, 162 Wn.2d at 610; see RCW 36.70A.030(7); RCW 36.70B.020(4). The parties agree the rezone was site specific. See *Woods*, 162 Wn.2d at 611 n.7 (stating a site-specific rezone is a change in the zone designation of a “‘specific tract’ at the request of ‘specific parties.’”

\(^1\) The Eastern Washington Growth Management Hearings Board has jurisdiction over such petitions arising from counties “east of the crest of the Cascade Mountains,” including Kittitas County. RCW 36.70A.260(1)(b).
First, the County and Ellison argue the rezone was a project permit approval regardless of whether the comprehensive plan authorized it. They reason RCW 36.70B.020(4) contains a nonexclusive list of project permit approvals including all site-specific rezones without restriction. But the County and Ellison ignore express limitations on the items listed. See In re Parentage of J.M.K., 155 Wn.2d 374, 393, 119 P.3d 840 (2005) (stating a court must not “simply ignore” express terms when interpreting a statute); State ex rel. Baisden v. Preston, 151 Wash. 175, 177, 275 P. 81 (1929) (stating a court must interpret a statute as a whole so that, if possible, “no clause, sentence, or word shall be superfluous, void, or insignificant” (quoting Wash. Mkt. Co. v. Hoffman, 101 U.S. 112, 115-16, 25 L. Ed. 782 (1879))); Murray v. Dep’t of Labor & Indus., 151 Wash. 95, 102, 275 P. 66 (1929) (a court must, if possible, interpret a statute so as to give every word or phrase “meaning” as well as “significance and effect” (internal quotation marks omitted)). Under RCW 36.70B.020(4), a site-specific rezone is a project permit approval solely if “authorized by a comprehensive plan”; otherwise, it is “the adoption or amendment of a . . . development regulation[].” We must interpret this language so as to give it meaning, significance, and effect.

Second, the County and Ellison argue the comprehensive plan authorized the rezone because the County found the rezone met all necessary criteria, including compatibility with the comprehensive plan. They reason the County ensured such
compatibility by changing the property's comprehensive plan category from Rural to Commercial "as a precondition to" changing its zone designation from Agriculture 20 to Commercial Highway. Br. of Resp't Kittitas County at 24. But the County accomplished each act concurrently by approving amendment 10-13. And, to be "authorized by a comprehensive plan" within the meaning of RCW 36.70B.020(4), the rezone had to be "allowed by an existing comprehensive plan." Spokane County v. E. Wash. Growth Mgmt. Hr'gs Bd., 160 Wn. App. 274, 281-83, 250 P.3d 1050 (emphasis added), review denied, 171 Wn.2d 1034 (2011); see also Woods, 162 Wn.2d at 612 n.7, 613; Wenatchee Sportsmen Ass'n v. Chelan County, 141 Wn.2d 169, 179-80, 4 P.3d 123 (2000).

The County and Ellison acknowledge the Rural comprehensive plan category existing before amendment 10-13 did not allow the rezone to Commercial Highway. And, the Commercial comprehensive plan category existing after amendment 10-13 was not part of the existing comprehensive plan at the time of the rezone. Thus, the rezone is not a project permit approval under LUPA because the then-existing comprehensive plan did not authorize it. Instead the rezone is an amendment to a development regulation under the GMA because it implements the comprehensive plan amendment. The hearings board's decision is within its statutory authority. See RCW 34.05.570(3)(b).

Dictum in Coffey v. City of Walla Walla, 145 Wn. App. 435, 187 P.3d 272 (2008), does not require a different conclusion. There, the city amended its comprehensive plan but did not rezone the property. Id. at 438. The Coffey court held the superior
court lacked subject matter jurisdiction to review the comprehensive plan amendment under LUPA because the hearings board had exclusive jurisdiction to do so under the GMA. \textit{Id.} at 441. The Coffey court continued,

\begin{quote}
It is not uncommon for those hoping to develop property to seek both a comprehensive plan amendment and a rezone of property in the same proceeding. Anyone seeking to challenge both aspects of a ruling granting both requests would by statute have to appeal to two entities: the [hearings board] for the comprehensive plan amendment and superior court for the rezone.
\end{quote}

\textit{Id.} at 442. This statement was unnecessary to the Coffey court's holding because the city amended its comprehensive plan but did not rezone the property. Additionally, this statement is true solely if a rezone is site specific and authorized by a then-existing comprehensive plan. In making this statement, the Coffey court did not consider whether a rezone that implements a comprehensive plan amendment can be an amendment to a development regulation.

Considering all, we hold a site-specific rezone is a project permit approval under LUPA if it is authorized by a then-existing comprehensive plan and, by contrast, is an amendment to a development regulation under the GMA if it implements a comprehensive plan amendment. In sum, the superior court erred because the hearings board had subject matter jurisdiction to review amendment 10-13’s rezone for compliance with both the GMA and SEPA. See RCW 36.70A.280(1)(a); former RCW 36.70A.290(2).

\textbf{Note:}

\begin{itemize}
\item RCW 36.70A.280(1)(a).
\item Former RCW 36.70A.290(2).
\end{itemize}
B. Exhaustion of Administrative Remedies

Ellison contends Futurewise failed to exhaust an available administrative remedy because it did not appeal the County's SEPA determination of nonsignificance to the county commissioners before petitioning the hearings board. Whether a party must exhaust an available administrative remedy is a legal issue we review de novo. See *Evergreen Wash. Healthcare Frontier, LLC v. Dep't of Soc. & Health Servs.*, 171 Wn. App. 431, 445, 287 P.3d 40 (2012) (citing *Sintra, Inc. v. City of Seattle*, 119 Wn.2d 1, 19 n.10, 829 P.2d 765 (1992)).

A party aggrieved by a county's SEPA action must use any available administrative appeal before petitioning the superior court for judicial review. RCW 43.21C.075(4); WAC 197-11-680(3)(c); *Citizens for Clean Air v. City of Spokane*, 114 Wn.2d 20, 26, 785 P.2d 447 (1990); see also RCW 34.05.534; *Citizens for Mount Vernon v. City of Mount Vernon*, 133 Wn.2d 861, 866, 947 P.2d 1208 (1997). But this requirement does not apply to Futurewise because it did not petition the superior court for judicial review; the County and Ellison did. And, the GMA's standing and jurisdictional requirements allowed Futurewise to petition the hearings board directly for administrative review. See RCW 36.70A.280(1)(a), (2), (4); former RCW 36.70A.290(2); RCW 34.05.530. Even if Futurewise were required to use some other administrative appeal before petitioning the hearings board, the procedure the County and Ellison suggest was not available to Futurewise.

While a party may appeal the County's SEPA action to the county commissioners, this procedure applies solely if the action relates to the County's
decision on a "land use permit"—a project permit application. KCC 15A.01.030; see KCC 15A.02.050(1); KCC 15A.04.020(2); KCC 15A.10.020. But a party may appeal the County's SEPA action to the hearings board directly if the action relates to the County's "amendments to the . . . comprehensive plan or development regulations." KCC 15B.05.010; see KCC 15.04.210(1)(b). Because amendments 10-12 and 10-13 are not decisions on land use permits but amendments to the comprehensive plan and development regulations, Futurewise could not appeal the determination of nonsignificance to the county commissioners. Indeed, the determination of nonsignificance recognizes this, stating, "There is no agency administrative appeal (KCC 15.04.210 and 15B.05.010)." AR at 465. In sum, Futurewise was not required to appeal the County's SEPA determination of nonsignificance to the county commissioners before petitioning the hearings board.

C. Verities and Abandoned Issues Noted

Because the County and Ellison bear the burden of proving the hearings board decision is invalid, see RCW 34.05.570(1)(a), their briefs to this court had to "set forth a separate concise statement of each error which [they] contend[] was made by the [hearings board], together with the issues pertaining to each assignment of error," RAP 10.3(h); see 3 KARL B. TEGLAND, WASHINGTON PRACTICE: RULES PRACTICE RAP 10.3 drafters' cmt. 1994 amends. at 54 (7th ed. 2011) (stating RAP 10.3(h) applies to "[a] party contending that the administrative agency decision was in error, regardless of the party's designation as 'appellant' or 'respondent'" before the appellate court).
This required their briefs to include "[a] separate assignment of error for each finding of fact [they] contend[] was improperly made," and to do so "with reference to the finding by number." RAP 10.3(g); see RAP 10.3(h). Unchallenged agency factual findings are verities on appeal. *Hilltop Terrace Homeowner's Ass'n v. Island County*, 126 Wn.2d 22, 30, 891 P.2d 29 (1995). Additionally, their briefs had to present "argument in support of the issues presented for review, together with citations to legal authority and references to relevant parts of the record." RAP 10.3(a)(6); see RAP 10.3(b). Unsubstantiated assignments of error are deemed abandoned. *Howell v. Spokane & Inland Empire Blood Bank*, 117 Wn.2d 619, 624, 818 P.2d 1056 (1991).

The County and Ellison's briefs to this court do not assign error to or argue against the hearings board's factual findings. Therefore, the factual findings are verities on appeal. See RAP 10.3(g)-(h); *Hilltop Terrace*, 126 Wn.2d at 30. Additionally, the County and Ellison's briefs to this court assign error to but do not argue against the merits of the hearings board's decision on SEPA noncompliance. Therefore, these assignments of error are abandoned. See RAP 10.3(a)(6), (b); *Howell*, 117 Wn.2d at 624. Notably, the County and Ellison did not raise the above issues in their petitions to the superior court either. In sum, we review solely the hearings board's legal conclusions on GMA noncompliance.

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2 While the County and Ellison baldly assert the environmental checklists and determination of nonsignificance were adequate under SEPA, they do not substantiate this argument.

3 But when addressing Ellison's challenges under RCW 34.05.570(3)(d) and (e), we still consider the hearings board's factual findings to determine whether they support the hearings board's legal conclusions. See generally *Morgan v. Prudential Ins. Co. of*
D. Hearings Board Decisions

The issue is whether the hearings board erred by invalidating amendments 10-12 and 10-13. Ellison contends the hearings board erroneously decided amendment 10-12’s expansion of the Type 3 LAMIRD is noncompliant with the GMA’s requirements and is inconsistent with the comprehensive plan’s goals, policies, and objectives. Next, Ellison contends the hearings board erroneously decided amendment 10-13’s rezone is inconsistent with the comprehensive plan’s prior designation of an Agriculture Study Overlay. We review the hearings board’s decision to ensure it is supported by substantial evidence in light of the whole record, does not erroneously interpret or apply the law, and is not arbitrary or capricious. RCW 34.05.570(3)(d)-(e), (i); Kittitas County, 172 Wn.2d at 155; City of Redmond, 136 Wn.2d at 46-47.

The hearings board may decide a petition alleging a county did not comply with the GMA in adopting or amending its comprehensive plan or development regulations. RCW 36.70A.280(1)(a); former RCW 36.70A.290(2). The petitioner (here Futurewise) bears the burden of proving noncompliance. See RCW 36.70A.320(2). But a county has “broad discretion in adapting the requirements of the GMA to local realities.” Quadrant Corp. v. Cent. Puget Sound Growth Mgmt. Hr’gs Bd., 154 Wn.2d 224, 236, 110 P.3d 1132 (2005); see RCW 36.70A.3201. Thus, the hearings board must presume validity and find compliance unless the county’s planning action is “clearly erroneous in view of the entire record before the board and in light of the goals and requirements of [the GMA].” RCW 36.70A.320(1), (3). A county’s planning action is
clearly erroneous if it leaves the hearings board with a "firm and definite conviction that a mistake has been committed." *King County*, 142 Wn.2d at 552 (quoting *Dep't of Ecology v. Pub. Util. Dist. No. 1*, 121 Wn.2d 179, 201, 849 P.2d 646 (1993)).

A comprehensive plan amendment must "conform to [the GMA]." RCW 36.70A.130(1)(d). But "the GMA is not to be liberally construed." *Woods*, 162 Wn.2d at 612 & n.8, 614 (citing *Skagit Surveyors & Eng'rs, LLC v. Friends of Skagit County*, 135 Wn.2d 542, 565, 958 P.2d 962 (1998)). Thus, a comprehensive plan must obey the GMA's clear mandates. See *Thurston County v. W. Wash. Growth Mgmt. Hr'gs Bd.*, 164 Wn.2d 329, 341-42, 190 P.3d 38 (2008). A newly adopted or amended development regulation must be "consistent with and implement the comprehensive plan." RCW 36.70A.040(3)(d), (4)(d), (5)(d); RCW 36.70A.130(1)(d); see WAC 365-196-805(1). But "a comprehensive plan is a 'guide' or 'blueprint' to be used when making land use decisions." *Citizens for Mount Vernon*, 133 Wn.2d at 873 (quoting *Barrie v. Kitsap County*, 93 Wn.2d 843, 849, 613 P.2d 1148 (1980)). Thus, a development regulation need not strictly adhere but must "generally conform" to the comprehensive plan. *Id.* (quoting *Barrie*, 93 Wn.2d at 849).

A county's comprehensive plan must contain "a rural element including lands that are not designated for urban growth." RCW 36.70A.070(5)(d); see WAC 365-196-425. This rural element "may allow for limited areas of more intensive rural development, including necessary public facilities and public services." RCW 36.70A.070(5)(d); see WAC 365-196-425(6). Type 3 LAMIRDs allow "intensification of . . . isolated small-scale to factual findings and legal conclusions entered after a bench trial).
businesses that are not principally designed to serve the existing and projected rural population and nonresidential uses, but do provide job opportunities for rural residents.”

RCW 36.70A.070(5)(d)(iii); see WAC 365-196-425(6)(c)(iii). Under these area types, “Rural counties may allow the expansion of small-scale businesses [or] ... new small-scale businesses to utilize a site previously occupied by an existing business.” RCW 36.70A.070(5)(d)(iii); see WAC 365-196-425(6)(c)(iii)(A). But such small-scale businesses must “conform[] to the rural character of the area.” RCW 36.70A.070(5)(d)(iii); see WAC 365-196-425(6)(c)(iii)(A).

The County’s rural element allows for Type 3 LAMIRDs, calling them “Rural Employment Center[s]—Intensification of development on lots containing isolated nonresidential uses or new development of isolated small-scale businesses that are not principally designed to serve the rural area, but do provide job opportunities for rural residents.” KITTITAS COUNTY COMPREHENSIVE PLAN (KCCP) 8.5.8. These area types must meet certain standards:

a) Intensification of development on lots containing isolated nonresidential uses or new development of isolated small scale businesses is permitted;

b) Businesses should provide job opportunities for rural residents, but do not need to be principally designed to serve local residents;

c) Small scale employment uses should generally be appropriate in a rural community, such as (but not limited to) independent contracting services, incubator facilities, home-based industries, and services which support agriculture; and

d) Development should conform to the rural character of the surrounding area.

KCCP Goal, Policy, & Objective 8.78. Once the County fixes an area’s boundaries, it may not expand them unless doing so is “otherwise consistent with the requirements of
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the GMA." KCCP Goal, Policy, & Objective 8.69. Such expansion, where permitted, may include "undeveloped land . . . for limited infill, development or redevelopment when consistent with rural provisions of the [GMA]." KCCP Goal, Policy, & Objective 8.70. However, "uses that require urban level of services should not be allowed." KCCP Goal, Policy, & Objective 8.73. Urban services are "public services and public facilities at an intensity historically and typically provided in cities, specifically including storm and sanitary sewer systems." RCW 36.70A.030(18); WAC 365-196-200(19).

We begin our analysis with amendment 10-12. First, Ellison argues the hearings board erred in deciding the travel center would not be "isolated" as required by RCW 36.70A.070(5)(d)(iii) and KCCP 8.5.8(a). The hearings board defined "isolated" according to *Whitaker v. Grant County,* No. 99-1-0019, at 13-14 (E. Wash. Growth Mgmt. Hr'gs Bd. Nov. 1, 2004), which decided proposed developments on contiguous Type 3 LAMIRDs would not be isolated but would permit low-density sprawl. Thus, the hearings board concluded the proposed development must stand apart from other similar uses. Giving this GMA interpretation substantial weight, we reject Ellison's argument because the undisputed facts show a fuel station and retail store exist on the Type 3 LAMIRD across the highway from the proposed development. This is a sufficient quantity of evidence to persuade a fair-minded person the travel center would not be isolated from other similar uses. In reaching this decision, the hearings board correctly interpreted and applied the law upon thorough reasoning with due consideration for the facts.
Second, Ellison argues the hearings board erred in deciding the travel center would not be "small scale" as required by RCW 36.70A.070(5)(d)(iii) and KCCP 8.5.8(a) and (c). The hearings board defined "small scale" according to state and local standards for Type 3 LAMIRDs, which require proposed developments to be appropriate for and visually compatible with a rural community. Thus, the hearings board concluded the proposed development must be small relative to surrounding uses. Giving this GMA interpretation substantial weight, we reject Ellison’s argument because the undisputed facts detailed below support the hearings board’s decision.

The facts show while surrounding uses are mainly agricultural, the proposed development would cover over 29 acres, comprising a 4,000 square foot fuel station, a 10,000 square foot retail store, a 5,000 square foot retail store, a 6,000 square foot restaurant, a 24,000 square foot hotel with 50 units, a 5,000 square foot recreational vehicle park with 45 spaces, and parking lots with spaces for hundreds of cars and trucks. These uses would operate 24 hours a day, employ up to 140 people, and generate $10.9 million annually. Additionally, the proposed development would require significant infrastructure, including roads from the highway and a six-acre septic or sewer reserve area the hearings board concluded was an urban service. This is a sufficient quantity of evidence to persuade a fair-minded person the travel center would not be small in scale relative to surrounding uses. In reaching this decision, the hearings board again correctly interpreted and applied the law upon thorough reasoning with due consideration for the facts.
Third, Ellison argues the travel center would conform to the surrounding area's rural character as required by RCW 36.70A.070(5)(d)(iii) and KCCP 8.5.8(d). But the hearings board never reached this issue, instead noting no evidence showed the county commissioners ever considered it. We will not exercise discretion the legislature placed in the hearings board. See RCW 34.05.574(1); RCW 36.70A.280(1)(a); former RCW 36.70A.290(2).

To summarize, the hearings board correctly decided the travel center would not be isolated or small in scale. Therefore, we conclude the hearings board did not err in deciding amendment 10-12 is noncompliant with the GMA and inconsistent with the comprehensive plan. We do not reach Ellison's remaining arguments on whether the expansion properly utilized a former truck stop site not included in the original Type 3 LAMIRD and whether the expansion fixed more logical outer boundaries than the original Type 3 LAMIRD.

We turn now to amendment 10-13. On December 22, 2009, the County designated an Agriculture Study Overlay applicable to "[p]roperties containing prime farmland soils, . . . and located in the former Thorp Urban Growth Node Boundaries and outside of LAMIRD boundaries." AR at 506. Amendment 10-13 changed the property's comprehensive plan category from Rural to Commercial and changed its zone designation from Agriculture 20 to Commercial Highway.

First, Ellison argues the hearings board erred in deciding an inconsistency exists because the record does not reveal the County's intent in designating the property as an Agriculture Study Overlay. But the undisputed facts show the County did so
because it intended to preclude commercial development until it determined whether the property qualified as Agricultural Lands of Long Term Commercial Significance:

"Outside of the LAMIRD boundaries, some parcels have been identified as meeting some though not all designation criteria for lands of long-term commercial significance for agriculture. An overlay zone is proposed to limit the potential for lot creation and some potentially incompatible land uses until the County completes a review of the needs of industry in 2010".... "The County intends to study the needs and nature of the agriculture industries and the designation criteria in conjunction with its consideration of its critical areas regulations update in 2010. In the interim, an agriculture study overlay zone were [sic] considered in these areas; and standards proposed in Kittitas County Code Title 17 that would be applied to the overlay zones."

AR at 601 (second and third omissions in original) (quoting Kittitas County Ordinance 2009-025 (Dec. 22, 2009) (Findings of Fact 128, 171)). The County apparently had not made this determination at the time of the rezone.

Second, Ellison argues the hearings board erred in deciding the property might have qualified as Agricultural Lands of Long Term Commercial Significance because doing so improperly entertained a collateral attack on the County's prior designation. But the hearings board merely concluded the rezone is inconsistent with the Agriculture Study Overlay's interim use limitations, which remained in effect at the time of the rezone. Indeed, the undisputed facts show the Commercial Highway zone designation permitted commercial development that the Agriculture Study Overlay prohibited. This is a sufficient quantity of evidence to persuade a fair-minded person amendment 10-13's rezone is inconsistent with the comprehensive plan's prior designation of an Agriculture Study Overlay. In reaching this decision, the hearings board again correctly interpreted and applied the law upon thorough reasoning with due consideration for the
facts. Therefore, we conclude the hearings board did not err in deciding amendment 10-13 is inconsistent with the comprehensive plan.

In conclusion, the hearings board's decision is supported by substantial evidence in light of the whole record, does not erroneously interpret or apply the law, and is not arbitrary or capricious. See RCW 34.05.570(3)(d)-(e), (i). We hold the hearings board did not err by invalidating amendments 10-12 and 10-13 on grounds the County did not comply with the GMA in adopting them. Accordingly, we reverse the superior court. We do not reach Futurewise's remaining contentions on whether the superior court erred in dissolving rather than remanding the hearings board's decision.

Reversed.

Brown, J.

WE CONCUR:

Siddoway, A.C.J.

Kulik, J.